



# **MALI. CRIMES WITHOUT CONVICTIONS**

ANALYSIS OF THE JUDICIAL RESPONSE TO CONFLICT-RELATED  
CRIMES IN CENTRAL MALI

**AMNESTY  
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# CONTENTS

<b>EXECUTIVE SUMMARY</b>	<b>7</b>
AN IMPERFECT LEGAL FRAMEWORK	8
BARRIERS TO JUSTICE AND TRUTH	9
INVESTIGATIONS INTO EMBLEMATIC CRIMES AT A STANDSTILL	9
A WAY OUT OF THIS IMPASSE	10
<b>METHODOLOGY</b>	<b>11</b>
<b>1. BACKGROUND</b>	<b>12</b>
1.1 ABUSES COMMITTED BY ALL PARTIES TO THE CONFLICT	12
1.2 JUSTICE, AN IMPERATIVE FOR THE VICTIMS, A COMMITMENT FOR THE AUTHORITIES	14
1.3 NATIONAL JURISDICTIONS, THE ICC AND THE TJRC	16
<b>2. AN IMPERFECT LEGAL FRAMEWORK</b>	<b>19</b>
2.1 OFFENCES CODIFIED UNDER MALIAN LAW	19
2.1.1 THE CRIMINAL CODE	19
2.1.2 THE LAW ON THE REPRESSION OF TERRORISM	21
2.1.3 THE REFORM PROJECTS OF THE LEGAL CODES	22
2.2 CONTROVERSY OVER AMNESTIES IN THE NATIONAL CONCORD LAW	23
2.2.1 CONFUSION AND CONTRADICTIONS IN AMNESTIED OFFENCES	24
2.2.2 DISAGREEMENT OVER THE TIMEFRAME OF THE AMNESTY MEASURES	24
2.3 COMPETING JURISDICTIONS	25
2.3.1 DIVISION BETWEEN THE COURTS OF FIRST INSTANCE AND THE SPECIALIZED JUDICIAL UNIT	25
2.3.2 THE PROBLEMATIC JURISDICTION OF THE MILITARY COURTS FOR CRIMES COMMITTED BY MALIAN SOLDIERS AGAINST CIVILIANS	27
2.3.3 JURISDICTION OF THE FRENCH COURTS FOR CRIMES COMMITTED BY FRENCH SOLDIERS IN MALI	29
<b>3. BARRIERS TO EFFECTIVE JUSTICE</b>	<b>31</b>
3.1 THE DIFFICULTIES IN TERMS OF JUDICIAL INVESTIGATIONS	32
3.1.1 A JUSTICE SYSTEM FAR REMOVED FROM THE CONFLICT ZONES	32
3.1.2 LACK OF PROTECTION FOR VICTIMS AND WITNESSES	35
3.2 SERIOUS VIOLATIONS OF DETAINEES' RIGHTS AND RIGHTS TO A FAIR TRIAL	37

3.2.1 ILLEGAL DETENTIONS AND BAD TREATMENT WITHIN THE STATE SECURITY SERVICE	37
3.2.2 INADEQUATE OR NON-EXISTENT LEGAL REPRESENTATION	43
HOW MINORS ARE TREATED IN THE MALIAN JUSTICE SYSTEM	45
<b>4. STATUS OF CASES INVOLVING SERIOUS CRIMES COMMITTED IN CENTRAL MALI SINCE 2018</b>	<b>47</b>
4.1 PROCEEDINGS INVOLVING ARMED GROUPS AND CRIMINALS	47
4.2 PROCEDURES CONCERNING THE NATIONAL ARMED FORCES	55
4.2.1 PROCEEDINGS BEFORE THE BAMAKO MILITARY COURT	56
4.2.2 PROCEEDINGS BEFORE THE MOPTI MILITARY COURT	57
4.2.3 BOUNTI AND THE QUESTION OF VIOLATIONS PERPETRATED BY THE FRENCH ARMY IN MALI	60
<b>5. CONCLUSION AND RECOMMENDATIONS</b>	<b>62</b>
5.1 TO THE GOVERNMENT OF MALI	62
5.2 TO THE MALIAN ARMED FORCES	64
5.3 TO NON-STATE ARMED GROUPS	64
5.4 TO FRANCE	64
5.5 TO MINUSMA	64
5.6 TO OTHER INTERNATIONAL PARTNERS	64

# GLOSSARY

TERM	DESCRIPTION
<b>ACHPR</b>	African Commission on Human and Peoples' Rights
<b>ACLED</b>	<b>Armed Conflict Location &amp; Event Data Project</b>
<b>AJM</b>	<i>Association des Juristes Maliennes / Association of Malian Women Lawyers</i>
<b>AMDH</b>	<i>Association Malienne des Droits de l'Homme / Malian Association for Human Rights</i>
<b>ANSE</b>	<i>Agence Nationale pour la Sécurité d'État / National State Security Agency</i>
<b>AQIM</b>	Al Qaeda in the Islamic Maghreb
<b>BIS</b>	<i>Brigade d'Investigations Spécialisées / Specialized Investigation Brigade</i>
<b>CEDAW</b>	Committee on the Elimination of Discrimination against Women
<b>CMA</b>	Coordination of Movements of Azawad
<b>CNDH/NHRC</b>	<i>Commission Nationale pour les Droits de l'Homme / National Human Rights Commission</i>
<b>DDR</b>	Disarmament, Demobilization and Reintegration
<b>DGSE</b>	<i>Direction Générale de la Sécurité d'État / General State Security Directorate</i>
<b>DNA</b>	Dan na Ambassagou
<b>DNAJS</b>	<i>Direction Nationale de l'Administration Judiciaire et du Sceau</i>
<b>EIGS</b>	<i>État Islamique au Grand Sahara / Islamic State in the Greater Sahara</i>
<b>EUCAP</b>	European Union Capacity Building Mission
<b>EUTM</b>	European Union Training Mission in Mali
<b>FAMA</b>	Armed Forces of Mali
<b>FIDH</b>	International Federation for Human Rights
<b>FORSAT</b>	Special Anti-Terrorist Task Force
<b>GSIM</b>	Group for the Support of Islam and Muslims

TERM	DESCRIPTION
<b>HRW</b>	Human Rights Watch
<b>ICC</b>	International Criminal Court
<b>ICIM</b>	International Commission of Inquiry for Mali
<b>ICRC</b>	International Committee of the Red Cross
<b>M5 RFP</b>	<i>Mouvement du 5 juin - Rassemblement des forces patriotiques</i>
<b>MAC</b>	<i>Maison d'arrêt et de correction</i>
<b>MINUSMA</b>	United Nations Multidimensional Integrated Stabilization Mission in Mali
<b>OCHA</b>	United Nations Office for the Coordination of Humanitarian Affairs
<b>PJS</b>	Specialized Judicial Unit against terrorism and transnational organized crimes
<b>TJRC</b>	Truth, Justice and Réconciliation Commission
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>WILDAF</b>	Women and Law and Development in Africa

# EXECUTIVE SUMMARY

**How do you expect me to conduct investigations when I can't even visit the scene of the crime without a military escort?  
How do you expect me to investigate incidents potentially involving the Armed Forces when my safety depends on their goodwill?**

A judge based in central Mali, raising the complexity of judicial investigations

Mali has been grappling with an internal armed conflict for 10 years. Initially pitting the Malian army against secessionist movements in the north allied with Al Qaeda in the Islamic Maghreb (AQIM)-affiliated groups, the conflict has become much more complex over the years with reconfigurations within these movements, the emergence of new armed and criminal groups in the central regions, and the intervention of several foreign armed forces.

Since 2018, the conflict has been characterized by increasing abuses against the civilian population, particularly in the central regions (Mopti and Ségou regions). Reports from the United Nations, Amnesty International, and several international and Malian non-governmental organizations (NGOs) have documented abuses committed by all parties to the conflict in these areas, some of which could be qualified as war crimes or even crimes against humanity. Armed groups such as the État Islamique au Grand Sahara (EIGS) and the Islam and Muslim Support Group (GSIM) have targeted and killed civilians, blockaded villages, and kidnapped people. Dan na Ambassagou and other criminal groups have perpetrated deliberate attacks on entire villages, resulting in massacres such as those that took place in Koulogon-Peul (39 people killed in January 2019), Ogossagou, (157 people killed in March 2019 and 35 in February 2020), and Sobane-Da (35 people killed in June 2019). Members of the Malian Armed Forces (FAMA) have been responsible for unlawful killings and extrajudicial executions, including in Dioura (17 people killed in February 2018), Nantaka (25 people killed in June 2018), Massabougou (9 people killed in June 2020), Binédama and Yangassadiou (37 and 15 people killed in June 2020 respectively). The French armed forces have been accused of possible violations of international humanitarian law in connection with the bombing of a wedding ceremony in Bounti in January 2021, in which 19 civilians and three suspected armed group members were killed.

Since 2018, the Malian authorities have repeatedly pledged to fight impunity and address the rights of victims and their families to justice. Despite these commitments, the course of justice remains slow, frustrating victims and their families, and reinforcing impunity. This report takes stock of Mali's judicial response to conflict-related crimes committed since 2018 in the central regions of the country. It is based on a series of interviews conducted by Amnesty International during two research missions to Bamako in June and October 2021, as well as an analysis of legal and judicial documents, investigations and other research reports. A total of 35 people were interviewed as part of this research, including members of the government, investigators from the Specialized Judicial Unit against terrorism and transnational organized crimes (PJS), the Mopti Court and the Bamako Court of Appeals, investigators from the Specialized Investigation Brigade

(BIS), magistrates from the military courts of Bamako and Mopti, lawyers, and members of civil society involved in some of the judicial cases-

This report shows that the fight against impunity in Mali faces many barriers and that these are blocking ongoing proceedings into crimes committed in the centre of the country since 2018, preventing the rights of victims and their families to truth, justice and reparation from being met. While the administration of justice is complicated by the absence of civil service personnel in a large part of the country and insecurity that hampers investigative and prosecutorial capacity, Amnesty International's research shows that legislative and institutional reforms, additional technical and financial resources for the judicial system, and stronger political will are needed to strengthen justice efforts and bring them into line with international human rights standards.

On 22 February 2022, Amnesty International sent a letter to the Malian authorities, presenting the findings of this report and giving them an opportunity to respond. At the time of publication of this report, no response was provided to Amnesty International by the Malian authorities.

## **AN IMPERFECT LEGAL FRAMEWORK**

The Malian legal framework governing crimes under international law suffers from certain gaps and imprecisions that foster impunity and deny justice to victims.

The Criminal Code does criminalize crimes under international law but the definition of war crimes must be brought into line with that of the Rome Statute. Furthermore, while many offences also enable serious human rights violations and abuses committed by parties in conflict to be covered, the Criminal Code should include offences relating to sexual violence other than rape.

The 2019 National Concord Law, which pardons several “acts that may be qualified as crimes or misdemeanours (...) occurring in the context of events related to the crisis that began in 2012 and which has seriously undermined national unity, territorial integrity and social cohesion”, it is ambiguous as to the exact temporal and material scope of these amnesties. These ambiguities must be resolved to ensure that Mali meets its obligations to investigate and prosecute those responsible for crimes under international law and other serious violations.

Competing jurisdictions with the responsibility of investigating and prosecuting the perpetrators of serious crimes committed since 2018 is also a barrier to combatting impunity. The Specialized Judicial Unit (PJS) has had jurisdiction since 2019 to investigate all crimes under international law throughout Mali and prosecute their perpetrators. In practice, it investigates allegations of crimes under international law committed by armed or criminal groups only and does not investigate allegations of violations against civilians by the Malian Armed Forces or its international partners.

It is the military courts that investigate allegations of crimes committed against civilians by the military. This is in contravention of the African Commission on Human and Peoples' Rights' Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa (2003), which state that: “The only purpose of military courts shall be to determine offences of a purely military nature.” This jurisdiction given to military courts is contrary to international law and is, in practice, an impediment to justice. In fact, the provost marshals in charge of investigating allegations of abuses committed by the military are under the hierarchical orders of the zone commanders, and the Minister of Defence alone can take the initiative to prosecute through the military courts, with military court judges sometimes reluctant to issue arrest warrants for fear of potential unrest within the army.

The 2014 defence agreement between Mali and France also specifies that French courts shall exercise priority jurisdiction over “any act or negligence of a member of its personnel in the performance of official duties” which, depending on the interpretation, may include allegations of crimes committed by French military personnel operating in Mali. This priority also constitutes a barrier to justice since the French authorities have rejected some allegations of violations without even opening a judicial investigation. Such was the case with the French army's bombing of a wedding ceremony in Bounti (Mopti region) on 3 January

2021 in which 19 civilians and three suspected members of armed groups were killed, according to an investigation by the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA).

## **BARRIERS TO JUSTICE AND TRUTH**

Insecurity, the remoteness of judicial actors from areas where most of the abuses occur, and the lack of resources also form barriers to the proper administration of justice. Members of the judiciary are dependent on logistical support from the Malian army and, sometimes, on MINUSMA to carry out their activities in conflict-affected areas, particularly in central Mali. Requests to deploy investigators to sites of abuses and to identify and bring suspects to justice are regularly denied on the grounds of the presence of armed groups and improvised explosive devices (IEDs) in these areas.

Investigations are also complicated by the lack of protection measures for victims and witnesses located in a conflict zone, sometimes living near those suspected of committing the abuses. This means they are afraid to testify because of possible reprisals.

Alongside this, the General State Security Directorate (DGSE), an intelligence agency with no connection to the judiciary, interferes in the justice efforts. The DGSE detains individuals incommunicado, including some on the grounds that they may be affiliated to armed Islamist groups, without any charges being brought against these individuals or any other legal basis for these illegal detentions. Amnesty International has documented cases of torture and ill-treatment of these individuals illegally detained by the DGSE. These practices continue in the full knowledge of all, including the judicial authorities, who have on several occasions “recovered” persons detained by the DGSE in order to prosecute them on the basis of statements made without the presence of a lawyer and possibly, if not probably, under torture.

All of these barriers only serve to prolong the investigation time and reinforce the feeling of impunity, of a failing system, and of a lack of credibility of justice among communities, witnesses and victims.

## **INVESTIGATIONS INTO EMBLEMATIC CRIMES AT A STANDSTILL**

Given the legal, institutional and security barriers, and in the absence of any real will on the part of the relevant authorities, impunity has been the order of the day for crimes committed against civilians in the context of the conflict since 2018.

Judicial investigations have been opened into major massacres committed since 2018 by armed groups or criminal groups in the centre of the country. The Koulogon-Peul massacre (January 2019) was investigated by the Mopti prosecutor prior to the PJS's jurisdiction being extended to crimes under international law. This is the only case for which a trial was held, albeit in the absence of the defendants. Other tragic events such as the Ogossagou I and II (March 2019 and February 2020), Sobane-Da (June 2019), and Bankass (July 2020) massacres are the subject of PJS investigations, but these are making little progress.

At the same time, several people arrested since 2018 in the centre of the country have been tried for acts of “terrorism” as defined by Malian law. As of November 2021, 221 terrorism trials had taken place in the Bamako and Mopti Courts of Appeal, some of which (the exact number could not be determined by Amnesty International) involved allegations of acts committed in the centre of Mali after 2018. These proceedings preclude all efforts to obtain justice for crimes potentially committed by these individuals (or groups with which they may be affiliated) against civilian populations, since they are based on charges of belonging to an armed group or possession of weapons as described in the 2008 Terrorism Law rather than on charges relating to crimes committed against civilians under the Criminal Code. In addition, these trials are rushed, with court-appointed lawyers having little time to prepare their defence, which is sometimes based on statements taken from the accused without the presence of a lawyers and during incommunicado detention

with a high risk of torture. As a result, these trials do not meet the minimum standards of fairness required by international law.

Finally, although proceedings have been opened by the military courts, notably in the incidents of Dioura, Kobaka/Nantaka, Malémana, Yangassadiou, Massabougou, and Binédama, no Malian soldier has yet been arrested or tried for crimes committed against civilians in the centre of Mali. In addition, the French justice system has not opened an investigation into the Bounti incidents regarding alleged crimes by the French military.

## **A WAY OUT OF THIS IMPASSE**

There is a crying need for justice. This climate of impunity only favours a perpetuation of the violence and reprisals that affect primarily civilians and contribute to undermining confidence in State institutions.

Ten years on from the start of the conflict, Amnesty International is calling on the authorities to act by speeding up the ongoing revision of codes of justice in order to address their shortcomings and by strengthening the technical, financial and human resource capacity of the justice sector.

Amnesty International is calling on the Malian authorities to formally recognize the competence of the Specialized Judicial Unit against terrorism and transnational organized crimes (PJS) to investigate crimes committed by the military against civilians in order to comply with international human rights law. Amnesty International is also urging the authorities to ensure that judicial proceedings related to the conflict are independent and impartial, including being completely free from unlawful intervention by the General State Security Directorate. Investigations must be opened into suspicions of ill-treatment and torture in detention and the judiciary must cease all collaboration with the DGSE regarding persons illegally detained by this body.

The defence and security forces must support the work of the judiciary by helping to make suspects available and implementing arrest warrants, by facilitating access on the part of judicial personnel to sites of interest and supporting the protection of witnesses and victims.

The right to justice and truth cannot be subordinate to security requirements or political considerations. The Malian authorities must therefore speed up emblematic procedures concerning, for example, the incidents of Koulogon-Peul, Ogossagou I and II, Sobane-Da, Bankass, Dioura, Kobaka/Nantaka, Malémana, Yangassadiou, Massabougou, and Binédama, for which the victims or their families are still awaiting justice. They must also ensure that legal proceedings are opened into the Bounti incidents, whether by the French authorities or by the Malian authorities themselves. The support of MINUSMA and Mali's international partners will be crucial, whether in terms of logistics, funding, or capacity building.

Converting the will to combat impunity into action by concluding judicial proceedings in Mali in accordance with the right to a fair trial will not only contribute to justice for the victims and their relatives but will also strengthen the population's confidence in State institutions, which has been weakened by the security crisis.

# METHODOLOGY

This report on the right to justice and the fight against impunity takes stock of Mali's judicial response to serious violations of international humanitarian and human rights law committed by all parties to the conflict in central Mali since 2018. It examines the institutional and legal framework governing these proceedings and the challenges faced by the authorities in the judicial response to conflict-related human rights violations and abuses.

The report is based on an analysis of investigations into conflict-related crimes since 2018, at which point a sharp increase in violence against civilians was documented in Mali. It is also based on a series of interviews conducted by Amnesty International between October 2020 and November 2021 with actors involved in the administration and monitoring of these judicial proceedings in Mali.

An Amnesty International delegation visited Bamako twice (June and October 2021) to meet with government officials, members of the judiciary, civil society and international organizations and discuss efforts and challenges in conducting judicial investigations and barriers to the proper administration of justice. The delegation also conducted interviews virtually with representatives of the military and ordinary courts and MINUSMA based in Mopti.

The Amnesty International delegation was also able to observe the proceedings of the special criminal trial sessions on terrorism at the Court of Assizes within Bamako Court of Appeal, which took place in the capital from 4 October to 2 November 2021. Delegates were able to attend several trials between 4 and 8 October 2021 and speak with the defence lawyers involved in those trials.

A total of 35 people were interviewed for this research, including the Minister of Justice and the Minister of Defence, as well as staff from their offices, the former Minister of Family and Promotion of Women, judges from the Specialized Judicial Unit against terrorism and transnational organized crimes (PJS) and from the Mopti Court and the Bamako Court of Appeal, investigators from the Specialized Investigation Brigade (BIS), judges from the military courts of Bamako and Mopti, the military justice authorities, members of civil society actively involved in prosecutions and judicial oversight, lawyers who have defended clients in terrorism trials, civil servants involved in revising the Criminal Code and the organization and administration of justice in Mali, and representatives of MINUSMA. The interviews were conducted in French.

Amnesty International did not interview the State Security authorities, an intelligence agency heavily involved in the detention of defendants but was able to speak to former detainees of this agency, as well as local institutions and organizations that have interacted with it.

Prior to each interview, Amnesty International informed the interviewees of the nature and purpose of its research and how it would use the information gathered. No incentives were offered for them to speak out.

In order to minimize the risk during all face-to-face interviews, the delegation complied with the COVID-19 health protocol, including wearing masks and following social distancing requirements.

The report also draws on extensive documentation of justice administration in the context of Mali's conflict, coming from government organizations, civil society and MINUSMA.

On 22 February 2022, Amnesty International sent a letter to the Malian authorities presenting the findings of this report and giving them an opportunity to respond. At the time of publication of this report, no response was provided to Amnesty International by Malian authorities.

# 1. BACKGROUND

## 1.1 ABUSES COMMITTED BY ALL PARTIES TO THE CONFLICT

Mali has been grappling with a non-international armed conflict since January 2012. Initially pitting the Malian state against secessionist movements in the north allied with Al Qaeda in the Islamic Maghreb (AQIM)-affiliated groups, the conflict has become much more complex over the years with reconfigurations within these movements, the emergence of new so-called armed “self-defence” groups in the centre of the country, the intervention of several armed forces allied with the Malian government forces (French armed forces and G5 Sahel forces) and the presence of the Integrated Multidimensional Stabilization Mission in Mali (MINUSMA).

Since 2018, the conflict has been marked by a dramatic increase in abuses against civilians, particularly in the centre of the country (Ségou and Mopti regions), which has become the epicentre of the conflict in Mali, along with Niger and Burkina Faso, where the activity of armed groups such as the Group for the Support of Islam and Muslims (GSIM - *Jama'a Nusrat ul-Islam wa al-Muslimin*), formed in March 2017, and Islamic State in the Greater Sahara (EIGS), has spread with all its ensuing violence. At least 8,254 civilians lost their lives in Mali, Niger and Burkina Faso between January 2012 and October 2021, according to the ACLED database.<sup>1</sup> Nearly 90% of these incidents have occurred since January 2017.<sup>2</sup> Due to the insecurity, 401,736 people were internally displaced in Mali as of November 2021,<sup>3</sup> including more than 157,000 in the Mopti region, according to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA).<sup>4</sup>

Human rights abuses and violations of international humanitarian law, including war crimes and, possibly, crimes against humanity –perpetrated by all parties to the conflict in the centre of the country– have been documented through several investigations by the UN, journalists and NGOs such as Amnesty International.<sup>5</sup> These abuses include: killings, extrajudicial executions, enforced disappearances, torture, sexual violence, arbitrary arrest and detention, kidnapping, looting and destruction of property.

Abuses have thus been committed against civilians by armed Islamist groups such as the GSIM and EIGS, whose insurgency has gradually spread from the north to the central regions. Among numerous incidents, for example, suspected GSIM members killed at least 32 people in the villages of Tori and Diallassagou in

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<sup>1</sup> 3,479 in Mali, 1,570 in Niger, and 3,205 in Burkina Faso.

The Armed Conflict Location and Event Data Project (ACLED), Mali: Violence against civilians [acleddata.com/dashboard/#/dashboard/81E7F5013D58AD393080A434370FCA3D](https://acleddata.com/dashboard/#/dashboard/81E7F5013D58AD393080A434370FCA3D) (last accessed 1 November 2021)

<sup>2</sup> 3,056 in Mali, 1,420 in Niger, and 3,158 in Burkina Faso:

[acleddata.com/dashboard/#/dashboard/7C1DED66F0F793D66E365E44F762C57A](https://acleddata.com/dashboard/#/dashboard/7C1DED66F0F793D66E365E44F762C57A)

<sup>3</sup> UNHCR, Operational Data Portal: [data2.unhcr.org/en/country/mli](https://data2.unhcr.org/en/country/mli) (last accessed 1 November 2021)

<sup>4</sup> OCHA, Situation des personnes déplacées (janvier-mai 2021) [Situation of Internally Displaced Persons (January-May 2021)], [reliefweb.int/sites/reliefweb.int/files/resources/2021\\_mali\\_humanitarian\\_snapshot\\_July22.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/2021_mali_humanitarian_snapshot_July22.pdf)

<sup>5</sup> Amnesty International, “*They executed some and brought the rest with them: Human rights violations by security forces in the Sahel*” (Index No.: AFR 37/2318/2020), 10 June 2020, [amnesty.org/en/documents/afr37/2318/2020/en/](https://www.amnesty.org/en/documents/afr37/2318/2020/en/)

Amnesty International, *Mali. Violations and abuses as instability spreads*, (Index No.: AFR 37/6835/2017), 1 June 2017, [amnesty.org/en/documents/afr37/6835/2017/en/](https://www.amnesty.org/en/documents/afr37/6835/2017/en/)

Amnesty International, *Mali. All parties to the conflict must put an end to ongoing human rights violations*, (Index No.: AFR 37/001/2014), 21 August 2014, [amnesty.org/en/documents/afr37/001/2014/en/](https://www.amnesty.org/en/documents/afr37/001/2014/en/)

July 2020. Numerous people have been abducted and held captive by members of these groups during the period covered by this report. Villages have been blockaded, impeding the most basic rights of individuals.

Criminal groups and other self-proclaimed self-defence groups such as Dan na Ambassagou, formed in 2016 and active in the Mopti region, which have emerged from the grassroots level, legitimizing themselves on the basis of the absence of civil service personnel in the central regions, have also perpetrated abuses against civilians. Reports have highlighted the responsibility of these armed or criminal groups in the massacres in Koulogon-Peul (39 civilians killed in January 2019),<sup>6</sup> Ogossagou (157 people killed in March 2019 and 35 victims in February 2020)<sup>7</sup> and Sobane-Da (35 civilians killed in June 2019).<sup>8</sup>

Mali's national armed forces (FAMA) have also been responsible for abuses committed since 2018 in the conflict during their so-called counter-terrorism operations. Unlawful killings or extrajudicial executions were committed, for example, against 17 people in Dioura (January and April 2018),<sup>9</sup> 25 people in Kobaka/Nantaka (June 2018),<sup>10</sup> 26 in Malémana (December 2019),<sup>11</sup> 9 in Massabougou (June 2020),<sup>12</sup> 15 in Yangassadiou (June 2020), and 37 in Binédama (June 2020), among others<sup>13</sup> [see Chapter IV].

French armed forces active in Mali since 2013, through the Serval and later Barkhane operations, have also killed civilians<sup>14</sup> and are facing calls<sup>15</sup> from MINUSMA and Malian and international NGOs for an investigation into possible violations of international humanitarian law regarding the French army's bombing of a wedding ceremony in Bounti (Mopti region) in January 2021, during which 19 civilians and three suspected armed group members were killed.

This report analyses the Malian justice system's response to these serious human rights violations, some of which may qualify as crimes under international law, committed since 2018 in the centre of the country.

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<sup>6</sup> MINUSMA. 2019. "Communiqué de presse: Conclusions préliminaires de la mission d'enquête spéciale sur les graves atteintes aux droits de l'homme commis à Ogossagou le 23 mars 2019" [Press Release: Preliminary Conclusions of the Special Fact-Finding Mission on the Serious Human Rights Violations Committed in Ogossagou on 23 March 2019: [minusma.unmissions.org/communiqu%C3%A9-de-presse-conclusions-pr%C3%A9liminaires-de-la-mission-d%E2%80%99enqu%C3%AAt-sp%C3%A9ciale-sur-les-graves](https://minusma.unmissions.org/communiqu%C3%A9-de-presse-conclusions-pr%C3%A9liminaires-de-la-mission-d%E2%80%99enqu%C3%AAt-sp%C3%A9ciale-sur-les-graves) and OHCHR. 2020. "Conclusions de la mission d'enquête spéciale sur les graves atteintes aux droits de l'homme commises à Ogossagou le 14 février 2020" [Findings of the Special Fact-Finding Mission into the Serious Human Rights Violations Committed in Ogossagou on 14 February 2020] (Press Release): [ohchr.org/Documents/Countries/ML/Conclusions\\_mission\\_denquete\\_speciale\\_14feb2020.pdf](https://ohchr.org/Documents/Countries/ML/Conclusions_mission_denquete_speciale_14feb2020.pdf)

<sup>7</sup> MINUSMA/Office of the High Commissioner for Human Rights. 2019. "Rapport sur les atteintes sérieuses aux droits de l'homme commises lors de l'attaque du village de Sobane Da (région de Mopti) le 9 juin 2019" [Report on the serious human rights abuses committed during the attack on the village of Sobane Da (Mopti region) on 9 June 2019], Investigation report: [minusma.unmissions.org/sites/default/files/mali\\_report\\_sobane\\_da\\_final\\_version\\_07.08.2018\\_15.45.pdf](https://minusma.unmissions.org/sites/default/files/mali_report_sobane_da_final_version_07.08.2018_15.45.pdf)

<sup>8</sup> MINUSMA/OHCHR. Rapport sur les abus des droits de l'homme commis dans le village de Koulogon-Peul, commune de Koulogon-Habe, cercle de Bankass, région de Mopti, le 1er janvier 2019 [Report on human rights abuses committed in the village of Koulogon -Peul, commune de Koulogon-Habe, Bankass cercle, Mopti region, 1 January 2019]: [ohchr.org/Documents/Countries/ML/RapportKoulongo.pdf](https://ohchr.org/Documents/Countries/ML/RapportKoulongo.pdf)

<sup>9</sup> Human Rights Watch. 2018. "Mali: Deaths, Torture in Army Detention. Justice Ministry Should Conduct Investigations in the Mopti Region": [hrw.org/news/2018/04/09/mali-deaths-torture-army-detention](https://www.hrw.org/news/2018/04/09/mali-deaths-torture-army-detention)

<sup>10</sup> RFI Afrique. 2018. "Mali: possibles découvertes de charniers vers Nantaka et Kobaka, dans le centre" [Mali: possible discoveries of mass graves near Nantaka and Kobaka, in the centre], 18 June: [rfi.fr/afrique/20180618-mali-possibles-decouvertes-charniers-peuls-nantaka-kobaka-armee-fama](https://www.rfi.fr/afrique/20180618-mali-possibles-decouvertes-charniers-peuls-nantaka-kobaka-armee-fama)

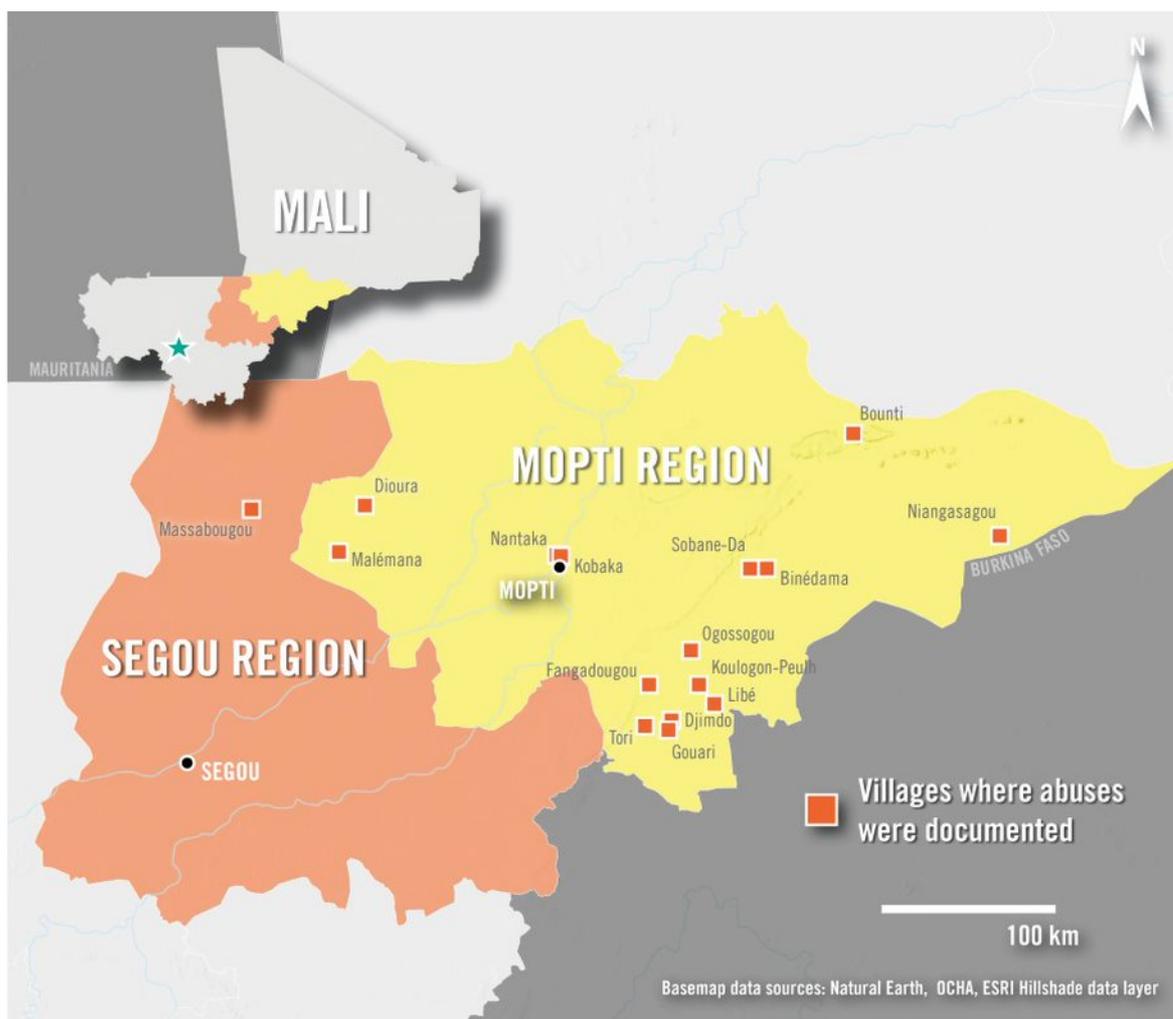
<sup>11</sup> UNO. 2020. "Rapport du Secrétaire général sur la situation au Mali" [Report of the Secretary-General on the situation in Mali], 20 March: [minusma.unmissions.org/sites/default/files/s\\_2020\\_223\\_e.pdf](https://minusma.unmissions.org/sites/default/files/s_2020_223_e.pdf)

<sup>12</sup> MINUSMA. "Note sur les tendances des violations et abus de droits de l'homme au Mali 1er avril - 30 juin 2020" [Note on trends in human rights violations and abuses 1 April - 30 June 2020], Division for Human Rights and Protection: [minusma.unmissions.org/sites/default/files/note\\_trimestrielle\\_tendances\\_des\\_violations\\_et\\_abus\\_de\\_dh\\_avril-juin\\_2020\\_final\\_version.pdf](https://minusma.unmissions.org/sites/default/files/note_trimestrielle_tendances_des_violations_et_abus_de_dh_avril-juin_2020_final_version.pdf) para 37.

<sup>13</sup> MINUSMA. 2020. "Note sur les tendances des violations et abus de droits de l'homme au Mali 1er avril - 30 juin 2020" [Note on trends in human rights violations and abuses 1 April - 30 June 2020], Division for Human Rights and Protection: [minusma.unmissions.org/sites/default/files/note\\_trimestrielle\\_tendances\\_des\\_violations\\_et\\_abus\\_de\\_dh\\_avril-juin\\_2020\\_final\\_version.pdf](https://minusma.unmissions.org/sites/default/files/note_trimestrielle_tendances_des_violations_et_abus_de_dh_avril-juin_2020_final_version.pdf)

<sup>14</sup> FIDH/Amnesty International/AMDH/ASF-Canada. 2021. "Mali: Il est urgent de mener une enquête judiciaire indépendante sur les frappes à Bounty" [Mali: An Independent Judicial Inquiry into the Bounty Strikes is Urgent], (April) [fidh.org/fr/regions/afrique/mali/mali-il-est-urgent-de-mener-une-enquete-judiciaire-independante-sur](https://fidh.org/fr/regions/afrique/mali/mali-il-est-urgent-de-mener-une-enquete-judiciaire-independante-sur)

<sup>15</sup> FIDH/Amnesty International/AMDH/ASF-Canada. 2021. "Mali: Il est urgent de mener une enquête judiciaire indépendante sur les frappes à Bounty" [Mali: An Independent Judicial Inquiry into the Bounty Strikes is Urgent], (April) [fidh.org/fr/regions/afrique/mali/mali-il-est-urgent-de-mener-une-enquete-judiciaire-independante-sur](https://fidh.org/fr/regions/afrique/mali/mali-il-est-urgent-de-mener-une-enquete-judiciaire-independante-sur)



Map showing villages where abuses have been documented in the Ségou and Mopti regions of Mali @Amnesty International

## 1.2 JUSTICE, AN IMPERATIVE FOR THE VICTIMS, A COMMITMENT FOR THE AUTHORITIES

The protection of civilian populations is a major issue for the country. It is the primary responsibility of the Malian authorities and, in particular, its defence and security forces. To this end, the authorities are supported by the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) – created by Security Council Resolution 2100 of 25 April 2013 with a mandate to: facilitate the implementation of a comprehensive, politically-guided Malian strategy to protect civilians; reduce inter-communal violence and re-establish the State’s authority and presence along with basic social services in central Mali; and support the implementation of the Agreement for Peace and Reconciliation in Mali, which

resulted from the Algiers process and was signed in 2015 between the Government of Mali and the Coordination of Azawad Movements (CMA), an alliance of armed groups.<sup>16</sup>

Combatting impunity for serious violations of human rights and international humanitarian law is also a key issue in the context of this conflict. This responds in particular to the need to protect civilian populations by removing and punishing the perpetrators of abuses, thus discouraging any repetition of the violations. Combatting impunity also ensures the victims' rights to justice, truth and reparation as guaranteed by international, regional and national human rights standards.

According to the United Nations independent expert on human rights in Mali, Alioune Tine, "The government must take firm measures to put a definitive end to the cruel, recurrent, and fierce violence, as well as violations and serious violations of human rights. A multisectoral approach is essential: strengthening the functioning of the judiciary and the fight against impunity are essential elements in the prevention of violence."<sup>17</sup>

In addition to international and national standards that require the Malian authorities to respect victims' rights to justice, truth and reparation, the authorities have themselves repeatedly undertaken to fight impunity for serious violations of human rights and international humanitarian law.

The 2015 Agreement for Peace and Reconciliation in Mali,<sup>18</sup> in particular, resulting from the Algiers process, includes a Chapter 14 dedicated to reconciliation and justice. Article 46 provides that the Parties shall agree to promote genuine national reconciliation based on, *inter alia*:

- The creation of an International Commission of Inquiry tasked with investigating all war crimes, crimes against humanity, genocide, sexual crimes and other serious violations of international law, human rights and international humanitarian law throughout Mali;
- Reaffirmation of the imprescriptible nature of war crimes and crimes against humanity and a commitment by the parties to cooperate with the International Commission of Inquiry;
- No amnesty for the authors of war crimes, crimes against humanity or serious violations of human rights, including violence against women, girls and infants, related to the conflict;
- Consolidation of judicial power in order to ensure the rule of law throughout the country;
- Commitment to carry out an in-depth review of the justice system to bring it closer to the litigants, improve its performance, end impunity and integrate traditional and customary regulations, without prejudice to the sovereign law of the State;
- The provision of judicial and legal assistance and information on citizens' rights;
- The promotion of high-quality training for all stakeholders and related personnel in the justice system, including the Cadis;
- The creation of transitional justice mechanisms, in particular by operationalizing the Truth, Justice and Reconciliation Commission (CVJR).

In November 2019, on the occasion of the 1<sup>st</sup> International Congress in Africa of the International Criminal Bar, then Malian President Ibrahim Boubacar Keïta recalled the importance of criminal justice in fighting impunity and reaffirmed his support for the International Criminal Court (ICC) and Mali's cooperation with the Court.<sup>19</sup>

Chapter 1 of the Transition Charter<sup>20</sup> adopted on 12 September 2020, a few days after the coup that removed President Ibrahim Boubacar Keïta from power, states that justice is one of the values and principles that must govern the transitional regime, a regime that will end with the organization of presidential elections.<sup>21</sup>

<sup>16</sup> United Nations. Resolution 2295 (2016) adopted by the Security Council at its 7,727<sup>th</sup> meeting: [minusma.unmissions.org/sites/default/files/160629\\_scr\\_2295\\_.pdf](https://www.unmissions.org/sites/default/files/160629_scr_2295_.pdf)

<sup>17</sup> United Nations Human Rights Council (UNHRC), Mali: UN expert says new government must prioritise safety of civilians and end impunity, 10 May 2019, <https://reliefweb.int/report/mali/mali-un-expert-says-new-government-must-prioritise-safety-civilians-and-end-impunity>

<sup>18</sup> Agreement for Peace and Reconciliation in Mali – a result of the Algiers process, June 2015: [peacemaker.un.org/node/2681](https://www.peacemaker.un.org/node/2681)

<sup>19</sup> International Criminal Court, "Mali and other African High Level Representatives Reaffirm Support for ICC and its Mandate at the Occasion of Major Congress in Bamako", 22 November 2019, [icc-cpi.int/Pages/item.aspx?name=PR1499&ln=en](https://www.icc-cpi.int/Pages/item.aspx?name=PR1499&ln=en)

<sup>20</sup> Decree Number 2020-007/PT-RM promulgating the Transition Charter, 1 October 2020, [koulouba.ml/wp-content/uploads/2020/10/Charte-de-la-Transition-2020.pdf](https://www.koulouba.ml/wp-content/uploads/2020/10/Charte-de-la-Transition-2020.pdf)

<sup>21</sup> Republic of Mali. Annex to Decree No. 2020-0072/PT-RM of 1 October 2020 promulgating the transition charter, October 2020: [sgg-mali.ml/JO/2020/mali-jo-2020-17-sp.pdf](https://www.sgg-mali.ml/JO/2020/mali-jo-2020-17-sp.pdf)

Furthermore, on the occasion of the G5 Sahel Summit on 16 February 2021 in Ndjamena,<sup>22</sup> the authorities concerned, including the Malian authorities, affirmed the need to strengthen the fight against impunity within their armed forces. They stressed the importance of strengthening the penal system and the bond of trust between the defence and security forces and the local population.

## THE MALIAN CONFLICT AND INTERNATIONAL LAW

The situation in central Mali since 2018 has been characterized as a non-international armed conflict. International humanitarian law therefore applies – all parties to the conflict must respect the Geneva Conventions of 1949 and their 1977 Protocols along with all rules of customary international humanitarian law. These include that the parties to the conflict must distinguish between civilians and combatants and not direct attacks against civilians or civilian property.

International human rights law applies equally in times of peace as in times of conflict. The Malian authorities must therefore also respect their obligations under human rights treaties to which they are a party, including the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Convention for the Protection of All Persons from Enforced Disappearance, and other international and regional human rights instruments.

The serious crimes perpetrated in the context of central Mali since 2018 may, in some cases, constitute crimes under international law as defined by the Rome Statute, which Mali ratified in 2000. War crimes are serious violations of international humanitarian law committed in the context of an international or non-international armed conflict (Article 8 of the Rome Statute). Crimes against humanity are crimes committed as part of a widespread or systematic attack directed against the civilian population for the purpose of implementing or furthering the policies of a State or organization (Article 7 of the Rome Statute).

Mali has an obligation to investigate, prosecute and try the perpetrators of crimes under international law and other serious violations of human rights and international humanitarian law. In addition, the victims of such violations have the right to truth, justice and reparation, as set out particularly in the 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 adopted by the United Nations in 2005.

## 1.3 NATIONAL JURISDICTIONS, THE ICC AND THE TJRC

The primary responsibility for combatting impunity for abuses committed in the context of the conflict lies within the national justice system. This report focuses on the exercise of this responsibility in relation to the most serious crimes committed by armed groups and the defence and security forces since 2018.

In addition to the national courts, the ICC also has jurisdiction to prosecute and try the main perpetrators of crimes committed in the context of the conflict. Indeed, Mali, which ratified the Rome Statute on 16 August 2000, referred the matter to the Court in July 2012,<sup>23</sup> asking the prosecutor to investigate the situation in the north of the country. After a preliminary review of the situation, the prosecutor opened an investigation on 16 January 2013 into crimes under international law committed on Malian territory since January 2012.

The ICC has since opened two cases relating to war crimes and crimes against humanity committed by members of armed groups during the occupation of the north of the country between May 2012 and January 2013. The first resulted in the sentencing of Ahmad Al Faqi Al Mahdi on 27 September 2016 to nine years in prison as co-author of the war crime of directing attacks against religious and historical buildings in

<sup>22</sup> Final Communiqué of the Ndjamena Summit, 16 February 2021, [auswaertiges-amt.de/blob/2442494/45ab58515024cfc8a07d11f2679ca290/2021-02-16-communique-de-n-djamena---version-valid%25C3%25A9e-by-leaders-and----data.pdf](https://www.austlii.edu.au/au/other/aufrilff/austrlii/other/aufrilff/auswaertiges-amt.de/blob/2442494/45ab58515024cfc8a07d11f2679ca290/2021-02-16-communique-de-n-djamena---version-valid%25C3%25A9e-by-leaders-and----data.pdf)

<sup>23</sup> International Criminal Court, Situation in the Republic of Mali, [icc-cpi.int/mali?ln=en](https://www.icc-cpi.int/mali?ln=en)

Timbuktu in June and July 2012.<sup>24</sup> The second involves Al Hassan Ag AbdouL Aziz, who is accused of committing war crimes and crimes against humanity, including sexual and gender-based crimes, while serving as *de facto* commissioner in the Islamic Police, with links to the work of the Islamic Court in Timbuktu. His trial commenced on 14 July 2020 and is still ongoing as of the date of this report.<sup>25</sup>

In her 7 April 2021 statement<sup>26</sup> while visiting Mali, ICC Prosecutor Fatou Bensouda said she had “discussed with the Malian authorities the ongoing violence in the country, and in particular, the preoccupying situation in central Mali” and affirmed that “our [the court’s] investigations in Mali continue”. She also confirmed the ICC’s support for national justice efforts to combat impunity for the most serious crimes. She recalled “the need to ensure that investigations by the Malian authorities are conducted as swiftly as possible and that those responsible for the commission of atrocities against the civilian population are brought to justice” and reiterated her Office’s commitment “to provide support as appropriate [...] to assist national efforts to investigate and hold accountable those responsible for the atrocities”.

The Malian authorities have also established a Truth, Justice and Reconciliation Commission (TJRC), created by Ordinance of 15 January 2014.<sup>27</sup> Its mission is “to contribute to the establishment of lasting peace through the search for truth, reconciliation and the consolidation of national unity and democratic values” (Article 1). To this end, it is charged with investigating “serious violations of individual and/or collective human rights committed in the country and, specifically, against women and children” (Article 2). It must also establish the truth about human rights violations and attacks on cultural property, establish responsibility for them and propose measures for reparation and restoration (Article 2). Its scope of investigation extends from 1960 to 2013 (section 3) and thus does not include the period under investigation in this report, i.e. since 2018.

Since its creation, local branches of the TJRC have collected numerous testimonies from victims. The TJRC also held four public hearings in December 2019, December 2020,<sup>28</sup> April and September 2021 to hear testimony from victims of human rights violations committed in Mali since 1960.

On the conclusion of its work, the TJRC will produce a report of the findings of its investigation together with recommendations for reparations and institutional reforms. The TJRC does not, however, have a mandate to prosecute individuals suspected of committing serious human rights violations, and there is no specific bridge between its work and that of the criminal justice system.

Finally, the signatories to the agreement for peace and reconciliation that resulted from the Algiers process (2015) requested the creation of an International Commission of Inquiry mandated to investigate war crimes, crimes against humanity, crimes of genocide, sexual crimes and other serious violations of international law, human rights, and international humanitarian law throughout Mali. This commission was formally established on 19 January 2018 by the UN Secretary-General and mandated to investigate the above-mentioned crimes under international law for the period from 1 January 2012 to 19 January 2018. Just like the TJRC, the scope of this commission’s investigation therefore does not include the post-2018 period which is the object of this report.

The commission concluded its investigation and submitted its report to the UN Secretary-General in June 2020, detailing serious violations of international law committed by the FAMA, armed jihadist and so-called self-defence groups, groups that were signatories to the peace agreement, and by French armed forces during their operations in northern and central Mali.<sup>29</sup> It also listed some of the factors contributing to the impunity that has been enjoyed for these violations in Mali, and which remain relevant to the violations committed since 2018. These include the insecurity faced by judges and the judicial staff, corruption in the Malian judicial system, a lack of financial and technical resources plus weaknesses in the international criminal law skills of those working in the justice system, while also highlighting political interference, abusive amnesty laws, and extrajudicial releases of detainees in secret, all of which impede the proper functioning of

<sup>24</sup> International Criminal Court. Sentencing Judgment, Prosecutor v. Ahmad Al Faqi Al Mahdi, 27 September 2016: [icc-cpi.int/Pages/record.aspx?docNo=ICC-01/12-01/15-171-tFRA](https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/12-01/15-171-tFRA)

<sup>25</sup> International Criminal Court. “Al Hassan trial opens at International Criminal Court”, 14 July 2020: [icc-cpi.int/Pages/item.aspx?name=pr1531&ln=en](https://www.icc-cpi.int/Pages/item.aspx?name=pr1531&ln=en)

<sup>26</sup> International Criminal Court, statement by ICC Prosecutor Fatou Bensouda on the conclusion of her visit to Mali: “Cultural heritage must no longer be attacked and destroyed with impunity”. 7 April 2021, [icc-cpi.int/Pages/item.aspx?name=21-04-07-otp-statement-mission-mali&ln=en](https://www.icc-cpi.int/Pages/item.aspx?name=21-04-07-otp-statement-mission-mali&ln=en)

<sup>27</sup> Mali. Order Number 2014-003 establishing the Truth, Justice and Reconciliation Commission, 15 January 2014, [cvjr-mali.com/data/documents/ordce\\_cvjr-pdf](https://www.cvjr-mali.com/data/documents/ordce_cvjr-pdf)

<sup>28</sup> Truth, Justice, and Reconciliation Commission (CVJR), “La deuxième audience publique de la CVJR s’est tenue le 5 décembre au Centre international de conférence de Bamako” [Second TJRC Public Hearing held on 5 December at Bamako International Conference Centre], 16 December 2020, [cvjr-mali.com/home/the-second-public-hearing-of-the-tjrc-is-held-on-december-05-2020-at-the-international-conference-center-of-bamako/](https://www.cvjr-mali.com/home/the-second-public-hearing-of-the-tjrc-is-held-on-december-05-2020-at-the-international-conference-center-of-bamako/)

<sup>29</sup> United Nations Organization 2020. “Report of the International Commission of Inquiry on Mali (19 June 2020)”: [undocs.org/en/S/2020/1332](https://undocs.org/en/S/2020/1332), part XIII

the justice system. Finally, the International Commission of Inquiry recalled that it was of the utmost priority to end impunity and that it was fundamental to fostering peace and reconciliation.

# 2. AN IMPERFECT LEGAL FRAMEWORK

## 2.1 OFFENCES CODIFIED UNDER MALIAN LAW

### 2.1.1 THE CRIMINAL CODE

The 2001 Criminal Code<sup>30</sup> provides for a number of offences that would enable prosecution of the most serious crimes committed by parties to the conflict.

Crimes of international law are found in the Criminal Code: crimes against humanity (Article 29), genocide (Article 30), and war crimes (Article 31), which are imprescriptible crimes (Article 32). The articles concerning crimes against humanity and genocide are direct transpositions into Malian law of the definitions contained in Articles 6 and 7 of the Rome Statute establishing the ICC.

The definition of a war crime in the Malian Criminal Code, however, differs significantly from that of the Rome Statute. It does not specifically refer to the 1949 Geneva Conventions and, above all, seems to omit war crimes related to non-international armed conflicts due to what appears to have been an oversight on the part of the legislators.

Article 31 of the Malian Criminal Code defines war crimes by giving a list of acts that may qualify as such. This is identical to the lists contained in Articles 8-2-a and 8-2-b of the Rome Statute, i.e. the list of war crimes that may be committed in the context of an international armed conflict. While Article 31 is unclear as it fails to include the chapeau elements of war crimes in its introduction, i.e. the context in which these acts must be committed in order to constitute a war crime, subparagraph (i) of Article 31 does confirm that it relates to acts committed in the context of an international armed conflict, since it starts with the phrase “other serious violations of the laws and customs applicable in international armed conflict within the established framework of international law”, thus implying that subparagraphs (a) to (h) also refer to such violations.

Article 31 of the Malian Criminal Code therefore fails to include the list of acts that constitute war crimes when committed in the context of a non-international armed conflict, as defined in Articles 8(2)(c) and 8(2)(e) of the Rome Statute. It therefore needs to be revised to incorporate all the elements of Article 8 of the Rome Statute, just as the legislators did with regard to incorporating Articles 6 and 7 of the Rome Statute into the Malian Criminal Code (for the definitions of genocide and crimes against humanity).

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<sup>30</sup> Mali, Criminal Code, 2001, [droit-afrique.com/uploads/Mali-Code-2001-penal-MAJ-2016.pdf](https://droit-afrique.com/uploads/Mali-Code-2001-penal-MAJ-2016.pdf)

The incorporation of crimes under international law into the Criminal Code is important because it would make it easier in theory for Malian judges to qualify criminal acts in line with their scope and severity, by specifying the context in which the abuses were committed.

In addition to crimes under international law, the Criminal Code provides for common crimes that may form abuses committed in the context of a conflict, including homicide (Article 199), intentional assault and battery (Article 207), torture (Article 209), rape (Article 226), hostage-taking and abduction (Articles 237 and 240), arson (Article 305), and looting (Article 314), among other offences. Amnesty International believes that, in addition to rape, other offences of a sexually violent nature should be incorporated into Malian law (see box below).

With regard to the forms of criminal responsibility, the Criminal Code provides that the following may be considered responsible as the authors or “accomplices” of a crime (Articles 24 and 25). Any person who:

- “by gift, promise, threats, abuse of authority or power, machination or culpable artifice, advice or injunction provoked this action or gave any instructions, indications or information to commit it”
- “procured weapons, instruments, or any other means that have been used in the action, knowing that they were to be used therein”
- “knowingly helped or assisted the author or authors of the action in the acts they were preparing or facilitating or in those they committed”
- “knowingly suppressed or attempted to suppress evidence of the action or knowingly assisted the authors or accomplices of the crime to evade justice by any means”
- “without risk to themselves and their families, witnessed the crime, refrained from intervening to prevent its commission or who, having knowledge thereof, refrained from denouncing its authors or accomplices”

With regard to criminal penalties, Article 32 provides that crimes against humanity, war crimes and genocide, among other offences, are punishable by death. Article 11 specifies that anyone sentenced to death shall be shot. In 2021, at least 46 people were sentenced to death in the Courts of Assizes in Bamako, Mopti and Kayes.

Although the country has had a moratorium on the death penalty for over 40 years (the last execution was in 1980), Amnesty International is opposed to the death penalty for all crimes and in all circumstances. The death penalty is a violation of the right to life and the right to freedom from torture or other ill-treatment and punishment.

## PRESSURE TO DROP THE DRAFT BILL ON GENDER-BASED VIOLENCE

There is strong social and religious pressure in Mali in relation to women's rights. In 2009, a draft bill of law regarding a new Family Code that would ensure equity between men and women in matters of inheritance and remove a woman's "duty of obedience" to her husband was met with mass protests, resulting in the government referring the Code back to the National Assembly. The new Code, adopted in 2011, reversed much of the progress that had been made in the initial draft adopted by the National Assembly with regard to inheritance rights and the age of marriage for women.<sup>31</sup> A draft bill on gender-based violence has been presented to the authorities since 2017. This draft law codifies a certain number of crimes of sexual violence in addition to rape, and aims to combat all gender-based violence, whether physical, psychological, sexual or economic. It aims to prohibit practices such as child marriage,<sup>32</sup> forced levirate, forced sororate and degrading widowhood rites, among others, and intends to punish participation or complicity in female genital mutilation.<sup>33</sup>

In 2020, the appointment of a civil society member known for her work fighting for gender equality as Minister for the Promotion of Women, Children and the Family, and rumours that a draft bill was to be passed sparked a campaign for her resignation, led by a religious leader based in Nioro du Sahel.

"I was also receiving anonymous threats sent to my phone. They preached against me for six Fridays in a row. The Sharif repeated these threats at each *khoutba*. During the 6<sup>th</sup> Friday *khoutba*, my husband told me to ask for extra protection from the government, for my safety. The Sharif's followers were threatening a protest to impede my activities. The government made no official statement but sent the Minister of Worship to Nioro to give a speech and explain to the faithful that there was no need to worry about this bill which was not on the agenda. However, during his sermon the following Friday, the Sharif insulted him outright. At some point, they realized that they didn't understand how the legislative procedure worked but, out of pride, they were unwilling to backtrack. They wanted me to apologize. And it annoyed me that I was asked to go to Nioro, for no valid reason. I refused, of course."

As of the date of publication of this report, the draft bill has still not been adopted by the Council of Ministers and remains under review by the Ministry of Women and Family Promotion. In addition, Amnesty notes that Mali ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, known as the Maputo Protocol, in 2005 and the Convention on the Elimination of All Forms of Discrimination against Women in 1985.

## 2.1.2 THE LAW ON THE REPRESSION OF TERRORISM

On 23 July 2008, Mali adopted a law "on the repression of terrorism".<sup>34</sup> The law defines the following, among others, as acts of terror:

- kidnapping and threatening to kill a person "in order to compel a State [or other natural or legal person] to act or abstain from any act" (Articles 3.1 and 3.2),
- committing "murder, kidnap or any other attack against a person or the freedom of a person who is internationally protected" or an attack on the premises, dwelling or means of transport of such a person (Articles 3.3 and 3.4),
- delivering, planting or detonating an explosive or other lethal device in or against a public place, government or other public facility, public transport system or infrastructure with the intention of causing death or serious bodily harm, or with the intent to cause widespread destruction to places and property (...)" (Article 3.6),

<sup>31</sup> Baba Ahmed. 2011. "Mali: un nouveau code de la famille, avec la bénédiction des islamistes" [Mali: a new Family Code, with the blessing of the Islamists]. Jeune Afrique (5 December): [jeuneafrique.com/178253/politique/mali-un-nouveau-code-de-la-famille-ave-la-b-n-diction-des-islamistes/](http://jeuneafrique.com/178253/politique/mali-un-nouveau-code-de-la-famille-ave-la-b-n-diction-des-islamistes/)

<sup>32</sup> Defined in the bill as any individual under the age of 18. See Article 7.

<sup>33</sup> Republic of Mali. Preliminary draft law on the prevention, repression and handling of gender-based violence in the Republic of Mali (Ministry for the Promotion of Women, Children and the Family). Document in the possession of Amnesty International.

<sup>34</sup> Mali. 2008. *Law on the repression of terrorism*, 23 July 2008, [unodc.org/pdf/terrorism/Loi%20n%C2%B008-025%20du%2023%20juillet%202008%20contre%20le%20terrorisme0001.pdf](http://unodc.org/pdf/terrorism/Loi%20n%C2%B008-025%20du%2023%20juillet%202008%20contre%20le%20terrorisme0001.pdf)

- when “in relation to an individual or collective enterprise they are intentionally aimed at seriously disturbing the public order through intimidation or terror”, computer-related crimes as defined by the Criminal Code, the illegal acquisition, possession, transport or carrying of explosive substances or devices made with such substances, as well as weapons and munitions of war or defence as defined by the law (Articles 6.1, 6.3 and 6.4).

The law also criminalizes the financing of terrorist acts (Article 8).

This law thus paves the way for the legal codification of crimes that could potentially constitute crimes under international law, such as kidnapping, murder and attacks on civilian objects or persons – acts that would qualify as war crimes if committed in the context of the ongoing armed conflict in Mali, as acts of terrorism rather than war crimes or other crimes as defined by the Malian Criminal Code and international law.

Amnesty calls on the judicial authorities to qualify these as crimes under international law (war crimes or crimes against humanity) where applicable, in accordance with Mali's obligations as a state party to the Rome Statute, in order to fully account for the scale and gravity of these crimes and to recognize the harm suffered by individuals who are victims of these crimes.

The crimes of terrorism defined by this law are not subject to any statute of limitations (Article 9) and are punishable by life imprisonment or, when the crime has resulted in the death of one or more persons, by the death penalty (Article 13). Amnesty International repeats that it is opposed to the death penalty in all circumstances and considers the death penalty to be the ultimate cruel, inhuman, and degrading punishment contrary to human rights.

## 2.1.3 THE REFORM PROJECTS OF THE LEGAL CODES

Mali has been engaged since 2021 in a major review of its legal corpus, the codes, and texts of which are mostly over 10 years old. The review of the Criminal Code and Code of Criminal Procedure is being led by the National Directorate of Judicial Affairs and the Seal (DNAJS). The review of the Code of Military Justice is being conducted by the Directorate of Military Justice.

As of October 2021, the ongoing review of the Criminal Code and the Code of Criminal Procedure had, according to the DNAJS, incorporated several important provisions aimed at combatting impunity for the most serious crimes committed in the context of the conflict. The review has harmonized the definitions of crimes under international law with those of the ICC, included the crime of aggression, inserted provisions for the protection of victims and witnesses of human rights violations in order to support their participation in judicial proceedings, and included a double level of jurisdiction in criminal matters via the creation of criminal chambers within the courts of first instance and the possibility of appeal. The Minister of Justice has shown his support for this latest revision.<sup>35</sup> Certain provisions related to gender-based violence, such as the criminalization of slavery and similar practices, could also be introduced into the Criminal Code.

According to the DNAJS, the process of revising both texts was well underway as of October 2021.<sup>36</sup> Both texts were reviewed in several sessions of a parliamentary standing committee composed of members of the Ministry of Justice plus national and international consultants and experts, including representatives of MINUSMA.

The preliminary draft of the Military Justice Code was validated by the permanent legislative committee. It includes several notorious advances, namely the initiative of public action by the prosecutor of the military court, with the transmission of information to the minister in charge of the armed forces, and provisions for the protection of victims and witnesses (anonymity and hearings in camera), as well as the possibility of appealing judgments, which does not exist in the current Code. In addition, the draft bill provides that the acts and reports drawn up by the judicial police officers are sent directly to the public prosecutor, who assesses whether or not the opportunity for public action is appropriate. Military courts always remain competent, however, for common law crimes committed by soldiers against civilians, excluding crimes under international law for which the PJS has jurisdiction.

The revised texts were to be pre-validated by a standing committee before being presented to and discussed at a national validation workshop open to representatives of civil society, and then referred to the Council of Ministers for adoption. It was not clear in October 2021 whether the texts could be adopted by the National

<sup>35</sup> Interview with the Minister of Justice and Human Rights, Keeper of the Seals of Mali, October 2021

<sup>36</sup> Interviews with Mr. Mohamed Maouloud Najim, Director of the National Directorate of Judicial Affairs and the Seal, 1 July and 13 October 2021

Transitional Council or whether they would have to wait for the election of a new parliament at the end of the transitional regime.

### THE FUTURE OF THE SPECIAL COURTS OF ASSIZES IN MALI

Criminal cases related to the conflict in Mali are tried by special Courts of Assizes within the Bamako, Mopti and Kayes Courts of Appeal. Courts of Assizes are not permanent jurisdictions. Although held within the three above-mentioned courts of appeal, assizes sessions may also be held in other locations within their jurisdiction. All cases investigated by the Specialized Judicial Unit against terrorism and transnational organized crimes (PJS) are brought to and tried before the Bamako Court of Assizes.

According to Article 259 of the 2013 Code of Criminal Procedure, “The Court of Assizes has full jurisdiction to try the individuals referred to it by an indictment. It may disqualify the proceedings and may also take up, *ex officio* or at the request of the Public Prosecutor’s Office, any crimes or offences of the accused that may be revealed during the proceedings.”<sup>37</sup> The convicted person or the prosecutor may then appeal the decision of the Court of Assizes before the Supreme Court but only to denounce a possible violation of the law.<sup>38</sup> The facts of the case are not subject to a second review on appeal.

According to actors in the judicial process,<sup>39</sup> reflections are already underway on the future of these Courts of Assizes, there being a clear desire to abolish the sessions and establish permanent criminal chambers at the level of the Courts of Appeal. The creation of these trial chambers should make it possible to reduce the length of pre-trial detention while ensuring a better guarantee of the principles of procedural fairness, with the possibility of an ordinary appeal in addition to the cassation appeal. “The trials as such have not always shown convincing results in terms of justice administration and remain hampered by the cumbersome nature of their organization. Moving towards criminal chambers would make it possible to meet international requirements in terms of the administration of justice,” said the National Director of the Directorate for Judicial Affairs and the Seal, the department coordinating the review of Mali’s Criminal Code and Code of Criminal Procedure.

## 2.2 CONTROVERSY OVER AMNESTIES IN THE NATIONAL CONCORD LAW

Mali’s Council of Ministers adopted a draft National Concord Law on 31 May 2018 which provides, among other things, for amnesties. This draft bill, prepared without any consultation, was submitted to the National Assembly for adoption in August 2018.

Forty-seven organizations launched a petition in November 2018 denouncing the content of the bill as a “real boost to impunity” especially as investigations and prosecutions for serious crimes committed in the conflict were already underway.<sup>40</sup> In the end, civil society was able to share its concerns and proposed amendments during two days of consultations at the National Assembly, thus allowing certain crimes to be excluded from the scope of the amnesty. Despite persistent disagreements over the content of the bill, it was nonetheless passed by the National Assembly on 27 June 2019 and enacted into law on 24 July 2019.

The National Concord Law undermines the victims’ right to truth and justice and enshrines impunity for certain human rights abuses committed during the conflict.

<sup>37</sup> Mali. Code of Criminal Procedure. <http://ilo.org/dyn/natlex/docs/ELECTRONIC/64578/73898/F-784451298/MLI-64578.pdf>

<sup>38</sup> Mali. Code of Criminal Procedure, Article 505

<sup>39</sup> Interview with Mohamed ould Najim, DNAJS, and the Deputy Prosecutor at the Bamako Court of Appeal, June and October 2021.

<sup>40</sup> VOA Afrique. 2018. “47 associations de défense dénoncent le projet de loi d’entente nationale au Mali” [47 defence associations denounce Mali’s national accord bill], 10 November: [voaafrique.com/a/associations-de-d%C3%A9fense-d%C3%A9noncent-le-projet-de-loi-d-entente-nationale-au-mali/4653034.html](http://voaafrique.com/a/associations-de-d%C3%A9fense-d%C3%A9noncent-le-projet-de-loi-d-entente-nationale-au-mali/4653034.html)

## 2.2.1 CONFUSION AND CONTRADICTIONS IN AMNESTIED OFFENCES

According to Article 2 of Law No. 2019-042 of 24 July 2019 on the National Concord Law,<sup>41</sup> its purpose is, among other things, “to exempt from criminal prosecution those persons who have committed or have been accomplices to the acts referred to in Article 3”.

Article 3 states: “The provisions of this law apply to acts that may be qualified as crimes or offences, provided for and punished by the Malian Criminal Code, special criminal laws and international conventions and texts ratified by Mali in terms of the protection and promotion of human rights, which occurred in the context of events related to the crisis that began in 2012 and which seriously undermined national unity, territorial integrity and social cohesion.”

Article 4 adds that “war crimes, crimes against humanity, rape, international and African conventions on human rights and international humanitarian law and any other crime that is not subject to the statute of limitations” are excluded from the scope of the law.

According to Article 4, the law thus excludes from the scope of the amnesty crimes under international law and, in particular, and explicitly, war crimes and crimes against humanity. By excluding “any other crime deemed imprescriptible” from its scope, it also implicitly excludes genocide and crimes covered by the law on the suppression of terrorism. The law also explicitly excludes rape from the scope of the amnesty. Other forms of sexual violence perpetrated during the conflict, such as sexual slavery or forced prostitution, are also implicitly excluded if they constitute war crimes.<sup>42</sup>

However, a combined reading of Articles 3 and 4 of the law is confusing as to the status of certain offences. Article 3 provides for amnesties for crimes and offences provided for in international conventions and texts ratified by Mali concerning the protection and promotion of human rights, while Article 4 excludes from the scope of said amnesty (violations of rights guaranteed by) international and African conventions on human rights and international humanitarian law.

In practice, these contradictory provisions have led Malian judges to claim the power to interpret these provisions, and thus the possible scope of application of the amnesty, as they see fit. The first time the National Concord Law was implemented, in the Sanogo case (see box below), demonstrates how –by setting aside the qualification of a crime under international law and invoking a broad interpretation of the law's provisions– a judge was able to grant amnesties for certain crimes.

According to Alioune Tine, UN Independent Expert on the situation of human rights in Mali, “the law, as it stands, may not only facilitate impunity for a large number of those responsible for serious human rights violations but could also contribute to circumventing the transitional justice process”.<sup>43</sup>

## 2.2.2 DISAGREEMENT OVER THE TIMEFRAME OF THE AMNESTY MEASURES

Another major area of confusion relates to the temporal scope of the National Concord Law. According to Article 2, the crimes and offences amnestied are those “that occurred in the context of events related to the crisis that arose in 2012”.

For some, this limits the amnesty law to events related to the March 2012 coup d'état against the government of Amadou Toumani Touré and the attempted countercoup organized by the military in April of the same year. The first time this law was applied was in the context of events relating to the attempted countercoup (see box below). For the prosecutor of the Specialized Judicial Unit against terrorism and

<sup>41</sup> Mali, National Accord Law, 27 June 2019, (page 3), [sgg-mali.ml/JO/2019/mali-jo-2019-26.pdf](http://sgg-mali.ml/JO/2019/mali-jo-2019-26.pdf)

<sup>42</sup> Rome Statute, Article 8-2-e-vi)

<sup>43</sup> Office of the High Commissioner for Human Rights, “Un nouveau droit malien pourrait conduire à des situations d’impunité pour les graves violations des droits de l’homme commises dans le passé, selon un expert des Nations Unies” [New Malian law could lead to impunity for past grave human rights violations, says UN expert] . 10 September 2019 [ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=24966&LangID=F](https://ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=24966&LangID=F)

transnational organized crimes (PJS), “The law concerns the coup and its related events. It does not cover current events.”<sup>44</sup>

But the lack of a time limitation in the law could allow the judge to interpret the phrase “events related to the crisis that arose in 2012” as referring to all events that have occurred since 2012 in the context of the armed conflict. According to the former prosecutor of the PJS, “people do not agree”<sup>45</sup> on the temporal scope of the law.

Amnesty International notes that implementation of this law cannot contradict Mali's international human rights obligations, nor its obligations as a state party to the Rome Statute. Mali has an obligation to investigate, prosecute and try the perpetrators of crimes under international law and other serious violations of human rights and international humanitarian law committed on its territory since 2012.

## **AMNESTY FOR SANOGO AND HIS CO-ACCUSED IN THE CASE OF THE MURDER OF THE RED BERETS**

The National Concord Law was applied for the first time in the “Sanogo case”.

Against a backdrop of the occupation of the North by armed groups, a junta led by Amadou Haya Sanogo came to power on 22 March 2012 in a coup against President Amadou Toumani Touré.

Sanogo and 27 other soldiers were accused of responsibility for the kidnapping and murder of 21 paratroopers (red berets) who were killed during an attempted counter-coup that took place on 30 May and 1 June 2012.

Sanogo was arrested on 27 November 2013. In December 2015, 10 of the accused soldiers had their cases dismissed by the Indictments Chamber of the Bamako Court of Appeal. The trial of Sanogo and the 16 remaining military defendants opened in November 2016 and stalled before resuming in 2020. The then Minister of Defence, Ibrahima Dahirou Dembélé, was one of the soldiers prosecuted.

In January 2020, the judiciary ordered the provisional release of Sanogo and the other military personnel still being detained, based on the length of their pre-trial detention, which had exceeded the maximum three years provided by law.<sup>46</sup> At the same time, the government negotiated a reparations agreement with the families to extinguish the public prosecution against the 17 defendants. Then, on 15 March 2021, on the basis of the National Concord Law and a memorandum of understanding signed between the government and the families of the victims, the Bamako Court of Appeals ordered the dismissal of the case against the defendants and their release.<sup>47</sup>

The memorandum of understanding signed on 24 January 2020 provides for various kinds of reparation, including the organization of national funerals for the victims, the status of “wards of the nation” granted to the minor children of the killed soldiers, the allocation of an “F5” social housing unit to each family, as well as financial reparations according to the rank of the victim.

## **2.3 COMPETING JURISDICTIONS**

### **2.3.1 DIVISION BETWEEN THE COURTS OF FIRST INSTANCE AND THE SPECIALIZED JUDICIAL UNIT**

<sup>44</sup> Interview with the Prosecutor of the Specialized Judicial Unit, 27 June 2021

<sup>45</sup> Interview with a former Prosecutor of the Specialized Judicial Unit of Commune VI, 27 June 2021

<sup>46</sup> Amnesty International, “Mali: Former junta leader to walk free while trial date pends”. 28 January 2020, [amnesty.org/en/latest/news/2020/01/mali-former-junta-leader-to-walk-free-while-trial-date-pends/](https://www.amnesty.org/en/latest/news/2020/01/mali-former-junta-leader-to-walk-free-while-trial-date-pends/)

<sup>47</sup> Amnesty International, “Mali: Un recours à la loi d’entente nationale qui envoie un mauvais signal aux victimes” [Mali: Use of National Accord Law Sends Wrong Signal to Victims]. 19 March 2021, [www.amnesty.org/en/documents/AFR37/3877/2021/fr/](https://www.amnesty.org/en/documents/AFR37/3877/2021/fr/)

In 2012, a Supreme Court ruling gave jurisdiction to the Court of Bamako Commune III to hear crimes that had previously fallen under the jurisdiction of the regions of Mopti, Gao and Timbuktu, as these were now occupied by armed groups. These regions regained their jurisdiction in 2015.

Meanwhile, in May 2013, a Specialized Judicial Unit against terrorism and transnational organized crimes (PJS) was created within the Bamako Commune VI High Court.<sup>48</sup> The PJS was not operational until 2015. Since then, when prosecutors from the local jurisdictions qualify crimes as acts of terrorism or transnational organized crime, the cases are referred to the PJS. The investigating court thus changes depending on the initial legal qualification of the crime.

Between 2015 and 2019, crimes under international law provided for in the Criminal Code, such as war crimes, crime against humanity and genocide, thus remained under the jurisdiction of the courts where the crime was committed. However, few prosecutions and no convictions took place on the basis of these crimes, mainly due to the judges' lack of knowledge of these specific offences.

In light of this, and in order to encourage the Malian justice system to investigate certain incidents on the basis of crimes under international law, civil society organizations involved in prosecutions of human rights violations related to the conflict advocated for the jurisdiction of the PJS to be extended to crimes under international law.<sup>49</sup>

This extension of jurisdiction was laid down in a new law in July 2019. Since then, the PJS, composed of a prosecutor, six deputies and 10 investigation teams<sup>50</sup> has also had jurisdiction over crimes under international law, such as war crimes, crimes against humanity and crimes of aggression.

The judicial police officers present in the centre and north of the country have, since then, been able to send reports of hearings directly to the PJS without going through the prosecutors in the local jurisdictions. A former PJS prosecutor says, "The goal is to prevent them [local court prosecutors] from taking over cases that do not fall under their jurisdiction, in addition to avoiding the security problems that could arise from an investigation at the level of these courts."<sup>51</sup> One objective of this centralization is to avoid mischaracterization of the crimes and a conflict of jurisdiction between local courts and the PJS.

While the case of the Koulogon-Peul massacre remained with the Mopti High Court, its investigation having begun before the extension of the PJS's jurisdiction, all other cases involving mass crimes committed by armed groups from March 2019 onward now therefore fall under the jurisdiction of the PJS. The PJS has also taken up, not without complexity,<sup>52</sup> cases from the Court of Bamako Commune III concerning crimes under international law, including sexual violence, perpetrated during the occupation of the North by armed groups.

To facilitate the investigations of the PJS by bringing it closer to the scene of the crimes, a branch of the unit was opened in Sévaré in October 2021 to house agents of the Specialized Investigation Brigade (BIS).

For offences that fall under the jurisdiction of the ordinary courts, including crimes under international law, the public prosecution is initiated by a judge or by the victim of the crime who decides to file a civil suit (Article 3 of the Code of Criminal Procedure). Proceedings for serious human rights violations related to the conflict were long initiated mainly by victims, supported by civil society organizations. Since the extension of the PJS's jurisdiction to include crimes under international law, it appears that the Unit has been more systematically investigating cases of mass killings, as was the case for the Ogossagou-Peul and Sobane-Da massacres. The cases opened by the PJS into terrorism charges appear to be in response to arrests of suspects by Malian forces or elements of the French Barkhane force (see Chapter 4).

<sup>48</sup> Republic of Mali. *Law No. 2013-016 of 21 May 2013 amending Law No.01-80 of 20 August 2001 on the Code of Criminal Procedure*

<sup>49</sup> Republic of Mali. *Law No. 2019-050 of 24 July 2019 amending Law No. 01-080 of 20 August 2001, as amended, on the Code of Criminal Procedure.*

<sup>50</sup> Interviews with PJS judges and AMDH members, June and October 2021

<sup>51</sup> Interview with a former Prosecutor of the Specialized Judicial Unit, June 2021.

<sup>52</sup> Several complaints have been filed by victims of sexual violence committed by elements of armed groups during the occupation of the north of the country. In particular, in November 2014, 80 victims of sexual violence, supported by the International Federation for Human Rights, the Malian Association for Human Rights, Women in Law and Development in Africa (WILDAF-Mali), DEME SO, the Association of Malian Jurists and Collectif Cri de Cœur, filed a complaint before the Court of Bamako Commune III, which then had jurisdiction over the whole north of the country affected by the conflict, for war crimes and crimes against humanity ([fidh.org/fr/regions/afrique/mali/mali-depot-d-une-plainte-au-nom-de-80-victimes-de-viols-et-de#:-:text=Bien%20que%20de,la%20justice%20malienne](http://fidh.org/fr/regions/afrique/mali/mali-depot-d-une-plainte-au-nom-de-80-victimes-de-viols-et-de#:-:text=Bien%20que%20de,la%20justice%20malienne)). A second complaint was filed by 33 other victims as civil parties and supported by the same organizations in March 2015, also for war crimes and crimes against humanity ([fidh.org/IMG/pdf/fidh\\_centre\\_of\\_mali\\_the\\_populations\\_taken\\_by\\_terrorism\\_and\\_counter\\_terrorism.pdf](http://fidh.org/IMG/pdf/fidh_centre_of_mali_the_populations_taken_by_terrorism_and_counter_terrorism.pdf) page 71.) Victims have named certain suspects in these complaints. Despite hearing the civil parties, the investigation of these two emblematic cases has stalled. The successive changes in jurisdiction between the Court of Bamako Commune III, the courts of the north and the PJS have generated confusion within these courts, particularly with regard to whether these changes apply to cases already before a court, which partly explains a lack of follow-up in their investigation. Some judicial actors do not hesitate to speak of the "loss" of files by the justice system.

## 2.3.2 THE PROBLEMATIC JURISDICTION OF THE MILITARY COURTS FOR CRIMES COMMITTED BY MALIAN SOLDIERS AGAINST CIVILIANS

Article 16 of the 1995 Military Justice Code<sup>53</sup> provides that “in times of peace as in times of war, the military courts are competent to investigate and judge offences of ordinary law committed by military personnel” during the performance of their duties (in addition to offences of a purely military nature). Military courts thus have jurisdiction over crimes committed by members of the Malian Armed Forces against civilians.

It is not clear what common law offences are involved, however, as the Military Justice Code is “obsolete” even according to members of the military institution,<sup>54</sup> justifying in part its current revision by the Directorate of Military Justice given that it refers to the 1961 Criminal Code<sup>55</sup> which has been replaced by the 2001 Criminal Code. This 1961 Code does not include crimes under international law that might be committed by military personnel in action, nor does it reflect national and international advances in defining other crimes that might be committed in the context of the conflict.

According to members of the military interviewed by Amnesty International, military courts have exclusive jurisdiction to try any crime committed by military personnel during operations, including against civilians and including crimes under international law.<sup>56</sup> This view is shared by the military on the basis that it would be easier for judges from the military to prosecute military personnel than civilian judges who have a poor understanding of how the military works. And this opinion is also partly accepted within the Specialized Judicial Unit (PJS),<sup>57</sup> at least given the competing laws governing these crimes in Mali.<sup>58</sup> This opinion is reflected in practice, since all cases involving crimes committed by the military against civilians are heard by military courts.

But this opinion is not shared by all. One senior judge who was involved in the expansion of the PJS's jurisdiction is surprised that this issue is still being raised since the 2019 law was passed, as this was intended to centralize cases involving crimes under international law within the PJS. In his words:

**“For judicial investigations into crimes under international law committed by the military against civilians, the PJS has sole jurisdiction because the military courts do not work in practice in Mali. It is the judicial unit that has primacy of action in these offences. That's what I think, but the military may think differently. My point is that this issue should be clearly decided, by being written into law, and that it should be clearly written in black and white in the law.”<sup>59</sup>**

While there is some debate as to whether military courts can have jurisdiction over crimes under international law given the obsolescence of the Military Justice Code, Amnesty International nonetheless stresses that the African Commission on Human and Peoples' Rights' Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa clearly state that the sole purpose of military courts should be to try purely military offences committed by military personnel (see box below).<sup>60</sup> The jurisdiction of Mali's military courts to hear crimes committed by military personnel against civilians in practice impedes the administration of justice and the right to a fair trial.

First of all, the military courts were not operational until 2017. In addition, the weakness of the provost marshal system in Mali poses a barrier to initiating prosecutions through the military courts. In Mali, the judicialization of military operations takes place through the presence of provost marshals from the gendarmerie, who act as the military judicial police. In practice, provost marshals are rarely deployed on operations and, when they are, they operate under the authority of the operations zone commanders. This subordination to the military command may hinder the proper investigation of offences; reports drawn up by the provost marshals must first be submitted to the theatre commanders, who have the discretion to amend them before forwarding them to the prosecutors of the military courts with jurisdiction over these zones.

<sup>53</sup> Republic of Mali, Law No. 95,042 on the Code of Military Justice, 20 April 1995, [http://www.vertic.org/media/National%20Legislation/Mali/ML\\_Code\\_de\\_Justice\\_Militaire.pdf](http://www.vertic.org/media/National%20Legislation/Mali/ML_Code_de_Justice_Militaire.pdf)

<sup>54</sup> Interview with military judges and the Directorate of Military Justice, June 2021.

<sup>55</sup> Republic of Mali, Law No. 95,042 on the Code of Military Justice, Article 93

<sup>57</sup> Interview with the Prosecutor of the Specialized Judicial Unit, June 2021. Interview with the President of the AMDH, June 2021.

<sup>58</sup> Interview with the Investigating Judge, PJS, June 2021.

According to some knowledgeable observers, some of these provost marshals have been threatened during the performance of their duties.

In addition, it is the Ministry of the Armed Forces that has the authority to initiate investigations and prosecutions. Article 32 of the Military Justice Code stipulates that: “The acts and reports drawn up by officers of the Military Judicial Police are sent to the Public Prosecutor at the military court who transmits them without delay to the Minister in charge of the Armed Forces. This latter then determines whether a prosecution is appropriate or not.”<sup>61</sup> Any prosecution that takes place without this order from the Minister in charge may be struck down by the Supreme Court of Mali.<sup>62</sup> It is therefore this political authority alone that determines the advisability of prosecutions and that can initiate public action against members of the defence and security forces. It is this situation that may have hindered the opening of investigations for a time (see Chapter IV). However, if a violation of the Code is reported by an investigating judge or by a Public Prosecutor, or by a Public Prosecutor at a court of appeal, the Minister of the Armed Forces is obliged to issue a prosecution order, resulting in the handover of military personnel if they are formally identified (Article 36). In reality, when it comes to crimes committed by the military against civilians, only actions initiated by the Minister of Defence are prosecuted.

Finally, other provisions in the Military Justice Code run counter to the right to a fair trial. In accordance with Article 51, the Minister of the Armed Forces may appeal an investigation, including an arrest warrant, once again undermining the independence of the judicial authority. In addition, Article 65 provides for the possibility of an appeal to the Court of Cassation but not for an appeal against the judgement itself. The Code also fails to provide for the participation of victims in the proceedings and trial.

The Malian authorities are currently engaged in reforming the Military Justice Code. Under the guidance of the military justice system, the objective is to “modernize this text, which refers to the old 1961 Criminal Code, and harmonize it with international standards”.<sup>63</sup> The question of the jurisdiction of military courts over crimes against individuals must be reviewed as part of this.

In October 2021, the Deputy Director of the Military Justice chaired three sessions of the 14-member review committee, which includes representatives from the Ministry of Justice, the United Nations Development Programme (UNDP), MINUSMA, and the International Committee of the Red Cross (ICRC) and is responsible for giving technical advice on the review work proposed by two experts, one international and one national. A national workshop with a number of members of the judiciary also made several recommendations:

- Allocate the initiative to prosecute not to the Minister of Defence but to the prosecutor of the military court after the optional opinion of the Minister of Defence;
- Insert a binding provision for the handover of military personnel to the courts;
- Include new offences such as cybercrime, mutiny and theft of weapons;
- Insert a provision on the provost marshal to guarantee the judicialization of military operations and their attachment to the court prosecution service;
- Establish a military court in Gao;
- Incorporate a double level of jurisdiction through the creation of an appeals chamber.

At this stage, the recommendations did not include restricting the jurisdiction of military courts to strictly military offences. Amnesty International calls on the Malian authorities to seize the opportunity of this reform of the Military Justice Code to exclude offences committed against civilians from the jurisdiction of the military courts, in line with the recommendations of the African Commission on Human and Peoples' Rights. Cases involving crimes under international law should be prosecuted and tried through the ordinary Malian courts or the ICC.

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<sup>61</sup> Code of Military Justice. Article 32.

<sup>62</sup> Code of Military Justice. Article 34.

<sup>63</sup> Interview with the Deputy Director of the Directorate of Military Justice, 14 October 2021.

## PRINCIPLES OF INTERNATIONAL LAW ON MILITARY JURISDICTIONS

While the ambiguity still remains within Mali's legal texts, the question of the jurisdiction of military courts has been clearly decided by the African Commission on Human and Peoples' Rights. In its Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa (2003),<sup>64</sup> it states that "military courts are intended to deal only with offences of a purely military nature committed by military personnel." It adds that "military courts are required to meet the fair trial standards set out in the Charter".

Indeed, it is increasingly accepted under international law that it should not be within the jurisdiction of military courts to try offences committed by the military against civilians, even less so when they involve crimes under international law such as crimes against humanity or war crimes. Principle 29 of the updated UN Principles on Impunity, for example, states that: "The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court."<sup>65</sup>

Mali's Military Justice Code is thus in contradiction with international law in this regard. Aware of this contradiction, the Malian authorities argue that their military courts are "hybrid" courts,<sup>66</sup> with a civilian prosecutor assisted by military prosecutors, and thus cannot be described as "purely military courts".

As the Military Justice Code is currently under review, Amnesty International recommends that its reform should stipulate that military courts have jurisdiction over military personnel only in purely military offences. The review should also bring the operation of Malian military courts into line with the right to a fair trial.

### 2.3.3 JURISDICTION OF THE FRENCH COURTS FOR CRIMES COMMITTED BY FRENCH SOLDIERS IN MALI

French troops are involved in the conflict in Mali as allies of the Malian Armed Forces. They have been present on Malian territory at the request of the Malian authorities since 2013 with Operation Serval, which later became Operation Barkhane.<sup>67</sup> As part of this alliance, France has signed a cooperation treaty<sup>68</sup> with Mali that prevents Malian courts from having primary jurisdiction over French military personnel who allegedly commit violations of international humanitarian law, including crimes against civilians, in the course of their operations.

In principle, any offence committed in Mali by a Malian or a foreign national should fall under the jurisdiction of the Malian courts. However, Article 15 of the Defence Cooperation Treaty signed on 16 July 2014<sup>69</sup> provides that:

1. Offences committed by a member of the sending State's personnel and its officers shall be subject to the jurisdiction of the courts of the host State, subject to the provisions of paragraph 2 of this article.
2. The competent authorities of the sending State shall have priority in exercising their right of jurisdiction in respect of offences arising from any act or omission of a member of personnel in the performance of their official duties [...].

This article thus gives priority jurisdiction to the French courts in the case of offences committed by French military personnel in the context of their military operations, although it is also specified that the two States

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<sup>64</sup> United Nations Economic and Social Council, Updated set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, 2005, Principle 29, <https://daccess-ods.un.org/tmp/9754825.23441315.html>

<sup>67</sup> Ministry of Europe and Foreign Affairs, n.d. "L'action de la France au Sahel" [France's action in the Sahel]. [diplomatie.gouv.fr/en/country-files/africa/security-and-fighting-terrorism/action-of-france-in-the-sahel/](http://diplomatie.gouv.fr/en/country-files/africa/security-and-fighting-terrorism/action-of-france-in-the-sahel/)

<sup>68</sup> Treaty on Defence Cooperation between the French Republic and the Republic of Mali signed in Bamako on 16 July 2014, [assemblee-nationale.fr/14/pdf/projets/pl3498-ai.pdf](http://assemblee-nationale.fr/14/pdf/projets/pl3498-ai.pdf)

<sup>69</sup> Treaty on Defence Cooperation between the French Republic and the Republic of Mali signed in Bamako on 16 July 2014, [assemblee-nationale.fr/14/pdf/projets/pl3498-ai.pdf](http://assemblee-nationale.fr/14/pdf/projets/pl3498-ai.pdf)

must assist each other in conducting investigations and must inform each other of the action taken in legal cases (Article 6 of the Treaty).

Although the Malian courts do not have priority, they may, however, retain jurisdiction over these cases if the French courts “decide to waive [their priority jurisdiction]” (Article 15.3 of the Treaty).

In practice, such an allocation of jurisdiction can lead to impunity if the party responsible for investigating and prosecuting fails to do so. Yet, in principle, the obligation of States to investigate and prosecute the perpetrators of crimes under international law remains.

Whether through the French or the Malian courts, the victims or families of victims of crimes committed by French forces in the context of the conflict in central Mali have the right to truth, justice and reparation.

# 3. BARRIERS TO EFFECTIVE JUSTICE

**“The priority right now is to ensure a state presence [in areas where it is absent], not access to justice. An investigation has been opened, yes, but it takes time. These are crimes for which there is no statute of limitations and so the Specialized Judicial Unit have all the time they need. And let's face it, in many of these incidents, investigation is not possible [at this stage].”**

Senior judge involved in the investigation of cases concerning crimes under international law in Mali.

**“How do you expect me to conduct investigations when I can't even visit the scene of the crime without a military escort? How do you expect me to investigate incidents potentially involving the Armed Forces when my safety depends on their goodwill?”**

A judge working in central Mali, on working conditions.

## 3.1 THE DIFFICULTIES IN TERMS OF JUDICIAL INVESTIGATIONS

### 3.1.1 A JUSTICE SYSTEM FAR REMOVED FROM THE CONFLICT ZONES

**“The Special Investigations Brigade (BIS) often operates in a battlefield setting, with people literally shooting around us while we are supposed to be investigating a crime scene. A year ago, I was stuck in the camp in Boulikessi when I was supposed to be out investigating, but there were IEDs all around the camp. This obviously prevented me from accomplishing my mission.”**

Head of the BIS of the Specialized Judicial Unit, on the conditions of an investigation.

The Malian public administration has been struggling to redeploy to the central and northern regions of the country since 2012. This situation hinders the operation of justice in cases of serious human rights violations.

This lack of administrative presence is due to the armed conflict and the resulting insecurity. The Malian administration thus rarely has a presence outside of the regional capitals, significantly hindering multiple rights such as those related to education, health and also justice.

The seizure of the northern regions and part of the centre of the country by armed groups in 2012 led to a mass exodus of civil servants, including from the justice sector to Bamako and the south. Since then, several judges, although appointed to the central and northern regions, have not been posted because of the continuing insecurity. Thus, according to the UN Secretary-General's report for Mali, dated December 2020:

**“As of 30 November [2020], only 9% of civilian administrators in northern Mali and the Mopti region were physically present in their duty stations, the lowest figure since at least September 2015. The majority of administrators reside in the closest *cercles* or in the regional capital and travel to their place of assignment periodically. In the Ménaka and Taoudenni regions, several positions remain vacant.”<sup>70</sup>**

Moreover, even when they are in post, members of the judiciary have very limited mobility due to the actions of armed groups, in addition to minimal means to carry out judicial investigations.<sup>71</sup> The Malian administration, including the judiciary, has great difficulty in moving freely within the inner *cercles* of these regions due to the state of insecurity; it remains heavily dependent on the defence and security forces to move beyond the regional capitals.

While this situation is the result of the initial crisis of 2012 and the mass exodus of administrative and judicial authorities to the south, it has not improved over the years. It constitutes a real impediment to the exercise of justice with regard to the serious human rights violations perpetrated in the context of the conflict in the north and centre of the country. It is equally important for jurisdictions that have to investigate crimes under international law.

<sup>70</sup> United Nations. 2020. Report of the UN Secretary-General to the Security Council on the situation in Mali. (28 December), p. 8

<sup>71</sup> Interview with the Prosecutor of the Mopti Court of Appeal, November 2020.

The persistent insecurity in areas where serious crimes related to the conflict have been committed makes it difficult for judges to conduct investigations and for the authorized forces to make arrests once arrest warrants have been issued by investigating judges.<sup>72</sup>

The work of the Special Investigation Brigade (BIS) of the Specialized Judicial Unit is thus largely affected by this lack of access to the field. In the words of one judge, “It is not the task of the BIS to go looking for suspects in a war zone. Without the army, it is not possible [to access these areas]. Jihadists and vigilante militia control this entire area and it would be irresponsible to send people to their deaths.”<sup>73</sup>

For many judges, progress in the investigation of conflict-related crimes is thus simply not possible because of the insecurity. For them, the right to justice and truth is conditional on the effective deployment of the State across the national territory.

**“The centre is a war zone with no State presence. There is no-one to search for the people named in the arrest warrants. It's the minor figures that get arrested and, if you send them to trial on the basis of such weak investigations, you're going to be ridiculed. For there to be progress in these investigations, the State administration must be present, there must be a return of the State to this area.”<sup>74</sup>**

The deployment of police officers and investigating judges to areas of interest and the arrest of suspects is thus dependent on the ability and willingness of the defence and security forces to secure investigations and execute arrest warrants.

And the fact is that judicial investigations are not a priority for an army in a war zone with limited resources in terms of troops and military engineering. Judges from the PJS, but also from the military courts, have on several occasions been refused requests for security to conduct their investigations, on the grounds of insecurity.

In some cases, the Malian Armed Forces have helped judges to travel to the scene of a crime and helped secure their investigations. But, even in these cases, the investigations remained difficult because of insecurity, particularly because of IEDs planted by armed groups on main and rural roads.<sup>75</sup>

**“Even when we are told that there are mass graves, it is very difficult for us to go there because of access constraints. And even when deployed, forensics often have a one-hour window to investigate the site in these war zones, because the situation changes so quickly. We are forced to travel with a battalion because of the insecurity.”<sup>76</sup>**

Another investigating judge involved in the proceedings in central Mali backed up this statement.

**“I went to the site of the massacre [of Ogossagou] twice. I had to travel by helicopter to get there but it was delayed and instead of getting there early, I didn't land until noon. At 1 p.m., the escort provided by the FAMA asked us to leave the area. As a result, I was unable to hear testimonies from a number of persons of interest.”<sup>77</sup>**

The lack of coordination between the different intervention forces: military, police and judicial, is also an obstacle to the implementation of investigations. Often, investigators such as those at the BIS have to use their informal relationships, built over their careers and across society, to do their work. This informality in mobilizing the different technical resources that facilitate access to the field has an impact on the progress of inquiries. This reality is reflected very well in the following words from the head of the BIS:

**“I have more than one trick up my sleeve, and it is because I know the officers of the other corps that information flows well and reaches me. There is no protocol for collaboration so, in practice, you can move more quickly using connections with people you know. There should be cooperation/coordination at all levels. Both internal and external. This would prevent us from stepping on each other's toes. We often need skilled people to de-mine the routes and the military engineers have to be called in. Or we need sniffer dogs, and that's the responsibility of the gendarmerie.”<sup>78</sup>**

<sup>72</sup> Interview with the SJP prosecutor and investigating judges, June 2021.

<sup>73</sup> Interview with the Prosecutor from the SJP, June 2021.

<sup>74</sup> Interview with the Prosecutor from the SJP, June 2021.

<sup>75</sup> Interview with the Head of the BIS, PJS, June 2021

<sup>76</sup> Interview with the Head of the BIS, PJS, June 2021.

<sup>77</sup> Interview with the investigating judge in charge of Ogossagou I and II, June 2021.

<sup>78</sup> Interview with the Head of the BIS, June 2021.

Another barrier to implementing investigations at the site of atrocities is the lack of financial resources. The feeling among members of the judiciary is that they have to fight for every penny, negotiating every step with the relevant authorities in order to be able to obtain the resources with which to conduct investigations. The creation of the PJS and the extension of its mandate has not been accompanied by a concomitant upgrading of its resources to adequately deal with the pile of court cases under investigation. According to a former judge and member of the unit:

**“[Our] budget is insufficient to send investigators to Mopti, Timbuktu. We often need assistance from the EU Training Mission to go to Sobane-Da and Timbuktu while, in other cases, it is MINUSMA that pays for the mission and transportation costs of the investigators deployed in the field.”<sup>79</sup>**

The need for security and resources for investigations is obvious but the judiciary is subservient to political and strategic agendas set by the government and this latter, in the words of one member of the judiciary, does not seem to consider it a priority.<sup>80</sup>

**“The priority right now is to ensure a State presence [in areas where it is absent], not access to justice. An investigation can be opened, but it takes time. These are crimes for which there is no statute of limitations and so the Specialized Judicial Unit have all the time they need. And, let's be clear, in many of these incidents, an investigation is not possible [at this stage],” concludes a judge in charge of these investigations.<sup>81</sup>**

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<sup>79</sup> Interview with a former prosecutor of the Specialized Judicial Unit

<sup>80</sup> Interviews with PJS judges, June 2021.

<sup>81</sup> Interviews with PJS judges, June 2021.

## MINUSMA'S SUPPORT FOR JUDICIAL PROCEEDINGS IN CENTRAL MALI

In its resolution 2531 of June 2020, the United Nations Security Council reaffirmed the importance of the judicial authorities' response to crimes under international law documented in Mali, particularly in the centre of the country. It urges Malian authorities to “fight against impunity for violations and abuses of international human rights law and violations of international humanitarian law in central Mali, by bringing to justice the individuals accused of perpetrating the massacres that killed hundreds of civilians in 2019 and 2020 and by holding the corresponding trials.”<sup>82</sup>

MINUSMA is providing significant support to the Malian authorities to investigate cases of human rights violations and abuses committed in central Mali since 2018. Most of the serious incidents in central Mali described in Chapter 4 of this report were investigated by MINUSMA's Human Rights Section and included in the case files of the Malian courts. The Justice and Corrections section provides logistical and technical support to Mali's judicial institutions.

In response to the limited resources and the Malian judiciary's dependence on military support to secure its investigations, the UN mission provides *ad hoc* logistical support in terms of transport for investigators and judges of the Specialized Judicial Unit; IT equipment; or by supporting the Malian prison authorities with training. MINUSMA is thus supporting the investigations into a dozen court proceedings related to crimes committed in central Mali and involving the alleged responsibility of armed groups, the FAMA or even G5 Sahel contingents deployed in Mali.<sup>83</sup> It provides technical and logistical support in cases involving the military that are heard by military courts, such as those of Boulikessi, Nantaka, Malémana, Sokolo and Binédama/Yangassadiou, for which proceedings have been ordered by the Minister of Defence.

This cooperation between MINUSMA and the Malian judiciary can lead to frustration on both sides. One side claims a lack of political will on the part of the Malians to end impunity; the other claims the cumbersome nature of the technical resources provided by MINUSMA.<sup>84</sup>

Nevertheless, MINUSMA's contribution is significant and has, for example, enabled the well in Ndoukala, Ségou region, to be identified where 34 bodies were dumped following the arrest of people at the Malémana fair in December 2019 and their execution by the FAMA.<sup>85</sup> It was MINUSMA that communicated the satellite coordinates of the well in question to the FAMA headquarters before encouraging them to initiate an internal investigation, despite initial reluctance. MINUSMA then provided the necessary equipment to exhume the bodies, at the request of the Malian authorities.<sup>86</sup> In the case of the Malémana investigation, for example, MINUSMA provided technical support, including forensic expertise, and also lobbied to ensure that there was a judicial follow-up to these extrajudicial killings.

### 3.1.2 LACK OF PROTECTION FOR VICTIMS AND WITNESSES

**“In the villages, everyone knows each other. There's no point in kidding ourselves; everyone knows who has spoken to the justice system.”**

Investigating Judge, Specialized Judicial Unit, Bamako, June 2021

<sup>82</sup> Resolution 2531 on extending MINUSMA's mandate, pp. 6-7 [minusma.unmissions.org/sites/default/files/unscr\\_2531\\_2020\\_e.pdf](https://www.unmissions.org/sites/default/files/unscr_2531_2020_e.pdf)

<sup>83</sup> These cases are Binédama/Yangassadiou, Boulikessi, Diabaly, Malémana, Dioura, Soma/Doma, Nantaka and Kobaka and Massabougou

<sup>84</sup> Interview with MINUSMA officials involved in these investigations in central Mali, and with judges of the Specialized Judicial Unit in Bamako, June 2021.

<sup>85</sup> MINUSMA. 2020. “Report of the Secretary-General on the Situation in Mali” (20 March):

[/minusma.unmissions.org/sites/default/files/s\\_2020\\_223\\_e.pdf](https://www.unmissions.org/sites/default/files/s_2020_223_e.pdf).

<sup>86</sup> According to MINUSMA, removing the bodies from the well was not the recommended option but was the one desired by the Malian authorities.

One consequence of the state of insecurity and the lack of presence of the justice system in conflict zones is the lack of protection for victims, families of victims, and witnesses of serious human rights violations and abuses in these areas.

Indeed, several judges and members of NGOs active in these cases who were interviewed recalled the concerns of victims, their families, and witnesses as to the risks they face if they testify formally in these legal proceedings.<sup>87</sup> In remote areas, where everyone knows each other, everyone knows who has spoken to the justice system. And the perpetrators of the crimes often live in the same area.

In addition, the lack of judicial staff in the courts of the central region, as well as the centralization of proceedings for crimes under international law within the PJS, forces victims, their families, and witnesses to travel to be heard by the courts. Travel can be complicated or dangerous because of checkpoints or roadblocks operated by armed groups or the military, which impede the free movement of people in isolated areas and along national roads linking the central and northern regions to the national capital.

The investigation into the alleged extrajudicial killings of nine Massabougou residents by members of the FAMA on 6 June 2020 (see Chapter IV), for example, is being obstructed by the inability of the military justice system to travel to the scene of the crime and bring witnesses and victims to Bamako to take their statements.<sup>88</sup> The two key witnesses, the imam and the village chief of Massabougou, have highlighted the insecurity on the road linking Massabougou to Dogofry and Ségou, where ethnic profiling at checkpoints staffed by traditional Dozo hunters particularly affects the Fulani community to which they belong.<sup>89</sup>

In addition to the issue of the security of victims and witnesses, there is also the question of the financial resources available to the justice system to enable it to participate in investigations and bring witnesses before the judicial authorities in large cities such as Bamako. “If we want to bring a witness from Timbuktu to Bamako, who will pay for their transportation? Where will they stay? There’s no mechanism for that,”<sup>90</sup> said a member of the judiciary. Local NGOs and associations that support the victims in legal proceedings often have to cover the costs.

The lack of protection is all the more damaging because of the length of legal proceedings. This reinforces the demotivation of victims, families of victims and witnesses to contribute to the work of justice, as they do not feel protected throughout the investigation.<sup>91</sup>

Malian law does not provide for a victim or witness protection scheme in the context of judicial investigations. This makes it difficult for these people to make anonymous statements or for the justice system to take them to other cities for hearings.

The principle of witness and victim protection has been retained in the context of the revision of the Criminal Code and the Code of Criminal Procedure as well as the Military Justice Code, but discussions are underway as to the mechanisms that will be implemented in this regard. “The objective is to protect witnesses and victims in the interests of truth and justice,” says the Director of Judicial Affairs and the Seal.<sup>92</sup>

The lack of security and deployment of staff in the northern and central jurisdictions, the dependence of the work of the judiciary on the assistance of the armed forces, and the limited resources allocated to the justice system, as well as the lack of protection for victims and witnesses, all constitute serious barriers to the proper functioning of justice in Mali and to victims’ access to justice.

These barriers affect the entire chain of investigation. Even when investigative steps have been taken, there are still obstacles, particularly with regard to the execution of arrest warrants. For example, with regard to the cases investigated by the PJS in the Ogossagou I and Sobane-Da massacres perpetrated by armed groups (see Chapter IV), the investigating judges point to difficulties in completing the investigations:

**“Investigations into Ogossagou and Sobane-Da are at an advanced stage, with suspects identified and arrest warrants issued. But these suspects are in the central region of Mali and everyone there knows that the [Malian] State administration is absent.”<sup>93</sup>**

This context therefore prolongs the investigation time and jeopardizes the success of investigations and future judicial proceedings. The difficulty for the justice system to access crime sites and interview people it

<sup>87</sup> Interview with judges, NGOs, Bamako, June and October 2021.

<sup>88</sup> Interview with military court judges in Bamako, June 2021. The sub-prefect of Sokolo and the commander of the military region of Ségou were heard in court, however, in Dogofry.

<sup>89</sup> Interview with the Prosecutor and deputy prosecutors, Bamako Military Court, June 2021.

<sup>90</sup> Interview with a former prosecutor of the Specialized Judicial Unit, June 2021

<sup>91</sup> Interview with judges, NGOs, Bamako, June and October 2021.

<sup>92</sup> Interview with Mohamed Maouloud Ould Najim, DNAJS, June 2021.

<sup>93</sup> Interview with the Prosecutor from the SJP, June 2021.

deems relevant to the progress of these investigations, as well as the high mobility of people in conflict zones, hinders the establishment of solid investigation files and poses a problem of preserving evidence.

This stalemate reinforces the feeling of impunity and discredits the justice system among communities, witnesses and victims, who do not understand why the suspects are still at large,<sup>94</sup> or the slowness of the procedures announced by government authorities, whether for Ogossagou I and II, Sobane-Da, for example, or for other events, into which MINUSMA has already conducted investigations, submitted to the Malian government.

This context could also lead investigating judges to close their files even if they are not complete and the main suspects have not been arrested. This situation could result in Malian judges hearing weak cases, possibly in the absence of the accused, as was the case for the trial of the Koulogon-Peul incidents in the Mopti court in June 2021.

## 3.2 SERIOUS VIOLATIONS OF DETAINEES' RIGHTS AND RIGHTS TO A FAIR TRIAL

In addition to the problems associated with the difficulty of investigations, interference in judicial proceedings by the General State Security Directorate (DGSE), a service responsible for the security of institutions and the territory, is also in contravention of the proper administration of justice and respect for the rights of individuals. Judicial proceedings may further be marred by a lack of legal representation or significant defects in suspects' and defendants' right to prepare a defence.

**“They kidnap you and you don't even know who they are. Then the judges play into the hands of the DGSE.”**

Member of civil society regarding the methods of the DGSE.

**“The DGSE isn't a detention facility, but it is us [the justice system] that keeps people there. The Bamako prison is a sieve; prisoners communicate with the outside world via their telephones. If they were taken there, it would be really dangerous for the staff and the other prisoners.”**

Prosecutor, justifying the detention of detainees by the DGSE in terrorism cases

### 3.2.1 ILLEGAL DETENTIONS AND BAD TREATMENT WITHIN THE STATE SECURITY SERVICE

Many people suspected of belonging to armed groups are arrested in the context of military operations.

Their transfer to the justice system may be complicated by a lack of security in the area of the arrest, thus contravening the criminal procedure in force. For example, while the legal time limit for police custody is six days for “terrorism”<sup>95</sup> suspects, the time it takes to transfer defendants from the centre of Mali to Bamako where the PJS is located sometimes already exceeds this time limit, due to the presence of IEDs on the road or sometimes due to the condition of the road itself. To bring an accused person from Boulikessi to Sévaré, it sometimes takes five days, leaving only one day to get them to Bamako.<sup>96</sup>

Above all, however, many people arrested in the context of military operations, including civilians, escape justice and are handed over directly to the General State Security Directorate (DGSE),<sup>97</sup> thereby excluding any judicial proceedings or control over the conditions of their detention.<sup>98</sup>

The DGSE was created in March 1989 with a mandate to protect the institutions of the Republic of Mali through territorial surveillance and the gathering of information and intelligence both inside and outside the

<sup>94</sup> Interviews with Tabital Pulaaku-Mali leaders, June/July 2021.

<sup>95</sup> Republic of Mali. Law No.2013-016 of 21 May 2013 amending Law No.01-80 of 20 August 2001 on the Code of Criminal Procedure, stipulates in its Article 7(2) that the “suspected authors of terrorist offences or transnational organized crime and their accomplices may be placed in police custody for a period of 48 hours, with this period being extendable three times for the same duration.”

<sup>96</sup> Interview with the Head of BIS, June 2021.

<sup>97</sup> Interviews with AMDH, PJS, Bamako, June and October 2021. See also Me Hélène Cissé and Allan Ngari. 2019. “Garantir un droit à un procès équitable aux présumés terroristes du Mali. Rapport de l'Institut d'études de sécurité” [Guarantee a fair trial for alleged terrorists in Mali. Report of the Institute for Security Studies], p. 13

<sup>98</sup> Interview with Clément Dembelé, former State Security detainee, October 2021.

country. This intelligence service is directly under the authority of the Presidency of the Republic.<sup>99</sup> It is not intended to carry out activities related to the judicial police and has no functional link with the judiciary. Nor does it have a mandate to detain individuals.

**“The DGSE takes people from Gao and puts them directly in its jails, without going through the judicial process. It even makes detainees disappear without providing any information to the BIS, which is unaware of their detention.”<sup>100</sup>**

It is impossible to determine the number of detainees who have been or remain under the authority of the DGSE. Its detention facilities are not public. There are no detention records. The National Human Rights Commission, which has a legal mandate to access all places of detention/deprivation of liberty in Mali at any time, has not been authorized to visit the DGSE detention facilities despite several official requests to do so.<sup>101</sup>

The lists of cases registered for the assizes sessions and a list of detainees released in exchange for the release of hostages show that some of them were being held by the DGSE. Among the 204 prisoners and detainees released in October 2020 in exchange for the release of Soumaila Cissé, leader of the Malian opposition, the French humanitarian Sophie Pétronin, and two Italian clerics, 51 of them were thus being held by the DGSE, according to a document made available to Amnesty International.

Illegal detentions by the DGSE do not relate only to people arrested in the context of the conflict. Members of civil society or State officials subjected to these detentions and/or their lawyers have also denounced them. Such is the case of Clément Dembélé, who spent more than two weeks in the DGSE's jails and who was able to see other detainees suspected of being members of armed groups during his detention (see box below). It is also the case for Kalilou Doumbia and Colonel Kassoum Goita, Secretary-General of the Presidency of Mali and Director General of State Security respectively until the coup of 24 May 2021. They were arrested between September and October 2021 and detained incommunicado for nearly two months in some cases before legal proceedings were finally opened against them for “criminal association”, “attempted coup” and “conspiracy against the government”. A complaint for “kidnapping” and “unlawful entry to the home” was filed by Colonel Goita's lawyer.<sup>102</sup>

These illegal detentions are paid lip service by members of the judiciary and the Minister of Justice. As this situation is well-known, the PJS regularly asks the DGSE if persons of interest to its judicial investigations are being detained under its authority, in order to interview them and conduct its investigations.<sup>103</sup>

The people initially brought to the detention centre at the DGSE remain there for several days, months or years, completely outside the control of the justice system, without contact with the outside world, without any charges being brought against them, and without access to legal aid.<sup>104</sup> These detentions are incommunicado and without any legal basis. They are illegal and constitute violations of the rights to liberty, security and fair trial of detained individuals. Human rights activists also accuse the DGSE of enforced disappearances of individuals arrested in connection with the conflict.<sup>105</sup>

The DGSE's incommunicado detention of these individuals creates a context in which the risk of torture and other ill-treatment and enforced disappearances is high. In cases where such detention is prolonged over several months or years, it constitutes in itself a form of torture or cruel, inhuman or degrading treatment. Several former DGSE detainees or their lawyers have denounced the routine mistreatment in detention.<sup>106</sup> According to Human Rights Watch, incommunicado detainees such as Kalilou Doumbia and Kassoum Goita and four other officials arrested along with them were allegedly mistreated while in DGSE custody, including mock drowning, injection of unknown substances, and beatings.<sup>107</sup>

<sup>99</sup> See Law No. 89-18/AN-RM of 1 March 1989 creating the General State Security Directorate. Articles 2, 3 and 5

<sup>100</sup> Interview with the Head of the BIS regarding the International Commission of Inquiry on Mali, page 218.

<sup>101</sup> Interview with CNDH chairs and commissioners, October 2021.

<sup>102</sup> RFI. 2021. “L’ avocat du colonel Kassoum Goita porte plainte contre l’ état malien” (12 novembre) [Colonel Kassoum Goita’s lawyer files a complaint against the Malian state] (12 November): [rfi.fr/en/afrique/20211112-l-avocat-du-colonel-kassoum-go%C3%A9ta-porte-plainte-contre-l-%C3%A9tat-malien](https://www.rfi.fr/en/afrique/20211112-l-avocat-du-colonel-kassoum-go%C3%A9ta-porte-plainte-contre-l-%C3%A9tat-malien)

<sup>103</sup> Interview with the Head of the BIS, June 2021

<sup>104</sup> Interviews with AMDH, CNDH, and lawyers, June/October 2021. Amnesty International has gathered more than five testimonies from members of civil society and lawyers who have been in direct contact with former DGSE detainees, all of which corroborate this information. Examples of the detention periods reported to us range from a few days to several years.

<sup>105</sup> Morgane Le Cam. 2021. “ ‘ C’est une boîte noire impénétrable ’ : enquête sur les prisons secrètes des renseignements maliens” [ ‘ It’s an impenetrable black box ’ : investigation into the secret prisons of Malian intelligence]. Le Monde Afrique (13 December): [lemonde.fr/afrique/article/2021/12/13/dans-les-prisons-secretes-des-renseignements-maliens-il-n-y-a-pas-de-loi-la-justice-c-est-nous\\_6105797\\_3212.html](https://www.lemonde.fr/afrique/article/2021/12/13/dans-les-prisons-secretes-des-renseignements-maliens-il-n-y-a-pas-de-loi-la-justice-c-est-nous_6105797_3212.html)

<sup>106</sup> Interviews with Mr Tiessolo Konaré and Mr Kalifa Yaro, lawyers, June 2021, Clément Dembélé and Mr Aliou Touré, lawyer, October 2021.

<sup>107</sup> Human Rights Watch. 2021. “Mali: Security Suspects Allegedly Tortured” (15 December): [hrw.org/news/2021/12/15/mali-security-suspects-allegedly-tortured](https://www.hrw.org/news/2021/12/15/mali-security-suspects-allegedly-tortured)

Clément Dembélé's testimony, received by Amnesty International, also describes the inhumane conditions of detention and torture he endured at the DGSE in 2020 (see box below).

## DETENTION AND TORTURE BY THE DGSE: THE CASE OF CLÉMENT DEMBÉLÉ

Clément Dembélé, professor and president of the Platform Against Corruption,<sup>108</sup> was detained and tortured by the DGSE for three weeks in May 2021.

The emblematic case of Clément Dembélé is set against the backdrop of the May 2020 elections. The announcement of the official results of the legislative elections on 30 April 2020 led to demonstrations in Sikasso and the occupation of the main national highway, which impeded the free movement of trucks from Mali to Côte d'Ivoire. When security forces intervened on 7 May 2020, they fired live ammunition at the protesters to dislodge them, resulting in the death of at least one man. On 8 May 2020, in a video posted from his home on Facebook, Clément Dembélé urged protesters to stop attacking private and public property and called on the police deployed in Sikasso to stop using force against protesters and to disobey if ordered to fire live ammunition at them.

On 9 May 2020, as he was leaving his home to run some errands, his vehicle was surrounded by four V8 SUVs, blocking all exits, and from which nearly 30 armed and hooded men emerged, firing warning shots and smoke gas in order to remove him from his vehicle. He recounts what happened next:

"They came to get me and started banging on the door of the vehicle telling me to get out. I refused to get out of the car, so one of them stabbed me in the arm. When I asked them, "Who are you?" one of them said, "You don't need to know. You just need to come with us." You have to understand, I didn't know who they were or what they wanted from me. They pounded on my car, until I finally got out and they put me in a van and drove off. Once inside, I was chained and hooded. I kept that hood on for 15 days with only a small hole through which to drink *moni*, millet porridge.

When I arrived at my destination, I was put in a room that must have been in a basement because we had to go down some steps to get there. There were no windows. There was a stud in the middle with a big chain on it. Thirty minutes later, they took me to an air-conditioned room where one of the officials questioned me. After this initial interrogation, I was taken to a holding cell full of jihadists and people arrested during operations in central Mali. That was the only time I didn't have the hood on.

There was a stud in the centre of the room to which all the prisoners were chained. One of them, a Nigerian, seemed mentally disturbed. He was making repetitive twisting gestures, not paying any attention to what was going on around him. According to another inmate, he had been in this condition for six months. There was also an Egyptian detainee, a shepherd from Kidal and another from Mopti. A young man of 18-19 years old by my estimation was with them. According to what he told me, he was arrested by the military near Djenné, while talking on his phone under a tree. All these inmates, about 30 of them, were asking me for information from the outside world; it was as if they had been cut off from the world for years. When the jailers heard this conversation, they came into the cell with some of the staff and one of the officials literally said to me: "You'll regret playing the revolutionary." I was left for an hour and a half in that cell with the jihadists before they arrived.

They then took me to another room, made me sit on a stone and shaved me quite brutally. My whole head was bleeding. They filmed the whole scene and were laughing at me. They poured alcohol on my wounds, and I screamed in pain, but they only laughed more. I was unclothed, shirtless, and wearing only my boxers when they took my picture. Some of them said: "Here you're nothing, if you don't pay attention, we'll smash your face in." One of them spat on me and shook me, mocking me and telling me that I would be blind by the time I left that cell as there was no daylight at all.

In the new cell, I was chained hand and foot to a stud in the centre of the room. They left a bucket and a can for my personal needs. I spent 15 days in this cell; they came to question me from time to time about my links with certain businessmen, politicians, and about my political opinions. I could hear moaning and screaming from other cells, the sound of tables and chains too. It was terrible and the only comfort was that it showed there was a human presence not so far away during those 15 days. Once, one of them put a gun to my head in the context of an interrogation.

After two weeks, they took me out of the cell and said they were taking me somewhere. I was hooded and handcuffed in the vehicle. We went to Commune III [a court in Bamako] where the prosecutor said this case was nothing to do with him because my arrest was extrajudicial. The same thing happened when we went to Kati. When we arrived in Bougouni, it was already night and we had to call the prosecutor to open the offices. Upon his arrival, took the same decision as his colleagues in Kati and Commune III, denouncing the methods of the DGSE. After Bougouni, I was brought back to the DGSE where I spent two

more nights; I started to despair because if no judge would agree to take the case, I risked staying indefinitely in this hell hole.

After these two nights, the agents of the DGSE put me in a minibus one morning to take me to Camp I of the gendarmerie and told me to go see Colonel H<sup>109</sup> of the Judicial Investigation Unit. They told me that he would be “forced to litigate”. Before dropping me off, they blindfolded me and told me not to try to find out who they were. The minibus left very quickly, and I just had time to see that it was a black SOTRAMA [minibus used for urban transport in Bamako].

When I arrived at the Colonel's office, he almost welled up at the sight of my bloody clothes, my bare feet and my shaggy beard. I was able to wash myself with soap in his office. He called the Prosecutor of Bamako Commune I to explain the matter. I spent three days at Camp I of the gendarmerie before I saw the prosecutor. During my hearing, he told me: “I'm not asking you to tell me what happened over the last two weeks. I want confirmation of your name, surname and date of birth. After that he asked me: “Were you trying to organize a coup?” To which I replied: “No”. He accused me of “inciting the defence and security forces in order to divert them from their duties and the obedience they owe to their leaders” and granted me provisional release with a ban on leaving the country. He also forbade me to talk to journalists about my detention, which I naturally refused to agree to.”<sup>110</sup>

After two postponements of his trial, the charges against Clément Dembélé were dropped in September 2020. Amnesty International considered that the detention of Clément Dembélé was arbitrary and called for his immediate release and for the charges against him to be dropped.

After several days, months or years in illegal detention, held incommunicado, the detainees at the DGSE may be released or returned to the judicial circuit. Lawyers working on these issues denounce the complicity of certain members of the judiciary when these people are returned to the justice system.<sup>111</sup> In practice, the DGSE generally hands over the detainee to the gendarmerie, which then draws up a report of the proceedings as if the person had just been arrested by the gendarmerie and sends this report to the Public Prosecutor. This erases all traces of the suspect's passage through the DGSE detention facility and all traces of previous interrogations with the DGSE, thus allowing the prosecutors to clear themselves of any association with the DGSE by building a case on the basis of hearings signed by the gendarmerie. In cases where the gendarmerie interface is absent, detainees tend to be handed over directly to judges who, although informed of the detainee's background, perhaps due to political and social pressure, do not proceed to their release or even to an annulment of the proceedings that took place during the illegal detention.

One lawyer believes: “The judges are playing into the hands of the DGSE. And the Police, Gendarmerie and DGSE all cover for each other because many of the DGSE agents have often come from these bodies.”<sup>112</sup>

Statements and “confessions” made by detainees during their interrogations at the DGSE, illegally established without any procedure, without the presence of a lawyer and possibly under torture, may thus become elements of proof in court cases brought against these people, in violation of Malian and international law, once reports have been produced by the judicial police officers.

In the ongoing trial before the International Criminal Court against Al Hassan ag Abdoul Aziz,<sup>113</sup> the former Commissioner of the Islamic Police of Timbuktu during the occupation of the city (2012-13), defence lawyers have thus invoked the nullity of certain acts because of the torture and ill-treatment used against the accused during his detention at the DGSE.<sup>114</sup> In Malian courts, the defence lawyer may raise this issue with the Indictment Division during the judicial investigation<sup>115</sup> but, in practice, since detainees are often not represented before they are sent to trial (see next section 3.2.2), they do not make such appeals. Once a lawyer has been appointed for the trial, i.e., after the indictment has been issued, the only remaining

<sup>108</sup> The Platform against Corruption and Unemployment is a Malian organization fighting corruption in the public sector and promoting policies that favour youth employment.

<sup>109</sup> The Colonel's name has been changed to preserve his identity.

<sup>110</sup> Interview with Clément Dembélé, October 2021.

<sup>111</sup> Interviews with public defenders, AMDH, June and October 2021.

<sup>112</sup> Interview with the President of AMDH, June 2021.

<sup>113</sup> Al Hassan ag Abdoul Aziz, former head of the Islamic police in Timbuktu during the occupation of the city, is accused of several crimes against humanity and war crimes against the civilian population of Timbuktu, including acts of torture, rape and sexual slavery, other inhuman acts in the form of forced marriages, and planned persecution. His trial began at the ICC in July 2020.

<sup>114</sup> ICC. 2020. Trial Chamber X. Situation in the Republic of Mali in the case of the Prosecutor vs Al Hassan ag Abdoul Aziz Ag Mohamed ag Mahmoud (Public redacted version of 'Corrigendum to "Defence Request to terminate the proceedings"', page 9 (para 15): [icc-cpi.int/Courtecordes/CR2020\\_04689.PDF](https://www.cpi.int/Courtecordes/CR2020_04689.PDF)

<sup>115</sup> b

possibility is to invoke the illegality of these acts at the end of the trial, when appealing to the Court of Cassation against the judgement of the Courts of Assizes.<sup>116</sup>

While acknowledging the violations committed by the DGSE, several actors involved in the justice system who were interviewed by Amnesty International perceive human rights not as an obligation but as a barrier to making progress in judicial proceedings. According to one BIS investigator, they should not be asked “to be champions of human rights. They need to be able to do their job“.

## PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT

Article 3 of the Malian Constitution states that “No-one shall be subjected to torture or inhuman, cruel, degrading or humiliating treatment or abuse” and specifies that “any individual or public official who is guilty of such acts, either at their own initiative or on instruction, shall be punished in accordance with the law.”<sup>117</sup>

Under international law, any form of torture is absolutely prohibited. It is a rule of customary international law known as *jus cogens*, i.e. it applies to all States and in all circumstances. There can be no exception to the prohibition of torture and other ill-treatment.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>118</sup> ratified by Mali in 1999, defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind” where such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Article 15 of the Convention requires each state party to ensure that any statement made on the basis of torture shall not be used in legal proceedings.

The African Charter on Human and Peoples' Rights also recalls the right to dignity and the prohibition of torture and other ill-treatment in its Article 5.<sup>119</sup> In addition, the African Commission on Human and Peoples' Rights' (ACHPR) Guidelines and Measures for the Prohibition and Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment in Africa (2002), the so-called “Robben Island Guidelines”, also state that conditions such as war, threat of war or emergency situations cannot be invoked to justify torture and degrading acts (Articles 9 and 10), and that all individuals deprived of their liberty by State structures should have that detention controlled by properly and legally constructed regulations, and that they are entitled to access to a lawyer, an independent medical examination, and notification of a relative or other appropriate third party of the person's detention (Article 20).<sup>120</sup>

Amnesty International reminds the Malian authorities of their obligations under Malian and international law to cease all acts of torture and ill-treatment, to exclude the use of any “information”, “confession” or other statement made on the basis of such practices, and to prosecute and try the perpetrators of such acts. The Malian authorities must respect the right to dignity, physical integrity, and humane conditions of all detainees on its territory.

Once under the judiciary, defendants nonetheless still remain mostly within the DGSE, thus in an illegal place of detention once more. For the judiciary, detention by the DGSE is the only option for dealing with certain security threats posed by detainees suspected of “acts of terrorism” when held in ordinary detention facilities, even though this constitutes a violation of the law and the rights of detainees.<sup>121</sup> The DGSE's

<sup>116</sup> Code of Criminal Procedure, Article 272

<sup>117</sup> Republic of Mali. Constitution (1992). Article 3

<sup>118</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly in its Resolution 39/46 of 10 December 1984, which entered into force on 26 June 1987 for those States that had ratified it.

<sup>119</sup> African Union. 1981. *African Charter on Human and Peoples' Rights*: [au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](http://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf)

<sup>120</sup> African Commission on Human and Peoples' Rights. 2002. “Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment in Africa, meeting in its 32<sup>nd</sup> Ordinary Session, held in Banjul, The Gambia, from 17 to 23 October 2002.

<sup>121</sup> Interview with the Prosecutor of the Specialized Judicial Unit, June 2021.

facilities are perceived as more secure than the prisons run by the prison administration, including the Bamako Correctional Facility. This perception has been reinforced by the media and the political impact of the 2014 escape of Mohamed Ali ag Wadoussene, the alleged kidnapper of two Frenchmen, Serge Lazarevic and Philippe Verdon in 2011, during which a prison guard and a detainee were killed.

The judicial authorities justify these continued detentions at the DGSE by invoking the weakness of the Malian prison system and the dangers this weakness poses to other detainees and even to prison guards. “Bamako Prison is a sieve; prisoners communicate with the outside world via their telephones. If he [Fawaz Ould Ahmed] were taken there, it would be really dangerous for the staff and the other prisoners. So we prefer to be criticized for keeping them at the DGSE. There is no need to be too legalistic about this.”<sup>122</sup>

In several cases, individuals detained by the DGSE, tried and convicted at the Bamako Assizes, were held in DGSE jails to serve their sentences. Such is the case of death row inmates Fawaz Ould Ahmed, known as “Ibrahim 10” and Moussa Maiga, known as “Saadou Chaka” in relation to the Radisson Hotel attacks in Bamako in November 2015 [See Part IV].<sup>123</sup> According to their lawyer, who denounced this state of affairs:

**“Fawaz was tried on 27 October 2020. Even following his conviction, he is still being held at the DGSE and not in Bamako Correctional Facility. I filed a complaint against General Diawara<sup>124</sup> protesting these detentions by the DGSE. I didn’t see Fawaz or Saadou Chaka before their trial. Even following their conviction, they are still being held in the facilities of the DGSE”.**

The DGSE’s influence over the administration of justice also manifests itself in its opposition to judicial decisions to drop charges against defendants for lack of evidence. According to one civil society actor involved in the judicial process, “There have been cases where people have been released by the courts only to be rearrested by the DGSE because they were considered a security threat.”<sup>125</sup>

Detentions by the DGSE were already being denounced in 2016 in the report of the UN independent expert on Mali, who warned of this danger in these terms:

**“The Independent Expert is particularly concerned by the growing number of detainees being held incommunicado by the Malian General State Security Directorate and the international forces. At the end of September, there were 104 such detainees. The Independent Expert is very concerned by the fact that the Human Rights and Protection Division continues to be refused access to the premises of these two entities — the Barkhane forces and the intelligence services — despite his repeated calls, in previous reports, for such access to be granted.”<sup>126</sup>**

On 1 October 2021, an Order created the National State Security Agency (ANSE) to replace the DGSE. The purpose of this agency is to ensure “the security of the State and its institutions throughout the national territory and outside of the country”, with a mandate to assist the President of the Republic in his decision-making, under whose authority it is directly placed.<sup>127</sup> A change of name certainly but, at the time of publication of this report, there had been no change in the illegal detention practices of this service.

### 3.2.2 INADEQUATE OR NON-EXISTENT LEGAL REPRESENTATION

Improving legal aid is a major challenge for the proper administration of justice, especially in cases of terrorism. Not only is legal representation often non-existent at the pre-trial stage, even at the trial stage it is not organized in a way that will guarantee the right to a fair trial and, in particular, ensure the time and resources necessary to prepare the defence of the accused.

Persons subject to criminal proceedings, particularly for acts of terrorism, very rarely receive the assistance of a lawyer during the investigative phase due to the failure of the competent authorities to inform them of their right to legal counsel or due to the lack of State resources to provide them with free legal assistance. In

<sup>122</sup> Interview with the Prosecutor of the Specialized Judicial Unit, June 2021.

<sup>123</sup> Interview with Mr Tiessolo Konaré, lawyer of Fawaz Ould Ahmed, June 2021.

<sup>124</sup> Director of State Security from 2013 until August 2020.

<sup>125</sup> Interview with AMDH’s National Coordinator, October 2021. See also the list of 204 prisoners released by Malian authorities in exchange for Malian and Western hostages in October 2020. Fifty-one of them were being held by the DGSE and at least one of them was scheduled for an October 2020 trial. Interviewed in June 2021, his lawyer said he did not understand the reasons for his absence and had not been given any information on the reasons for this by the Court of Appeal.

<sup>126</sup> Report of the Independent Expert on the situation of human rights in Mali, A/HRC/34/72, p. 14.

<sup>127</sup> Studio Tamani. 2021. “Sécurité d’État: pourquoi remplacer la DGSE par l’ANSE?” [State Security: Why replace the DGSE with the ANSE?]:

[studiotamani.org/index.php/magazines/28437-securite-d-etat-pourquoi-replacer-la-dgse-par-l-anse](http://studiotamani.org/index.php/magazines/28437-securite-d-etat-pourquoi-replacer-la-dgse-par-l-anse)

the rare cases where a lawyer is appointed by a defendant, they can only see their client if they are being held in Bamako prison. The lawyer does not have the right to visit places of illegal detention within the DGSE.<sup>128</sup>

At the trial stage, most of the people prosecuted for acts of terrorism are represented by lawyers appointed by the Bar Association, a procedure that takes place late in the day, after the court files have been recorded with the Assizes (Article 278 of the Code of Criminal Procedure). It is the President of the Bar Association, contacted by the Public Prosecutor's Office, who appoints lawyers to defend the various defendants sent to trial at the Assizes. The fees paid by the President of the Bar to court-appointed lawyers have had to be increased fivefold, from 50,000 CFA francs (EUR 76) to 250,000 CFA francs (EUR 381), to compensate for the reluctance of lawyers to take on the defence of persons accused of terrorism.<sup>129</sup>

A number of court-appointed lawyers interviewed by Amnesty International explained that these cases had been referred to them by the President of the Bar very late in the proceedings, sometimes only a few days before the start of the trial. In practice, they do not have time to prepare a defence or to properly acquaint themselves with the file that has been sent to them, and they are sometimes unable to even see and discuss with their clients before the trial begins. Amnesty International was, however, unable to verify whether these lawyers were given the opportunity to request additional time to prepare their defence and, if so, whether they took advantage of it. In any case, suspects are represented by lawyers who have not spent adequate time preparing their client's defence.

**“I was able to speak with my client just a few minutes before the trial. The rest was done in the stand.”<sup>130</sup>**

Public defenders have also experienced surprises on the day of the trial, such as the absence of the person they are defending from the courtroom<sup>131</sup> or their speaking time being limited to 10 or 15 minutes.<sup>132</sup> These are inadequate conditions to ensure a real defence of the accused in cases that involve crimes which carry heavy penalties.

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<sup>128</sup> Interviews with public defenders, AMDH and CNDH, June and October 2021

<sup>129</sup> Interview with Mr Tiessolo Konaré, lawyer, June 2021, and with Mr Touré and Mr Mallet, court-appointed lawyers for the special terrorism trials, October 2021.

<sup>130</sup> Interview with Mr Touré, public defence lawyer at the special terrorism assizes, October 2021

<sup>131</sup> For example, one of the lawyers for Fawaz Ould Ahmed, Moussa Maiga, and Abdoul Baki Maiga, who were indicted for the November 2015 Bamako Radisson attack, was publicly surprised that his client Abdoul Baki Maiga had not been brought to the hearing and that he had been given no explanation for this absence; he had not been informed that his client was among the 204 detainees released in October 2020 by State Security in exchange for hostages.<sup>131</sup> The three defendants were sentenced to death in the absence of Abdoul Baki Maiga.

Interview with Mr Tiessolo Konaré, lawyer, June 2021. Abdoul Baki Maiga was number 59 on the list of prisoners released in this prisoner exchange. He is named as being held by the DGSE in a document that is in Amnesty International's possession.

<sup>132</sup> As Amnesty International observed during the October 2021 hearings on terrorism cases.

## HOW MINORS ARE TREATED IN THE MALIAN JUSTICE SYSTEM

In Mali, the law on criminal responsibility (Law No. 01-81 of 24 August 2001)<sup>133</sup> prescribes a special jurisdiction for children between the ages of 13 and 18 years involved in criminal acts (Article 3), who must be tried before the juvenile courts. It also prescribes the application of half the sentences imposed on adults, for which they must be sentenced on the basis of the same charges. This law is corroborated by the 2002 Child Protection Code,<sup>134</sup> which sets the age of criminal majority at 18 years (Article 95), indicates that the age of the child shall be determined on the date the offence is committed (Article 96), and stipulates that children over 13 and under 18 years of age who are charged with an offence qualified as a contravention, offence or crime, shall not be referred to the ordinary criminal courts. They can only be tried in juvenile courts (Article 99).

In addition, Mali has been a State Party to the Convention on the Rights of the Child since 1990 and to the African Charter on the Rights and Welfare of the Child since 1998.<sup>135</sup> Article 17 of the latter states, among other things, that: “Every child accused or found guilty of having infringed penal law shall have the right to special treatment (...)” and that states parties must ensure that children in detention are not subjected to torture or other ill-treatment and are separated from adults, among other procedural guarantees.

With regard to cases related to “acts of terrorism” under Malian law, however, the Malian judiciary does not apply the principles and obligations mentioned above. Since the 2008 terrorism law does not make special provisions for minors, a Malian judge ruled that Article 13 of the law, which prescribes the death penalty for any individual guilty of a terrorist act that results in the death of one or more persons, also applies to minors. According to Malian judges dealing with this issue in 2016, since the creation of the Specialized Judicial Unit against terrorism and transnational organized crimes, there has been a conflict of jurisdiction between this and the juvenile courts that has not been resolved by Malian legislators.<sup>136</sup>

The case of Moussa Maiga alias “Saadou Chaka” or “Oussama” illustrates this issue. Charged with the 20 November 2015 attacks on the Radisson Blu Hotel in Bamako that left 20 dead<sup>137</sup> and 10 injured, he was a minor at the time of the incriminating events but did not enjoy the specific protections of Malian and international law regarding the treatment of minors in the criminal justice system. He was detained by the DGSE without access to a lawyer, then prosecuted through the ordinary courts and tried in an emblematic hearing held during the October 2020 assizes session of the Bamako Court of Appeal.

Moussa Maiga was accused of coordinating the arrival of the commando members from Gao to Bamako, finding them a place to stay, scouting out the hotel with them before the attack, and dropping them off in a cab outside the Radisson Blu on 20 November 2015.<sup>138</sup> He was found guilty of “criminal conspiracy, murder, assault and battery, possession of weapons and explosives in connection with a terrorist enterprise”<sup>139</sup> along with Fawaz Ould Ahmed and another individual who was a minor at the time of the events, Abdoulbaki Maiga alias “Abou Mahamadoune” (who had been released a few weeks earlier in exchange for hostages and was not present at the trial). This highly publicized trial lasted one day and concluded on 28 October 2020 with death sentences for the three defendants. An appeal to the Court of Cassation was filed by the defence lawyers after the conviction, which had not been decided as of October 2021.

Amnesty International reminds the Malian authorities of their commitment to protect and promote children's rights and urges them to immediately prioritize the best interests of the child and respect the provisions of Malian and international law concerning the treatment of minors by the criminal justice system, including the Convention on the Rights of the Child since 1990 and the African Charter on the Rights and Welfare of the Child since 1998.

Furthermore, any death penalty applied to a person who was a minor at the time of the crime is a clear violation of international law and must be immediately commuted or revoked. Amnesty International repeats that it opposes the death penalty at all times, regardless of who is sentenced and whatever their age.

<sup>133</sup> Official Journal of Mali. 2002. Law No. 01-081 on criminal responsibility and the institution of juvenile courts, 24 August 2001: sgg-mali.ml/JO/2002/mali-jo-2002-03-sp.pdf

<sup>134</sup> Republic of Mali. 2002. Order No.02-062/P-RM of 5 June 2002 on the Child Protection Code, 5 June 2002: unesco.org/education/edurights/media/docs/c1c5d5eb0edb7d18bb8134184f16acf64533fe9b.pdf

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<sup>135</sup> UNO. *Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989*: [ohchr.org/en/professionalinterest/pages/crc.aspx](https://www.ohchr.org/en/professionalinterest/pages/crc.aspx) and African Union. African Charter on the Rights and Welfare of the Child, <https://au.int/en/treaties/african-charter-rights-and-welfare-child>

<sup>136</sup> Association of the High Courts of countries sharing the use of French. 2016. "Minutes of the Bamako seminar 24 and 25 October 2016": [ahjucaf.org/sites/default/files/BAMAKO%20Report%20final%20november%202016.pdf](http://ahjucaf.org/sites/default/files/BAMAKO%20Report%20final%20november%202016.pdf)

<sup>137</sup> A total of 22 people were killed in the attack, including two of the assailants.

<sup>138</sup> Interview with Mr Tiessolo Konaré, lawyer, June 2021. See also *Réquisitoire aux fins de saisine de la Chambre d'accusation de la Cour d'appel de Bamako [Referral to the Indictment Division of the Bamako Court of Appeal] No.00260/PG-CA-BKO*, 10 April 2020.

<sup>139</sup> According to the records of the hearings, and based on his statements, he was born in 1999 in Kadji, Gao. The judicial authorities did not have a record of his age and could not corroborate these incidents from investigations and testimony, according to the public defender. See also: Paul Lorgeter Twitter Post, 28 October 2020, [#Mali - La Terrasse Trial - Hotel Radisson Blu - Day 2](https://twitter.com/PLorgeter/status/1321406077674622976?s=20)"

# 4. STATUS OF CASES INVOLVING SERIOUS CRIMES COMMITTED IN CENTRAL MALI SINCE 2018

## 4.1 PROCEEDINGS INVOLVING ARMED GROUPS AND CRIMINALS

Central Mali, consisting of the regions of Ségou and Mopti, has become the epicentre of the conflict since 2017, with a proliferation of attacks and abuses committed against the civilian population.

Armed Islamist and so-called “self-defence” groups have committed serious human rights abuses in this region, in some cases amounting to crimes under international law.

In the wake of the State's commitments, judicial proceedings have been opened into several civilian massacres committed since 2018. The Koulogon-Peul massacre (January 2019) was investigated by the Mopti prosecutor prior to the PJS's jurisdiction being extended to crimes under international law. This is the only case for which a trial was held, albeit in the absence of the defendants. Other tragic events such as the massacres of Ogossagou I and II (March 2019 and February 2020), Sobane-Da (June 2019), and Bankass (July 2020) are the object of PJS investigations, but they are making little progress due to a lack of resources, insecurity, a lack of protection for witnesses and victims, and a lack of commitment on the part of the Malian authorities.

Apart from these mass crimes, investigations do not appear to have been opened into other abuses committed by armed groups against civilians. Many proceedings have, however, been opened into charges of terrorism by alleged members of armed groups –such as EIGS or GSIM– arrested in the centre of the country since 2018. These proceedings, some of which have been marked by irregularities and violations of the right to a fair trial, have led to trials and sentences, and sometimes to death.

**“I am dismayed at the recent increase in violence in central Mali, which is increasingly affecting civilians, and I call on the authorities to scale up their coordinated efforts to protect civilians.**

**Impunity breeds violence. I therefore call once again on the Malian authorities to redouble their efforts to end impunity.”<sup>140</sup>**

Report of the UN Secretary-General on the situation in Mali (2019)

## **KOULOGON-PEUL MASSACRE (1 JANUARY 2019)**

The incidents in Koulogon-Peul formed part of a cycle of attacks and reprisals between armed Fulani and Dogon groups in the Bankass *cercle* in the latter months of 2018. The incriminating events date back to 1 January 2019, when some 100 assailants on motorcycles attacked the village of Koulogon-Peul at dawn. During this attack, in which the village was first surrounded to prevent residents from escaping, 36 people were unlawfully killed, including two girls aged 3 and 16 and two boys aged 7 and 13. Three other people, including a woman who was seriously injured, succumbed to their injuries in the following days, making a total of 39 dead.<sup>141</sup> The vast majority of the victims were shot, many at close range, using automatic weapons or traditional shotguns; some of the victims were killed in their homes or in the middle of the village as they tried to flee. Eight of them were found burned in the hut of the village chief. The attackers also destroyed public and private property: 173 huts were destroyed as well as 59 of the 61 grain stores in the village, accounting for 80% of the buildings in the village. The attack specifically targeted the Fulani community of Koulogon-Peul.<sup>142</sup>

The first elements of the Malian Armed Forces arrived in Koulogon-Peul on 1 January 2019 at around 9 a.m., after being alerted by the village chief. In a statement reacting to the attack, the Government of Mali promised that “the perpetrators [...] will be punished to the full extent of the law” and called on all communities in the centre to remain calm.<sup>143</sup>

On the day of the attack, Malian army soldiers arrested seven men from the sister village of Koulogon-Habé, including the mayor and his third deputy, for their alleged role in the Koulogon-Peul attack. In the days that followed, several other individuals were arrested, including the village chief of Koulogon-Habé, and five people from the village of Koromatintin.<sup>144</sup> The High Court of Mopti opened a judicial investigation into “murder, criminal conspiracy, intentional assault and battery, illegal possession of weapons and ammunition and complicity.”

The Koulogon-Peul investigation faced many challenges, including the difficulty for members of the judiciary to access victims and witnesses given the high mobility of the inhabitants of the Bankass *cercle* due to the armed groups active in the area.<sup>145</sup>

The investigation has nonetheless led to some of the assailants being identified by survivors and witnesses of the attack; most of them were from the neighbouring villages of Koulogon-Habé and Koromatintin. While the individuals identified all denied responsibility during their initial hearings, Malian members of the judiciary

<sup>140</sup> MINUSMA. 2019. “Report of the Secretary-General on the Situation in Mali”, 31 May: [minusma.unmissions.org/sites/default/files/s\\_2019\\_454\\_e.pdf](https://minusma.unmissions.org/sites/default/files/s_2019_454_e.pdf) para 90.

<sup>141</sup> MINUSMA/OHCHR. Report on human rights abuses committed in the village of Koulogon-Peul, Koulogon-Habé commune, Bankass *cercle*, Mopti region, 1 January 2019: [ohchr.org/Documents/Countries/ML/RapportKoulongo.pdf](https://ohchr.org/Documents/Countries/ML/RapportKoulongo.pdf), para 33.

<sup>142</sup> The MINUSMA report clarifies this and points out that Mossi and Minianka residents were spared. All the victims were from the Fulani community, para 42 and 56.

<sup>143</sup> L'Expresse with AFP. 2019. “Mali: un village peul attaqué, 37 morts” [Mali: Fulani village attacked, 37 dead]. 2 January: [lexpress.fr/actualites/1/monde/mali-un-village-peul-attaque-37-morts\\_2055500.html](https://lexpress.fr/actualites/1/monde/mali-un-village-peul-attaque-37-morts_2055500.html)

<sup>144</sup> MINUSMA Report. The list of those arrested includes Hamady Guindo, Youssouf Togo, Oumar Togo, Sétourou Diafou, Amadou Guindo, Ousmane Thiama, Aly Togo, Mamadou Djibo, Mamadou Somboro, Ayouba Goro, Honoré Roger Gana and Boubacar Djibo. See Siaka Doumbia. 2021. “Cour d’ assises de Mopti: 12 assaillants de Koulogon-Peulh condamnés à la peine de mort et à 500 millions de FCFA d’ amende par contumace” [Mopti Court of Assizes: 12 assailants of Koulogon-Peulh sentenced to death and a 500 millions CFA franc fine *in absentia*]. Aujourd’hui Mali/Maliweb, 12 July: [maliweb.net/faits-diversises/cour-d-assises-de-mopti-12-assaillants-de-koulogon-peulh-condamnes-a-la-peine-de-mort-et-a-500-millions-de-f-cfa-damende-par-contumace-2935405.html](https://maliweb.net/faits-diversises/cour-d-assises-de-mopti-12-assaillants-de-koulogon-peulh-condamnes-a-la-peine-de-mort-et-a-500-millions-de-f-cfa-damende-par-contumace-2935405.html)

<sup>145</sup> Interviews with judges of the Specialized Judicial Unit, the Prosecutor of the Mopti Court, and MINUSMA staff, June 2021.

reportedly discovered evidence of property looted during the attack and belonging to the victims and survivors of Koulogon-Peul during searches of their homes.<sup>146</sup>

Eventually, 12 people were charged in this case. These 12 people were released on pre-trial detention on condition that they make themselves available for trial.<sup>147</sup> Following the investigation, the trial was postponed twice for lack of presence of the defendants.

Faced with the difficulty of bringing the 12 defendants to justice, the Koulogon-Peul case was finally included in the Mopti Assizes session of June 2021 without the presence of either the defendants or the civil parties, the latter for security reasons. The 12 defendants were tried and sentenced *in absentia* to death for the offences of murder, arson, criminal conspiracy, robbery and illegal possession of weapons, among others, as well as damages amounting to 500 million FCFA (EUR 761,000). No arrest warrant was issued following the conviction of the 12 defendants, however.<sup>148</sup>

Amnesty International opposes trials *in absentia* as the right to be present at trial and to present a defence is essential to a fair trial. Our organization thus calls on the judicial authorities to arrest these people and try them once more, respecting principles of fairness and their rights as defendants and without recourse to the death penalty.



© ↑ An anonymous woman in refugee camp in central Mali. She was in Ogossagou when the village was attacked on 23 March 2019 ©Michele Cattani / AFP

<sup>146</sup> Siaka Doumbia. 2021. “Cour d’ assises de Mopti: 12 assaillants de Koulogon-Peulh condamnés à la peine de mort et à 500 millions de FCFA d’ amende par contumace” [Mopti Court of Assizes: 12 assailants of Koulogon-Peul sentenced to death and 500 millions CFA francs fine in absentia]. Aujourd’hui Mali/Maliweb, 12 July: [maliweb.net/faits-diversises/cour-d-assises-de-mopti-12-assaillants-de-koulogon-peulh-condamnes-a-la-peine-de-mort-and-a-500-millions-de-f-cfa-damende-par-contumace-2935405.html](https://maliweb.net/faits-diversises/cour-d-assises-de-mopti-12-assaillants-de-koulogon-peulh-condamnes-a-la-peine-de-mort-and-a-500-millions-de-f-cfa-damende-par-contumace-2935405.html)

<sup>147</sup> Interview with the Transitional Justice Coordinator, SAT-Canada, June 2021.

<sup>148</sup> Bamada. 2021. “Procès de l’attaque du village de Koulogon: les ‘12 accusés’ mis en liberté provisoire ont disparu dans la nature” [Trial in the attack on the village of Koulogon: the ‘12 defendants’ released on pre-trial detention have disappeared into thin air]. [bamada.net/proces-de-l-attaque-du-village-de-koulogon-les-12-accusés-mis-en-liberte-provisoire-ont-disparu-dansu-la-nature](https://bamada.net/proces-de-l-attaque-du-village-de-koulogon-les-12-accusés-mis-en-liberte-provisoire-ont-disparu-dansu-la-nature)

## OGOSSAGOU I (MARCH 2019) AND II (FEBRUARY 2020) MASSACRES

For the UN, the attack on the village of Ogossagou-Peul on 23 March 2019 marked a “growing ethnicization of the conflict in central Mali, in which entire communities are being stigmatized as terrorists or as affiliates of armed groups.”<sup>149</sup>

The attack began at dawn, at around 5 a.m., when some 100 Dozo fighters affiliated with the Dan na Ambassagou (DNA)<sup>150</sup> group and armed with rifles and knives attacked the positions of a so-called Fulani self-defence group<sup>151</sup> set up in the village as part of the disarmament, demobilization, and reintegration (DDR) process initiated by the Malian state in the wake of the 2015 peace agreement. The MINUSMA report on the attack further states that some of the fighters, members of DNA, were wearing military fatigues.

The attack by DNA fighters first targeted the self-defence group, which was quickly defeated and fled the village. It was after this initial battle that the killings of civilians in the village took place, resulting in the deaths of at least 157 people,<sup>152</sup> including 46 children, plus displaced persons from the Bankass *cercle* who had taken refuge in the village of Ogossagou. Several houses, grain stores and civilian buildings were also set on fire during the attack, with the use of fuel. 95% of the village was destroyed.<sup>153</sup> Some of the victims died in the burned huts and houses where they had taken refuge. The 23 March 2019 attack also resulted in the injury of 65 people, including 17 children who were evacuated to the hospital in Sévaré, some of them with injuries caused by firearms and knives.<sup>154</sup>

The media and political repercussions of this attack, which was the deadliest civilian massacre since the start of the 2012 conflict, were not long coming. The area was visited by President Ibrahim Boubacar Keïta to express his condolences,<sup>155</sup> while several Fulani community associations denounced the collusion between the government and Dan na Ambassagou in central Mali. In the aftermath of the attack, the Malian Chief of Staff was reshuffled to “breathe new life into [the] achievements”, and the Dan na Ambassagou group was officially disbanded by the government, calling for the disarmament of all armed groups in central Mali.<sup>156</sup> This dissolution was contested by the DNA leaders, who denounced the lack of State structures in central Mali and its inability to protect the population and their property in the face of the advance of armed Islamist groups.<sup>157</sup>

<sup>149</sup> United Nations. 2019. “Central Mali: Top UN genocide prevention official sounds alarm over recent ethnically targeted killings” <https://news.un.org/en/story/2019/03/1035661>

<sup>150</sup> Self-defence group formed by members of the Dogon community in response to the rise of Islam in central Mali. Dan na Ambassagou literally translates as “The Hunters who trust in God”.

<sup>151</sup> This vigilante group was led by Sékou Allaye Bolly, a Fulani businessman from the centre who was involved in the reintegration of former jihadist fighters from the centre in tandem with the State authorities. Since 2020, he has been a Head of Mission in the cabinet of Mali’s Ministry of National Reconciliation, along with a former Dan na Ambassagou leader, Marcelin Guenguéré, who has been appointed Chief of Staff in the same ministry.

<sup>152</sup> 12 of the victims are believed to have been members of the self-defence group stationed in the village.

<sup>153</sup> MINUSMA. 2019. “Report of the Secretary-General on the Situation in Mali”, 31 May: [minusma.unmissions.org/sites/default/files/s\\_2019\\_454\\_e.pdf](https://www.minusma.unmissions.org/sites/default/files/s_2019_454_e.pdf) para 30.

<sup>154</sup> MINUSMA. 2019. “Communiqué de presse: Conclusions préliminaires de la mission d’enquête spéciale sur les graves atteintes aux droits de l’homme commis à Ogossagou le 23 mars 2019” [Press release: Preliminary Conclusions of the Special Fact-Finding Mission on the Serious Human Rights Violations Committed in Ogossagou on 23 March 2019]: [minusma.unmissions.org/communiqu%C3%A9-de-presse-conclusions-pr%C3%A9liminaires-de-la-mission-d%E2%80%99enqu%C3%AAt-sp%C3%A9ciale-sur-les-graves](https://www.minusma.unmissions.org/communiqu%C3%A9-de-presse-conclusions-pr%C3%A9liminaires-de-la-mission-d%E2%80%99enqu%C3%AAt-sp%C3%A9ciale-sur-les-graves)

<sup>155</sup> RFI Afrique. 2019. “Mali: visite du président IBK dans le village dévasté d’Ogossagou” [Mali: President IBK visits the devastated village of Ogossagou]. 25 March: [rfi.fr/en/afrique/20190325-mali-visit-president-ibk-ogossagou-village](https://www.rfi.fr/en/afrique/20190325-mali-visit-president-ibk-ogossagou-village)

<sup>156</sup> RFI Afrique. 2019. “Massacre au Mali: IBK remplace son état-major et dissout la milice dogon” [Massacre in Mali. IBK replaces his staff and dissolves the Dogon militia]. 24 March: [rfi.fr/afrique/20190324-mali-consternation-secours-massacre-centre-peuls-ogossagou](https://www.rfi.fr/afrique/20190324-mali-consternation-secours-massacre-centre-peuls-ogossagou)

<sup>157</sup> RFI Afrique. 2019. “Mali: Dan Nam Ambassagou refuse sa dissolution demandée par les autorités” [Dan Nam Ambassagou refuses to dissolve as requested by the authorities]. 28 March: [rfi.fr/afrique/20190328-mali-attacks-massacre-villages-dogons-dana-amassagou-youssouf-toloba](https://www.rfi.fr/afrique/20190328-mali-attacks-massacre-villages-dogons-dana-amassagou-youssouf-toloba)

Demonstrations were also organized in Bamako to denounce inter-communal violence in the centre and the role of Prime Minister Boubeye Maiga in the growth of so-called self-defence groups,<sup>158</sup> demonstrations that ended with the resignation of the Prime Minister and his government in April 2019.<sup>159</sup>

The judicial response was quickly set in motion with the opening of an investigation by the Specialized Judicial Unit and the arrest of 10 suspects as of May 2019.<sup>160</sup> The first challenge for the investigation was to secure the site and avoid “pollution”; this was done with the support of MINUSMA.<sup>161</sup> PJS teams were able to deploy to the site of the attack with technical support from MINUSMA and conduct interviews and scientific expertise. The BIS of the PJS was deployed for a month in Ogossagou, supported by the Bankass gendarmerie; however, it was unable to exhume the bodies, buried in mass graves, for forensic examination. In fact, the bodies had already been buried the day after the attack, on 24 March, during the visit of the government delegation, and religious and cultural reticence prevented them from being exhumed for examination.<sup>162</sup>

The investigating judge in charge of the case then issued arrest warrants in November 2019 for several people suspected of responsibility for the attack. As of November 2021, two years later, these warrants had still not been executed. According to the judge in charge of the case, “none of the arrest warrants [issued for Ogossagou] have been executed. I have not even had any official feedback regarding the warrants I issued, not even an acknowledgement of their receipt”.<sup>163</sup>

Despite the symbolic nature of this case, an analysis of the judicial process shows a lack of coordination in the response between the various State structures and, above all, a reluctance to arrest those identified in the investigation, which effectively hinders the victims' right to truth and justice. Indeed, although the BIS is mandated to arrest persons of interest in these investigations, it remains dependent on the availability of the Malian Armed Forces to deploy to central Mali and secure these arrests. The judicial authorities believe that, given the current state of the conflict in the centre, it is impossible to arrest some people. According to them, victims and witnesses are afraid to help identify suspects because of possible reprisals. “It's a matter of time. We must first secure the centre before we can make arrests.”<sup>164</sup>

A PJS judge believes the Ogossagou investigation is at an advanced stage, with several witnesses being heard and with the collection of ballistic and scientific evidence that will allow the case to move forward; the problem lies in the failure to execute the arrest warrants because “these people are in the centre of Mali and everyone knows there's no State administrative presence there.”<sup>165</sup>

The village of Ogossagou-Peul was again attacked on 14 February 2020 by people suspected of being members of Dan na Ambassagou. The deployment of an army contingent and government-initiated efforts to reduce tensions led to the return to the village of Fulani populations who had moved to Mopti and other urban areas in Mali following the first massacre. According to the report of the United Nations (UN) Panel of Experts, the second attack on the Fulani district of Ogossagou could have been prevented. In addition to the perpetrators' responsibility for the attack, the negligence of the Malian army unit stationed in the village contributed to this massacre, which resulted in the deaths of 35 civilians, including one woman, three boys and two girls, and the disappearance of 19 others in the aftermath of the attack.<sup>166</sup> The attack followed the same procedure as the first, with the arrival at dawn (5 a.m.) of fighters on motorbikes armed with automatic

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<sup>158</sup> There is widespread speculation regarding a tacit agreement between the FAMA and Dan na Ambassagou between 2019 and 2019 to secure central Mali. Hunters have served as scouts and informants for military authorities deployed in the centre, and this collaboration has been integrated into the plan to secure the centre, developed by the government of Soumeylou Boubeye Maiga in 2018. See Crisis Group. Reversing Central Mali's Descent into Communal Violence, p.16: <https://www.crisisgroup.org/africa/sahel/mali/293-enrayer-la-communautarisation-de-la-violence-au-centre-du-mali>

<sup>159</sup> Aïssatou Diallo and Baba Ahmed. 2019. “Mali: les raisons de la démission de Soumeylou Boubeye Maiga” [Mali: the reasons for Soumeylou Boubeye Maiga's resignation]. 19 April: [jeuneafrique.com/765358/politique/mali-les-raisons-de-la-demission-de-soumeylou-boubeye-maiga/](http://jeuneafrique.com/765358/politique/mali-les-raisons-de-la-demission-de-soumeylou-boubeye-maiga/)

<sup>160</sup> MINUSMA. 2019. “Report of the Secretary-General on the Situation in Mali”, 31 May: [minusma.unmissions.org/sites/default/files/s\\_2019\\_454\\_e.pdf](https://www.unmissions.org/sites/default/files/s_2019_454_e.pdf) para 31.

<sup>161</sup> Interview with a former SJP prosecutor, June 2021

<sup>162</sup> Interview with the investigating judge with responsibility for Ogossagou, June 2021

<sup>163</sup> Interview with the investigating judge with responsibility for Ogossagou, June 2021

<sup>164</sup> Interviews with SJP judges, June 2021

<sup>165</sup> Interview with the investigating judge with responsibility for Ogossagou, June 2021

<sup>166</sup> Still missing at the time of the report's publication in August 2020.

rifles, shotguns and knives, presumed to be Dozo hunters affiliated to Dan na Ambassagou, who surrounded the village and carried out targeted killings of Fulani civilians before destroying public buildings.<sup>167</sup>

According to sources consulted by the United Nations, military operations command in the centre had been warned by local sources of an attack being planned on the village once the military contingent responsible for securing Ogossagou had left and before the arrival of the relief force. It had given assurances in this regard, including from the Ministry of Defence,<sup>168</sup> that the relief force would arrive in time to assist the population. And yet it was well after the departure of this contingent on 13 February 2020, at around 5 p.m. and before the arrival of their relief at 8 a.m. on 14 February, that the attack took place. In addition, a MINUSMA detachment alerted to the impending attack and deployed to Ogossagou was reportedly “diverted from the route to another place”.<sup>169</sup>

Despite political condemnation and promises of a judicial response, the Ogossagou II investigation is still in its infancy two years on. The PJS was unable to deploy to the site following the attack due to security and transportation issues and did not interview any victims or witnesses to the attack.

## **SOBANE-DA MASSACRE (9 JUNE 2019)**

**“I would not want to close the case with these people in custody, because there are still many suspects out there. Sobane-Da is the most important file I'm working on.”<sup>170</sup>**

The attack on the village of Sobane-Da, in the Bandiagara *cercle* (Sangha commune), came two months after the attack on Ogossagou (March 2019). On 9 June 2019, between 5 p.m. and midnight, the village suffered an attack very similar to others perpetrated in the Mopti region. Thirty to 40 armed individuals surrounded and attacked the village from the west and south, firing automatic weapons at residents, burning and destroying civilian buildings, and shooting the wounded.

According to MINUSMA, 35 people were killed in the attack, including 32 who were burned alive or asphyxiated while seeking refuge in various buildings in the village. Twenty-two children under the age of 12 (11 girls and 11 boys) were among the victims; the other victims were seven men and six women. The attack caused injury to nine individuals, including four children between the ages of two and 11 who were evacuated to Bandiagara and Sévaré. Most of the victims could not be identified or could only be identified from lists compiled by local residents, including some survivors of the attack who had taken refuge in Koundou and Sourou.<sup>171</sup> Forty percent of the village buildings were destroyed, including 23 houses and 27 grain stores.<sup>172</sup> According to survivors of the attack and the MINUSMA report, the suspected attackers were members of a Fulani community self-defence group living in the surrounding villages, including Binédama.

An investigation was initiated into the Sobane-Da massacre by the Specialized Judicial Unit shortly after the attack. Nine individuals, members of the Fulani community, were arrested by the military three days following the attack in surrounding villages such as Karakindé and handed over to the courts for judicial

<sup>167</sup> “At least 136 dwellings (wooden or concrete) were destroyed by arson or rendered uninhabitable, 32 grain stores and food storage sheds burned or rendered unusable, 24 carts, three commercial buildings (kitchen, rotisserie and store) destroyed, two cattle pens destroyed and/or burned, and a significant number of cattle stolen or killed.” OHCHR. 2020. “Conclusions de la mission d’enquête spéciale sur les graves atteintes aux droits de l’homme commises à Ogossagou le 14 février 2020” [Findings of the Special Fact-Finding Mission into the Serious Human Rights Violations Committed in Ogossagou on 14 February 2020] (Press Release): [ohchr.org/Documents/Countries/ML/Conclusions\\_mission\\_denquete\\_speciale\\_14feb2020.pdf](https://ohchr.org/Documents/Countries/ML/Conclusions_mission_denquete_speciale_14feb2020.pdf)

<sup>168</sup> United Nations. 2020. “Final report of the Panel of Experts established pursuant to Security Council Resolution 2374 (2017) on Mali and renewed pursuant to resolution 2484 (2020), S/2020/785: [securitycouncilreport.org/att/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S\\_2020\\_785.pdf](https://www.un.org/securecouncilreportorg/att/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2020_785.pdf) Page 8.

<sup>169</sup> MINUSMA. 2020. “Conclusions de la mission d’ enquête spéciale sur les graves atteintes aux droits de l’ homme commises à Ogossagou, le 14 février 2020” [Conclusions of the special fact-finding mission on the serious human rights violations committed in Ogossagou, 14 February 2020]. 18 March: [minusma.unmissions.org/conclusions-of-the-mission-d%E2%80%99inquiry-sp%C3%AAte-sp%C3%A9cial-on-the-serious-abuses-of-human-rights-committed](https://minusma.unmissions.org/conclusions-of-the-mission-d%E2%80%99inquiry-sp%C3%AAte-sp%C3%A9cial-on-the-serious-abuses-of-human-rights-committed)

<sup>170</sup> Interview with the SJP Investigating Judge, June 2021

<sup>171</sup> MINUSMA. 2019. “Rapport sur les atteintes sérieuses aux droits de l’ homme commises lors de l’ attaque du village de Sobane Da (région de Mopti) le 9 juin 2019” [Report on serious human rights abuses committed during the attack on the village of Sobane Da (Mopti region) on 9 June 2019]: <https://minusma.unmissions.org/publication-du-rapport-final-de-l%E2%80%99enqu%C3%AAte-sur-les-atteintes-s%C3%A9rieuses-aux-droits-de-l%E2%80%99homme-commises> Para 11.

<sup>172</sup> According to the MINUSMA report, 329 people fled the village (221 children, being 116 girls and 105 boys, plus 108 adults) as a result of the attack, according to local and humanitarian sources contacted by MINUSMA in their investigation.

investigation. According to the judge in charge of the investigation, there was little evidence to establish the involvement of the individuals arrested in the attacks; some were arrested at their homes or while going about their normal business during a sweep by the FAMA. Although they were sentenced to two years for illegal possession of weapons and ammunition in connection with a terrorist enterprise, membership of a combat group in relation to a terrorist enterprise, arson, murder, robbery and wilful damage to the property of others,<sup>173</sup> the judge in charge of the case had reservations about the conditions of their arrest and said that “we do not know on what basis the military made these arrests.”<sup>174</sup>

Several victims and witnesses were heard by the justice system on 18 August 2019, including the mayor of the commune of Koundou.<sup>175</sup> This was the only time that victims and witnesses were heard by the judge, who cited logistical and security difficulties. The victims and witnesses interviewed identified several of the assailants by their precise names, naming them as residents of nearby villages such as Singuimana, Binédama and Diankabou.<sup>176</sup>

A warrant was issued to the Specialized Investigation Brigade (BIS) on 29 October 2019 to arrest seven people identified by name by the victims, including the chiefs of the three villages mentioned above, but it was not executed. In its February 2020 correspondence, the BIS cited as obstacles to its implementation “the scattering of affected villages over a fairly large area of Seno and the mobility and instability of the populations given the prevailing insecurity and community conflicts.”<sup>177</sup> The justice system also invoked the problem of homonymity as a possible obstacle to the arrest of persons of interest, as victims and witnesses had provided the names of suspects without their filiation, which can cause identification problems.

As of November 2021, the investigating judge had still not been able to visit the site of the massacre. And for the judge, “proper searches have not been done to question certain individuals and the files are still open even though the investigation is stalled.”<sup>178</sup>

In June 2021, seven of the nine individuals arrested in this case were released following a request for their provisional release by their lawyer. As of October 2021, two detainees remained in custody for the Sobane-Da massacre. The investigation has made little progress since the August 2019 hearings and the failure to execute the arrest warrants issued by the investigating judge in October 2019.

## **BANKASS MASSACRE (1 JULY 2020)**

Still in the context of the cycle of inter-communal violence in the centre of the country, several villages in the Bankass *cercle* (Fangadougou, Gouari, and Djimindo; Tori and Diallassagou communes) were attacked on the afternoon of 1 July 2020 by unidentified assailants, resulting in the deaths of 32 people from the Dogon community. Local sources interviewed by Amnesty International said the attackers, who arrived on nearly 60 motorcycles and were armed with automatic and homemade rifles, first attacked the village of Fangadougou, killing one person, before moving on to Djimdo, where 15 people were killed, and Gouari, where 16 people were killed and four more were injured.<sup>179</sup> In addition to the unlawful killings, livestock was seized by the attackers, who also destroyed several civilian buildings in the villages of Gouari and Djimdo.

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<sup>173</sup> Specialized Judicial Unit. 2020. Specialized Investigation Brigade of Bamako. “Procédure sur délégation judiciaire”, Report No. 017-BIS-PJS of 4 February 2020, (15 April)

<sup>174</sup> Interview with the investigating judge with responsibility for Sobane-Da, June 2021.

<sup>175</sup> Interview with the investigating judge with responsibility for Sobane-Da, June 2021.

<sup>176</sup> Interview with the investigating judge with responsibility for Sobane-Da. The village chief of Binédama was killed when members of the Malian National Guard, accompanied by Dogon militiamen, attacked the village in June 2020.

<sup>177</sup> Specialized Judicial Unit. 2020. “Report”, PV #017/BIS-PJS of 4 February 2020

<sup>178</sup> Interview with SJP Investigating Judge, June 2021

<sup>179</sup> Interview with residents of Djimdo and Gouari, and with local officials from Bankass, July 2020

These three attacks in the Bankass *cercle* were not claimed by any group. Immediately after the killings, the PJS opened a judicial investigation but, as in other cases of attacks on civilians in the centre of the country, the investigation is proceeding slowly, and no-one has been charged with the unlawful killings.<sup>180</sup>



 Aerial shot depicting a camp for displaced people in Sevre (central Mali) ©Michele Cattani / AFP

## PROCEEDINGS FOR ACTIONS QUALIFIED AS TERRORISM

Several individuals suspected by the Malian authorities of being members of armed groups have been arrested for “acts of terrorism” (as defined by Malian law) committed since 2018 in the centre of the country. The PJS has opened investigations not into crimes that these individuals or groups they belong to may have committed against civilians but for “belonging to a combat group intentionally linked to a terrorist enterprise”, “receiving stolen goods” or “illegal possession of weapons linked to a terrorist enterprise”.<sup>181</sup>

As of November 2021, 221 trials had been held for terrorism-related offences at the Bamako and Mopti Courts of Appeal. Some of these cases involved post-2018 events in central Mali but Amnesty International has been unable to distinguish between cases from before and after 2018.

During 2021, a special assizes session on terrorism was held by the Bamako Court of Appeal from 4 October to 2 November 2021. By the end of the session, 47 cases had been heard, involving one death sentence, 17 life sentences and seven acquittals, of which 32 were *in absentia* (Amnesty International opposes the death penalty and trials *in absentia*, see section 4.1).<sup>182</sup> The stated desire of the judiciary is to make these special assizes a regular occurrence, and to conduct one per year in Bamako.<sup>183</sup>

Amnesty International was able to attend several of the hearings in the October-November 2021 special session and spoke to defence lawyers, many of whom were court-appointed, about several of the court proceedings. These cases involved post-2018 events in central Mali.

Defendants arrested in central Mali who were present at their trial had access to an interpreter during the proceedings and were assisted by lawyers. Several of the defendants were not at the hearings, however,

<sup>180</sup> UNO. 2020. “Report of the Secretary-General on the Situation in Mali, 28 December: [minusma.unmissions.org/sites/default/files/s\\_2020\\_1281\\_e.pdf](https://www.unmissions.org/sites/default/files/s_2020_1281_e.pdf) para 33.

<sup>181</sup> Bamako Court of Appeal. 2021. “Rôle journalier: session d’octobre 2021 de la cour d’assises siégeant à Bamako” [Daily roll: October 2021 session of the Court of Assizes sitting in Bamako], 27 September 2021.

<sup>182</sup> Mali Actu. 2021. “Mali: Session spéciale sur le terrorisme de la cour d’ assises: Une peine de mort, 17 condamnations à perpétuité, 7 acquittements et 32 condamnations par contumace” [Special Session on Terrorism of the Court of Assizes: One death sentence, 17 life sentences, 7 acquittals and 32 convictions in absentia], Press article (6 November): [maliactu.net/mali-session-speciale-sur-le-terrorisme-de-la-cour-d-assises-une-peine-de-mort-17-condamnations-a-perpetuite-7-acquittals-and-32-convictions-in-contumace/](https://maliactu.net/mali-session-speciale-sur-le-terrorisme-de-la-cour-d-assises-une-peine-de-mort-17-condamnations-a-perpetuite-7-acquittals-and-32-convictions-in-contumace/)

<sup>183</sup> Interviews with Minister of Justice, October 2021.

because they had been released previously in prisoner-hostage exchanges.<sup>184</sup> Such was the case, for example, of Moussa Tamboura, whose case was listed in the assizes and who was accused of acts of terrorism by belonging to a combat group with an intentionally terrorist enterprise and complicity in acts of terrorism. He was sentenced *in absentia* to life imprisonment, in a summary hearing with no debate, and without even the representation of a lawyer. The accused had been placed under a committal order on 2 December 2019 but was later released without the criminal case against him being extinguished – his name appeared as number 129 in a document listing the 204 prisoners released by the Malian authorities in October 2020 as part of a prisoner-hostage exchange led by the DGSE. Amnesty International is unable to confirm whether he has been informed of his trial, conviction, and sentence. Under such circumstances, this trial does not meet the minimum guarantees of the right to a fair trial.

Trials observed by Amnesty International in which the defendant was present also highlighted other possible procedural irregularities and violations of their human rights. For example, D.D. was arrested in 2020 and tried in October 2021 for possession of weapons connected to a terrorist endeavour at the time of his arrest. During the hearing, the accused, assisted by an interpreter and a lawyer, said he had been beaten during his initial arrest and did not remember confessing to owning three guns found on a motorcycle, and he disputed the contents of his interrogation report. The defendant's lawyer denounced<sup>185</sup> the “beating suffered to extract a confession from him following his arrest”. These allegations correspond to practices that have already been documented within the General State Security Directorate (see Chapter 3.3 of this report). Amnesty International repeats that the Malian authorities must investigate all allegations of torture by its agents and those statements made under torture and without the presence of a lawyer must not be used to prosecute an individual. D.D. was nonetheless sentenced to five years in prison and a fine of 2 million FCFA (EUR 3,000).

Some proceedings for “terrorism” as defined by Malian law therefore involved serious violations of the rights of the suspects and defendants subject to those proceedings: illegal detention and incommunicado detention of suspects at the DGSE; torture and ill-treatment; lack of a defence lawyer, usually court-appointed, at the investigation stage and during pre-trial detention; inability of the suspect to appeal to a judge before referral to the Court of Assizes; hasty trials or trials *in absentia*, among others. The authorities must give appropriate remedy to violations suffered by those accused or convicted, when these violations occur and, on a case-by-case basis, and ensure that current and future proceedings are conducted with respect for the dignity of persons, a prohibition of torture and ill-treatment, and the minimum guarantees of the right to a fair trial.

## 4.2 PROCEDURES CONCERNING THE NATIONAL ARMED FORCES

**“It’s important to realise that the military prosecutor is not in charge of the prosecution. For military affairs, it is the Minister of Defence and Veterans Affairs.”<sup>186</sup>**

For a time, the jurisdiction given to military courts to hear crimes committed by military personnel against civilians was slowing down the opening of investigations, first because they were not operational prior to 2018 and then because of the initiative given to the Minister of the Army to prosecute.<sup>187</sup> Paradoxically, several cases have been opened since the arrival to power of military officers in August 2020, notably in response to pressure from the international community and civil society.

The first proceedings were initiated in 2018. Nonetheless, between January and March 2021, ten judicial proceedings involving military personnel were opened by military authorities and courts for alleged unlawful killings or extrajudicial executions committed since 2018, including in Dioura (February 2018), Boulikessi

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<sup>184</sup> Interviews with Mr Aliou Touré and Mr Mallet, lawyers, October 2021.

<sup>185</sup> Interview with Mr Oumar Mallet, defence lawyer at the special assizes’ session on terrorism, October 2021.

<sup>186</sup> Interview with the Prosecutor of the military court in Bamako, June 2021.

<sup>187</sup> Interviews with AMDH, ASF-Canada, June and October 2021.

(May 2018), Nantaka (June 2018), and Massabougou (June 2020).<sup>188</sup> Other incidents, however, such as those occurring in several villages in the communes of Dogofry and Diabaly (Niono *cercle*, Ségou region) in February 2020,<sup>189</sup> for which the military is allegedly responsible, have not been prosecuted.

Investigations opened by military courts into crimes committed since 2018 by military personnel in the central regions have seen little progress, and none has resulted in a trial as of the date of this report. Military personnel suspected of involvement in war crimes or other serious violations remain in service, despite forming the object of prosecutions. To justify this state of affairs, the authorities invoke the insecurity that hinders investigations, but also the negative impact that these cases could have in terms of army cohesion.<sup>190</sup>

Amnesty International repeats that military courts should not have the jurisdiction to prosecute and try crimes under international law and other crimes committed against civilians and calls on the Malian authorities to investigate and prosecute such crimes through the ordinary civilian courts (see Chapter 3, Section 3.1.2).

## 4.2.1 PROCEEDINGS BEFORE THE BAMAKO MILITARY COURT

The Bamako Military Court has jurisdiction over the regions of Koulikoro, Bamako and Ségou, and is organized around a civilian prosecutor assisted by three deputy prosecutors from the army officer corps, and an investigating judge attached to Bamako Commune IV. Although a Directorate of Military Justice was established in 2007,<sup>191</sup> it is only since 2018 that the Bamako Military Court has commenced activities, and this at a stop/start pace. All of the cases that have been tried so far have been for offences that were essentially military in nature.

### MASSABOUGOU (6 JUNE 2020)

The Massabougou case involved the arrest and execution of nine villagers during a military patrol on 6 June 2020. According to sources consulted by MINUSMA, this patrol was organized following an armed attack on a military post in the village of Sarakala at 3 a.m. in the morning of 6 June.<sup>192</sup> Military personnel made the arrests at around 11 a.m. after searching several homes, and those arrested were reportedly executed near the village cemetery. Amnesty International had already denounced the arrest of 22 people and the execution of eight of them by Malian soldiers a few months earlier, on 7 February, in the same village of Massabougou.<sup>193</sup>

The Malian authorities announced an investigation in response to allegations of abuses in Massabougou.<sup>194</sup>

According to sources knowledgeable of the case, it was a colonel who informed the relevant authorities of these allegations, resulting in the drafting of an intelligence report and the indictment of six soldiers for murder and assassination. The gendarmerie was able to hear the families of victims and witnesses as well as the soldiers.<sup>195</sup> Persons of interest such as the sub-prefect of Sokolo and the commander of the military region of Ségou were heard by the Ugo military justice system.

The military court was, however, unable to locate the bodies of the nine victims from Massabougou due to the insecurity in that area and an attempt to get a military judge to hear several witnesses in Ségou was unsuccessful due to a fear of testifying on the part of those involved. According to judicial sources, the chief of the village of Massabougou refused to travel to Ségou because of the presence of Dozo hunters on the

<sup>188</sup> MINUSMA Report April 2021.

<sup>189</sup> AFR 37/2318/2020. Sahel. “They Executed some and Brought the Rest with Them”: Human Rights Violations by Security Forces in the Sahel, Amnesty International Report (June 2020)

<sup>190</sup> Interview with the Prosecutor of the Mopti High/Military Court, October 2021.

<sup>191</sup> Republic of Mali. 2007. Order No. 07-029/P-RM of 18 July 2007 creating the Directorate of Military Justice

<sup>192</sup> MINUSMA. “Note sur les tendances des violations et abus de droits de l’homme au Mali 1er avril - 30 juin 2020” [Note on trends in violence and human rights abuses in Mali 1 April to 30 June 2020] Human Rights and Protection Division: [minusma.unmissions.org/sites/default/files/note\\_trimestrielle\\_tendances\\_des\\_violations\\_et\\_abus\\_de\\_dh\\_avril-juin\\_2020\\_final\\_version.pdf](https://minusma.unmissions.org/sites/default/files/note_trimestrielle_tendances_des_violations_et_abus_de_dh_avril-juin_2020_final_version.pdf) para 37.

<sup>193</sup> AFR 37/2318/2020. Sahel. “They Executed Some and Brought the Rest with Them”: Human Rights Violations by Security Forces in the Sahel, Amnesty International Report (June 2020)

<sup>194</sup> Ministry of Defence and Veterans Affairs of Mali. 2020. “Communiqué”, 8 June.

[facebook.com/MalianForcesArmees/photos/a.286095741540018/1677446942404884/?type=3&source=57](https://facebook.com/MalianForcesArmees/photos/a.286095741540018/1677446942404884/?type=3&source=57)

<sup>195</sup> Interview with the Prosecutor and deputy prosecutors, Bamako Military Court, June 2021.

road and the risk of reprisals. “When I get back, everyone will know that I went to testify and my life will be in danger,” he was quoted as saying when asked, illustrating once again the imperative of protecting victims and witnesses in the context of judicial investigations.

For the justice system, at this stage in the investigation, without the possibility of going to Dogofry and given the time elapsed since the attack, the possibilities of exploiting forensic expertise are becoming increasingly complicated, especially if one also considers the cultural and religious reticence around exhuming the bodies. One of the options considered by the military court for these investigations is to delegate investigative powers to the Zone Commander of the 6<sup>th</sup> Military Region, which could put the fairness of the case at risk.

Despite the serious charges and ongoing proceedings against them, the six suspects are still deployed in theatres of operation. The fear of a reaction from the military if some of their own are arrested is generally a factor in the decisions taken by the military justice system. “Arresting soldiers while they are on operations and under fire could be detrimental to the morale of their comrades in the field and cause them unnecessary stress. Those in command need to be mindful of making such arrests.”<sup>196</sup>

Amnesty International is calling for the suspension of all military and other officials when they are being prosecuted for crimes under international law or other serious human rights violations.

## 4.2.2 PROCEEDINGS BEFORE THE MOPTI MILITARY COURT

The jurisdiction of the Mopti military court covers the regions of Mopti, Gao, Timbuktu, Ménaka, Taoudenni and Kidal.<sup>197</sup> Unlike the court in Bamako, the prosecutor of the military court in Mopti is also the prosecutor at Mopti High Court, and thus handles both civilian and military cases.

In February 2021, a working group on military justice was formed in Mopti, bringing together military and ordinary judicial authorities and partners such as MINUSMA and EUCAP Sahel Mali to support the functioning of military justice and the judicialization of military operations.<sup>198</sup> The stated goal of the working group is to monitor ongoing proceedings, build the capacity of members of the judiciary, bring the training offered into line with the actual needs expressed by the actors, and support coordination between investigative units and the conduct of hearings.

### KOBAKA AND NANTAKA (JUNE 2018)

On 13 June 2018, villagers discovered three mass graves in the vicinity of the villages of Kobaka and Nantaka (Mopti cercle)<sup>199</sup> following the arrest of 25 individuals from the Fulani community.<sup>200</sup> According to witnesses quoted by the media, they heard gunfire after the arrests, and the bodies were discovered once the military had left. Another witness quoted by FIDH and AMDH said that the soldiers had promised to kill 20 villagers if any of them were attacked.<sup>201</sup> In February 2018, two Malian soldiers on leave were attacked by armed men in Nantaka, resulting in the death of one of them.

The responsibility of the soldiers at the Sévaré camp was quickly noted by local sources and associations, and the Malian authorities acknowledged the responsibility of the army in these extrajudicial executions.<sup>202</sup>

<sup>196</sup> Interview with the Prosecutor and deputy prosecutors, Bamako Military Court, June 2021.

<sup>197</sup> As part of the revision of the codes of criminal procedure, military justice and the criminal code, a reduction in the jurisdiction of the Mopti military court is being considered, with the possibility of establishing another court of appeal, with another military court for the northern regions.

<sup>198</sup> UN. 2021. MOPTI: démarrage d’ un groupe de travail sur la justice militaire avec l’ appui de la MINUSMA [MOPTI: Military justice working group launched with MINUSMA support] (12 February): [peacekeeping.un.org/fr/mopti-demarrage-dun-groupe-de-travail-sur-la-justice-militaire-avec-lappui-de-la-minusma](https://peacekeeping.un.org/fr/mopti-demarrage-dun-groupe-de-travail-sur-la-justice-militaire-avec-lappui-de-la-minusma)

<sup>199</sup> Thirteen bodies in one pit, seven in another and five in the third. See also RFI Afrique. 2018. “Mali: possibles découvertes de charniers vers Nantaka et Kobaka, dans le centre” [Mali: possible discoveries of mass graves near Nantaka and Kobaka, in the centre], 18 June: [rfi.fr/afrique/20180618-mali-possibles-decouvertes-charniers-peuls-nantaka-kobaka-armee-fama](https://www.rfi.fr/fr/afrique/20180618-mali-possibles-decouvertes-charniers-peuls-nantaka-kobaka-armee-fama)

<sup>200</sup> According to the RFI article, witnesses cite the arrest of several dozen residents of Kobaka and Nantaka, including Songhais, Tamasheqs, and Bozos, all of whom were later released, however. See also RFI Afrique. 2018. “Mali: possibles découvertes de charniers vers Nantaka et Kobaka, dans le centre” , 18 juin: [Mali: possible discoveries of mass graves near Nantaka and Kobaka, in the centre] 18 June: [rfi.fr/fr/afrique/20180618-mali-possibles-decouvertes-charniers-peuls-nantaka-kobaka-armee-fama](https://www.rfi.fr/fr/afrique/20180618-mali-possibles-decouvertes-charniers-peuls-nantaka-kobaka-armee-fama)

<sup>201</sup> FIDH Report, page 62.

<sup>202</sup> VOA Afrique. 2018. “Bamako reconnaît l’ implication de militaires dans les fosses communes au Mali” [Bamako acknowledges military involvement in mass graves in Mali] (20 June): [voaafric.com/a/fosses-communes-au-mali-bamako-reconnait-military-involvement/4446478.html](https://www.voaafric.com/a/fosses-communes-au-mali-bamako-reconnait-military-involvement/4446478.html)

Three years after the event, however, with the Nantaka case under investigation since 2018, there do not seem to have been any further significant developments.

## **DIOURA (FEBRUARY AND APRIL 2018)**

The military court has been investigating incidents in the town of Dioura (Tenenkou *cercle*, Mopti region) since 2018. These date from 5 April 2018 when 14 individuals were killed by soldiers in as yet unexplained circumstances. In fact, the Malian army had arrested 14 individuals on 5 April 2018, in the villages of Nelbal and Dekounna, during a military patrol. The day after these arrests, the Directorate of Public Relations of the Armed Forces publicly declared the deaths of the 14 individuals during an escape attempt.<sup>203</sup> According to a witness interviewed by Human Rights Watch, the soldiers found a weapon in Dioura village during their patrol, which is believed to be the reason for the arrest of the 14 individuals. The announcement of the deaths of the 14 detainees in an escape attempt was met with scepticism by local associations such as Tabital Pulaaku, which claimed extrajudicial executions on the part of the army.<sup>204</sup>

In response to the outcry and scepticism generated by these incidents, while denouncing attempts to “make the army feel guilty” and noting the professionalism of the soldiers, the Ministry of Defence and Veterans Affairs announced the opening of an investigation to shed light on the circumstances of these deaths. The case was referred to the military prosecutor as early as 8 April 2018 to initiate an investigation into these allegations.<sup>205</sup> Amnesty International has been unable to obtain any information on progress in this case.

In the same locality of Dioura, on 21 February 2018, three individuals (Amadi Bah, 21 years old, Assane Bah, 40 years old and Modibo Bah, 60 years old) were forcibly disappeared and then killed. These three individuals had been arrested by the FAMA that same day in Finadjè and Selibougou. A strong suspicion of extrajudicial killings hangs over the Malian military following the discovery, in June 2018, of three bodies – identified by their families as those of the missing men– in two pits in Korogui, at a former site occupied by the FAMA.<sup>206</sup> According to an FIDH report documenting these incidents, “One of the bodies was wearing a shirt similar to the one worn by Amadi Bah on 21 February” when he was arrested by soldiers.<sup>207</sup> As of the date of this report, these February 2018 incidents are not being investigated.

## **MALÉMANA (DECEMBER 2019)**

Another case pending before the Mopti military court concerns enforced disappearances followed by extrajudicial killings of civilians in the village of Malémana (Tenenkou *cercle*, Mopti region). These incidents took place on 19 December 2019 when 26 Fulani villagers from Malémana were arrested during a military patrol and then disappeared, their bodies discovered by residents of Ndoukala days later in a well in the same village (Dogofry commune, Ségou region).

Public denunciations gained momentum after people from the area released videos showing the mass grave in late December 2019. It was in response to this pressure that a judicial investigation was opened by the military prosecutor of Mopti.<sup>208</sup> MINUSMA has provided technical and logistical support to the Malian authorities to investigate this case, including the provision of forensic equipment and expertise, in order to push for a successful investigation by the military justice system; however, progress has been limited since 2019. Indeed, the exhumation of the bodies requested by the Malian authorities has still not been carried out. A judicial delegation is being considered by the military prosecutor of Mopti, for Malémana, to enable the judicial police to collect material evidence in this case.<sup>209</sup>

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<sup>203</sup> Human Rights Watch. 2018. “Mali: Deaths, Torture in Army Detention. Justice Ministry Should Conduct Investigations in the Mopti Region”: [hrw.org/news/2018/04/09/mali-deaths-torture-army-detention](https://www.hrw.org/news/2018/04/09/mali-deaths-torture-army-detention)

<sup>204</sup> Studio Tamani. 2018. “Dioura: polémique autour de la mort de 15 personnes” [Dioura: polemic around the death of 15 people], Press article: [studiotamani.org/index.php/themes/politics/15204-dioura-polemique-autour-de-la-mort-de-15-personnes](https://www.studiotamani.org/index.php/themes/politics/15204-dioura-polemique-autour-de-la-mort-de-15-personnes)

<sup>205</sup> MINUSMA. 2018. “La MINUSMA prête à appuyer les autorités maliennes” [MINUSMA ready to support Malian authorities], Facebook page: [facebook.com/notes/3541505853589](https://www.facebook.com/notes/3541505853589)

<sup>206</sup> FIDH/AMDH letter to MDAC.

<sup>207</sup> FIDH report, page 59

<sup>208</sup> UNO. 2020. “Rapport du Secrétaire général sur la situation au Mali” [Report of the Secretary-General on the situation in Mali], 20 March: [minusma.unmissions.org/sites/default/files/s\\_2020\\_223\\_e.pdf](https://www.minusma.unmissions.org/sites/default/files/s_2020_223_e.pdf)

<sup>209</sup> Interview with the Prosecutor of the Mopti Military Court, January 2022.

## YANGASSADIOU AND BINÉDAMA (JUNE 2020)

In Yangassadiou, cases of extrajudicial killings were reportedly committed by members of the Mondoro National Guard on 3 June 2020 during a patrol on market day. According to MINUSMA, the Malian National Guard unit was assisted by fighters from Dan na Ambassagou. The FAMA reportedly surrounded the village, arrested several people, and summarily and extrajudicially executed at least 15 civilian men, all of them members of the Fulani and Bella communities.<sup>210</sup>

An investigation was opened by the military court of Mopti in June 2020. No-one has been arrested for these crimes since then. Amnesty International has not received any information on progress in investigating the case, despite asking the judicial authorities in Mopti and the Directorate of Military Justice.

Two days after the Yangassadiou incidents, the village of Binédama was attacked by soldiers, again accompanied by traditional hunters, who indiscriminately killed 37 civilians including three children, according to a MINUSMA report. Huts and grain stores were also burned. The Binédama massacre forms part of the backdrop to the violence in the southern *cercles* of the Mopti region (Douentza; Bankass and Koro), the village of Binédama being cited as the home village of the people who attacked the Sobane-Da on 9 June 2019.

As in the case of Nantaka a year earlier, the authorities acknowledged the possibility of crimes committed by members of the security forces, very quickly announcing the opening of an investigation.<sup>211</sup> In this case, Amnesty International has had confirmation of an ongoing investigation since 2020 but no information on its progress since.<sup>212</sup>

Despite the opening of investigations, taking statements from several suspects in some of these different proceedings and, sometimes, issuing orders to prosecute suspected soldiers, no arrests have yet been made at the orders of the Mopti court for the above incidents.<sup>213</sup> According to some of the people Amnesty International spoke to, the fear that these arrests will lead to protests by soldiers deployed in the centre of the country is preventing the military justice authorities from progressing these cases. The Mopti prosecutor thus asserts that “we need to be realistic; Mopti is currently in the grip of violence, and it is the soldiers who are shielding us from the chaos being perpetrated by the armed groups. The senior officers are willing to see justice done but not at the risk of having to deal with a mutiny. You saw what happened when the commander of the Special Anti-Terrorist Force (FORSAT) was arrested a month ago. We have to be careful.”<sup>214</sup>

In response to criticism of the serious human rights violations committed by soldiers on operations, some of which could be qualified as war crimes, and their impunity, the authorities say that investigations are underway and that nearly “70% of the soldiers deployed on the front line have been trained in international humanitarian law and international human rights law.”<sup>215</sup>

Amnesty International repeats that the authorities have an obligation to investigate, prosecute and try the authors of these violations through fair trials in ordinary civil courts and without recourse to the death penalty.

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<sup>210</sup> MINUSMA. 2020. “Note sur les tendances des violations et abus de droits de l’homme au Mali 1<sup>er</sup> avril - 30 juin 2020” [Note on trends in human rights violations and abuses 1 April - 30 June 2020], Division for Human Rights and Protection: [minusma.unmissions.org/sites/default/files/note\\_trimestrielle\\_tendances\\_des\\_violations\\_et\\_abus\\_de\\_dh\\_avril-juin\\_2020\\_final\\_version.pdf](https://minusma.unmissions.org/sites/default/files/note_trimestrielle_tendances_des_violations_et_abus_de_dh_avril-juin_2020_final_version.pdf)

<sup>211</sup> Government of Mali. Press release from the Government of the Republic of Mali on the allegations of abuses committed in Niagassadiou and Binédama, in Mopti region. Facebook page of Yaya Sangaré, former spokesman for the Malian government: [facebook.com/YayaBSangare/photos/pcb.697331274169642/697239417512161/](https://facebook.com/YayaBSangare/photos/pcb.697331274169642/697239417512161/)

<sup>212</sup> Interview with the Prosecutor of the Mopti Military Court, October 2021 and January 2022.

<sup>213</sup> United Nations. Report of the Secretary General on the Situation in Mali, 28 December 2020, [minusma.unmissions.org/sites/default/files/s\\_2020\\_1281\\_e.pdf](https://minusma.unmissions.org/sites/default/files/s_2020_1281_e.pdf)

<sup>214</sup> Interview with the Prosecutor of the Mopti Military Court, Bamako. October 2021.

<sup>215</sup> Audience with the Office of the Minister of Defence and Veteran Affairs of Mali, June 2021.

## 4.2.3 BOUNTI AND THE QUESTION OF VIOLATIONS PERPETRATED BY THE FRENCH ARMY IN MALI

The question of the criminal responsibility of third-party soldiers deployed on military operations in Mali was raised with the deaths of 22 individuals, including 19 civilians, following a French military strike in Bounti (Mopti region) on 3 January 2021.

France has been deployed militarily in Mali since January 2013, following a request from the Malian authorities in the face of the advance of armed Islamist groups in the north and centre of the country. Operation Serval (2013-14), which was intended to repel the attack, became an “anti-terrorist” force with a regional presence<sup>216</sup> in August 2014 with the advent of Operation Barkhane.

From 2 to 20 January 2021, Operation Eclipse – a joint operation against the Katiba Serma, a group affiliated with the GSIM and active in the Gourma region of Mali – took place.<sup>217</sup> The operation mobilized 3,000 soldiers, including 1,500 affiliated with Barkhane and 1,500 from Sahelian countries.<sup>218</sup> A few days before the operation, five French soldiers lost their lives due to the explosion of IEDs on the Douentza-Hombori road.<sup>219</sup>

It was in this context that a Mirage 2020 aircraft carried out several strikes on Bounti on 3 January 2021. In the hours following the strikes, local sources reported that people injured during a wedding ceremony in Bounti had been transported by Doctors Without Borders first to Kikara, then to Douentza, and finally to Sévaré. Two days later, the French military authorities commented on the incident, reporting that they had conducted strikes in the area indicated by local sources, targeting “dozens of jihadists” and clarifying that “the information about a wedding does not tally with the observations made”.<sup>220</sup> A 7 January 2021 press release stated that the “allegations following the strike are misinformation. No collateral damage, no elements constituting a festive gathering or wedding were observed.”<sup>221</sup>

Amidst the tumult of versions and counter-versions, the investigation conducted by MINUSMA<sup>222</sup> immediately following these incidents sheds light on the facts. The findings of the investigation indicate that the gathering of men in the northern outskirts of Bounti was related to the celebration of a wedding, that investigations at the site of the strikes did not indicate the presence of burned motorcycles, nor destroyed weapons, nor shell casings or ammunition, and it is therefore unlikely that there was a military target at the scene. In addition, according to MINUSMA, 19 of the victims killed were civilians, and possibly three of the victims belonged to the Katiba Serma. MINUSMA thus questions the legality of the strike under international humanitarian law, stating that the principles of precaution, proportionality and necessity were not respected in the targeting of the gathering in Bounti.

These conclusions were rejected by the French authorities, who refuted the investigation’s methodology, denouncing the “partiality” of witnesses and the influence of armed groups.<sup>223</sup> As of the date of publication of this report, no judicial investigation had been opened into this incident. Alongside this, in June 2021, the PJS’s BIS took statements from several persons of interest regarding this incident.<sup>224</sup>

<sup>216</sup> The Barkhane force is present in five countries of the Sahel: Mali, Niger, Burkina Faso, Chad and Mauritania.

<sup>217</sup> The Gourma region of Mali is formed of the southern bank of the Niger River, in the regions of Gao and Timbuktu. It consists of the Gourma-Rharous cercle (Timbuktu region) and the southern part of Gao cercle (Gao region), both of which border Burkina Faso. In some documents, the Gourma extends to include the cercles of Ansongo, Ménaka, and Douentza, which is where the GSIM and EIGS operate out of.

<sup>218</sup> 900 Burkinabe, 850 Malians and 150 Nigériens. See Matteo Maillard. 2021. “Mali: avec les soldats français de l’opération ‘Eclipse’ qui pourchassent les djihadistes liés à Al-Qaïda” [Mali: with the French soldiers of the ‘Eclipse’ operation who are hunting down jihadists linked to Al-Qaeda]. *Le Monde*: [lemonde.fr/afrique/article/2021/02/04/au-c-ur-de-l-operation-eclipse-au-mali\\_6068769\\_3212.html](https://www.lemonde.fr/afrique/article/2021/02/04/au-c-ur-de-l-operation-eclipse-au-mali_6068769_3212.html)

<sup>219</sup> See, among others, Mali: “Trois soldats français tués par un engin explosif lors d’une opération” [Three French soldiers killed by an explosive device during operations]: [leparisien.fr/faits-divers/mali-trois-soldats-francais-tues-en-operation-28-12-2020-8416427.php](https://leparisien.fr/faits-divers/mali-trois-soldats-francais-tues-en-operation-28-12-2020-8416427.php) (December 28, 2020) and Téa Bazrevic, Mali: deux soldats français tués par un engin explosif improvisé [Mali: two French soldiers killed by an improvised explosive device] [afrique.tv5monde.com/information/mali-deux-soldats-francais-tues-par-un-engin-explosif-improvisé](https://www.afrique.tv5monde.com/information/mali-deux-soldats-francais-tues-par-un-engin-explosif-improvisé)

<sup>220</sup> *Le Parisien* with AFP. 2021. “Frappe au Mali: la France se défend de toute bavure et assure avoir neutralisé des djihadistes” [Strike in Mali: France defends itself of any blunder and says it has neutralized the jihadists] (6 January): [leparisien.fr/politique/frappe-au-mali-la-france-se-defend-de-toute-bavure-et-assure-avoir-neutralise-des-djihadistes-05-01-2021-8417443.php](https://leparisien.fr/politique/frappe-au-mali-la-france-se-defend-de-toute-bavure-et-assure-avoir-neutralise-des-djihadistes-05-01-2021-8417443.php)

<sup>221</sup> Ministry of the Armed Forces. 2021. “Operation Barkhane: “Frappe contre un rassemblement de membres d’un groupe armé terroriste dans la région de Douentza” [Strike against a gathering of members of an armed terrorist group in the Douentza region] Press release from the French Chief of Staff (7 January): [defense.gouv.fr/salle-de-presse/communiqués/communiqué-de-presse\\_operation-barkhane\\_frappe-contre-un-rassemblement-de-membres-d-un-groupe-arme-terroriste-dans-la-region-de-douentza](https://defense.gouv.fr/salle-de-presse/communiqués/communiqué-de-presse_operation-barkhane_frappe-contre-un-rassemblement-de-membres-d-un-groupe-arme-terroriste-dans-la-region-de-douentza)

<sup>222</sup> MINUSMA. 2021. “Rapport sur l’incident de Bounti du 3 janvier 2021” [Report on the Bounti Incident of 3 January 2021], report, Human Rights and Protection Division: [minusma.unmissions.org/sites/default/files/rapport\\_final\\_bounty\\_bounty9.pdf](https://minusma.unmissions.org/sites/default/files/rapport_final_bounty_bounty9.pdf)

<sup>223</sup> See MINUSMA. 2021. “Rapport sur l’incident de Bounti du 3 janvier 2021” [Report on the Bounti Incident of 3 January 2021], report, Human Rights and Protection Division:

<sup>224</sup> Interview with the PJS and BIS, June 2021.

The cooperation treaty between Mali and France provides that, in principle, the French judicial authorities have primary jurisdiction to investigate and prosecute crimes committed by the French military but that the Malian judicial authorities may assume competency if the French authorities waive their priority jurisdiction (see Chapter 3, Section 3.1.3). Amnesty International considers the inaction of the French authorities to be a *de facto* renunciation of their priority jurisdiction. The victims of this attack and their loved ones are entitled to truth and justice, and states such as France and Mali have an obligation to prosecute and try those responsible for crimes under international law, especially as parties to the Rome Statute.

Amnesty International calls on the French authorities to immediately open an independent judicial inquiry into the Bounti incidents. Failing that, Amnesty International calls on the Malian authorities to exercise their jurisdiction to investigate these incidents and, if necessary, bring those responsible to justice through the Malian criminal courts in fair trials, without recourse to the death penalty.

# 5. CONCLUSION AND RECOMMENDATIONS

Mali faces the dual challenge of protecting civilians and obtaining justice for victims of crimes under international law and other serious human rights abuses committed in the context of the internal armed conflict. With the support of their regional and international partners, the Malian authorities have repeatedly reaffirmed their willingness to bring those responsible for the abuses committed on their territory to justice.

And yet little progress has been noted in the cases investigated by the PJS with regard to crimes committed by armed groups against civilians in the central regions of the country since 2018. Greater political will, adequate technical and financial resources, and the support of the military and MINUSMA would help to meet the challenge of safeguarding investigations, apprehending suspects, and protecting victims and witnesses.

Several trials have been held involving alleged members of armed groups, but these have been for acts qualified as terrorism, unrelated to crimes committed against civilians. These cases have, however, suffered from procedural irregularities and violations of the rights of the accused, thus impeding the proper administration of justice in Mali.

Finally, no military personnel have yet been tried for crimes committed by the military against civilians in central Mali since 2018. The jurisdiction of the military courts to hear offences committed by military personnel against civilians, in opposition to international human rights standards, has long been a barrier to the initiation of investigations and continues to be an obstacle to the proper conduct of investigations opened since 2018, particularly on the issue of making arrests and the independence of military courts.

At a time when several fundamental texts governing Mali's justice system are being revised, Amnesty International is calling for renewed strength in the fight against impunity for the most serious crimes committed in the centre of the country since 2018 and, more broadly, in the context of the conflict since its inception, and makes the following recommendations.

## 5.1 TO THE GOVERNMENT OF MALI

- Ensure that all persons suspected of responsibility for serious abuses or violations of human rights and international humanitarian law committed in the context of the conflict since 2012, including crimes under international law, are prosecuted through the ordinary courts and tried in proceedings that meet fair trial standards, without recourse to the death penalty;
- Strengthen the human, technical and financial resources of the judiciary, including the resources allocated to the Specialized Judicial Unit against terrorism and transnational organized crimes;
- Guarantee, within the framework of the reform of the Criminal Code:
  - The harmonization of the definitions of crimes under international law with those of the Rome Statute

- The inclusion of provisions on sexual violence
- Guarantee, within the framework of the reform of the Code of Criminal Procedure:
  - Legal assistance for those suspected or accused from the point of police custody and throughout the investigation
  - An effective system of protection for victims and witnesses in criminal proceedings, including the possibility of testifying anonymously and relocation measures
  - Prohibition of trials *in absentia*, as a minimum in criminal proceedings involving felonies and misdemeanours that could lead to prison sentences
  - The establishment of permanent criminal chambers in the Courts of Appeal of Bamako, Kayes, and Mopti to facilitate the organization of trials for conflict-related cases, and the possibility of appealing judgements
- Ensure, in the context of the reform of the Military Justice Code, that the jurisdiction of the military courts is limited purely and strictly to military offences, and that crimes committed by military personnel against civilians are clearly excluded from their jurisdiction, in accordance with the Principles and Guidelines of the African Commission on Human and Peoples' Rights on the Right to a Fair Trial and Legal Assistance in Africa;
- Revise the 2019 National Concord Law by clarifying the temporality and the list of crimes that could be subject to amnesty, in order to ensure respect for the right to justice and truth for victims of serious human rights violations and abuses;
- Interpret judicial cooperation treaties with third states, including France, in the light of Mali's other international obligations, ensuring that Mali's judicial authorities prosecute all crimes under international law committed on Malian territory by members of the armed forces of a third state when that State fails to investigate and prosecute the perpetrators itself;
- Ensure that all persons arrested, whether in military operations or in other contexts, are promptly handed over to the appropriate judicial authorities and brought before a judge;
- Guarantee that State Security is not a place of detention and proceed to the immediate release of all persons still illegally detained by the ANSE, as well as investigate the incommunicado and illegal detentions and acts of torture and ill-treatment of persons that have taken place within the DGSE and prosecute and try those responsible;

In the meantime, facilitate access on the part of the National Human Rights Commission, the ICRC and MINUSMA to places of detention under ANSE's control;

- Exclude any evidence from interrogations conducted by the DGSE/ANSE, in particular "confessions" of detainees obtained without the presence of a lawyer and with a high risk of torture and, more broadly, prevent any interference by State Security in ongoing judicial proceedings;
- Ensure that all persons subject to judicial proceedings in relation to conflict-related crimes have their right to defence respected, including access to a lawyer at the time of the investigation, access to the case file, and sufficient time to prepare their defence;
- Ensure that all detainees are held in humane conditions, have access to the outside world, including their lawyer and family or loved ones, have access to care when needed, and have the opportunity to challenge their detention before a judge;
- Investigate all suspicions of ill-treatment and torture in detention, and cease all collaboration with the DGSE regarding persons illegally detained by this body;
- Suspend any member of the security and defence forces, the administration, or any other State body who is under investigation by the competent judicial authorities for crimes under international law or other serious human rights violations;
- Abolish the death penalty.

## 5.2 TO THE MALIAN ARMED FORCES

- Ensure strict respect for the protection of human rights and international humanitarian law during military operations, and cease all violations of international humanitarian or human rights law such as arbitrary arrests, torture, extrajudicial executions and other violations;
- Suspend all members of the defence forces suspected of being involved in crimes under international law or other human rights violations from all operational deployment and place them at the disposal of the civilian justice system;
- Provide the technical and logistical support necessary for the proper functioning of the competent judicial authorities, including the safeguarding of judicial investigations.

## 5.3 TO NON-STATE ARMED GROUPS

- Ensure strict respect for international humanitarian law and cease all human rights abuses against civilian populations, such as attacks on civilians or indiscriminate attacks, killings, sexual violence, destruction of civilian homes and food stores, or other abuses.

## 5.4 TO FRANCE

- Ensure strict respect for the protection of human rights and international humanitarian law during military operations in Mali;
- Conduct independent and transparent investigations into allegations of violations of international humanitarian law and human rights law by French military personnel on operations in Mali, such as the Bounti incidents of 3 January 2021 and, where appropriate, bring those suspected of being responsible for such violations to justice;

## 5.5 TO MINUSMA

- Remind the Malian authorities of their obligation to obtain justice and truth for victims of crimes under international law in Mali, and urge them to investigate all allegations of crimes under international law or other human rights violations committed in the context of the conflict, and to prosecute the perpetrators through the ordinary civilian courts, in accordance with fair trial standards;
- Continue to provide technical support to the Malian justice system for the investigation of violations of international humanitarian law;
- Continue training judicial personnel on the fight against impunity for crimes under international law, and the prison administration on improving defendants' conditions of detention.

## 5.6 TO OTHER INTERNATIONAL PARTNERS

- Remind the Malian authorities of their obligation to obtain justice and truth for victims of crimes under international law in Mali, and urge them to investigate all allegations of crimes under international law or other human rights violations committed in the context of the conflict, and to prosecute the perpetrators through the ordinary civilian courts, in accordance with fair trial standards;
- Provide technical and financial support to the judicial authorities for the administration of justice, and to build the capacity of judicial personnel (magistrates, lawyers, judicial police officers) when necessary and upon request from these authorities;

Provide technical support to the Specialized Investigation Brigade (BIS) of the PJS in terms of accessing sites in the centre of Mali, forensic and ballistic expertise, or any other type of technical activity, when necessary and upon request from the BIS.

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#### CONTACT US



[info@amnesty.org](mailto:info@amnesty.org)



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# MALI. CRIMES WITHOUT CULPRITS

## THE JUDICIAL RESPONSE TO CONFLICT-RELATED CRIMES IN THE CENTRAL REGIONS

This report provides an analysis of impunity in Mali in the context of the country's internal conflict and the challenges faced by the authorities in ensuring the protection of civilians and security in the country. It shows that the fight against impunity in Mali is facing many barriers that are blocking ongoing proceedings into crimes committed in the central regions of the country since 2018, preventing the rights of victims and their families to truth, justice and reparation from being met.

It is based on an analysis of primary and secondary documents and interviews with 35 people from the Malian judiciary, civil society and government involved in these investigations.

While the administration of justice is complicated by the absence of a State administration in much of the country and insecurity that hampers the investigative and prosecutorial capacity of the judiciary, this research shows that justice is being impeded by irregularities in the investigation process and a lack of protection for victims and witnesses that undermines the standards of fair trials. Legislative and institutional reforms, additional technical and financial resources for the judicial system and stronger political will are needed to strengthen justice efforts and bring them into line with international human rights standards.