

Human Rights and the Peace Process in Mali (January 2016 – June 2017)

February 2018

Executive summary

The interim period provided for in the 2015 Agreement on Peace and Reconciliation in Mali emanating from the Algiers process (the “Peace Agreement”), finalized in June 2015 by the Government of Mali and the armed movements of the *Plateforme* and the *Coordination des mouvements de l’Azawad* (CMA), came to an end on 30 June 2017. The interim period was a pivotal moment in the peace process, as outlined in the Peace Agreement, “to favour the implementation of conditions conducive to reconciling Malians, and to lay the foundations for a new, democratic and unified Mali.” The end of the interim period also provided an opportunity to assess progress and setbacks in the implementation of the Peace Agreement, particularly with regard to the protection and respect of human rights.

To this end, the MINUSMA Human Rights and Protection Division (the “Division”) has regularly monitored four key areas: 1) human rights violations and abuses, ii) conflict-related detentions, including in the context of “counter-terrorism” operations, iii) the fight against impunity, and iv) the establishment of transitional justice mechanisms.

Involvement of signatory parties, non-signatory and splinter armed groups, AQIM and similar armed groups, and international forces in human rights violations and abuses

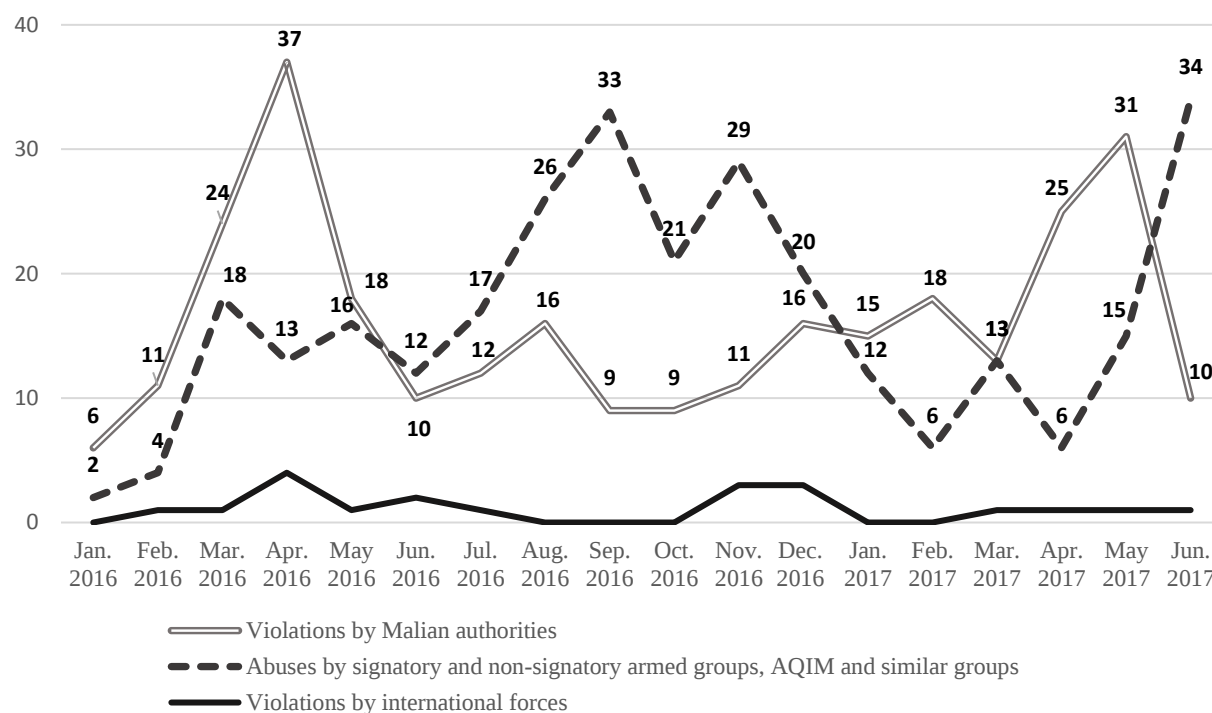
Between January 2016 and June 2017, the Division documented 608 cases of human rights violations and abuses in Gao, Kidal, Ménaka, Mopti, Ségou and Timbuktu regions, as well as in the district of Bamako, involving at least 1,481 victims. Of these, 186 were killed, 73 were disappeared, and 295 were subjected to torture or ill-treatment. The vast majority of victims were men (1,326), followed by children (125) and women (30).

The typology of violations and abuses includes illegal detentions, torture and ill-treatment, extrajudicial executions, enforced disappearances, the recruitment of child soldiers, and sexual violence, as well as violations by omission (primarily the failure to investigate serious human rights violations and abuses).

Two hundred forty-six (246) of these cases are human rights abuses attributable to signatory armed groups, while 39 are attributable to Al Qaida in the Islamic Maghreb (AQIM), Ansar Eddine, the Macina Liberation Front, *Jama’at nusrat al-Islam wal Muslimeen* (JNIM) and Al Mourabitoun (“AQIM and other similar groups”), and 12 are attributable to non-signatory and splinter armed groups. An additional 288 cases are human rights violations attributable to State actors, 20 to international forces (Barkhane and MINUSMA), and three to the *Mécanisme opérationnel de coordination* (MOC).

As the table below illustrates, patterns of violations and abuses vary according to alleged perpetrator and time period:

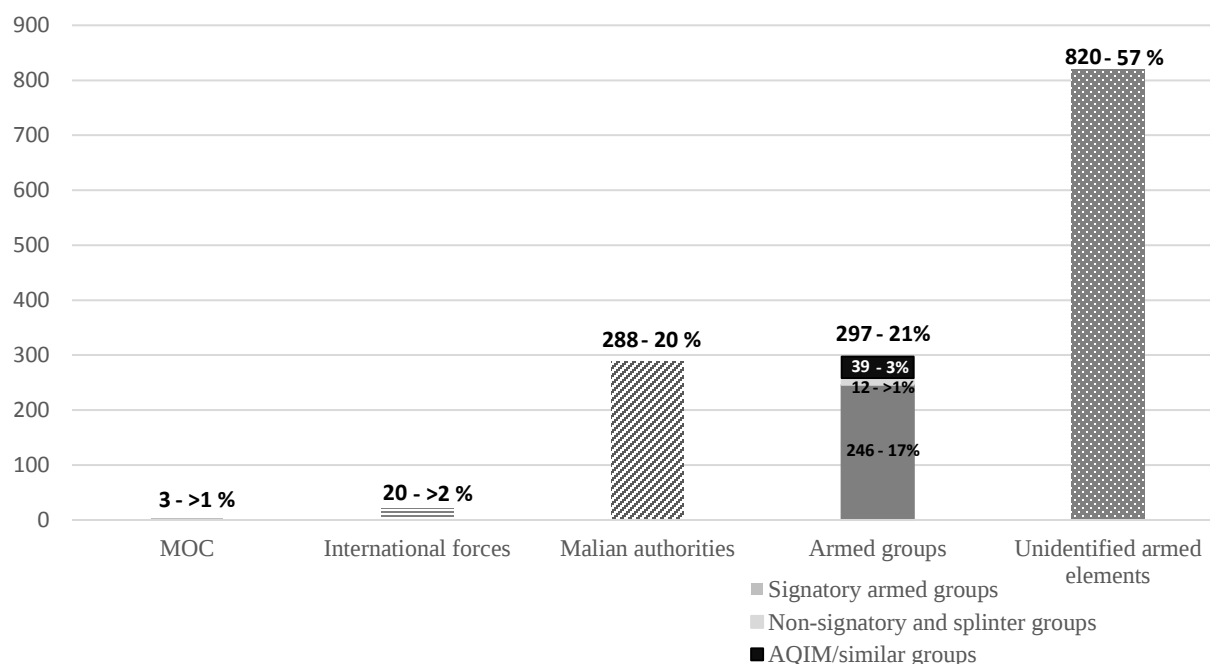
**Number of human rights violations and abuses, by alleged perpetrator and month
(1 Jan. 2016 – 30 June 2017)**



Between January 2016 and June 2017, the Division also documented 820 incidents that put the lives of civilians at risk and affected the enjoyment of their human rights, but which could not be qualified as either violations or abuses in the absence of a clear determination of the perpetrator's identity. These incidents involved at least 1,235 victims, of whom 255 were killed and 284 were injured.

In sum, the Division documented 1,428 cases of human rights violations and abuses, as well as incidents putting the lives of civilians at risk, in the northern and central regions of Mali and the district of Bamako, between January 2016 and June 2017. These cases and incidents involved at least 2,716 victims, of whom 441 were killed. It should also be noted that 78 per cent of these cases and incidents involved either signatory armed groups, non-signatory/splinter armed groups, or AQIM and similar groups (21 per cent), or unidentified armed elements (57 per cent). The remaining cases involved the Malian authorities (20 per cent), the international forces of Barkhane and MINUSMA (less than 2 per cent), and the MOC (less than 1 per cent).

**Number and proportion of human rights violations and abuses, and incidents putting civilian lives at risk, by alleged perpetrator
(1 Jan. 2016 – 30 June 2017)**



This data should not obscure the fact that, in the northern and central regions of Mali, State authorities (notably the MDSF) rarely conduct operations outside of major towns, except in Mopti and Ségou regions.

Various confrontations between signatory armed groups in Kidal region, the expansion of the activities of AQIM and other groups, a growing crime rate in the central regions of Mali, as well as the very “counter-terrorism” operations carried out by Malian defence and security forces (MDSF) in response to the growing insecurity, are the primary factors leading to human rights violations and abuses, as well as incidents putting the lives of civilians at risk, that were documented by the Division during the reporting period.

Conflict-related detentions, including in the context of “counter-terrorism” operations

Since 2013, the release of individuals detained in connection with the conflict has been treated as a confidence-building measure to facilitate negotiations leading to the Peace Agreement. Accordingly, these releases rapidly became a subject of often drawn-out negotiations between the different parties.

While the exact number of individuals arrested between January 2013 and June 2017 is difficult to determine, the Division estimates, based on its monitoring work, that at least 2,470 individuals (including at least 94 minors and 12 women) were detained in connection with the conflict by Malian authorities, international forces, signatory armed groups, non-signatory and splinter armed groups, as well as AQIM and other similar groups.

Some individuals were detained illegally by Malian authorities for several months without a committal order (*mandat de dépôt*). Of the 764 individuals who were arrested and detained in connection with the conflict between January 2016 and June 2017, 339 were arrested or detained illegally. The Division contributed to restoring the rights of 102 of these individuals. However, as of 30 June 2017, at least 57 individuals were still being detained illegally, the majority of whom were at the *Sécurité d'Etat*. Other individuals who had been illegally detained were either released or placed under committal orders.

Signatory armed groups also illegally deprived individuals of their freedom in the context of the conflict. At the time of the signing of the Peace Agreement, it was estimated that 76 individuals were being illegally detained by these groups. As of 31 December 2016, the majority of these detainees has been released. Nonetheless, with the renewal of confrontations between the CMA and Plateforme during the first half of 2017, the armed groups once again detained individuals in connection with the conflict. At least 50 individuals were thus deprived of their freedom during this period, even if the majority of them were released relatively quickly. As of 30 June 2017, 22 individuals were still being detained *a priori* by signatory armed groups.

Overall, detention conditions remained hazardous for both those detained by Malian authorities as well as by armed groups. Between January 2013 and June 2017, 28 individuals died while in the custody of Malian military elements or corrections officers. The Division also documented the deaths or disappearances of at least 22 individuals detained by armed groups. AQIM and similar groups, for their part, executed at least four individuals that they had been holding in captivity. It should be noted, furthermore, that the Division has never been granted access to individuals detained at the *Sécurité d'Etat* (a detention facility reserved exclusively for individuals detained on “terrorism”-related charges, *a priori*). With regard to international forces, the Division has only been granted access to individuals detained by MINUSMA Force.

While “terrorism”-related detentions accounted for only 43 per cent of all conflict-related detentions between January 2013 and the signature of the Peace Agreement, they have nearly doubled in proportion since that time, representing approximately 81 per cent of conflict-related detentions by 30 June 2017.

“Counter-terrorism” operations by MDSF elements have resulted in a number of human rights violations. In 2016, the Division was able to establish that violations had been committed in 61 per cent of “terrorism”-related arrests and detentions. However, this number increased dramatically during the first half of 2017, with violations established in 93 per cent of “terrorism”-related arrests and detentions. The majority of these violations consisted of illegal detentions, torture, and ill-treatment, however the Division also recorded several cases of extrajudicial executions and enforced disappearances. Most of these violations were documented in the central regions of Mopti and Ségou, followed by the northern region of Timbuktu.

The Division also confirmed that some of these arrests, carried out in the absence of judicial police officers of the *gendarmerie* (in contravention of Malian law), were based on the local population’s denunciation of the victim and/or targeted individuals belonging to specific communities. Such targeting, in addition to other human rights violations committed during these arrests, has created

a strong impression of discrimination within certain communities, which feel increasingly stigmatized by the MDSF.

It is also important to note that a majority of the individuals arrested in connection with “terrorism”-related charges were ultimately released by judicial authorities, generally due to a lack of evidence against them. Between January 2016 and June 2017, the Division estimates that 56 per cent of those arrested on terrorism-related charges were released within a few weeks of their arrests.

The fight against impunity

Little progress has been made in the fight against impunity for crimes committed in 2012-2013 and later, whether committed by MDSF elements or signatory armed groups.

Between January 2013 and June 2017, Malian authorities released at least 1,456 individuals detained in connection with the conflict, of whom at least 245 were released on a provisional basis as part of confidence-building measures established with signatory armed movements. The Division was able to document the conditions of release of 850 of the 1,456 detainees, and estimates that at least 32 per cent were released outside of any legal framework—in other words, following interference by or on the instruction of political authorities.

In 2016, under the impetus of the Ministry of Justice and Human Rights, criminal assizes were held in Bamako and Mopti. In total, 229 cases were heard, however only 10 of these involved individuals who had been released as part of the confidence-building measures related to the Peace Agreement. As these individuals did not attend their hearings, they were convicted and sentenced *in absentia* to the maximum penalties provided for under the Penal Code for the offences with which they were charged. No criminal assizes were held during the first half of 2017.

The collective impact of these measures—the suspension of arrest and committal orders, the provisional release of pre-trial detainees, and even convictions *in absentia*—has considerably weakened the ability of Malian magistrates to support the fight against impunity. Subject to substantial difficulties in the context of their work, including threats to their security, magistrates have been little-inclined to pursue investigations concerning human rights violations and abuses and violations of international humanitarian law involving armed group elements that have occurred since 2012. As of 30 June 2017, very few investigations or legal proceedings had truly progressed, other than the trial of the former self-declared Islamic Police Commissioner of Gao, Aliou Mahamane Touré, who was sentenced to 10 years’ imprisonment in August 2017. At the international level, in 2016, the International Criminal Court sentenced Ahmad Al Mahdi Al Faqi, a member of the self-proclaimed Islamic police of Timbuktu in 2012, to nine years’ imprisonment for the destruction of mausoleums and a mosque forming part of the city’s cultural heritage.

Very few investigations or legal proceedings have been initiated with regard to serious violations of international human rights and humanitarian law committed by MDSF elements. Between January 2013 and June 2017, the Division documented 89 serious human rights violations, involving at least 407 victims, of which 73 were allegedly perpetrated by FAMA or National Guard elements, and 16 by the police or *gendarmes*. With the exception of the case of General Amadou

Sanogo and 16 other individuals, whose trial remains stalled, the legal response to these cases has rarely passed the preliminary investigation phase, due to the failure of the military hierarchy to place accused perpetrators at the disposition of the courts.

Transitional justice

There have been some noteworthy advances in the area of transitional justice, notably with the implementation of the Truth, Justice and Reconciliation Commission (TJRC), and particularly with the opening of five regional offices of the TJRC in December 2016, which launched the operationalization of the Commission's mandate and brought the Commission into greater contact with the victims of the conflict whom it is meant to serve.

Recommendations

➤ To the Government of Mali:

- Ensure that arrests and detentions comply with international human rights and humanitarian legal standards, as well as with the national Penal Code and the Criminal Procedure Code, and that they are based on preliminary information that has been corroborated, rather than mere denunciations;
- Ensure that counter-“terrorism” operations conducted by Malian armed forces or international forces on Malian territory conform to international human rights and humanitarian legal standards, and always include judicial police officers of the *gendarmerie*;
- Allow human rights officers to have access to all places of detention, including those under the control of the *Sécurité d'Etat*;
- Conduct prompt, thorough and impartial investigations of allegations of violations of international human rights and humanitarian law committed by MDSF elements; and ensure that elements of these forces who have been identified as alleged perpetrators are systematically made available to judicial authorities by the *Ministère de la Défense et des Anciens combattants*), in accordance with Malian law;
- Refrain from granting extra-judicial releases of individuals allegedly involved in serious human rights violations or abuses;
- Speed up ongoing judicial proceedings of alleged perpetrators of violations or abuses of international human rights law and violations of international humanitarian law committed between 2012 and 2013 in the northern regions of Mali, in particular those connected with sexual violence; and provide magistrates with adequate means to carry out these proceedings ;
- Take adequate security and protection measures to allow magistrates deployed in the northern regions of Mali to conduct their work in a secure environment;

- Provide the Truth, Justice and Reconciliation Commission (TJRC) with adequate human and operational resources to implement its mandate and to meet the expectations of the Malian population.

➤ ***To the signatory armed groups:***

- Respect their obligations under the international humanitarian law framework, and in particular, the provisions of Common Article 3 of the four Geneva Conventions applicable in non-international armed conflicts;
- Allow human rights officers to have access to all places of detention under their control;
- Allow the TJRC to operate freely in areas under their control ;

➤ ***To the international community:***

- Continue to support the efforts of the Government of Mali to guarantee the security of the population throughout Malian territory;
- Speed up the implementation of the International Commission of Inquiry on human rights violations and abuses, and violations of international humanitarian law, committed since January 2012;
- Support the Government of Mali to continue building national capacities, including those of the judiciary and the defence and security forces, to strengthen the rule of law and democracy, and to build a culture of peace and human rights in Mali.