



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

Distr.: General
24 November 2020
English
Original: French
English, French and Spanish only

Committee on Enforced Disappearances

**Report submitted by Mali under article 29 (1) of
the Convention, due in 2012***

[Date received: 5 November 2020]

* The present document is being issued without formal editing.



Contents

	<i>Page</i>
I. Introduction	3
II. Legal and institutional framework for the prohibition of enforced disappearance.....	4
A. Legal framework.....	4
B. Institutional framework.....	6
III. Implementation of the provisions of the Convention	7
IV. Conclusion	18

I. Introduction

1. The present report, which covers the period from 2013 to 2019, was drafted pursuant to article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance, which was adopted at the sixty-first session of the General Assembly of the United Nations in New York on 20 December 2006. It was signed by Mali in Paris on 6 February 2007 and entered into force on 23 December 2010.
2. In accordance with article 29 (1): “Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of this Convention for the State Party concerned.”
3. The Government of Mali ratified the Convention on 1 July 2009.
4. The Government also recognizes the competence of the Committee on Enforced Disappearances to consider communications from individuals and from other States parties under articles 31 and 32 of the Convention.
5. Mali is a landlocked country in the heart of West Africa, located entirely on the continental mainland. It has an area of 1,241,238 km², 65 per cent of which is arid or semi-arid. It is one of the largest countries in West Africa and shares its approximately 7,651 km-long border with seven countries: Algeria to the north, Burkina Faso to the south-east, Côte d’Ivoire to the south, Guinea to the south-west, Mauritania to the north-west, the Niger to the east and Senegal to the west.
6. The population of Mali was 14,528,662 in 2009 (general population and housing census, 2009) and was estimated to be 19,418,000 in 2018. In 2018, 47.2 per cent of the total population was under 15 years of age, 50.6 per cent was between 15 and 64, and 2.2 per cent was 65 or older (National Population Directorate). With an average annual growth rate of 3.6 per cent, the population of Mali will double almost every 20 years, a development that could have a series of consequences in terms of natural resources and the educational, employment and health needs of individuals.
7. According to the most recent general population and housing census, conducted in 2009, 70 per cent of the population lives in rural areas and works in the primary sector. The population is very young; 59.5 per cent of Malians are under 19 years of age. Women make up 50.4 per cent of the population. The annual population growth rate is 3.6 per cent.
8. Mali is an ethnic and cultural melting pot. Its population is composed of Muslims, Christians and animists. The country’s economy is based on agriculture, animal husbandry, fishing, handicrafts, trade, tourism, mining, industry and small and medium-sized enterprises.
9. With respect to devolution, Mali currently comprises 410 administrative units, including 19 regions, 1 district (Bamako), 60 *cercles*, 330 *arrondissements* and 754 *communes*.
10. In terms of decentralization, the country has 825 territorial units, including 10 regions, 1 district (Bamako), 60 *cercles* and 754 *communes*.
11. By Decree No. 2016-0889/P-RM of 23 November 2016, the Government approved the Strategic Framework for Economic Recovery and Sustainable Development (2016–2018) as a national policy document. This document is the fourth of its kind, following the Strategic Framework for Combating Poverty (2002–2006), the Strategic Framework for Growth and Poverty Reduction (2007–2011) and the Strategic Framework for Growth and Poverty Reduction (2012–2017). It puts into effect the vision set forth in the “Mali 2025” national outlook study and it is also based on the Sustainable Development Goals; the priorities under the Plan for a Sustainable Recovery in Mali (2013–2014), the Government Programme of Action (2013–2018), the Accelerated Development Programme for the Northern Regions and the new challenges arising from the Agreement on Peace and Reconciliation in Mali emanating from the Algiers process are also covered.
12. Following the implementation of the Strategic Framework for Economic Recovery and Sustainable Development, the country’s gross domestic product grew by 5.8 per cent in

2016 and by 6 per cent in 2015. The growth rate had been 4.5 per cent in 2009, 5 per cent in 2008 and 4.3 per cent in 2007. The income poverty rate declined from 47.2 per cent in 2015 to 46.8 per cent in 2016, and from 47.1 per cent in 2013 to 46.9 per cent in 2014. The poverty line decreased from 177,000 CFA francs (CFAF) in 2015 to CFAF 175,000 in 2016, owing to a decline in the annual inflation rate. In addition, Mali is highly vulnerable to fluctuations in world commodity prices, particularly those of three products, cotton, gold and livestock, the country's main exports. Poverty continues to affect nearly one in two Malians. Despite the economic growth experienced in 2015, 2016 and 2017, the prevalence of poverty has not significantly declined.

13. Mali is a country with a thousand-year-old civilization, and its current political and human rights practices draw from its own history and from universal democratic values.

14. The present report was prepared by the Interministerial Support Committee for the preparation of initial and periodic reports on the implementation of treaties ratified by Mali, which was created under Decree No. 09-049/PM-RM of 12 February 2009 and for which the Ministry of Foreign Affairs and International Cooperation acts as the secretariat.

15. The above-mentioned Committee brings together designated representatives from all ministerial departments, the National Human Rights Commission and civil society in order to increase the involvement of the various stakeholders in the process of drafting the country's periodic reports.

16. The present report describes the current status of the implementation of the Convention in Mali.

II. Legal and institutional framework for the prohibition of enforced disappearance

A. Legal framework

(a) Constitutional and legal provisions

17. Articles 1, 3, 4, 5, 6, 9 and 10 of the Constitution of 25 February 1992 establish the sanctity and inviolability of human beings, recognize the right of all persons to life, liberty and security and integrity of the person, and guarantee freedom of thought, religion, opinion, residence and movement for everyone in accordance with the law.

18. The Constitution also guarantees all human rights to all persons, without discrimination. Therein, Mali subscribes to the Universal Declaration of Human Rights of 10 December 1948 and the African Charter on Human and Peoples' Rights.

19. By ratifying the Convention, Mali incorporated into its national legislation the general principles and definitions established in the Convention, pursuant to article 116 of the Constitution, which provides that: "Treaties and agreements which have been lawfully ratified or approved take precedence, once published, over national laws, subject, in the case of each treaty or agreement, to its implementation by the other party."

20. However, enforced disappearance does not constitute a separate offence in Mali. The current Criminal Code takes into account the collective aspect of the offence of enforced disappearance. However, in order to address its individual aspect, it will be necessary to transpose the Convention into national law.

(b) International, regional and bilateral commitments

21. Mali is a party to a number of bilateral, regional and international legal instruments dealing with enforced disappearance.

1. International legal instruments

22. These instruments include:

- Rome Statute of the International Criminal Court of 17 July 1998

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 14 December 1973
- International Convention against the Taking of Hostages of 17 December 1979
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 10 March 1988
- International Convention Against the Recruitment, Use, Financing and Training of Mercenaries of 4 December 1989
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 19 January 2004
- International Convention for the Suppression of Terrorist Bombings of 15 December 1997
- International Convention for the Suppression of the Financing of Terrorism of 9 December 1999
- Framework Convention on Civil Defence Assistance of 22 May 2000
- United Nations Convention against Transnational Organized Crime and the Protocols thereto of 15 December 2000
- International Covenant on Civil and Political Rights of 16 December 1966
- Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948
- United Nations Convention against Corruption of 9 December 2003
- Convention of the Organization of the Islamic Conference on Combating International Terrorism of 1 July 1999

2. *Regional legal instruments*

23. These instruments include:

- Organization of African Unity Convention on the Prevention and Combating of Terrorism of 14 July 1999
- Economic Community of West African States Convention on Mutual Assistance in Criminal Matters of 29 July 1992
- Economic Community of West African States Convention on Mutual Assistance in Criminal Matters of 11 January 1995
- Economic Community of West African States Convention on Extradition of 12 June 1995
- Judicial cooperation agreement between Mali, the Niger and Chad of 9 May 2017

3. *Bilateral agreements*

24. The main bilateral agreements include:

- Agreement on the transfer of sentenced persons between the Government of the Republic of Mali and the Government of the Republic of Côte d'Ivoire, signed on 10 May 2018.
- Agreement on mutual assistance in civil and commercial matters between the Government of the Republic of Mali and the Government of the Republic of Côte d'Ivoire, signed on 10 May 2018.
- Agreement on extradition between the Government of the Republic of Mali and the Government of the Republic of Côte d'Ivoire, signed on 10 May 2018.

- Agreement on mutual assistance in criminal matters between the Government of the Republic of Mali and the Government of the Republic of Côte d'Ivoire, signed on 10 May 2018.
- Memorandum of Understanding on judicial cooperation between the Government of the Republic of Mali and the Government of the Republic of Côte d'Ivoire, signed on 10 May 2018.
- Protocol on cooperation between the Government of the Republic of Mali and the Government of the People's Democratic Republic of Algeria for the exchange of knowledge and experience in the legal and judicial sphere, signed on 15 May 2017.
- Agreement on mutual assistance in civil, family and criminal matters between the Government of the Republic of Mali and the Government of the Russian Federation, signed on 31 August 2000.
- Agreement on judicial cooperation between the Government of the Republic of Mali and the Government of the People's Democratic Republic of Algeria, signed on 28 January 1983.
- General agreement on judicial cooperation between the Government of the Republic of Mali and the Government of the Republic of the Congo, signed on 4 May 1964.
- General agreement on judicial cooperation between the Government of the Republic of Mali and the Government of the Republic of the Niger, signed on 22 April 1964.
- Agreement on judicial cooperation between the Government of the Republic of Mali and the Government of the Republic of Ghana, signed on 31 August 1977.
- General agreement on judicial cooperation between the Government of the Republic of Mali and the Government of the Republic of Côte d'Ivoire, signed on 11 November 1964.
- General agreement on judicial cooperation between the Government of the Republic of Mali and the Government of the Republic of Guinea, signed on 20 May 1964.
- Agreement on judicial cooperation between the Government of the Republic of Mali and the Government of the Republic of Tunisia, signed on 29 November 1965.
- General agreement on judicial cooperation between the Government of the Republic of Mali and the Government of the Republic of Senegal, signed on 8 April 1965.
- General agreement on judicial cooperation between the Government of the Republic of Mali and the Government of the Republic of Upper Volta, signed on 3 December 1963.
- General agreement on judicial cooperation between the Government of the Republic of Mali and the Government of the Islamic Republic of Mauritania, signed on 25 July 1963.
- Agreement on judicial cooperation between the Government of the Republic of Mali and the Government of the French Republic, signed on 9 March 1962.

B. Institutional framework

(a) Government entities involved in combating enforced disappearance

25. In Mali, the lead agency for combating enforced disappearance is the Ministry of Justice and Human Rights, which acts through the National Directorate for Judicial Affairs and the courts and tribunals (Code of Criminal Procedure, arts. 31 et seq.).

26. The Ministry of Security and Civil Defence works to combat enforced disappearance through the investigation units of the police and gendarmerie.

27. The Ministry of Defence and Former Combatants works to combat enforced disappearance through the operational entities of the General Staff of the Armed Forces, the

Directorate for Military Justice and the military police and investigation units of the gendarmerie.

(b) Other entities involved in combating enforced disappearance

28. Such entities include:

- National Human Rights Commission.
- Organizations and associations working to protect and defend human rights, and civil society organizations operating in Mali.

III. Implementation of the provisions of the Convention

Article 1

29. In Mali, no exceptional circumstance, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearance.

30. Administrative measures, including the declaration of a state of emergency, have no impact on the effective implementation of the prohibition on enforced disappearance.

31. The laws currently in force do not allow for any derogation from the prohibition on enforced disappearance. During a state of war or instability, the defence and security forces are deployed in accordance with established rules of engagement and in strict compliance with the Geneva Conventions and the three Protocols additional thereto, to which Mali is a signatory.

32. The prohibition is also underpinned by the Code of Military Justice. However, article 28 of the Criminal Code provides that: “No offence shall be deemed to have been committed if:

1. The accused was of unsound mind at the time of the act or was defending himself or herself or another person;
2. The accused was compelled by overwhelming force;
3. The accused was acting pursuant to a requirement of law or on the order of the legitimate authorities.”

Article 2

33. Enforced disappearance and its constitutive elements are not defined in any law or regulation that exists in Mali.

34. However, the spirit of such a definition can be found in national law, specifically in the relevant provisions of the Criminal Code, namely, book 3, title 1, chapter 1 on crimes against humanity (art. 29 (i)). The provisions invoked to deal with cases of enforced disappearance are articles 237 to 244 of the Criminal Code, on unlawful arrests, false imprisonment, hostage-taking, kidnapping, trafficking in persons, placement in bondage or servitude and trafficking in children, or article 29 of the Code when the offence may be categorized as a crime against humanity.

Article 3

35. For the prohibition and prosecution of the acts defined in article 2 of the Convention, the Criminal Code is applicable, specifically section 9 (1) on unlawful arrests, false imprisonment and hostage-taking, in particular articles 237 to 242.

Article 4

36. As mentioned above, enforced disappearance is a criminal offence under article 29 of the Criminal Code.

37. However, no law provides for an autonomous offence of enforced disappearance in line with article 2 of the Convention. Nonetheless, enforced disappearance is in itself sufficient to constitute a crime against humanity and to attract the death penalty.

38. The fundamental difference between the offence of enforced disappearance and other similar offences, such as abduction or arbitrary arrest, is that the former is deemed to be a crime against humanity, which is not subject to a statute of limitations and is punishable by the death penalty (art. 32), whereas the latter offences are punishable by life imprisonment or fixed-term imprisonment and are therefore subject to a statute of limitations (Criminal Code, arts. 237 et seq.).

39. This applies unless the offence of enforced disappearance is an autonomous offence, distinct from crimes against humanity and carrying a different punishment.

Article 5

40. Enforced disappearance is included in article 29 of the Criminal Code as one of the acts that qualify as a crime against humanity under international law and, as such, it is not subject to a statute of limitations and is punishable by the death penalty (art. 32).

41. Accordingly, any perpetrator of or accomplice to enforced disappearance is liable to the death penalty.

Article 6

42. Article 28 of the Criminal Code provides that the State may not be held criminally responsible. Furthermore, the principles of criminal responsibility are not adequately defined in accordance with international law.

43. This provision of the Code simply states that no criminal responsibility exists. In Mali, it would be possible to use the theory of accomplice liability, provided for in articles 24 and 25 of the Code, to establish the criminal responsibility of persons (including superiors) who are complicit in an offence, whether actively, by virtue of order, support, assistance or injunction, or passively, if, in the absence of any risk to themselves or their families, they allow it to be committed, without doing anything to prevent it or reporting the perpetrator(s).

44. However, national legislation allows for the prosecution of any public person involved in a case of enforced disappearance. Examples include:

- The case brought by the public prosecution service against Amadou Haya Sanogo and others, which is pending before the Assize Court.
- The case of the journalist Birama Touré remains unsolved. However, investigations are ongoing.

45. There is currently no express regime of criminal responsibility for violations of the Convention. However, with respect to the responsibility of superiors, article 24 of the Army Service Regulations prohibits “passive obedience”. This prohibition requires subordinates to assess the letter and spirit of orders at the risk of being held personally responsible.

46. Subordinates who are punished for refusing to carry out an order that they deem to be unlawful are entitled to pursue administrative remedies (appeal to a higher authority or appeal to the same authority to reconsider its decision).

Article 7

47. The Criminal Code is currently being reviewed; in the meantime, article 29 of the Code is applicable and provides that the offence of enforced disappearance is a crime against humanity.

48. In Mali, the maximum sanction for enforced disappearance provided for in the Criminal Code is the death penalty.

49. However, article 18 of the Code provides for mitigating circumstances that may be applied in respect of any person who meets the conditions set out in articles 18 to 23 of the Code of Criminal Procedure, which, in this instance, means having no prior criminal convictions.

50. The Criminal Code does not provide for aggravating circumstances for enforced disappearance because the maximum penalty is already applicable.

Article 8

51. In Mali, the crime of enforced disappearance is not subject to a statute of limitations.

52. National law establishes that no statute of limitations applies to crimes against humanity.

Article 9

53. The crime of enforced disappearance is not governed by a specific law defining it in accordance with the applicable rules of international law.

54. Mali has jurisdiction over any offence committed in its territory, regardless of the location where the perpetrator was arrested or his or her nationality.

55. Unlimited mutual judicial assistance may be provided in respect of any matter.

56. Universal jurisdiction may be invoked. Mali takes a position of “extradite or prosecute” vis-à-vis international cooperation in criminal matters.

Article 10

57. Apart from the case against Amadou Haya Sanogo and his accomplices, there are no other specific cases involving persons suspected of having committed an offence of enforced disappearance in Mali.

58. However, investigations into alleged cases of enforced disappearance have been opened by the competent authorities.

59. The relevant legislative provisions and the precautionary measures provided for in national law are based on article 240 of the Code of Criminal Procedure, which covers extradition proceedings before the Indictments Chamber. The rights of persons subject to provisional detention are set out in articles 238 and 239 of the Code of Criminal Procedure; they are entitled to legal counsel and also to challenge the validity of the proceedings brought against them before the Indictments Chamber.

60. Article 9, third paragraph, and article 10, first paragraph, of the Constitution safeguard the rights of all persons deprived of their liberty to be assisted by counsel and examined by a doctor of their choice. The rights of the defence in Mali are enshrined in these provisions. They are supplemented by articles 76 and 77 of the Code of Criminal Procedure.

Article 11

61. Articles 29 and 32 of the Criminal Code (Act No. 01-079 of 20 August 2001) constitute the legal framework that allows the Assize Court to exercise universal jurisdiction in cases involving an offence of enforced disappearance. Pursuant to Act No. 2019-50 of 24 July 2019, amending the Code of Criminal Procedure (Act No. 01-080 of 20 August 2001, as amended), under which the specialized judicial unit to combat terrorism alone is competent to try such cases, only Bamako Assize Court has jurisdiction.

62. The competent authorities are:

- Prosecutors, for prosecution.
- Investigating judges, for the first stage of investigation, and indictment chambers, for the second stage of investigation and for extradition.
- Assize courts, for the trial of cases involving an offence of enforced disappearance, when Mali decides to prosecute rather than extradite; all these prosecutors, investigating judges, indictment chambers and assize courts are attached to Bamako Court of Appeal, which has responsibility for the specialized judicial unit.

63. In national law, no distinction is made between nationals and non-nationals. Once the offence has been established, the legislative provisions that apply are the rules on types of evidence and the measures to ensure a fair trial.

64. Under Malian law, the military authorities may not investigate or prosecute cases of enforced disappearance (Code of Criminal Procedure, art. 31), except in cases involving the defence and security forces.

Article 12

65. In Mali, since no court has been specifically designated to handle cases of enforced disappearance, all courts are competent to do so.

66. The above-mentioned specialized judicial unit has exclusive jurisdiction over cases of enforced disappearance within the meaning of article 29 of the Criminal Code.

67. Prosecutions are initiated on the basis of complaints or reports of enforced disappearance. Even in the absence of a complaint or report, the prosecutor may initiate prosecutions *ex officio*, on the basis of *prima facie* evidence.

68. The prosecutor orders the investigation units (or military police if the alleged perpetrators are military personnel) to conduct thorough investigations, gather all evidence, conduct searches, interview witnesses and draw up a report for transmittal to the competent prosecutor. If, upon reviewing this report, the prosecutor concludes or even suspects that an offence of enforced disappearance has been committed, he or she must refer the case to the investigating judge, who will examine the evidence both against and in favour of a named or unknown perpetrator. Having examined the evidence, the investigating judge will either dismiss the charges, if they have not been proved, or refer the case to the chief prosecutor if they have. The chief prosecutor refers the matter to the Indictments Chamber, which orders the perpetrator's committal for trial before the Assize Court.

69. Persons affected by violations of the principle of equality before the law or by a failure to protect victims in cases of enforced disappearance may lodge a complaint with the Forum for Democratic Discussion or the Ombudsman.

70. In addition, a preliminary bill on special investigations and a preliminary bill on victim and witness protection are being drafted with a view to strengthening the existing legal arsenal to combat enforced disappearance and ensuring better protection for victims and witnesses in cases of enforced disappearance.

Article 13

71. In Mali, since it is not specified which offences are extraditable, enforced disappearance is not explicitly mentioned as such in treaties and agreements. Situations are examined on a case-by-case basis.

72. In Malian law, enforced disappearance is not categorized as a political offence or an offence connected with a political offence, rather it is simply considered a crime against humanity.

73. The Indictments Chambers of Bamako, Kayes and Mopti Courts of Appeal rule on extradition cases. Extradition is refused if requested for purely racial, religious or political reasons, as determined by each State. See articles 237 to 249 of the Code of Criminal Procedure.

Article 14

74. For information on the agreements and treaties on mutual judicial assistance concluded by Mali, please refer to part II, section A, of this report.

75. In the treaties that it concludes with other countries, Mali negotiates the broadest possible mutual judicial assistance without specifying the offences concerned.

Article 15

76. Victims who duly sue for damages as part of criminal proceedings are assisted when they appear before the courts.

77. Discussions regarding legislation on victim and witness protection are ongoing.

Article 16

78. Mali does not yet have a law on international cooperation in criminal matters (a preliminary bill is being drafted with technical support from the United Nations Office on Drugs and Crime). However, most of the bilateral agreements or treaties that Mali has signed with other States make mention of the principle that extradition may only take place for the offences described in the request.

79. The State may not, under any circumstances, invoke any particular practice to refuse a request for extradition.

80. The Prime Minister is the (administrative) authority who issues the final extradition decision, by decree, once the judicial phase is complete.

81. When the Prime Minister decides to grant an extradition request, the person who is the subject of the request may not challenge the decision or submit a request for review. Equally, if the Prime Minister refuses to grant an extradition request, there is no avenue of appeal.

82. In general, the officials responsible for expelling or extraditing foreign nationals are trained on police-to-police handovers (police cooperation).

Article 17

83. Article 1 of Act No. 2016-036 of 7 July 2016 on the establishment of the National Human Rights Commission designates that independent administrative authority as the national mechanism for the prevention of torture under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

84. Article 6 of the Act provides that the Commission is responsible for:
- Making regular or unannounced visits to all places of deprivation of liberty and any other places where persons may be detained.
 - Regularly examining the treatment of persons deprived of their liberty and preventing torture and other cruel, inhuman or degrading treatment or punishment.
 - Making recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and preventing torture and other cruel, inhuman or degrading treatment or punishment.
 - Submitting proposals and observations concerning existing or draft legislation on torture or other cruel, inhuman or degrading treatment or punishment.
 - Following up on the recommendations made and cooperating with United Nations organs and mechanisms, as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment.
85. Articles 237 and 238 of the Criminal Code expressly prohibit secret and unofficial detention.
- Article 237 provides that: “Anyone who: (1) without an official warrant, arrests, detains or falsely imprisons any person, except where the law requires the arrest, including in cases where persons are suspected of having committed a crime or caught in flagrante delicto; or (2) knowingly provides a location in order for the detention or false imprisonment to be carried out; shall be liable to 5 to 20 years’ imprisonment and, optionally, to a residence ban of 20 years. If the persons arrested, detained or falsely imprisoned were subjected to physical torture, the perpetrators shall be liable to the death penalty. If the false imprisonment was accompanied by violence not amounting to physical torture, or by death threats, the penalty shall be life imprisonment.”
 - Article 238 provides that: “If the person was arrested, detained or falsely imprisoned as a hostage, to prepare or facilitate the commission of an offence; to assist with an escape or ensure impunity for the perpetrators of or the accomplices to an offence; or in a secret location, to comply with an order or condition, the perpetrators shall be liable to life imprisonment. However, if the person arrested, detained or falsely imprisoned as a hostage to comply with an order or condition is released voluntarily within five days of the arrest, detention or false imprisonment, without the order or condition having been carried out, the penalty shall be 10 to 20 years’ imprisonment.”
86. An order of deprivation of liberty may be issued in accordance with the Code of Criminal Procedure (Criminal Code) by the following judicial officers (Constitution of 25 February 1992, art. 10):
- Public prosecutor or chief prosecutor
 - Investigating judge
 - President of the Indictments Chamber
 - President of a trial chamber
 - Criminal investigation officer
87. Article 76 of the Code of Criminal Procedure expressly prohibits officers under the command of a criminal investigation officer from detaining suspects (taking them into custody).
- Article 123: For less serious offences carrying a prison term, pretrial detention may be ordered:
 - When the pretrial detention of the accused person is the only way to preserve material proof or evidence or to prevent the intimidation of witnesses or collusion between accused persons and accomplices.

- When pretrial detention is required to protect public order from the disturbance caused by the offence or to protect the accused person, to put an end to the offence, to prevent its repetition or to ensure that the accused person can be brought before the courts.
- When the accused person deliberately fails to comply with a judicial supervision order.
- Article 82: In cases of flagrante delicto involving serious offences that have not yet been taken up by the investigating judge, the public prosecutor may issue a warrant to apprehend any person suspected of involvement in the offence. The prosecutor immediately questions the persons brought before him or her in this manner. If these persons are accompanied by a lawyer, they may only be questioned with the lawyer present.
- Article 83: In cases of flagrante delicto involving minor offences punishable by a term of imprisonment that have not yet been taken up by the investigating judge, the public prosecutor may, after questioning the suspect about his or her identity and the allegations against him or her, order the suspect's detention. A justice of the peace has the same obligations for detentions that he or she orders under the same article.
- Article 114: An investigating judge may issue a warrant to apprehend, a committal warrant or an arrest warrant, as necessary. A warrant to apprehend is the order given by the judge to the law enforcement authority to bring the accused person before him or her immediately. The investigating judge may issue a warrant to apprehend in respect of a witness who refuses to obey a summons delivered in accordance with article 101, without prejudice to the penalties provided for in article 84 of the Criminal Code. A committal warrant is the order given by the judge to the governor of the remand prison to accept and detain the accused person. This warrant is also used to seek or transfer the accused person upon prior notification. An arrest warrant is the order given to the law enforcement authority to find the accused person and take him or her to the remand prison indicated on the warrant, whereupon he or she will be placed in detention. Warrants are executed throughout the national territory.
- Article 199: In cases before courts competent to try less serious and minor offences, before the opening of the trial, if the chief prosecutor considers that the facts of the case warrant more serious charges than were brought, he or she orders the submission of the case file, prepares the case for trial and submits it with an application to commence proceedings to the Indictments Chamber. The chief prosecutor proceeds in the same way when, after the Indictments Chamber has terminated proceedings, he or she receives evidence that might allow new charges to be brought. In this case, the president of the Indictments Chamber, pending a session of that body, may issue a committal warrant or an arrest warrant upon receipt of the relevant application from the chief prosecutor.
- Article 240: The Indictments Chamber rules in the form provided for in articles 246 and 247 of the Code; until its decision is handed down, the fact that a case is before it has a suspensive effect on any other proceedings, and their related measures and effects, against the extradited person; however, during the period specified in the Code, the extradited person may be provisionally detained on the basis of a committal warrant issued by the public prosecutor in order to ensure that he or she appears before the Indictments Chamber.
- Article 76: For the purposes of an investigation, a criminal investigation officer may be obliged to detain for 48 hours one or more of the persons referred to in articles 73, 74 and 75. The same persons may incur the penalties prescribed by the Criminal Code for the punishment of resistance to legitimate authority.

88. The authorization for persons deprived of their liberty to communicate is guaranteed by the fourth paragraph of article 76 of the Code of Criminal Procedure: "The public prosecutor may, ex officio or at the request of a family member of the person in police custody, designate a doctor to examine that person at any time during the period of police custody." The sixth paragraph of this article provides that: "During the preliminary

investigation, any person who is involved in or the victim of an offence shall have the right to be assisted, upon request, by one or more lawyers of his or her choice.” The third paragraph of article 171 provides: “However, the qualified doctors responsible for examining the accused person may ask the questions necessary to carry out their task in the absence of the judge and of counsel.”

89. In Mali, the National Human Rights Commission and other human rights organizations, the Association malienne des droits de l’homme, the Bar Association and the International Committee of the Red Cross conduct regular inspections of places of detention. Prosecutors, investigating judges and indictments chambers are also responsible for carrying out inspections of places of detention in accordance with the Code of Criminal Procedure.

90. Public prosecutors also regularly inspect places of detention (article 53: “Public prosecutors shall take, or oversee the taking of, all measures necessary for the investigation and prosecution of criminal offences. They shall visit police detention facilities whenever they consider it necessary and at least once per quarter; to this end, they shall keep a register listing the number and frequency of inspections conducted at each facility.” Article 218: “The President of the Indictments Chamber, whenever he or she considers it necessary and at least once per year, shall visit the remand prisons under the jurisdiction of the court of appeal and monitor the situation of accused persons held in pretrial detention.”).

91. The National Directorate of Penitentiary Administration and Supervised Education is the entity responsible for managing places of detention, except for those of the police and gendarmerie investigation units, which come under the responsibility of the prosecution service (public prosecutors).

92. The relevant guarantees are provided for in article 131 of the Code of Criminal Procedure (“Detention orders and detention extension orders may be challenged by the accused person and the public prosecution service.”).

93. Registers recording the situation of detainees are kept at every place of detention.

Article 18

94. Regarding information about a detained person, the fourth and sixth paragraphs of article 76 of the Criminal Code guarantee the right of any person with a legitimate interest to gain access to information on measures that require the notification of the family, lawyer or any other person connected to the detained person.

Article 19

95. Mali does not have an appropriate medical centre capable of processing DNA on site. In general, samples are sent abroad for processing.

96. To remedy this shortcoming, Mali adopted Act No. 2018-002 of 12 January 2018 on the establishment of the General Directorate of the Forensic Police. As part of the implementation of this Act, a project is under way to put into operation a DNA processing centre within the Ministry of Security and Civil Defence.

97. In civil matters, particularly marital cases (maternity or paternity disputes), the data collected is used to provide the necessary information to the court; in criminal matters, for example, in the case of a serious offence, the information is kept confidential, the results are recorded in the file and the physical items are sealed and stored by the court registry.

Article 20

98. Under article 76 of the Code of Criminal Procedure, there are no restrictions on access to information about persons deprived of their liberty. Any person who requests it may visit a person deprived of his or her liberty.

99. However, given the complexity of some cases (such as breaches of public order or of national security), the prosecutor may prohibit visits from persons other than family members, lawyers and doctors; prosecutors are competent to do so by virtue of their administrative and discretionary powers. This measure is never applicable to the lawyer of the detainee.

Article 21

100. In accordance with articles 53 and 218 of the Code of Criminal Procedure, inspections of places of detention conducted by the prosecutor, the investigating judge or the President of the Indictments Chamber are a means of verifying that a person whose release has been ordered has actually been released.

101. The release order is issued by the prosecutor to the prison governor, who immediately releases the prisoner.

102. The prosecutor, the investigating judge, the President of the Indictments Chamber and the prison governor are the authorities competent to oversee the release.

103. The National Human Rights Commission and some civil society organizations also monitor compliance with such measures.

Article 22

104. In criminal proceedings in Mali, liberty is the rule and detention the exception.

105. Regarding sanctions for obstruction and failure to provide information, in Mali, the applicable procedure offers persons deprived of their liberty the option to request release at any time and at any stage of proceedings.

106. In addition, the final paragraph of article 116 of the Code of Criminal Procedure provides that: “Any judge or official who orders or knowingly allows an arbitrary detention measure to be applied shall be liable to the penalties provided for in article 76 of the Criminal Code.”

107. Moreover, means by which to challenge an arbitrary detention decision are envisaged as part of the review of the Code of Criminal Procedure.

108. Article 76 of the Criminal Code goes further by stipulating that: “Chief prosecutors, public prosecutors, their deputies, judges and public officers who detain or order the detention of a person outside the locations determined by the Government or public authorities, or who bring a citizen before an assize court without a legal indictment having been issued shall also be liable to 5 to 20 years’ imprisonment.”

109. Article 2 of the Code of Criminal Procedure provides the following guarantees: “Any person suspected of or prosecuted for having committed an offence is presumed innocent until proven guilty. Violations of their right to be presumed innocent are prevented, remedied and punished, subject to the conditions established by law. They are entitled to be informed of the charges against them and to be assisted by counsel. Any coercive measures in respect of such persons are applied by the decision or under the effective oversight of a judicial officer. These measures must be strictly limited to what is necessary for the proceedings, must be proportionate to the severity of the alleged offence and must not violate personal dignity. A final ruling on the detention of and the charges brought against such persons must be handed down within a reasonable time frame. Convicted persons are entitled to have their conviction reviewed by another court.”

110. Article 70 of the Criminal Code also provides that: “Public officials responsible for policing or criminal investigation who refuse or neglect to comply with a legal request to report an unlawful or arbitrary detention, either at a detention facility or elsewhere, and who are not able to prove that they have reported the detention to a higher authority shall be liable to 5 to 20 years’ imprisonment and to the payment of damages, to be determined in accordance with article 68 above.”

111. Pursuant to article 71, governors and guards of penal institutions who admit a prisoner without a warrant or judicial decision or without a provisional government order, who detain a prisoner or refuse to present the prisoner to the criminal investigation officer or to the person transmitting his or her orders without an injunction from a public prosecutor or judge, or who refuse to show their detention registers to the criminal investigation officer are deemed to be guilty of arbitrary detention and liable to 6 months' to 2 years' imprisonment and a fine of CFAF 20,000 to 240,000.

112. Article 72 provides that: "Any crime committed by public officials in the performance of their duties constitutes malfeasance."

113. Article 73 provides that any act of malfeasance is punishable by 5 to 10 years' imprisonment, unless the law provides for a lesser or greater penalty.

114. Beyond the legal detention period, the governor of the remand prison must bring the detainee before the public prosecutor or the investigating judge, as applicable, who, in turn, must order the detainee's release (Code of Criminal Procedure, arts. 122–137).

Article 23

115. All persons involved in preliminary investigations, prosecutions, judicial investigations, trials and imprisonment receive regular training specifically on human rights.

116. In general, extensive coverage is given to international humanitarian law in the training programmes of the armed forces, in basic training, non-commissioned and commissioned officer training schools and other standard non-continuous training courses. The National Judicial Training Institute offers training programmes on human rights.

Article 24

117. Malian law does not specifically address the definitions of enforced disappearance or of a victim. In general, for a person to be classed as a victim, he or she must have suffered harm as a result of an offence. However, this status only entitles the person to reparation if he or she duly sues for damages as part of the criminal proceedings.

118. The judicial investigation constitutes a guarantee that the truth about the circumstances of the disappearance and the fate of the disappeared person will be brought to light.

119. In the absence of a specific national law on enforced disappearance, the Convention is the basis on which the judge may investigate the inculpatory and exculpatory evidence to ascertain the truth about the circumstances of the disappearance.

120. During the investigation, the victims' lawyers are kept regularly informed of the progress of the case.

121. During the investigation, if it is found that the offence was committed and the victim has been identified, the judge may order that the body or mortal remains be returned to the family.

(a) See paragraph 71 on article 19;

(b) Reparation for victims may be obtained through judicial or extrajudicial avenues and may be material, physical or moral in nature;

(c) The procedure relating to the legal status of a disappeared or missing person is described in articles 62 et seq. of the Personal and Family Code (Act No. 2011-087 of 30 December 2011):

- Article 62: "When a person has not returned home or been heard from for more than three years, any interested party or the public prosecution service may bring legal proceedings to request that the person be declared 'presumed missing'. This is done by filing an application before the civil court with

jurisdiction over the last known address of the person presumed missing or, failing that, his or her most recent place of residence.”

- Article 63: “The application shall be transmitted to the prosecutor, who shall launch an investigation into the fate of the person presumed missing and shall take all appropriate steps to publicize the application, including through the print media or any other means of communication, including outside the country, where appropriate.”
- Article 64: “The court may designate one or more family members or, if necessary, any other person to represent the person presumed missing in the exercise of his or her rights or any other act in which he or she has an interest and to administer all or part of his or her property. In such cases, the representation of the person presumed missing and the administration of his or her property are subject to the rules applicable to legal administration or guardianship. The same applies to matters concerning the person’s minor children, if any.”
- Article 65: “Upon assuming his or her functions, the representative shall draw up an inventory of the property belonging to the person presumed missing and file it with the registry of the relevant court. The representative is empowered to carry out legal transactions for the preservation of rights and of a purely administrative nature.”
- Article 66: “The court may, at any time, including on its own motion, terminate the functions of the person designated in this manner. The court may also replace the person in question.”
- Article 67: “Once two years have elapsed since the application was lodged and in the light of the results of the investigation, the court may declare that the party in question is presumed missing. The court may confirm the transactions completed under articles 64 and 65 above.”

Section II: Declaration of absence

- Article 68: “If the person presumed missing has not reappeared three years after having been declared ‘presumed missing’, a request for a declaration of absence may be lodged with the court. The prosecutor shall carry out a supplementary investigation.”
 - Article 69: “If 10 years have elapsed since the decision to declare the person ‘presumed missing’, the court may issue a declaration of absence at the request of any interested party or the public prosecution service.”
 - Article 70: “If the person presumed missing reappears or the date of his or her death is established before the decision is handed down, the request for a declaration of absence shall be deemed void.”
 - Article 71: “At the request of the public prosecutor, the operative part of the final decision on the declaration of absence shall be recorded in the register of deaths and the register of marriages of the missing person’s habitual or most recent place of residence. A note of this record shall also appear in the margins of the birth and marriage certificates of the missing person.”
 - Article 72: “As soon as the decision allowing the declaration of absence is recorded, it shall have the same effects as the missing person’s having died.”
 - Article 73: “If the missing person reappears or it is proved that he or she is alive, the public prosecutor or any interested party may apply to have the declaration of absence declared null and void.”
- (d) Freedom of association is enshrined in the Constitution;
- (e) No information is available.

Article 25

122. National law, specifically articles 102 et seq. of the Criminal Code, protects all persons against the falsification of any documents. However, it does not specify that this applies to cases of enforced disappearance involving children.

123. Article 17 of the Child Protection Code (Ordinance No. 02-062/P-RM of 5 June 2002) clearly states that children enjoy all the guarantees of international humanitarian law laid down in conventions ratified by Mali.

124. The national office established to support children who are wards of the State is a mechanism to ensure the care of children whose parent or legal guardian is dead, missing or deported (Act No. 2016-058 of 27 December 2016 on Wards in the Republic of Mali).

IV. Conclusion

125. In Mali, as in many places in the world, enforced disappearance is a reality. However, it should be recalled that cases of enforced disappearance are very rare. The Government is making considerable efforts to provide the maximum protection to all people.
