



Fédération internationale de l'Action des chrétiens pour l'abolition de la torture  
International Federation of Action by Christians for the Abolition of Torture  
Federación Internacional de la Acción de los Cristianos para la Abolición de la Tortura



## Contribution of FIACAT and ACAT Mali to the Third Universal Periodic Review of Mali

June 2017

## **Authors of the report**

### **ACAT Mali**

ACAT Mali was created in 1996 and recognized by the local authorities in 1998. It has been affiliated to FIACAT since 2004.

The activities of ACAT Mali are directed towards the abolition of torture and the death penalty. Its members are working to improve prison conditions through prison visits. ACAT Mali works in close collaboration with civil society organizations specializing in human rights but also with the National Commission for Human Rights of Mali (CNDH).

### **FIACAT**

*The International Federation of Action by Christians for the Abolition of Torture, FIACAT, is an international non-governmental human rights organisation, set up in 1987, which works towards the abolition of torture and the death penalty. The Federation brings together some thirty national associations, the ACATs, present in four continents.*

#### **FIACAT – representing its members in international and regional organisations**

It enjoys Consultative Status with the United Nations (UN), Participative Status with the Council of Europe and Observer Status with the African Commission on Human and Peoples' Rights (ACHPR). FIACAT is also accredited to the International Organisation of *la Francophonie* (OIF).

*By referring the concerns of its members working on the ground to international bodies, FIACAT's aim is to encourage the adoption of relevant recommendations and their implementation by governments. FIACAT works towards the application of international human rights conventions, the prevention of torture in places of detention, and an end to enforced disappearances and impunity. It also takes part in the campaign against the death penalty by calling on states to abolish capital punishment in their legal systems.*

To give added impact to these efforts, FIACAT is a founding member of several campaigning coalitions, in particular the World Coalition against the Death Penalty (WCADP), the International Coalition against Enforced Disappearances (ICAED) and the Human Rights and Democracy Network (HRDN).

#### **FIACAT – building up the capacities of the ACAT network in thirty countries**

FIACAT assists its member associations in organising themselves, supporting them so that they can become important players in civil society, capable of raising public awareness and having an impact on the authorities in their country.

It coordinates the network by promoting exchanges, proposing regional and international training events and joint campaigns, thus supporting the activities of the ACATs and providing them with exposure on the international scene.

## **I. Right to life**

### ***A. Death penalty***

1. Many States had made recommendations on the abolition of the death penalty during the last Universal Periodic Review of Mali<sup>1</sup>.
2. Mali has observed a moratorium on executions since 1980 and the last death sentence dates from 2014.
3. A bill to abolish the death penalty in Mali was submitted to the National Assembly for adoption in October 2007. However, given the socio-political situations at that time, the national elected representatives had not yet adopted this law that has since remained in the drawers. Thus, the Criminal Code still provides for the death penalty (Article 4) for a number of crimes such as armed robbery, arson, homicide etc<sup>2</sup>. In addition, the draft new Constitution currently under discussion does not contain a provision on the abolition of the death penalty.

#### **ACAT Mali and FIACAT recommend again to the Malian government:**

- ***Include the abolition of the death penalty in the current draft revision of the Constitution and revise the Criminal Code to remove any reference to the death penalty.***
- ***Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.***

### ***B. Extrajudicial executions and enforced disappearances***

4. In 2013, during the last UPR in Mali, several states had recommended to the Malian government to fight against the impunity of the perpetrators of extrajudicial killings<sup>3</sup>.
5. Many investigations have been carried to identify the perpetrators of human rights violations and to determine where responsibilities lay. Members of the military junta involved in these violations have been arrested. Investigations are still in progress. On the other hand, the Truth, Justice and Reconciliation Commission was created as part of the implementation of the agreement for peace and reconciliation.

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<sup>1</sup> Recommendations made by Italy, Costa Rica, Switzerland, Holy See, Portugal, France, Slovakia, Argentina, Hungary, Uruguay and Montenegro in the report of the UPR working group, A/HRC/23/6, para 111.17, 111.18, 112.2, 112.5, 112.10 to 112.12.

<sup>2</sup> See for example articles 32 to 35, 45, 47 to 52, 80, 153, 200, 201, 209, 237, 238, 253, 305, 307, 308, 311, 314 of the Criminal Code.

<sup>3</sup> Recommendations made by Lithuania, Poland, Austria, Holy See, Canada and Costa Rica in the report of the UPR working group, A/HRC/23/6, para 111.48, 111.50, 111.62, 112.25 and 112.26

6. At the international level, we note in particular the deferral in 2015 to the International Criminal Court (ICC) of Mr. Ahmad Al Faqi Al Mahdi who was suspected of war crimes in northern Mali. Mr. Ahmad Al Faqi Al Mahdi was tried and sentenced on 27 September 2016 for war crimes by this court.

7. Cases of enforced disappearances are still recorded in Mali. In this respect, several cases can be cited such as:

- The journalist Birama TOURE disappeared in Bamako on January 29, 2016. The investigations are still ongoing.
- The case of Sister Maria Cecilia Gloria, missing in Karangasso in the Diocese of Sikasso in February 2017. The investigations are still ongoing.

8. It should also be noted that a mass grave was discovered in December 2013 in Diago. Some have argued that the bodies found in this pit would be those of the missing red berets.

**ACAT Mali and FIACAT recommend to the Malian State to:**

- *Pursue its efforts to investigate the allegations of extrajudicial executions and enforced disappearances and prosecute and convict the authors of such acts.*

## **II. Violations of physical integrity**

### ***A. Torture and other cruel, inhuman or degrading treatment or punishment***

9. Several States had recommended that Mali ensure compliance with the absolute prohibition of torture and combat impunity for such acts<sup>4</sup>.

10. Torture is criminalized in article 209 of the Malian Criminal Code. The definition adopted is consistent with that given by the Convention against Torture: "*The term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*"

11. It should be noted, however, that the sentences provided for this crime do not appear to be proportionate to the gravity of the offense, since they only go from 1 to 5 years' imprisonment if there is no aggravating circumstance<sup>5</sup>. In addition, the Criminal Code does not provide for the non-applicability of statutory limitations when it comes to acts of torture, so these crimes are subject to the limitation periods of common law, namely 10 years for crimes (Article 7 of the Code of Criminal Procedure).

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<sup>4</sup> Recommendations made by Canada, Tunisia, Ireland, Spain, Austria, Holy See, Costa Rica in the report of the UPR working group, A/HRC.23.6, para 111.19, 111.21, 111.23, 111.55, 111.62, 112.14 and 112.26

<sup>5</sup> If aggravating circumstances exist, the sentence for torture is of 5 to 10 years' imprisonment or even the death penalty if the torture has led to the death of the victim.

12. Beyond this insufficient criminalization of the crime of torture, it should be noted that many human rights violations, particularly torture, were recorded during the northern crisis in 2012. The rebels of the armed groups and the jihadists have been the perpetrators of numerous acts of torture such as limb amputation (foot or arm), rape, flogging, kidnapping etc. Investigations have been carried out and some perpetrators have been prosecuted and convicted (as in the cases of Badoussein and Ahmad Al Faqi Al Mahdi).

**ACAT Mali and FIACAT recommend to the Malian State to:**

- *Amend article 209 of the Criminal Code to provide for penalties proportionate to the gravity of the crime of torture and to include the imprescriptibility of such acts.*
- *Continue to investigate allegations of torture, prosecute perpetrators and sentence them to appropriate penalties.*

### ***B. Conditions of detention***

13. During the 2013 review, France had recommended Mali to ensure that the defense and security forces respect human rights and international humanitarian law, in particular with regard to the treatment of prisoners.<sup>6</sup>

14. There are 58 penal institutions in Mali, including 52 detention and correction centers, four agricultural penitentiaries and two centers specialized in detention, rehabilitation and reintegration of women and minor children.

15. We note a significant overcrowding situation in prisons in Mali. For example, the Bamako Central Prison, built to house 400 people, accommodated 1089 detainees on 9 December 2016<sup>7</sup>.

16. Prison services are mainly located in regional capitals or district capitals (prefectures). According to the annual report of the National Commission of Human Rights (CNDH) on Human Rights in Mali in 2016, the prison population in Mali was as follows:

<b>Categories</b>	<b>Pre-trial detainees</b>	<b>Sentenced detainees</b>	<b>Total</b>
<b>Men</b>	<b>3087</b>	<b>2019</b>	<b>5206</b>
<b>Women</b>	<b>120</b>	<b>36</b>	<b>156</b>

<sup>6</sup> Recommendations made by France in the report of the Working Group for the UPR, A/HRC/23/6, para 111.24

<sup>7</sup> Source : Report of the visit of places of deprivation of liberty and psychiatric service of point G, Bamako, 05/12/2016, 5<sup>th</sup> edition of the national week for human rights

<b>Male Minors</b>	<b>151</b>	<b>13</b>	<b>164</b>
<b>Female Minors</b>	<b>32</b>	<b>03</b>	<b>35</b>
<b>Total</b>	<b>3390</b>	<b>2171</b>	<b>5561</b>

17. We thus note a high rate of pre-trial detainees (61% of the prison population), notably because of the non-respect of pre-trial detention periods.

18. Due to prison overcrowding, the material conditions of detention in Malian prisons are unsatisfactory, both in terms of food and hygiene and care.

19. Apart from the center of Bollé, which is a rehabilitation and reintegration center for women (accommodating 99 detainees including 13 minors and 11 infants beside their mothers in detention) There are no other prisons for women in the country . Within the country, men and women are held in the same prisons but in separate cells. Regarding minors, we note the existence of a juvenile prison in Bamako only.

20. According to the Act No. 2016-036 / of July 7, 2016, the National Commission for Human Rights has become the national preventive mechanism against torture in Mali. According to article 6 of the Act, the Commission has access to all places of deprivation of liberty and may make unannounced visits at any time. The CNDH has already been able to visit places of deprivation of liberty and has prepared its first annual report.

**ACAT-Mali and FIACAT recommend to the Malian state to:**

- *Allow the National Human Rights Commission to carry out its role as a national preventive mechanism against torture in complete independence and to guarantee it has access to all places of deprivation of liberty.*
- *Reduce prison overcrowding, in particular by ensuring that periods of pre-trial detention are respected and by prioritizing alternative measures to detention.*

### ***C. Judicial safeguards***

21. In 2013, Sweden had recommended to the Malian Government to ensure the effective application of criminal legislation and to respect the principle of 48 hours period for any judicial procedure<sup>8</sup>.

22. The period of custody shall not exceed 48 hours in accordance with article 74 of the Code of Criminal Procedure, which may be extended for 24 hours by written authorization of the public prosecutor or the investigating judge. However, in practice, these deadlines are not respected. Indeed,

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<sup>8</sup> Recommendations made by Sweden in the report of the UPR working group, A/HRC/23/6, para 111.58.

it is almost customary for security forces to arrest people on Friday, knowing that Saturday and Sunday are non-working days in the country. It is only on Monday that the case of the arrested person will be examined. He or she will have already spent 3 days in custody.

23. It should be noted that conditions in police custody facilities at police stations are sometimes very poor. For example, it has been found that in some of these cases people in custody are forced to do use buckets inside their cells as toilets.

24. It was furthermore noted that law enforcement officers sometimes made themselves guilty of torture during police custody, as evidenced by the case of Mr Moustapha Koné, who was the victim of acts of torture in a police station in Bamako: hit with a stick, filing of fingers, etc.

**ACAT-Mali and FIACAT recommend to the Malian state to:**

- ***Make every effort to ensure that the security forces (police and gendarmerie) comply with the time limit for police custody and improve the conditions of detention in police commissariats.***

### **III. Training**

25. With regard to the training of law enforcement officials, it should be noted that there have been some peacekeeping and human rights training for armed forces and law enforcement agencies by international NGOs or by MINUSMA and MISAHEL for example. Some trainings took place at the peacekeeping school in Bamako. However, these trainings are insufficient because they are not regular and there is still a large number of soldiers, gendarmes and police officers who are not trained in human rights.

**ACAT Mali and FIACAT recommend to the Malian state to:**

- ***Multiply and diversify training in human rights and international humanitarian law for the armed and security forces (police and gendarmerie) throughout the country;***

### **IV. Administration of justice**

26. The Holy See, during the last UPR of Mali, made a recommendation on the full independence of the judiciary.

27. Although article 81 of the Malian Constitution provides that: "*The judiciary is independent of the executive and legislative branches.*", Corruption remains a reality in the country. Thus, many high-ranking and influential people enjoy impunity. There is no fair trial and the people of Mali no longer trust their justice.

**ACAT-Mali and FIACAT recommend to the Malian state to:**

- ***Establish a national anti-corruption mechanism;***
- ***Investigate cases of corruption, prosecute and punish perpetrators***

## V. National Human Rights Institution

28. The National Institution for Human Rights in Mali is the National Commission for Human Rights (CNDH). It was created by the law N ° 2016- 036 of July 7th, 2016.

29. Its mission is the protection and promotion of human rights and the prevention of torture and other cruel, inhuman or degrading treatment or punishment. The CNDH is also the national preventive mechanism against torture as previously mentioned. It is an independent and autonomous institution with its budget to perform its functions effectively. It is composed of members representing: national human rights organizations, women's rights organizations, the Malian Bar Association; the most representative union of magistrates; the University of Legal and Political Sciences; professional organizations of the press, the order of doctors; the most representative central labor union; religious groups (article 8 of the law of July 7, 2016). The members of the commission bear the title of commissioner. They are elected or appointed by the institutions, the organizations they represent according to the terms and conditions established by these institutions or organizations under the supervision and control of the Ministry of Human Rights. They are appointed commissioners by decree of the Council of Ministers. The Commission elects an Executive Board of four (4) members: a president, a vice-president, a general rapporteur, a deputy general rapporteur.

**ACAT-Mali and FIACAT recommend to the Malian state to:**

- *Make available to the CNDH the necessary resources for capacity building and the proper functioning of the institution.*

## VI. Cooperation with UN mechanisms

30. Mali is actively collaborating with MINUSMA and other human rights structures as recommended by Austria in 2013<sup>9</sup>. It has also collaborated with the independent expert on human rights during his visits since the last review (in 2013, 2014, 2015 and 2016) as well as with the representative of OHCHR and the Prosecutor of the International Criminal Court.

31. It should be noted, however, that Mali has still not submitted its report to the Human Rights Committee due since 2005 and its initial report to the Committee against Torture expected since 2000, contrary to what several States had recommended in 2013<sup>10</sup>.

32. Also, Mali has still not issued a standing invitation to the special procedures of the Human Rights Council, contrary to some of the 2013 recommendations<sup>11</sup>. In addition, it has not received the visit of any other special procedures than the independent Expert on Mali since the last review.

**ACAT-Mali and FIACAT recommend to the Malian State to:**

- *Maintain the genuine collaboration with the UN human rights mechanisms;*

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<sup>9</sup> Recommendations made by Austria in the report of the UPR working group, A/HRC/23/6, para 111.11.

<sup>10</sup> Recommendations made Guatemala, Montenegro, Slovenia, Germany and Chili in the report of the UPR working group, A/HRC/23/6 para 111.11

<sup>11</sup> Recommendations made by the Czech Republic, Guatemala, Hungary, Latvia, Portugal and Spain in the report of the UPR working group, A/HRC/23/6, para 112.9

- *Cooperate fully with all the experts who are mandated with respect to the special procedures of the Human Rights Council, in particular by sending them a standing invitation.*