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MALI

An unfair trial and torture with impunity compromise the establishment of the rule of law

INTRODUCTION

*"It would have been better if Amnesty International had come here to make its investigations on the spot rather than writing a report outside the country based on inaccurate information"¹, was the reaction of Amidou Diabaté, Mali's Minister for Justice in November 1997 when Amnesty International published a document entitled *Mali/Des libertés essentielles remises an cause*, Mali/Basic liberties at risk.*

In that document, Amnesty International exposed the fact that members of the security forces, acting on their own initiative or on the orders of their superiors, had, with complete impunity, perpetrated acts of physical and psychological torture on civilians in detention, some of whom were women. The victims of these acts of torture were members of the opposition, arrested following demonstrations which had, on occasions, degenerated into violence. These demonstrations took place at the time of the legislative and presidential elections of April and May 1997 which resulted, in particular, in the re-election of President Alpha Oumar Konaré, who had been Head of State since 1992.

Amnesty International also noted that, in violation of Mali's international obligations², international standards on human rights³ and its own national legislation, not one allegation of torture had resulted in the institution of an independent and impartial investigation.

In the same document, Amnesty International expressed its concern about the legal situation of **Mady Kamakoye Diallo**, who was a minister in the government of the former president Moussa Traoré, and six soldiers, arrested in October and December 1996 and held without trial since that time.

¹ Statement reported by the *Agence France-Presse* (AFP), French press agency, on 27 November 1997.

² Mali acceded to the International Covenant on Civil and Political Rights on 16 July 1974 (entry into force on 23 March 1976); it ratified the African Charter on Human and Peoples' Rights on 13 November 1981 (entry into force on 22 January 1982). However, it has not signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to the Report of the Secretary General of the United Nations to the Commission on Human Rights, as at 5 December 1997 Mali had neither signed nor ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, nor acceded to it (United Nations document E/CN.4/1998/36/Rev.1, dated 20 January 1998).

³ Among the international standards on detention and trials, we can quote: Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolutions 663C (XXIV) of 1957 and 2076 (LXII) of 1977), (General Assembly Resolution 43/173 of 1988), the Code of Conduct for Law Enforcement Officials (General Assembly Resolution 34/169 of 1979), the Basic Principles on the Independence of the Judiciary (General Assembly Resolutions 40/32 and 40/146 of 1985).

Following an invitation from the Government of Mali to visit the country to investigate these allegations, in March 1998 Amnesty International sent a fact-finding mission to Mali, which gathered extensive information on the acts of torture and ill-treatment reported by the organization. The Amnesty International delegation consisted of one staff member and a legal observer, who is a lawyer and Member of the governing body of the Tunis Bar Council. The two delegates attended the trial of Mady Diallo and the six soldiers: **Moriba Dialla, Yacouba Traoré**, known as “Casa”, **Roger Alfred Dao, Abdou Kemenani** and **Amara Berthé**, who had been held since October 1996 and **Yacouba Keita**, who had been held since December 1996.

This document contains the results of the fact-finding mission. With regard to the trial, Amnesty International has concluded that legal norms had not been respected and that the Malian judicial authorities had used the pretext of wholly fabricated accusations to institute proceedings against people on the basis of their political beliefs or their being members of an association of non-commissioned officer, a movement within the corps which is seeking to improve soldiers' living conditions. If national and international standards had been respected in Mali, the court would not have convicted any of the prisoners. The sentences of 15 to 18 months' imprisonment which were imposed reveal a lack of independence and impartiality of the Malian judicial system which appears to have reacted to politically-motivated orders which have little to do with the concept of justice. Since the verdict was given, in March 1998, those who were sentenced have lodged an appeal with the *Cour de cassation* (Court of Cassation).⁴

With regard to the serious allegations of torture which Amnesty International revealed in November 1997, these have been confirmed in every respect by the fact-finding mission. The two Amnesty International delegates gathered new evidence directly from victims which confirms that acts of torture and ill-treatment were perpetrated last year with complete impunity in a number of police stations throughout the country.

Amnesty International is aware of the efforts of the Malian authorities to establish a state governed by the rule of law since the fall of General Moussa Traoré's government in 1991. On numerous occasions, the organization has publicly acknowledged these efforts, in particular the decision taken in December 1997 by President Konaré to commute all death sentences imposed by Malian courts. Nevertheless, Amnesty International believes that the arbitrary arrests followed by acts of torture and ill-treatment which took place last year, and the unfair trial of March 1998, seriously compromise the establishment of the rule of law.

⁴ The Court of Cassation which, at the time of writing (July 1998), had not announced its decision, cannot rule on the substance of a case or request an investigation into the allegations of torture. Indeed the Court of Cassation does not decide on the facts but on questions of law, which means that it considers any procedural irregularities raised by the defence during the trial.

Amnesty International calls on the Malian authorities to take urgent action to end the impunity enjoyed by members of the security forces who have committed these serious acts. Amnesty International also calls for the guaranteed right to a fair trial within a reasonable time to prevent the law being used to intimidate inconvenient opponents and remove them from the political debate. This document has been drawn up in a constructive spirit, which explains why Amnesty International makes a series of recommendations which it is hoped will contribute to the consolidation of the rule of law in Mali.

I. AN UNFAIR TRIAL

In its November 1997 document, Amnesty International expressed its concern at the continued detention without trial of Mady Diallo and the six soldiers who were arrested at the same time, or shortly afterwards. The seven men had been charged with *“an attack against the lawful government of the Republic of Mali with the intention of overthrowing it by force, and aiding and abetting a threat to state security by means of donations, pledges and provision of resources”*. However, until publication of Amnesty International’s report in November 1997, no evidence to support these accusations had been produced and no date had been set to try these men, who had been held without trial for over a year.

The trial was finally held in March 1988 and the two Amnesty International delegates were able to monitor the hearings. They were also completely free to speak to the accused, their defense lawyers, the public prosecutor and the president of the court, who facilitated all necessary contact in a desire for transparency which Amnesty International applauds.

Amnesty International concluded that these seven men, sentenced to between 15 and 18 months’ imprisonment by the Bamako Assize Court, are prisoners of conscience, imprisoned for their non-violent political opinions. Their trial, which did not comply with the relevant international standards, was a flagrant injustice. No real evidence was submitted against them; the Bamako Assize Court convicted them on the basis of confessions which had clearly been obtained under torture⁵.

Throughout their detention without trial, the seven accused were denied a whole series of basic rights referred to in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles); time limits for *garde à vue*, (police custody) were not respected, confessions were obtained by means of torture, the accused experienced problems with regard to meeting their families and obtaining the assistance of a lawyer and a doctor and they were found guilty after an unfair trial.

⁵ See section entitled “Confessions extracted under torture” below.

a) Arbitrary detention

In October 1996, *Sécurité d'Etat* (SE) State Security, a department which at the time was answerable to the *Primature* (Prime Minister's Office)⁶, arrested Mady Diallo and the following five soldiers in Bamako: Moriba Dialla, Yacouba Traoré known as "Casa", Roger Alfred Dao, Abdou Kemenani and Amara Berthé. A sixth soldier, Yacouba Keita, was arrested two months later.

Seated from left to right: Yacouba Keita, Amara Berthé, Abdou Kemenani.
Standing from left to right : Roger Alfred Dao, Mady Kamakoye Diallo, Moriba Dialla, Yacouba Traoré known as Casa.

Mady Diallo is one of the leaders of the *Mouvement patriotique pour le renouveau* (MPR) Patriotic Movement for Renewal, the successor to General Moussa Traoré's former single ruling party, *l'Union démocratique du peuple Malien* (UDPM) Democratic Union of the People of Mali. The majority of the six co-accused soldiers were members of the association of non-commissioned officers. These men were suspected of plotting to arrest the Head of State, politicians and members of the Malian military.

⁶ Since 11 November 1997, the SE is directly answerable to the President of the Republic.

After their arrest, all the detainees were taken to SE premises, where they were interrogated in inhuman and unlawful conditions, some of them for more than five days. Those who were arrested by the SE clarified that the arrests took place at their homes, either during the night or at dawn by a group of armed officers.

This is the first contravention of Malian law, which states that “*an officer charged with effecting an arrest may not enter a citizen’s home before 6 am or after 9 pm*” (article 124 of the *Code de procédure pénale* (CPP), Code of Criminal Procedure.

Article 69 of the CPP also states that “*house searches and house visits may not be commenced before 6 am or after 9 pm*”.

The official powers of the SE, a department created in 1962, make no explicit reference to the legal authority to effect an arrest and undertake interrogations. In fact, the SE’s principal purpose is “*to protect the institutions of the Republic of Mali, in particular by monitoring all activities taking place and ... gathering information on the political, economic, social, cultural, military and scientific life of the country*” (Law No 89-18, creating the Board of the SE).

During the trial, the defense lawyers highlighted the fact that the powers conferred on SE officers by the laws and decrees relating to the organization of the Board of the SE did not include the right to carry out judicial investigations, or to arrest and interrogate citizens; the law conferred this preliminary investigative role on gendarmes (the paramilitary police) in their capacity as *officiers de la police judiciaire* (OPJ), officers of the criminal investigation department. However, the Assize Court did not accept this argument.

This preliminary investigation and interrogation by SE officers had the support of the Malian gendarmes. During the trial, the detainees made it clear that the gendarmes, in their capacity as OPJs, had, in the presence of the torturers, simply copied the contents of the notebooks containing confessions which SE officers had obtained by means of torture.

All this clearly demonstrates that the arrests were made in an arbitrary manner and in violation of both international standards and guarantees laid down in the CPP.

Under the terms of Article 121 of the CPP “*any person charged under a warrant to appear, who has been held at a remand center for more than twenty-four hours without having been interrogated, is deemed to have been arbitrarily detained*”. Yacouba Keita, arrested under such a warrant, was detained for several days on SE premises, where he was tortured and received death threats before being seen by the examining magistrate. Although Article 126 of the CPP provides for sanctions in the event of non-compliance with “*formalities to be observed in the case of a warrant to appear*”, the examining magistrate and the public prosecutor have not, so far as Amnesty International is aware, been disciplined.

International standards also prohibit detention effected in an arbitrary manner, with no respect for established legal procedure. Article 9, paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR) provides as follows: “*No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law*”. The Human Rights Committee, a body of independent experts who monitor the application of the ICCPR by State Parties, was of the opinion that the term “*arbitrary*” did not only mean “*against the law*” and that it should be interpreted more broadly to include inappropriate, unfair and unforeseeable elements. Article 9 of the Universal Declaration of Human Rights (UDHR) also provides that no one shall be subjected to arbitrary arrest or detention.

b) Failure to comply with the legal limits for *garde à vue*

The accused were held incommunicado beyond the legal limit for *garde à vue*. In fact, Mady Diallo was held in *garde à vue* for four days and most of those arrested in October 1996 were brought before the examining magistrate after more than 15 days of incommunicado detention. Amara Berthé, who was arrested on 27 October, was brought before the magistrate on 13 December, which is more than 45 days later.

Garde à vue is that period of incommunicado detention when the detainee has no access to his family, to a doctor of his choice or to a lawyer. It enables members of the security forces to hold suspects for interrogation without referring them to the public prosecutor.

Officially justified on grounds of “*requirements for the investigation*”, this period of incommunicado detention is conducive to the perpetration of torture and ill-treatment with the aim of extracting confessions from suspects.

The limit for *garde à vue* is regulated by the CPP. Articles 74 and 75 specify that: “*... the OPJ may find it necessary to hold one or more persons ... for 48 hours*”.

The CPP specifies that this period may be extended ‘*by 24 hours on the written authorization of the public prosecutor or examining magistrate*’ if there is strong corroborating evidence sufficient to charge the person.

Strict limitation of *garde à vue* is also contained in Mali’s Constitution, which specifies in Article 10 that “*no one may be detained for more than forty-eight hours without the reasoned decision of a magistrate of the judiciary*”.

International standards moreover condemn the principle of incommunicado detention. The Commission on Human Rights, in its Resolution 1997/38 (para. 20), considered that long periods of incommunicado detention constituted a form of cruel, inhuman and degrading treatment.

Another constitutional principle was violated in the detention of Mady Diallo and his co-accused. This is contained in article 10 of Mali's Constitution which provides that "*anyone deprived of his liberty is entitled to be examined by a doctor of his choice*". If we exclude the case of Mady Diallo, who was seen by a doctor in the first few days and who was given permission to travel to France for treatment while on remand, those accused with him did not receive immediate care, despite the ill-treatment to which they had been subjected. During their trial, the six soldiers stated that neither the officers of the SE nor the gendarmes had informed them, at any time, of their right to be examined by a doctor of their choice.

The right to be seen by a doctor is also guaranteed by Principle 24 of the Body of Principles.

c) Constraints on access to families and lawyers

Even when the period of *garde à vue* came to an end, some of the seven detainees had to wait a long time before being allowed to see their families. Although Mady Diallo was able to receive a visit from his parents after four days, during their examination before the court the other detainees deplored the fact that their families had had to wait several months before being able to visit them. "*It was only after I had spent three months in detention that I was able to see my parents*", Moriba Dialla told the court. Yacouba Keita said that he had not been allowed to communicate with his wife, who was entitled only to provide meals for him.

This refusal to grant prisoners access to their families contravenes the internationally-recognized right of any individual to inform his family of his arrest. Rule 92 of the Standard Minimum Rules for the Treatment of Prisoners provides that "*An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them ...*".

The detainees also experienced difficulties consulting a lawyer. During the trial all the accused were represented by a collective of lawyers to defend them. However, for most of them legal assistance was limited to the trial, because they were not informed of this right by the SE at the time of their arrest.

There was little change in this situation when the accused were brought before the examining magistrate. Yacouba Keita acknowledged that the magistrate had informed him of his right to obtain the services of a lawyer, but added that lack of experience and the fact that he was not in communication with his family prevented him from doing this. It was not until the confrontation with his co-defendants that he met their lawyers and was able to appoint one of them himself.

Moreover, a number of prisoners were interrogated by the examining magistrate in the absence of a lawyer. Roger Alfred Dao, for instance, was interrogated by the examining magistrate without his lawyer (who had already lodged his notice of instruction to defend) being called. This

constitutes a contravention of article 115 of the CPP which provides that “*counsel must be advised by the examining magistrate of the day and time of the examination and confrontations the accused must attend and the taking of evidence. Such notice shall be given by personal letter with at least 24 hours’ notice ...*”.

The absence of a lawyer is particularly serious in that most of the confessions had been extracted from the accused by means of torture and they were afraid to withdraw them before the examining magistrate for fear of further ill-treatment. At the trial, this was confirmed by Abdou Kemenani, who said that he had not been able to respond freely to the examining magistrate’s questions. When the President of the Court expressed his surprise at his fear, the accused replied that no lawyer had been present during the examination.

The obvious difficulties experienced in obtaining the presence of a lawyer contravene all relevant international rules. Indeed, any one held in detention has the right to be represented by a lawyer at all stages of the criminal procedure, as laid down in Principle 17 of the Body of Principles.

d) Conditions of detention contrary to international standards

The seven accused interviewed by the Amnesty International delegation all mentioned the inhuman conditions in which they were held both at the SE and at the gendarmerie. Most of them were held for a period of three months, shackled hand and foot. Roger Alfred Dao had shackles on both hands and feet for six months. He said:

“After three days, I was taken to the gendarmerie with very strict instructions. I spent six months in a gendarmerie cell, shackled hand and foot, with no contact with anyone; the windows and doors were barricaded. I relieved myself into plastic bags; the waste was removed once a week. For six months, I ate with my hands and feet shackled, I used to walk the 25 meters from my cell to the shower with shackles on my feet.”

Such conditions of detention are a flagrant contravention of international standards for the defense of human rights. Article 10, paragraph 1 of the ICCPR states: “*All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*” This principle is designed to oblige States to guarantee decent conditions of detention and to respect prisoners’ rights. In this case, they were not respected.

e) Confessions extracted under torture

At the trial in March 1998, the defendants informed the court that, during the long period they had spent in police custody, they had been regularly humiliated, beaten and tortured to extract a confession. Mady Diallo was not personally subjected to acts of physical torture, but he was deprived of sleep and received threats concerning his family from SE officers. Some prisoners also said that

their torturers had been present in the office of the examining magistrate as he was interviewing them.

The six soldiers stated that they were tortured as a means of forcing them to sign *procès verbaux* (statements) drawn up by the SE implicating Mady Diallo in an attempted conspiracy against the State. In spite of the length of time which had elapsed between the infliction of physical violence on them and the trial, evidence of their ill-treatment was still visible and was noted by the Amnesty International delegates, in particular on the wrist of at least one prisoner.

During pauses in the hearings, the Amnesty International delegates were able to talk to the detainees who had been subjected to torture and ill-treatment during their detention on SE premises.

The most common forms of torture were:

- Death threats – after being beaten, the accused were obliged to kneel in the yard at the SE where officers threatened to execute them.

- Beatings – while the accused were shackled hand and foot, they were kicked and punched all over the body after being sprayed with water.

- Deprivation of food and water – all the prisoners said they had been deprived of food for the three days of their detention at the SE. Some also said that they had eaten only once during the first three days.

- Sleep deprivation – the detainees also complained of sleep deprivation because the interviews lasted at least 20 hours during the first days in detention.

Some detainees handed the delegation written reports of the ill-treatment to which they had been subjected:

“... My right hand was shackled to my right foot and my left hand to my left foot. I was beaten with rifle butts and they poured water over me In three days I had only one meal, I was interrogated 19 hours out of 24 without respite, with my hands and feet still shackled. The deputy director of the SE ordered them to kill me; that is why I was on my knees, six meters in front of four soldiers, so that they could shoot me”

International law unreservedly prohibits torture and other cruel, inhuman or degrading treatment or punishment. Article 5 of the African Charter on Human and Peoples' Rights (ACHPR) refers to the prohibition of torture. Similar provisions are contained in international treaties, in particular the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or

Punishment (Convention against Torture) and Article 7 of the ICCPR. Nevertheless, in the light of the trial of March 1998 before the Assize Court, there is a contradiction between Malian texts, in particular Article 3 of the Constitution which prohibits and condemns the use of torture, and current practice, especially at the SE.

f) Political verdict

The seven men were sentenced by the Bamako Assize Court in March 1998 on the basis of confessions which clearly had been extracted under torture.

This practice constitutes a flagrant violation of all international standards for the respect of human rights.

Article 12 of the Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("Declaration against Torture") states: "*Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.*"

Moreover, Article 14, paragraph 3 g) of the ICCPR states: "*In the determination of any criminal charge against him, everyone shall be entitled to the ... minimum guarantee ... not to be compelled to testify against himself or to confess guilt*". These provisions are designed to prevent the use of physical or psychological force to oblige persons charged with criminal offences to testify against themselves or to confess guilt. Article 14, paragraph 3 g) of the ICCPR has been interpreted as meaning that evidence obtained by force of any kind shall not be admissible.

The decision of the Assize Court to accept these confessions obtained under torture is explained by its lack of independence. As laid down by law, the Court consisted of a President, two *magistrats conseillers*, advisory magistrates, and four *assesseurs*, assessors, the latter having been selected by the Minister for Justice on the advice of the Minister for the Interior from a list of distinguished members of the community drawn up by the *commandants de cercle*, senior local officials, pursuant to Article 218 of the CPP. This appointment of *assesseurs* by the Minister for Justice could, at least, leave some doubt as to their independence and impartiality.

The absolute need for independence and impartiality is clearly stated in Article 14 of the ICCPR and in the Basic Principles on the Independence of the Judiciary.

In terms of the competence of the *assesseurs* in legal matters, this is far from guaranteed. Article 300 of the CPP grants judges alone the right to decide "*on matters of competence, application of the law and procedural applications*". The *assesseurs* rule only on the facts and

on the question of guilt, and have no access to files. They may, however, ask questions and their opinion counts, especially during the deliberations which lead to the delivery of a verdict.

In addition to its composition, the attitude of the court in response to requests from the defense proves that it was far from impartial.

Apart from the statements signed under torture, no evidence was presented by the prosecution.

At the end of the judicial inquiry, the *Chambre d'accusation*, Indictments Division, disqualified the initial charges relating to the threat to internal State security. However, the committal for trial sending the seven men before the Assize Court accuses Mady Diallo of having engaged the services of Moriba Dialla, a friend of his son, to recruit soldiers with a view to arresting the Head of State, ministers and leaders of the military. According to this committal for trial (which is no more than four pages long), Moriba Dialla, together with an officer, informed Balla Diabaté, the Mandé elder, of the foiled plan with the aim of obtaining his blessing. In addition, Mady Diallo allegedly paid large sums of money to the six soldiers to carry out this coup d'Etat. In conclusion, *the Chambre d'accusation* declared that it had been sufficiently established that "... some time during 1996, and in any event, during the past ten years, Kamakoye Mady Diallo, Moriba Dialla, Yacouba known as "Casa", Roger Alfred Dao, Yacouba Keita, Abdou Kemenani and Amara Berthé [had] together conspired against the legal government of the Republic of Mali with the aim of overthrowing it ...".

During the trial, the defense highlighted the fact that the Mandé elder, one of the main prosecution witnesses who has since died and who, according to the authorities, had exposed the coup d'Etat, had refuted this information in the statement he made shortly before his death.

Another statement submitted by the prosecution was accepted by the court despite glaring contradictions and serious doubts as to its authenticity. This was the statement made by Baba Berthé. Not only did this witness make no effort to conceal his animosity towards the defendant Amara Berthé, he also contradicted himself on more than one occasion. What is more, he told the court that SE officers would often add to statements remarks he had not made. While this witness was waiting to make his statement in one of the court rooms, he was visited by a soldier with a view to influencing him.

It is on the basis of such evidence and confessions extracted under torture that the Assize Court sentenced these seven men to between 15 and 18 months in prison, that is to say the equivalent of the time spent on remand.

The biased attitude of the Assize Court can also be seen by its reaction to requests made by the defense, all of which were rejected.

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- The court rejected the defense's arguments to take no account of the police *procès verbaux* containing confessions extracted under torture, since this is contrary to Article 12 of the Declaration on Torture and Article 7 of the ICCPR.
 - The court did not accept the defense's argument that the presence of members of the SE during examination, and that pressure exerted by them on those charged to confirm the confessions obtained under torture rendered such confessions void.
 - The court did not see fit to consider the defense's request that *procès verbaux* which had not been signed by the defendants should be removed from the file since the absence of such signature constitutes a flagrant violation of article 73 of the CPP.
 - The court also rejected the defense's request to remove from the file a letter written by one of the prisoners in respect of which no record of attachment existed.

Throughout the procedure which led to the sentencing of these seven men it was clear that the trial of March 1998 did not comply with international rules. The rights of the accused were abused at every stage of their detention, during the critical stage between their arrest and the first hearing, during the preliminary examination before the examining magistrate and during the trial itself.

The isolation of the prisoners from the outside world during their period in *garde à vue* facilitated the torture and ill-treatment to which they were all subjected and made it possible to force them to make statements on which the prosecution based its case during the trial.

Although the court was informed of the ill-treatment suffered in detention and confessions extracted under torture, it accepted all these statements as admissible. It made no effort to ascertain the circumstances in which these statements had been gathered by the investigating officers, nor did it comment on the presence of SE officers while the detainees were making statements to the examining magistrate.

The prosecution's case was essentially based on statements made by the defendants following threats or acts of torture or other acts of coercion or incitement. No independent or reliable evidence has been presented to corroborate the charges.

With regard to the prosecution's principle thesis, the submissions of the public prosecutor contained sufficient omissions and incoherences to throw considerable doubt on the 'facts' it purported to present. No evidence has been presented to the court to show that Mady Diallo and the six soldiers had taken part in a conspiracy to overthrow the government and arrest political leaders and leaders of the military by violent means, or that they had taken part in acts of violence.

In short, the judicial and procedural irregularities of the court already referred to should have been sufficient to justify an independent and impartial court declaring the whole procedure null and void. In addition, and this is equally important in terms of the fairness of the trial, it is clear to Amnesty International that since the evidence submitted by the prosecution had been obtained under torture, it could not be considered admissible by the court. Amnesty International is therefore of the opinion that the right to a fair trial, with full respect of judicial guarantees by an independent and impartial court, was not respected.

Amnesty International also believes that by convicting the prisoners in the conditions described above, the Bamako Assize Court did not show itself to be independent. Furthermore, it is regrettable that the executive should use the courts to settle political conflict or to abuse such basic rights as the right of association and the right to belong to the party of one's choice.

The right to a fair trial is a basic right. The international community has drawn up a range of rules to guarantee the fairness of trials to protect the rights of persons at the time of arrest, during the period of detention prior to trial and during the judgement procedure until all avenues of appeal have been exhausted.

The UDHR and the ICCPR both strenuously affirm that the impartiality of the judicial system is absolutely fundamental to guarantee a fair trial. The Human Rights Committee has insisted on this point by recalling that *"the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception"*.⁷

This requirement is based on the principle that the different organs of the State must have exclusive and specific competence. This means that the judiciary must have exclusive power to decide on cases which are put before it. The judiciary as a whole as well as each judge in particular must be protected from any interference by the executive authority or by any private individuals. Judges must be free to rule on cases which are put before them on the basis of the facts and in accordance with the law, without interference, harassment or influence from members of the government or private individuals. These standards are set out in the Basic Principles on the Independence of the Judiciary, which provide for safeguards for the independence and competence of the judiciary in particular with regard to recruitment, tenure, assignment of cases and removal from post.

Impartiality of the courts means that judges must have no prejudices concerning the cases they are to hear, or interest in the decision given. They must be able to work without the intervention of government departments, whether direct or indirect, without inducement, pressure or threats from any quarter. The Human Rights Committee has stated that impartiality *"implies that judges must*

⁷ Gonzalez del Rio v. Peru (comm. 263/1987, paragraph 5.2, decision adopted on 28 October 1992).

not harbour any preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties”⁸.

When the authority of the law is eroded by partiality and political bias, it is likely that the representatives of the State believe they can abuse fundamental rights with impunity. The police feel free to arrest individuals at will. Those responsible for conducting interrogations think they can torture suspects without fear of sanction. The population at large feel that there is no longer anyone to whom they can turn for protection or to obtain justice.

II. IMPUNITY FOR TORTURERS

Following the publication of the Amnesty International report in November 1997 denouncing serious cases of torture and ill-treatment, Mali’s Minister for Justice, Amidou Diabaté, claimed that “*since the fall of the former regime of President Moussa Traoré, torture was no longer practiced in Mali*”.⁹

The Minister for Justice also stated that the judicial authorities had no record of any complaints regarding torture. In order to be clear in his own mind, the Minister had ordered checks to be carried out which concluded that the information published by Amnesty International in relation to torture, in particular at the police station at Sogoniko, was without foundation.

a) Further confirmation of the use of torture with impunity

In spite of all these denials, the Amnesty International delegation sent to Mali in March 1998 gathered new evidence of human rights abuses and cases of torture which took place in 1997. The stories of the victims met by the organization’s two delegates, confirm the information published in the November 1997 report in every detail.

In March 1988 the Amnesty International delegation met opposition leaders who had been arbitrarily arrested in 1997, as well as the victims of ill-treatment both in Bamako and Sogoniko. The delegation also went to San and Ségou. The information gathered by the delegates confirms that not only were those arrested at Niamakoro tortured, but that this practice of ill-treatment is found outside the capital.

⁸ Karttinen v. Finland (Comm.387/1989), UN document A:48/40 (Part II), 1 November 1993.

⁹ Statement reported by AFP on 27 November 1997.

A scene from everyday life in Niamakoro

The delegates also met people arrested at Niamakoro in May 1997 who are at present at liberty awaiting trial. The stories of all these people mention the beatings they received and the insults about their families. Some were suspended from the ceiling by their hands, others were beaten while kneeling on pebbles, their hands handcuffed behind their backs. Two people told the Amnesty International delegates how, in that position, a police inspector had climbed onto their backs, pressing on their handcuffed hands to increase the pain.

In addition to this, the Amnesty International delegates met an independent source who had witnessed these acts of torture.

These victims of ill-treatment, some of whom still bore visible traces at the time the Amnesty International delegation visited, stated that the authorities had never asked them about the treatment they had received in detention and that no investigation had taken place.

b) The need to put a stop to impunity

Armed with this new proof of serious human rights violations, the Amnesty International delegation attempted to arrange a meeting with the Minister for Justice, but he was unable to see them because of other commitments. Nevertheless the two delegates met the Minister for Justice's *Chef de cabinet*, principal private secretary, who assured them that he would transmit the organization's concerns and recommendations to the Malian authorities. In response to Amnesty International's persistent questions about the allegations of ill-treatment the *Chef de cabinet* stated that at the time of the arrests at Niamakoro he was public prosecutor and that he had, himself, asked prisoners whether they had been tortured but that, when they said no, he did not order an investigation. Despite this negative reaction, Amnesty International sent a copy of this present document in advance of

publication in the hope of receiving information about the serious allegations of human rights violations. In his response of 2 September 1998 M. Amidou Diabaté, Minister for Justice, merely declared his “*great surprise at the tone and biased attitude (or lack of objectivity) which forms the basis of this document*”. He repeated his invitation for an Amnesty International delegation to visit the country but provided no clarification on the information published by the organization.

The practice of torture does, indeed, exist in Mali and is being carried out with impunity, as revealed by the way the trial of March 1998 was conducted.

Although the seven defendants had reported acts of torture during the trial and some of them had shown the traces of ill-treatment they bore, especially on their wrists, the court did not see fit to initiate an investigation into these serious allegations, so giving official support to an unspoken policy designed to protect the impunity enjoyed by the security forces.

This judicial sanctioning of immunity from prosecution was confirmed when the Assize Court rejected the defense’s request to summon and question Colonel Soumaïla Cissé, Assistant Director General of the SE, in connection with allegations of torture and ill-treatment. In so doing, the Assize Court took no account of the right of the defendants to prove their innocence, which is contrary to the Convention against Torture, according to which an impartial and exhaustive enquiry must be made into all serious allegations of torture. Similarly, by declaring admissible confessions extracted by torture to condemn political opponents, the Malian courts are sanctioning the perverse efficacy of this method of extracting information.

The Bamako Assize Court which tried these seven men in March 1988 therefore failed in its role to prevent and suppress acts of torture as written into international texts. The role of the judiciary in eradicating torture was clearly spelt out in 1992 by the United Nations Special Rapporteur on Torture. He stated: “*It is the judiciary which can provide in various ways immediate relief and redress in individual cases. If the judiciary takes upon it this responsibility it will actually make the use of torture unrewarding and will thereby effectively contribute to its disappearance. ... The judiciary can make significant contributions towards reinforcing the prohibition of torture by refusing to admit evidence which, in its opinion, might have been obtained through torture and by ordering the release of anyone who has been arrested and detained in violation of national and international standards. If the judiciary takes such a position the use of torture becomes less worthwhile and thereby less attractive.*”¹⁰

In its General Comment on Article 7 of the ICCPR, the Human Rights Committee also points out: “*It is important for the discouragement of violations under article 7 that the law*

¹⁰ Oral statement by the Special Rapporteur on torture to the Commission on Human Rights, 11 February 1992 - E/CN.4/1992/17.

*must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment”.*¹¹

The use of torture is also encouraged by authorities who permit members of a political police force to hold citizens, sometimes at premises not recognized by the judiciary, depriving them of all contact with their relatives, lawyers and doctors.

On the basis of new information obtained on the spot by the Amnesty International delegation in March 1998, the Malian authorities can no longer shrink from their obligation to initiate an investigation into these allegations of ill-treatment. This obligation is acknowledged by international law on human rights and stems from what legal opinion calls the duty to safeguard, that is to say the general obligation of the State, in addition to not violating human rights, to conduct an investigation as soon as such violation is recorded, to prosecute those responsible and to compensate the victims.

The Constitution of Mali also provides that no person responsible for human rights violations shall go unpunished. Article 3 of this fundamental text condemns torture and inhuman treatment. Furthermore, the Constitution specifies that: “*any individual or agent of the State who commits such acts, either on his own initiative, or under orders, will be punished in accordance with the law*”.

In spite of these constitutional principles and their international obligations, the authorities of Mali have not, so far as Amnesty International is aware, yet carried out any independent and exhaustive enquiry into any of these allegations.

Amnesty International believes that until those responsible for human rights violations have to answer for their actions before a court, it will not be possible effectively to combat the practice of torture and the violation of basic human rights in Mali.

RECOMMENDATIONS

Amnesty International urges the authorities in Mali to put in place, both in their legislation and in practice, all the internationally-acknowledged guarantees of fairness quoted above, with a view to contributing to the protection and safety of prisoners. In addition, the organization calls on them

¹¹ General Comment No 20 (44) on Article 7, CCPR/C/21/Rev.1/Add.3 of 7 April 1992, paragraph 12.

to adhere closely to international standards in their legislation and in practice. In particular, it requests the authorities in Mali to take the following initiatives:

- To put a stop to torture and to investigate allegations of torture

Appropriate guarantees should be applied to put a stop to torture and ill-treatment inflicted on prisoners. Those responsible for such acts should be brought before the courts and the victims should be compensated. Allegations of torture should, without delay, be the subject of an impartial enquiry. No statement made under torture should be accepted as evidence in proceedings, except against the person accused of torture to establish that a statement has been made.

- Accession to international instruments

Amnesty International recommends that Mali become a Party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- To guarantee the separation of the authorities responsible for detention and those responsible for investigation

To safeguard against torture and ill-treatment, the authority responsible for detention should be distinct from the authority responsible for investigation. Each detention center should be monitored by an authority other than the one which manages it.

- To put a stop to arbitrary arrests

The authorities responsible for making arrests must immediately inform the persons they detain of the reason for their arrest and any charges against them. The authorities must also give all detained persons access to the documents concerning their arrest, pursuant to principle 12 of the Body of Principles.

- Provide redress in the case of arbitrary arrest or detention

Anyone who had been arbitrarily arrested or detained has the right to obtain redress. Paragraph 5 of Article 9 of the ICCPR expressly mentions this right, which is formulated implicitly in Principle 35 of the Body of Principles.

- Enable prisoners to be brought before a magistrate without delay

All detainees must be brought before a judicial authority without delay in the presence of their lawyer. This authority must be empowered to decide on the lawfulness and merits of the detention, and on the treatment of the detainee. Prisoners must be able at any time to request a review by the judiciary of the merits of their detention, and of any decision of a prosecutor which prevents them from seeing their relatives, lawyers or doctors. These guarantees are set out in Article 9, paragraph 3 of the ICCPR and in Principles 11 and 37 of the Body of Principles. Judges who renew detention orders must be independent of the police and the prosecuting authorities.

- Try prisoners within a reasonable time or release them

All political prisoners should be released, unless they are charged with a recognizable criminal offence and given a fair trial within a reasonable time.

- Organize training in international standards on human rights

The training of officials involved in the administration of justice must clearly lay emphasis on the provisions of international treaties on human rights and other standards concerning such rights, as well as the obligations arising from them. The training of all law enforcement officials must include standards which guarantee the basic rights they have a duty to protect. It is the responsibility of the Malian authorities to ensure that such training is provided and to monitor its results.