



fidh



MALI

Choosing justice in the face of crisis

Report

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TABLE OF ACRONYMS AND ABBREVIATIONS

AJM	Association des Juristes maliennes (Association of Malian Jurists)
AMDH	Association malienne des droits de l'Homme (Mali Human Rights Association)
AQIM	Al Qaeda in the Islamic Maghreb
CMA	Coordination des Mouvements de l'Azawad (Coordination of the Movements of Azawad)
CNRDRE	Comité national pour le Redressement de la Démocratie et la Restauration de l'État (National Committee for the Restoration of Democracy and State)
DEMESO	Clinique juridique (Legal Clinic)
FAMA	Forces armées maliennes (Malian Armed Forces)
FIDH	Fédération internationale des ligues des droits de l'Homme (International Federation for Human Rights)
FLM	Front de Libération du Macina (Macina Liberation Front)
GATIA	Groupe d'auto-défense Touareg Imghad et alliés (Tuareg Imghad and Allies Self-Defence Group)
HCUA	Haut Conseil pour l'Unité de l'Azawad (High Council for the Unity of Azawad)
ICC	International Criminal Court
JNIM	Jamaat Nosrat al-Islam wal-Mouslimin
MAA	Mouvement arabe de l'Azawad (Arab Movement of Azawad)
MINUSMA	Mission multidimensionnelle intégrée des Nations unies pour la Stabilisation au Mali (United Nations Multidimensional Integrated Stabilisation Mission in Mali)
MISMA	Mission internationale de Soutien au Mali (International Support Mission to Mali)
MOJWA	Movement for Oneness and Jihad in West Africa
MNLA	Mouvement national de Libération de l'Azawad (National Movement for the Liberation of Azawad)
MSA	Mouvement pour le Salut de l'Azawad (Movement for the Salvation of Azawad)
TGI	<i>Tribunal de Grande Instance</i>
WILDAF/Mali	Women in Law Development in Africa/Mali

EXECUTIVE SUMMARY

The fight against impunity must be a priority in Mali, both to uphold the law and satisfy the need for truth, justice and reparations for the victims of a conflict that has raged since 2012, and to help reestablish a lasting peace and the rule of law. In the context of a deteriorating security situation, a disintegration of the bond of trust between peoples and State institutions, especially in the Central and Northern regions, and the presence of the same perpetrators of violence who were involved at the beginning of the conflict, the fight against impunity is an absolute necessity. This fight must make it possible to at once do justice by the victims, reestablish the relationship between citizens and the State, and remove the perpetrators of violence in order to prevent future crimes.

However, on the one hand, the deterioration of the security situation has given rise to a strong military response by Malian authorities and their foreign partners, thereby relegating respect for human rights and the fight against impunity to a secondary priority, although both of these elements are fundamental in the fight against terrorism. On the other hand, the political negotiations to restore the peace, in particular prior to the signing of the Peace Agreement resulting from the Algiers Process in June 2015, necessitated sacrifices in the fight against impunity, among other things through waves of releases of individuals who are nonetheless presumed responsible for serious human rights violations in Northern Mali.

Nevertheless a large number of investigations into the most serious crimes committed during the conflict has been opened by Malian courts. These investigations have resulted, over the last twelve months, in two considerable advances for the fight against impunity in Mali: the holding of the first trial for crimes related to the crisis in Northern Mali, which resulted in the sentencing of Aliou Mahamane Touré, former Chief of the Islamic police of MOJWA in Gao; and the opening of the trial against former coup leader Amadou Haya Sanogo and other elements of the former junta, accused of having orchestrated the abduction and summary execution of about twenty red beret soldiers from the Malian army who had attempted a countercoup d'État in April 2012.

FIDH and AMDH insist that Malian authorities must continue their efforts towards holding other trials (and resuming the trial against Sanogo) and towards greater recognition by judicial authorities of international crimes in these future proceedings, in particular sexual crimes as war crimes. They also bring to light a certain number of crimes not currently being judicially investigated or prosecuted, notably crimes committed during the "reconquest of Northern Mali" by Malian and foreign armed forces, as well as crimes committed in the Central and Northern regions during the deterioration of the security situation seen in recent years.

Finally, action by the ICC remains essential for the fight against impunity in Mali and must be part and parcel of a genuine move towards complementarity in judicial proceedings pending before the courts at the national and international levels.

I. HOW TO RESPOND TO THE CRIMES RELATED TO THE MALIAN CRISIS?

1. A necessary fight against impunity

The unprecedented crisis experienced by Mali since 2012,¹ the consequences of which continue to be felt more than ever through the offences committed by the different armed groups involved, has created many victims, especially in Northern Mali, where international crimes were committed – war crimes, including murders, summary executions of Malian soldiers during the first hours of the conflict, rapes, forced disappearances and tortures. The victims of these crimes are above all civilian populations, beginning with women, who were particularly targeted by sexual crimes during the occupation of Northern Mali.

Since January 2012 and the offensive by the rebel groups, FIDH and AMDH have documented human rights violations committed by the various actors involved, by means of numerous investigations and interviews and thanks to the tireless work of observers spread throughout the country. Apart from the need for medical and social support to surmount the consequences of the crimes committed, all of the victims encountered expressed their resolute desire to obtain justice and see the perpetrators of the crimes tried.

To support them in this request for justice, our organisations have met about 500 victims and witnesses over the last few years and have initiated or participated in a dozen judicial proceedings, in which we represent over 180 civil parties. The extent and gravity of the crimes currently under investigation or at trial, unheard of in contemporary Malian history, make it imperative that justice be done. It is crucial both for the victims and to guarantee the non-recurrence of conflicts and the conditions for a genuine return to the rule of law.

Indeed, the crisis has lastingly undermined faith in national judicial authorities, especially with the occupation of Northern Mali, which saw the sovereign functions of the State usurped by armed groups. The feeling of having been abandoned by the State, expressed by part of the population of the regions occupied in 2012-2013, has been compounded by the frustration of being suspected of complicity with those same groups. Consequently, a significant distrust of the Malian judicial system and its ability to try the most serious offenders has taken hold, especially in the regions where those crimes were committed and where the need for justice is the greatest. Under these circumstances, the fight against impunity must therefore make it possible to reestablish citizens' faith in judicial authorities and thereby help strengthen the legitimacy of these institutions.

Finally, while new perpetrators of violence have emerged over the past two years,² most of the groups that are committing or continuing to commit crimes in Northern Mali, and now in the central part of the country, have come from various restructurings of the armed groups of the 2012-2013 crisis. These groups involve actors with a long history of violent actions. Without courts capable of trying the leaders of these various groups and thereby sending a strong message to those who commit or might be tempted to commit such crimes, it is difficult to imagine that military operations alone will be able to stop the violence. On the other hand, if the Malian courts manage to successfully close the proceedings

1. See FIDH/AMDH report, *Justice in Progress [La justice en marche]*, March 2014.

2. See FIDH/AMDH report, *Terrorism and Impunity Jeopardize a Fragile Peace Agreement*, May 2017.

already undertaken, there is a good chance that they will play a role of prevention and dissuasion, once the criminals contemplate the possibility that they may be called to account for their actions.

Respecting victims' right to justice; restoring the rule of law; and preventing new crimes: these are all reasons why the fight against impunity must be treated as an absolute necessity if Mali is to make a sustainable recovery from the conflict.

2. A clear will to do justice...

Since the election of Ibrahima Boubacar Keita to the presidency of Mali on 11 August 2013, Mali's executive branch has taken positions in favour of justice and the fight against impunity, beginning with the Head of State in his inaugural address.³

The current Minister of Justice, Mamadou Ismael Konaté, who has held office since July 2016, also sees justice as a vital solution to the Malian crisis. Speaking recently on the need to resume the Sanogo trial, he stated on 13 November:

“Justice, justice and nothing but justice. The first and last remedy for the crisis threatening the survival of our country and its people lies in justice. Let us once again follow that principle of life whereby we submit violations, deviant behaviour and conflicts to the discretion of the courts.”⁴

These words were put into practice notably through the trial of Haya Sanogo *et al.* in 2016 (See *Part III of this report*), and then of Aliou Mahamane Touré, the former Chief of Islamic police of MOJWA in Gao (See *Part II*), who was tried and convicted last August. Both trials were unprecedented for the Malian justice system, owing to the identity of the defendants and the gravity of the crimes being tried.

The long-awaited setting up of the Truth Justice and Reconciliation Commission (TJRC), which had been created in January 2014, and the subsequent adoption of a national policy of transitional justice in December 2016, have also helped to make justice a national priority.

Finally, let us recall that in the peace and reconciliation agreement that emerged from the Algiers Process, which was signed in May and June 2015, the signatories agreed to:

“promote genuine national reconciliation based on [...] the imprescriptible nature of war crimes and crimes against humanity; [...] no amnesty for the perpetrators of these crimes and of serious violations of human rights, including the raping of women, young girls and children; the consolidation of the judiciary to secure the rule of law throughout the country; [and the] fundamental reform of the judicial system to bring justice closer to citizens, improve the performance of the judicial system, and put an end to impunity”.

These agreements were preceded by the lifting of arrest warrants for several senior officers of signatory armed groups that may be guilty of serious crimes in the case of *Public Prosecutor v. Iyad Ag Ghali and 29 others*, and the implementation of the agreements is considerably behind schedule.⁵ Nevertheless,

3. See: <http://www.maliweb.net/politique/discours-dinvestiture-du-nouveau-president-de-la-republique-du-mali-ibrahim-boubacar-keita-dit-ibk-167869.html> [in French only]

4. See: <http://maliactu.net/mali-mamadou-ismael-konate-ministre-de-la-justice-il-est-de-linteret-de-tous-que-le-proces-de-amadou-aya-sanogo-a-ille-jusquau-bout/> [in French only]

5. See FIDH/AMDH report, *Terrorism and Impunity Jeopardize a Fragile Peace Agreement*, May 2017.

the fact remains that they are establishing a national framework conducive to the exercise of justice, beginning with international crimes.

3. ... caught in the middle between security challenges and political agendas

While the Malian justice system has achieved significant progress by opening two particularly important trials to date (*See Parts II and III of this report*), it remains largely plagued by an acutely deteriorated security situation and political issues that often impinge on legal matters.

The year 2016 saw a particularly sharp resurgence of violence and attacks committed by various armed groups against civilians and Malian or MINUSMA soldiers. At the time our organisations had counted at least 385 attacks resulting in at least 332 deaths, among them 207 civilians in the northern and central parts of the country. In addition at least 621 recorded cases of torture, abduction, arbitrary detention and extortion of all types were recorded, 67 of them involving minors.⁶

This unprecedented level of violence – practically twice that observed in 2015 – is a result of a marked worsening of insecurity, which persisted in 2017. It can be explained by a proliferation of armed groups and the resumption of hostilities between certain signatory parties to the Agreement, but also – and above all – by the spread of violence to the central part of the country. In that region, which had been relatively spared until then, terrorist groups and violent extremists, notably the Macina Liberation Front of Islamic preacher Amadou Kouffa, took advantage of the vulnerability of the region to carry out attacks and targeted actions against representatives of the State (prefects, governors, judges, armed forces, etc.) and civilian populations accused of supporting the Malian army.

This aggravation of the security situation gives rise to consequences that adversely impact the exercise of justice in two ways. By targeting the Malian State, these armed groups contribute first of all to the State's withdrawal from certain areas, where basic services, including the courts, are no longer able to function. But this violence also forces the State to concentrate resources on a security and military response that sometimes entails abuses by the Malian armed forces⁷ and relegates justice to a secondary priority, although it would be an appropriate response to the crimes committed by the various groups.

On the political level, the negotiations leading to the Algiers Agreement and the various trust-building measures introduced have at times in recent years cruelly disappointed victims' expectations and seriously compromised the proper functioning of the judicial system. Thus, for example, the release in August 2014 of Ag Alfousseyni Houka Houka, the former Islamic judge of Timbuktu, who was charged for his alleged role in the commission of serious human rights violations, was a serious attack on the independence of the judicial system and a real setback to the fight against impunity.

The same can be said of the release on 9 December 2014 of Mohamed Aly Ag Wadoussène, Haïba Ag Acherif, Oussama Ben Gouzzi and Habib Ould Mahouloud, all of whom allegedly committed serious crimes and were prosecuted by Malian courts. These men were exchanged as part of negotiations for the release of the French hostage Serge Lazarevic, among other things – at the expense of the victims' rights to justice.

These measures have at times succeeded in contributing to political progress, but at the expense of justice, victims' rights and a lasting peace that would keep the most serious offenders from going

6. *Ibid.*

7. *Ibid.*

unpunished. They have also sent negative signals to the leaders of armed groups by considering the actors' trouble-making potential and their role in the balance of power among the various actors in the crisis to be a higher priority than their accountability and the reality of their crimes. Finally, these political decisions also have harmful consequences on the judicial system and the work of judges, who under these conditions are discouraged from expediting investigations or initiating investigative actions against high officials, when such measures could at any time become the object of political manoeuvring.

4. Adapt the judicial system to the challenges presented by the crisis?

Faced with the magnitude of the task despite the difficulties described above, the Malian judicial system has had to adapt over recent years and put in place new instruments for investigating and prosecuting the most serious offenders.

• Jurisdiction of the northern courts: from theory to practice

In two decisions, dated 16 July 2012⁸ and 21 January 2013⁹, the Supreme Court of Mali ordered the withdrawal of jurisdiction from courts "located in the occupied areas" and appointed the *Tribunal de Grande Instance* of Commune III of the District of Bamako to review all offences committed in the regions affected by the conflict. Subsequently, on February 16, 2015, the Malian Supreme Court ordered that the courts of Northern Mali have their respective jurisdictions returned to them on the grounds that "the areas formerly occupied have been liberated and the sovereign functions of the State can once again be carried out more or less normally, with the gradual return of the agents of the State..."¹⁰

The cases initiated by FIDH, AMDH and other human rights defence organisations – WILDAF, AJM, DEMESO, and Cri de Cœur Collectif – before the *Tribunal de Grande Instance* of Commune III of Bamako therefore fell into legal limbo. In principle, the *Tribunal de Grande Instance* of Commune III of Bamako lost its jurisdiction to try crimes committed in Northern Mali under the occupation. However, the decision of the Supreme Court did not specify what was to become of cases already under investigation before the *Tribunal de Grande Instance* of Bamako. In other words, the Supreme Court's decision to return jurisdiction does not specify whether it applies solely to the opening of future proceedings or whether it is retroactive and would therefore also apply to ongoing cases. On the other hand, the investigating judges of Commune III of Bamako have confirmed to us that they did not receive official notification of that decision or of loss of jurisdiction. As a result some judges believed that they still had jurisdiction, while others interpreted this decision as putting an end to their jurisdiction to handle these cases. In any event, **the decision of the Supreme Court dated February 2015 restoring jurisdiction to the courts of Northern Mali imperils the proceedings already opened before the court of Commune III of Bamako.**¹¹

Moreover, despite the partial return of the State to the northern regions, the judicial system in these areas is not yet fully functional. The reality is that these courts are not capable of handling these sensitive cases at present. The courts of the Timbuktu and Gao regions that were rehabilitated after the occupation are barely functional and cannot, due to the security situation and threats faced by the administrators of justice, handle cases that investigate individuals who are or have been affiliated with armed groups and terrorist groups, some of whom have benefited from the confidence-building measures provided for

8. Supreme Court Decision N°46 of 16 July 2012.

9. Supreme Court Decision N°04 of 21 January 2013.

10. Supreme Court Decision N°11 of 16 February 2015

11. Several judicial authorities interviewed in October 2017 believe that there is a non-negligible risk that these proceedings could ultimately be thrown out if the investigations are prosecuted before the *Tribunal de Grande Instance* of Commune III of Bamako.

in the peace agreement. Furthermore, the handling of these sensitive cases by courts in Northern Mali would imperil the victims, who would benefit from no protective measures. Judicial actors too, especially judges, enjoy no guarantee of safety when they work on these cases.¹² A case in point is the Prosecutor of Gao, who escaped during an attack on his home in January 2015. The court of Kidal for its part is still not open despite the appointment of a new Prosecutor based in Gao. It is important to emphasize that the deterioration of the security situation in both Northern and Central Mali, principally during the year 2017, does not augur well for the return of the administration of justice in the near future.¹³

• The creation of a Specialised Judicial Unit for the fight against terrorism

On 21 May 2013, Malian authorities passed a law amending the Code of Criminal Procedure and creating a specialised judicial unit for the fight against terrorism and transnational crime within the *Tribunal de Grande Instance* of Commune IV of the District of Bamako.¹⁴

This Specialised Judicial Unit for the fight against terrorism in fact assumed its duties in January 2015. It is composed of a Prosecutor's office, specialised investigative offices, a specialised bureau of investigation and experts to support the unit in their fields of expertise, among others. The specialised bureau is distinguished by its ability to travel and investigate throughout all of Mali, and it has already conducted missions in the northern regions (where investigative judges of the "ordinary" courts of Bamako are unable to go).¹⁵ In addition to the considerable resources of the Specialised Judicial "Anti-Terrorism" Unit (which are vastly greater than those of the ordinary courts), the administrators of justice in the unit have received specialised training in investigative techniques and the laws applicable specific to the unit's mandate.¹⁶

The material jurisdiction of the Specialised Judicial Unit is defined in Article 609-1 of the Law of 2013 and applies to offences related to terrorism, financing of terrorism, money laundering, drug trafficking, weapons and ammunition, and human trafficking and related practices when these crimes are transnational in nature.¹⁷ Its geographical jurisdiction, moreover, covers all of Mali.¹⁸

Since early 2015, the Specialised Judicial Unit has initiated several proceedings for offences under its jurisdiction, notably for acts of terrorism committed since it assumed its duties.¹⁹ In addition, several dozen proceedings for terrorism offences or transnational crime that were opened after the passing of the law creating the Specialised Unit but predating the effective entry into function of the unit are now

12. In July 2015 the Prosecutor in Gao was lucky to emerge unscathed from an attack at his home.

13. Due to the lack of safety, the redeployment of the civilian administration in Northern and Central Mali has not progressed. On 11 September 2017 only 30% of all agents of the State in the septentrional and Mopti regions were on the job, as against 38% in January 2017. Report of the UN Secretary General on the Situation in Mali, 28 September 2017, S/2017/811.

14. Law N°2013-016 of 21 May 2013 amending Law N°01-080 of 20 August 2001 enacting the Code of Criminal Procedure, articles 610 and 610-1.

15. Meeting with the Prosecutor of the Specialised Judicial Unit for the fight against terrorism, October 2017.

16. The Specialised Judicial Unit receives considerable financial and technical support from MINUSMA and other international partners.

17. Article 609-1 of Law N°2013-016 reads: "The offences specified in Law No. 08-025 of 23 July 2008 on Prevention of Terrorism in Mali; Law No. 10-062 of 30 December 2010 enacting [a] uniform law on the fight against the financing of terrorism; Law No. 06-066 of 29 December 2006 enacting [a] uniform law on the fight against money laundering; Law No. 01-078 of 18 July 2001 on the control of drugs and precursors; Law No. 04-050 of 12 November 2004 governing weapons and ammunition; Law No. 12-023 of 12 July 2012 on the fight against human trafficking and related practices, are [shall be] prosecuted, investigated and tried under the provisions of the Code of Criminal Procedure subject to the provisions [of this law] if they are transnational in nature." (NB: acts of terrorism, financing of terrorism and money laundering are considered transnational offences.)

18. Article 611-1 of the aforementioned Law states, "In the prosecution and investigation of offences committed in cases of terrorism and organised transnational crime as defined in Article 609-1 and related offences, the territorial jurisdiction of the Prosecution and the specialised offices covers the entire country."

19. For example, the Specialised Judicial Unit for the fight against terrorism charged nine individuals with terrorist acts committed during the ambush of a MINUSMA foot patrol near Aguelhoc, during which two peacekeeping soldiers were killed on 23 May 2017.

in the process of being transferred to the unit.²⁰ Our organisations therefore anticipate, on the one hand, that the unit's activities will be increased in the coming months, but also that cases related to terrorism that are currently stagnant before the *Tribunal de Grande Instance* of Commune III of Bamako²¹ will be "taken up anew" and real progress thereby.

Furthermore, the Prosecutor of the Specialised Judicial Unit for terrorism has the power to prosecute "offences related" to main offences in the cases of which he is in charge. This means that once a case is on his level, the Prosecutor also has jurisdiction to investigate and prosecute the individual in question for any offence other than those falling within his jurisdiction, including offences related to serious human rights violations. These related offences become, in other words, offences secondary to the principal offences that are related to terrorism or transnational crime.

In ongoing "terrorism cases" in which FIDH and AMDH are representing victims and which are in the process of being transferred to the unit, the Prosecutor therefore has the option of extending his investigation to serious human rights violations that were committed as related offences. He may, for example, decide to prosecute Ag Alfousseyni Houka Houka, both for offences linked to terrorism as a member of Ansar Dine and for the serious abuses that he ordered against the civilian population as former president of the Islamic Court of Timbuktu.

However this jurisdiction over related offences is clearly insufficient for our organisations, in that it makes the prosecution of international crimes and other serious human rights violations conditional on the prosecution of charges related to terrorism or transnational crime. This thereby eliminates the possibility of any prosecution if a person has not also committed terrorist acts or other transnational crimes (such as crimes that may have been committed by elements of the Malian army or foreign troops including Barkhane and MINUSMA), or if these acts or crimes cannot be proven. This also puts serious human rights violations in a category of "secondary crimes", which our organisations find unacceptable given the right of victims to obtain truth, justice and reparations.

• Expanding the jurisdiction of the Specialised Judicial Unit?

Currently, the new policy of transitional justice adopted by the government in December 2016 envisages expanding the jurisdiction of the anti-terrorist Specialised Judicial Unit created by Law No. 2013/016 of 21 May 2013 to include jurisdiction for war crimes, crimes against humanity, genocide and torture.

This is a solution that FIDH and AMDH have strongly supported,²² because, inasmuch as the unit has jurisdiction over all of Mali, the solution has the effect of alleviating the current problem of determining which court has jurisdiction for cases currently ongoing before the courts of Bamako, as well as for future cases concerning crimes committed in Northern and Central Mali.²³ Furthermore, the Specialised Judicial Unit is much better supplied with material resources, technology and humans to be able to investigate and prosecute sensitive cases concerning serious human rights violations perpetrated in connection with the conflict.

However, the effective implementation of this expansion necessitates first adopting a law stipulating this expansion of the unit's jurisdiction. **Our organisations therefore urge the Malian authorities to expedite**

20. During our meeting in October 2017 the Prosecutor of the unit told us that orders withdrawing jurisdiction had recently been issued by the Pre-Trial Chambre at the Court of Appeal, and he was awaiting the arrival of the physical files.

21. See *Part IV Section 2 of this report*.

22. See the recommendations submitted by FIDH and AMDH on the preliminary draft of the policy of transitional justice in Mali, September 2016.

23. See the recommendations submitted by FIDH and AMDH concerning the policy of transitional justice in Mali, September 2016.

the adoption of a law stipulating the expansion of the jurisdiction of the Specialised Judicial Unit. This would enable expedition of ongoing cases and initiation of new proceedings for the crimes committed in Northern and Central Mali, which have been ignored thus far by the judicial system.

Once the new jurisdiction of the unit is enshrined in law, the unit will have to implement the measures needed to guarantee that international crimes are actually investigated and prosecuted by specialised investigative bureaus and offices within the unit, and not treated as secondary to other types of offences.

II. THE FIRST TRIAL ON NORTHERN MALI AND A GREAT BREAKTHROUGH IN THE FIGHT AGAINST IMPUNITY: THE HAND CHOPPER OF GAO BEFORE THE COURTS

1. Retracing the period of Gao's occupation by jihadist groups

Between January 2012 and April 2013 armed and jihadist groups took control of and ran a large part of the Republic of Mali, in particular the northern regions. The “seizure” of Gao took place on 31 March 2012. Throughout this period of occupation those armed groups committed serious human rights violations, some of them constituting crimes against humanity and war crimes.

Once Kidal fell into their hands, the armed group the National Movement for the Liberation of Azawad (MNLA) and the jihadist groups Ansar Dine, Al Qaeda in the Islamic Maghreb (AQIM) and the Movement for Oneness and Jihad in West Africa (MOJWA), continuing their progress southward, launched an offensive against Gao, the large northern city that houses the Chief of Staff of the Malian Army for the entire northern region. The rebels penetrated the city in the morning of 31 March 2012, after which fighting was concentrated around the two military camps in Gao, where governmental forces had fallen back to mount a resistance. In the evening of 31 March the Malian army finally withdrew from the city and headed south, including to Sévaré. The MNLA and the Islamic fighters claimed responsibility for the attack. At this point in time, these armed entities controlled all of Northern Mali.

Late June 2012 saw the beginning of the “jihadist occupation” in Northern Mali, as MNLA forces were gradually evicted in favour of nearly exclusive control of cities by armed jihadist groups, particularly MOJWA.

On 27 May 2012 Ansar Dine and the MNLA had announced their merger in the obscure and short-lived “Transitional Council of the Islamic State of Azawad”, which was governed by sharia. The merger however was unable to conceal growing rifts between the pro-independence Tuareg group and the armed jihadist groups. These rifts turned into incidents, then into clashes between MNLA and the other armed groups.

The trigger incidents occurred in the city of Gao, in the aftermath of the murder on 25 June 2012 of Mr Idrissa Oumarou, a teacher and community leader, and the following day's bloody suppression of a protest against the armed groups occupying the city. MNLA and MOJWA blamed each other for the dozen or so people injured by bullets.

On 27 June intense fighting broke out in several neighbourhoods in Gao, pitting MNLA directly against the Islamic groups, in particular MOJWA, for the first time in that city. The radical Islamists of MOJWA, supported by elements from AQIM, took control of MNLA headquarters and the seat of its Transitional Council of Azawad and finally ousted MNLA from Gao. From then on, the city was under the exclusive control of MOJWA.

Between 27 June 2012 and late January 2013 the city of Gao was in the hands of MOJWA, led by the Islamic governor Abou El Wahid Sahraoui, who imposed sharia law through a repressive, pitiless, organised system enforced by the Islamic police and the Islamic courts. They subjected the civilian population to serious abuses (torture, arbitrary detention, rape and sexual violence, among others).

Aliou Mahamane Touré, a shoemaker native of the Gao region, was then appointed Chief of Islamic Police by MOJWA. As was later established during the judicial investigation, his duties included carrying out the sentences of the Islamic court by inflicting heinous abuses ranging from whipping, illegal arrest and detention, assault, inhumane treatment, and amputating limbs of convicted persons.²⁴

The “occupation” of Gao was to last until late January 2013. On 3 January 2013, after Ansar Dine announced the resumption of hostilities, MOJWA and AQIM forces and elements of Boko Haram resumed their offensive toward the south. The jihadists, with about 1,200 men, threatened the cities of Mopti and Sévaré, the last stronghold before Bamako, the capital. The interim president, Dioncounda Traoré, requested intervention by France, which deployed its forces (“Operation Serval”) on 11 January 2013 alongside the Malian Armed Forces (FAMA). Before the end of January 2013, Malian and French forces, later supported by African forces of MISMA (which later became MINUSMA), retook the cities of Timbuktu and Gao. The town of Kidal was retaken by Serval and Chadian forces.

2. Three years of investigation culminating in a charge of war crimes

Aliou Mahamane Touré was arrested near Gossi on the night of 23 December 2013 by elements of the National Guard’s Meharist unit and taken to the provost detachment of Gao. On 29 January 2014 he was charged and placed under a committal order for attacks on the internal security of the State, terrorism, criminal conspiracy, and more.

The arrest and indictment of Aliou Mahamane Touré marked a turning point. While he is admittedly not one of the principal offenders of MOJWA, he was one of the ringleaders in committing atrocities against the population of Gao during the occupation. Because of his role as Chief of Islamic police and the zeal with which he carried out his duties in this position at the head of the enforcement body of the jihadist regime in the city, his prosecution by the Malian courts is an undeniable breakthrough that sent a powerful message to the victims of the serious violations that he orchestrated.

On 20 June 2014 seven victims, supported by AMDH and FIDH and represented by our organisations’ lawyers, joined the investigation as civil parties. On 20 June 2016 an eighth victim joined the proceedings as a civil party. All the civil parties were heard by the investigating judge during the investigative stage of the proceedings, with support from FIDH and AMDH, which made it possible for them to go to Bamako.

The investigation ended on 8 November 2016 – nearly three years after the arrest of Aliou Mahamane Touré.²⁵ The investigating judge of the 8th Office of the *Tribunal de Grande Instance* of Commune III of the District of Bamako found the charges of war crimes, attacks on the internal and external security of the State, criminal conspiracy, aggravated assault, torture, terrorism, and illegal possession of military weapons and ammunition against Aliou Mahamane Touré to be sufficiently established; and therefore referred the case to the Public Prosecutor.²⁶ FIDH and AMDH commended the work of the investigating

24. The Pre-Trial Chambre also noted in its decision that Aliou Mahamane Touré had “subjected the populations of the City of Gao and its environs to many atrocities and abuses, while looting their possessions”. Decision No. 42 dated 28 March 2017 to confirm charges and transfer the case to Criminal Court.

25. For the record, the maximum period of pre-trial detention in Mali is one year, renewable twice – i.e., three years in total. The investigation thus ended shortly before the end of the pre-trial detention period and the obligation to release Aliou Mahamane Touré if not sent to trial.

26. The investigating judge in his order for transfer [of the case] found “that the investigation has led to the following charges being

judge and expressed great satisfaction that the charges of war crimes and torture had been accepted – for the first time in proceedings undertaken before the Malian courts for crimes related to the conflict.

Four months later the parties to the case were gathered before the Pre-Trial Chambre of the *Tribunal de Grande Instance* of Bamako to determine whether Aliou Mahamane Touré should be sent before the Criminal Court for trial there. The defence pleaded for acquittal, despite the overwhelming findings of the investigating judge, while the lawyers for the civil parties pointed out that the proceeding against Aliou Mahamane Touré was a unique opportunity for all the victims of Gao to seek recognition for the crimes suffered during the city's occupation in 2012-2013, and they called a trial.

On 28 March 2017 the Pre-Trial Chambre rendered its decision, after which Aliou Mahamane Touré was charged with the following offences: attacks on the internal security of the State, criminal conspiracy, possession of military weapons, and aggravated assaults.²⁷ The charges of torture and war crimes were not accepted, at the request of the Office of the Public Prosecutor, which in its final submissions asked the Chambre not to prosecute war crimes because “since Mali never declared war, it might seem a bit superfluous to contemplate war crimes”.²⁸ The decision of the Pre-Trial Chambre²⁹ was thus in line with these requests. **This dismissal of the charges of war crimes and torture was a great disappointment for the victims, who expected the trial to bring to light all the crimes committed by the former Chief of Islamic police of Gao against the city's population. This was not possible anymore, given the more restricted scope of the case as determined by the Pre-Trial Chambre.**

3. A trial held in the presence of the victims

• A hurried start

Between 27 July and 1st of August 2017, the civil parties received summonses to appear and to present themselves at the session of the Criminal Court on 9 August 2017 in the case against Aliou Mahamane Touré. Our lawyers were not notified but learned of this development from the victims themselves. **The date chosen for the opening of the trial was surprising for a number of reasons: it came in the middle of**

brought against Aliou Mahamane Touré:

- (i) Use of military weapons and explosives to attack or bomb undefended cities, communities, homes or buildings that are not military targets;
- (ii) Violations of human dignity, in particular through inhumane or degrading treatment;
- (iii) Acts of rape, sex slavery, forced prostitution, forced pregnancies or any other form of sexual violence constituting a serious violation of the Geneva Conventions;
- (iv) Conscription or enlistment of children younger than fifteen years old by making them actively participate in hostilities;
- (v) Attacks against the external security of the State, specifically by taking up arms against Mali and corresponding with a foreign power;
- (vi) Attacks against the integrity on the security [sic] of the State, specifically by maintaining relationships with subjects or agents of an enemy power in time of war;
- (vii) Undermining State security, specifically by attempting to violate Malian territorial integrity;
- (viii) Conspiracy with members of MOJWA and others to prepare and commit attacks against individuals and their property;
- (ix) Assault against at least 7 victims who are claimants in civil actions, if said assault was premeditated and resulted in amputation, disability or illness;
- (x) Acute physical or mental suffering inflicted on individuals to obtain information or confessions from them, to punish them for acts that they were suspected of having committed, and to intimidate them, if said sufferings resulted in mutilation, amputation, loss of the use of limbs, illness and death;
- (xi) Arrests of, threats against and murders of individuals to force the State and international organisations to take or refrain from taking certain actions as an explicit or implicit condition for the release of the individuals;
- (xii) Possession of military weapons and ammunition.

Final order for the transfer of documents to the Office of the Public Prosecutor, Office of the Investigating Judge of the 8th Office of the *Tribunal de Grande Instance* of Commune III of Bamako, 8 November 2016.

27. This decision by the pre-trial chambre to transfer the case to criminal court was accompanied by a committal order that made it possible to hold Aliou Mahamane Touré in detention while awaiting the opening of and for the duration of the criminal trial.

28. Final submissions of the Public Prosecutor, 28 February 2017, page 3.

29. Decision No. 42 dated 28 March 2017 to confirm charges and transfer the case to Criminal Court, Pre-Trial Chambre of the Court of Appeal of Bamako.

court recess³⁰ and with very little advance notice. Although the statutory time periods were respected, more advance notice to the victim parties to the proceedings not residing in Bamako and to their lawyers would in the future provide better conditions for the victims to participate effectively in the trials for crimes committed in Northern Mali. Moreover the victims residing in Gao were given no means of traveling to the capital to participate in the trial.³¹

Our organisations met with the Public Prosecutor to tell him of their concerns that the victims, who had been awaiting this trial for years, would not be able to attend, given the very short notice. On 9 August 2017, M^e Moctar Mariko, the lead lawyer for the civil parties in the case and president of AMDH, attended a hearing to request that the opening of the trial be postponed to 18 August 2017, to allow additional time in which to arrange for the civil parties to travel and participate effectively in the trial; the Public Prosecutor supported this request. The Criminal Court granted the request from the civil parties' lawyers. On the other hand, the Public Prosecutor informed the lawyers from our organisations that there was no budget to facilitate the participation of the civil parties in the trial, and that it therefore would be up to our organisations to actually implement this participation and cover the costs thereof.

The civil parties were transported by airplane from Gao to Bamako,³² two days before the opening of the trial. Within the allotted time our organisations and lawyers met them, put in place a security system for the day of the trial, explained to them the proceeding and prepared them for their testimony on the stand.

• **The first trial of Northern Mali: an all-day marathon**

The trial before the Criminal Court of Bamako opened on 18 August 2017. The courtroom was filled to capacity with victims, supporters of the accused, and the media.

That day in the summer of 2017 effectively witnessed the first trial for crimes committed against the populations in Northern Mali during the terrible jihadist occupation period five years earlier. It took place in the presence of the victims, who came to testify and obtain justice and reparations. This was an undeniable step forward in the fight against impunity in Mali. The Malian political and judicial system thereby showed that they were now willing and able to prosecute the perpetrators of the most serious crimes committed during the conflict.

After several procedural hearings concerning the absence of the lead lawyer for the defence and the lack (quickly remedied) of an interpreter for the gathering of testimony and the statement of charges against the accused, the Court commenced the hearings on the merits.

The first to take the stand and give evidence was the accused, Aliou Mahamane Touré. He denied the alleged acts when questioned by his lawyers, although he had acknowledged them during the investigation. He claimed to have acted at the time to protect the population and State property, all the while denying having committed any crimes. Finally, he accused the judicial system of bias, since he was the only person being prosecuted for the crimes committed in Gao, whereas others, in particular his superiors in MOJWA,³³ had all been released following their arrest.³⁴

30. August is a month of court recess in Mali.

31. The city of Gao is located over 1,200 km from Bamako, and the security situation remains very precarious in this part of Mali, especially on the highways.

32. The air transportation was made possible by MINUSMA. The costs of the victims' stay in Bamako were subsequently covered by our organisations.

33. He named Yoro Ould Dah, a member of MOJWA in Gao, who belongs to the Arab community. He also named Houka Houka, the former Touareg chief judge of the Islamic Court of Timbuktu and a member of Ansar Dine. Those two individuals were indeed arrested and then released as part of the peace negotiations.

34. He therefore accused the Malian courts of prosecuting only people from the Songhai community such as him, while Touaregs or Arabs, he said, escaped prosecution.

At about 12:30 PM it was the victims' turn to be heard by the Court. Seven victims testified in all. They spoke of arbitrary arrests and detentions, the horror of amputations, physical and mental tortures, fear of the new order established by the Islamists, harassed journalists, children conscripted into MOJWA, and more. They also described the harm suffered and the afflictions and anguish that they continue to endure to this day. They answered questions from the lawyers and some accusations by the defence:³⁵

“Aliou Mahamane Touré and his men arrested me on false accusations and amputated my right hand. Before the occupation of Gao I was a driver. I can no longer work in my profession. I can no longer satisfy my family’s needs”, stated one victim on the stand.

One victim who was closely related to the accused stated that the latter had joined MOJWA voluntarily, against his family's wishes. Aliou Mahamane Touré had himself acknowledged during questions from the lawyers for the civil parties that he had actually applied for the position of Chief of Islamic police and been selected from among a dozen or so candidates.

All this testimony played a crucial role in the trial. The voices of the victims, confronted with the statements of the accused, guaranteed the adversarial nature of the proceeding, through their narratives of the crimes suffered, which constituted decisive evidence for establishing the facts.

“I was on my way to a wedding, and we had gone to collect the bride from the home of her parents. I was parking my motorcycle when Aliou and his men arrived, and Aliou began shooting at us, shouting that Islamic law did not authorize wedding parties. Several bullets hit me in the right leg, and I had to have it amputated because of the injuries”, recounted one victim emotionally.

Apart from their contribution to establishing the truth about the abuses inflicted on the population of Gao by MOJWA during the occupation, the victims' testimony also made it possible to show the impact of the crimes on the population – the harm suffered by the victims and its consequences, both short- and long-term, on people's lives.

“I relive those days of detention and the tortures they put me through. I often think back to the day when they put their gun to my head. I saw myself already dead. I still suffer from it today”, said another victim before the Court.

No one therefore could underestimate the importance of the victims' participation in that trial – on the one hand, to establish the facts and the harm suffered, and on the other, to give the victims a chance to speak for themselves, allow them to observe and take part in the judicial proceedings, and thereby give them a certain sense of justice.

“I trust in justice. Seeing the accused here in this courtroom, and telling what happened to me, in the presence of judges, is cause for satisfaction. We have waited a long time for this trial”, said one victim when leaving the hearing.

It was late afternoon when the oral testimony ended. The lawyers were immediately called to present their closing arguments before the Court.

35. The lawyers attempted to undermine the credibility of the victims' testimony. On one occasion the lawyers attempted to show that one of the victims had dementia, to which the lawyers for the civil parties replied that trauma resulting from a crime suffered should not be confused with lack of mental capacity. The accused himself did not hesitate to directly attack the victims during their testimony, going as far as to insult an amputation victim, calling him a “born thief”. He was called to order several times by the judges.

The lawyers for the civil party then made their closing arguments seeking that the charges of “aggravated assault” be reclassified as “war crimes” and explained their case to the Court. **Basing themselves on the day’s testimony and the findings of the investigation, the lawyers maintained that the crimes perpetrated by Aliou Mahamane Touré against the population of Gao constituted war crimes, a classification which better reflects the reality of the serious abuses suffered by the population. War crimes are defined not only in Article 8 of the Rome Statute, which the State of Mali has ratified,³⁶ but also in Article 31 of the Malian Criminal Code.³⁷**

The lawyers for the civil party recalled, first of all, that nowhere is it mentioned that the concept of a war crime requires a declaration of war; on the other hand a war crime must be perpetrated in the context of an armed conflict – and there was no doubt that an armed conflict had existed in Northern Mali in 2012-2013, as the Malian State itself had repeatedly acknowledged.³⁸ Second, the lawyers explained that the crimes committed by Aliou Mahamane Touré, which were committed in the context of an armed conflict, were all perpetrated against ordinary inhabitants of the city, i.e., against civilians, not combatants. These two facts,³⁹ combined with the very nature of the crimes – amputations, serious attacks on physical integrity, torture, and pillaging – made it possible to establish that this case concerned war crimes.

In response to these findings, the Public Prosecutor himself changed his position. He then explained to the Court that the prosecution had not correctly grasped the concept of war crimes and the importance of accepting this charge in this case, but that he was now joining the civil party’s request to reclassify the charges.⁴⁰ In his submissions the Public Prosecutor also synthesized the evidence of the offences brought to light during the hearing, highlighted the disrespectful and inappropriate behaviour of the accused during the trial and the informed consent with which the accused had joined MOJWA and committed those crimes, and finally asked the Court to find Aliou Mahamane Touré guilty of the charges of attacks on the internal security of the State, possession of military weapons, criminal conspiracy, and, additionally, of war crimes.

Finally the lawyers for the defence concluded the series of pleadings by attempting to demonstrate, on the one hand, that the accused could not be held responsible for the offences of which he was accused because the State had failed in its duty to protect the population of Gao against the MNLA at the time in question, and on the other hand seeking to politicize the case and discredit both the judicial system⁴¹ and the lawyers for the civil parties.⁴² The last word went to the accused, who said that he trusted in God and the judges, asked forgiveness and begged the Court to let him go home to his family and seek treatment.⁴³

36. Mali ratified the Rome Statute on 16 August 2000.

37. War crimes are governed in Mali by Article 31 of the Criminal Code, which defines a war crime as “(a) voluntary manslaughter; (b) torture or inhumane treatment, including biological experiments; (c) the act of intentionally causing great suffering or of violating physical integrity or health; (d) illegal and arbitrary destruction and appropriation of property not justified by military need and carried out on a large scale; (e) the act of forcing a prisoner of war or a protected person to serve in the forces of an enemy power; (f) the act of intentionally depriving a prisoner of war or any other protected person of his right to be judged lawfully and impartially; (g) illegal deportations or transfers or illegal detentions; (h) hostage taking; (i) other gross violations of the laws and customs applicable to armed conflicts [...]”

38. Specifically in the letter of 13 July 2012 sent to the Prosecutor at the ICC, in which the Malian Minister of Justice requested the opening of an ICC investigation into the most serious crimes committed in his country since January 2012, which he characterized as “serious and massive violations of human rights and international humanitarian law committed in the northern part of the country and elsewhere, (...) acts that constitute crimes against humanity and war crimes.” Letter No. 0076/MJ-SG from the Minister of Justice of Mali.

39. The context of armed conflict and crimes committed against civilians.

40. The prosecutor went further by affirming that Mali was at war at the time of the acts, and that President Amadou Toumani Touré had, moreover, declared, “How can I send my men to war without providing them any resources?”

41. Which was accused of prosecuting Aliou Mahamane Touré only because he belonged to the Songhai community.

42. Notably through false accusations that the lawyers for the civil parties were “in the pay of the Westerners” and that this was a trial sponsored by France, etc.

43. He has diabetes.

The hearings came to a close at around 19:00. When the judges withdrew to deliberate, the atmosphere remained tense in the courtroom and outside. Supporters of the former Chief of Islamic police of Gao were present among the public and attempted to intimidate the victims who had come to testify. The FIDH and AMDH teams stayed with them to support and protect them, fend off the insults and accusations levelled against them and protect their identity from the media.

• **A first victory that promises to pave the way for more**

Half an hour after withdrawing, at about 19:30, the judges of the Criminal Court returned to the courtroom and handed down their verdict. **Aliou Mahamane Touré was found guilty of attacks on the internal security of the State, criminal conspiracy, possession of military weapons, and aggravated assault with mitigating circumstances. On the other hand the Court rejected the classification of war crimes, which was found to be "inapplicable".**

There followed the prosecution's final submissions concerning sentencing, and an hour later the sentence was handed down: Aliou Mahamane Touré was to serve ten years in prison. It was nearly 20:30 when the parties to the trial prepared to leave the courtroom, after more than twelve hours of hearings without a break.

The rejection of the war crimes classification was a great disappointment for our organisations and the victims that they represented. Indeed, the Criminal Court was fully empowered to include war crimes charges in the charges brought against Aliou Mahamane Touré under the relevant provisions of Malian law.⁴⁴ Because the Criminal Court ruled that the request for reclassification of the charges was "inapplicable" but gave no further reasons for its decision,⁴⁵ our organisations still wonder about the reasons for this rejection,⁴⁶ which may possibly have resulted from a poor understanding by the Malian judges of international crimes, even though international crimes were added to the criminal code in 2001.

During a judicial mission in October 2017, FIDH and AMDH met with judicial authorities from the various courts in Bamako (prosecutors, investigating judges, and judges). Most of them expressed strong dissatisfaction with the rejection of the war crimes classification; they felt that the trial had not taken place under optimal conditions and that neither the Public Prosecutor nor the judges had been fully prepared. Several of them also insisted that Malian judges must be trained in the prosecution of international crimes, which are still quite unfamiliar in the national judicial system.

For all that, we must not lose sight of the most important thing: for the first time in Mali, the courts tried and convicted one of the principal perpetrators of the serious human rights violations and crimes committed in Northern Mali. Our organisations commend the holding of this first trial and the obtaining of this first, eminently symbolic, conviction in the context of a conflict that is still ongoing. Let this trial be a reminder to all that those who commit such atrocities will be brought to justice for their deeds.

Our organisations welcome this advance for the fight against impunity and urge the Malian authorities to persevere in their efforts, both by holding other trials and by fully recognizing international crimes in future proceedings, in order to make sure that charges and convictions best reflect the crimes committed against civilian populations.

44. Article 259 of the Code of Criminal Procedure reads, "The Criminal Court has full jurisdiction to try individuals referred to it by a decision confirming charges. It may redefine proceedings and may also assume jurisdiction, either ex officio or by request of the prosecution, over any crimes or offences charged against the defendants that may come to light during the hearings."

45. Either during the hearing or in the written decision.

46. The most likely scenario is that the Criminal Court judges believed that the issue had already been resolved by the Pre-Trial Chambre and did not merit a second examination.

4. Reparation for harm to the victims: for whom and how?

Together with its finding of guilt, the Criminal Court of Bamako ruled on the civil claims and accordingly sentenced Aliou Mahamane Touré to pay compensation to certain victims who had the status of civil parties in the case. However, the reparations awarded remain largely insufficient, given the magnitude of the harm suffered and the number of victims of the abuses committed by the Islamic police of MOJWA during the occupation of Gao.

• Compensation for some victims but not for all

The Criminal Court recognized the right of the civil parties who had been recognized in the case during the investigation and had suffered harm as a result of the aggravated assault of which Aliou Mahamane Touré was guilty, to receive compensation.⁴⁷ This concerned in particular the civil parties who had suffered amputations.

On the other hand, victims who had been civil parties during the investigation for offences other than those of aggravated assault saw their claims dismissed by the Court as a result of the rejection of the war crimes charge. This concerned in particular a victim of sexual violence and a victim of child conscription.

The criminal policy of the Public Prosecutor and the classification of the crimes thus directly affect victims' right to reparation for serious human rights violations. **When charges requested against a person do not reflect all of the crimes committed, some victims are deprived of their right to receive justice and reparations.**

On the other hand, a victim who was not a civil party during the investigation was found by our organisations the day before the trial and brought to the hearing to testify and to become a civil party at the bench. The Court authorized him to be heard for information but denied him the status of a civil party at that stage of the proceeding.⁴⁸ Consequently, although that victim suffered from acts similar to those of the other victims, whom the Court recognized as being entitled to compensation, his right to such compensation was unfortunately not recognized.

Another amputation victim who brought his case to our organisations in 2012, but whom we were unable to find at the time of the filing of the victims' claim and of the investigation, contacted our organisations after the trial to request legal aid.

In light of the Malian context, which already limits victims' access to justice – the alarming security situation in Northern Mali, population displacements, and the lack of information concerning judicial proceedings –, it is crucial that trial courts allow victims who have not been heard during an investigation to participate in the trial nevertheless and be recognized as civil parties at all stages of proceedings, as stipulated by Malian law.

47. The Court ordered Aliou Mahamane Touré to pay damages to four civil parties in amounts ranging from CFA Francs two million to twenty million.

48. The Malian Code of Criminal Procedure does not exclude, however, the option of filing as a civil party before the Criminal Court, see articles 4 to 7. Article 5 reads, "Claims for damages in civil proceedings may be brought at the same time as criminal proceedings and before the same court."

- **Give the victims redress beyond compensation**

Reparations should not be limited to compensation alone.⁴⁹ Indeed, international law recognizes that victims of serious violations of international human rights law and international humanitarian law are entitled to “adequate, effective and prompt” reparation “of the harm suffered”.⁵⁰

International law identifies five categories of reparations: **restitution**, which aims to reestablish the victim in the original situation that existed before the crimes were suffered; **compensation**, designating the allocation of a sum of money proportionate to the harm suffered; **rehabilitation**, the purpose of which is to provide victims material, medical, psychological and social support; **satisfaction**, which refers to measures helping to restore victims’ place and dignity in society (such as symbolic reparation measures); and finally, **guarantees of non-repetition**, which are characterized by preventive measures to prevent crimes from recurring in the future.

These forms of reparation are complementary with one another. Not all types of reparations are appropriate or applicable in all situations, but it is necessary to consult the victims regarding their needs and requests, in order to formulate a combination of different types of reparation. On the other hand, the only reparations provided for by the Malian criminal code are in the form of compensation.⁵¹

It is therefore the responsibility of the Malian State to institute other forms of reparation, which may also be collective, to fill the gaps in Malian law, restore victims’ rights, and act in compliance with its international commitments.

These efforts to implement reparation programs must accompany and complement efforts to fight against impunity in Mali. This would make it possible both to compensate for the shortcomings of the forms of reparations that the judicial system is able to grant and thereby to meet a greater variety of victims’ needs, and on the other hand to benefit all the victims of the conflict (not only those who have participated in judicial proceedings).

FIDH and AMDH thus call on the Malian authorities to undertake genuine reflection and consultations with the victims of Northern Mali and civil society organisations, in order to implement adequate and effective reparation measures for the victims of the conflict in Mali, such as provided for by the policy of transitional justice adopted by the government.

49. In other words, in the form of individual financial reparations.

50. Basic principles and guidelines on the right to remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law. Resolution 60/147 adopted by the United Nations General Assembly on 16 December 2005.

51. See Code of Criminal Procedure’s section “On decision about civil action”: articles 358 to 363.

III. SANOGO FACING MALIAN JUSTICE: A LONG, UPHILL BATTLE

1. Disappearance of the red beret soldiers in the wake of the coup d'État

While Mali had faced an offensive since January 2012 by armed Tuareg pro-independence groups and jihadist armed groups that had already conquered nearly one quarter of the country, on 21 and 22 March 2012 a group of junior officers overthrew President Amadou Toumani Touré, took power in Mali forty days from the President election and installed a military junta called CNRDR headed by Captain Amadou Haya Sanogo.

On 30 April 2012 an attempted counter coup, led by elements of the 33rd Parachute Commando Regiment (RCP), the elite army unit commonly called “red berets”, headed by Lieutenant Colonel Abdina Guindo, which had remained loyal to former Head of State Amadou Toumani Touré, was defeated⁵² and violently put down by the putsch leaders, who captured several dozen red berets.

According to inquiries by FIDH and AMDH, on the night of 2 May 2012, twenty-one red beret soldiers were taken from their cells and driven in military trucks towards Diago, a village near Kati, the headquarters of the military junta, located fifteen or so miles from Bamako. There they were executed and buried in a common grave.

Some of the captured red berets⁵³ had been paraded on ORTM, the national television station, on 1 May 2012.

2. From the disappearances to a mass grave discovered in Diago: years of investigation resulting in a solid case

In July 2012 during the political transition, a judicial investigation against X for “kidnapping of persons” was opened before the *Tribunal de Grande Instance* of Commune III of Bamako.

On the 1st of October 2013 the investigating judge issued the first committal orders against several soldiers for “conspiracy to kidnap”. Between 23 and 30 October 2013 three of them were arrested, namely Captain (former Lieutenant) Amassanko Dolo; Lieutenant (former Sergeant) Issa Tangara; and Sergeant Oumarou Sanogo, aka Kif Kif. Immediately afterwards, the investigating judge asked the Minister of Justice to send a request for the delivery of General Sanogo and other soldiers to the Minister of Defence, which then took place on 6 November 2013. On 27 November 2013 General Amadou Haya Sanogo, Captain Christophe Dembele, Sergeant Fousseyni Diarra and twenty-five others were charged and placed under committal order. Finally, between December 2016 and February 2014, Colonel Blonkoro Samake, Second Lieutenant Soïba Diarra, and Second Lieutenant Lassine Singare were in turn arrested and placed under a committal order.

On 28 November 2013 FIDH and AMDH became civil parties in the proceeding, alongside the families of the missing persons.

52. On 30 April 2012 the red berets had attacked, among other targets, the Office of Radio and Television of Mali (ORTM), where several green beret soldiers and at least four civilians were killed.

53. Among them were Second Lieutenant Aboubacar Kola Cisse; Staff Sergeant Youba Diarra; Private First Class Abdoul Karim Keita; and Private Aliou Boncana Maiga.

The finding of a mass grave containing twenty-one bodies on the night of 3 December 2013 was pivotal to the investigation. It enabled the prosecution to reclassify the charges of “kidnapping” to “killings, murders and complicity in killings and murders” at the request of the lawyers of the civil parties. The bodies of several other missing persons were never recovered.⁵⁴

The investigation was closed on 10 February 2015,⁵⁵ after forensic medical analyses and DNA tests concluded that the twenty-one bodies recovered indeed belonged to some of the red berets who had “disappeared” from the jails of Haya Sanogo and his security detail.

On 22 December 2015 therefore the Pre-Trial Chambre of the Court of Appeal of Bamako brought charges against Amadou Haya Sanogo and seventeen co-defendants and decided to transfer them to a criminal court to be tried for the crimes of kidnapping and murder, or complicity in kidnapping and murder.⁵⁶

This investigation displayed all the independence and rigor of which the Malian judicial authorities are capable and attests to genuine political will on their part. In a context that is very sensitive, owing to the position of power that Sanogo and his accomplices held and the number of supporters that Sanogo still has, it was no easy task to arrest him and see this investigation through in an impartial and equitable manner. By so doing the judicial authorities sent an unambiguous message about the primacy of the rule of law and of the fight against impunity over the challenges of pressure and the degree of publicity from which the case has suffered.

3. The beginnings of a long-awaited trial: an important breakthrough

• The long-awaited opening of the trial

On 30 November, almost a year after the decision of the Pre-Trial Chambre, the trial of Amadou Haya Sanogo, head of the former military junta, and seventeen others for conspiracy to kidnap and murder commenced. A special session of the Criminal Court was scheduled to that end and moved to Sikasso, a city located 380 km from Bamako, for security reasons.

The opening of this trial was a crucial step in the fight against impunity in Mali. The former putsch leader Sanogo finally had to answer before the judges and before all of Mali for those acts. The families of the missing all made the journey for that long-awaited day and were hopeful to see justice do its work so that the crimes committed against their husbands and children would not remain unpunished.

FIDH and AMDH were there with the victims whom they represented,⁵⁷ who had joined the proceedings as civil parties for the disappearances and deaths of their loved ones. The public turnout was large, and a certain solemnity reigned in the large courtroom.

54. Our organisations supported the loved ones of twenty-three missing persons in the Red Berets case, yet only twenty-one bodies were found in the mass grave in Diago.

55. Order for the transmission of documents to the Public Prosecutor at the Court of Appeal of Bamako, 10 February 2015, Investigating Judge of the 2nd Office of the *Tribunal de Grande Instance* of Commune III of the District of Bamako.

56. The decision of the Pre-Trial Chambre to transfer the case to Criminal Court stated that there was no cause to prosecute ten of the defendants; on the other hand, it found sufficiently established the criminal charges of kidnapping and murder enumerated against Fousseyni Diarra, aka Fouss, Mamadou Kone, Tiémoko Adama Diarra, Lassana Singare, Cheickna Siby and Issa Tangara; and the charges of conspiracy to kidnap and murder against Amadou Haya Sanogo, Blonkoro Samake, Amassongo Dolo, Siméon Keita, Oumarou Sanogo aka Kif Kif, Soiba Diarra, Christophe Dembele, Amadou Konare, Mohamed Issa Ouedraogo, Ibrahim Boua Kone, and complicity in murder against Yamoussa Camara and Ibrahima Dahirou Dembele. Decision No. 585 by the Pre-Trial Chambre at the Court of Appeal of Bamako dated 22 December 2015 to confirm charges and transfer the case to Criminal Court.

57. FIDH and AMDH represent the victims civil parties in these proceedings through their team of lawyers, composed of Malian lawyers (with M^e Mostar Mariko as lead lawyer) supported by lawyers from the subregion (Senegal, Côte d'Ivoire) and elsewhere (France).

“Being in the courtroom and hearing my son’s name among the victims... is already a first victory”,
confided one victim.

• **Logistics and security for victim participation ensured with difficulty**

The Public Prosecutor’s announcement on 15 November – with less than two weeks’ notice – of the opening of the trial, and the transfer of the trial far from the capital, were major factors contributing to difficulty in organising participation by the victims. Our organisations particularly regretted shortcomings in the plan to ensure the participation of the witnesses and civil parties in the proceeding.

Granted, the Malian authorities did implement certain measures. The Lamissa Bengali Performance Hall was converted into a hearing room to allow access to the general public, and security measures were put in place at the entrance and within the premises of this temporary courtroom; furthermore those measures were enhanced during the first week of hearings. For another thing, working conditions for the lawyers were improved during this first phase of the trial, specifically by giving the lawyers access to rooms equipped with computers.

On the other hand, no provision was made to cover the cost of the trips to Sikasso or lodging in Sikasso, nor were any measures implemented for security outside of the courtroom premises, leading to frustration and anxiety among the civil parties and the witnesses called by the Prosecutor. The victims were confronted by hostile gatherings of pro-Sanogo protesters⁵⁸ around the courtroom and were unable to obtain adequate security for their place of lodging or for the trips between their lodgings and the courtroom.⁵⁹

The costs of these considerations were left entirely up to our organisations, which had to find additional funding and implement an urgent plan on the spot to the best of their ability and given the context of the city. Nonetheless it is the State’s obligation to enable victims to participate in a trial, and all the more so if the State decides to relocate the trial; such a decision must not be taken at the expense of victims’ access to justice. Yet for such a large trial, and with no indication by the authorities as to the duration of the trial or the organisation of its hearings, the organisation of the victims’ daily travel⁶⁰ and lodging⁶¹ presented a certain number of challenges in terms of security, logistics and funding.

• **The hearings: procedural deliberations and a sometimes charged atmosphere**

That first week of hearings was marked by fits and starts and punctuated by repeated adjournments. The hearings essentially addressed procedural matters and preliminary objections raised by the defence, but they also showed that the Malian judicial system was doing its utmost to ensure that the trial be held in full accordance with the principle of a fair trial and the adversarial principle. Indeed, the Criminal

58. The protesters chanted messages in support of the former coup leader, of the “Free Haya” type. On several occasions protesters threw projectiles against the bus carrying the civil parties. There were also posters displaying messages denigrating FIDH and AMDH.

59. Our organisations repeatedly asked that the trips between the hotel and the court be escorted by the national gendarmerie and that several gendarmes be posted at the door of the hotel where the civil parties were staying. We were not given this, except on one trip, when so many protesters were waiting outside the hearing that the civil parties refused to leave the court premises without an escort.

60. For the trips between Bamako and Sikasso, no police escort was made available to our convoy, despite repeated requests to the Public Prosecutor at the Court of Appeal of Bamako. The civil parties were in fear of possible attacks by pro-Sanogo militants during this trip, owing to various threats and intimidation attempts levelled at some of them.

61. For example, with respect to the issue of lodging, there are only three hotels in the city of Sikasso that have sufficient capacity to accommodate all the victims and the lawyers. Yet it is essential to ensure that the victims and the defence lawyers do not stay in the same hotel, in order to maintain their safety and the confidentiality of the exchanges between them and their lawyers. The location of the hotel with respect to the court, hotel security (the presence of guards, access and controls at the entryway, etc.) and the standard of comfort of the hotel (meals available on site to limit travel; availability of a meeting room with sufficient capacity and lighting, Internet access, etc.) are also elements that are difficult to find all in one place, given the limited offerings in Sikasso.

Court scrupulously observed the rules of procedure and of order in the court, and our organisations commend this demonstrated will to guarantee the equitable nature of the trial and the serenity of the hearings.

At the end of the first day of hearings the defence lawyers obtained an initial adjournment of 48 hours to give them more time to prepare.⁶² During the next hearing, an incident concerning the conditions of entry into the courtroom for the lawyers necessitated a new adjournment of two days, in a charged atmosphere. Faced with the dignity of the victims, the pro-Sanogo turnout, both in the street and on the defence lawyers' bench, seemed determined to deflect attention from the crimes of which the defendants were accused.⁶³

On the third day of hearings the deliberations focused on the absence of the witnesses from the courtroom. The defence deplored the Public Prosecutor's lack of preparation. The Court ordered the witnesses to be brought by security forces and authorized a new adjournment of two days for that purpose.⁶⁴

Finally, the hearing of Wednesday, 7 December was devoted to deliberations on the preliminary objections raised by the defence. According to the defence, several procedural and jurisdictional matters warranted a postponement of the trial until the next trial session, or even nullity of proceedings.

The defence lawyers in particular raised incompetence of the Criminal Court. According to them, this was a "trial of the Malian army" for offences of a military nature committed among soldiers and should therefore be tried by a military court. These arguments were part of a strategy of reducing the trial to a political dispute between red berets and green berets,⁶⁵ and presenting the case as being that of the army and the coup d'État of 2012 – a false and dangerous message to the general public. Both the lawyers for the civil party and the Public Prosecutor opposed this interpretation and vigorously recalled that the defendants had not been acting in the performance of their military duties [when they allegedly committed the crimes in question], and that this was a matter of prosecuting individuals who had kidnapped and executed other individuals in cold blood. It was also recalled, moreover, that the question of jurisdiction had already been settled by the Malian courts, as well as by the ECOWAS Court.⁶⁶ The Court cut short the debate, confirming that there was no cause to examine its own jurisdiction.⁶⁷

Other preliminary objections raised by the defence concerned alleged violations of the rights of the defence, including the observance of deadlines for summoning defendants; the legality of the pre-trial detention of the defendants; and compliance with the procedure for the forensic medical opinion prepared during the investigation. The civil party and the Public Prosecutor opposed each of the objections on legal grounds and showed their determination to go to trial.⁶⁸ The issue of compliance with the procedure for the forensic medical opinion did however persuade the judges that there had been a violation of the rights of the defendant and that it needed to be remedied.

62. To learn more, read the FIDH/AMDH newsletters that were published during the trial. Newsletter N°1: <http://nl.fidh.org/nl2/pg79/1z1jo.html> [in French only]

63. To learn more, read the FIDH/AMDH newsletter N°2: <http://nl.fidh.org/nl2/pg79/1z1j5.html?hl=fr> [in French only]

64. To learn more, read the FIDH/AMDH newsletter N°3: <http://nl.fidh.org/nl2/pg79/1z1ju.html> [in French only]

65. Two different contingents of the Malian army, the first loyal to former President Amadou Toumani Touré and the second having sworn allegiance to Captain Sanogo.

66. Decision N°ECW/CCJ/JUD/12/16 of the ECOWAS, 17 May 2016, Case N°ECW/CCJ/APP/06/15.

67. The Court based itself on the fact that the matter of jurisdiction had actually already been resolved, and the decision by the Pre-Trial Chamber to transfer the case conferred jurisdiction.

68. To learn more, in particular on the substance of the deliberations concerning the preliminary objections, read FIDH/AMDH newsletter N°4: <http://nl.fidh.org/nl2/pg79/1z1jz.html?hl=fr> [in French only]

• Rescheduling of the case to allow for the preparation of a new expert opinion

On 8 December 2016 the Court decided to reschedule the case to the first trial session of 2017, in order to allow a new forensic medical opinion to be prepared in a period of 45 days, the first one not having been prepared in accordance with the procedures prescribed by Malian law. Indeed, the experts who prepared the first expert opinion had not sworn an oath before the Court, nor had the defence been notified of the expert report as prescribed in Article 283 of the Code of Criminal Procedure. The Court appointed a medical laboratory based in Bamako to prepare a new expert opinion and issue its report within forty-five days of its appointment.

“The defence arguments for nullity of the proceedings were rejected, and that is already a victory. We remain committed to the equitable nature of this trial, and that is why we welcome the decision to order a new expert opinion. We hope above all to soon have clear information about the date and the conditions under which the trial will be resumed”, said M^e Moctar Mariko, president of AMDH and the lead lawyer for the civil parties.

In effect, that decision of 8 December 2016 also resolved all the preliminary objections raised by the defence, which were all rejected except for the one concerning the forensic medical opinion. In particular the Court rejected the arguments concerning the deadlines for summoning defendants; the material and personal jurisdiction of the Criminal Court; the absence of several witnesses; and the legality of the pre-trial detention of the defendants. The Court also denied the defence’s requests for provisional release, citing the risk of alteration of evidence and suborning of witnesses in the case.

“We have waited three years for this case, and we will wait another three months if we have to. We are not afraid of the truth. We are ready, and we will obtain justice for our loved ones before a Criminal Court”, said one civil party.

4. The resumption of the trial awaited by all

In spite of the procedures established by the decision of the Criminal Court,⁶⁹ the preparation of the new expert opinion was significantly behind schedule, so the parties are still waiting for the resumption of the trial to be announced. The civil parties were asked to take new DNA tests in April 2017 (i.e., already four months after the decision of the Court to order this new expert opinion). Since then, despite promises from the authorities, it would appear that the results of the expert opinion have still not arrived, or at least that these results have not yet been communicated to the parties to the trial.⁷⁰ The date of 31 October had been moved forward for a while before being again pushed back. **FIDH and AMDH urge Malian authorities to do everything in their power to ensure that the judicial authorities and the parties to the proceeding receive these results as soon as possible, in order to prepare and organise a new trial session to make possible the resumption of this trial, which is so anticipated by all.**

Furthermore, the defence and the defendants have also announced their impatience to resume the hearings, emphasizing that the defendants have been held in pre-trial detention for several years while awaiting this trial. And yet the trial cannot resume without the report of the expert opinion. In early November 2017, therefore, the defence introduced a request for release on bail. To rule on this request for release of the defendants on bail, the Pre-Trial Chamber of the Court of Appeal of Bamako held a

69. It is regrettable to note that the decision of the Criminal Court was not complied with, inasmuch as the expert opinion was supposed to be prepared in under forty-five days and the trial was supposed to resume during the first trial session of 2017 – neither of which condition was met.

70. As of the day this report was written, the results were expected by the end of October 2017.

hearing on Tuesday, 14 November 2017. Our lawyers were informed of the hearing the day before and urgently filed pleadings emphasizing the legality of the detention under the regime of the committal order and the risks that release on bail would pose for the safety of the victims, the suborning of witnesses and the defendants' failure to appear before the Criminal Court. The judges of the Pre-Trial Chamber therefore denied the request of the defence, which is reassuring news from the perspective of the resumption of the trial.

Our organisations and the victims they represent now hope that this resumption will take place not only without further delay, but also under improved conditions allowing for their full participation in the proceedings. These improved conditions should include in particular payment for the transport and lodging of the civil parties and witnesses in the event the Criminal Court should be moved, as well as procedures to ensure full security of the parties to the trial both within and outside of the court premises during the time of the trial. Our organisations encouraged the authorities to consider the option of organising this trial in Bamako, in order to limit the logistical and cost challenges associated with transportation to the Court.

Finally, FIDH and AMDH emphasize the need to give the lawyers for the civil parties and for the defence the means to prepare for the trial by providing, among other things, reasonable advance notice of the commencement of the trial; immediate access to the complete file; and the establishment of a provisional calendar of hearings, or at least the order in which people will be called to testify. These procedural arrangements are in fact essential to the smooth conduct of the proceedings.

Malian authorities showed during the investigation of this case, known as the "Red Berets Case", that they have the will and the ability to prosecute the perpetrators of serious crimes, despite challenges of a political nature and the pressure that surrounds this type of case. It is now time to prove that the Malian justice system can and will see this proceeding to its conclusion in respect of the principle of fair trial and the rights of all the parties. Our organisations urge the Malian political and judicial authorities to do everything in their power to bring about the resumption of the trial and to thereby prove that no one is above the law, not even the former putsch leader Amadou Haya Sanogo.

IV. CASES UNDER INVESTIGATION BY THE MALIAN COURTS... INSUFFICIENT PROGRESS

1. Sexual violence in Northern Mali in 2012-2013: what is the status of the investigations?

- **Sexual violence: war crimes and crimes against humanity under the jihadist occupation in Northern Mali**

Between 2012 and 2013 numerous sexual crimes were committed against young girls and women in Northern Mali, specifically rape, gang rape, forced marriage, sex slavery and other gender-based violence. **Investigations by our organisations revealed that these crimes were the most widespread and the most typical of the period of occupation of the regions of Timbuktu, Gao, Kidal and part of Mopti by jihadist groups**, in application of Islamic “Sharia” law, as they interpreted it.

Women and girls thus suffered, in addition to the crimes affecting all civilians, gender-based violence involving numerous forms of physical, psychological and social harm, both short- and long-term. These victims of sexual violence, namely the women and the children born of these rapes, experienced a very difficult situation indeed: loss of their livelihood, isolation from or abandonment by their family and community, lack of official recognition for the children (no civil status), stigmatisation, etc.

Sexual crimes committed in the context of the armed conflict in Northern Mali in 2012-2013, perpetrated to such an extent and systematically in the cities controlled by jihadist groups, constitute war crimes and crimes against humanity.

However, although Malian judicial authorities opened several proceedings against the leaders of these groups that had occupied Northern Mali,⁷¹ none of the proceedings concerned crimes committed against civilians, not to mention sexual crimes. **Right after the end of the occupation of Northern Mali, a certain number of arrest warrants were filed, and dozens of people were arrested and charged, but none of them was apprehended for the most serious crimes or the most systematic crimes committed against women and girls by armed groups and jihadist groups.**

- **Proceedings initiated by our organisations before the Malian courts**

Faced with a lack of any attempt by Malian authorities to investigate or prosecute the perpetrators of sexual crimes, FIDH and AMDH took action to make Malian authorities face up to their responsibilities to recognise the commission of these crimes and not let the perpetrators go unpunished, by providing judicial support to the victims and filing complaints in their name. A pool of fifteen Malian and international lawyers was thus put in place by a coalition of six organisations composed of FIDH, AMDH and four other Malian civil society organisations (WILDAF/Mali, DEMESO, Cri de Cœur Collectif and AJM),⁷² to voluntarily assist the victims of sexual violence before Malian courts.

71. Several proceedings were opened for crimes such as violation of territorial integrity of the State, attacks against the internal security of the State, and terrorism; *see Part IV, Section 2.*

72. FIDH and AMDH initiated the formation of a coalition of Malian civil society organisations for the fight against impunity, in the

On 12 November 2014 our organisations filed, with the *Tribunal de Grande Instance* of Commune III of Bamako, a complaint⁷³ accompanied by the victims' claim to obtain the status of a civil party for crimes against humanity and war crimes on behalf of eighty women and girls who were victims of rape and other forms of sexual violence. This act forced the Malian courts to open their first judicial proceeding for sexual crimes.

Then, on 6 March 2015, following investigations conducted in Timbuktu and the Timbuktu region, our organisations filed a new complaint⁷⁴ accompanied by the victims' claim to obtain the status of a civil party on behalf of thirty-three victims of international crimes, among them sexual crimes, committed in this region by armed groups in 2012 and 2013. That complaint specifically targeted fifteen alleged perpetrators of crimes against humanity and war crimes.

Those two cases are still currently in the investigation stage before the *Tribunal de Grande Instance* of Commune III of Bamako. While the investigating judges have heard some of the civil parties, the investigations have been stalled for several years.⁷⁵ None of the proceedings undertaken on the matter of sexual violence in Mali has yet given rise to a trial.

In order for justice to be done to the victims and repetition of these odious crimes prevented, the fight against impunity for the perpetrators of sexual crimes must be a priority for Malian authorities. Sexual violence must not be the forgotten crime from the conflict in Mali, as has too often been the case during armed conflicts in the world. Our organisations urge Malian authorities to do everything in their power to enable the prosecution of the perpetrators of such serious violations of human rights and international humanitarian law.

Judges, however, face several major challenges. First, the security situation remains a source of grave concern in Northern Mali and has actually even deteriorated since the crisis of 2012-2013,⁷⁶ so much so that it is impossible for these judges to travel and gain access to these areas in order to carry out their investigations; the victims are difficult to reach; and the risk of disappearance of evidence is high. The victims' hearings that have been organised – the only real advances in these investigations – were made possible by support from our organisations, which enabled these victims to travel to Bamako.

Second, the question of which court has jurisdiction to investigate these cases is in legal limbo, which risks imperilling these proceedings unless this is remedied and which therefore inhibits some judges from taking action for fear of not having jurisdiction to do so (*See Part I Section 4 of this report*).

Finally, FIDH and AMDH deplore a lack of political will to investigate and prosecute the perpetrators of these crimes. This is illustrated, for example, by the fact that political authorities do not always cooperate as well as might be hoped with judicial authorities (in particular with respect to the enforcement of arrest warrants or committal orders, or furthermore the lack of continuity of the judges in charge of these cases⁷⁷), or fail to provide sufficient resources to the Malian judicial system for it to effectively work.

name of which complaints were filed, and bringing together the associations WILDAF/Mali, Cri de Cœur, Association of Malian Jurists (AJM), and the DEMESO Association.

73. See FIDH/AMDH press release, available at: <https://www.fidh.org/en/region/Africa/mali/16455-mali-complaint-filed-on-behalf-of-80-victims-of-rape-and-sexual-violence>

74. See FIDH/AMDH press release, available at: <https://www.fidh.org/fr/regions/afrique/mali/mali-33-victimes-de-tombouctou-et-7-associations-portent-plainte> [in French only]

75. For the record: several other complaints have since been filed by victims of sexual violence with the support of other organisations, but none has succeeded to date, and they all remain at the investigation stage.

76. See FIDH/AMDH report, *Terrorism and Impunity Jeopardize a Fragile Peace Agreement*, May 2017.

77. In particular the sometimes extrajudicial releases of alleged perpetrators, repeated changes of investigating judges in charge of cases, etc.

The victims and our associations, which support them, continue to look forward to strong and specific actions by the Malian justice system. These actions must result, among other things, in the resumption of investigations as soon as possible by the courts having jurisdiction and the indictment of the alleged perpetrators of those crimes.

• **When will there be protective measures and measures providing for care specific to the victims of sexual violence?**

The difficulty of protecting victims, in particular the victims of sexual violence, is set out very perceptively in these cases, due among other things to the lack of safety that prevails in Northern Malian regions and cohabitation between alleged perpetrators of serious crimes and the victims of those crimes. **The Malian legal framework is inadequate in this area. However, a draft law on gender-based violence, including specific provisions for the protection of victims of sexual violence, is currently under discussion.**⁷⁸ Two other preliminary draft laws on the protection of victims and witnesses have also been drafted by Malian civil society organisations. Meanwhile, in the absence of any measures provided by Malian authorities, our organisations have implemented a strategy of protection for victims and witnesses of sexual violence,⁷⁹ with an emphasis on protecting the confidentiality of victims' identities, during their trips to Bamako to be heard by the investigating judge.

Apart from security issues, the personal and psychological situation of the victims remains troubling. Our organisations urge Malian authorities to implement measures to provide psychosocial support for these vulnerable persons.

Finally, the low capacity of the judicial system and judicial actors to handle sexual violence related to the conflict is a real challenge, especially with respect to the techniques for investigating these crimes and hearing these victims, the legal framework applicable to these crimes in the context of an armed conflict, etc. Cases dealing with sexual violence that constitute international crimes require judicial authorities and lawyers to have specific expertise and practice. Efforts have been made in this area, specifically through the organisation of training for judicial personnel.⁸⁰

In parallel, the problem of protecting judicial personnel and defenders who help these victims remains a concern for our organisations. However, a draft law on "human rights defenders" initiated by the Ministry of Justice is in the process of being adopted by the National Assembly of Mali. Although our organisations welcome this advance, the fact remains that the draft suffers from flaws capable of compromising the purpose of the law. The provisions stipulated in paragraph 2 of Article 9 in particular contradict the law itself. This paragraph stipulates that "[defenders] are bound to a duty of impartiality, respect for foreign laws, and *safeguarding public safety and the general interest*". This could constitute a gap in the effective exercise of the mandate of human rights defenders in their work of helping victims, since the concepts of "public safety" and "general interest" remain vague concepts that are open to interpretation by public authorities. The possibility that this concept could be interpreted arbitrarily, particularly in the framework of the fight against terrorism, is not to be dismissed.

78. This draft law was initiated by the Ministry for the Promotion of Women, Children and the Family in partnership with human rights organisations.

79. This procedure receives support from MINUSMA.

80. AMDH and WILDAF/Mali, in partnership with the human rights division of MINUSMA, organised a week-long training course in July 2017 for judges and lawyers in the prosecution of sexual violence.

2. Terrorism-related investigations must not ignore crimes against civilian populations

Since July 2012 many judicial proceedings⁸¹ have been opened against persons arrested in Northern Mali and assigned to three investigating judges of the *Tribunal de Grande Instance* of Commune III of Bamako. The offences cited in these judicial proceedings are various: criminal conspiracy, participation in an insurrectionary movement, rebellion, attacks on the internal and external security of the State, treason, terrorist acts, and illegal possession of military weapons and ammunition. Those proceedings do not, however, concern crimes against civilian populations. **FIDH and AMDH have therefore expressed concern that the charges on which these proceedings are based do not as a whole reflect the seriousness of the human rights violations committed, especially the murders, tortures, rapes and other sexual crimes.**⁸²

Indeed, the opening of these proceedings reveals an inadequate judicial strategy on the part of the Malian authorities and illustrates how serious human rights violations – and hence the search for truth and justice for the victims of this conflict – have been relegated to a secondary priority. These proceedings must not limit themselves to reflecting disputes between the State and terrorist groups, but must first and foremost pursue the goal of bringing justice to the people of Mali, who are the main victims of the conflict. **Our organisations call on the Malian authorities, on the contrary, to make serious violations of human rights and international humanitarian law a priority in the fight against impunity, in order to effectively contribute to the establishment of the truth, the recognition of victims, and ultimately the reestablishment of the relationship of trust between State and citizen and a lasting peace in Mali.**

Concurrently with filing complaints initiating new proceedings (*See preceding section on cases related to sexual violence*), the strategy of our organisations has therefore been to join these proceedings by representing civil parties, in order to expand the scope of these proceedings to include charges arising from crimes against civilian populations, in particular international crimes. **FIDH and AMDH are therefore representing victims in a proceeding against Iyad Ag Ghali and twenty-eight other senior officers of the Ansar Dine movement; another proceeding against Ag Alfousseyni, aka Houka Houka, former chief judge of the Islamic court of Timbuktu, and the proceeding against Aliou Mahamane Touré, former Chief of Islamic police of MOJWA in Gao.**

Except for this last proceeding, which recently resulted in the trial and conviction of Aliou Mahamane Touré (*See Part II of this report*), the other proceedings in which our organisations have been civil parties along with the victims remain in the investigation stage and have made no notable progress, nearly five years later.

In the case against Iyad Ag Ghali, it is important to note that the offences that are the subject of this proceeding include the war crimes committed in Aguelhoc. On 24 January 2012 the military camp of the Malian army of Aguelhoc, located in the Kidal region, was violently attacked by MNLA and Ansar Dine. After several hours of fighting, during which FAMA exhausted its ammunition supply, 153 Malian soldiers were taken prisoner; some were tortured and then summarily executed. According to testimony gathered by our organisations, some had their throats slit, and others were executed with bullets. On 8 and 18 February and 5 and 23 March 2013, arrest warrants based on extremely serious offences had been issued against about twenty people, including Iyad Ag Ghali. However, it must be acknowledged that the case has seen no progress since then. On the contrary, several arrest warrants were lifted

81. Our organisations do not know the exact number of these proceedings or the identity of all the individuals still facing charges. It is extremely difficult to do a complete mapping of these said proceedings that were initially dispersed throughout various investigative offices of the *Tribunal de Grande Instance* of Bamako.

82. FIDH/AMDH report, *Justice in Progress [La justice en marche]*, March 2014.

between October 2013 and June 2015 as part of negotiations leading to the signing of the peace agreement. While the lifting of the arrest warrants does not theoretically suspend the proceedings, it could compromise the efficacy of the victims' rights to justice and truth, among other things.

As with the judicial proceedings for sexual crimes, many challenges hinder these proceedings, especially the security situation in the northern part of the country and the lack of resources of the judicial system. **Clearly, though, the main obstacle to these proceedings is a lack of political will. This is characterised in particular by a refusal to arrest the individuals involved and by waves of releases of suspects.**

In all of these cases, many people alleged to have committed international crimes and other serious human rights violations either are not apprehended, have been released or are abroad at this time. Our organisations estimate that at least fifty alleged perpetrators of crimes against humanity or war crimes who had been arrested have been released for political reasons or as part of negotiations with armed groups. While Malian authorities today are obviously unable to find and arrest Iyad Ag Ghali,⁸³ this does not apply to all the persons involved. The example of Houka Houka is emblematic, since he still lives in the Timbuktu region at present. He teaches in a Koran school, openly and in full view of the public, including the victims of the crimes that he ordered. Our organisations have also been informed that he participated as a religious leader in an "inter- and intra-community" meeting held on 27 September 2017 in Zouéra, a village located in the rural commune of Essakene, organised by the Chérif, Ansar and allied communities and presided over by the Director of the Office of the Governor in Timbuktu, assisted by the prefect of Goundam Circle.

On the other hand, it is important to note that these cases are in the process of being transferred from the Specialised Judicial Unit for the fight against terrorism, which in principle has jurisdiction to handle these cases but was created after the opening of these proceedings. Our organisations hope that these transfers, initiated by the unit and ordered by the Pre-Trial Chambre at the Court of Appeal of Bamako, mean that these proceedings relating to terrorism will make progress in the near future (See *Part I Section 4 of this report*).

It is crucial today to guarantee both the progress of these ongoing investigations and the inclusion of the prosecution of serious crimes against civilian populations in the scope of these investigations, in order to guarantee a fight against impunity in Mali that is effective and meaningful for the people and communities who are the most affected.

3. "Dormant cases": forgotten investigations

Several other proceedings have been opened for serious crimes committed in the context of the conflict in Mali, but these investigations appear to have been abandoned since. Although these investigations have not been closed, they have yielded no results to date. The cases below constitute several examples of these "dormant cases".

• The Case of the Kati Mutiny

During the day on 30 September 2013, a mutiny was declared in Soundiata Keïta Camp, which housed the former comrades-in-arms of General Amadou Haya Sanogo. This mutiny originated in the settling

83. Iyad Ag Ghali remains one of the key actors of the violence in Northern and Central Mali, as a leader of the Ansar Dine movement and one of the leaders of the new jihadist movement JNIM (Jamaat Nosrat al-Islam wal-Mouslimin, Support Group for Islam and Muslims), which brings together the main terrorist groups in the Sahel (AQIM, MOJWA, Ansar Dine, Macina Liberation Front).

of scores within the army, owing to dissent and frustration provoked by broken promises made by the Captain-turned-General Amadou Haya Sanogo to his men.⁸⁴ In the hours and days that followed, some mutineers or suspected mutineers disappeared.⁸⁵ Some soldiers supposedly were called and taken to General Sanogo or his entourage to negotiate a possible arrangement, while others were allegedly abducted. To put an end to this score-settling among “green berets”, the government launched operation “Saniya”, which led to the arrests of about thirty soldiers, on the one hand, and the disarming of the soldiers of Soundiata Keïta Camp, on the other. **This case, known as the “Kati Mutiny”, is a case emblematic of the persistence of the crimes committed by General Sanogo and his men after they seized power in the coup d’État of March 2012 (See Part III of this report).**

The families of the missing men appealed to AMDH and FIDH; they had had no news of their loved ones and were anxious about the lack of response from military authorities to lobbying done by some of the families. Our organisations then documented six cases of forced disappearances and two cases of murder. On 29 November 2013, our organisations filed a complaint accompanied by the victims’ claim to obtain the status of a civil party on behalf of the loved ones of the missing at the *Tribunal de Grande Instance* of Commune III of Bamako, against Chief Warrant Officer Fousseini Diarra, Captain Christophe Dembele and General Amadou Haya Sanogo.⁸⁶

Between February and March 2014 Malian law enforcement found six bodies buried outside of Kati. On 23 February 2014 two communal graves were found in the rural commune of Kambila, less than 10 km from the city of Kati, containing the bodies of five green beret soldiers. Then, on 1 March 2014, a body bearing a colonel’s insignia was discovered in a well in Malibougou, outside of Kati, at a villa belonging to a serviceman who was close to General Sanogo.⁸⁷ An investigation was immediately opened. Medical expert opinions were carried out in May 2014 on the recovered bodies, and the civil parties represented by FIDH and AMDH were heard by the investigating judge. Seven people were charged, then released pending trial, and forty soldiers were delivered to the courts.⁸⁸

Since then, however, the investigation has been at a standstill. No action has been taken for over two years. **More than four years after the events of Kati, the families of the victims and our organisations regret that this case has not progressed, and we encourage the investigating judge recently appointed to be in charge of the case to take all necessary measures to complete the investigation within a reasonable period of time.**

• The case of the attempted counter-coup d’État by the red berets

On 30 April 2012, in the aftermath of the coup d’État by the military junta known as the “green berets”, led by Amadou Haya Sanogo, soldiers from the parachute commando unit known as the “red berets”, who were loyal to former President Amadou Toumani Touré, launched a surprise attack against ORTM (Mali’s official television station) as a prelude to an attempted counter-coup d’État⁸⁹. This attack ended in the deaths of at least four civilians and several unarmed soldiers posted in front of the ORTM building.

84. Amadou Haya Sanogo had promised the soldiers in the camp promotions and pay raises. Private Moussa Ba fired on Colonel Diallo, the chief of staff and aide du camp of General Amadou Haya Sanogo, thereby provoking the mutiny within the camp.

85. Colonel Youssouf Traoré, second in command in the former junta, thus went missing on the evening of 30 September 2013, along with several others from his entourage.

86. That complaint included the offences of illegal arrest, false imprisonment, torture, forced disappearance and murder.

87. There was every reason to believe that it was the body of Colonel Youssouf Traoré.

88. Some people who were held in pre-trial detention in this case were recently released owing to the expiration of the period of pre-trial detention, in accordance with Malian law.

89. This kidnapping preceded the kidnapping and summary execution of red beret soldiers on the very night of 30 April 2012, in reprisals for the attempted counter-coup d’État, and which are the subject of the proceeding against Amadou Haya Sanogo and seventeen others, called the “Red Berets Case” (See Part III of this report).

About forty red beret soldiers were arrested and placed in detention in the military camp in Kati for their participation in the attack against the siege of ORTM. There they were tortured before being transferred to the detention centre of Camp 1 in Bamako on 24 June 2012. At the same time, an investigation was opened into the attack on ORTM before the *Tribunal de Grande Instance* of Commune III of Bamako against Colonel Abdina Guindo and others, who were accused of “murder, conspiracy to murder, attacks on the security of the State and criminal conspiracy”.

Owing to a reconciliation process between “red berets” and “green berets”, twenty-eight soldiers and policemen were released on 30 January 2013, followed by five more on 18 July 2013, and finally Colonel Abdina Guindo himself was released on 9 November 2013.

According to the latest news gathered by our organisations, the investigation was closed and the case forwarded to the Prosecution over a year ago. However, no committal order or discharge has been issued to date. FIDH and AMDH stress the need to see this case through to its conclusion, just like the other cases relating to the events following the coup d’État. It is important to respond to the accusations of a political nature and to the campaigns of disinformation surrounding these cases by the impartial and equitable treatment of all these cases by the Malian courts.

• **The case of the “missing persons of Timbuktu”**

On the day after the liberation of the city of Timbuktu by Malian (FAMA) and French armed forces, several people were reported missing. Their bodies were subsequently found and identified by their loved ones. Thus on 28 January 2013 Mohamed Lemine and Mohamed Tiadani were said to have been arrested by FAMA, and their bodies were found a few days later. On 14 February 2013 Maouloud Fassoukoye, Ali Ould Mohamed Kabad, and several others were also reported missing in the neighbourhood of Abaradiou. Their bodies were found by their loved ones in the outskirts of the city.

In 2015 the loved ones of some of the missing filed a complaint with the Prosecutor of the Republic of Timbuktu. The case has seen no progress since that day.

• **The case of the disappearance of Staff Sergeant Mohamed Ramadane**

Staff Sergeant Mohamed Ramadane, who was on duty in Timbuktu during the early days of the crisis, had returned to Bamako on 1st April 2012 following the withdrawal of the Malian army. After serving on the General Staff of the armed forces, he was posted to a unit in Kati, where the commander gave him a week of leave. He resumed service on 22 October 2012, only to be kidnapped on 24 October in broad daylight by some men seemingly acting under the orders of Captain Amadou Konare.⁹⁰ He was then evidently taken to a detention cell, from which he was able to telephone his family, but since that day there has been no news of his fate. He seems to have disappeared after his interrogation by the men of Captain Christophe Dembele on that same day.

On 17 July 2014 the wife of Mohamed Ramadane filed a complaint accompanied by the victims' claim to obtain the status of a civil party against Captains Amadou Konare, Cheickna Konate, Lieutenants Christophe Dembele, Issa Pangassi Sangare and Major Mahamadou Maïga. FIDH and AMDH lobbied to support the complainants before the proper authorities.

On 22 October 2014 the investigation was opened before the *Tribunal de Grande Instance* of Commune III of Bamako against the persons named above for kidnapping and conspiracy to kidnap. On 29 October

90. The second in command of CNRDRE, the group of putschists headed by General Sanogo.

2014 the investigating judge ordered a judicial delegation and sent applications for delivery to the courts of all those named in the complaint, apart from those already under a committal order. Several witnesses were also questioned. Since February 2015, however, the investigation has been fruitless and inactive.

• **The case of the bombing of the Maïga family**

In the morning of 11 January 2013 the house of the Maïga family was bombed during the counter-offensive by the Malian and French armies against the jihadist occupants in Konna, in the Mopti region. Aminata Maïga, forty years old, and her three children, Adama Maïga, Zeindou Maïga and Aliou Maïga, one year, six years, and ten years old, respectively, were killed, and another child, Saoudetou Maïga, twenty years old, was injured. Their houses also were damaged in the bombing.

FIDH and AMDH met with the victims and their loved ones during a mission to investigate and document human rights violations committed in the northern regions in July 2013. The victims then submitted their case to the State Prosecutor at the *Tribunal de Grande Instance* of Commune III of Bamako through a complaint against the French army. The case was dismissed without prejudice on 2 April 2015 in the “absence of an offence against criminal law”. The victims subsequently sent a letter to the French ambassador and met with the leaders of the Serval Operation at Gao, who replied to them that it was up to the Malian State to pay for collateral damage from the Serval Operation. To date the Maïga family has received no reparation for its losses.

4. Crimes related to the reconquest of Northern Mali and crimes in Central Mali: when will investigations be opened?

In addition to the serious violations of human rights and international humanitarian law that are already the subject of judicial proceedings – some of which have made more or less progress while others remain at the investigation stage, our organisations have documented other crimes that are classifiable as war crimes and crimes against humanity and that have not yet been the subject of any judicial proceedings. These crimes were committed by terrorist groups and armed groups that are signatories to the Peace Agreement, but also by Malian armed forces and French forces, notably in the context of the fight against terrorism.

FIDH and AMDH emphasize the need to prosecute all crimes related to the conflict, whoever the perpetrators. Our organisations therefore call on Malian authorities to show proof of political courage, to make the fight against impunity a priority, and to demonstrate the independence and impartiality of the Malian courts. The courts cannot apply double standards if they are to achieve the conditions needed for genuine reconciliation and the reestablishment of a lasting peace.

• **The forgotten crimes of 2012-2013**

Armed groups carried out abuses against civilian populations during the “reconquest of Northern Mali”, but so did the Malian armed forces and the French forces of Operation Serval.

In February and March 2013 ten or so civilians, including shepherds and Peuhl herdsmen, were summarily executed or murdered by armed groups in the Timbuktu region.⁹¹ According to witness statements gathered by our organisations, some of them were thrown into wells. Our organisations also documented several cases of forced disappearance and summary execution supposedly committed

91. These targeted killings took place in communities in the Goundam and Niafongué circles, in the Timbuktu region.

by armed groups against the population of Peuhl between 2012 and 2013, especially in the Timbuktu region⁹² and near the border with Mauritania. To date our organisations have heard of no proceedings being opened to investigate and prosecute the perpetrators of those crimes.

Similarly, FIDH and AMDH have documented dozens of serious crimes classifiable as war crimes that were perpetrated by alleged members of the Malian army and the French army during the “reconquest of Northern Mali” in 2013.⁹³ These crimes include in particular arrests and summary executions perpetrated in Sévaré and other towns near the areas of hostilities in January 2013. Cases of arrests followed by extrajudicial executions or forced disappearances were perpetrated in February and March 2013 in those “reconquered” regions, notably in the Timbuktu and Gao regions. It is worth mentioning the case of the disappearance of Ali Ould Kabad and ten or so others in Timbuktu in early 2013 (See *preceding section on dormant cases, and the “missing persons of Timbuktu”*), and the summary execution of three individuals on 12 March 2013 in the commune of Djibok, located forty-five kilometers from Gao.⁹⁴ These serious violations of human rights and international humanitarian law have not led to any investigation or prosecution by Malian judicial authorities.

• Crimes committed after the 2012-2013 crisis

Despite the signing of the National Peace and Reconciliation Agreement that emerged from the Algiers Process in June 2015, Mali has experienced a deep deterioration of the security situation since the end of the occupation of Northern Mali in March 2013, characterised by a significant increase in violence and the perpetration of serious violations of human rights and international humanitarian law by the various parties to the conflict. The number of civilians and soldiers killed or injured after March 2013 in the context of the conflict is higher than that recorded in 2012-2013. The conflict in Mali has never engendered so many victims as it is doing now.⁹⁵

Since 2014, e.g., in the midst of the peace talks between Malian authorities and the rebel groups for the Peace Agreement, FIDH and AMDH documented crimes by the future signatories to the Agreement. On 17 May 2014, for example, members of armed groups (MNLA, HCUA, AMA) killed eight people in Kidal, including two prefects and four sub-prefects from the region.⁹⁶ This was followed by violent fights between the Malian armed forces and the armed groups present in Kidal, especially MNLA and CMA, as well as waves of arrests and acts of harassment and intimidation within the black civilian populations of Kidal. Since the signing of the Agreement, resumptions of hostilities between certain armed groups that are signatories are not rare in Northern Mali and are regularly the subject of new ceasefires.⁹⁷ Our organisations have documented and condemned, for example, the violent clashes between CMA and GATIA during the summer of 2016,⁹⁸ and again, very recently⁹⁹ the violent fights involving MSA.¹⁰⁰

92. Specifically in the commune of Léré.

93. The Malian army committed abuses against civilians during the retaking of the occupied territories in Northern Mali, at the same time as Operation Serval was being launched in early 2013. Some civilians were also victims of “collateral damage” from the operations of the French army, and although those crimes do not qualify as war crimes because those civilians were not the target of the bombings, those people also are entitled to receive reparations for the harm suffered. To date no victim, either of the Malian army or the French army, either of intentional crimes or of collateral damage, has received reparations.

94. On 12 March 2013, two Malian vehicles accompanying a French army patrol opened fire on a car. The occupants of the car were killed outright. Malian military authorities would have recalled the soldiers involved in this crime, but those soldiers were never prosecuted.

95. To learn more, see FIDH/AMDH report, *Terrorism and Impunity Jeopardize a Fragile Peace Agreement*, May 2017.

96. These targeted killings took place after the visit of then Prime Minister of Mali Moussa Mara in Kidal.

97. The last cease-fire to date between CMA and the Platform groups was signed in Bamako on 20 September 2017.

98. See the joint FIDH/AMDH note, *2016 : Une année de recrudescence des violences et des actes terroristes dans le Nord et dans le Centre [2016: A year of increasing violence and terrorist acts in Northern and Central Mali]*, February 2017.

99. Especially in September and October 2017.

100. A dissident group within MNLA, created in September 2016.

Apart from the resurgence of targeted killings and the resumption of hostilities between armed groups, the conflict today is accompanied by a proliferation of increasingly sophisticated and devastating terrorist acts in an ever-growing portion of Malian territory, violent intercommunal clashes,¹⁰¹ acts of armed banditry, and sexual violence in Northern and Central Mali.¹⁰²

In the regions of Ségou and Mopti in particular, terrorist groups and violent extremists, notably the Macina Liberation Front led by Amadou Kouffia, carry out attacks and actions targeting representatives of the State, the Malian Armed Forces, prominent citizens and local communities. This strategy of insecurity exacerbates the disengagement of the State, which is no longer capable of either protecting the civilian populations or providing them basic public services such as access to education and health.

At the same time, the fight against terrorism and the response of the Malian army to this phenomenon of insecurity and terrorism in the central regions has been accompanied by numerous human rights violations. Our organisations have documented dozens of cases of arbitrary arrests and detentions, torture and summary executions perpetrated in the framework of anti-terrorism operations in 2016 and 2017.¹⁰³

Similarly, in the framework of Operation Barkhane the French army, which shared the goal of fighting terrorism in the Sahel Zone, was also the subject of allegations of human rights violations and grave military blunders. Our organisations enjoin the competent authorities, in particular the French authorities, to open investigations and publicize their findings concerning such allegations, including concerning the death of a minor who was killed by Barkhane forces during a patrol in the far North of Mali on 30 November 2016¹⁰⁴ and the death of eleven Malian soldiers killed during a raid by French forces on 23 October 2017 in the Kidal region when they were being held hostage by a terrorist group.¹⁰⁵

• **The lack of a response by Malian judiciary authorities**

FIDH and AMDH are not aware at this time of any judicial proceedings concerning these serious violations of human rights and international humanitarian law that were perpetrated both during the “reconquest of Northern Mali” in 2013 and since then in the regions of Northern and Central Mali. However, proceedings concerning these crimes, which have been committed by all sides since 2013, remain the most appropriate means of preventing the crimes from being committed in the future.

Furthermore, due to this situation of increasing insecurity, many victims are afraid to file a complaint in court, for fear of possible reprisals, even when they have access to State services or to organisations such as FIDH and AMDH that could support them in those steps.¹⁰⁶ Civilian populations are doubly

101. Intercommunal conflicts are behind many deaths, injuries and displacements in the central regions in 2016 and 2017. To learn more, see the joint FIDH and AMDH note published in February 2017 and the joint FIDH and AMDH report published in May 2017.

102. For example, on 18 and 19 April 2017, ten young women, including a twelve year-old minor, were kidnapped, illegally confined and raped by armed individuals in a community in the Goundam circle in the Timbuktu region. This incident was documented by our organisations; however this is only one example of a phenomenon that to date is under-documented by human rights organisations and MINUSMA alike, due among other things to the difficulty of gaining access to the areas and because the victims choose not to speak of these violations. To learn more, see FIDH/AMDH report, *Terrorism and Impunity Jeopardize a Fragile Peace Agreement*, May 2017.

103. To learn more, see FIDH/AMDH report, *Terrorism and Impunity Jeopardize a Fragile Peace Agreement*, May 2017.

104. See article published in the journal *Jeune Afrique*: <http://www.jeuneafrique.com/392503/politique/bavure-mali-responsabilite-de-larmee-francaise-mort-dun-enfant-se-confirme/> [in French only]

105. See article: <http://www.jeuneafrique.com/490325/politique/mali-les-11-militaires-retenus-en-otage-ont-bien-ete-tues-lors-dun-raid-de-loperation-barkhane/> [in French only]

106. Due to the security situation, many State services are nonexistent or ineffective in Central and Northern Mali, many victims are displaced (no longer have their documents, difficult access to authorities), the NGOs themselves have more and more difficulty in getting around in these conflict areas and in identifying or supporting the victims, etc. Even when these victims testify with our organisations and could receive free legal representation through our lawyers, it is not uncommon today for them to refuse to have their case taken before the Malian courts.

victims, of both terrorist acts and anti-terrorism operations, and they take refuge in silence.

However, the primary responsibility for investigating and prosecuting international crimes committed in Mali in the context of the conflict falls upon the Malian State. Our organisations call on the Malian authorities to fulfil their obligations and their promises to fight against impunity by effectively investigating all allegations of violations of human rights and humanitarian law and by prosecuting the perpetrators of these serious crimes. It is crucial, especially in light of the current context of the country, to show that such crimes shall not go unpunished.

Our organisations therefore call for the opening of judicial proceedings concerning the crimes perpetrated during the “reconquest of Northern Mali” and the crimes perpetrated since the period of occupation by jihadist groups – by armed groups, terrorists and elements of the Malian and foreign armies.

V. INVESTIGATIONS, TRIALS, REPARATIONS AND COMPLEMENTARITY: THE ICC'S CHALLENGES IN MALI

1. Opening of an ICC investigation early in the conflict

Only a few months after the start of the “Northern crisis”, the Malian State appealed to the international community to help it maintain the country’s territorial integrity and to investigate and prosecute the perpetrators of serious human rights violations taking place in the regions under jihadist occupation. This appeal was formally decided at the end of the Council of Ministers meeting on 30 May 2012, through the submission of the case to the International Criminal Court, in accordance with the option whereby a State Party¹⁰⁷ to the Rome Statute may refer a situation as provided for in Article 14 of said Statute. FIDH and AMDH commended this decision and supported the Malian authorities in this process,¹⁰⁸ as it proves the commitment of the Malian State to implement its obligations to international law and its faith in the international system of justice.

By virtue of the principle of complementarity,¹⁰⁹ the ICC may indeed investigate any situation in which it has reason to believe that crimes falling within its jurisdiction (war crimes, crimes against humanity or genocide) have been perpetrated and when the State lacks the will or the ability to itself investigate and prosecute those guilty of these crimes. On 13 July 2012, the Minister of Justice sent a letter to the Prosecutor of the ICC declaring that the State of Mali “has the honour to bring before you the most serious crimes committed since the month of January 2012 on its territory inasmuch as the Malian courts are unable to prosecute or try the perpetrators”.¹¹⁰

On 16 January 2013 the Prosecutor of the ICC, Fatou Bensouda, announced the official opening of an investigation into crimes allegedly committed in Mali since January 2012. Based on the findings of its preliminary examination, the Office of the Procurator found that there was reasonable ground to believe that the crimes of murder, mutilation, cruel treatment and torture, attacks against protected property, extrajudicial execution, pillaging and rape, all of which constituting war crimes, had actually been committed. The Prosecutor then agreed to “conduct a thorough and impartial investigation and bring justice to the Malian victims”.¹¹¹

On 13 January 2013 the cooperation between Mali and the ICC was strengthened through the signing of cooperation agreements pursuant to Chapter IX of the ICC Statute. Mali thereby informed the ICC of the status of the judicial proceedings that had been opened at the national level and made available to the investigators of the Office of the Prosecutor all documents relating to these proceedings, including those proceedings in which FIDH and AMDH were civil parties with the victims. The ICC investigation then got off the ground for real, in coordination with the Malian authorities and the Malian civil society organisations that were ready and able to contribute to this investigation and to positive collaboration between Mali and the Court. FIDH and AMDH have been convinced from the outset of the merits of

107. Mali ratified the Rome Statute on 16 August 2000.

108. AMDH provided technical support to the Malian government in its process requesting referral to the ICC.

109. Article 17 of the Rome Statute of the International Criminal Court.

110. Letter N°0076/MJ-SG of 13 July 2012, signed by the Minister of Justice Mr Malick Coulibaly.

111. Press release of the Prosecutor of the ICC Fatou Bensouda, 16 January 2013, ICC-OTP-20130116-PR869.

genuine complementarity and cooperation between Malian authorities and the ICC towards the common goal of the fight against impunity in Mali.

2. The Al Mahdi case, the first ICC trial: a symbolic breakthrough and clarion call for further trials

The ICC investigation has thus far resulted in one case, which ended in September 2016 with the conviction of Ahmad Al-Faqi Al Mahdi for the war crime of destroying mausoleums in Timbuktu. This case, which was conducted in record time, marked an important symbolic step and shows that the fight against impunity for the crimes committed in Mali is underway on the international level. This first conviction arising out of the situation in Mali also represents an important advance for international case law, inasmuch as it is the first time in the world that anyone has been found guilty of and been convicted for the war crime of destroying cultural patrimony. On the other hand, although Ahmad Al-Faqi Al Mahdi was convicted, the case is not yet closed: there is now the issue of what reparations should be awarded to the victims of the crimes of which Al Mahdi was found guilty and how to implement the reparations in the context currently prevailing in Mali.

• Retracing the trial against Al Mahdi for destruction of mausoleums in Timbuktu

On 18 September 2015 the Pre-Trial Chamber issued the first arrest warrant in the situation of *Mali vs. Ahmad Al-Faqi Al Mahdi*, alias Abou Tourab, a member of Ansar Dine, an Al Qaeda affiliate in Islamic North Africa, and former head of the “Hisba” Morality Brigade of Timbuktu. A week later, Al Mahdi, who was being held by Nigerian authorities at the time, was transferred to the ICC.

On 24 March 2016 the Court confirmed the charges brought against the accused,¹¹² namely the war crime of intentionally attacking historic monuments and religious buildings, including nine mausoleums and one mosque in Timbuktu, between approximately 30 June 2012 and 10 July 2012.¹¹³ From 22 to 24 August 2016 was held the trial, during which the accused pleaded guilty and asked for forgiveness from the Malian people, in particular the population of Timbuktu, where he was from.¹¹⁴

Our organisations have described this trial as historic, in that it is the first trial charging a defendant for the crime of destroying world cultural patrimony during the conflict in Northern Mali in which the accused admitted his responsibility by pleading guilty. Our organisations regret however that crimes against individuals, in particular sexual crimes, were unfortunately not included in the charges brought against the defendant. Indeed, the complaint filed by our organisations on behalf of the thirty-three victims from Timbuktu before Malian courts in March 2015 specifically concerned sexual violence and named Mr Al Mahdi personally, among fifteen alleged perpetrators.¹¹⁵

On 27 September 2016 the ICC found Ahmad Al-Faqi Al Mahdi guilty of war crimes consisting of the destruction of mausoleums in Timbuktu and sentenced him to nine years in prison.¹¹⁶ FIDH and AMDH, which very closely monitored the judicial proceeding against Al Mahdi, welcomed this sentence – a first step in the fight against impunity for the perpetrators of serious human rights violations in Mali.

112. Decision confirming the charges against Ahmad Al Faqi Al Mahdi, Pre-Trial Chamber I of the ICC, 24 March 2016, Doc ICC-01/12-01/15-84.

113. A delegation from FIDH and AMDH was present during the hearing of confirmation of charges on 1 March 2016 in The Hague.

114. A delegation from FIDH and AMDH was present during Al Mahdi's August 2016 trial in The Hague.

115. See *Part IV Section 1 of this report*.

116. Judgment and Sentence, ICC Chamber of first instance VIII, 27 September 2016, Doc ICC-01/12-01/15-171.

Our organisations urge the ICC moreover to continue its investigations and extend them to other crimes committed in the context of the conflict in Mali, in particular sexual crimes.¹¹⁷

• The challenge of determining and implementing reparations

Following the conviction of Al Mahdi, the Court opened the reparations proceeding against him and invited the parties and other organisations having relevant expertise to submit their observations in the matter.

FIDH and AMDH were thereby authorized to submit their joint observations during the reparations phase in the capacity of "*amicus curae*" to the proceeding.¹¹⁸ These observations concerned mainly the identification of the victims, the different types of harm suffered by the population of Timbuktu, including psychological and mental harm, and the methodology to be applied to the process of design and implementation of the reparations, with a particular emphasis on the need to consult the affected populations.¹¹⁹

On 17 August 2017 the ICC issued its reparations order against Ahmad Al-Faqi Al Mahdi,¹²⁰ including for individual, collective and symbolic reparation measures. It thereby confirmed that the destruction of the mausoleums had led to losses that not only concerned the buildings at issue, but that also – and above all – affected the population of Timbuktu. It recognized three categories of harm entailing a right to reparation:¹²¹

- (i) **Damage** caused to protected buildings, for which the Court ordered collective reparations in the form of measures to restore the sites;¹²²
- (ii) **Indirect economic harm**, for which it ordered individual reparations for "those whose livelihoods exclusively depended upon the protected buildings", as well as collective reparations for the community of Timbuktu;¹²³ and
- (iii) **Moral harm**,¹²⁴ for which it ordered individual reparations for "those whose ancestors' burial sites were damaged in the attack", as well as collective reparations for the non-economic harm suffered by the entire community of Timbuktu (in the form of rehabilitation measures and/or symbolic measures).

The ICC's Trust Fund for the Victims is at present responsible for drafting an implementation plan of the reparations measures by February 2018,¹²⁵ which must then be approved by ICC judges.

117. See FIDH/AMDH press release, "First step on the path to justice: ICC sentences Al Mahdi to 9 years", 27 September 2016, available at: <https://www.fidh.org/en/region/Africa/mali/first-step-on-the-path-to-justice-icc-sentences-al-mahdi-to-9-years>

118. In accordance with the Chambre's decision of 25 October 2015 and pursuant to Article 75-3 of the Rome Statute and Rule 103 of the Rules of Procedure and Evidence.

119. Joint observations of FIDH and AMDH on the reparations proceedings, 2 December 2016, Doc ICC-01/12-01/15-189, available at: <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/12-01/15-189-tENG&In=fr>

120. Reparation order, ICC Chambre of first instance VIII, 17 August 2017, Doc ICC-01/12-01/15-236.

121. The Court also recognized the harm suffered by the Malian population as a whole and the international community, and it ordered a symbolic one euro to be paid to the State of Mali and to UNESCO for reparation.

122. The Court specified that the fact that these buildings had already been restored by UNESCO had no bearing on the question of whether Al Mahdi must be financially liable for the reparations ordered.

123. These collective reparations could take the form of community education and awareness-raising programs designed to make known the cultural patrimony of Timbuktu; return/resettlement programs; a micro-loan system that would enable the population to generate income; or other financial assistance programs to regenerate part of the economic activity that Timbuktu has lost.

124. The Court specified that this moral harm was composed of mental pain and suffering (including over the loss of childhood, opportunities and relationships for those who fled Timbuktu), and on the other hand the disruption of the culture.

125. Reparation order, ICC Chambre of first instance VIII, 17 August 2017, Doc ICC-01/12-01/15-236.

FIDH and AMDH reiterate the importance of consulting the victims, leaders and local organisations in order to adequately identify the victims and to elaborate draft reparation programs adapted to the local context, including the security challenges, and consistent with the view of the victims and the aspirations of the community of Timbuktu.

The reparations procedure in this case is something new and unprecedented. Identifying the beneficiaries and implementing appropriate means of reparation for damages suffered as a result of the destruction of world cultural patrimony are particularly complicated. Our organisations remain available to the various entities of the ICC and the Trust Fund to support them in this process.

3. Investigations by Malian courts and the ICC must be carried out in a complementary manner

Our organisations urge the ICC to continue its investigation into the situation in Mali and to initiate new proceedings concerning other crimes over which the Court has jurisdiction, especially crimes committed at Aguelhoc and sexual crimes. In a conflict in which mass crimes have been committed against civilian populations, including sexual and gender-based crimes, murders and other serious attacks on physical integrity and dignity, it is crucial for the Office of the Prosecutor to have a prosecution strategy that seeks a certain representativeness of the most serious crimes committed in the framework of the conflict. In order to have a real positive impact on the people and communities affected, the ICC's action must reflect the victims' priorities for justice and not limit themselves to a single case concerning the destruction of cultural patrimony. Granted, that case against Al Mahdi is symbolic in the eyes of Malians, but it is not sufficient with respect to the crimes experienced by them first hand.

To date the Office of the Prosecutor has provided no information on the opening of any future judicial proceedings concerning the Malian situation, but the Prosecutor has repeatedly confirmed that the investigation is still ongoing and that the Al Mahdi case will not remain an isolated case concerning crimes committed during the conflict that has raged in Mali since 2012. When she went to Bamako in October 2017,¹²⁶ Fatou Bensouda reaffirmed her intention to carry out investigations, especially into sexual crimes, killings, murders and attacks against the MINUSMA blue helmets. Our organisations therefore encourage the Office of the Prosecutor to pursue her investigations and open new cases concerning the Malian situation, in particular concerning sexual violence, to offset the lack of progress in the fight against impunity at the national level.

In parallel, FIDH and AMDH call on the ICC and Malian authorities to strengthen their cooperation with the aim of establishing true complementarity between proceedings before Malian courts and before the ICC. This complementarity is at the heart of the ICC's mission, with the State keeping the primary responsibility to investigate and prosecute the perpetrators of serious violations of human rights and international humanitarian law on its own soil. It would be particularly important for the ICC Prosecutor to become more involved in supporting ongoing national proceedings, if she believes that sharing information in her possession could advance investigations at the national level without endangering the safety of witnesses and victims.

Our organisations welcome in this sense the Prosecutor's statement on the occasion of the opening of the trial of Amadou Haya Sanogo and other suspects before the Malian courts, when she said,

126. FIDH and AMDH participated in a meeting held in Bamako on 18 October 2017 between the ICC Prosecutor and Malian civil society.

“In the spirit of complementarity, my Office is also ready to offer assistance in support of the efforts of the national judicial authorities, as required, within the parameters of its mandate to continue fostering genuine national proceedings for ICC crimes in Mali.”¹²⁷

While the ICC is complementary to the national courts and cannot open investigations or conduct trials unless the latter are unwilling or unable to do so, the Office of the Prosecutor admits that “a positive approach to complementarity means that the Office (of the Prosecutor) will encourage genuine national proceedings where possible, including in situation countries”.¹²⁸ Our organisations therefore believe that the implementation of the principle of positive complementarity in Mali is crucial. Indeed, “the goal of ending impunity in Mali can best be achieved with the combined efforts of the Court and the national authorities”.¹²⁹

127. Statement of the ICC Prosecutor, Fatou Bensouda, on the occasion of the opening of the trial of Amadou Haya Sanogo *et al.*, suspects before the Malian courts: “Complementarity is central to the Rome Statute system”, 1st December 2016.

128. ICC Office of the Prosecutor, Prosecutorial Strategy 2009-2012, 1st February 2010, par. 17

129. Statement of the ICC Prosecutor, Fatou Bensouda, on the occasion of the opening of the trial of Amadou Haya Sanogo, 1st December 2016.

RECOMMENDATIONS

To the Malian authorities:

- Take all necessary measures to fight against impunity for the perpetrators of serious violations of human rights and international humanitarian law, and to guarantee victims' access to truth, justice and reparations;
- Initiate and adopt as soon as possible a law expanding the jurisdiction of the Specialised Judicial Unit for the Fight against Terrorism to include the offences of war crimes and torture, crimes against humanity, and genocide;
- Further strengthen the capabilities of the Specialised Judicial Unit, whose jurisdiction will be expanded to ensure the effective investigation and prosecution of perpetrators of international crimes, including by establishing investigative offices specialised in the prosecution of the crimes being newly added to the unit's jurisdiction;
- Help to strengthen the technical capabilities of actors in the criminal justice system, including judges and prosecutors, lawyers, security forces and all other relevant authorities, in the field of international human rights law and international humanitarian law, especially in prosecuting sexual violence;
- Take adequate protective measures to ensure the security of judges and judicial administrators working in sensitive areas and modify the draft law on the protection of "human rights defenders" by taking into account the recommendations of Malian civil society that were submitted to the National Assembly in November 2017;
- Arrange for the resumption of the trial against Amadou Haya Sanogo and others in the so-called "red berets" case as soon as possible after obtaining the results of the new expert opinion, making sure that optimal logistics and security measures are put in place to enable the effective participation of all parties to the trial, in particular civil parties and witnesses;
- Expedite investigations in ongoing judicial proceedings concerning serious crimes perpetrated in the context of the conflict, especially those relating to sexual violence;
- Open judicial investigations into crimes perpetrated in the regions of Central and Northern Mali since 2012 that are not yet under investigation, including abuses committed by elements of the Malian army and foreign forces;
- Ensure due process for victims participating as civil parties in ongoing and future proceedings, including reasonable time to prepare for trial, access to court files, and notification of all documents to their lawyers;
- Guarantee reparations, including through extrajudicial and collective reparation measures, to all victims who suffered harm from the serious crimes perpetrated in the context of the conflict, including the serious crime of which Aliou Mahamane Touré was found guilty;
- Expedite the adoption of the law on gender-based violence and the law on the protection of victims and witnesses;

- Implement adequate measures to ensure medical, psychosocial and judicial support for the victims of serious human rights violations, in particular the victims of sexual crimes;
- Pursue full cooperation with the International Criminal Court to facilitate investigations and prosecutions against alleged perpetrators of war crimes and crimes against humanity in Mali, including sexual violence perpetrated in the context of the conflict.

To the International Criminal Court:

- Continue its investigation into the situation in Mali since 2012, in particular into sexual violence constituting war crimes and crimes against humanity and into the crimes committed in Aguelhoc;
- Pursue full cooperation with the Malian authorities, including through support for judicial proceedings at the national level pursuant to the principle of complementarity.

To the ICC Fund Trust for Victims:

- Consult the victims, the affected communities and Malian civil society organisations in order to develop reparations programs adapted to the local context and the needs of the victims in the Al Mahdi case;
- Consider elaborating and implementing assistance programs for the victims and the communities affected by the conflict in Mali.

To the international community:

- Support the Malian authorities in their efforts to fight against impunity, which is a priority for the re-establishment of peace in Mali;
- Urge the Malian authorities to expedite ongoing judicial proceedings and to take into account in these proceedings the most serious crimes perpetrated against the Malian population, including sexual violence as an international crime;
- Continue to support the Malian authorities in their efforts to prevent the perpetration of serious violations of human rights and international humanitarian law, including by supporting training and awareness raising for concerned judicial personnel and security forces;
- Support the Malian authorities in their efforts to harmonise Malian law with Mali's international commitments, including the full integration of the provisions of the Rome Statute into the Criminal Code and the Code of Criminal Procedure;
- Expedite the creation of an international commission of inquiry as stipulated in the Agreement for Peace and Reconciliation resulting from the Algiers Process.



First organization for the defense of human rights in Mali, the *Association malienne des droits de l'Homme* (AMDH) was created on 11 November 1988.

It is composed by volunteers and activists from various backgrounds, each of them contributing to the promotion and protection of human rights through his or her own expertise. AMDH members include lawyers, magistrates, other public officers of the judiciary, civil administrators, professors and academics, elementary and secondary school teachers, physicians and health sector employees, sociologists, journalists, accounting experts, playwrights and other actors of the cultural sector, etc.

Member of the FIDH and the UIDH, the AMDH represents a strength of civil society in Mali. Its main office is located in Bamako, but is also represented by local sections in 8 regions of Mali: Kayes, Koulikoro, Sikasso, Segou, Mopti, Timbuktu, Gao and Kidal.

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Informing and reporting - Mobilising public opinion

For FIDH, transforming societies relies on the work of local actors.

The Worldwide movement for human rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

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FIDH is an international
human rights NGO federating
184 organizations
from 112 countries.

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ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 184 member organisations in 112 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

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