

Mali: peace threatened by insecurity, impunity and the fight against terrorism

Position Paper – 19 February 2016

On the occasion of an international mission to Mali in February 2016, FIDH and AMDH hereby publish a position paper in which they express their concerns about the level of violence that persists in the country, eight months after the peace Agreement was signed, as well as about the impact of the fight against terrorism and the ongoing impunity for the perpetrators of the most serious crimes committed since 2012.

Since the beginning of 2015, more than 200 terrorist and criminal attacks have been recorded in the North and Center of Mali killing more than 200 people, most of them civilians. 140 of these attacks were carried out by terrorist armed groups, 42% of which have targeted United Nation forces. In 2015, attacks by armed groups caused around 150 deaths and injured a further 250 people among which 50% were civilians. Attacks targeting MINUSMA alone led to 29 dead and 80 injured, making Mali the most dangerous country for a UN mission.



"Eight months after the conclusion of the Peace Agreement, terrorist armed groups, mafia and others are responsible for about 30 attacks every month, resulting in persistent insecurity and serious human rights violations against the population and international forces. Progress needs to take place in the implementation of the Peace Agreement and in the fight against impunity in order to lower the level of violence and to protect civilians. » declared our organizations.

Our organisations have noted the persistence of human rights violations by terrorist armed groups, government supporters and former rebels, allegedly responsible for a dozen enforced disappearances and execution of people accused of being informants. The Malian security forces are also responsible for violations, including cases of arbitrary arrest, mistreatment and acts of torture in the context of counter-terrorist operations *Séno* and *Jiguiya* launched in late 2015. Approximately 300 persons are believed to be currently in detention in relation to the conflict in the North of the country, and around

55% of them without having been charged.

While judicial proceedings against the former putschist leader of the military junta in power in 2012 have advanced, victims of crimes committed in Northern Mali by rebel armed groups, jihadist and Malian armed forces have not seen any substantial development as far as their cases are concerned. Not only victims are denied their right to truth and justice, Malian authorities are thereby also deprived of an important lever to limit the proliferation of violent actors on the ground. Since 2013, Malian authorities have even released 220 former detainees linked to the conflict in the North, mainly in response to demands from armed groups under the confidence-building measures of the Peace Agreement. According to our organisations, at least 46 among them are allegedly responsible for crimes against humanity, war crimes or other serious human rights violations.

To address these challenges, our organisations call upon Malian authorities to make the fight against impunity a reality, in particular through the following measures: (i) establishing a judicial department specialised in the most serious crimes; (ii) guaranteeing that anyone released is not suspected of serious crimes; and (iii) arresting and prosecuting identified suspects, including those mentioned in this paper.

Likewise, efforts to promote national reconciliation must not be undermined by new appointments within the Truth, Justice and Reconciliation Commission (CVJR) that might threaten the impartiality of its members because of the presence of representatives of armed groups or of alleged perpetrators of crimes. Our organisations believe that the effectiveness of the CVJR's work to promote reconciliation will depend on the quality of its composition as well as its ability to ensure that each victim is offered a safe access to truth, justice and reparations.

I - A peace agreement with delayed impact

The Agreement for peace and reconciliation from the Algiers process finally signed in Bamako on 20 June 2015 under the aegis of the international community provides for confidence-building measures between, on the one hand, armed groups linked to the Malian government grouped together within the Platform, on the other hand, ex-rebel armed groups gathered in the Coordination of Azawad Movements (CMA, *Coordination des mouvements de l'Azawad*), and finally Malian armed and security forces. These past eight months, the three parties have repeatedly been violating dispositions of the Peace Agreement (joint patrols, limitation of action areas, mixed administration, etc.), leading to an alarming level of violence and insecurity.

The Peace Agreement also provides for restriction of movement, identification and disarmament process of the signatory armed groups. This demobilisation, disarmament and reinsertion (DDR) process is supposed to limit the number of armed actors on the ground, to identify and coerce the refractory elements and to facilitate their reintegration either into the Malian army or in civilian activities. Despite efforts to build the first two military camps, the security situation significantly delays the time when the armed groups can no longer move freely, leaving some serious doubts as to their real willingness to comply to whatever restrictions.

In this context, parties to the Agreement should agree on a short-term binding agenda involving appropriate penalties and eventually individual sanctions against those responsible for the groups and parties in case of non-compliance. Such agenda would ensure restriction of movement of armed elements as fast as possible in regions where these armed individuals take advantage of the proliferation of hardly identifiable armed groups to commit numerous abuses.

However, the monitoring mechanisms of the Peace Agreement led to an increasingly satisfactory implementation of humanitarian law upon combatants. Thus, in 2015, regular prisoner exchanges occurred even though some fifteen pro-government fighters would still be in the hands of the armed groups of the CMA.

II – Human rights violations linked to armed groups, terrorism and the fight against terrorism

Terrorist, pro-government and ex-rebel armed groups continue to commit numerous human rights violations which led to at least 210 deaths and 250 wounded in 2015 and in early 2016, the majority of whom were civilians.

These armed groups are allegedly responsible for a dozen enforced disappearances in 2015. In some cases, the responsible armed group was not identified, and are thus believed to be mafia groups.

Most of these armed groups have control over a certain area of action in which they allow perpetration of human rights violations. Such violations are all the more perpetrated when these groups fight among themselves for the control of a city or a territory despite the provisions of the Peace Agreement, which provides for a “freezing” of geographical positions of the signatory armed groups.

Finally, armed groups, whether known as terrorists or not, have been carrying out summary executions of people accused of informing rival groups, government and international forces for months. These executions are sometimes claimed by terrorist armed groups themselves such as Al Qaida in the Islamic Maghreb (Aqmi).

Meanwhile, Malian armed forces and security forces have also committed human rights violations as part of anti-terrorist operations particularly in the wake of the increasing attacks of the movement of the radical preacher Amadou Kouffa, the Liberation Front of Macina, in the centre and east of the country against security and civilian targets. According to national authorities, the Séno operation in the Mopti region launched in late October 2015 and which lasted for three months, and the Jiguiya operation in the Sikasso region which started two weeks later, have enabled them to neutralise several Jihadists and to arrest several others.

Around seventy persons were allegedly arrested as part of the Séno et Jiguiya operations so far, including several persons not linked to armed groups. Among them several were subjected to violence and acts of torture. Most of these arrests were not legally conducted, thereby qualifying as arbitrary.

These human rights violations committed as part of anti-terrorist operations by Malian security forces have the immediate consequence of creating mistrust of civilian population towards them. Cooperation and support of civilian population is however crucial in terms of information and intelligence to fight terrorist groups. Such actions appear contrary to the stated goals of these anti-terrorist operations in particular to “ensure the safety of persons and their property”.

In early 2016, close to 300 persons were detained in relation to the conflict in the northern part of the country, among them 55% would be detained without having been formally charged.

III – Justice and the fight against impunity, a winning strategy

Malian political and judicial authorities, including President Ibrahim Boubacar Keita himself, stated on several occasions their commitment to provide justice to the victims of serious crimes committed since 2012 in Mali and to fight against the impunity of their perpetrators. If judicial proceedings against the former putschist leader of the military junta in power in 2012 have advanced, victims of crimes committed in the north of Mali by rebel armed groups, Jihadist groups and Malian armed forces did not experience any significant developments. This denies victims their right to truth and justice but also Malian authorities of an important lever to limit the proliferation of violent actors on the ground.

- ***The crimes of the former military junta of Amadou Haya Sanogo***

On December 22nd 2015, the Criminal Division of Bamako Court of Appeal ordered the reference before the Assizes Court of Bamako of the former Putschist general, Amadou Haya Sanogo and 17 other military leaders for the execution of 21 soldiers and disappearance of other ‘red berets’ in April 2012 during the attempt to counter the military coup d'état of Amadou Haya Sanogo and CNRDRE. FIDH and AMDH that support and legally represent the families of victims of the executed soldiers [welcomed the decision of the Malian justice and](#) call for the holding of an expeditious, public and fair trial to ensure the

rights of the defence and victims' access to truth, justice and reparation.

- **Crimes committed as part of the conflict in the North**

In addition to the approximate 120 anti-terrorist judicial proceedings which barely led to trials, there are only two judicial cases in Mali for crimes against humanity and serious human rights violations committed in Northern Mali since 2012. These two judicial proceedings, initiated by FIDH and AMDH with five other Malian organisations in favour of 123 victims, stagnate and suspects are free, in front of their victims, due to the lack of will and resources.

On November 12th 2014, our organisations had filed a complaint before national jurisdictions for crimes against humanity and war crimes as legal representatives of 80 women and girls (*parties civiles*). Those victims had been subjected to rape and other sexual violence inflicted by armed groups in Northern Mali in 2012 and 2013. Despite information provided by victims, no investigative action has been taken to date in this case.

On March 6th 2015, following investigations conducted in Timbuktu and its region by FIDH and AMDH, our organisations had filed a new complaint, as legal representatives of 33 victims (*parties civiles*) of international crimes committed during the occupation of Timbuktu and its region by armed groups in 2012 and 2013. This complaint targets 15 perpetrators of crimes against humanity and war crimes.

Several perpetrators targeted by the complaint were freed, are abroad or are not concerned by national authorities. On July 9th and 14th and August 15th 2014 Mohamed Ag known as Mohamed Allah¹, Azbey Ag Baya and Al Fousseyni Ag Houka Houka², all important figures of armed groups and presumed responsible for serious crimes committed during the occupation of Northern Mali by armed groups in 2012 and 2013, were released. Thus, Al Fousseyni Ag Houka Houka, President of the Islamic Court of Timbuktu³ in 2012 and 2013, currently lives in the Timbuktu region after being released upon the request of the armed groups as part of the measures of trust of the peace Agreement. Hamar Moussa, the Islamic Police officer of Timbuktu was present in Bamako for the signing of the Peace Agreement in June 2015, along with Cheik Haoussa, one of the chiefs of Ansar Dine also present in Timbuktu during that period. Finally, Sidi Mohamed Ould Mohamed Ould Bouamama known as Sanda Ould Bouamama, spokesperson for Ançar Dine was released on 3 August 2015 by the Mauritanian authorities. Only Ahmad Al Faqi Al Mahdi known as Abou Tourab, chief of the 'Hesbah' the Brigade of the Islamic Morals Police of Timbuktu, arrested in Niger and transferred on September 26th 2015, is currently being detained by the International Criminal Court (ICC) in The Hague. The confirmation hearing of the charges of war crimes for the destruction of cultural property in Timbuktu held against him took place during the first week of March 2016.

Since 2013, the Malian authorities released 220 persons arrested in relation to the conflict in the North

- 1 Mohamed Ag known as Mohamed Allah was a fighter with Ansar Dine who admitted having fought among the ranks of the Jihadists to impose extremist theses of the armed group and who was injured while fighting the French forces in Operation Serval. Injured, he fled and was treated in Libya before being arrested by the French Forces in Kidal and handed over to the Malian authorities. He was released on July 14th 2014 in exchange for Malian soldiers imprisoned in Kidal, without ever having appeared before an investigating judge.
- 2 Similarly, in August and September 2014, our organisations had opposed the release of Houka Houka, an Islamic judge in Timbuktu. Arrested by the French Forces on January 17th 2014 and handed over to the Malian authorities, he was released on August 15th 2014. Houka Houka is a *cadi* (an Islamic judge) who distinguished himself during the occupation of Timbuktu as an Islamic judge of the armed groups who, in particular, ordered amputations and other serious human rights violations. FIDH and AMDH support fourteen victims of crimes ordered by Houka Houka in Timbuktu who have filed a complain before the investigating judge in charge of the matter, and dozens of other victims, some of whom have been heard by the court as they narrated the facts of which they were victims. On November 12th 2014, six human rights organisations, including FIDH and AMDH, filed a complaint with respect to the sexual crimes committed within the prison walls of its "jurisdiction" on behalf of eighty victims.
- 3 Azbey Ag Baya, a native of Kidal, was the driver of Abdelhamid known as Abou Zeid and Moktar Belmokhtar, two Aqmi leaders. After belonging or working successively for MNLA, Ansar Dine and Aqmi, he was particularly paid by Aqmi to identify Westerners who could be captured as hostages in the Gao region. Arrested and handed over to the service of the judicial investigation brigade on October 31st 2012, he was tried during a session of the Assizes Court in Bamako and acquitted on July 9th 2014 due to the lack of sufficient evidence with respect to his involvement which led to his immediate release. A judge from Niger had, however, requested that he be placed under committal order and be tried in a separate legal proceeding. He is also wanted by Chad and Saudi Arabia.

either upon the request of armed groups as part of the trust measures of the Peace Agreement, or as part of prisoner/hostage exchange, or due to the lack of clear evidence against those arrested during military operations. According to our organizations, at least 46 of those released are alleged perpetrators of crimes against humanity, war crimes or other serious human rights violations.

- ***Strengthened judiciary or a specialized judicial division on serious human rights violations committed in the North***

Our associations, as well as the lawyers who represent victims, are waiting for the Malian authorities to take responsibility and ensure effective justice. This may involve strengthening existing means of investigating judges: opportunity to go to the scene, to join the existing judicial procedures in order to give their full dimension to the crimes, to expand the charges to human rights violations perpetrated, to ensure the safety of judges, and to secure the outcome of the ongoing proceedings. These objectives can also be implemented through the creation of a specialized division on serious human rights violations, especially for the investigation and prosecution of serious crimes committed in northern Mali since 2012. Such an entity would be composed by several investigating judges who would be jointly responsible for examining the judicial proceedings. Only referred of these cases for a limited amount of time, these judges would be able to effectively advance investigations, to hear victims and suspects and would thus be able, within a reasonable time, to refer to an Assize Court authors suspected of serious human rights violations committed in 2012 and 2013. The strengthening of justice for victims of crimes committed in the north, whether by supporting judges already in charge of those cases, or by the creation of a specialized division for serious human rights violations, would be a strong signal that the president's commitment to the fight against impunity is not wishful thinking, and the resolution of crises and rebellions in the north no longer passes through the impunity of armed actors belonging to the rebels or the army. This would be an effective way to create the conditions for non-repetition of crimes in the future.

The creation of a specialized judicial division for most serious crimes with a national jurisdiction is all the more necessary as the security conditions do not allow magistrates in the North of the country to work safely which is a major concern. Thus, on the night of January 25th to 26th, 2016, just two weeks after his moving to Gao, the Prosecutor to the High Court of Gao was the victim of an armed attack at his home, perpetrated by two men, one of them was killed by the guard. In these circumstances, it is difficult to refer highly sensitive cases to magistrates exposed this much. In addition, a specialized judicial division would have an overview of the crimes committed by mobile armed groups. Magistrates in those areas would be able to effectively contribute to investigations and informations feedback.

Ignoring these ground realities, the Supreme Court, considering that the "formerly occupied areas are freed and the sovereign functions of the state can again be accomplished with the gradual return of state employees," took on February 16th, 2015, a decision to give back to northern jurisdictions their jurisdiction. The implementation of this decision would allow for the return of sensitive cases to the investigating judges of Northern jurisdiction.

Given these factors, it is essential to distinguish recovery and effectiveness of justice in the north of the country and sensitive investigations into the most serious crimes committed in these regions. The establishment, even temporarily, of a specialized division for judicial proceedings for international crimes and serious human rights violations would also ensure that these specific crimes will not be referred to the specialized division on anti-terrorism and cross-border crimes. Indeed this division is not qualified to deal with such crimes and would consider these human rights violations, including sexual violence, as crimes related to terrorism.

Recent movements of many judges for legal reasons of proper administration of justice paradoxically have adverse consequences on judicial proceedings for crimes against humanity and war crimes, engaged by our organizations. Especially, the investigating judges previously in charge were familiar with the cases and the victims involved and had gained expertise on complex and high legal technicality issues. This has to be rebuild with new investigative judges. The creation of a specialized division for serious crimes would avoid such pitfalls by capitalizing the achievements and skills of specialized judges, of their staff and of engaged procedures, especially in terms of security of judges, victims and

witnesses. This would allow to improve investigative techniques and international cooperation with similar division in Africa and in the rest of the world. Such specialized judicial division do not constitute disproportionate financial costs in terms of their effectiveness in the fight against impunity for most serious crimes.

The participants at the Seminar on transitional justice and national reconciliation, organized by FIDH and AMDH on November 6th and 7th 2014, have in this respect underlined how the impunity of perpetrators of past crimes had been the breeding ground for the commission of crimes that followed.

IV – What reconciliation?

The Truth, Justice and Reconciliation Commission (TJRC) was created on January 15th 2014. Its president, former Minister Ousmane Oumarou Sidibé was appointed on August 17th 2015. Two months later, on October 14th, 14 other commissioners were appointed by the Council of Ministers including Ms. Nina Walet Ag Intallou, Vice-President of the CVJR and member of the Coordination of Azawad Movements (CMA).

This appointment encouraged other armed groups of the CMA to claim more of their representatives in the CVJR.

In this perspective, a further enlargement to 10 new commissioners was announced by the authorities. Three additional positions should go to representatives of the CMA, other positions could be offered to representatives of the civil society, such as human rights organizations and journalists.

Yet, these new appointments of armed groups representatives is a threat with regard to the possible presence of members of armed groups involved in and potentially responsible for serious human rights violations during the 2012 crisis. Officials of Ansar Dine or individuals close to businessmen with suspicious fortunes would thus potentially join the CVJR, posing the question of the credibility of the CVJR for the victims and the viability of the whole process.

Pending the development of its new composition, which may be fatal, the 15 members have set up five sub-committees and adopted rules of procedure, a strategic plan and documents for the collection of testimony victims. They plan to meet with the victims in the regions before establishing the internal organization of the CVJR to welcome the victims: organization of its regional branches, staff recruitment, organization of data, etc. The question is whether the victims would dare to speak in front of some individuals they may consider as their executioner.

Thus, efforts in favor of a national reconciliation process should not be undermined by new appointments to the Truth, Justice and Reconciliation Commission (TJRC) that would be likely to challenge the impartiality of its members due to the presence of representatives of armed groups or alleged perpetrators of crimes. According to our organizations, the effectiveness of the work of the CVJR for reconciliation passes through the quality of its composition but also by its ability to guarantee all victims access to truth, justice and reparation safely.

Signatories:

- **FIDH**
- **AMDH**

FIDH is an international human rights NGO federating 178 organizations from close to 120 countries. Since 1922, FIDH has been defending all civil, political, economic, social and cultural rights as set out in the Universal Declaration for Human Rights. FIDH's headquarters are in Paris and the organization has offices in Abidjan, Bamako, Brussels, Conakry, Geneva, The Hague, New-York, Pretoria and Tunis.