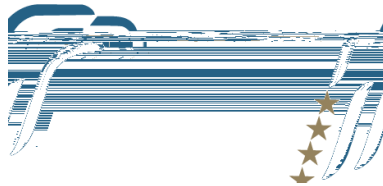


THE



Report of the Independent Observers of the EMC and the

- **Manuela Massé**, *Translator*

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ACRONYMS

TERMINOLOGY

| | |
|---------------------------------|--|
| Agreement | The Agreement on Peace and Reconciliation in Mali, Resulting from the Algiers Process |
| CSA | Created in July 2015, in accordance with Chapter 19 of the Agreement on Peace and Reconciliation in Mali, the CSA is responsible for monitoring, supervising, and coordinating the agreement's implementation. The CSA comprises the government, the Signatory Movements, and the Mediation Team; chaired by Algeria, the CSA includes Burkina Faso, Mauritania, Niger, Chad, ECOWAS, the United Nations, the Organization of Islamic Cooperation, the African Union, and the European Union. Permanent members of the UN Security Council are invited to participate in its work. |
| Integration | Refers to the process of integrating ex-combatants from the movements, once disarmed and demobilized, into government institutions, including the national defense and security forces. To be distinguished from socioeconomic reintegration for ex-combatants seeking to enter civilian life outside of the public sector, within DDR's socio-economic component. |
| International Mediation | Members of the international community referred to in Article 58 of the agreement. |
| Signatory Movements (Movements) | Coordination of Azawad Movements and the Platform of the Signatory Movements of the June 14, 2014, Algiers Declaration, the two coalitions of movements that signed the agreement in 2015. |
| Malian Parties (Parties) | Government of Mali, CMA and the Platform. |
| Platform | The Platform of movements signatories of the "Algiers Declaration" of June 14, 2014 of Algiers" of June 14, 2014, is a coalition of armed movements. |
| Transition | The governing framework established after the Aug. 18, 2020, coup, beginning with the inauguration of the Transition president on Sept. 25, 2020. Following the second coup on May 24, 2021, the governing bodies of the Transition include the president, the Cabinet, and the National Transitional Council. |

more difficult to keep people safe and for humanitarian organizations to access and serve internally displaced persons and refugees.

The Independent Observer emphasizes that **all provisions of Title V are essential to achieving the agreement's main objective to restore peace, stability, and unity in Mali.**

The Parties should therefore devote more effort to implementing this pillar, building on the recent positive relaunch of their dialogue since August.

To tackle the remaining challenges and to pursue progress on transitional justice in Mali, Td(t)3a)4TJ-0.003

BACKGROUND

From July to October 2022, Mali has been slowly emerging from a socioeconomic and diplomatic crisis exacerbated by sanctions imposed by the Economic Community of West African States (ECOWAS). On July 3, 2022, at the ECOWAS e

GENERAL OBSERVATIONS FOR THE JULY - OCTOBER 2022 PERIOD

From July to October, both the Malian parties and the monitoring bodies resumed their activities as part of the implementation process.

The meeting

OBSERVATIONS ON THE IMPLEMENTATION OF THE PROVISIONS ON RECONCILIATION, JUSTICE, AND HUMANITARIAN ISSUES

The agreement's main objective is to restore peace, stability, and unity in the country. Title V sets the objective of promoting national reconciliation and social cohesion by implementing transitional justice mechanisms; consolidating the judicial system and facilitating people's access to justice; fighting corruption; strengthening the role of cadis in the administration of justice; enhancing the status of traditional authorities; and enabling the rapid return and reintegration of internally displaced persons (IDPs) and refugees.

Although crucial to the peace process, reconciliation, justice, and humanitarian issues to which Title V of the Agreement on Peace and Reconciliation in Mali, Resulting from the Algiers Process, appear to be regularly sidelined by the agreement's monitoring bodies. As early as 2019, the [Independent Observer dedicated a report to highlight this observation](#).¹¹ It remains true today: the issues related to this pillar have a minor place in the agendas, concluding statements, and communiqués of the Agreement Monitoring Committee (CSA); additionally, the CSA subcommittee responsible for this pillar still experiences operational difficulties.

However, seven years into the implementation of the agreement, some provisions of this pillar have been implemented; others are to be completed. For instance, The Law on National Understanding, which enshrines the imprescriptible nature of war crimes and crimes against humanity, was adopted in 2019.¹² The conference on national understanding took place from March 27 to April 2, 2017, but the Malian parties themselves – the government, the CMA, and the Platform – have since agreed that this process should continue in order to adopt a consensual National Charter for Peace, Unity and National Reconciliation.¹³ Developments are also taking place regarding other provisions, such as strengthening the role of cadis in the administration of justice or on the status of traditional authorities. Conversely, provisions on justice reform and support to humanitarian action are still lagging behind, due to the CSA and parties' lack of attention.

Against this backdrop, the Independent Observer presents its observations on the progress made in the areas of reconciliation, justice, and humanitarian issues. It considers the developments since the Independent Observer's October 2021 assessment report requested by the CSA, as well as the priorities set by the parties at the end of the [February 2022 Seminar on the Independent Observer's](#)

¹¹ [The Independent Observer's April 2019 Report](#).

¹² As provided for in Article 46, para. 5 of the agreement. The Law on National Understanding 2019-042 was adopted by the National Assembly on June 27, 2019, and promulgated by the president of the Republic of Mali on July 24, 2019. Human rights organizations voiced a critical analysis of it and of the CEI (see below in the report).

¹³ As provided for in the updated priority actions Roadmap regarding the implementation of the Agreement on Peace and Reconciliation in Mali, Resulting from the Algiers Process, during the transition, adopted by the Parties on Dec. 18, 2020 (action 28). The Charter submitted to the president on June 20, 2017, was not consensual among the parties.

[Observations and Recommendations](#) linked to Title V of the agreement.¹⁴ Finally, it provides recommendations to bolster the implementation of outstanding commitments.

I.

was hailed as a first since the country's independence, the same traditional authorities met on Oct. 8 and Oct. 9, 2022, and recommended the following:²²

- The new constitution recognizes traditional chieftaincies
- The decrees abolishing traditional chieftaincies be repealed²³
- The agreement, particularly the points relating to traditional chieftaincies and cadis, be implemented

In addition, by decree of March 4, 2022, the date of Nov. 11 was established as "National Day of Traditional Authorities."²⁴

The Independent Observer notes that they also supported the draft of the new constitution, which includes Title VIII "Traditional Authorities", of which Article 185 stipulates: " Traditional authorities, as guardians of societal values, contribute to strengthening social cohesion and managing conflicts; The different categories of traditional authorities, their roles and the procedures for their intervention are determined by law." This article takes into account their diverse nature and function throughout the country. Additionally, traditional authorities would be represented in a second parliamentary chamber, called the High Council of the Nation.

Article 46, paragraph 11 of the agreement also provides for "strengthening the role of the cadis in the administration of justice, in particular with regard to civil mediation, so as to take into account cultural, religious and customary specificities." The draft also provides that "alternative and traditional modes of dispute resolution are authorized under the conditions determined by law (Article 138, paragraph 2)." These provisions would lift constitutional obstacles that have prevented the adoption of the 2018 draft law on the role of cadis in the administration of justice.

²² General report of the General Meeting of the Kel Ansar tribe in collaboration with the traditional chieftaincies, Bamako, Oct. 8-9, 2022.

²³ The Constitution of Sept. 22, 1960, (Article 41) already sets out the new territorial structuring of the country: "The

- Gathered

the truth. These demands need to be heard. The CVJR, which has consistently stated it is not a court of law, hopes that at minimum the victims who wish to do so will be able to use their depositions gathered by the CVJR to seek justice.³⁰ In a memorandum presented to the government, the CNT, associations, and technical and financial partners, the Association Noyau Dur for the Promotion of Transitional Justice (AND-Mali), and the Africa Transitional Justice Legacy Fund (ATJLF) formulated a series of recommendations to respond to those victims who want to access criminal justice.³¹

On this last point, the International Commission of Inquiry (CEI), provided by the agreement and created by the United Nations at the request of the Malian government, also expressed concern in its report about the judicial system's current state and its ability to attain this objective. The CEI recommends establishing an entity within the Malian judiciary that specializes in the fight against international crimes, with the support of the international community. Modeled after the Specialized Judicial Pole, this specialized pole would investigate and judge war crimes and crimes against humanity.³² In its report, the CEI also assessed the work of the CVJR and particularly considered that the CVJR had chosen to focus on the victims' fate, leaving aside the perpetrators' responsibility.³³ It insists: "By virtue of the mandate it has been given and the victim-centered objectives it has set for itself, the CVJR will not be able to meet -

distance, long procedures, prohibitive costs, and ignorance of the judicial system, as described by the CNDH in its study on the "state of affairs and impediments to have access to justice."³⁴

IV. International Commission of Inquiry (CEI) and follow-up recommendations

The International Commission of Inquiry for Mali (CEI) was created by the agreement's Article 46 and established by the United Nations Secretary-General on Jan. 19, 2018, at the request of the signatory parties.³⁵ It was tasked with investigating allegations of abuses and serious violations of international human rights law and international humanitarian law, including allegations of conflict-

to study ways and means of implementing the CEI's recommendations. Since no progress has been made, MINUSMA has initiated discussions with the minister of justice to establish an appropriate framework.

V. Humanitarian issues

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CONCLUSION

Despite a certain lack of visibility, progress has been made in implementing some of the provisions of Title V of the agreement. Two concerns prevail, however. First, some provisions are yet to be implemented as underlined in the Independent Observer's October 2021 report to the CSA. Second, actions already undertaken are not enough to achieve the overall objectives of the agreement. To have meaningful impact, they need to be supplemented.

In the assessment report presented to the CSA in October 2021, the Independent Observer mentioned several pending measures and actions concerning justice and the fight against impunity. Examples include the adoption of the decree implementing the law on national understanding and the need to adopt and effectively implement a national legal and judicial assistance strategy. The Independent Observer reiterates its recommendation that the government present to the CSA an assessment of the provisions for which there is a lack of information on measures taken, such as the implementation of the emergency program to strengthen the judicial system. In addition, the Independent Observer reiterates that it would be very useful to have the Central Office for the Fight against Illicit Enrichment (OCLEI) present its activities before the CSA.

Beyond the achievements of the CVJR, and noting that the International Commission of Inquiry's recommendations have not yet been implemented, much remains to be done to fulfill the agreement's objectives of national reconciliation and peace. To support the parties' and CSA's efforts, the Independent Observer makes eight recommendations below.

RECOMMENDATIONS

- **In terms of transitional justice, the same opportunities should be given both to victims who have opted for material and symbolic reparations and victims who are waiting to access criminal justice.**
- **Support mechanisms should be created for those who want to seek justice in the courts, just as a body will be set up to guarantee material or symbolic reparations to the victims waiting for them.**
- **Victims should be represented in the two bodies succeeding the CVJR, and the composition of these bodies should consider the geographical and cultural diversity of the country.**
- **The two future bodies for reparations and justice should be established before the end of the CVJR's mandate, in accordance with the demands of the victims' associations and the CVJR's proposals.**
- **A framework should be set up to implement the CEI's recommendations to support the fight against impunity, as endorsed by CSA.**

- The CSA should take up the issue of the chronic dysfunction of the subcommittee on justice, reconciliation, and humanitarian a