

DRAFT MALIAN LAW: A THREAT TO PEACE, RECONCILIATION AND VICTIMS' RIGHTS

Mali's Council of Ministers adopted a draft bill for the "National Accord Law" ("Loi d'entente nationale", hereinafter referred to as "the Law") on May 31, 2018. As of October 2018, it has not been put forward to the National Assembly, but signs indicate that the Government of President Ibrahim Boubacar Keita, re-elected for a second mandate beginning September 4, 2018, has the intention to move forward with the Law imminently. In the opinion of Lawyers Without Borders Canada, it is imperative that this Law not be adopted. It represents a serious threat to the rule of law and to victims' rights, and jeopardizes efforts to achieve reconciliation in Mali.

In order to achieve its objectives of restoring peace and fostering national reconciliation, the Law provides that perpetrators of certain crimes linked to the 2012 crisis may benefit from an amnesty or pardon. It also includes social appeasement and compensation measures, as well as reinsertion measures for former combatants, refugees, and internally displaced persons.

Several significant weaknesses of the Law could allow perpetrators of serious international crimes, including crimes against humanity and war crimes, to benefit from amnesty in its application, and it does not respect victims' rights, in contravention of Mali's international human rights obligations.

Broad and vague scope of application

The Law provides that amnesty can be granted for crimes linked to the crisis "that gravely compromised national unity, territorial integrity, and social cohesion". No specific crimes are enumerated, and the factors that demonstrate a link with the crisis are not identified, which leaves space for various interpretations.

The Law does formally exclude certain serious crimes from its scope, namely, war crimes, crimes against humanity, rape, and "other crimes reputed to be imprescriptible", which is consistent with international law. However, it is regrettable that the Law does not specifically name certain other imprescriptible crimes, such as genocide, torture, and enforced disappearance. In theory, perpetrators of these crimes are not supposed to be able to benefit from the Law; but in application, authorities may give amnesty to these perpetrators, one significant factor being the Law's vagueness.

Broad range of actors with the authority to receive requests for amnesty

According to the Law, a person who wishes to end criminal proceedings against them should provide a statement regarding the facts to the authorities, and lay down their weapons. The Law recognizes many authorities as competent to receive such requests, including ambassadors, brigade commanders, police commissioners, prefects, and mayors. After receiving a request, the initial

authority is required to notify the territorially competent Public Prosecutor, who has 8 days to approve or deny the request.

It is very problematic that the independence and impartiality of the authorities named in the Law are not guaranteed. Conflicts of interest will likely arise, and decisions are likely to be subject to political influence. The lack of safeguards in this regard is especially concerning given that some authorities may themselves have been involved in serious crimes.

Moreover, the authorities responsible to receive requests for amnesty do not necessarily have the legal training and expertise to be able to distinguish between the crimes meant to be subject to amnesty or not. They may thus erroneously halt criminal proceedings against perpetrators of atrocity crimes.

Inadequate processes

The Law does not set out a minimum basis of information that a would-be beneficiary must provide to benefit from an amnesty, nor is that person compelled to contribute to reparations for victims. Further, the Law does not establish a proper mechanism to verify declarations, which could be false or incomplete. The 8-day period given to the Public Prosecutor is insufficient to carry out even a minimal investigation to determine the nature of the facts in question and their legal characterization, a particularly complex exercise when serious crimes are at issue.

In addition, the process for examining requests for amnesty set out in the Law lacks transparency and is not public. The Law does not guarantee access to declarations, for either victims or the broader population. It contains no provisions on the conservation or protection of information.

Similarly, the provisions of the Law regarding the reintegration of bureaucrats having been disciplined for involvement in crimes related to the crisis do not set out any criteria or conditions for reinstatement. International standards require a vetting process to ensure state institutions function properly and to ensure the non-repetition of a conflict.

Incomplete and confusing provisions on reparations for victims

The Law establishes that victims who have suffered bodily, material, or financial injury may request compensation. It does not provide for reparation for psychological damage. Moreover, the Law embodies a limited view of reparations, in that it is centred on monetary compensation. This does not align with international standards, which uphold a full, holistic vision of reparations, involving the adoption of a variety of measures. The limited approach of the Law will presumably be inconsistent with the eventual recommendations on reparations of the Truth, Justice, and Reconciliation Commission of Mali (TJRC).

Further, the provisions on compensation are only for victims of the crimes within the scope of the Law. The Law does not provide for reparations for victims of the serious crimes not subject to amnesty, which is likely to cause frustration and confusion.

Victims' rights are not valued

The Law creates a day of national forgiveness, and provides for the preparation of an inclusive history of Mali. These types of measures would be more appropriate following the recommendations of the TJRC, which is in contact with victims and has the support of transitional justice experts. Its recommendations are more likely to be in line with the needs and expectations of victims, and to contribute to reconciliation.

It is problematic that victims' organisations were not consulted in the Law's drafting process, which runs against established norms for transitional justice. It is widely recognized that the full participation of victims in the creation of laws and mechanisms intended for their benefit is critical for their legitimacy and effectiveness.

Far from ensuring that the truth regarding crimes committed emerges, or reinforcing judicial institutions to tackle impunity for serious crimes, the Law is an affront to victims' rights to truth, justice, and reparation, and ultimately hinders the prospects for peace and reconciliation in Mali.

About LWBC

Lawyers without borders Canada (Avocats sans frontières Canada) is a non-governmental international cooperation organization that aims to contribute to the protection of human rights of those in situations of vulnerability. Through the "Justice, Prevention, and Reconciliation for Women, Minors, and Other People Affected by the Crisis in Mali" (JUPREC) project, carried out in consortium with the Centre for International Studies and Cooperation (CECI) and the National School of Public Administration (ENAP), LWBC works to strengthen civil society organisations, victims' rights, and access to justice, in order to foster peace and stability in Mali.

The present document summarizes and simplifies the detailed legal analysis of the National Accord Law produced by LWBC.