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## Human Rights Council

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### Annual report of the United Nations High Commissioner for Human Rights and reports of the High Commissioner and the Secretary-General

### Technical assistance and capacity-building

## Report of the United Nations High Commissioner for Human Rights on the human rights situation in Mali\*

### *Summary*

This report is submitted pursuant to resolution 22/18 in which the Human Rights Council asked the United Nations High Commissioner for Human Rights to provide it with an updated report on the human rights situation in Mali for consideration at its twenty-third session.

On 25 April 2013, by resolution 2100, the United Nations Security Council decided to establish the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) and that its mandate should be the following: (a) stabilization of key population centres and support for the re-establishment of State authority throughout the country; (b) support for the implementation of the transitional road map, including the national political dialogue and the electoral process; (c) protection of civilians and United Nations personnel; (d) promotion and protection of human rights; (e) support for humanitarian assistance; (f) support for cultural preservation; and (g) support for national and international justice.

This report is the result of research carried out by a mission deployed in Mali by the Office of the United Nations High Commissioner for Human Rights (OHCHR) between 18 February and 22 March 2013 and supplemented by the MINUSMA Human Rights Division. The aim of the report is to give an account of the human rights situation prevailing in Mali since the High Commissioner's previous report was submitted to the Council on 12 March 2013.

The human rights situation in the north of the country remains precarious, being marked by violations of the right to life, enforced disappearances, torture, unlawful arrests, arbitrary detentions and destruction of property. These violations are attributed to armed

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\* Late submission.

groups, particularly the National Movement for the Liberation of Azawad, Ansar Dine and the Movement for Unity and Jihad in West Africa, and also to officers of the Malian army. Internally displaced persons and refugees have stated that they fled their region of origin for fear of reprisals on the part of both the Malian army and the armed groups.

The numerous grave violations of human rights and international humanitarian law committed since January 2012 are consequences of a cycle of impunity that is part of a long tradition of violence and crime committed during successive periods of conflict in the country extending over more than 20 years.<sup>1</sup>

Since the consideration of the High Commissioner's previous report, the Malian authorities have taken a number of steps to combat impunity and to bring legal proceedings against the alleged perpetrators of violations of human rights and international humanitarian law. It is important that these efforts are supported by the international community if the country is to be able to address the numerous challenges it faces in relation to security, restoration of the rule of law, democratic and economic reconstruction and respect for human rights.

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<sup>1</sup> A/HRC/22/33 and Corr.1, para. 17.

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## I. Introduction

1. This report is submitted pursuant to resolution 22/18 in which the Human Rights Council asked the United Nations High Commissioner for Human Rights to provide it with an updated report on the human rights situation in Mali for consideration at its twenty-third session. The aim of the report is to give an account of the situation prevailing since the High Commissioner's previous report<sup>2</sup> was submitted to the Council on 12 March 2013. The report covers the period up to 20 May 2013.

2. On 25 April 2013, in resolution 2100, the United Nations Security Council decided to establish the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) and that its mandate should be the following: (a) stabilization of key population centres and support for the re-establishment of State authority throughout the country; (b) support for the implementation of the transitional road map, including the national political dialogue and the electoral process; (c) protection of civilians and United Nations personnel; (d) promotion and protection of human rights; (e) support for humanitarian assistance; (f) support for cultural preservation; and (g) support for national and international justice.

3. The report is based on research carried out by a mission deployed in Mali by the Office of the United Nations High Commissioner for Human Rights (OHCHR) between 18 February and 22 March 2013 (hereinafter "the Mission") and by the Human Rights Division of MINUSMA. The report also takes into account the findings of the missions deployed by the MINUSMA Human Rights Division in Burkina Faso, Mauritania and Niger, in April and May 2013, to investigate the situation of Malian refugees and to collect information about the human rights situation prevailing in their places of origin at the time of their flight.

4. Thanks to ongoing improvements in the human rights situation in the north in the wake of Operation Serval, our teams were able to travel to previously inaccessible areas including Konna, Mopti, Sévaré, Timbuktu, Gao, Tessalit and Kidal. They were thus able to confirm the allegations of human rights violations contained in the High Commissioner's previous report and to ascertain the scale of the trauma suffered by communities and the victims of grave human rights violations committed under the area's occupation by armed groups since January 2012.

5. Significant challenges persist and continue to hamper the effective conduct of investigations into these human rights violations. First, it is difficult to verify certain allegations as access to the north of the country is restricted for security reasons. Secondly, the human rights teams found that some actors had a tendency to distort information, sometimes claiming to speak on behalf of the communities of the north. Lastly, the fact that certain witnesses and victims are reluctant to cooperate with the investigators for fear of reprisals remains a major obstacle.

6. The OHCHR teams met with the Minister of Justice and Keeper of the Seals, the Minister of Defence and Veterans' Affairs, the Minister for Territorial Administration, Decentralization and Regional Planning, and the Minister for the Family, the Advancement of Women and Children, as well as with local authorities in the northern region. The teams

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<sup>2</sup> Information on the legal framework applicable to the situation in Mali and on the geographical and historical context in the country is included in the High Commissioner's previous report (A/HRC/22/33 and Corr.1, paras. 5 to 17).

also met with the Public Prosecutor of Commune III,<sup>3</sup> the National Human Rights Commission, members of civil society and representatives of the diplomatic corps and United Nations agencies.

## II. Context

### A. Security situation and military operations in the north

7. The security situation in the north remains fragile and has been marked by cordon-and-search operations carried out by the Malian Defence and Security Forces with assistance from French troops and the African-led International Support Mission to Mali (AFISMA) in Sévaré, Mopti, Ber, Timbuktu and Gao. At least 13 attacks have been logged since 12 March 2013, confirming the persistent threat of suicide and car bombing attacks perpetrated by armed groups such as Al-Qaida in the Islamic Maghreb (AQIM), the Movement for Unity and Jihad in West Africa (MUJAO) and Ansar Dine.

8. These attacks have had grave consequences for the human rights situation in the north of Mali, having caused the death of 24 persons since February 2013 as well as destroying property. They have also bred a climate of fear and generalized suspicion among the population which is fuelling more and more allegations based on a tendency not to distinguish between certain fair-skinned communities in the north and members of armed or rebel groups.

9. The main regions of the north have now been partially secured by the Malian army, following prior operations by military police detachments (*prévotés*), the French army and AFISMA troops. The exception is Kidal, which remains under the control of the National Movement for the Liberation of Azawad (MNLA). On 11 April, four AFISMA soldiers were killed in a suicide attack in a Kidal market place. On 16 May 2013, there were clashes between MNLA combatants and the rival faction, the Arab Movement of Azawad (MAA), in Anefis, near Kidal. The number of victims in these clashes has not yet been confirmed.

10. Many areas in the north remain unsafe, especially rural areas and areas far from regional capitals. The armed groups, and in particular Ansar Dine, AQMI and MUJAO, retain the ability to cause harm, not only in the north but also in the south of the country and in the Sahel region. Since March, attacks by armed groups have been reported in the regions of Gao, Menaka and Timbuktu.

### B. The situation in Kidal

11. Kidal is the third largest town in the north and has been a cradle of successive Tuareg rebellions since Mali gained independence. It has not enjoyed the same degree of liberation as other localities in the north such as Gao and Timbuktu. Despite the presence of French and AFISMA troops, the town remains under the control of MNLA, which administers it autonomously through a governor. According to witness reports, the de facto authorities issue administrative documents stamped “State of Azawad” and the flag of Azawad is displayed throughout the Kidal region, including in Tessalit and the town of Kidal. These reports have been confirmed by a multidisciplinary AFISMA team including a representative of the Human Rights Division, which was able to visit Kidal, Tessalit, Timbuktu and Gao between 29 and 31 March 2013.

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<sup>3</sup> One of the six communes of Bamako.

12. The continuing control over the Kidal region exercised by MNLA constitutes a break in the constitutional order and a major obstacle to the enjoyment of human rights in the region, especially in view of the organization's past and its links with armed groups such as AQIM, MUJAO and Ansar Dine which controlled the north of the country before the French and African forces intervened. According to witness reports, there have been numerous human rights violations attributable to MNLA in Kidal, including physical assaults, unlawful arrests and arbitrary detentions. Frequently the victims are Tuaregs, who are perceived as being close to factions opposed to MNLA, in favour of unity in Mali and supportive of the Government in Bamako.

13. The State of Mali's lack of effective sovereignty in the Kidal region also threatens to undermine the exercise of citizens' right to participate in the conduct of public affairs, notably through elections. Specifically, if the Malian authorities do not have safe access to Kidal prior to the elections, there is a serious risk that elections will not take place in Kidal or that, if they do, they will be marred by irregularities that compromise its peoples freedom of expression.

14. Given the symbolic importance of Kidal and the tense security climate reigning there, it is vital that the Malian Defence and Security Forces' entry into Kidal, when it occurs, is properly monitored and that the army's presence in the town is supervised, in order to prevent the risk of misconduct and human rights violations being committed against persons suspected of having supported MNLA and the secession of the north of Mali.

### **C. Extension of the state of emergency**

15. In order to conduct military operations in the north of the country, the Government of Mali declared a nationwide state of emergency on 13 January 2013 lasting for a period of 10 days. The state of emergency was then extended until 22 April 2013, in conformity with article 72 of the Constitution. The Government subsequently asked the National Assembly to extend the state of emergency a second time, until midnight on 6 June 2013, on the grounds that the objectives set in the initial declaration had not yet been achieved.

16. As established in the 1992 Constitution and regulated by Act No. 87-49 of 4 July 1987, the declaration of a state of emergency must be a response to an "imminent danger resulting from serious infringements of public order", "subversive actions which compromise national security" or "events which, by virtue of their nature or seriousness, constitute a public disaster". A state of emergency entails the implementation of measures derogating from ordinary law that are theoretically dictated by the exceptional circumstances and could potentially impede respect for human rights and civil liberties. For example, the administrative authorities are empowered to restrict or prohibit the movement of people and vehicles in certain places and at certain times, to place under house arrest any person whose actions are deemed a threat to security or public order and to order the temporary closure of public places.

17. In the current scenario, in which military operations in the north are coupled with an increasingly fragile political situation and imminent elections, it is important to remain vigilant as to the way in which the political, administrative and military authorities apply the powers vested in them under the state of emergency. In meetings with human rights observers, certain authorities affirmed that things that people might write during "normal times" might be prohibited and penalized during a state of emergency. Some officials also invoked the state of emergency as justification for the arrest without warrant and

subsequent detention of a journalist by the intelligence services.<sup>4</sup> Freedom of expression and association are thus also under threat.

18. Given this risk of abuse, it is essential that the measures adopted by the authorities are consistent with the provisions of article 4 of the International Covenant on Civil and Political Rights, which specify the conditions under which derogations from usual human rights norms due to exceptional circumstances are lawful.

#### **D. The electoral process**

19. The offensive launched by armed groups on 17 January 2012 and the military coup of 21 March 2012 plunged Mali into an unprecedented security, political, institutional, social and economic crisis. The presidential elections scheduled for 28 July 2013 should allow Malians to exert their right to participate in the conduct of public affairs.

20. There has been much opposition, especially from within civil society, to the hasty organization of the elections, on the grounds that the technical and political preconditions have not been met. There are also considerable practical obstacles to the participation of all Malians in the elections in accordance with the conditions established in article 25 of the International Covenant on Civil and Political Rights. These obstacles will restrict the participation of refugees and internally displaced persons (IDPs) and of all persons who have reached the age of 18 years since the electoral register was last revised in 2011. The problem will also affect the people of Kidal, who are unlikely to be able to exercise their right to vote while the region is not fully under the control of the Government of Mali.

21. Moreover, full exercise of the right to vote assumes effective enjoyment of associated rights such as freedom of expression, press freedom, freedom of association, the right to peaceful assembly, freedom of movement and the right to security of person. In this respect, the situation remains fragile and merits particular attention in order to ensure that the elections are inclusive, free and transparent and are carried out in a peaceful manner, with respect for human rights and civil liberties.

### **III. The human rights situation**

#### **A. Summary executions and extrajudicial killings**

22. Since the military operations in the north of the country began, Malian soldiers have allegedly been involved in summary executions of persons thought to belong to armed groups or suspected of having collaborated with them. The Mission collected credible information concerning the killing of 10 persons forming part of the Tuareg community on 15 February 2013. These persons were allegedly killed by the Malian Defence and Security Forces while trying to cross the border into Mauritania at Leré. The Mission was not able to travel to Leré to carry out more detailed inquiries due to the volatile security situation in that area.

23. In January and February 2013, the Mission also received information about the execution of eight people (four men of Tuareg origin and four men of Arab origin) by members of the Malian Defence and Security Forces in Timbuktu. Their bodies were reported to have been buried before being later discovered by members of the civilian

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<sup>4</sup> Meeting between the AFISMA Human Rights Division and high-ranking officials of the Government of Mali held in Bamako on 8 March 2013.

population. In addition, on 4 February 2013, also in Timbuktu, a man belonging to the Tuareg community was allegedly abducted and killed by unidentified members of the Malian Defence and Security Forces. His body was recovered on the outskirts of the town.

24. In the morning of 11 January 2013, soldiers of the Malian army reportedly arrested five persons belonging to the Peul and Tuareg communities, including two gendarmes. It is alleged that, on suspicion of being “traitors”, these persons were taken to Sévaré military camp where they were executed the same day. The Mission met with the wife of one of the victims, who said that she had been unable to ascertain where her husband’s body had been buried. The Mission also spoke with the chief of the gendarmerie in Sévaré and gave him the names of the two gendarmes who were among the victims.

25. While in Sévaré, the Mission investigated allegations of bodies having been dumped in nine wells located near the bus station. Two witnesses interviewed in Bamako had told the Mission that the Malian army had thrown bodies into these wells. A passer-by indicated that one of the wells contained at least 10 bodies. The Mission found traces resembling dried blood on the edge of three wells. It also noticed that earth had recently been thrown into the wells.

26. The Mission interviewed three people who had witnessed four killings carried out by armed groups, two in Sévaré and two in Timbuktu. The Mission also received information that the bodies of other victims had been taken to Sévaré hospital, suggesting that numerous civilians may have been killed during the liberation of Konna. The Mission was unable to obtain any information that might enable it to determine the exact number of combatants and the exact number of civilians among the victims. The Mission also interviewed the mother of a 35-year-old man who had apparently been shot by members of AQMI in Timbuktu while trying to flee.

27. A number of witnesses have accused MNLA and MUJAO combatants of violating the right to life. For example, on 20 March 2013, 20 people are alleged to have been killed during an attack on the village of Bougoumi, in the municipality of Ténenkou, carried out by armed men belonging to MNLA. In another typical incident, on 11 May 2013, a member of MUJAO reportedly opened fire on a crowd of people gathered at a humanitarian aid distribution point in Ménaka, killing two civilians. The occurrence of violations of the right to life committed by armed groups in the north of Mali has been confirmed in interviews conducted by the MINUSMA human rights teams in Malian refugee camps in Mauritania, Niger and Burkina Faso.

## **B. Enforced disappearances**

28. The Mission investigated allegations concerning the enforced disappearance of nine men on 14 February 2013. The Mission interviewed three witnesses, who gave credible information about the disappearance of a merchant of Arab origin who was taken away by a group of unidentified males dressed in Malian army uniform. Based on information gained in other interviews with credible witnesses, in total, in Bamako and Sévaré, members of the Malian army arrested nine people (eight persons of Arab origin and one of Songhay origin).

29. A great number of people have turned to the MINUSMA Human Rights Division for help in finding members of their families who have disappeared since military operations were initiated in the north of the country. Malian refugees in the various camps in Niger, Mauritania and Burkina Faso have provided information about alleged cases of enforced disappearance and abductions of members of their families perpetrated by armed groups and Malian forces.

30. Furthermore, human rights observers have received testimonies indicating that abductions are still being carried out by members of armed groups including the Arab



Movement of Azawad (MAA), Islamic Movement of Azawad (MIA), MNLA and MUJAO, which remain active in Kidal, Gao and Timbuktu. For example, on 5 May 2013, the son of a marabout from Ber, a municipality 60 kilometres from Timbuktu, was reportedly kidnapped by members of MAA during armed confrontations between the Arab and Tuareg communities.

31. MNLA, which controls the Kidal region, is alleged still to be holding more than 30 persons in the city police station, which is being used as a detention centre. For security reasons, it is difficult to verify whether any of the persons thought to have disappeared are among those being detained by MNLA. On 18 May 2013, during a meeting with the MINUSMA Human Rights Division in Ouagadougou, the MNLA leadership acknowledged the detention of 47 persons, all presumed jihadists, including foreign fighters from Algeria, Burkina Faso, Niger, Mauritania as well as Malian nationals. MNLA invited the MINUSMA Human Rights Division to visit Kidal to meet all the persons who had been detained in the different confrontations in the north of the country.

### **C. Torture and ill-treatment**

32. According to a number of witnesses and human rights NGOs, and as inquiries carried out by MINUSMA have confirmed, the ongoing military operations have on occasions been accompanied by abuse on the part of Malian soldiers against persons suspected of being jihadists or active members of armed groups or of having collaborated with these groups. The cases documented by MINUSMA have been brought to the attention of the Malian authorities, which have undertaken to ensure that the alleged perpetrators of human rights violations are brought before the judicial authorities.

33. Combatants from the various armed groups have committed widespread acts of torture and ill-treatment against civilians and persons suspected of being allied with the Government of Mali. The OHCHR Mission received information that five couples were whipped by members of the Islamic police for having been involved in extramarital relationships. Women have also been arrested and whipped by armed groups for having conducted themselves in a manner deemed contrary to sharia law.

34. The Mission interviewed a man receiving medical care at Sévaré hospital who claimed that, on 29 January 2013, in the municipality of Boni, he, his wife and his daughter were beaten and shot at by six armed men belonging to MUJAO. A medical source confirmed that the victim had received three bullets in his body.

35. The Mission also interviewed a 22-year-old male of Songhay origin who had had his hand amputated in a public ceremony in Timbuktu in March 2012. He was accused of having stolen a mattress during the looting that followed Timbuktu's capture by the armed groups. The ceremony that preceded the amputation was presided over by a judge belonging to Ansar Dine and was attended by members of other armed groups including MUJAO, MNLA and AQMI. According to witnesses, public amputations were intended to discourage theft and each amputee was subsequently taken to hospital for treatment by members of Ansar Dine.

36. The MINUSMA Human Rights Division has made contact with local NGOs with a view to identifying victims of amputations, assessing the scale of the phenomenon and, in conjunction with the various stakeholders, developing specific projects to address the problem, including through the United Nations Voluntary Fund for Victims of Torture's 2013 call for applications.

## D. Violations of freedom of expression

37. One of the most striking of the cases of violation of freedom of expression brought to the attention of human rights observers was that of Boukary Daou, the editor of the daily newspaper *Le Républicain*. Mr. Daou was arrested on 6 March 2013 and held in the premises of the State Security Service for 8 days. He was then brought before Bamako Court of First Instance and charged with inciting violence and disseminating false information following the publication of a letter, attributed to soldiers, which criticized the financial benefits granted to Captain Sanogo, the leader of the 21 March 2012 coup d'état, by the transitional President.

38. On 18 March 2013, Mr. Daou was placed in pretrial detention in Bamako Central Prison. On 2 April 2013, he was released on bail. On 30 April 2013, Bamako Court of First Instance ruled that the case against him was null and void. His trial was monitored by the MINUSMA Human Rights Division and by NGOs involved in the defence of press freedom and human rights.

## E. Conditions of detainees arrested in the north

39. In execution of its mandate, the MINUSMA Human Rights Division continues to make regular, unrestricted visits to Gendarmerie Camp I in Bamako and to Bamako Central Prison to assess the conditions in which persons detained in connection with the military operations in the north are being held. The human rights teams were also able to meet with 10 combatants assumed to be members of armed groups who had been arrested in the region of Ber and Boureim and were being detained in the military camp in Timbuktu before being transferred to Bamako.

40. As of 9 May 2013, more than 295 suspected members or collaborators of armed groups arrested in various locations in the north during the military operations to retake control there were being detained in Bamako. The majority of the detainees were Malians aged between 20 and 76 years' old, 80 per cent of whom were of Songhay or Peul origin and the remainder Arabs or Tuaregs. Their number also included people originally from Algeria, Burkina Faso, France, Morocco, Niger, Nigeria, Somalia and Tunisia. Three prisoners of French nationality are reported to have been extradited to France.

41. Some detainees interviewed by the MINUSMA Human Rights Division said that they had been tortured by members of the Malian army at the time of their arrest in the north. Some had visible scars on their bodies which they claimed were the result of torture. All credible testimonies corroborated by detainees' statements indicate that the torture and other inhuman acts ceased once the detainees were placed in the custody of members of the gendarmerie or were transferred to Bamako. However, the Government's undertaking to investigate the extent to which members of the Malian Defence and Security Forces were involved in these human rights violations has yet to be followed by concrete action.

42. On 11 April 2013, MINUSMA human rights observers received confirmation of the death of four alleged members of armed groups at Bamako Central Prison during the night of 6 to 7 April 2013. An administrative investigation was initiated by the judicial authorities in an attempt to clarify the exact causes of their death. According to the authorities, three of the detainees were sick at the time of their transfer to Bamako. It should be noted that, after visiting Bamako Central Prison on 22 and 23 March 2013, the MINUSMA human rights observers had drawn the judicial authorities' attention to the need to improve the conditions in which alleged members of armed groups were being held. During this visit, detainees

had complained of their cells being small, dark and lacking in ventilation and the temperature inside them being too high.<sup>5</sup>

## F. Sexual violence

43. The progressive improvement in security conditions in the north of the country and the easier access to victims have made it possible to verify the allegations of sexual violence committed by members of armed groups mentioned in the High Commissioner's previous report. The Mission conducted 19 interviews during which allegations were made of sexual violence having been used against women and girls by members of armed groups, including MNLA, AQIM, MUJAO and Ansar Dine, in the north of the country between January and December 2012.

44. The information collected by the Mission indicates that members of armed groups frequently abducted their victims before sexually assaulting them. In some cases, the victims were assaulted either in their own homes or in centres of detention. Information analysed by the OHCHR Mission gives grounds to believe that, in most cases, the alleged perpetrators were members of MNLA. One victim interviewed by the Mission said that she and her sister had been raped in front of their mother by four men in Gao, in early June 2012, and that she had fallen pregnant as a result of the rape. She stated that her aggressors were members of MNLA and were wearing a military uniform and a turban. Another victim described having being harassed for months by members of one of the armed groups before being captured by them and taken to the Banque Malienne de Solidarité (BMS) in Timbuktu, where she was raped by five men in December 2012. It should be noted that, according to a number of testimonies collected by the Mission, during the occupation of Timbuktu armed groups used the BMS premises as a detention centre for women.

45. The information collected by the Mission indicates that most of the rape victims were Songhay and Bella women. However, it is difficult to ascertain whether the victims were targeted because of their ethnic origin. For example, in Ménaka it appears that Bella women accounted for most of the rape victims but in Gao the victims were predominantly Songhay women. This finding could be a reflection of the composition of the population in these two municipalities, where these two ethnic groups account for the majority of the population.

46. The Mission also received information from various sources, including in some cases from family members of victims, alleging that girls had been forced to marry members of armed groups in Gao and Timbuktu. According to the reports, in most cases these forced marriages were followed by multiple rapes in the armed groups' camps and lasted no more than two or three weeks, after which the girls were sent back to their families.

47. The Mission noted that a number of organizations were endeavouring to document and collect information about cases of sexual and gender-based violence, including, in particular, conflict-related rapes committed in the north in 2012. On the basis of this information, on 6 March 2013 the Minister for the Family, the Advancement of Women and Children revealed that 200 cases of women and girls being raped by the different armed groups had been documented, with the victims' ages ranging from 9 to 60 years' old.

48. It is difficult to determine with any precision the scale of the sexual violence committed in the north of Mali since the occupation by armed groups began in January 2012, because the criteria used to record these acts of violence do not appear to have been

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<sup>5</sup> In April, the average temperature in Bamako varies between 38 and 44 degrees Celsius.

standardized. Moreover, victims are reluctant to report their cases due to the associated trauma and shame and the fear of being stigmatized. One interviewee mentioned that women and girls who were victims of rape do not report the incidents because they think that “if they do it, there will be no future for them”. In one interview, the Mission was informed that a victim of rape had committed suicide at the end of February 2013 after several attempts.

## **G. Violations of the rights of the child**

49. The Mission received information about the enrolment and use of children by armed groups. The Mission held meetings with representatives of the United Nations Children’s Fund (UNICEF) and the Malian authorities concerning the transfer, on 8 and 9 March 2013, of six child soldiers who had been captured in Tessalit by the French army, then handed over to the Malian authorities and referred to UNICEF.

50. The Malian authorities assured the Mission that, in conjunction with the international community, they were working to reintegrate children who had been associated with armed groups. On 28 January 2013, the authorities released an interministerial circular stating that child soldiers who had been captured or had escaped should be viewed as victims and should be treated as such. The circular also called on all relevant authorities to work together in the reintegration of these children.

51. The educational system has been particularly badly affected by the occupation of the north by armed groups, with serious consequences for the right to access education for around 700,000 children. Since the violence began in the north, at least 115 schools have been closed, destroyed or pillaged. Some have even been contaminated with unexploded ordnance abandoned by the armed groups. In addition, many teachers have been displaced and have not yet returned to the north. It is essential that the schools are rebuilt and that teachers are encouraged to return to the north and are given training and access to teaching materials. As of April 2013, around 200,000 children still did not have access to schooling.

## **H. Intercommunity tensions and risk of reprisals**

52. Relationships between communities in the north of the country continue to be marred by persistent tensions between, inter alia, the Songhays, the Peuls, the Arabs and the Tuaregs. These tensions create a considerable risk of violence. Incidents such as the clash between Arabs and Tuaregs in Ber on 5 May 2013 appear to be precursory signs of such violence. The fact that the militia often have a specific ethnic composition heightens the risk of violence. It is therefore vital that future political dialogue is inclusive and allows for the effective participation of all communities, in order to reinforce the importance and the benefits of coexistence in this region.

53. Despite a considerable decrease in the number of violations being reported against members of the Arab and Tuareg communities alleged to have supported armed, jihadist groups during the liberation of the northern cities between January and March 2013, the risk of reprisals remains high. For example, during a mission in the Timbuktu region from 8 to 12 May 2013, the MINUSMA human rights teams noted that members of the Tuareg and Arab communities aged between 15 and 50 years’ old had fled, and that the few remaining members of these communities, most of whom were either elderly or sick or children, were hiding in their homes for fear of reprisals and stigmatization. Refugees based in various camps in Burkina Faso confirmed that young people aged between 15 and 40 years’ old have fled the region. Some are in refugee camps while others are hiding in villages in Mali where living conditions are reported to be difficult.

54. Intercommunity tensions remain a serious obstacle to the return of refugees and persons suspected of having collaborated with the different armed groups. The complex nature of the intercommunity incidents reported makes it impossible to distinguish clearly between violence of a criminal nature and reprisals based on ethnicity and issues of identity. The efforts of local authorities and politicians, notably in Timbuktu, who have launched awareness-raising campaigns on coexistence in a bid to prevent reprisals, promote intercommunity tolerance and create conditions that foster respect for human rights should be applauded. In this context, the situation of Bella communities, which was highlighted in the High Commissioner's previous report, merits particular attention, as the Bella people continue to suffer discrimination and stigmatization and some members of their communities are used as slaves by the Tuaregs.

## **I. Internally displaced persons and refugees**

55. Protecting the civilian population remains a challenge for the Malian Defence and Security Forces in many northern towns where the Government does not yet have the means to protect all segments of the population, including internally displaced persons (IDPs). According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), between January and 23 May 2013, the number of IDPs in Mali rose to 301,027. During the same period, the number of refugees in neighbouring countries is estimated to have reached 174,129 (74,108 in Mauritania, 50,000 in Niger and 49,975 in Burkina Faso). Malians continue to flee their homelands to seek refuge in neighbouring countries.

56. Between 9 and 20 May 2013, three teams from the MINUSMA Human Rights Division travelled to Burkina Faso, Niger and Mauritania to assess the human rights situation experienced by the Malian refugees before they fled their places of origin and also to address questions of impunity, national reconciliation and the refugees' participation in the July 2013 presidential elections.

57. The refugees, who come mainly from the north of Mali, fear the insecurity and disorder caused by the absence of the Malian authorities, as well as reprisals from members of the Malian army and/or the armed groups, especially MNLA and MUJAO. They are particularly fearful of the threat of abduction, enforced disappearances, summary and extrajudicial killings and pillage. These phenomena were the main reasons for their flight, along with the increasingly difficult living conditions attributable to the lack of adequate public services. Most of the refugees expressed a readiness to return to their region of origin once peace and security are restored. They also underscored that national reconciliation should not be pursued on the basis of impunity.

## **IV. Measures adopted by the Government**

58. To date, Government responses to the human rights situation have been focused on political measures and judicial actions. On the political side, on 7 February 2013 the Government adopted the Bamako Declaration, thereby reaffirming its commitment to respecting human rights and fighting impunity. This commitment, coupled with awareness-raising activities and the establishment of military police detachments (*prévotés*) in the areas in which Malian forces have been deployed, have made it possible to prevent human rights violations and reduce acts of reprisals against Arab and Tuareg communities.

59. The authorities maintain that they sent circulars reminding all army units engaged in the military operations of the need to respect human rights and international humanitarian law. In the north of the country, including in Timbuktu and Gao, the Government has also

deployed a sizeable gendarme detachment to assume responsibility for interviewing individuals arrested during the military operations and taking action in cases of abuse committed by military officers during the military operations.

60. The Government has also set up a commission of inquiry to investigate the human rights violations that have been committed throughout the country. In addition, a joint Mali-Mauritania commission of inquiry was established in September 2012 to investigate the killing of 13 Malian and Mauritanian preachers by the Malian army in Diabali. However, so far there has been no judicial follow-up to these initiatives.

61. Responding to the need for inclusive dialogue to find a way out of the crisis, by Decree No. 2013-212/P-RM of 6 March 2013, the Government established the National Commission for Dialogue and Reconciliation. The Commission has a two-year mandate and the following vast remit: (i) to collect information about the political and social forces affected by the dialogue and reconciliation process; (ii) to identify the armed groups eligible to take part in the dialogue under the terms of the transitional road map; (iii) to register cases of human rights violations committed in the country since the start of the hostilities and until the entire country is fully secured; (iv) to come up with ways and means to mitigate the trauma suffered by victims; (v) to identify and advise on the implementation of measures to strengthen social cohesion and national unity; (vi) to highlight the benefits of dialogue and peace; (vii) to encourage the emergence of a national conscience and a commitment to the general interest on the part of all Malian citizens; and, (viii) to promote the country's democratic, social and cultural values, including, in particular, respect for the right to be different.

62. The members of the National Commission for Dialogue and Reconciliation were appointed by the interim President of the Republic by Decree No. 2013-325/P-RM of 10 April 2013 and assumed their duties on 25 April 2013. In addition to the fact that the Commission's mandate appears not to be in step with the guiding principles of transitional justice processes,<sup>6</sup> its composition has been criticized by some political figures and sections of civil society. The Commission has 33 members and its considerable size could hamper its efficiency. At this stage, the Commission looks to be a primarily political body tasked with finding a path to reconciliation through inclusive dialogue between all Malian communities. Its duties in relation to human rights and transitional justice appear to be limited.<sup>7</sup>

63. For this reason it is important to have more clarity about the Malian authorities' view of transitional justice so that the country's technical and financial partners are able to provide better support for the process, which, if carried out in accordance with international standards and best practice in this field, could help to clarify the facts about alleged human rights violations, to heal the wounds and to strengthen social cohesion.

64. On the judicial front, in response to the human rights violations committed by armed groups and in view of the physical impossibility of deploying the judicial machinery in the northern region, the judicial powers that had formerly been devolved to the regions of Gao, Kidal and Timbuktu were transferred to the Public Prosecutor of Commune III of Bamako by a decision of the Supreme Court of 21 January 2013. As of the date of submission of this report, there have still been no credible investigations into the allegations of rape, in spite of

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<sup>6</sup> Essentially, establishment of the truth, justice, reparation and guarantees of non-recurrence.

<sup>7</sup> The Office of the United Nations High Commissioner for Human Rights made a preliminary analysis of Decree No. 2013-212/P-RM of 6 March 2013 concerning the establishment, organization and working methods of the National Commission for Dialogue and Reconciliation which has been submitted to the Minister of Justice of Mali.

a Government circular issued in October 2012 which urged prosecutors and judges to prioritize cases of rape committed in the north of the country in 2012.

65. Following numerous allegations of killings in which the victims' bodies were reported to have been thrown into wells, the relevant prosecutor initiated an inquiry in an attempt to shed light on these cases. The Government has also initiated inquiries into other cases of serious human rights violations allegedly committed by the Malian army, including, in particular, into the abduction and enforced disappearance of eight Arab merchants and one Songhay merchant in Timbuktu on 14 February 2013. In this connection, five Malian military officers, including one captain, have been removed from Timbuktu and brought before the judicial authorities because of their involvement in this incident.

66. On 29 March 2013, 27 persons being detained in connection with inquiries into the situation in the north since the start of the crisis were released by the Public Prosecution Service due to lack of evidence. Following the death of four detainees in April 2013, the Ministry of Justice has been working to improve conditions of detention in Bamako Central Prison.

## V. Conclusions and recommendations

67. **Although progress has been made following the liberation of the north as a result of the military operations carried out by the Malian army with the support of French and African forces, the human rights situation remains precarious, due to the significant challenges that continue to impede security, the restoration of State authority, the establishment of the rule of law, political dialogue and national reconciliation. In this scenario, the protection of human rights remains one of the main challenges in the search for solutions to the Malian crisis.**

68. **The Malian authorities have taken a number of steps to combat impunity and to bring legal proceedings against the alleged perpetrators of violations of human rights and international humanitarian law. These efforts should be supported by the international community if the country is to be able to address the numerous challenges it faces in relation to security, restoration of the rule of law, democratic and economic reconstruction and respect for human rights.**

69. **In view of the foregoing, the United Nations High Commissioner for Human Rights addresses the following recommendations to the Government of Mali:**

(a) **Ensure that the relevant services initiate in-depth, independent and impartial investigations into all alleged cases of violations of human rights and international humanitarian law committed by the Malian Defence and Security Forces and by armed groups;**

(b) **Take urgent measures to organize fair and just trials for persons arrested in connection with the crisis and for all other persons implicated in human rights violations;**

(c) **Ensure the effective return of the Malian administration to the northern region, in order to re-establish the rule of law and social peace;**

(d) **Dismantle the various militias and other parallel armed forces whose activities continue to jeopardize the safety of people and property;**

(e) **Continue, in conjunction with MINUSMA and the European Union Training Mission, to provide training for the Malian Defence and Security Forces in**

the principles of international human rights law and international humanitarian law and in Human Rights Due Diligence Policy;

(f) Establish a transitional justice mechanism in conformity with the norms and practices of international human rights law with the technical support of the Office of the United Nations High Commissioner for Human Rights;

(g) Ensure that the needs and opinions of IDPs and refugees are taken into account in the ongoing national reconciliation process, and that appropriate measures are adopted to guarantee the participation of the entire Malian population in the electoral process;

(h) Adopt urgent measures to create conditions conducive to the return of refugees and to the participation of all Malians in political processes, and to organize awareness-raising campaigns to promote human rights, tolerance and coexistence.

70. The United Nations High Commissioner for Human Rights addresses the following recommendations to the international community:

(a) Provide the technical and financial assistance needed by the different actors to initiate or continue national capacity-building programmes, including the reform of the justice system, with a view to promoting and safeguarding human rights;

(b) Continue to support capacity-building programmes for the Malian army focused on human rights and civilian protection;

(c) In view of the impact of the crisis on social cohesion, support programmes that promote tolerance and respect for diversity.

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