

STADE DU 28 SEPTEMBRE



fidh



Justice, reconciliation and legislative reform: 3 priorities for the Rule of Law in Guinea

Cover picture: Mamadou Taslima Diallo, photographed at the entrance of the national stadium where he was beaten by police on 28 September 2009 as he attended a peaceful opposition rally, Conakry. © Tommy Trenchard

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INTRODUCTION

On 12 March, Aboubacar Sidiki Diakité, known as “Toumba”, the ex-aide de camp of Moussa Dadis Camara, was transferred to Conakry from Senegal, where he had been arrested on 16 December 2016 after seven years on the run for his involvement in the 28 September 2009 massacre, for which there was an international arrest warrant in his name. This historic transfer in Guinea was made possible by the signing of an extradition order by Senegalese president Macky Sall on 10 February 2017. His presence in the country enabled him to be indicted by the Guinean examining judges on 14 March.

This important step in the legal proceedings against the key figures responsible for these crimes should allow the investigation to be concluded more quickly and the trial to be held as soon as possible, something the national authorities have committed to ensure on several occasions. Following the indictment of Moussa Dadis Camara, the ex-leader of the military junta in power at the time of the massacre, in Ouagadougou on 8 July 2015, this new development is a powerful signal of the fight against impunity in Guinea after six years of judicial inquiry.

Our organisations, alongside the Association of Victims, Parents and Friends of the 28 September massacre (AVIPA), have actively contributed to the investigation into the case of 28 September, providing support for almost 450 victims. The constant discussions between our organisations and the political and legal authorities, especially Justice Minister Cheick Sako, as well as the Office of the Prosecutor of the International Criminal Court, have led to the government’s renewed public commitment to holding a trial not only for this case, but also for the torture perpetrated by the Hamdallaye riot squad in 2010 and the repression in January and February 2007, although investigations into the latter case have not progressed as hoped.

Although these developments must be welcomed, there is a great deal still to do in order to consolidate the Rule of Law in Guinea, where episodes of violence continue to emerge. The demonstrations linked to the teachers’ strike of 20 and 21 February 2017 led to the death of eight people, several of whom were shot. Inquiries are currently under way and due to conclude soon. Until now, none of the investigations carried out in the context of the violence committed during the demonstrations have led to a trial. As local elections continue to be postponed and legislative elections are planned for 2018, the Guinean authorities urgently need to fulfil their commitments to the fight against impunity, at all levels and in all circumstances, and pave the way for national reconciliation by providing genuine guarantees that state-led violence will not be repeated.

Since the human rights situation in the Republic of Guinea was evaluated in January 2015 as part of the Universal Periodic Review (UPR) by the Human Rights Council, the Guinean government, and the Ministry of Justice in particular, have committed to implementing the main recommendations issued.¹ This commitment by the Guinean authorities has enabled important progress to be made, especially in reforming the justice sector and ensuring that Guinean legislation complies with the international conventions to which the state of Guinea is party.

However, the principal objectives set out by the UPR, namely the 28 September trial and the establishment of a Truth, Justice and Reconciliation Commission, have not yet been achieved.

1. For the Universal Periodic Review of the human rights situation in the Republic of Guinea, see: <https://www.upr-info.org/en/review/Guinea>

In terms of justice reform, the National Assembly's adoption of the new Penal Code and new Penal Procedure Code in July 2016 is part of a dynamic of justice sector reform that aims to improve the way the judiciary system works and to ensure that Guinean legislation complies with the international conventions to which the state has subscribed. With the adoption of these texts, major progress has been made in terms of fundamental liberties and respect for human rights, in particular the abolition of the death penalty. However, our organisations feel that the reform has been insufficient given that women's rights are widely neglected in Guinea, and we are extremely concerned about the draft Military Code of Justice that is due to be debated by the National Assembly during the next law-making session, as it contains provisions that could seriously threaten the judicial independence and the rights of victims in accessing the system.

Relating to the implementation of a transitional justice and reconciliation system, the continued discussions and advocacy work carried out by our organisations with public authorities – especially the Prime Minister and the Minister of National Unity and Citizenship – has led to the government's renewed public commitment to establishing a Commission for Reflection on National Reconciliation. The Provisional Commission, which was established in 2011, sent its report and recommendations to the Head of State in 2016, who tasked the Prime Minister with implementing them.

However, besides the public commitment made by authorities, significant challenges still need to be overcome to ensure these commitments are fulfilled. The establishment of a Truth, Justice and Reconciliation Commission, tasked with investigating the grave human rights violations committed since the Guinean declaration of independence in 1958, will need considerable material and human resources to complete its work. Nevertheless, our organisations believe that such a commission is an essential corollary to the 28 September trial to ensure that it assumes the full symbolic meaning attached to it, namely to put a lasting end to political violence and the impunity of leaders and to restore the rights of victims of grave human rights violations.

The Guinean judiciary system also continues to suffer from serious structural weaknesses left over from several decades of poor governance. Jurisdictions are under-staffed, infrastructure is inadequate and there are not enough magistrates and clerks. In this context, holding the 28 September trial is a considerable challenge for Guinea, and it will require significant material and financial support from the international community. Furthermore, the dilapidated infrastructure and lack of staff are the source of numerous and grave human rights violations. Hundreds of people in custody have spent years waiting to be sentenced, and victims' access to justice – especially outside major cities – is far from effective.

With the 2015 presidential election, Guinea entered a consolidation phase of its democratic transition, along with a marked return to the continental stage. The most recent examples of this are the Guinean president's election to the revolving presidency of the African Union and his role in mediation in the Gambia following the results of Yahya Jammeh's presidential election. With progress being made in the Rule of Law and in accordance with their repeated commitments, the national authorities must now ensure that the trials of those behind the most serious crimes committed in Guinea in recent years are held as quickly as possible, as well as duly implementing the long-awaited national reconciliation process and pursuing the promised legislative reform.

PART I. FIGHTING IMPUNITY: TOWARDS THE FULFILMENT OF COMMITMENTS IN 2017?

I. Case of 28 September 2009: a long-awaited trial

Over seven years after it occurred, the Guinean justice system is still investigating the massacre perpetrated at the stadium on 28 September 2009 and the related crimes committed during the following weeks. On 28 September 2009, at least 157 people were killed at the Conakry stadium and over 100 women were raped by the security forces of the military junta that had taken power eight months before. Dozens of people are still reported missing. The victims were civilians and members of political parties of all leanings, who assembled in their thousands to contest the junta leader Moussa Dadis Camara's decision to run in the planned presidential elections several months later.

The 28 September massacre caused a major backlash within the international community which, under pressure from Guinean and international NGOs, tasked an Independent Commission of Inquiry with shedding light on the massacre and the identities of those responsible. At the Commission of Inquiry, Moussa Dadis Camara accused his aide-de-camp, Aboubacar Sidiki Diakité, known as "Toumba", of initiating the repression. On 3 December 2009, "Toumba" shot Moussa Dadis Camara and fled, remaining on the run for seven years.

On 14 October 2009, in light of Guinea's accession to the Rome Statute since 14 July 2003 and the numerous communications received in relation to article 15 of the treaty, the Office of the Prosecutor of the ICC announced the start of a preliminary inquiry into the situation in Guinea. On 17 December 2009, the International Commission of Inquiry published its report, which concluded that there was a possibility that several high-ranking military personnel could individually be held criminally responsible, including the junta leader Moussa Dadis Camara and his aide-de-camp Aboubacar Sidiki Diakité, known as "Toumba". The commission recommended that national criminal proceedings be implemented as soon as possible and, secondarily, that the International Criminal Court assume jurisdiction.²

In February 2010, legal proceedings were opened in Guinea into the massacre of 28 September 2009. FIDH, OGDH and AVIPA brought civil action and, along with their lawyers from the Judicial Action Group (JAG), supported almost 450 victims in legal proceedings.

1. An end to the investigation announced in the coming months

Due to the inquiries carried out and testimony provided by the human rights organisations, the Guinean justice system was able to indict several perpetrators from the military junta in power in 2009, including junta leader Moussa Dadis Camara, the ex-State Minister in charge of the war on drugs and organised crime, Moussa Thiegboro Camara, the ex-Minister of Presidential Security, Claude Pivi, and the ex-Minister of Health, Abdoulaye Chérif Diaby.

2. See the report of the United Nations International Commission of Inquiry, 17 December 2009, p. 55.



Habibatou Camara photographed with the sign that she brought to the stadium on 28 September 2009, where she was raped, Conakry.
© Tommy Trenchard

Thanks to the active participation of the victims and the lawyers of the JAG, an important step was taken in April 2013 with the indictment and remanding in custody of a policeman who, on 28 September along with two other members of the police forces, is alleged to have raped a woman represented by our organisations inside the stadium.³

In June 2015, an ex-soldier allegedly responsible for acts of torture on the protesters detained arbitrarily at the Koundara camp in the weeks that followed the stadium massacre on 28 September was arrested, charged and remanded in custody after being identified by the victims represented by the JAG's lawyers.⁴ Thanks to the active participation of the victims in these proceedings, for the first time in this case members of the armed forces were implicated as the direct perpetrators of sexual violence and acts of torture.

The indictment of Moussa Dadis Camara on 8 July 2015 was a powerful signal of the fight against impunity in Guinea. This indictment followed a writ petition from the lawyers of the Judicial Action Group (JAG) and the FIDH issued on 30 June 2015 to the examining judges in charge of the case. This petition was accompanied by numerous elements of incriminating evidence that were added to the file and used by the examining judges during questioning of the ex-junta leader in Ouagadougou.

3. See "28 September 2009 massacre: A gendarme arrested and charged with rape, a first time in Guinea", 7 May 2013, available at <https://www.fidh.org/en/region/Africa/guinea-conakry/guinea-28-september-2009-massacre-a-gendarme-arrested-and-charged-with-13392>

4. See "The 28 September 2009 Case: Indictment of a Former Member of the Military for Crimes Committed at the Camp of the Presidential Security Battalion", 10 June 2015, available at <https://www.fidh.org/en/region/Africa/guinea-conakry/guinea-the-28-september-2009-case-indictment-of-a-former-member-of>

On 16 December 2016, Aboubacar Sidiki Diakité was arrested in the district of Ouakam, close to the centre of Dakar, and questioned by the Senegalese police. Although “Toumba” announced his opposition to his extradition to Guinea, the judges at the Criminal Chamber of the Court of Appeal in Dakar approved the extradition request filed by the state of Guinea. On 10 February, president Macky Sall signed the extradition order for Aboubacar Sidiki Diakité who, on 12 March, was transferred and incarcerated at Conakry prison facility. Efforts were made to ensure that he had a clean and secure individual cell that complied with international detention standards. He was then indicted on 14 March by the examining judges in charge of the case.

During 2016, following the writ petitions issued by the JAG’s lawyers to the examining judges, new key witnesses were heard, most of them ex-high ranking junta soldiers. Some of these testimonies brought new elements to the case and reinforced several strategies of inquiry. With the completion of the extradition proceedings and indictment of Aboubacar Sidiki Diakité or “Toumba”, the judicial investigation is now being closed.

It is now urgent that the Guinean government turns its attention to organising the upcoming trial which, due to the roles held by the accused, the number of victims and the expected level of media coverage, will be complex, long and sensitive. Considerable logistical organisation will need to be planned for in advance to ensure the safety of all participants and that the victims bringing civil action have a central role in the trial.

Thierno Ousmane Diallo photographed at his home, where he continues to have intensive daily treatment following the serious injuries inflicted upon him on 28 September 2009, Conakry. © Tommy Trenchard



2. The challenges of organising the trial

- **Logistical organisation**

The 28 September trial will require the presence of many different figures, including the 14 accused – who include an ex-head of state and several ministers, some of whom still hold government posts – and nearly 450 victims. The nature of the crimes committed, especially given the circumstances surrounding them and the national and international media backlash they sparked, will guarantee a high level of local, regional and international media attention on the trial.

However, the premises of the Dixinn court of first instance in Conakry, though procedurally appropriate, are unable to host a trial of this nature. It is therefore necessary to set up a Criminal Chamber in a new location that is part of the Dixinn court but able to host all the participants in the trial and ensure their safety, in terms of its capacity, structure and environment.

To ensure the smooth running of hearings on a daily basis, our organisations believe that the trial should be held in Conakry in order to guarantee the accessibility of the courtroom for the victims and stakeholders involved, most of whom are based in Conakry. In Mali, the relocation of the trial of captain Haya Sanogo⁵ and 17 co-accused to Sikasso, 400 km from Bamako, posed major logistical and financial challenges in guaranteeing transport, accommodation and the presence of all parties.

Individual security measures for witnesses, victims, the accused, sitting judges, prosecutors, clerks and lawyers must be taken. The implementation of all these organisational and coordination measures requires the establishment of a steering committee and topic-based working groups, particularly for issues of security, logistics and communication. This system should be implemented as soon as possible in order to tackle all the preparations for the trial.

To do this, all stakeholders involved should convene on a regular or occasional basis, including financial backers, technical partners, legal representatives of the victims and victim support groups. It would also appear essential to designate a coordinator, whose role would be to ensure that preparations have been made and to bring together all stakeholders who may be able to participate effectively in these preparations.

Moreover, given the considerable time that some elements of trial preparation may take, it is essential to draw up a provisional implementation schedule and ensure it is kept to.

- **Giving victims a central role**

The 28 September trial will be an unprecedented event in Guinea's judicial history, as hundreds of people – victims of the most serious crimes – have now filed civil action. As such, they should be able to exercise all the rights afforded to them as parties to the trial.

A certain number of them, who are both victims and witnesses, must be heard. A corollary to the effective participation of the victims is the need for significant protection. Their right to be protected against possible reprisals is absolutely fundamental. This means that victims who show themselves by coming to speak at the trial must have full access to protective measures, such as closed hearings for sensitive testimonies.

5. See "The trial of Amadou Haya Sanogo opens in Mali: a crucial step forward in the fight against impunity", 28 November 2016, available at <https://www.fidh.org/en/region/Africa/mali/the-trial-of-amadou-haya-sanogo-opens-in-mali-a-crucial-step-forward>

In addition, given the very high number of rapes and other sexual violence committed at the stadium on 28 September and in the weeks that followed, the extreme vulnerability of some victims must also be taken into account by the relocated Criminal Chamber of the Dixinn court. Appearing in court is always difficult, particularly for victims of sexual abuse. The Chamber must therefore ensure that cross-examination, especially by defence lawyers, avoids all attempts at intimidation.

- **Financing measures of judicial reparation**

After hearing the different parties to the trial, the Criminal Chamber will also have to be able to evaluate the damages suffered by the victims. Based on requests as part of the civil action, individual and collective reparation measures that are relevant and appropriate to the gravity of the damages suffered, should be ordered at the end of the trial.

To make this possible, prior consideration should be given to overcoming the potential insolvency of those responsible and planning for public funds to help fund the reparation measures. A similar mechanism to the Rome Statute, which provides for a special victims' fund, should be set up in the Guinean context for the victims of 28 September.

There should therefore be some collective consideration of this issue with all relevant stakeholders, including victim groups in the first instance, as well as the Guinean political authorities, United Nations representatives in Guinea and all the financial backers involved in the fight against impunity. This will allow for decisions to be made on the form that these reparations could take – in any case, they must comply with the relevant basic principles and international directives⁶ – and for consideration of the best way to ensure that all victims of the events can receive them in order to help them confront their difficulties, whether material or psychological.

- **Pre-trial detentions to be resolved**

FIDH and OGDH have already denounced – in 2012⁷ and again in 2015⁸ – the abusive nature of the pre-trial detention of some accused, even if this is to ensure that they appear in court. The Guinean Penal Procedure Code limits the duration of pre-trial detention to 12-24 months, but this timeframe is widely exceeded for most accused individuals remanded in custody.

Our organisations stress that the efforts made by Guinea to nationally implement the provisions of the international conventions to which it is party cannot excuse any grave violation of the fundamental rights of alleged perpetrators. As the right not to be detained arbitrarily is an intangible principal of the national, regional and international human rights instruments to which the state of Guinea is party, it is important to place the accused under legal supervision as soon as possible.

6. See in particular "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

7. See the FIDH and OGDH position note, "The fight against impunity in Guinea: progress observed, actions awaited", September 2012, available at <https://www.fidh.org/IMG/pdf/rapguinee596ang.pdf>

8. See the FIDH and OGDH report, *Le temps de la justice*, May 2015, available at https://www.fidh.org/IMG/pdf/guinee_rapport_le_temps_de_la_justice.pdf (no English version)



Anonymous, photographed at the national stadium for the first time since she was arrested and detained by security forces on 28 September 2009 as she attended a peaceful opposition gathering, Conakry. © Tommy Trenchard

Interview with Asmaou Diallo (president of the Association of victims, parents and friends of the 28 September massacre – AVIPA)

Question: Why does the 28 September trial have symbolic value for Guinea?

Answer: This trial will have symbolic and even historic value, because until now, no high-ranking member of government or the army who has committed human rights violations has ever been tried. We are therefore dual victims: victims of the violence we have suffered and victims of the absence of the justice owed to us. Today, the legal proceedings relating to 28 September 2009 are about to culminate in a trial, a very important step for which we have fought very hard.

Q. In what way will holding the trial in Guinea mark a turning point in the history of Guinean justice?

A. Since 2010, along with our partners from Guinean civil society and FIDH, we have taken a gamble on the national justice system in view of the Guinean authorities' commitment to try those responsible for the Conakry stadium massacre. Seeing the perpetrators of these crimes tried in Conakry, rather than before the International Criminal Court in The Hague, will have a very significant impact in the fight against impunity and the establishment of a genuine Rule of Law in Guinea. This will allow the victims to participate a great deal in the trial, as well as enabling all of Guinean society to follow it closely. The fact that those who were still untouchable a few years ago will be appearing before their own national court will send a very strong message to all those considering acts of violence.

Q. What are you expecting from the international community and international partners?

A. The international community has played a major role throughout this process. After the judicial inquiry was opened in Guinea in 2010, FIDH and OGDH brought civil action and, with the support of the European Union, formed a collective of Guinean and international lawyers in order to help the nearly 450 victims through the proceedings.

The Office of the Prosecutor of the ICC has been highly active throughout the preliminary inquiry and its regular trips to Conakry. But after all the crimes committed in Guinea over the past sixty years, we feel that it is first and foremost up to the Guinean justice system to try those responsible, and it is on this condition that impunity can finally be ended. At a time when some states are accusing the ICC of only prosecuting African criminals, and as president Alpha Condé becomes head of the revolving presidency of the African Union this year, the Guinean justice system has a historic opportunity to show that an African national justice system can hold a fair trial, in line with international standards, of those responsible for crimes of such gravity.

Today, with the approaching trial and a possible national reconciliation process, the international community should therefore continue to provide its financial and technical support to the Guinean government so that it can honour its commitments.

II. Fighting torture: current legal proceedings must come to fruition

1. The case of torture committed by the Hamdallaye riot squad (2010)

Opened on 18 May 2012 after a complaint was filed by FIDH and OGDH alongside 16 victims, the judicial investigation into the acts of torture committed on 23 October 2010 by the Hamdallaye riot squad was settled and the proceedings transferred to the prosecutor's office on 26 June 2014 before being referred to the Indictments Chambers of the Conakry Court of Appeals.

In January 2010, people supported by our organisations were arrested, arbitrarily detained and tortured by the Hamdallaye second riot squad. All these people accused several high-ranking politicians and military personnel in office at the time of the event. These were the ex-Governor of Conakry, Sékou Resco Camara, the ex-Chief of Staff of the transitional regime, Nouhou Thiam, and Commander Aboubacar Sidiki Camara, known as "De Gaulle", the ex-Head of Presidential Security, who has since died.

According to the corroborating testimonies of the victims, while "De Gaulle" himself made arrests and took the plaintiffs to the squad headquarters of the mobile gendarmerie, Nouhou Thiam and Sékou Resco Camara, who were at the scene, took part in acts of torture overseen by "De Gaulle" and instructed that they should continue.

A hearing before the Criminal Chamber was held on 17 February 2016, with lawyers from the FIDH Judicial Action Group present, during which the president of the Chamber ordered an additional investigation, requesting a hearing for the commander of the Hamdallaye riot squad at the time of the event. The president of the Chamber then appointed one of his advisors to oversee this additional investigation, as prescribed by the Penal Procedure Code. In April 2016, this advisor summoned the individual in question and the hearing took place.



Amadou Diouldé Barry (right) and Thierno Mamadou Baldé (left), photographed at the place they were arrested and then tortured by the Béréts Rouges soldiers on 23 October 2010, for supposedly having taken part in violence during the 2010 presidential election, Conakry. © Tommy Trenchard

Almost three years after the judicial investigation was concluded, the case had reached a stage whereby it could be sent before a trial court. However, the cancellation of trial hearings, Criminal Chamber reform and the transfer of criminal jurisdiction to the courts of first instance (CFI) have so far stopped the trial from taking place.

As penal procedure reform is now fully complete and operational, the Criminal Chamber of the court of first instance in Dixinn will have jurisdiction to hear this case. Nevertheless, the spatial constraints of the venue and the blocking of current proceedings within this jurisdiction have led us to fear that there may be additional delays unless measures are taken to improve the working conditions of judges and equip the court with a second courtroom.

As a result, an advocacy campaign was launched to alert the relevant authorities and financial backers involved in justice reform to the need to implement adequate infrastructure in order to ensure that this penal procedure reform is fully effective by reinforcing different jurisdictions.

2. The lawsuits filed against 12 agents of the Brigade Anti-Criminalité (2016)

Despite efforts, the use of torture remains widespread in Guinea. On 19 May 2016, FIDH, OGDH and MDT member organisations filed an official complaint and brought civil action alongside a young man



Mamadou Bilal Guissé photographed at the place he was arrested by the guards of president Sekouba Konaté and then tortured at the Hamdallaye gendarmerie on 23 October 2010, Conakry. © Tommy Trenchard

who had been a victim of torture by agents of the Brigade Anti-Criminalité (BAC).⁹

On 4 March 2016, Mr. S was arbitrarily arrested by agents of the mixed unit of the Brigades Anti-Criminalité 4 and 8 of the national police force. He was then tortured and arbitrarily detained at the headquarters of Brigade Anti-Criminalité 8, before being transferred to Conakry prison facility three days later, where he is still being held without charge. A video showing the atrocity of the acts he was subjected to was made public in April 2016 and broadcast on social media. This violence appears to have been committed along with at least 11 other agents, who are also the subject of the complaint.

After the violence suffered by Mr. S was revealed, the majority of the BAC agents mentioned in the complaint were suspended from their roles but were still not turned over to the justice system and appear to no longer be in Conakry.

On 30 January 2017, a captain from the Conakry Brigade Anti-Criminalité who was mentioned in the complaint was summoned by the examining judge in charge of the case, charged and remanded in custody.¹⁰ This arrest represents a first victory in this case and shows that the fight against impunity is progressing in Guinea. That said, it is important that the other agents involved are quickly located and brought to justice. To put a lasting end to the practice of torture in Guinea, these events should be fully

9. See "L'OGDH et MDT portent plainte contre 12 membres des forces de sécurité pour arrestation arbitraire, séquestration et torture" (no English version), 19 May 2016, available at <https://www.fidh.org/fr/regions/afrique/guinee-conakry/l-ogdh-et-mdt-portent-plainte-contre-12-membres-des-forces-de>

10. See "Un capitaine de la brigade anti-criminalité inculpé pour faits de torture" (no English version), 7 February 2017, available at <https://www.fidh.org/fr/regions/afrique/guinee-conakry/un-capitaine-de-la-brigade-anti-criminalite-inculpe-pour-faits-de>

brought to light and all those responsible must answer for their actions.

The judges in charge of this case should be able to continue and speed up their inquiries to ensure a trial is held as soon as possible. To do this, the military authorities need to cooperate with the justice system and refuse to tolerate any impunity in this case, or for anyone involved in acts of this nature.

III. Repression in January and February 2007: an overlooked case

Ten years ago, on 10 January 2007, with president Lansana Conté in power since 1984, a general strike was called by the country's main unions. The call was widely followed and the demonstrations held throughout the country were brutally repressed by security forces. As a result, hundreds died, were wounded, raped and had their homes and businesses looted.

FIDH and OGDH collected over 1,400 statements from victims of abuse, violence and looting through inquiries conducted by the OGDH teams at their regional offices in 2007.

For over five years, these grave human rights violations were subject to no inquiry or legal proceedings, both of which would have shed light on one of the most violent episodes of political repression that Guinea has witnessed. Even if a national Commission of Inquiry had been tasked with investigating the crimes committed during this wave of repression, it would never have been able to finish and submit its report and those responsible for the crimes would have had nothing to fear.

Amara Touré photographed near his old house, where he was shot by a stray bullet on 22 January 2007 during the violent repression by the security forces of the demonstrations organised by the country's main syndicates, Conakry. © Tommy Trenchard



On 19 May 2012, FIDH and OGDH filed a complaint with civil action against anyone who, between January and February 2007, committed the crimes of *"intentional homicide, attempted homicide, assault and battery, intentional violence leading to death without the intention of causing death and arbitrary acts endangering individual liberty or fundamental law, and any other violation that the investigation may uncover"* against the victims.

A judicial investigation is currently under way. Given the extent and seriousness of the crimes committed, properly concluding these proceedings represents a significant challenge and high stakes for the Guinean justice system. However, the investigation has not yet developed as hoped. As the victims of the repression in January and February 2007 are located throughout the country, the examining judges will have to be able to conduct inquiries and hear the civil parties in all the different regions of Guinea, but given the lack of material and financial assistance for judges' travel allocated by the Ministry of Justice, these have not been able to take place.

Nevertheless, on 30 September 2015, the examining judges in charge of the case sent the Dixinn court a list of several ex-high ranking figures – which incidentally included some of those accused in the 28 September case – who may have been party to the crimes committed by the security forces during the wave of repression and in particular the violence committed in Conakry on 22 January 2007. That day, near the 8 November bridge, the Guinean army opened fire on unarmed protesters, killing and wounding several dozen. Despite this, nobody was questioned and inquiries stalled.

Beyond the current proceedings, the particularly widespread nature of this wave of political oppression, which echoed all the others that Guineans have seen since the country's independence, should

Oumar Sow photographed at the taxi rank in Madina, where his brother was shot dead by the security forces in 2007 during the violent repression of the general strike action organised by the country's main syndicates, Conakry. © Tommy Trenchard



be included in the process of national reconciliation. As FIDH and OGDH commemorated the tenth anniversary of these events on 22 January, our organisations stressed that although efforts have been made by the authorities in the fight against impunity and judiciary institutions have been strengthened, the country must also meet the need for justice expressed by the thousands of victims of political violence committed throughout Guinea's fifty years of authoritarian regimes.¹¹

11. See "10 ans après, les victimes des répressions de janvier et février 2007 demandent justice" (no English version), 24 January 2017, available at <https://www.fidh.org/fr/regions/afrique/guinee-conakry/10-ans-apres-les-victimes-des-repressions-de-janvier-et-fevrier-2007>

PART II. NATIONAL RECONCILIATION: RECOGNISING PAST CRIMES THROUGH A PROCESS IN LINE WITH THE NEEDS OF CIVIL SOCIETY

By creating the Provisional Commission for Reflection on National Reconciliation (CPRN) on 15 August 2011, president Alpha Condé set Guinea on course for a process that should culminate in the establishment of a system for reconciliation. This decision followed a commitment made during the presidential elections in 2010 and was particularly anticipated, after fifty years of authoritarian regimes marked by numerous human rights violations and impunity rendered systematic by those who enacted it.

Due to its initially very limited means – the CPRN was only allocated headquarters in 2012, over two years after it was formed – and a tense political context due in particular to the legislative elections being held, the Provisional Commission took time to become established. In addition, its mandate was not clearly defined by the 2011 order, and the appointment of two religious leaders as its chairmen

Mohammed Lamine Sow photographed outside the post office where he was parked during the night of the attempted coup d'état of 1985. Despite this, Lamine was accused of conspiracy during the coup d'état, tortured and imprisoned by the government of Lansana Conté until the amnesty of 31 December 1987, Conakry. © Tommy Trenchard



– the imam of the Conakry grand mosque and the archbishop of Guinea, both of whom were highly overstretched in carrying out these duties – did not contribute much to making the Commission quickly operational.

It was not until 2016 that the CPRN, backed by the United Nations High Commissioner for Human Rights (OHCHR), was able to engage in national consultations which, having been postponed several times, were finally held from 7-11 April around the country. As with their counterparts established in Togo and Burundi, their aim was to allow the Guinean population to talk about which mechanisms of the transitional justice system should be implemented with a view to national reconciliation. Since 2011, our organisations had called for such a process to take place, as the only way of legitimising the future commission – through broad public participation – in terms of its mandate and its means.

These consultations helped identify the principal actions that needed to be taken. It was determined that the needs expressed as a priority by the Guineans questions related to the right to historic truth and the right to justice, along with a reparations strategy, in particular through the state's official recognition of the crimes perpetrated under the different regimes in power in Guinea since 1958.

Institutional reform was another major expectation of those who spoke as part of these consultations. This concerns the judiciary system first and foremost, as well as public administration and the defence and security forces. These three sovereign areas are inextricably linked in their relationship with the Rule of Law, and their full and proper functioning is the best guarantee that the state will respect the fundamental rights of Guinean citizens.

Our organisations welcome the efforts of the CPRN and the consultative approach adopted, which has meant that over 9,000 people have been consulted. These consultations helped put an end to the Provisional Commission, and the final report sent to the head of state on 29 June 29 should trigger a new phase in this process, with the establishment of a new commission.

On 2 October 2016 – Independence Day – the Guinean president spoke about the issue of reconciliation: “our national community must achieve closure on all the painful periods of our shared past, which has often been marked by political violence [...]. I would like to encourage the Prime Minister to adopt the work of the Commission for National Reconciliation and prepare a realistic schedule for implementing its recommendations along with our different partners.”¹²

Since then, although the CPRN continues to do some work to raise awareness on the report's recommendations, no political strategy or decision has been announced and our organisations are concerned about the apparent lack of political conviction on this issue. On 15 November 2010, during his first public declaration after winning the presidential election, Alpha Condé declared that he would be “the president of national reconciliation.”¹³ Nearly seven years later, this commitment must materialise in order to meet the needs of victims of grave human rights violations. This is now an urgent matter to which the national authorities must respond as quickly as possible, given the favourability of the political and electoral agenda in particular. If, as recommended by the national consultation report, the commission is to last for 24 months, its work will have to begin in 2017 to ensure that the process is concluded before the next presidential election.

12. See <http://www.cprn-guinee.org/actualite-cprn/rapport-cprn-pr-alpha-conde-demande-au-pm-de-sappropriation-des-recommandations-des-co-presidents/>

13. <http://www.jeuneafrique.com/183709/politique/alpha-cond-remporte-l-election-pr-sidentielle-avec-52-52-des-voix/> (no English version)

Interview with Ibrahima Dioumessi (president of the Association of Victims of Repression – AVR)

Question: Along with AVIPA and the Association of the Victims of Camp Boiro, you formed a platform for victims' associations. Why bring together victims of such different events?

Answer: Because the events are really not that different! Of course, the story of the victims of Camp Boiro between 1960 and 1984 is not the same as that of the victims of the 1985 repression or the stadium massacre of 28 September 2009, but what all the grave human rights violations committed in Guinea since its independence have in common is the use of state violence against its citizens. The victims that we represent through our associations share the fact that they are victims of arbitrary and senseless violence.

Q. Does that mean that, for you, it is less about reconciling the citizens with themselves and more about reconciling them with the State?

A. Exactly! I would add that the tendency to view reconciliation in Guinea as a process to reconcile the different ethnic communities with one another can be dangerous in several aspects. First, this approach involves assigning an ethnic or political label to victims of the human rights violations of various events. This idea contributes to a divisive strategy as well as being historically false; at the Conakry stadium on 28 September 2009, the soldiers made no ethnic distinctions when firing on the crowd. Similarly, the fact that Sékou Touré is Malinké did not stop him from choosing to lash out at the Malinké traders in Kankan, rather than anyone else. What's more, this approach helps dilute responsibility for different crimes on the pretext that all Guineans, through their presumed political or community belonging, have at some point been victims and then persecutors in turn, or persecutors and then victims. This view of the situation positions justice and truth as a secondary issue, in favour of a collective and rather vague responsibility that does not stand up to historical analysis and the principle of individual responsibility that is fundamental to criminal law.

Our organisations, who work closely with the different Guinean victims' associations, believe that such a commission should follow the principal recommendations of the national consultations, in particular:

Mandate:

Our organisations believe that the temporary mandate should cover all of Guinea's contemporary history since the first republic. The commission will need to investigate the grave human rights violations committed during this period, especially the major episodes of repression, without exception.

Composition:

The now numerous experiences of reconciliation held around the world have demonstrated that the success of a commission was largely due to its composition and the quality of its members. We therefore support the idea – one that arose from the national consultations – of a limited commission made up of five to nine members. These members should have recognised authority in the different fields of expertise required for the commission to function (history, investigation, medicine, sociology, etc.). We also feel that this new step in the reconciliation process needs to be led by people who have not yet participated in the process, in order to preserve the necessary independence of the future commission, as it is essential that it is well-perceived by the population and has a new dynamic.

Appointment system:

As suggested in the national consultation report, the commissioners will need to intervene at the end of a consultative process that includes the various civil parties, in order to guarantee the credibility of the members of the commission and avoid any perception of bias that could impact negatively on the fairness of the work.

Function:

The future commission will need to be able to receive individual victim cases, investigate the facts and hear the most symbolic ones publicly. As we have mentioned, it will have to take a judicial approach as well as setting out recommendations for individual and collective reparations and institutional reforms to guarantee that past crimes are not repeated.

Judicial attributes:

The national consultations have demonstrated both the Guinean people's hunger for justice and their distrust of the judicial system. To respond to these paradoxical factors, the future commission will need to include a judicial or quasi-judicial dimension:

- the ability to send cases before the justice system when the nature of the crimes, the availability of the presumed perpetrators and the needs of victims command it;

Ahmadou Toukara photographed in the house where his father, a minister at the time, was arrested and executed in 1971 by the regime of Sekou Touré following the attempted coup d'État led by Portuguese troops in 1970, Conakry. © Tommy Trenchard



- the ability to announce the alleged responsibility of the perpetrators of grave human rights violations when the justice system no longer has jurisdiction, in the event of the death of the perpetrators or those responsible.

Our organisations insist upon the inalienable right of victims to take legal action, and the line that any amnesty measures would represent.

Reparations:

Beyond financial reparations, the commission will need to consider moral and symbolic ones. Examples of what this process should enable include building a memorial to the memory of the victims, facilitating victims' access to healthcare, exhuming the bodies of those executed by past regimes and providing decent graves so that families can begin to rebuild their lives.

Guarantees of non-recurrence:

To stop political violence from recurring, the commission will have to guarantee:

- an effective fight against impunity, through the necessary trials of recent crimes, in particular the massacre of 28 September 2009 or the 2007 repression. As impunity was the reason that past crimes recurred, putting an end to it is an essential condition of a successful process.
- institutional reform, especially in the justice sector and the security services, which must enable effective, consensus-based state reform in order to create safeguards and guarantees that the state will no longer be privatised for personal gain and the justice system will no longer be made an instrument for political advancement. It is such dysfunction that has enabled all abuses and the most serious human rights violations in Guinea to occur. Counter-measures and safeguards will need to be established in order to stop such crimes from recurring.

Interview with Sidiki Keita (president of the Association of Victims of Camp Boiro – AVCB)

Question: What are you expecting from a Truth, Justice and Reconciliation Commission in Guinea?

Answer: The search for truth and the establishment of a historic account should be the first objectives of the Guinean reconciliation process. The formation of a group of historians and sociologists tasked with investigating, cross-checking, summarising and situating these accounts within history, using archives and testimonies from those working in past regimes, will restore meaning to our history and that of the country. Creating this account will enable those who have not yet been heard to express themselves, as one day they and their stories will no longer be here. Without such a commission, the history of Guinea – all of our history – that risks being lost and forgotten forever.

Q. What reparations and guarantees could the State provide?

A. Recommendations will need to be made, including once institutional reform is complete, with a view to ensuring that human rights violations cannot recur, and ultimately supporting the national reparation process. To enable real reconciliation, two conditions often need to be aligned. The first consists of making reparations, on behalf



Ousmane Baldé (left) and his sister Mitenen Baldé (right) photographed at the place where their grandfather was hanged by the regime of Sekou Touré in 1971, Conakry. © Tommy Trenchard

of the State, for the damages suffered through past crimes. The second is being able to transform the structure and function of the state in order to persuade citizens and individuals that these grave human rights violations are very much in the past and that the new state guarantees them the "non-recurrence of human rights violations": a constitutional, administrative, legislative etc. way of saying "never again."

Moreover, can you believe that in Guinea there is not a single monument or commemorative plaque for the crimes committed since 1958? When the 8 November bridge was destroyed in Conakry in 2013, which is where members of the administration were hanged on 25 January 1971, it was only right that the victims of Camp Boiro were able to organise a ceremony and keep a few stones from this structure that was so emblematic of the crimes Sékou Touré's regime. It is essential that the Truth, Justice and Reconciliation Commission can make the country's past and its history visible once again, and in the Guinean public space, so that the younger generations can have some ownership of it to make sure that it really is "never again."

PART III. MODERNISING THE JUSTICE SECTOR: REFORMS MUST PROMOTE RESPECT FOR HUMAN RIGHTS

Although there is still a long way to go before the Guinean justice system can fully meet the needs of the Guinean people and the international standards for quality justice, our organisations do note that, driven by the Minister of Justice Cheick Sako, significant provisions towards cleaning up judicial power, greater respect for human rights and improved function of the justice system have been adopted.

As such, the Superior Council of Judges that was established by the organic law of 23 December 1991 was finally formed in 2015, almost twenty-five years later. As part of the efforts made to ensure the independence of judges, measures have been taken to reassert the value of their status and their allowances and to ensure their mobility within jurisdictions. A great deal of training has been delivered and the competition for accessing the job of clerk will supply jurisdictions with additional personnel.

More specifically, the adoption of the New Penal Code and New Penal Procedure Code by the National Assembly in July 2016 also represented significant progress.¹⁴ In particular, our organisations welcome the implementation of international conventions, especially the Rome Statute establishing the International Criminal Court and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Crimes against humanity, genocide, persecution and torture now feature in the Guinean Penal Code, in which the prescribed penalty for the most serious crimes is life in prison. Eschewing the death penalty, this provision enshrines the abolition of capital punishment in the footsteps of numerous progressive African states, thereby allowing Guinea to join the growing number of abolitionist African countries.

The New Penal Procedure Code allows the law passed in June 2015 on judiciary reorganisation to become operational. Most notably, circuit courts, which were summoned for temporary sessions and very rarely functional, have been abolished in favour of permanent criminal divisions within courts of first instance. This reform is important and beneficial, as it has resulted in the introduction of a dual degree of jurisdiction in criminal matters, thus making penal procedure compliant with international guidelines. In addition, due to the permanence of the criminal divisions, it should help the judicial process run more smoothly and ultimately limit cases of pre-trial detentions that exceed the current standards for maximum legal periods.

However, although our organisations approve of and support the abolition of the circuit courts, they feel that the courts of first instance, particularly those in Conakry and Kindia, are not currently able to deal with the influx of cases that they will have to manage due to their new criminal jurisdiction, due to a lack of infrastructure, equipment and human resources. That said, bottlenecks within jurisdictions are the source of grave human rights violations, and the hundreds of people detained without charge and beyond the legal timeframes represent the largest proportion of the prison population, which far exceeds the capacities of prison establishments.

14. See "Justice militaire, droits des femmes, encadrement des manifestations : les acquis de la réforme menacés - Note de position adressée aux membres du gouvernement et aux députés de l'Assemblée nationale" (in French), 13 April 2016, available at <https://www.google.com/search?q=ustice+militaire%2C+droits+des+femmes%2C+encadrement+des+manifestations%2%A0%3A+les+acquis+de+la+r%C3%A9forme+menac%C3%A9s&ie=utf-8&oe=utf-8&client=firefox-b-ab>

Furthermore, in terms of core law and the distribution of jurisdictions, our organisations have already alerted the government and deputies of the National Assembly to certain provisions of the draft Military Justice Code that will be submitted to the deputies' vote during the next law-making session.¹⁵ The exceptional breadth of these jurisdictions is a serious threat to the Rule of Law and its corollaries, in particular the right to be tried by an independent and impartial court.

Finally, although our organisations welcome the fact that their proposed amendments to the provisions relating to the management of demonstrations within the draft New Penal Code have been retained and enshrined in the adopted texts, they nevertheless lament that the reform does not take adequate account of women's rights, which are widely neglected in Guinea, despite the commitments made by the state through its adherence to the Maputo Protocol and those made by its government in Geneva in January 2015 before the Human Rights Council.

I. Urgent: making the reform of the judicial process effective and humanising prisons

Following the uprising at Conakry prison facility on 9 November 2015, when significant material damage was caused by prisoners chanting "Jugez-nous!" ("Give us a trial!"), the Minister of Justice decided to establish a review commission, in which OGDH took part, tasked with writing a report and providing recommendations for so-called "prolonged" pre-trial detentions.

Overseen by one of the General Counsels near the Conakry Court of Appeals, in March 2016 the commission, along with OGDH and working throughout the country, was able to list over 1,550 cases of pre-trial detention, including 716 at Conakry prison facility. These numbers have increased significantly in just a few months. In its report published in February 2017, the High Commissioner for Human Rights points out that *"in December 2016, Conakry prison facility, which holds three quarters of prisoners, held 1,643 people, including 643 convicted prisoners, 67 women and 128 minors. Some of the accused have been awaiting a ruling for over ten years, which constitutes arbitrary detention."*

Although the growth of the prison population is obviously exponential, as the number of people in pre-trial detention is much higher than the jurisdictions' actual capacity to process cases, the exact figure for the prison population in Guinea is extremely vague. As the Prisons Commission – overseen by Mamadou Aliou Barry, ex-deputy director of the prison administration at the Ministry of Justice – noted in its report, the statistical system is lacking. This deficiency has been exacerbated by the absence of a digitised system, which stops data from being centralised in any way.¹⁶

The large number of places that deprive people of their liberty further complicates figures. The Guinean prison system has a large number of detention facilities in relation to the prison population. The prison map is based around a central prison in each place where a CFI is located, with the exception of Conakry where the prison facility covers three CFIs. In total, there are eight central prisons and 23 civilian prisons in Guinea, a total of 31 penitentiaries.

Penitentiaries stand out for their small size and insalubrity. The detention centres were built during the colonial period or during the first years of independence, for a very small number of prisoners. For example, Conakry prison facility, which is the country's largest detention centre, now has almost 1,700 prisoners, despite being built by the colonial administration in 1930 to house 300 people. Nzérékoré

15. *Idem*.

16. See the report of the Prisons Commission, *La Guinée face à ses prisons* (no English version), Paris, L'Harmattan, 2015, p. 24.



National ratification workshop for the Penal Code, the Penal Procedure Code and the Code of Military Justice, Kindia, May 2016. © OGDH

civilian prison, which was also built in the colonial era with a capacity of 40 prisoners, now has over 200. The other prisons are, for the most part, either the remnants of old buildings destroyed during the wave of repression in January and February 2007, or makeshift buildings given or loaned by other administrations or rented out by private owners.¹⁷

Most detention centres are in an advanced state of disrepair. Cells are small, dark, overheated and dirty, and lack ventilation and adequate latrines. Without enough light or a suitable ventilation system, prisoners are often on the brink of suffocation.¹⁸ They also sleep on the floor. These prison conditions violate detainees' right to dignity and not to be subjected to cruel, inhuman or degrading treatment. Although occasional cases of mistreatment have been reported to the Prisons Commission,¹⁹ as a general rule poor prison conditions are the result of a lack of means, leading to particularly high levels of malnutrition and illness, in particular due to a lack of sufficient medical assistance provided by the State.²⁰

Our organisations nevertheless acknowledge and welcome the willingness of the authorities to remedy this situation. The Ministers of Health and Justice have recently undertaken to update the Memorandum of Understanding on the cooperation between these two ministries with a view to improving access to healthcare in penitentiaries.

17. *Ibid.*, p. 26.

18. *Ibid.*, p. 24.

19. *Ibid.*, p. 24.

20. *Ibid.*, p. 23. Moreover, article 10, paragraph 1 of the International Covenant on Civil and Political Rights requires that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

OGDH and MDT, which with the support of FIDH established legal clinics in Conakry and Nzérékoré to provide free legal assistance to victims of grave human rights violations, and particularly to destitute detainees, are calling for the reform of the judicial process to be sped up as a matter of urgency. Reform should, as soon as possible, lead to the modernisation of jurisdictions and especially infrastructures, as well as an improvement in case management within jurisdictions and the implementation of a genuine criminal policy with a view to limiting pre-trial detentions which today are almost systematic, even for the pettiest of crimes.

Defendants or the accused are held in custody for exorbitant periods of time that often lapse into months or even years after the legal timeframe of their committal order has expired, without any legal action being taken by the judicial authorities. Up until the vote on the New Penal Procedure Code, this practice could be explained by the irregular nature of court sessions. These were supposed to be held every four months, but in reality took place less than once a year, at best, and only processed a small number of cases. While awaiting their ruling, sometimes for up to ten years or more, bail requests, perhaps with judicial supervision, are almost always denied, including for minor offences.

Prosecutor audits, for example, with the aim of checking the legality of detentions, are insufficient and make do with a level of illegality that has so far been seen as the norm. According to the report by the Prisons Commission, several judges have complained that the recommendations made to this effect and the grievances of prisoners are not taken into account by the authorities.²¹

Furthermore, criminal cases fell within the remit of the courts in an arbitrary way, without taking account of the duration of pre-trial detention and circumventing all detainees without the financial means to retain a lawyer, as the assistance of counsel is obligatory before a circuit court. The reason given was the lack of budget allocated by the Ministry of Justice to pay the fees court-appointed lawyers.²² Since then, lawyers at the MDT and OGDH's legal clinics have been able to make up for this deficiency by helping 44 people during the last court sessions held in June and July 2016 in Conakry and Labé, and 132 before the correctional courts of Conakry,

The cancellation of court sessions and the transfer of jurisdictions to the CFI for criminal matters aims to remedy this situation. However, our organisations are highly sceptical as to the effectiveness of this reform if it is not accompanied by a significant reinforcement of the operational capacities of courts of first instance. At the time of writing this report, over 600 criminal cases were awaiting a ruling in the city of Conakry alone, yet each court only has a single courtroom, all of which are already suffering major backlogs of correctional, civil and commercial cases.

The absence of adequate infrastructure for trials to be held is therefore at the source of grave human rights violations, including denial of justice for victims, arbitrary detention for the accused and, more generally, a dilution of the efforts made by human rights defence organisations committed to fighting impunity and providing access to the law.

Consequently, it is essential to the work of our organisations that financial backers committed to justice reform in Guinea make the modernisation and proper equipment of jurisdictions their top priority, as the point of departure for an improvement in the way that the entire judicial process operates, the fight against impunity and the respect for human rights in Guinea.

21. *Ibid.*, p. 38.

22. See the report by the High Commissioner for Human Rights, "Situation des droits de l'Homme dans les lieux de détention en République de Guinée" (no English version), 2015, available at http://www.ohchr.org/Documents/Countries/GN/ReportofGuinea_October2014.pdf

Moreover, in order to significantly reduce the prison population and put an end to the practice of illegal prolonged pre-trial detentions, the judicial authorities must do everything they can to make the *in flagrante delicto* procedure, as covered in articles 461 et seq. of the Penal Procedure Code, truly effective. According to several judges our organisations spoke to, this procedure is only rarely implemented, once again due to a lack of available courtrooms within the legal timeframes for implementation. As a result, judicial investigations are opened for cases that do not, objectively, require one. This practice leads to examining judges, magistrates and clerks being pointlessly overloaded, to the detriments of more complex cases, and to pre-trial detentions that often last several months for extremely minor alleged crimes.

Similarly, judicial supervision orders are almost never used in Guinea, as judges almost systematically use pre-trial detention instead, even though both the old and the New Penal Procedure Code state that detention should be considered an exceptional measure. Judges often use the lack of exact addresses in Guinea, the porosity of borders or, more generally, the flight risk, as an excuse to refuse judicial supervision orders and continue to practise detentions. In many cases this explanation does not stand up to analysis, as detainees can provide guarantees that they will appear in court; moreover, it in no way justifies the deliberate violation of procedural texts that limit the duration of pre-trial detention to 12 months, or 24 in exceptional circumstances.

Our organisations therefore recommend greater cooperation between the police services, especially local ones, and the leaders of neighbourhoods and districts, with the judicial services in order to consider judicial supervision measures, suitable for the context of Guinea, that could be recommended as an alternative to pre-trial detention, especially for ordinary offences.

II. Draft Code of military justice: a dangerously broad jurisdiction

The exceptional breadth of these jurisdictions is a serious threat to the Rule of Law and its corollaries, in particular the right to be tried by an independent and impartial court. Due to their composition, their operating rules and the interference they can be subjected to through executive power, these jurisdictions do not provide the same guarantees of independence as common law jurisdictions theoretically have.

• Broad geographical jurisdiction for the most serious crimes

On reading the latest draft text sent to our organisations, military jurisdictions will not only cover soldiers who have committed crimes according to military discipline, such as desertion or insubordination. On the contrary, military jurisdictions will be able to try common law crimes, such as murder, rape or torture – in other words, grave human rights violations – committed by soldiers in military establishments or when operating outside the country (article 22).

They will also have jurisdiction “*to hear war crimes, crimes against humanity, crimes of genocide and crimes of abuses committed by soldiers, as stated in the Penal Code*” (article 28, para. 2).²³

It is important that the geographical jurisdiction of military tribunals is strictly limited to military crimes,

23. This provision, which was added by the Commission in charge of writing up the text, has been very hotly debated. It appears that the Ministry of Justice ultimately removed this provision from the draft, but our organisations have not been able to access the latest version of the text.

committed by military personnel and people with military status, for crimes relating to their role under that status.²⁴

Military infractions are those that, by nature, exclusively concern interests legally protected by military order and discipline, such as desertion, insubordination or abandonment of post or command. Military justice should therefore confine itself to being a way to discipline troops. This principle, which has already been laid down by various United Nations bodies, was backed by the African Commission on Human and People's Rights in 2003. Grave human rights violations should therefore be tried by common law jurisdictions and, as a result, any military jurisdiction should be eschewed.²⁵

In 2006, the report presented by expert on the United Nations Human Rights Sub-Commission, Emmanuel Decaux (hereafter "Decaux principles"), therefore emphasised that: *"the doctrine and jurisprudence of the Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child, the African Commission on Human and Peoples' Rights, the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights and the country-specific and thematic procedures of the United Nations Commission on Human Rights, are unanimous: military tribunals are not competent to try military personnel responsible for serious human rights violations against civilians."*²⁶

More recently, in 2013, the United Nations Special Rapporteur on the independence of judges and lawyers stated that military tribunals should have the sole purpose of hearing and trying crimes of a purely military nature alleged to have been committed by members of the army.²⁷ There are two reasons behind this principle: first, the status of soldier does not authorise a person to commit human rights violations; and these crimes should not fall with the jurisdiction of military tribunals as there is no guarantee that they can try them in a fair way. Given the structure of these courts, they may even be tempted to protect soldiers guilty of grave human rights violations, especially high-ranking military personnel.

The perpetrators of grave human rights violations should therefore be tried by common law jurisdictions and, as a result, any military jurisdiction should be eschewed.

Moreover, article 28, paragraph 2 of the draft Code of Military Justice that grants jurisdiction to military tribunals *"to hear war crimes, crimes against humanity, crimes of genocide and crimes of abuses committed by soldiers, as stated in the Penal Code"* runs entirely contrary to the spirit of the Rome Statute integrated into the New Penal Code.

Indeed, article 17.2 of the Rome Statute states that, to determine a state's lack of willingness to try a case the Court can take account, *"in view of the guarantees of a fair trial recognised by international law,"* of the following circumstance: *"The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice."*²⁸

24. Principle No. 8, Decaux Report, Doc. UN E/CN.4/2006/58, 13 January 2006. See para. 29.

25. African Commission on Human and People's Rights, "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa", DOC/OS/(XXX)247, 2003, Principle L, <http://www.achpr.org/instruments/principles-guidelines-right-fair-trial/>

26. Decaux Report, Doc. UN E/CN.4/2006/58, 13 January 2006, para. 35. See also Federico Andreu-Guzman, "Military jurisdiction and international law", *Military courts and gross human rights violations*, vol. I, International Commission of Jurists, Geneva, 2004.

27. "Independence of judges and lawyers", report by the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Doc. UN A/68/285, 7 August 2013, para. 67.

28. Rome Statute, article 17.2.c), see in particular General Policy Paper Preliminary Examinations, Office of the Prosecutor of the ICC, November 2013, available at https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/policies%20and%20strategies/Pages/draft%20policy%20paper%20on%20preliminary%20examinations.aspx.

One may therefore deduce from this provision that crimes codified in the Rome Statute cannot, in the context of the adoption of a piece of national legislation by a party state, be confined to military jurisdictions, which do not benefit from the same guarantees of independence and impartiality.

Furthermore, the informal expert report written upon request of the Office of the Prosecutor of the International Criminal Court on the principle of complementarity describes “*special jurisdictional regimes (military tribunals)*,” as “*factors that may be relevant in determining the unwillingness or inability of a state to genuinely carry out proceedings.*”²⁹

• **Broad jurisdiction over civilians**

Articles 23 and 24 of the draft Code of Military Justice define the personal jurisdiction of military tribunals, in other words the people they are allowed to try. Article 23 specifies the status of “*military personnel*” while article 24 defines those “*treated*” as military personnel in the context of those covered by these jurisdictions, specifically civilians and persons with a protected status, in this instance prisoners of war.

Article 23 states that: “*Those treated as military personnel include those taken as present, for whatever reason, in the crew of a navy ship or on the manifesto of a military aircraft; those who, though not legally or contractually bound to the armed forces, are covered by controls and perform service; members of a prize crew; prisoners of war; civilians employed in military services and establishments.*”

Article 33 goes further, stating that: “*When military personnel prosecuted for crimes that fall within military jurisdictions have civilian co-perpetrators or accomplices, all defendants or accused are brought before military jurisdictions.*”

The extension of these jurisdictions to civilians is entirely contrary to established international principles on the subject. Therefore, in August 2013, the United Nations Special Rapporteur on the independence of judges and lawyers specified in her report, submitted to the United Nations General Assembly, that military jurisdictions cannot, on principle, be allowed to try civilians, and that the state must ensure that civilians accused of criminal acts, regardless of their nature, are tried by civil courts.³⁰

Different United Nations bodies take a very firm stance in favour of preventing military tribunals from having jurisdiction over civilians, pointing out that their existence poses serious problems in terms of the fair, impartial and independent administering of justice.³¹ For example, the United Nations Human Rights Committee notes that “*the existence, in many countries, of military or special courts which try civilians [...] could present serious problems as far as the equitable, impartial and independent administration of justice is concerned.*”³²

The jurisprudence of the African Commission on Human and People’s Rights is also explicit. In its ruling *Law Office of Ghazi Suleiman v. Sudan*, the Commission reasserts its policy position, according to which: “*military courts should respect the norms of a fair trial. They should in no case try civilians. Likewise,*

29. ICC-01/04-01/07-1008-AnxA 30-03-2009, p. 28.

30. *Op. cit.*, Doc. UN A/68/285, 7 August 2013, para. 15.

31. The Sub-Commission on the Promotion and Protection of Human Rights, Principle 5 of the Principles of the United Nations Commission of Human Rights on the administration of justice through military tribunals (2006), clearly asserts military jurisdictions’ lack of authority to try civilians. The report by the Special Rapporteur on the independence of judges and lawyers concludes that “*in regard to the use of military tribunals to try civilians, international law is developing a consensus as to the need to restrict drastically, or even prohibit, that practice.*” Doc. UN E/CN.4/1998/39/Add.1, para. 78.

32. General Observations 13 on Article 14 of the PIDCP, United Nations Human Rights Committee (12 April 1984), Doc. UN Doc. HRI/GEN/1/Rev.1 (1994).

*military courts should not deal with offences which are under the purview of ordinary courts.*³³

• **Broader jurisdiction during periods of “exceptional circumstances”**

Article 31 of the bill states that *“during a state of emergency or state of siege decreed for all or part of the country, military jurisdictions are also authorised to hear cases covered in the previous article as well as crimes specified by organic law in the state of emergency and state of siege.”*

Article 30 extends authority *“for any crime in which military personnel or those treated as military personnel are implicated”* as well as *“connected crimes as defined by the Penal Code,”* in other words common law crimes which, as explained above and according to the United Nations bodies and the African Commission on Human and People’s Rights, should never fall within the purview of military jurisdictions.

III. Women's rights: fragmentary implementation of the “Maputo Protocol”

In 1982, Guinea ratified the Convention on the Elimination of Discrimination against Women (CEDAW), and since 2012 has been party to the Protocol to the African Charter on Human and Peoples’ Rights (Maputo Protocol).

In 2007, the CEDAW Commission examined the situation of women in Guinea and identified the existence of discriminatory provisions against them in the Civil and Penal Codes. The Commission pointed out that these texts conveyed and reinforced a patriarchal ideology within Guinean society and encouraged the persistence of damaging traditions such as forced and early marriage and gender inequality within the family and society.

The draft New Civil Code, which like the Code of Military Justice is set to be debated during the April 2017 law-making session, improves the place of women within their families in some respects. This is especially the case for the legal marrying age, the elimination of the notion of paternal power in favour of the concept of parental authority, a woman’s right to undertake a professional activity without the consent of her husband, the right to decide the location of the marital home in shared agreement with the man.

However, the fragmentary implementation of these provisions through the Civil and Penal codes make a number of the rights accorded to women ineffective. Polygamy, limited access to abortion and the absence of recognition of marital rape threaten to undermine the majority of the objectives of the reform undertaken due to their inconsistency with the progress observed elsewhere.

• **Will polygamy soon be legalised?**

The greatest ambiguity surrounds the way polygamy is legally handled in Guinea. Although forbidden by the current Civil Code, it is nevertheless very widely practised, including in the wealthiest and most urban settings.

33. *Law Office of Ghazi Suleiman c. Soudan*, African Commission on Human and People’s Rights, Communication 222/98 and 229/99, 33rd Ordinary Session, Niamey, Niger, 15 May 2003, <https://www1.umn.edu/humanrts/africa/comcases/F222-98.html>.

A draft text of the Civil Code consulted by our organisations legalised polygamy and even made it the matrimonial regime according to common law. After marked protests by women's rights organisations and the media, the government removed this provision and upheld the ban on polygamy. However, our organisations question what the results will be when this issue is debated in parliament. The majority of elected officials our organisations spoke to during our advocacy work were particularly evasive on the subject.

That said, our organisations note that, by legalising polygamy, and particularly by establishing it as the default matrimonial regime, Guinea would be violating its international commitments. Indeed, in article 6, which relates to marriage, the Maputo Protocol stipulates that:

States must ensure that men and women have equal rights are considered equal partners in their marriage. In this regard, states must adopt the appropriate legislative measures to guarantee that:

....

c) monogamy is encouraged as the preferred form of marriage. The rights of the woman in the marriage and within the family, including in polygamous conjugal relationships, are defended and protected.

By legalising polygamy, the New Civil Code would represent a step backwards compared to existing law. In addition, it would violate article 6 of the Protocol as, instead of making monogamy *"the preferred form of marriage"*, it would relegate it to the exception. In the last version our organisations saw, article 282 of the draft Civil Code stated that: *"If the man fails to adhere to one of the options listed in this article, the marriage is presumed to fall within the regime of polygamy."*

As a result, our organisations recommend that the government and deputies of the National Assembly retain the current legal regime, whereby: *"the practice of polygamy is prohibited to any person with Guinean nationality and who lives anywhere in the Republic."*

Our organisations take the position that polygamy should be outlawed and that equality between men and women should be guaranteed by both law and practice.

• Limited access to abortion

In article 14 on the right to health and control of reproductive functions, the Maputo Protocol stipulates that:

States must take all appropriate measures to:

...

c) protect women's reproductive rights, particularly by authorising medically supervised abortion in the event of sexual assault, rape, incest and when the pregnancy endangers the mental and physical health of the mother or the life of the mother or foetus.

With the New Penal Code, having an abortion is not considered a crime in the following cases: if the abortion is required to save the seriously endangered life of the mother, in the event of early pregnancy, rape, incest and serious illness in the unborn child (article 265 of the New Penal Code).

In his 2011 report,³⁴ the Special Rapporteur on the right of everyone to the enjoyment of the highest

34. Interim report by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (in french), 2011, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/118/43/PDF/G1111843.pdf?OpenElement>



MDT and OGDH delegation visit the Nzérékoré court of first instance to open the region's legal clinic, Nzérékoré, 27 August 2015. © OGDH

attainable standard of physical and mental health asserts that: *“criminal law and other restrictions on sexual and reproductive health imposed by law can have multiple negative impacts on the right to health, especially by interfering with human dignity (...) These criminal laws and other restrictions that affect sexual and reproductive health may constitute violations of the right to health.”* He concludes that *“these laws should be reviewed without delay.”* We call upon Guinea to decriminalise abortion.

As a minimum, in order to make legislation compliant with the international commitments made by Guinea, our organisations recommend that the government and deputies of the National Assembly complete article 265 of the New Penal Code and insert a clause authorising abortion in the event that the mother's mental health is endangered.

Moreover, in order to make having an abortion truly possible in cases permitted by law, it is imperative to revise that paragraph 2 of this article, which states that: *“(i)n this case the abortion must be authorised by a board of specialist doctors who must record their decision in an official report justifying their reasons. It can only be practised by a doctor in a public or private establishment with the means to perform abortions.”*

Given the inadequate medical resources in Guinea, and even more so in the interior of the country, the ability for a woman on a modest income to obtain written authorisation from a *“board of specialist doctors”* is realistically non-existent.

We therefore recommend that this provision is modified and the right to an abortion in cases permitted by law (including when the mental health of the mother is endangered) is made subject to the authorisation of the treating physician.

Finally, we recommend the abolishment of the punishment of imprisonment mentioned in article 264 for all other cases.

- **Absence of recognition of marital rape**

Violence – including sexual – within a couple is extremely widespread in Guinea and largely ignored. The vestiges of a concept of marriage based on patriarchal ideology and gender inequality, the provisions of the Penal Code relating to rape make no reference to sexual violence between spouses, as the act of sex is presumed to be consensual – or even compulsory – for a woman bound to her attacker by marriage. In 2014, the Committee expressed its concern over *“The absence in the State party of a comprehensive law on violence against women and its failure to criminalize marital rape”* and recommended that marital rape should be criminalised in accordance with international law.³⁵

In 2015, as part of the Universal Periodic Review, the Guinean government committed to modifying the Penal Code to cover the different forms of sexual violence, including marital rape. However, there is no mention of it in the New Penal Code. In order to comply with the commitments made by the government before the Human Rights Council and to give female victims of marital violence effective remedy, our organisations recommend a revision of the New Penal Code as soon as possible, and the insertion of a clause enshrining the recognition sexual violence between spouses.

35. CEDAW, Concluding observations on the combined seventh and eighth periodic reports of Guinea (presented in a single report), CEDAW/C/GIN/CO/7-8, 2014, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGIN%2fCO%2f7-8&Lang=en.

CONCLUSION

The progress observed over the course of 2015 and 2016 has led to significant advances in the fight against impunity, both in terms of inquiries as part of the judicial investigations under way and from the point of view of justice reform and discussions on national reconciliation. Given the needs of victims and the already very long time they have waited, it is nevertheless urgent that the government fulfils its commitments.

Organising the 28 September trial, which is due to begin in 2017, should represent a turning point in the history of Guinean justice, marking the end of impunity and start of a new, more modern, fairer justice system that has a greater respect for human rights. The process of national reconciliation, which is an essential corollary to the trial and the fight that has begun against impunity, will be able to support this transition to an enduring Rule of Law by recognising past crimes.

The justice system should investigate violence and human rights violations of a political nature, especially during demonstrations, and their perpetrators should be prosecuted. Violence against women should also be penalised within a renewed and more protective legislative framework. Throughout these central issues, the state should be able to arbitrate disputes and protect its citizens from violence and arbitrary acts. In one year of work, the OGDH and MDT's legal clinics have already been able to provide support for 262 people, with the help of FIDH. During the court sessions held in June and July 2016 in Conakry and Labé, 49 people received free legal assistance, including 15 minors. Lawyers at the legal clinic also assisted 213 people before criminal courts. Although there are over 500 outstanding cases, this nevertheless shows that the justice system can and must act. The relationship that citizens have with their justice system and its effectiveness must remain a priority for the government.

In this regard, 2017 is a critical year for achieving these objectives before Alpha Condé's second mandate comes to an end. There are numerous challenges still to be identified in order to reach these achievements, as much in logistical and financial terms and political ones. The role of the international community and financial backers remains essential at this stage for providing the necessary support to the Guinean government in modernising its justice system, humanising its prisons, organising the highly symbolic trial of the massacre of 28 September 2009 and, in the context of a Truth, Justice and Reconciliation Commission, for laying several decades of State-led violence to rest.

RECOMMENDATIONS

FIDH and its member organisations, OGDH and MDT, recommend:

1. That the Guinean government:

- speeds up the conclusion of the investigation into the case of the stadium massacre on 28 September 2009 and hold the trial in 2017 as it has committed to do on numerous occasions, as well as suspending any people accused in this case from their government positions until the trial ends;
- continues to cooperate with the International Criminal Court, and especially the Office of the Prosecutor, which in October 2009 opened a preliminary investigation into the situation in Guinea, in particular the events of 28 September 2009 and the following days;
- effectively continues to fight against torture in Guinea by holding, as soon as possible, the trial of those alleged to be responsible in the case of the torture perpetrated in November 2010 by the mobile gendarmerie riot squad in Hamdallaye, and locates the eleven agents of the Brigade Anti-Criminalité listed in the complaint filed by OGDH and MDT in May 2016 for similar offences;
- provides the examining judges in charge of the case of the repression in January and February 2007 with all the material means necessary for effectively investigating this case and bringing the judicial investigation to a conclusion;
- holds impartial inquiries into human rights violations during political demonstrations and, if required, prosecutes the perpetrators and those responsible, particularly if they are agents of the State;
- establishes a Truth, Justice and Reconciliation Commission in line with the recommendations made by the national consultations led by the Provisional Commission for Reflection on National Reconciliation (CPRN), according a central role to the associations of victims of political violence;
- revises the draft Code of Military Justice, taking account of the international principles on this subject;
- brings the Maputo Protocol, which Guinea has ratified, into full effect in terms of women's rights;
- continues the efforts made to improve the situation of women and girls in the country and combats discrimination against them, particularly by:
 - effectively implementing the criminalisation of female genital mutilation as stated in the Penal Code;
 - improving the medical, psychological and material care given to victims of rape, as well as providing them with legal assistance;
- continues and speeds up the reform of the justice sector and establishes the new judicial organisation, and in particular:
 - providing the financial, material and human resources to courts of first instance so they can meet their new mandate, which gives them jurisdiction over criminal cases;
 - ensuring that trials are held regularly in order to put an end to prolonged, exorbitant and illegal pre-trial detentions that violate the provisions of the Penal Procedure Code, which stipulates that such detention should be the exception rather than the rule;

- reinforces the efforts made to improve the prison situation in Guinea by increasing the budget allocated to the penitentiary administration in order to effectively combat the problems related to prison overcrowding and to ensure that prisoners have detention conditions that comply with international standards;
- guarantees freedom to protest in accordance with the provisions of article 10 of the Constitution, articles 9 and 11 of the African Charter on Human and Peoples' Rights and article 21 of the International Covenant on Civil and Political Rights (ICCPR);
- makes a declaration in accordance with article 34.6 of the Protocol relating to the African Court of Human and People's Rights with a view to authorising the individuals and non-governmental organisations (NGOs) to introduce petitions directly to the Court;

2. That the opposition parties:

- reinforce their dialogue with the government to ensure respect for the constitutional provisions for holding planned elections in a peaceful context;
- exercise the freedom to protest in accordance with the provisions of article 10 of the Constitution, articles 9 and 11 of the African Charter on Human and Peoples' Rights and article 21 of the International Covenant on Civil and Political Rights (ICCPR), within the constraints of the legislative provisions on maintaining public order;
- guarantee the peaceful nature of demonstrations organised at the responsibility of political parties;
- ensure they abstain from making any declaration that could be interpreted as a call to violence against the forces of law and order;
- use public appeals to insist that militants exercise their rights to demonstrate in a peaceful way that is respectful of public order;
- support the efforts made by the national public and judiciary authorities in favour of the fight against impunity for perpetrators of the most serious crimes;
- support the establishment of an independent and functional Truth, Justice and Reconciliation Commission as soon as possible;
- support efforts made in relation to justice reform, and particularly the revision of the draft Code of Military Justice to ensure it complies with the international standards for human rights protection in this area;
- support the adoption of a Civil Code that complies with the international provisions on human rights protection, and in particular on women's rights;

3. That foreign diplomacies and intergovernmental organisations:

- support the fight against impunity and the holding of the 28 September trial in accordance with the commitments made by the Guinean state to the victims and the international community;

- participate in considerations of how the victims of the events of 28 September could benefit from reparation measures for the damages they have suffered;
- support the national consultation campaign and the establishment of an independent and functional Truth, Justice and Reconciliation Commission as soon as possible;
- support efforts made in relation to justice reform, and particularly the revision of the draft Code of Military Justice to ensure it complies with the international standards for human rights protection in this area;
- support the adoption of a Civil Code that complies with the international provisions on human rights protection, and in particular on women's rights;
- support the improving of conditions in prisons and detention centres.



OGDH was founded in 1990 by academics, students and lawyers. Its objectives are the promotion, protection and defence of human rights through its training campaigns and the denouncing of human rights violations in the country.

It holds seminars on the protection of human rights aimed at leaders in charge of applying the law (judges, judicial police officers, prison wards), media figures and national administration executives, and has implemented a training programme for human rights leaders to improve citizens' awareness of their rights in rural areas, as well as setting up four Human Rights Information and Training Centres (HRITC) in Tougué, Telimélé, Kouroussa and Mandiana to take care of citizens whose human rights have been violated. OGDH is particularly active in collecting witness statements and supporting them before the Guinean judiciary authorities.

OGDH is a member of the International Federation for Human Rights (FIDH), the Inter-African Union for Human Rights (IAUHR) and has the status of observer at the African Commission on Human and People's Rights (CADHP). In 2001 it was awarded the Baldwin Prize for Peace in the United States.

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Les Mêmes Droits pour Tous (Same Rights for All or MDT) is a non-governmental organisation for the defence of human rights founded in 2006. The actions of MDT aim to defend and promote human rights in the Republic of Guinea, in particular by providing free legal assistance to victims of grave human rights violations who have no income, and by carrying out advocacy work in favour of justice, the fight against impunity and national reconciliation in Guinea.

MDT is also committed to the fight against torture and other cruel, inhuman and degrading punishments or treatment, as well as the issue of gender-based violence, including female genital mutilation.

MDT is a correspondent member of FIDH and the recipient of the 2016 Franco-German Prize for Human Rights.

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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
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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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