

Report of the Independent Observer

Observations on the Implementation of the Agreement on Peace and Reconciliation in Mali, Emanating from the Algiers Process

April 2019

THE
CARTER CENTER



This report presents the observations of The Carter Center as the Independent Observer of the implementation of the Agreement on Peace and Reconciliation in Mali, emanating from the Algiers Process, for the period from January to April 2019.

The Carter Center: A not-for-profit, nongovernmental organization, The Carter Center has helped to improve life for people in over 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and former First Lady Rosalynn Carter, in partnership with Emory University, to advance peace and health worldwide.

NOTE

The Independent Observer wishes to acknowledge the important contribution of the Kroc Institute for International Peace Studies to the development of its Feb. 18, 2019, report. The Kroc Institute was not cited in our list of selected interlocutors (Annex 2). We regret the omission.

PERSONNEL OF THE INDEPENDENT OBSERVER

BAMA KO

SPECIAL ADVISOR

AMBASSADOR (RET.) BISA WILLIAMS¹

DEPUTY SPECIAL ADVISOR

JEAN NTOLE KAZADI

COORDINATOR

LAURENCE BARROS

ANALYST

CLAUDIO FERRANTE

ACCOUNTANT

BAKARY DIARRA

ATLANTA

CEO, THE CARTER CENTER

AMBASSADOR (RET.) MARY ANN PETERS

VICE PRESIDENT, PEACE PROGRAMS (*interim*)

CRAIG WITHERS

DIRECTOR, CONFLICT RESOLUTION PROGRAM

HRAIR BALIAN

ASSOCIATE DIRECTOR, CONFLICT RESOLUTION PROGRAM

JOHN GOODMAN

ASSOCIATE DIRECTOR, COMMUNICATIONS

SOYIA ELLISON

ASSOCIATE DIRECTOR, OFFICE OF INTERNATIONAL SUPPORT

JAYANTHI NARAIN

SENIOR ASSOCIATE DIRECTOR, DEVELOPMENT

JANET SHIN

PROGRAM ASSOCIATE

KATE KNAPP

PROGRAM ASSISTANT

CASSANDRA THOMAS

FINANCIAL ANALYST

RUBY JUDIT-KOCHENDERFER

ACRONYMS AND TERMINOLOGY

ACRONYM ²	DEFINITION
CEI	International Commission of Enquiry
CMA	Coordination of Azawad Movements
CN-DDR	National Commission for Disarmament, Demobilization, and Reintegration
CSA	Monitoring Committee
CVJR	Truth, Justice and Reconciliation Commission
ERAR	Regional Reconciliation Support Teams
DDR	Disarmament, Demobilization, and Reintegration
FAMa	Armed Forces of Mali
IDP	Internally Displaced Persons
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali
MOC	Operational Coordination Mechanisms
PTF	Technical and Financial Partners
PU-RSJ-MOA	Emergency Program for the Reinforcement of the Judicial System and the Implementation of the Agreement for Peace and Reconciliation in Mali, Emanating from the Algiers Process
UNHCR	Office of the United Nations High Commissioner for Refugees

TERMINOLOGY	DEFINITION
International Mediation	Members of the international community referred to in Article 58 of the Agreement for Peace and Reconciliation in Mali, Emanating from the Algiers Process
Signatory Movements	Coordination of Azawad Movements and the Platform of Movements - Algiers Declaration, June 14, 2014
Malian Parties	Government of Mali and the signatory movements
Platform	Platform of Movements - Algiers Declaration, June 14, 2014

TABLE OF CONTENTS

SUMMARY	1
OBSERVATIONS AND RECOMMENDATIONS	4
A. Principal Blockages Impeding Implementation and Recommendations.....	4
B. Observations and Recommendations on Title V of the Agreement.....	7
1. Reconciliation and Transitional Justice	7
2. Reform of the Justice System	10
3. Refugees and Internally Displaced Persons	11
4. Humanitarian Questions	12
CONCLUSIONS	13

SUMMARY

In the first trimester of 2019, the acceleration of violence in central Mali increasingly overshadowed the implementation of the Agreement on Peace and Reconciliation in Mali, emanating from the Algiers Process, and slowed peace and reconciliation efforts. The attacks on Malian Armed Forces (FAMa) camps in Diouro and Guiré, on March 16 and April 22 respectively, and the March 23 massacre in Ogossagou, highlighted the steadily mounting tensions. An evaluation of the implementation of the agreement must take into account the challenge posed by the situation in central Mali.

The most important advance during the period from January to April 2019 was the government's launch of the constitutional reform process. This same period was also marked by stagnation, even backsliding, in the implementation process. Launched in November 2018, the accelerated "Demobilization, Disarmament, and Reintegration-Integration" (DDR) process was interrupted in mid-January and, as of April, had slowly restarted with the initial medical screening of those combatants who had not previously been screened or who were initially determined to be ineligible.³ While approximately 1,423 signatory movements members have completed the vetting process, to date none have been integrated into the national defense and security forces. There is no agreed timetable or strategy for the overall DDR process for the 63,000 combatants identified by the National Commission for Demobilization, Disarmament, and Reinsertion (CN-DDR). In the rural areas of the north, particularly around Gao and Menaka, civilians are regular victims of crime and violence, often caused by non-demobilized armed men who steal and sometimes rape and kill with impunity.

The international community is present but seems unable, as currently configured, to compel implementation or fully meet humanitarian needs. On one hand, the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) supports the DDR process and provides a general safety net through its patrols and limited civilian services. On the other, in the north, U.N. agencies are to some extent paralyzed by the threat environment and security regulations limiting their scope of activities.

Amid the growing tension between certain communities in Mali, reconciliation and justice issues, which lie at the core of the agreement, have been to large extent overlooked. Reform of the justice system is perhaps the single most neglected aspect of the implementation process.

Dialogue and trust between the Malian parties are showing signs of withering. In Kidal, despite the presence of the governor and the interim authorities, the Coordination of Azawad Movements (CMA), citing rising criminality, issued two unilateral decrees on Jan. 30. The decrees established a host of administrative measures and put in place a new security plan, known as *Acharouchou*.⁴ Despite the CMA's Feb. 18 statement acknowledging widespread misunderstanding about the decrees, the measures remain in place, and Kidal residents have since reported a decrease in insecurity. **In essence, the CMA command structure provides local administration, security, and basic public services in Kidal and its immediate surroundings. It does so thanks to the assistance of a handful of non-governmental humanitarian organizations, without meaningful support from the government and in lieu of the nominal civilian authorities, the governor, and the interim authorities; governance is thus to a large degree militarized.**

On March 8, the government in turn issued two decrees on military affairs.⁵ The decrees created special operations units and announced *Operation Dambé*, an effort designed to reassert military presence in the Ségou, Mopti, Timbuktu, Gao, Kidal, Taoudéni, and Ménaka regions.⁶ The government's unilateral measures, like those of the CMA (which contravened the principle of national unity), constituted a violation of the agreement, namely the articles concerning the reconstituted army and its redeployment to the north (e.g., articles 21, 22 and Annex 2). Following the announcement of *Operation Dambé*, the CMA declared its temporary withdrawal from the tripartite consultation framework (*cadre de concertation*), currently the main intra-Malian forum to advance implementation. The divisions within the Platform of Movements – Algiers Declaration of June 14, 2014 (Platform), illustrated by the recent disagreements over the selection of its representatives to the “high-level dialogue on defense and security issues” and the withdrawal of some of its combatants from DDR, have weakened the group's ability to contribute to the implementation.

Given this overall context, the increasing confidence established between the Malian parties since early 2018 is now dwindling. The erosion of trust has contributed to the continuation of the longstanding problem of the parties' lack of follow-through on commitments. Although in its April 14 meeting the Monitoring Committee (CSA) reached a decision regarding the dispute over the Platform's representatives, in general **the international mediation members of the CSA seem reluctant to propose solutions to the often-serious impediments hindering implementation.**

The Independent Observer is concerned that, in Kidal, the government appears to have conditioned the restoration of public services on the return of the FAMA. The persistent shortfalls in funding the activities of the interim authorities, and the absence of government-paid teachers or support for health services, distinguish Kidal from Gao and Timbuktu, where government-provided services to a degree have returned and the interim authorities have begun to function, albeit with the myriad difficulties noted by the Independent Observer in previous reports. At the same time, the Independent Observer has seen no effort on the part of CMA leaders in Kidal to facilitate the government's transition to administering public services.

The most important advance during this trimester was the government's launch of the constitutional reform process. On April 1, the Committee of Experts for the Reform of the Constitution, established by the president of the republic, submitted a draft constitutional law after holding consultations throughout Mali. A central theme of the consultations was the need to integrate key provisions of the agreement into the constitution. This inclusive approach – marked by discussions between the president of the republic, the political class, and other stakeholders – may contribute to overcoming the obstacles encountered during the previous, aborted constitutional reform effort, paving the way for the adoption of the legislative measures needed to implement fully the agreement. Another positive development was the consultation held by the National Assembly on the Law of National Understanding, with the participation of human rights and civil society organizations, representatives of the signatory movements, and the political class; an earlier draft law had been strongly contested during its initial presentation to the assembly in December 2018. Also positive was the government's issuance of two decrees, on March 27 and March 5 respectively, establishing the procedures for transferring state services to the *collectivités territoriales* and for the

integration of movement ex-combatants into government administration, including the army and security forces.

Despite these constructive measures, the authority of the Ministry of Social Cohesion, Peace, and National Reconciliation, which is responsible for coordinating the government's implementation effort, appears ambiguous. This ambiguity manifests itself in the ministry's apparent lack of influence on the decision-making of sibling ministries responsible for implementing aspects of the agreement and in its inability to implement effectively agreements on specific issues reached by the Malian parties in the *cadre de consultation*. The disagreements over *Operation Dambé*, or in late 2018 over the process of re-districting, **illustrate that the Ministry of National Reconciliation is not empowered to decide key issues and that the *cadre de concertation* is a negotiation forum rather than an organ for definitive, joint planning.** This situation highlights the need for stronger, more unified, and more public leadership in support of the implementation of the agreement.

In its previous report, the Independent Observer noted that as of December 2018, 44 percent of the agreement had been implemented but that fulfilled commitments consisted primarily of preliminary actions. Of the main provisions of the agreement, none had implementation rates above 50 percent. While the parties have begun in-depth consideration of the Independent Observer's previous recommendations, as of April, the Independent Observer had not observed significant advances in either the overall implementation rate, the implementation of the March 2018 Roadmap, or the attainment of the main benchmarks set by United Nations Security Council Resolution 2423 (June 2018).⁷

In accordance with its mandate under Article 63 of the agreement and Security Council resolutions 2371 (December 2017) and 2423 (June 2018), the Independent Observer aims to contribute to the fulfillment of the agreement by first identifying, and then assisting in overcoming, obstacles to implementation. With that objective in mind, this report begins by identifying persistent, key challenges, followed by recommendations intended to support the signatory parties and accompanying parties in advancing implementation. In light of the Independent Observer's previous reports describing the lack of progress regarding titles IV and V of the agreement, the Independent Observer has chosen in this report to focus specifically on Title V. Since the signing of the agreement, justice, reconciliation, and humanitarian issues have for the most part not received the same attention as politico-institutional, defense, and security matters. The Independent Observer continues to view the rule of law and national reconciliation as the cornerstones of lasting peace.

OBSERVATIONS AND RECOMMENDATIONS

A. Principal Blockages Impeding Implementation and Recommendations

The Independent Observer considers the following to be key impediments to the implementation of the agreement:

➤ WEAKNESS OF DECISION-MAKING MECHANISMS

The president of the republic, as well as the former prime minister, have repeatedly reiterated the high priority of the implementation of the agreement. The designation of a ministry (i.e., the Ministry of National Reconciliation) to coordinate the government's action and funding for implementation, in combination with the establishment of the tripartite *cadre de concertation* under its auspices, were welcomed enthusiastically by the accompanying parties. Yet, as of late April 2019, the prevailing perception, particularly among the public and certain members of the international community, is that there is a lack of urgency on the part of the government and that it continues to make multiple, uncoordinated decisions about implementation. Therefore, it appears that the current *cadre de concertation* is insufficient for establishing guidelines, resolving urgent issues creating blockages, or making key decisions.

RECOMMENDATION:

That a more effective decision-making framework be created through which unresolved issues are brought directly to the president of the republic for final decision. The government's representatives and the leaders of the movements should prepare formal recommendations for the president's consideration and approval/disapproval and should use the framework to express together their public support for implementation.

➤ SPORADIC RHYTHM OF DDR

○ *Operational Coordination Mechanism and "Accelerated DDR-Integration"*

As of April, the accelerated DDR process has not resulted in the demobilization, disarmament, or reintegration of movement combatants in the Operational Coordination Mechanism (MOC). In general, the government's design and launch of the accelerated DDR, starting with the MOC members, lacked sufficient planning; numerous technical, material, and financial obstacles have delayed the process, despite its critical symbolism as the embryo of the reconstituted army. The Independent Observer also notes that, following the initial evaluation and confirmation of 1,423 eligible MOC members in January, to date none have been integrated into the army and security forces, and no timetable exists to do so.

Begun in November 2018, the process was interrupted - initially because of the controversy surrounding the leak of an apparent government document listing combatants judged to be "medically unfit" for integration, and subsequently due to the lack of X-ray equipment for medical examinations for the MOC contingent in Kidal. While these obstacles were overcome and accelerated DDR resumed, there remains the problem of lack of appropriate command and control of MOC members.

As accelerated DDR resumes, it is important to recall that it concerns roughly 1,500 combatants who, once engaged in the integration process, will still have to be trained, equipped, and deployed, a process likely to absorb most of 2019. In addition, the Independent Observer notes that the question of the future of the MOC as an entity, once its members have been integrated in the national army and security forces, has been raised several times in the CSA without the emergence of a clear consensus or decision.

- *DDR Process*

The Independent Observer is concerned that the registration of eligible combatants in the overall DDR process, which under the March 2018 Roadmap was scheduled to close in April 2018 but remains in progress, appears to be endless. As the CN-DDR announced at the March meeting of the CSA, the current total is 63,000 eligible combatants, with the prospect of more to come. Four years after the signing of the agreement, on a matter of critical importance and a key test of the Malian parties' commitment, there exists no comprehensive and binding timetable. **Further, the elevated number of registered combatants – which seems well beyond both the probable number of combatants belonging to the movements and the government's capacity to absorb them in the security forces or provide for a transition to civilian life – risks undermining the general DDR process.**

The high number of already-registered combatants is a particular concern, given the lack of detailed planning for security-sector reform and the absence of agreement on the restructuring and redeployment of the reconstituted army. These difficulties are compounded by the failure to reach consensus on the preconditions for DDR set by the movements, namely agreement on the number of their combatants joining, and the command structure of the reconstituted army. The Independent Observer also reiterates its concerns about the lack of predictable funding for the implementation of the DDR process.

RECOMMENDATIONS:

1. *That, under the supervision of the mediation and the United Nations Security Council, a clear and binding timetable be established for the DDR process. This should also spell out the technical and financial means necessary for its implementation.*
2. *That the movements publicly confirm their commitment to the demobilization of their forces, including the desired timing, and that the CN-DDR and the Ministry of Defense publicly defend the DDR-integration process and explain to the Malian people its importance for national security. These actions should be conducted jointly and repeated at regular intervals.*

➤ **LACK OF GOVERNMENT SERVICES IN KIDAL**

Since the arrival of the governor and the director of schools, Kidal has not benefited from other services re-establishing the presence of the Malian government. Given that the 2012 rebellion began in Kidal, the lack of services is highly symbolic of the meager progress in restoring the state's presence. According to Annex III of the agreement, the government's return was to be

advanced through a host of services to be “urgently carried out and in order of priority.” The emergency humanitarian plan, which was designed to be implemented immediately, was also designed to reinforce the state’s return. Officially in place since 2017, the interim authorities – the embryos of shared governance whose mission includes restoring the presence of the state – continue to highlight the government’s underfunding of their activities.

In the absence of services provided by the government, the CMA’s command structure, whether out of necessity or by design, oversees governance, including the administration of justice through *cadis*. During the Independent Observer’s multiple missions, the governor, the leadership of the CMA, and the interim authorities all confirmed that government services were welcome in Kidal and that the current security situation would allow for the presence of government-paid teachers, health workers, and other services.

The situation in Kidal illustrates the multiple obstacles faced by the interim authorities. The absence of a clear framework defining the relationship between the community leaders in the interim authorities and the signatory parties, who appointed those same figures, raises serious questions about the interim authorities’ autonomy. Further, the precarious status of the interim authorities – floating as it were between the former regional councils and the future regional assemblies and facing a governor who continues to be the government’s legal representative – limits their scope of action and weakens their relationship with the population, sometimes inadvertently discrediting them locally.

RECOMMENDATION:

That urgent measures be taken to restore the provision of government services in Kidal. This topic should be one of the issues addressed as a priority by the CSA.

➤ **LACK OF CONSENSUS AMONG INTERNATIONAL GUARANTORS AND ACCOMPANYING PARTIES**

One thing that distinguishes this agreement from past peace accords in Mali is the role of international “guarantors” and “accompanying parties.” Yet it appears to the Independent Observer that, despite provisions set out in the agreement, international stakeholders differ considerably in their perceptions about – and readiness to fulfill – the responsibilities of “guaranteeing” and “accompanying” implementation. Further clarifying the roles of the guarantors and accompanying parties would assist the Malian parties and the implementation process as a whole. How should the guarantors of the agreement respond to obstacles to implementation? Given that the agreement is a framework rather than a detailed plan, what is the role of guarantors in resolving disputes over implementation? An initial response to these questions could be found in the “Pact for Peace” signed in September 2018 between the United Nations and the Malian parties, which confirms that decisions of the international mediation are “enforceable.”

RECOMMENDATION:

That the Monitoring Committee, which in January began to modify its working procedures, deepen its deliberations about the responsibilities of guaranteeing the agreement, drawing on the agreement itself, the “Pact for Peace,” and the recommendations of the Independent Observer.

➤ **CRISIS IN CENTRAL MALI**

The crisis in central Mali began in 2015 and continued to intensify in the first quarter of 2019, marked on the one hand by the terrorist attacks on the FAMa camps in Dioura and Guiré and on the other by the upsurge in inter-communal conflict, such as the massacre of 160 civilians, including women and children, in Ogossagou. The number of displaced persons in the Mopti region continues to grow. The steady escalation of the crisis in central Mali is increasingly drawing the attention and resources of the Malian government and international stakeholders and is, therefore, itself a major challenge to the implementation of the agreement.

B. Observations and Recommendations on Title V of the Agreement

1. Reconciliation and Transitional Justice

National reconciliation lies at the heart of the agreement. Article 5 provides for a Conference of National Understanding to open an “in-depth debate among the components of the Malian [nation] on the root causes of the conflict.” As part of the conference, a Charter for Peace, Unity, and National Reconciliation is envisaged to “assume [sic] the shared identity and historical dimensions of the crisis in Mali and put its seal on its national unity and territorial integrity.” In addition to these two tools, Article 5 emphasizes the link between reconciliation and justice, particularly through the reform of the justice system.

In Title V, Article 46 provides for the establishment of bodies and the adoption of specific texts aimed at reconciliation and transitional justice – namely, the charter, the operationalization of a Truth, Justice, and Reconciliation Commission (CVJR), and the creation of an International Commission of Inquiry (CIE). The article also reaffirms the inalienable nature of war crimes and crimes against humanity, including non-amnesty for the perpetrators of such crimes. While these actions and mechanisms have been formally implemented, **for a variety of reasons they have not generated the national dialogue envisaged by Article 5 and, therefore, seem far from having laid the foundation for genuine national reconciliation.**

The challenge of national reconciliation has been compounded by the emergence of inter-communal tensions and conflict in central Mali, making it all the more difficult to implement the agreement and, at the same time, diminishing the prospects for restoring good relations among Malian communities.

The Independent Observer has previously noted that Title V has not received as much attention as other titles during the implementation process. The implementation rate for Title V-related commitments is 33 percent. Perhaps even more worrying was the suspension of the deliberations of the CSA subcommittee on Title V for several months in mid-2018. **Despite the principle of non-**

amnesty enshrined in Article 46, the approach to personal and legal accountability for war crimes and crimes against humanity remains ambiguous; to date, no individual has been identified or brought to justice.

In the course of its field missions, the Independent Observer has found that the establishment and initial activities of the CVJR – the body primarily responsible for transitional justice, and thus for laying the foundation for reconciliation – created hope and expectations. Yet over time, because of the limited objectives set by the CVJR, victims are increasingly voicing disappointment and frustration, which could potentially lead to loss of credibility for the CVJR.

The following obstacles must be overcome to advance national reconciliation through transitional justice focused on victims and their communities:

➤ LIMITATIONS OF THE NATIONAL CONFERENCE OF UNDERSTANDING AND THE CHARTER FOR NATIONAL RECONCILIATION

The Independent Observer notes that the Conference of National Understanding contributed relatively little to achieving a major objective of the agreement: national reconciliation. The March 2018 Roadmap recognizes this fact in listing among needed priority actions the “completion of the process of the Conference of National Understanding in accordance with the provisions of the Agreement”; yet since then, few, if any, specific actions have been taken by the Malian parties to implement this commitment. Indeed, in addition to the tensions that arose in 2017 over the holding of the Conference of National Understanding, its very outcomes remain disputed by the signatory movements, who object to the Charter for Peace, Unity, and National Reconciliation. Simply put, the conference did not mark a turning point for national reconciliation in Mali.

➤ THE CVJR’S LIMITED ROLE AND THE CHALLENGE OF NATIONAL RECONCILIATION

The CVJR is operational and, through its regional branches, has collected roughly 11,624 depositions from alleged victims.⁸ The Independent Observer notes that the CVJR’s approach aims essentially at social, historical, and memory-related objectives. The CVJR method consists of gathering victims’ statements, analyzing data and mapping serious human rights violations, and identifying the root causes of the conflict; it will also take testimony from key sources, such as local notables. **Nowhere, however, does the CVJR’s strategy clearly address the perpetrators of violations.** While anticipating the holding of public hearings in the future, the CVJR does not foresee that these sessions would involve confrontations between the victims and perpetrators, which could assist in establishing truth, fostering forgiveness, or justifying compensation.

The Independent Observer is aware that the CVJR is preparing a draft policy on compensation for victims and that it expects that, drawing on its findings, victims will individually pursue complaints within the formal justice system. The Independent Observer notes, however, discouragement among many victims who, having provided depositions, remain confused about both next steps and the potential outcomes of their testimony.

As its mandate makes clear, the CVJR is not a judicial institution. Yet its relatively circumscribed objectives, combined with the persistent weakness of the judicial system, particularly in the north, mean that the commission is unlikely to be able to meet victims' expectations or address reconciliation more broadly. Indeed, it is important to note that the provisions of the agreement concerning traditional justice mechanisms, which are indispensable to the process of national reconciliation, are yet to be fully implemented.

➤ **DISPARATE, UNCOORDINATED RECONCILIATION EFFORTS**

The implementation of the Article 46 commitments concerning national reconciliation requires the same attention as that applied to other provisions of the agreement. **The Independent Observer notes that the multiple ongoing reconciliation efforts are often uncoordinated.**

The draft Law on National Understanding, which was adopted by the council of ministers and reached the National Assembly in December 2018, was strongly contested by human rights organizations and by the signatory movements and parts of the political class. The National Assembly subsequently engaged in in-depth consultations with these groups, and a new law is scheduled to be examined during the assembly's current session. Separately, the International Commission of Inquiry (CEI), begun in October 2018, will present its report to the U.N. secretary-general in October 2019. Yet the CEI has faced difficulties in gathering information, both because of its only periodic presence on the ground and because of resistance from some interlocutors.

Starting in 2017, the Ministry of National Reconciliation established regional reconciliation support teams (ERAP), led by local religious and customary notables, with the aim of resolving outstanding issues and restoring social cohesion. While effective, the ERAPs suffer from lack of resources and are themselves victims of the general climate of violence and impunity in central and northern Mali.

The signatory movements are also involved in reconciliation. The "Anéfis 1" agreement in 2015 and "Anéfis 2" in 2017 illustrate their efforts not only to end armed clashes but also to advance reconciliation between communities. Yet the results of these reconciliation efforts, which were assigned to *cadis*, remain largely unknown. Moreover, given the absence of robust transitional justice mechanisms and the undetermined status of traditional justice, the impact of the *cadis*' efforts will remain uncertain. Without an engagement between the *cadis*-led process and other mechanisms of transitional justice, the rebuilding of trust and lasting reconciliation between communities will likely be difficult.

RECOMMENDATIONS:

1. *That the Malian parties and the international mediation dedicate themselves to reinvigorating the process of reconciliation and transitional justice.*

Given that the Conference on National Understanding failed to meet its ultimate objectives, the parties should create a new general framework for reconciliation and transitional justice, which would encompass the CVJR,

traditional justice mechanisms, and the ERAPs, as well as formal legislation, such as the Law of National Understanding and the Reparations Act. It will be critical to clearly define the treatment of individual responsibility for crimes and the implementation of the “non-amnesty” provision in Article 46.

2. That the CVJR clarify the anticipated next steps for victims’ depositions and share the policy with the public. The CVJR’s mandate, which has expired, should be renewed

2. Reform of the Justice System

In Article 46, the Malian parties commit to promoting national reconciliation through significant reform of the justice system. In particular, Article 46 provides for the incorporation of traditional justice mechanisms into Malian law and calls, in general, for the justice system to become more accessible.

Justice reform is without doubt the orphan of implementation. The March 2018 Roadmap, for example, contains not a single commitment concerning the judicial sector. The discussions of the CSA sub-committee on Title V have only rarely delved into judicial reform. The following blockages hinder the implementation of the agreement’s provisions on justice reform:

➤ ABSENCE OF A JUDICIAL REFORM PLAN

The government’s project for judicial reform is the “Emergency Program for the Strengthening of the Justice System and Implementation of the Agreement for Peace and Reconciliation in Mali, emanating from the Algiers Process” (PU-RSJ-MOA), which was launched in 2015 and intended to run through 2018. The program’s objective was to improve the Malian judicial system and the rule of law, as envisaged by the agreement. The PU-RSJ-MOA included 89 activities and a budget of 59,960,000,000 FCFA (\$US105.6 million), of which 32,998,000,000 FCFA (\$US58 million) was available as of 2015.⁹ **An evaluation of the program, long-promised by the government and requested on multiple occasions by the CSA sub-committee on Title V, has yet to be made public.** A strategic planning document for the justice system for 2019-2023, as well as a draft law on the judicial sector, are also not yet published. Alongside these shortcomings are a range of other challenges, most notably the ongoing judges’ strike. Indeed, despite the involvement of technical and financial partners (PTFs), the justice sector has not demonstrated significant improvement since 2015, and, as a result, its impact on peace and reconciliation is minimal.

Multiple international partners support the government’s efforts in the justice sector and the rule of law in general. Yet justice reform is rarely evoked in the implementation process. Given the generally recognized role that dysfunction in the judicial system played in the breakdown in trust between the government and citizens, particularly in the north, the scant attention devoted to the judicial reform provisions of the agreement is a source of concern.

➤ AMBIGUOUS STATUS OF TRADITIONAL JUSTICE

In the north, as was the case before the 2012 conflict, the formal judicial system is largely absent outside the principal cities. Justice is mainly provided through *cadis*, *marabouts*, or other traditional authorities. For example, in Kidal, justice, including criminal law, is administered by the *cadis*. The role of traditional actors in the justice system is thus continuing or increasing, but at times in an ad hoc or even arbitrary manner. The continuation of such an approach to the administration of justice – as opposed to the establishment of a legal framework defining the role of traditional authorities, as called for in the agreement – risks undermining the rule of law.

RECOMMENDATIONS:

1. *That in returning public services to Kidal, the government prioritize the operationalization of appropriate judicial organs, including those covering matters of criminal law.*

2. *That the government make public, as soon as possible, the outcome of the PU-RSJ-MOA, which would allow for the clarification of its priorities and guide future international support, including that pertaining to the role of traditional authorities. The publication of the new strategic planning document for 2019-2023, together with a proposed action plan and budget, should also be prioritized.*

3. Refugees and Internally Displaced Persons

In Article 47 of the agreement, the parties undertake to “create the necessary conditions to facilitate the prompt return, repatriation, reintegration, and reinsertion of all displaced persons (IDPs) and refugees,” including through the establishment of “welfare mechanisms.” According to the most recent data collected by the Office of the United Nations High Commissioner for Refugees (UNHCR), there are 137,975 Malian refugees residing in Mauritania, Niger, and Burkina Faso, as well as 99,039 internally displaced persons in Mali.¹⁰ The latter figure has increased significantly since January 2018, from 38,172 IDPs as of Dec. 31, 2017, to a record 123,574 in January 2019.¹¹ Most of the current displacements are occurring in Mopti and Ségou (61.1 percent) because of the intensification of violence in that area. There are also significant displacements in Gao (12.4 percent), Timbuktu (12.2 percent), and Menaka (9.1 percent).¹²

During a March visit to Niger by the Independent Observer, representatives of refugee communities said they had not received sufficient information to determine whether security and other conditions would allow them to return to Mali. In general, refugees in Niger desire to return, but fear violence and insecurity. Many who tried to leave the camps were forced to abandon their efforts and return to Niger because of crime in their home communities, especially in the Menaka area. Nevertheless, in March over seven hundred refugees were preparing to return to Mali from the Abala camp in Niger. Their experience upon return could not be verified by the Independent Observer at the time of publication of this report.

This situation, coupled with the poor economic prospects and lack of social and health services in northern Mali, has led many refugees in Niger to seek permanent resettlement in the host country.

The Nigerien government has indicated its intention to build a significant number of permanent housing units for Malian refugees who settle permanently in Niger.

In general, there exists no resettlement plan for refugees and IDPs. The lack of a resettlement plan reflects the slow pace of implementation and undermines confidence in the Malian parties' ability to take effective measures to ensure that refugees and IDPs can return home. Increased insecurity in central Mali has only exacerbated the situation.

4. Humanitarian Questions

In Article 49, the Malian parties undertake to “promote and respect the principles of humanity, neutrality, impartiality, and independence which guide humanitarian action” and to “facilitate access for humanitarian agencies and guarantee the security of their personnel.” According to the latest report from the U.N. Humanitarian Country Team, in 2019, 3.2 million people will need humanitarian assistance, half of whom are in central and northern Mali. The areas of health (with 1.4 million people in need), water, hygiene, and sanitation (1.3 million), nutrition (868,000), protection (755,000), and education (451,000) most urgently require interventions.¹³

Humanitarian access to these populations is problematic. **According to humanitarian actors, access to target populations is hindered by growing crime (theft of vehicles, robberies, looting of depots, etc.) as much as conflict.** This is particularly the case in the entirety of the Gao-Menaka region, the northeast of Mopti, and the zone around Timbuktu and Taoudenit.¹⁴ Military operations also impose constraints, particularly in the regions of Gao and Menaka and northeast and northwest of Mopti.¹⁵ In these zones, as a general rule, national and international non-governmental organizations have greater access than U.N. agencies.¹⁶ Indeed, U.N. agencies, which have relatively small offices for security reasons and thus lack the ability to conduct detailed follow-up, generally cannot carry out large-scale operations and are often limited to concentrated “hot spots” of displaced persons. Yet national and international NGOs, because of a lack of resources and consistent access, are unable to cover the needs, which for 2019 are estimated to be in the range of \$US296.5 million.¹⁷ In light of Article 49, the Independent Observer has attempted to identify several general obstacles to humanitarian access.

➤ ABSENCE OF SYSTEMATIC DIALOGUE ON ACCESS

Despite the signatory parties' commitment to facilitate access for humanitarian actors and protect their staff, there is no forum for regular dialogue between the parties and humanitarian actors on security and access issues. Indeed, **given the movements' increasing lack of command and control of their combatants, agencies and organizations often must communicate on a case-by-case basis with commanders in the field, with varying success.** Perhaps even more seriously, humanitarians report that at times they must negotiate with unidentified armed men. In short, there is no systematic approach to handling humanitarian issues.

Humanitarian operations have rarely been raised in the CSA or its subcommittee on Title V. The *cadre de concertation* also does not seem to have dealt with humanitarian issues. **Without a**

forum or systematic dialogue, the Malian parties' and communities' understanding of humanitarian principles often falls short of the commitments in Article 49.

➤ CHALLENGES OF ACCESS FOR U.N. AGENCIES

Within the U.N. system, risk assessment instruments, principally designed for MINUSMA, are at times an awkward fit for the U.N. humanitarian agencies. U.N. Department of Security Services' security standards limit the presence and activities of U.N. agencies, particularly in the north. The Independent Observer has noted considerable frustration on the part of both humanitarian actors and security officers, with some interlocutors referring to a "broken dialogue" between MINUSMA and the agencies. In general, the humanitarian agencies would prefer to manage access and security by relying to a greater degree on communication with communities and their reputation for independent, impartial action, along the lines of the practices of national and international NGOs. MINUSMA's security protocols are derived from U.N. experience in stabilization efforts and awareness that MINUSMA is the U.N.'s deadliest peacekeeping mission.

RECOMMENDATION:

1. That, within the CSA or in another framework, the signatory parties establish a regular and systematic forum for dialogue between humanitarian actors and political leaders in order to facilitate humanitarian access. The CSA and the international mediation should hold the parties to commitments undertaken in this forum.

CONCLUSIONS

As the fourth anniversary of the signature of the agreement approaches, the fracture left by the 2012 conflict remains, and national reconciliation is incomplete. Tensions among Malian communities have worsened greatly in the central region, as highlighted by the massacre in Ogossagou. Given the stalling of implementation by all sides, frustration and distrust is growing. The Independent Observer is deeply concerned that unless efforts to address the most neglected section of the agreement, national reconciliation, are urgently accelerated, tensions within Malian society will continue to mount, jeopardizing the agreement itself. More generally, the Independent Observer highlights the link, even if indirect, between delays and bottlenecks in the implementation of the agreement and the ongoing deterioration of the security situation.

Four years on, the interminable preparations for DDR, marked by persistent questions about the parties' political will, planning for accelerated DDR, and the lack of parameters and timetables for the general DDR process, risk fundamentally undermining implementation, including ongoing politico-institutional reform. As goodwill withers among the signatories, civilians and humanitarian actors – particularly in the Gao and Ménaka areas – continue to suffer from rampant crime linked in large part to non-demobilized, unemployed combatants. For DDR to succeed, the government and signatory movements will need to recommit urgently to the process, including through public

statements and the adoption of a meaningful, binding calendar, robustly enforced by the international mediation, the U.N. Security Council, and the agreement's guarantors.

To recover lost ground, the leadership of the government and the signatory movements will need to act boldly. They will have to work more closely and regularly together while demonstrating the resolve needed to break longstanding impasses. For their part, the international guarantors and accompanying parties must clarify the scale and parameters of their commitments, particularly regarding DDR, and devote focused attention to implementation as Mali enters an extremely difficult period.

ENDNOTES

¹ Based in Washington, D.C.

² Some acronyms are listed according to the common French usage.

³ See, *infra*, "Sputtering of the DDR Process."

⁴ Decision n.09/2019/CD/CMA on the implementation of police and security operation and Decision n.010/2019/CD-CMA establishing general measures to regulate specific sectors. CMA leadership later claimed that the decision merely publicized longstanding practice.

⁵ Decree n.2019-0200/P-RM, March 8, 2019, initiating *Operation Dambé* and Decision n.2019-0532/MDAC, March 8, 2019, creating and setting the mission of the specialized units "B-US."

⁶ Decree n.2019 0258/P-RM, March 27, 2019, establishing the transfer of relevant *services déconcentrés* to the *collectivités territoriales* and Decree n.2019 0184, March 5, 2019, setting the criteria for the integration of ex-combatants from the movements into government administration, including the army and security forces.

⁷ Regarding Resolution 2423, the seven benchmarks are: (1) the holding of the presidential elections in a peaceful environment, with the support of the movements (achieved); (2) progress in the decentralization process, namely through the adoption of a decree transferring decentralized state services to local authorities (achieved); (3) the full operationalization of the interim administrations (not achieved); (4) progress in the DDR process, including the finalization of the registration of eligible combatants and the integration of at least 1,000 movement combatants into the Malian army and security forces (not achieved); (5) the full operationalization of the MOC (not achieved); (6) the adoption of a law establishing the Northern Development Zone (not achieved); and (7) the meaningful participation of women, including in the implementation organs such as the interim authorities (not achieved).

⁸ Per the most recent information collected by the Independent Observer from the CVJR.

⁹ Ministry of Justice and Human Rights - Secretary-General - Written Communication (undated).

¹⁰ See, <https://data2.unhcr.org/en/situations/malisituation>. The distribution of refugee is as follows: Mauritania, 41.4 percent; Niger, 40.6 percent; and Burkina Faso, 18 percent.

¹¹ According to UNHCR, the number of IDPs fell to 84,825 in February.

¹² See, <https://data2.unhcr.org/en/country/mali>

¹³ See, Humanitarian Country Team - "Humanitarian Response Plan 2019," December 2018.

www.humanitarianresponse.info/en/operations/mali

¹⁴ See, "Accès humanitaire au Mali : Pour des stratégies d'accès plus efficaces - Premier trimestre 2019"

www.mali.humanitarianresponse.info/Access

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ See, Humanitarian Country Team - "Humanitarian Response Plan 2019," December 2018.

www.humanitarianresponse.info/en/operations/mali