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Canada



**African Commission on Human and Peoples' Rights
71st Ordinary Session**

-
21 April to 13 May 2022

Note on the persistence of the practice of descent-based slavery in Mali

Introduction

Lawyers Without Borders Canada (LWBC), the Malian Association for Human Rights (AMDH) and the International Federation for Human Rights (FIDH) are concerned about the persistence of descent-based slavery in Mali.

Our three organizations condemn this practice and call on the Malian authorities to take all necessary measures to put an end to it.

Increasing human rights violations related to the practice of descent-based slavery

In Mali, descent-based slavery is an old practice rooted in the traditions and customs of certain ethnic groups, in particular the Peulh, Soninké, Sonraï and Malinké. The practice is also inherent to the Touareg and arab community, in which the victims of slavery are called Bellas. In these hierarchical societies, marked by the existence of several castes (nobles, artisans, griots, enslaved persons) the practice has an impact that is at once social, political and economic.

In Mali, the practice of slavery varies from one region to another and may, within the same region differ from one cercle to another or even from one village to another. In the Kayes region, individuals identifying as nobles take advantage of this social order to impose servitude on those who they deem as slaves. The situation of dominance, which the slaves are subject to, is particularly evident during certain social events, when they are forced to undertake tasks such as slaughtering animals, cooking and performing slave dances during ceremonies.¹ As such, many people described as slaves are kept in a situation of inaptitude and legal incapacity, which contributes to the perpetuation of the relationship of dependence that binds them to their masters. This *de facto* legal incapacity manifests itself in particular as an infringement of enslaved persons' right to property (notably the prohibition of access to land

¹ Naffet Keïta, *L'esclavage au Mali*, February 2012, Harmattan editions, p. 18, 19.

ownership). The submission of enslaved persons to endogamic marriage - a matrimonial system in which a person marries within his or her social, ethnic, religious or occupational group - prevents them from marrying people from other social classes, namely the noble class. Women with slave status play the role of "*animatrice nuptiale*", a task that is exclusively assigned to them and consists of assisting young brides during their honeymoon.² Furthermore, in some localities, access to political office (mayor or deputy) and to traditional chieftaincy is strictly reserved for people from the so-called noble social classes, to the extent that an enslaved person would find it difficult to run for local and regional elections.

As such, these human rights violations caused by descent-based slavery are multiple, especially in the Kayes region. The questioning of this practice in recent years by victims of slavery has resulted in further human rights violations. Individuals and communities who renounce this practice are subjected to serious human rights violations, which can take many forms: physical aggression with assault and battery, denial of access to basic social services, confiscation of property, acts of vandalism, banishment, harassment, rape, threats, insults, etc.³

On January 13, 2019, men, women and children in the village of Sakoré in the commune of Jémékouraba, Kita cercle were beaten and their homes were ransacked because they refused to submit to people who considered themselves their masters. Similarly, on September 29, 2021, in the cercle of Bafoulabé, region of Kayes, individuals who considered themselves slave masters against people and communities victims of slavery committed extremely grave acts of violence amounting to violations of the rights to life, physical and moral integrity, and land ownership. The National Human Rights Commission (CNDH) of Mali has expressed concern about "*multiple allegations of abuses committed against citizens who speak out against their status as 'slaves' by descent in the Kayes region.*"⁴ This new violence has accentuated the climate of fear that has been present in the Kayes region since the first

² During the first week of the wedding, the bride and groom are confined to a room with no contact with the outside world, except through the "*animatrice nuptiale*". The latter is also responsible for giving advice to the newlyweds on married life. See Culture 24, "Mali : L'importance de la Chambre nuptiale," March 26, 2019, online: <<https://culture24.news/mali-limportance-de-la-chambre-nuptiale/>>.

³ See especially Expert indépendant sur la situation des droits de l'Homme au Mali, Situation des droits de l'Homme au Mali, A /HRC/49/94, 17 mars 2022, para. 40 : "*Between January 1 and December 31, 2021, MINUSMA documented at least nine incidents resulting in at least one death and eighty-one injuries, of which seven were women. Twice as many people, mostly considered slaves, were injured in 2021 as in 2020. The most recent incident, which occurred in the village of Souroubiré in the Kayes region on September 28-29, 2021, resulted in one death and at least twelve injuries among those considered slaves.* [translated]" en ligne <<https://reliefweb.int/report/mali/situation-des-droits-de-l-homme-au-mali-ahrc4994-advance-unedited-version>>

⁴ CNDH, Communiqué de la CNDH relatif aux allégations d'exactions commises sur des citoyens d'élevant contre leur condition d'"esclaves" par ascendance, Communiqué n°031-2018/CNDH, 30 octobre 2018, en ligne : <<http://bamada.net/communiquede-la-cndh-relatif-aux-allegations-dexactions-commises-sur-des-citoyens-selevant-contre-leur-condition-desclaves-par-ascendance>>.

uprisings by members of the "slave" community in 2018, which led to significant reprisals and undermined social cohesion. These events are a reminder of the urgent need for Malian political and judicial authorities to fight against impunity.

Deficient legal framework and inadequate judicial responses in the face of the strong demand for justice from victims and civil society

These various manifestations of descent-based slavery constitute serious human rights violations under Articles 1, 2, and 3 of the Malian Constitution, which respectively enshrine the sanctity of human life, prohibit all discrimination based on social origin, and prohibit inhuman, cruel, degrading, or humiliating treatment. These practices also contravene to international instruments ratified by Mali, such as the Slavery Convention of 25 September 1926 and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 7 September 1956, the Universal Declaration of Human Rights, and the African Charter on Human and Peoples' Rights.⁵ The latter provides in Article 5 that: *"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."*

While these acts are crimes and offenses under the Malian Penal Code, a specific law criminalizing slavery, as is the case in Senegal and Niger would facilitate the prosecution of perpetrators. Moreover, such a law would highlight the systemic nature of these violations and the different manifestations of the practice. In addition, professionals in the legal sector assert that the existing judicial arsenal does not allow for the prosecution of all types of cases⁶.

Currently, the Malian Penal Code and the Law on the Fight against Trafficking in Persons and Related Practices fail to provide a clear definition of slavery and its related practices. Moreover, the Penal Code only addresses slavery as an act underlying crimes against humanity, which requires the prosecution to first establish the existence of a widespread or systematic attack against a civilian population. However, it would be difficult to demonstrate that the abuses committed, for instance, in the Kayes region, meet this criterion. Moreover, the Law on the Repression of Trafficking includes slavery as one of the criminal purposes of

⁵ Constitution of the Republic of Mali, February 1992, articles 1 and 2; Law n° 2012-023 of 12 July 2012 on the fight against trafficking in persons and related practices, article 1; The African Charter on Human and Peoples' Rights, entered into force 21 October 1986, article 5.

⁶ Study on trafficking in persons in Mali, state of affairs, International Office for Migration, May 2021, p. 55

trafficking in persons, but not all instances of slavery in Mali can be qualified as such, as it requires the qualification of both a material element and a coercive element, which are not met in all cases.

This inadequate legal framework largely accounts for the difficulties the State has in combating the problem. It could also explain the inadequacy of attempts made by the courts to qualify offenses relating to slavery. Indeed, while the offenses most often cited in proceedings against individuals suspected of engaging in slavery practices are assault and battery and damage to land, these in no way reflect the extent of the phenomenon or the seriousness of its consequences for the community.

To remedy the situation, a preliminary draft law specifically criminalizing slavery and related practices was developed in 2016. This text, if adopted, would make it possible to strengthen the current positive law, incorporating relevant provisions from regional and international instruments relating to slavery and its assimilated practices, to indict perpetrators and punish these practices.

The impunity of perpetrators is also due to the sensitive nature of the issue due to its strong cultural roots and the taboo that still surrounds it in certain communities. Furthermore, it is feared that the initiatives of reconciliation and pacification ongoing in the Kayes region could thwart any process to criminalize this practice. Some religious leaders support this approach, which would enshrine impunity and encourage a continuation of the violence that is increasingly engendering displacement and affecting peaceful coexistence. According to the CNDH, the Sakoré event in 2019 resulted in more than "1,153 internally displaced persons, including 534 men, 619 women, and 720 children, all of whom were victims of descent-based slavery in the rural communes of Dindanko, Djougoun, and Guémoucouraba, who had found refuge in the commune of Mambri, in the cercle of Kita, in the region of Kayes."⁷ Since 2018, more than 3,000 victims of descent-based slavery have been forced to flee their villages in the Kayes region, largely because of their action against the practice.⁸

Recognizing that this practice is likely to undermine the Malian State's initiatives towards the promotion and protection of human rights, political authorities have taken up the issue in order to prevent and curb associated crises, by addressing the strong demand for justice by

⁷ Mali / Région de Kayes : L'horreur de l'esclavage par ascendance sévit, Le Républicain, 8 August 2019, online <https://www.maliweb.net/societe/region-de-kayes-lhorreur-de-lesclavage-par-ascendance-sevit-2832728.html> [translated].

⁸ Study on trafficking in persons in Mali, state of affairs, International Office for Migration, May 2021, p. 56.

victimized individuals and communities, in response to persistent advocacy by organizations fighting against the practice. On November 11, 2021, the Minister of Justice and Human Rights sent a circular letter to the Attorneys General of the Courts of Appeal "*to ensure that appropriate follow-up is given to legal cases related to this practice, in particular by making optimal and judicious use of the provisions of the Criminal Code.*"⁹ Since this injunction, the judicial authorities of Kayes have apprehended several perpetrators¹⁰. In addition, in its ruling of January 19, 2022, the Kayes Court of Appeals upheld a judgment of the Diéma trial court that had recognized the customary rights of victims of enslavement. The victims had been illegally dispossessed of their property by a village chief, on the grounds that enslaved persons did not have the right to own land¹¹.

While these decisions are encouraging and commendable, it is imperative that the judicial authorities expedite all pending proceedings relating to this phenomenon. In addition, in order to evaluate these measures, the Minister of Justice, in a new circular letter dated February 4, 2022, asked the Attorney General of the Kayes Court of Appeal to conduct "*an evaluation mission in the jurisdictions where cases related to the phenomenon have been recorded.*"¹² The Permanent Law Commission in the context of the reform of the Penal Code and the Code of Criminal Procedure to integrate relevant provisions relating to slavery into Mali's new punitive arsenal is also addressing the issue.

Conclusion and recommendations

Given the persistence of violence related to the practice of descent-based slavery and the recent violence in reaction to opposition to the practice, the state has attempted to respond. However, it must be noted that these responses remain limited, as proceedings related to the practice are still pending before national courts and victims are still awaiting justice and reparations.

⁹ Minister of Justice and Human Rights, Circular letter from the Minister of Justice and Human Rights, dated 11 November 2021, addressed to Attorneys General of the Court of Appeal, Circular n°0000863/MJDH-SG, 11 November 2021; Minister of Justice and Human Rights, Circular letter from the Minister of Justice and Human Rights, addressed to Attorneys General of the Court of Appeal, Circular n°0000863/MJDH-SG, Letter n°067/MJDH-DG, 4 February 2022 [translated].

¹⁰ Expert indépendant sur la situation des droits de l'Homme au Mali, Situation des droits de l'Homme au Mali, A/HRC/49/94, 17 mars 2022, para. 40 : "*on november 1st 2021, the investigating judge has ordered the arrest and transfer of 21 men to the central prison of Kayes for their presumed role in those attacks occurred on the 28th and 29th September 2021.* [translated]" en ligne <<https://reliefweb.int/report/mali/situation-des-droits-de-l-homme-au-mali-ahrc4994-advance-unedited-version>>

¹¹ Cour d'Appel de Kayes (Chambre civile), Hamadi Diawara c. Mamadou Coulibaly et autres, Arrêt n°03, 19 janvier 2022.

¹² Circular letter from the Minister of Justice and Human Rights, dated 4 February 2022, addressed to Attorneys General of the Court of Appeal in Kayes.

Recommendations for an action plan to combat the persistence of the practice of descent-based slavery

LWBC, AMDH and FIDH call on the ACHPR to adopt a plan of action to:

- **Condemn** the violations of the right to life, physical integrity, equality, land ownership and to freedom of movement of people, committed by individuals in connection with the practice of descent-based slavery in Mali, pursuant to article 5 of the African Charter on Human and People's Rights ;
- **Call on** the Malian authorities to immediately stop the violence against victims of descent-based slavery in the Kayes region;
- **Call on** the Malian authorities to adopt a law defining and criminalizing slavery and its analogue practices by pursuing the work initiated in 2016 on the draft law specifically incriminating slavery and its related practices;
- **Urge** the judicial authorities to continue their efforts to combat impunity by ensuring the speedy and professional handling of cases pending before the Malian courts relating to the practice of slavery, while respecting due process;
- **Encourage** the Malian authorities to strengthen the capacities of actors in the criminal justice system to deal with cases of slavery;
- **Promote** access to legal information and legal services for victims of the practice;
- **Call on** the authorities to put in place a judicial protection system for victims, in particular by securing their access to the courts;
- **Call on** the Malian authorities to create the conditions for the return of displaced persons to their places of origin;
- **Promote** access to legal information and legal services for victims of the practice;
- **Encourage** the government to find sustainable solutions that allow dispossessed enslaved persons to regain access to their land as their primary means of livelihood;
- **Establish** mechanisms for the socio-economic reintegration of victims and their psychological support;
- **Define an action plan** to fight the persistence of slavery in Africa through concrete actions and measures.