A TRANSITIONAL JUSTICE STRATEGY FOR MALI

Analysis Based on Input from Civil Society and Local Communities

Executive Summary and Recommendations
American Bar Association Rule of Law Initiative (ABA ROLI)

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EXECUTIVE SUMMARY

Mali’s 2012-2013 political crisis, sparked by an armed insurrection in the north in January 2012 followed by a coup d’état in March and the subsequent seizure of large areas of the country’s north by a mix of separatist and Islamist groups, inflicted considerable suffering on the civilian population, particularly in the territories occupied by the armed groups. There have been reports of abuses committed by both rebel groups and the Malian army.

The year 2013 witnessed important events signaling the beginning of the return of peace to Mali: international military intervention permitted the liberation of the occupied territories and the restoration of constitutional order as well as presidential and legislative elections. A transitional justice process for addressing human rights violations committed during the conflict was thereafter able to begin, in particular through the establishment of a Dialogue and Reconciliation Commission, replaced in January 2014 by the Truth Justice and Reconciliation Commission (TJRC), the launch of legal procedures before domestic courts, and the submission of petitions to the International Criminal Court. Mali has also begun a process of national reconciliation by holding community dialogues in the north and by continuing peace negotiations with the armed groups.

The American Bar Association Rule of Law Initiative (ABA ROLI) has been operating in Mali since January 2011. Since the beginning of the crisis, ABA ROLI has worked alongside government and civil society partners to build their capacity to implement an effective transitional justice process. Recognizing that an effective transitional justice strategy will take communities’ and victims’ expectations for addressing human rights violations into account, ABA ROLI has focused on the creation of broad-based working groups to nurture dialogue at both the community and national levels. ABA ROLI believes that this dialogue will contribute to the emergence of a nationally vetted, community-driven, and victim-centered transitional justice strategy.

This document, a culmination of ABA ROLI’s efforts since 2013, is a compilation of situational analyses and action plans for an effective transitional justice strategy in Mali as defined by these working groups. Their recommendations were finalized and recorded in a workshop organized by ABA ROLI in October 2014 and that was attended by working group representatives, civil society organizations, and regional community members. This document is also informed by a series of community consultations and dialogues that ABA ROLI conducted with civil society organizations in northern Mali in 2014.
A Comprehensive Transitional Justice Strategy for Mali with Broad-Based Political Support

Ever since Mali’s independence, previous attempts to end cycles of violent conflict and to restore social cohesion have failed to incorporate a human rights-based approach. Any transitional justice strategy that is to be developed in Mali following the 2012 crisis should take a holistic approach to addressing human rights abuses which includes justice, criminal accountability, truth-seeking, reparations, institutional reforms, as well as memorialization and national reconciliation policies. Such an approach should be concerted, well planned, and supported by the Malian government and its international development partners.

Because the current understanding of transitional justice processes in Mali is minimal and restrictive, mobilizing the requisite level of political will at the level of government and international development partners has been challenging. Failure to comprehend transitional justice as a multifaceted discipline which requires the involvement of a multiplicity of actors has the potential to result in an ineffective and fragmented governmental response without a vision for how it can bring together the converging and complementary views of national and international state and non-state actors. This would ultimately weaken any future initiatives targeting communities and victims. A better understanding of transitional justice in Mali is therefore indispensable to ensuring that a comprehensive and holistic response will meet the needs of victims.

Socio-political Fragility and Sequencing of Transitional Justice Interventions

A thorough analysis of the current social and political landscape in Mali raises doubts about whether the country is ready for a national transitional justice process. Armed groups maintain a significant level of operational capacity and recent events have been highlighting the fragility of the peace process. There have been increased attacks against governmental and international forces, tensions between certain communities in northern Mali and the United Nations Multidimensional Integrated Stabilization Mission (MINUSMA), and deadlines for the Algiers peace negotiations remain ambiguous. The Malian state’s fragility constitutes an obstacle to the development of a national transitional justice strategy. Communities and victims not only have serious concerns related to their security and survival but also view existing transitional justice initiatives with apprehension. For these reasons, priorities should be set based on realistic expectations, and should be reflected in a sequenced implementation of transitional justice mechanisms and other initiatives targeting communities and victims. Such an approach would also take into account commitments made by the Malian government in the context of peace negotiations, the weakness of state institutions, sociocultural resistance, and the need to avoid launching unpopular initiatives that can have adverse consequences for the restauration of peace and the rule of law.
REQUIRED ELEMENTS OF A SUCCESSFUL TRANSITIONAL JUSTICE STRATEGY IN MALI

Truth-seeking

The replacement of the Dialogue and Reconciliation Commission with the Truth Justice and Reconciliation Commission (TJRC) in 2014 was a positive development for the transitional justice process in Mali. The TJRC, created by the Presidential Decree of Ibrahim Boubacar Keita and endorsed by the National Assembly, contains key features commonly held by truth commissions in other contexts. Staffed with 15 Commissioners, the TJRC is tasked to contribute to the establishment of lasting peace and national unity through truth-seeking and reconciliation. With a three-year mandate, the Commission will address events that occurred between 1960 and 2013. The ongoing Algiers’ peace and reconciliation negotiations process provides an opportunity to revisit the legal framework of the TJRC, including its duration of operations, the method for appointing commissioners, and maintaining the independence of the TJRC (currently it is under the supervision of the Minister of National Reconciliation). The Algiers agreement should also clarify the relationship between the TJRC and a potential International Commission of Inquiry, which is provided for in both the Ouagadougou Agreement of February 18, 2013 and the ceasefire agreement of May 23, 2014.

Accountability as a prerequisite for reconciliation

The need for retribution, from attribution of blame to the application of sanctions, has been a consistent demand of Malian communities, and in many instances, is seen as a minimum prerequisite for national reconciliation. Though investigations have been conducted by the Malian judiciary and human rights documentation has been carried out by local civil society groups, prosecutions at the domestic level of those who bear the greatest responsibility for human rights violations are stagnating in Malian courts. Though the ICC Office of the Prosecutor (OTP) opened its investigation in Mali in January 2013, the OTP is, due to subsidiarity and complementarity principles, still assessing whether Malian courts are able or willing to investigate and prosecute, leaving many to conclude that ICC intervention remains uncertain.

At the national level, domestic criminal proceedings have fallen into two categories: those brought against General Haya Sanogo and other members of the military junta, and those related to the conflict in the North, perpetrated by several armed groups and by the Malian army. For the former, investigations have been completed and case files are waiting to be sent to court for adjudication. Approximately 200 cases of violations carried out in the North are under active investigations led by a Bamako lower level court given the current absence of operational courts in the North. Magistrates in charge of investigations, however, are often reluctant to conduct field investigations and affected communities and victims remain hesitant to cooperate with investigative efforts. This in turn, contributes to the ineffectiveness of the courts.

In light of the challenges that investigations and prosecutions are facing at national and international levels, an alternative accountability-seeking mechanism that is responsive to the nature and gravity of alleged crimes is urgently needed. This process would also lay the foundation
for the establishment of a policy of national reconciliation. This would also lay the groundwork for the Malian government to engage in the classification of crimes and to establish a range of accountability-seeking mechanisms tailored to the specifics of each category’s degree of gravity.

Such an approach would allow the government to make better use of its resources by directing high-level crimes with actionable evidence to the judiciary, for instance, while non-judicial processes that draw on customary or other practices can address other categories of crimes. To complete this process, a comprehensive mapping of human rights violations should be conducted to ensure that any future accountability-seeking mechanisms that are put in place do not offend international standards and principles pertaining to the fight against impunity, and that they do not limit communities’ and victims’ rights to seek redress before judicial and non-judicial institutions.

Reparations

Since it is widely acknowledged that the Malian government will not be in a position to award compensation to all victims, and in consideration of the fact that no financial compensation can satisfactorily remedy victims’ grief, a multipronged approach to reparations in Mali should be established. Multi-pronged reparation policies should be developed on the basis of varying definitions of the term “reparations” including restitution, compensation, granting non-monetary satisfaction to victims, and guarantees of non-repetition of the crimes they suffered.
SYNTHESIZED RECOMMENDATIONS FOR A TRANSITIONAL JUSTICE STRATEGY IN MALI

Prioritize victims in post-conflict truth, reconciliation, and justice efforts:

1. Support victims’ outreach and identification efforts by assisting with the establishment of victims’ associations.
2. Strengthen victims' knowledge of their rights and available means to assert them.
3. Ensure victims’ participation in the national reconciliation process.
4. Create public means for expressing grief through the establishment of a commission to memorialize victims’ reflections on the conflict and through the organization of public funerals for people who died during the crisis.
5. Conduct advocacy campaigns to ensure that peace negotiations and agreements do not jeopardize victims’ judicial and non-judicial recourses for obtaining justice.

Consolidate efforts to map human rights violations committed during the conflict in order to improve services to victims:

1. Expand civil society-led documentation efforts to ensure that no victim feels unheard.
2. Share and collate human rights violations data collected by various civil society organizations into a national database to ensure that all victims and crimes are properly accounted for.
3. Document yet unrecorded human rights violations, namely by using audiovisual tools (an impactful means of collecting evidence in illiterate communities while at the same time elevating the quality of information being collected).
4. Raise awareness in communities to increase their participation in the mapping of human rights violations, encouraging them to report new cases of human rights violations.
5. Cooperate with multiplicity of actors and service providers (judicial, medical, social services, etc.), to both identify victims and protect the identity of those whose consent to participate in any proceeding, has not been obtained.
6. Ensure that victims, witnesses, and any other persons participating in judicial proceedings before national and international jurisdictions be protected according to international standards.

Operationalize the Truth Justice and Reconciliation Commission (TJRC):
1. Preserve the independence of the TJRC so that it is able to effectively serve victims and affected communities.

2. Ensure that the TJRC operates transparently to preserve its credibility, notably at the stage of selecting commissioners and members of its governing bureau.

3. Fast-track the appointment of commissioners in order to complete the creation and operationalization of the TJRC.

4. Endow the TJRC with necessary resources to enable their truth-seeking work of identifying victims and alleged perpetrators.

5. Facilitate victims' access to the TJRC, in particular by establishing decentralized offices of the TJRC.

6. Establish a cooperation framework between the TJRC and civil society.

7. Conduct public outreach on the mission of and methodology used by the TJRC.

**Create classification of human rights violations:**

1. Advocate for the classification of human rights violations to allow for the establishment of various degrees of criminal responsibility.

2. Identify relevant courts as well as the crimes that non-judicial mechanisms may adequately address.

3. Ensure that domestic prosecutions for grave crimes are effective, timely, and compliant with international standards by encouraging the filing of complaints in court and by monitoring court proceedings.

4. Advocate for the adoption of implementing legislation that draws from the Rome Statute, notably with regards to the definition of crimes, to establish protocols for cooperation with the ICC, the privileges and immunities of the ICC, and the protection of victims and witnesses.

5. Advocate for the swift completion of preliminary proceedings before the ICC, particularly relating to the admissibility of Malian cases.

**Incorporate customary and religious practices in transitional justice policies:**

1. Build the capacity of customary and religious leaders to respect international human rights standards.

2. Strengthen early warning mechanisms for a timely mitigation of community and religious conflicts.
3. Identify best practices in customary and faith-based approaches that promote national reconciliation through a victim-centered approach to accountability and reparations.

4. Involve customary and religious leaders in the identification of victims of human rights violations.

**Create an operational framework for reparations programs:**

1. Identify victims and their specific needs pertaining to reparations.

2. Raise awareness and inform victims and communities about the various types of reparations, emphasizing psychological reparations and the acknowledgment of the suffering of the victims.

3. Establish a national reparations fund.

4. Develop an approach to facilitate communities and victims’ access to the ICC Trust Fund for Victims.

5. Advocate for the creation of criteria for access to reparations’ funds that is fair and open in order to avoid corruption and prevent alleged perpetrators of human rights violations to access reparations funds.

6. Create a civil society committee for the coordination and disbursement of reparations funds.
The **American Bar Association's Rule of Law Initiative (ABA ROLI)** has operated in Mali since 2011. Since 2013, we have been working with government and civil society partners to implement an effective transitional justice process. Our efforts have focused on creating dialogue – both at the community and national levels – to facilitate the emergence of a strategy of transitional justice that provides a comprehensive and holistic response to the needs of victims and that contributes to ending cycles of human rights violations in the country.

For more information on our work in Mali, please email us at rol@americanbar.org