

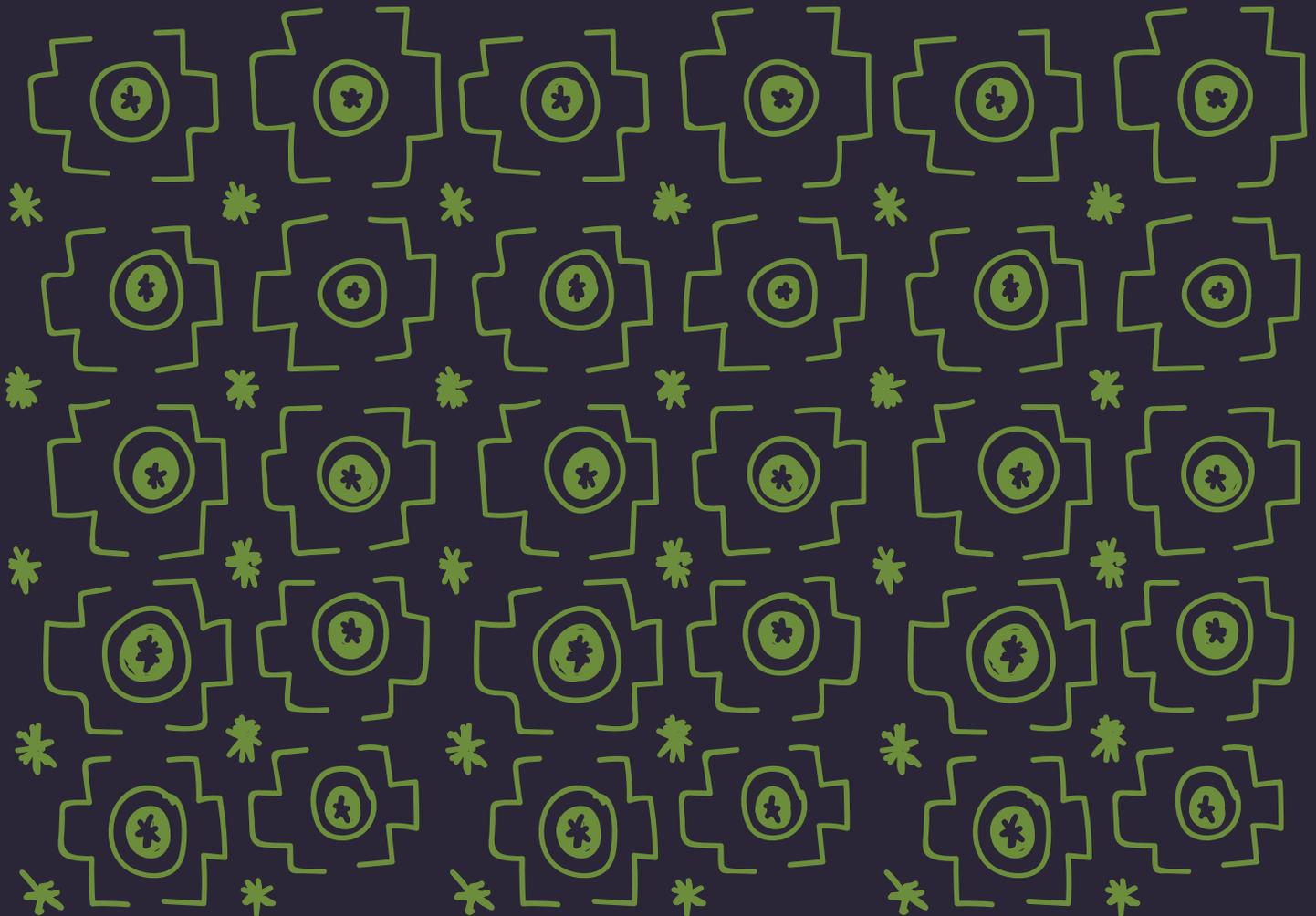


LAWYERS WITHOUT BORDERS
AVOCATS SANS FRONTIERES
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Canada



JUPREC
JUSTICE, PREVENTION, RECONCILIATION

un projet du consortium
ENAP ASF Canada



THE MALIAN NATIONAL ACCORD LAW: A THREAT TO PEACE, RECONCILIATION, AND VICTIMS' RIGHTS

EXECUTIVE SUMMARY



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 people 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 published by LWBC (“La Loi d’entente nationale : une menace pour la paix, la réconciliation et les droits des victimes au Mali”), available in French only.

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EXECUTIVE SUMMARY

Context and content of the Law

On June 24, 2019, Mali's Legislative Assembly adopted the Bill for the "Loi d'entente nationale" ("National Accord Law", hereinafter referred to as "the Law"). The President promulgated the Law on July 27, 2019, almost a year after a first version of the Bill was adopted (in August 2018) by the Council of Ministers. At the time, civil society organisations (CSOs) rallied in opposition to the Bill. Their advocacy succeeded in convincing the government to withdraw it from the legislative agenda in December 2018.

In order to achieve its purported 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 provisions for social appeasement and reparation for victims of these crimes; for the reintegration of public servants that were disciplined; and for the reinsertion of former combatants, refugees, and internally displaced persons.

The original 2018 Bill was revised in line with some of the recommendations made by CSOs through their advocacy. However, the changes made were minor. They were insufficient to make the Law compliant with international law or effective as a tool allowing perpetrators and victims to engage in an authentic reconciliation process.

Lawyers without Borders Canada (LWBC)'s analysis of the Law

LWBC's analysis concludes that in its application, the Law risks allowing authors of grave international crimes to benefit from amnesty, due to its numerous and significant flaws. It does not respect victims' rights to justice, truth, and reparation, and is thus in conflict with Mali's relevant international obligations.

Imprecise scope of application

The Law does not identify the specific crimes it applies to, which creates the probability of divergent interpretations. Moreover, even though it formally excludes "war crimes, crimes against humanity, rape, international and African conventions on human rights and international humanitarian law, and other crimes reputed to be imprescriptible" (art. 4) from its scope of application, the Law also states that it applies to crimes or offences established and punished by international conventions (art. 3). This significant contradiction could be exploited by individuals, including perpetrators of grave crimes, seeking to protect themselves from criminal prosecution.

The reference to international conventions in article 4 is a further source of confusion, because while a given crime can be excluded from an amnesty law's scope of application, the same cannot be said for conventions, which set out individual or collective rights and the corresponding obligations of the State. Moreover, it is unfortunate that the Law does not explicitly name the 'reputedly imprescriptible' crimes such as genocide, torture, and enforced disappearance supposed to be excluded from its scope of application. This further contributes to the lack of clarity of the law.

Also, in providing that amnesty can be granted for only crimes linked to the crisis "that gravely compromised national unity, territorial integrity, and social cohesion", the Law seems to allow amnesties for more serious crimes but not for minor crimes, which is bizarre and runs opposite to international norms.

Overall, the imprecise and confusing nature of the Law's provisions make it susceptible to arbitrary and inconsistent application. It is difficult to predict how it will be implemented.

Various "competent authorities" who are not all independent or properly qualified

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. These authorities must then advise the general prosecutor with jurisdiction in the territory, who has thirty days to approve an application. In the relevant provision (art. 23), the Law does not clearly indicate whether this decision can be to reject an application for amnesty, and what the process would be in such a case.

The majority of the authorities given the responsibility to receive applications for amnesty (e.g. brigade commanders, police commissioners, prefects, and mayors) are not independent from the Executive, and could thus be influenced by political considerations. Conflicts of interest will likely arise, which is especially concerning given that some authorities may themselves have been involved in the commission of serious crimes. Moreover, the authorities responsible to receive requests for amnesty do not necessarily have legal expertise, and could thus erroneously allow investigations and prosecutions against perpetrators of atrocity crimes to be abandoned.

Inadequate procedures

The Law does not set out a minimum basis of information that an applicant must provide to benefit from the amnesty, does not set out reduced or alternative sentences (instead, it provides for a complete erasure of any criminal consequences), does not require applicants to contribute to individual or collective reparations for victims, and does not establish a proper mechanism to verify statements, which could be incomplete or false. Given the complexity of the crimes committed in Mali and the insecurity that still prevails in many of the regions where most of the serious crimes have been committed, the 30-day period given to general prosecutors to approve applications is insufficient to investigate the nature of the facts in question and their legal characterization.

In addition, the process for examining requests for amnesty set out in the Law lacks transparency, is not public, and does not allow victims to oppose such requests. It also does not provide any opportunity for perpetrators to ask for forgiveness from victims. The Law does not guarantee access to declarations, for either victims or the broader population, nor does it contain 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 linked to the crisis do not set out any criteria or conditions for their reinstatement. This is not in accord with international standards, which require a vetting process to ensure state institutions function properly and to ensure the non-repetition of a conflict.

Victims' rights cast aside

Apart from promising the future individual reparation of victims, the Law creates a day of national forgiveness and a week for national reconciliation, and provides for the writing of an 'inclusive general history of Mali.' These types of measures would be more appropriate if based on the work of Mali's Truth, Justice, and Reconciliation Commission, which is in contact with victims and has been supported by many transitional justice experts. The Commission's recommendations are more likely to be in line with the needs and expectations of victims, and to truly contribute to reconciliation.

It is problematic that victims were not adequately and substantially consulted before the adoption of the Law. This runs against established norms for transitional justice. In fact, it is widely recognized that the full participation of victims in the creation of laws and mechanisms intended for their benefit is critical for the legitimacy and effectiveness of such measures. In the Law itself, the opaque amnesty process established does not include the participation of victims. Far from shedding light on the crimes committed in the context of the 2012 crisis or strengthening judicial institutions to tackle impunity, the Law shuts the door on demands for justice, and ultimately hinders the prospects for peace and reconciliation in Mali.



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