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From Words to Deeds: A Research Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms

The National Movement for the Liberation of Azawad
(Mouvement National de Libération
de l'Azawad, MNLA), Mali

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LIST OF ACRONYMS AND ABBREVIATIONS

AP II	1977 Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflict, 8 June 1977
AQIM	Al-Qaeda in the Islamic Maghreb
AMDH	Association Malienne des Droits de l'Homme
ANSA	Armed non-state actor
ATNMC	Alliance Touareg du Nord Mali pour le Changement
CMA	Coordination des Mouvements de l'Azawad
FIDH	Fédération internationale des ligues des droits de l'homme
GATIA	Groupe Autodéfense Touareg Imghad et Alliés
HCUA	Haut Conseil pour l'Unité de l'Azawad
HRW	Human Rights Watch
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IED	Improvised explosive device
IHL	International humanitarian law
IHRL	International human rights law
International Commission of Inquiry	International Commission of Inquiry for Mali
JNIM	Jamā'at nuṣrat al-islām wal-muslimīn
MAA	Mouvement Arabe de l'Azawad
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali

MNA	Mouvement National de l'Azawad
MNJ	Mouvement des Nigériens pour la Justice
MNLA	Mouvement National de Libération de l'Azawad
MUJAO	Mouvement pour l'Unité et le Jihad en Afrique de l'Ouest
NGO	Non-governmental organization
NIAC	Non-international armed conflict
OHCHR	Office of the United Nations High Commissioner for Human Rights
Ouagadougou preliminary agreement	Preliminary agreement on the presidential elections and inclusive peace talks in Mali signed in Ouagadougou on 18 June 2013
Peace and reconciliation agreement	Agreement for peace and reconciliation in Mali negotiated in Algiers and signed on 15 May and 20 June 2015 in Bamako
Plateforme	Plateforme des Mouvements du 14 Juin 2014 d'Alger
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
WFP	World Food Programme

EXECUTIVE SUMMARY

This case study has been conducted as part of the research project on armed non-state actors' (ANSAs') practice and interpretation of international humanitarian law (IHL), led by the Geneva Academy of IHL and Human Rights and Geneva Call, in collaboration with the American University in Cairo and the Norwegian Refugee Council (NRC).

From a legal perspective, while ANSAs are bound by IHL, how they actually perceive, understand and act upon their obligations has remained insufficiently explored. Through a comparative analysis of selected norms, the research project aims to advance understanding of ANSAs' perspectives and behaviour, enhance strategies to promote their compliance with IHL as well as inform future international law-making processes.

While making reference to other ANSAs active in Mali, the present study focuses on the case of the Mouvement National de Libération de l'Azawad (National Movement for the Liberation of Azawad, MNLA), a largely Tuareg ethnic independentist movement that has been engaged in armed conflict against the Malian Government and other ANSAs since 2012. The study is based on a thorough analysis of MNLA public statements, internal regulations, agreements and commitments.

In addition, an extensive desk review of relevant literature was conducted, notably reports from the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), the Office of the High Commissioner for Human Rights (OHCHR), the International Commission of Inquiry for Mali, as well as human rights NGOs documenting IHL violations allegedly committed by the MNLA. The study is also based on semi-structured interviews with MNLA officials conducted face-to-face or remotely. MNLA officials include the Secretary-General and other members of the leadership, military commanders, spokespersons as well as legal advisers and human rights focal points. Selected experts were also interviewed to contextualize the findings.

Key findings include:

- The MNLA has spelled out its standards of behaviour and intention to respect IHL and human rights since the outbreak of the conflict. Its founding organizational documents and military doctrine reflect key rules of the law of armed conflict. A number of references to IHL issues (such as humanitarian access, the provision of health care and education) are also included in the ceasefire and peace agreements signed with the Government of Mali in 2013 and 2015 respectively. In addition, as part of a larger alliance known as the Coordination des Mouvements de l'Azawad (Coordination of Movements of Azawad, CMA), the MNLA has undertaken formal commitments with the UN to end and prevent child recruitment and sexual violence. Overall, we found no principled disagreement of the MNLA with international standards. In some instances, MNLA policy goes beyond what IHL requires, for example with regards to landmines (a total ban on both antipersonnel and anti-vehicle mines) or the recruitment and association of children with armed forces (the prohibition of under 18-year-olds). In other instances, however, the MNLA's position on or interpretation of some rules, such as the use of government buildings for military purposes, is problematic.
- In our analysis, several factors explain this broad acceptance of IHL. First, MNLA values, local norms and customs largely coincide with commonly agreed rules of behaviour. In particular, many officials interviewed in the course of this study referred to the Tuareg traditional code of warfare, called *Achak*, which the leadership used to promote respect for IHL among the foot soldiers. Another factor is the MNLA's actual aims and ideology. The MNLA is a secular nationalist movement that has been fighting for the rights of the 'Azawad people'. In this sense, it has a vested

interest in showing its constituency and the international community that it cares about its human rights record. This has been vital to enhance its credibility as a 'liberation movement' and to gain support for its 'cause'. Finally, the leadership structure of the group has also played a central role. Much of the military command is made up of professional officers formerly serving in the armed forces of Libya and/or Mali. The military experience and training of these officers, including in IHL, have been instrumental in the establishment of an internal code of conduct to control the fighters' behaviour. The MNLA leadership realized that potential IHL violations may damage the movement's reputation, confuse the MNLA with 'terrorist groups' and lead to potential prosecutions by the International Criminal Court. To avoid this, it has been able to rely on the activism of human rights and legal advisers inside the movement, as well as international lawyers, who have all helped guide MNLA policy.

practice, but the sequence of events suggests that the MNLA brought them in rapidly after the capture of Timbuktu and Gao in March/April 2012 and public reports of abuses released by human rights NGOs.

- To be sure, despite its stated adherence to IHL and actual implementing measures (such as the evacuation and immediate release of wounded soldiers), the MNLA has faced serious compliance issues. The International Commission of Inquiry for Mali and other various sources have documented numerous IHL violations, including cases of murder of persons not participating in hostilities, sexual abuse, ill-treatment of detainees, pillaging and attacks against protected property, particularly in the early months of the conflict between January and April 2012. However, except for pillaging and the recruitment and association of children between 15 and 18 years old, no systematic or widespread contrary practice has been found. MNLA officials have acknowledged that isolated incidents occurred but, according to them, none of these violations reflect official policy. They further explained that in the early stages of the conflict, the MNLA faced command and control challenges and took corrective actions to enforce behaviour standards. It is difficult to ascertain to what extent these measures were implemented in

1. INTRODUCTION

This case study has been conducted as part of the research project on armed non-state actors' (ANSAs') practice and interpretation of international humanitarian law (IHL),¹ led by the Geneva Academy of IHL and Human Rights and Geneva Call, in collaboration with the American University in Cairo and Norwegian Refugee Council (NRC).²

This research project builds on three interrelated trends. First, most armed conflicts today are non-international in character, involving ANSAs fighting government forces or other armed groups.³ In many countries, ANSAs play prominent roles and have a direct impact on civilian populations, especially in territories under their control. In this context, the international community has called for a more

sustained engagement with ANSAs to ensure the delivery of humanitarian aid and to enhance IHL compliance.⁴ Second, from a legal perspective, though it is undisputed that ANSAs are bound by IHL, how they actually view, interpret or implement their international obligations has remained insufficiently explored by legal scholars.⁵ While a number of studies have analysed states' practice, notably the 2005 study by the International Committee of the Red Cross (ICRC) on customary IHL,⁶ a comprehensive analysis of binding humanitarian norms from the perspective of ANSAs has yet to be made. Only then will one 'know how the existing rules and possible future development of IHL ... would change if they were taking the perspective of non-State armed groups into account'.⁷ Finally, the state-centric approach to ANSAs' international obligations may explain to some extent their lack of ownership of, and compliance with, international law. Indeed,

¹ The research project focuses on international humanitarian law (IHL). Nevertheless, certain rules related to human rights, such as gender equality or the 18-years age limit for the recruitment and participation of children in hostilities, have been addressed in the interviews. Indeed, even if the issue of human rights obligations of armed non-state actors (ANSAs) is controversial, ANSAs themselves often refer to human rights in their policies and regulations. This is a good indication of what some ANSAs feel bound by and thus deserves to be considered in the analysis, notably because it can be indicative of what could be included in future law-making processes.

² For further information on the project, including definitions of ANSAs and practice, see A. Bellal, P. Bongard and E. Heffes, *From Words to Deeds: A Research of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms*, Research Brief, Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy), December 2019, <https://www.geneva-academy.ch/joomlatools-files/docman-files/From%20Words%20to%20Deeds%20A%20Research%20of%20Armed%20Non-State%20Actors%E2%80%99%20Practice%20and%20Inter.pdf> (last accessed 29 December 2020).

³ See A. Bellal (ed), *The War Report: Armed Conflicts in 2018*, Geneva Academy, 2019, p.19, <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%202018.pdf> (last accessed 29 December 2020); International Committee of the Red Cross (ICRC), *The Roots of Restraint in War*, 2018, pp 13–14.

⁴ United Nations Security Council (UNSC), Protection of Civilians in Armed Conflict: Report of the Secretary-General, UN doc S/2019/373, 7 May 2019, §66 (affirming that

'[e]nhancing respect for the law requires changing the behaviour and improving the practices of non-State armed groups. Key to this is principled and sustained engagement by humanitarian and other relevant actors that is, moreover, strategic and based on a thorough analysis of the group(s) concerned').

⁵ Several authors have referred to this knowledge gap. See, among others, M. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edward Elgar Publishing, 2019; H. Jo, *Compliant Rebels: Rebel Groups and International Law in World Politics*, Cambridge University Press, 2015; D. Petrasek, *Ends & Means: Human Rights Approaches to Armed Groups*, International Council on Human Rights Policy, 2000.

⁶ J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, Cambridge University Press, 2005. See also the ICRC Customary IHL Database (ICRC CIHL Database), <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home> (last accessed 29 December 2020). It should be noted that the 2005 ICRC study does not focus entirely on issues of compliance with IHL, but on the identification of customary norms within this realm. Of course, an argument can be made that the practice and *opinio juris* needed for the latter serves as an indicator to measure the level of acceptance of, and respect for, the applicable legal framework. A study on the correlation between both is beyond the scope of this case study.

⁷ M. Sassòli, 'Taking Armed Groups Seriously: Ways to Improve their Compliance with International Humanitarian Law', 1 *Journal of International Humanitarian Legal Studies* 1 (2010) p 19.

there is an increasing sense that ANSAs' compliance with international law is likely to improve if they are involved in the development and implementation of the rules that are binding upon them.⁸

Drawing on these premises, the research project aims to address these gaps and increase our knowledge of ANSAs' practice and interpretation of selected international humanitarian norms, anchored notably in IHL.⁹ It focuses on the following main questions:

- Are ANSAs familiar with these norms and how do they understand them?
- Do they agree with their content?
- What factors influence their policy and practice?
- Are there new issues that ANSAs would be willing to regulate in the future?

Through a comparative analysis of ANSAs' views, the research will provide a better sense of how ANSAs perceive IHL, which norms are more accepted or disputed, more respected or disregarded, and why. It will also shed light on the causes of violations or, *a contrario*, the factors that are conducive to compliance or restraint. Altogether, it is expected that the results of the research will advance understanding of ANSAs' perspectives and behaviour, enhance strategies

to promote their compliance with IHL as well as inform future international law-making processes.

Drawing notably on Geneva Call's Their Words database (www.theirwords.org), the research will entail a global analysis of various sources used by ANSAs that reflect their position on international law. Documentary sources include unilateral declarations, public statements, codes of conduct, command orders, penal codes, legislation, decrees, memoranda of understanding, special agreements, as well as peace and ceasefire agreements.¹⁰ The second method of the research will involve an in-depth investigation – in the form of case studies – of the practice and interpretation of IHL by selected ANSAs. The case studies have been selected according to the following criteria: 1) the existence of a situation of armed conflict entailing the applicability of IHL; 2) diversity in geographical scope and types of ANSAs, in terms of size, organizational structure, motivations and territorial control; 3) access to a variety of sources (both primary and secondary) to allow the cross-checking of information.

The present study focuses on the case of the Mouvement National de Libération de l'Azawad (National Movement for the Liberation of Azawad, MNLA). The MNLA is an armed opposition movement¹¹ that has been engaged in armed conflict against the Malian Government and other ANSAs since 2012. Though part of a

⁸ Ibid; S. Sivakumaran, 'Implementing Humanitarian Norms Through Non-State Armed Groups', in H. Krieger (ed), *Inducing Compliance with International Humanitarian Law: Lessons From the African Great Lakes Region*, Cambridge University Press, 2015; S Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, 2012.

⁹ The research examines ANSAs' perspectives on the following core norms: i) protection of civilians from attacks; ii) the prohibition of sexual violence and gender discrimination; iii) the prohibition of using and recruiting children in hostilities; iv) the protection of education; v) humanitarian access; vi) protection of health care; vii) the prohibition of forced displacement; viii) use of landmines and other explosive devices; ix) detention, fair trial and administration of justice; x) the special protection of certain objects, such as cultural property and the environment. The choice of these norms has been dictated by three factors: First, the violation of these norms represents a current challenge identified by various humanitarian actors when dealing with ANSAs. The second factor is related to ANSAs' perceptions of these norms, as some of them represent the

most contentious and challenging humanitarian provisions from their perspective. Finally, some of the selected norms may be part of future legal developments.

¹⁰ An analysis of the legal value of each of these sources will be conducted during the project and made available on the companion website of the research project, www.words2deeds.org.

¹¹ For the purpose of this research, 'armed opposition movements' typically aim at contesting the power and legitimacy of a ruling government of a state. They can also fight for the secession of a region or for the end of an occupational or colonial regime. In this sense, they pursue a political, mostly social-revolutionary or ethno-nationalistic agenda. See U. Schneckener, 'Armed Non-State Actors and the Monopoly of Force', in A. Bailes, U. Schneckener and H. Wulf (eds), *Revisiting the State Monopoly on the Legitimate Use of Force*, Policy Paper no 24, Geneva Centre for the Democratic Control of Armed Forces, 2006, <http://www.wulf-herbert.de/DCAFP24Wulf.pdf> (last accessed 29 December 2020).

larger alliance, known as the Coordination des Mouvements de l'Azawad (Coordination of Movements of Azawad, CMA) since 2014, it is treated separately in this study. As indicated by its name, the CMA is a 'coordination' between three movements, the MNLA, the Haut Conseil pour l'Unité de l'Azawad (High Council for the Unity of Azawad, HCUA) and the Mouvement Arabe de l'Azawad (Arab Movement of Azawad, MAA), which was created in June 2014 with the aim of facilitating their participation in the peace talks.¹² Despite the military coordination and the recently agreed merging process, the CMA does not yet have a unified command structure of the armed forces. Hence, this study considers the MNLA as a distinct ANSA within the meaning of IHL. That said, MNLA policy reflects CMA policy on a number of IHL issues. For example, the CMA (on behalf of the three movements) issued in 2017 a unilateral communiqué on preventing and responding to conflict-related sexual violence.¹³ The same year, it also signed an Action Plan with the UN to end and prevent child recruitment and use, sexual violence and all other grave violations against children.¹⁴ This is interesting to note as the CMA includes movements of different ideological backgrounds, notably the HCUA, a splinter faction of the Islamist group Ansar Dine.

The case study begins with an overview of the methodology used for the research (Section 2). Section 3 includes basic information about the MNLA, notably its origins, goals and organizational structure, as well as key historical developments. It also addresses the applicable

legal framework (Box 1). Sections 4 and 5 examine, respectively, the MNLA's policy and practice with regard to IHL and selected IHL norms. This also includes comparison with the stands of other ANSAs which have operated in the region, including Ansar Dine, the Mouvement pour l'Unité et le Jihad en Afrique de l'Ouest (Movement for Oneness and Jihad in West Africa, MUJAO) and the Mouvement des Nigériens pour la Justice (Niger Movement for Justice, MNJ) (Boxes 3 and 4). Section 6 offers some conclusions and recommendations.

This study does not aim to provide a full account of MNLA behaviour nor of its humanitarian consequences. Rather, it seeks to provide an insight into its policy on and interpretation of certain IHL rules from a legal perspective. Little substantive research has been conducted on this aspect and it is hoped that this case study will make a valuable contribution.

2. METHODOLOGY

The methodology used for this case study has consisted of two complementary steps. The first entails the analysis of various documents collected during the research which reflect MNLA policy on international humanitarian norms, such as its military code of conduct and commitments with the UN (see Box 2). The analysis was guided by the following questions: why did the MNLA undertake to respect these norms and what references (legal, political, cultural, religious) are included in its

¹² Diakonia, *Legal Classification of the Situation in Mali and Applicable International Law*, Legal Brief, 2019, p 10, https://www.diakonia.se/contentassets/2580bf38f0c84e78b256973f1e77d9b1/legal-classification-of-the-situation-in-mali_web.pdf (last accessed 29 December 2020). The charter of the Coordination des Mouvements de l'Azawad (CMA) states that each movement will maintain its personality, notably its internal management, until full unity. *Charte des Mouvements de l'Azawad*, 18 October 2014. On file with the researchers. In late October 2014, a military coordination was agreed between the three movements. See *Mouvement National Pour la Libération de l'Azawad (MNLA), La coordination militaire de l'Azawad est opérationnelle*, 28 October 2014, <http://www.mnlamov.net/actualites/34-actualites/393-la-coordination-militaire-de-lazawad-est-operationnelle.html> (last accessed 17 February 2021).

¹³ Communiqué unilatéral de la Coordination des Mouvements de l'Azawad (MNLA, HCUA, MAA) sur la prévention et la lutte contre les violences sexuelles liées au conflit, 10 July 2017, <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/02/Communiqu%C3%A9-Unilateral-CMA-2017.pdf> ((last accessed 17 February 2021).

¹⁴ Plan d'action entre la CMA (Coordination des Mouvements de l'Azawad) et l'Equipe Spéciale Pays des Nations Unies pour la surveillance et la communication de l'information sur les six graves violations contre les enfants au Mali pour la lutte contre le recrutement et l'utilisation d'enfants et les viols et autres formes de violence sexuelles contre les enfants par la CMA, ainsi que les personnes ou groupes qui leur sont associées. On file with the researchers. See <https://childrenandarmedconflict.un.org/tools-for-action/action-plans/> (last accessed 17 February 2021).

commitments? Are there any references to international treaties? Did the MNLA change its views with respect to specific rules during the conflict? Are there any commitments that go beyond the applicable law? Are there any correlations between how the MNLA is organized and its goals and the content, wording and references of the commitments made? MNLA documents are important benchmarks against which the movements' policy can be measured.

In addition, an extensive desk review of relevant literature was also undertaken, primarily reports of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), OHCHR, the UN Secretary-General on conflict-related sexual violence and children and armed conflict, the International Commission of Inquiry for Mali (International Commission of Inquiry), as well as human rights NGOs. The goal of this initial analysis of primary and secondary sources was to have a general overview of the norms that the MNLA had agreed or committed to respect as well as those that had been the most problematic in terms of compliance.

Secondly, the case-study has also been informed by semi-structured interviews with 11 MNLA officials, including one female representative, conducted face-to-face in Bamako and Kidal between April and December 2019 or remotely (via telephone or video link). The MNLA officials interviewed are members of the leadership, both political and military, and include the Secretary-General, Bilal Ag Acherif, military commanders, spokespersons as well as human rights representatives and legal advisers to the movement. Moreover, the MNLA military staff, under the supervision of Mohamed Ag Najim, 'chargé de la défense' of the MNLA and CMA, provided a written response to follow-up questions asked by the researchers for further clarification and information. The interviewees were selected based on their knowledge of MNLA policy and practice regarding IHL. The gender dimension was an essential element that the researchers considered when deciding who to interview. Some of the interlocutors were interviewed twice during the research process in order to triangulate information shared by others. To reduce bias, individual interviews

followed a standardized questionnaire. All interviewees were informed of the purpose of the interview and the ways in which the information would be used.

The researchers also met with representatives of relevant external stakeholders, such as MINUSMA, UNICEF, the International Commission of Inquiry, the ICRC, the Commission Nationale des Droits de l'Homme (CNDH), Human Rights Watch (HRW), the Association Malienne des Droits de l'Homme (AMDH) and Groupe de Recherche, d'Étude, de Formation Femme-Action (GREFFA). While some of these exchanges are explicitly referred to in this case study, others have only informed its content and the reviewed literature.

Conducting research of this nature is inherently difficult and there are a number of factors that may have limited or influenced the findings. First, the responses provided by MNLA officials during the interviews must be situated within the dialogue that Geneva Call has had with this movement since 2012. Although the researchers explained that interviews were voluntary and not tied to any benefit, it is important to acknowledge that this prior relationship may have in some ways influenced what the MNLA officials said. On the other hand, Geneva Call's engagement with the MNLA provided an invaluable source of information, access to the leadership and the scope to ask sensitive questions. Moreover, the study's focus may have encouraged MNLA officials to speak more positively about the movement's policy and practice, to inflate or underplay specific events. To mitigate these limitations, the researchers have tried to cross-check the statements made by the MNLA with external sources to contextualize them and thus provide a more nuanced picture of the events on the ground.

3. MNLA PROFILE

The MNLA is a Tuareg-dominated secular independentist movement formed in October 2011 as a result of the merger of the Mouvement National de l'Azawad (MNA), a movement of students and activists, and remnants of the Alliance Touareg du Nord Mali pour le

Changement (ATNMC) led by the late Ibrahim Ag Bahanga.¹⁵ It was bolstered by the return of heavily armed Tuareg fighters of the Libyan army after the collapse of the Muammar Gadhafi regime.¹⁶ Numerous Malian army defectors also joined the MNLA's ranks.¹⁷

The MNLA initially aimed to obtain self-determination for the 'Azawad', a territory considered its homeland in northern Mali.¹⁸ It claimed grievances related to previous Tuareg rebellions and denounced the non-respect by the central government of the Algiers Accord signed in 2006, in particular poor governance, impunity for past abuses and the political and economic marginalization of the north to the benefit of southern dominance since independence.¹⁹

The MNLA has an organizational structure composed of several bodies:

- An executive committee chaired since its inception by Bilal Ag Acherif, who serves as its Secretary-General
- A military staff under the command of Mohamed Ag Najim, a former colonel in the Libyan army
- A revolutionary council, which is the movement's legislative body
- A consultative council, made up of

traditional and religious leaders, cadres and women,

- Regional bureaus

The general congress is the supreme body of the movement and meets every four years.²⁰

Although it is largely composed of ethnic Tuaregs, the MNLA has presented itself as a 'political and military movement representing all the peoples of Azawad'. While the MNLA claimed to have more than 9,000 fighters in 2018,²¹ they were estimated at 2,000 by other sources.²² The MNLA's stronghold is Kidal, but the movement has also operated in the regions of Ménaka, Timbuktu, Gao and partially Mopti and Ségou.

The MNLA launched its first armed attacks against government forces on 17 January 2012 in Ménaka.²³ The uprising quickly spread throughout northern Mali alongside Ansar Dine, a primarily Tuareg Islamist group, and al-Qaeda in the Islamic Maghreb (AQIM), already active in the region. Taking advantage of the power vacuum created by a military coup in Bamako, the three ANSAs gained control of virtually all of the northern territory, including the largest cities (Timbuktu, Kidal and Gao). On 6 April, in a move to contest Mali's sovereignty in the north, the MNLA unilaterally proclaimed the

¹⁵ For an account on the origins of the MNLA, see D. Chebli, *Du MNA au MNLA: le passage à la lutte armée* (Noria, 10 June 2014, <https://www.noria-research.com/fr/du-mna-au-mnla-le-passage-a-la-lutte-armee/> (last accessed 29 December 2020)). See also O. Ba, *Tuareg Nationalism and Cyclical Pattern of Rebellions: How the Past and Present Explain Each Other*, Working Paper no 007, Sahel Research Group, University of Florida Center for African Studies, March 2014, p 13, https://sites.clas.ufl.edu/sahelresearch/files/Ba_Tuareg-Nationalism_final.pdf (last accessed 29 December 2020).

¹⁶ I. Maïga, *Armed Groups in Mali: Beyond the Labels*, West Africa Report 17, Institute for Security Studies, June 2016, p 2.

¹⁷ MNLA, Déclaration de désertion de l'armée Malienne et d'adhésion au MNLA, 3 December 2011, <http://mnlamov.net/actualites/79-declaration-de-desertion-de-larmee-malienne-et-dadhesion-au-mnla.html> (last accessed 29 December 2020).

¹⁸ The MNLA's first communiqué, dated 16 October 2011, states: '[Le MNLA] a pour objectif de sortir le peuple de l'Azawad de l'occupation illégale du territoire azawadien par le Mali',

<https://azawadinfo.wordpress.com/2011/10/16/communique-n-1-du-mnla/> (last accessed 29 December 2020).

¹⁹ See G. Chauzal and T. van Damme, *The Roots of Mali's Conflict: Moving Beyond the 2012 Crisis*, Clingendael: Netherlands Institute of International Relations, March 2015, pp 30–38, https://www.clingendael.org/sites/default/files/pdfs/The_roots_of_Malis_conflict.pdf (last accessed 29 December 2020). See also Ba, *Tuareg Nationalism*, supra fn 15.

²⁰ Statut et Règlement du MNLA, p 15. On file with the researchers.

²¹ Interview with MNLA Secretary-General, 13 January 2021.

²² UNSC, Report of the International Commission of Inquiry for Mali (19 June 2020), UN doc S/2020/1332, 29 January 2021, §93.

²³ P.-F. Naudé, 'Nord-Mali : 'plusieurs morts' dans des affrontements avec des rebelles touaregs', *Jeune Afrique*, <https://www.jeuneafrique.com/177681/politique/nord-mali-plusieurs-morts-dans-des-affrontements-avec-des-rebelles-touaregs/>.

independence of 'Azawad'²⁴ and, on 26 May, announced an alliance with Ansar Dine to establish an 'Islamic Republic of Azawad'.²⁵ The deal, which was an attempt to settle the differences between the two Tuareg groups,²⁶ crumbled a few days later. On the one hand, some political leaders of the MNLA disavowed the agreement, considering that the movement's independentist, secular agenda was incompatible with Ansar Dine's aims (a united Malian state governed by Sharia law). On the other hand, Ansar Dine, by advancing towards the south, entered areas that were more favourable to its aspirations than the separatism promoted by the MNLA.²⁷ The first clashes between the two movements occurred in June 2012.²⁸ On 26 June 2012, the tension came to all-out combat in Gao between the MNLA and MUJAO, an offshoot of AQIM. By mid-July, Ansar Dine, supported by AQIM and MUJAO, evicted the MNLA from all major towns in the north, including Gao where it had its headquarters.²⁹

In January 2013, faced with the rapid advance of the Islamist groups towards Bamako, the Malian Government resolved to request immediate military assistance from France, which responded by deploying Operation Serval, followed and extended by Operation Barkhane. The MNLA, which had dropped its separatist

claims³⁰ came out in support of France's intervention.³¹

At the same time, peace talks were resuming between the Government of Mali and MNLA, as well as HCUA. The talks led to the signing of the Preliminary agreement on the presidential elections and inclusive peace talks in Mali signed in Ouagadougou on 18 June 2013 (Ouagadougou preliminary agreement), which provided for a ceasefire and measures that would enable presidential elections to be held.³² The agreement also created the political conditions for the deployment, under UN Security Council Resolution 2100, of MINUSMA, which started in July 2013.³³ The truce broke down rapidly, however. In September, the MNLA, HCUA and MAA suspended negotiations with Bamako, faced with the government's refusal to discuss the autonomy of 'Azawad'.³⁴ Clashes finally resumed in May 2014, when the MNLA drove the Malian armed forces out of Kidal and, repelling an army counter-offensive, took control of Ménaka, Léré and other cities in the north.³⁵ Following the retreat of the government forces from Kidal, Tuaregs of the Imghad tribe announced the creation of the Groupe d'Autodéfense Touareg Imghad et Alliés (Imghad Touareg and Allied Self-Defense Group,

²⁴ MNLA, Déclaration d'indépendance de l'Azawad', 6 April 2012, <http://mnlamov.net/actualites/169-declaration-dindependance-de-lazawad.html> (last accessed 29 December 2020).

²⁵ 'Mali Tuareg and Islamist Rebels Agree on Islamist State', *BBC News*, 27 May 2012, <https://www.bbc.com/news/world-africa-18224004>.

²⁶ International Crisis Group, *Mali: Avoiding Escalation*, Africa Report no 189, 18 July 2012, <https://d2071andvip0wj.cloudfront.net/189-mali-avoiding-escalation.pdf> (last accessed 29 December 2020).

²⁷ A. M. Amoroso, 'Mali: The Overlap and Combination of Separatist, Jihadist and Intercommunal Conflicts', in Bellal, *The War Report*, supra fn 3.

²⁸ 'Mali Rebel Groups 'Clash in Kidal'', *BBC News*, 8 June 2012, <https://web.archive.org/web/20121223052848/http://www.bbc.co.uk/news/world-africa-18377168>.

²⁹ 'Mali Islamists 'Oust' Tuaregs From Timbuktu', *News24*, <https://www.news24.com/News24/Mali-Islamists-oust-Tuaregs-from-Timbuktu-20120629>.

³⁰ MNLA, Communiqué No 52, Déclaration du MNLA, 11 February 2013, <http://www.mnlamov.net/actualites/257-communication-nd-52-declaration-du-mnla.html> (last accessed 17 February 2021).

³¹ 'Mali Crisis: Key Players', *BBC News*, <https://www.bbc.com/news/world-africa-17582909>.

³² Accord préliminaire à l'élection présidentielle et aux pourparlers inclusifs de paix au Mali (Ouagadougou preliminary agreement), 18 June 2013, https://peacemaker.un.org/sites/peacemaker.un.org/files/ML_130618_AccordElectionsDialogueInclusif.pdf (last accessed 29 December 2020).

³³ United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), 'History', <https://minusma.unmissions.org/en/history> (last accessed 29 December 2020).

³⁴ P.-F. Naudé, 'Mali : les négociations avec les rebelles achoppent sur l'autonomie du Nord', *Jeune Afrique*, <https://www.jeuneafrique.com/168211/politique/mali-les-negociations-avec-les-rebelles-achoppent-sur-l-autonomie-du-nord/>.

³⁵ Amoroso, 'Mali', supra fn 27.

GATIA).³⁶ The GATIA presented itself as a self-defence movement and joined the Plateforme des Mouvements du 14 Juin 2014 d'Alger (Plateforme), a coalition of loyalist ANSAs formed in June 2014 in reaction to the creation of the CMA. Clashes multiplied between the armed groups of the CMA and those of the Plateforme, which were both striving to exert pressure in the peace negotiations that had resumed in Algiers under the auspices of the Government of Algeria. An Agreement for Peace and Reconciliation in Mali (Peace and reconciliation agreement) was finally reached in June 2015, granting more autonomy to the north, providing for CMA fighters' reintegration in the national security forces and promising better representation for minorities.³⁷

Armed confrontations did not end between the CMA and other ANSAs. In December 2015, AQIM assaulted the MNLA base at Talhandak, killing at least 10 MNLA fighters.³⁸ On 20 September 2017, after months of escalating tensions, the CMA and the Plateforme signed a 'document of commitments', providing for, *inter alia*, a definitive cessation of hostilities.³⁹ Since that agreement, no serious clashes have been reported between the two coalitions.

In contrast, progress in the implementation of the 2015 Peace and reconciliation agreement's provisions has been slow, in particular the

process of disarmament, demobilisation and reintegration.⁴⁰ In February 2020, mixed units of a reconstituted army battalion, consisting of regular forces and former fighters of the CMA, including the MNLA, and the Plateforme were deployed in Kidal. Similar units are expected to be deployed in other northern Malian cities such as Ménaka, Gao and Timbuktu but, to date, the CMA continues to run some areas and perform security tasks.⁴¹ In parallel, following recommendations made at the congresses of each movement (the HCUA, MNLA and MAA) between October 2019 and January 2020, the CMA announced that it has started the process of merging the three movements into one single politico-military organization.⁴²

BOX 1: INTERNATIONAL LAW APPLICABLE TO THE MNLA

Since 2012, the MNLA has been engaged in non-international armed conflicts (NIACs) regulated by IHL against the Malian Government and other ANSAs.⁴³

The Agreement for Peace and Reconciliation in Mali signed in 2015 in Algiers between the CMA (which the MNLA is part of) and the government did not put an end to the application of IHL as the CMA still controls territory in the northern part of the

³⁶ Ibid.

³⁷ Accord Pour la Paix et la Réconciliation au Mali – Issu du Processus d'Alger (Peace and reconciliation agreement), 2015, https://peacemaker.un.org/sites/peacemaker.un.org/files/Accord%20pour%20la%20Paix%20et%20la%20R%C3%A9conciliation%20au%20Mali%20-%20Issu%20du%20Processus%20d%27Alger_0.pdf (last accessed 29 December 2020).

³⁸ European Council on Foreign Relations, 'Mouvement National Pour la Libération de l'Azawad (MNLA)' https://ecfr.eu/special/sahel_mapping/mnla (last accessed 29 December 2020).

³⁹ UNSC, Report of the Secretary-General on the Situation in Mali, UN doc S/2017/811, 28 September 2017, §5.

⁴⁰ On the implementation of the Peace and reconciliation agreement, see A. Bencherif, 'Le Mali post ' Accord d'Alger ' : une période intérimaire entre conflits et négociations', 150 *Politique africaine* 2 (2018), <https://www.cairn.info/revue-politique-africaine-2018-2-page-179.htm> (last accessed 29 December 2020).

⁴¹ B. Ahmed, 'Mali : la Coordination des mouvements de l'Azawad impose des nouvelles règles aux habitants de Kidal', *Jeune Afrique*, 16 February 2019, <https://www.jeuneafrique.com/736064/politique/mali-la-coordination-des-mouvements-de-lazawad-impose-des-nouvelles-regles-aux-habitants-de-kidal/>.

⁴² Déclaration de coordination des mouvements Azwadi (CMA), 19 March 2020, <https://mnlamov.net/actualites/604-declaration-de-coordination-des-mouvements-azwadi-cma-18-19-mars-2020.html> (last accessed 29 December 2020).

⁴³ According to the case law, there are two cumulative requirements for a non-international armed conflict (NIAC) to qualify as such and to trigger the applicability of IHL. First, there must be 'protracted armed violence' and second, violence must be conducted by government forces and at least one organized armed group (or between such groups within a state or across a state's borders). See ICTY, *The Prosecutor v Dusko Tadić a/k/a 'Dule'*, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1, 2 October 1995, §70, <https://www.icty.org/x/cases/tadic/acdec/en/51002.htm> (last accessed 29 December 2020). These conditions are fulfilled in the present case.

country.⁴⁴ In addition, intense hostilities between the MNLA and other ANSAs, notably the GATIA, took place after the Peace and reconciliation agreement.

In terms of applicable law, both the Malian armed forces and ANSAs, including the MNLA, are bound to respect common Article 3 of the 1949 Geneva Conventions. Moreover, since the MNLA (as part of the CMA) controls territory and Mali is a party to the 1977 Additional Protocol II (AP II), the provisions of this treaty are applicable, even if hostilities between the government forces and the MNLA have ceased since 2015. All parties to the conflict must also respect customary IHL and other relevant applicable treaties.

For more information on the applicable law in Mali, see www.rulac.org.

4. MNLA IHL POLICY AND PRACTICE

Since its creation, the MNLA has expressed its position on IHL, as well as on human rights norms, in various internal and external documents. Article 21 of its founding statute reads:

The Movement is committed to respecting and adopting humanitarian principles concerning the protection of civilians and their property in the event of armed conflict, regardless of their ethnic, political or religious affiliation. It treats and protects prisoners of war in accordance with the

⁴⁴ The determination of the end of a NIAC, and therefore the end of the applicability of IHL, is challenging. The 2016 ICRC Commentary on the Geneva Conventions of 1949 specifies that a 'NIAC would end if one of the parties ceases to exist or in case of a lasting cessation of armed confrontations without real risk of resumption, despite the existence of a ceasefire'. See ICRC, 2016 Commentary on Art 3 of the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, §§489–491, <https://ihl.databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDF490736C1C1257F7D004BA0EC> (last accessed 29 December 2019). In the present case, despite the 2015 Peace and reconciliation agreement, the MNLA continues to exist and armed confrontations with other ANSAs did not cease after the agreement. As a consequence, IHL remains applicable to the MNLA.

*principles of Islam and international humanitarian law until their release.*⁴⁵

In the declaration of independence⁴⁶ issued on 6 April 2012, the MNLA refers to the principles of international law and declares its total adherence to the UN Charter. Similarly, in its 'Political Platform' dated September 2012, the MNLA states that it 'adheres and is committed to respect all human rights conventions, particularly the 1949 Geneva Conventions and their additional protocols'.⁴⁷ On 10 October 2012, the MNLA head of information and communication, signed, on behalf of the movement, an action plan entitled 'Respecting the Laws of the War'.⁴⁸ In this unilateral commitment, the MNLA expresses concern over the fact that 'innocent civilians may have been subjected to attacks and religious or historic monuments may have been destroyed by parties to the armed conflict' and undertakes to implement the following actions:

1. Cooperate with the International Criminal Court (ICC) in its preliminary examination into alleged crimes committed in Mali
2. Engage with Geneva Call, submit Deeds of Commitment and invite Geneva Call to monitor their implementation
3. Provide written and/or oral instructions to its military

⁴⁵ Art 21, Statut et Règlement du MNLA.

⁴⁶ 'l'Etat de l'Azawad est né...', *Tamazgha*, 6 April 2012, <http://tamazgha.fr/L-Etat-de-l-Azawad-est-ne.html>;

MNLA, 'Déclaration d'indépendance de l'Azawad', supra fn 24.

⁴⁷ MNLA, Political Platform, http://www.tamazgha.fr/IMG/pdf/MNLA_Platform_englis_h.pdf (last accessed 29 December 2020).

⁴⁸ Plan d'action : respecter le droit de la guerre, présenté au Conseil de Sécurité des Nations Unies par le Mouvement National de Libération de l'Azawad, 10 October 2012, http://theirwords.org/media/transfer/doc/1_ml_mnla_2012_04-70db343c912fd1aa11a348984c3153a0.pdf (last accessed 29 December 2020).

commanders to ensure that all MNLA troops abide by IHL

4. Provide training and/or advice to MNLA military commanders to ensure that they fully appreciate IHL
5. Investigate any credible allegation of mass human rights abuses committed by MNLA troops and take appropriate action

The document was submitted to the UN Security Council through international lawyers of the (then) law firm Böhler Advocaten (hereafter MNLA lawyers), who were engaged by the MNLA to act on its behalf in relation to ‘the preliminary examination, investigations and all other action undertaken by, or related to, the ICC; and any other relevant IHL issues relating to the armed conflict in Mali’.⁴⁹ On 12 October 2012, the MNLA lawyers also wrote a letter on behalf of the MNLA to the ICC Prosecutor offering to ‘cooperate with any fair and balanced investigation into human rights abuses committed in Mali’ and ‘submit evidence and information to the ICC in due course’.⁵⁰

In the same period, the MNLA lawyers drafted a military code of conduct to give guidance to MNLA fighters on ‘the standards and behaviour that must be respected’.⁵¹ The code of conduct, which was endorsed in October 2012, ‘affirms the basic rules of warfare to which MNLA soldiers must abide’.⁵² It is based on an earlier draft in Arabic dated October 2011⁵³ and was reportedly⁵⁴ used by the military command to draft the ‘Texte organique pour l’organisation et la réglementation des forces armées du MNLA’

(Texte organique),⁵⁵ an internal document on the organization and regulation of the MNLA armed forces, approved by the MNLA Secretary-General on 15 February 2013 after the MNLA’s second general congress.⁵⁶

According to MNLA military staff, these various internal regulations stem from three factors:

[F]irst (1), the ideology of the MNLA which is a revolutionary movement of resistance and national liberation fighting for the protection of the people of Azawad in all its diversity, then (2) the military experience of the officers of the movement (military rules, military discipline, respect for international conventions, etc.) and finally (3) the experience of the movement, local customs, cultures and the reality on the ground. The people of Azawad have a long history of warfare and have developed an unwritten code of conduct that is known to the majority of the population. The goal is for everyone who bears arms under MNLA command to abide by a written code of conduct.’⁵⁷

In these internal regulations, which cover various topics such the command structure, the duty of obedience and responsibilities of the fighters, as well as disciplinary sanctions, there are also a number of provisions related to IHL rules. According to the MNLA Secretary-General, the Texte organique has been disseminated to all regional commanders, including senior officers responsible for the supervision, training and operations of MNLA forces.⁵⁸

⁴⁹ Power of Attorney, between Böhler Advocaten and the MNLA, 1 October 2012. On file with the researchers.

⁵⁰ Letter on file with the researchers.

⁵¹ Interview with MNLA former lawyer, 10 November 2019; interview with MNLA former spokesperson, 17 January 2021.

⁵² Art 1, Code de conduite militaire (MNLA military code of conduct). On file with the researchers.

⁵³ Response from MNLA military staff, 11 January 2021; interview with MNLA former commander, 15 April 2019; interview with MNLA former education and training secretary, 12 November 2019.

⁵⁴ Interview with MNLA former spokesperson, 27 August 2020.

⁵⁵ Texte organique pour l’organisation et la réglementation des forces armées du MNLA (Texte organique). On file with the researchers.

⁵⁶ Response from MNLA military staff, 11 January 2021; interview with MNLA former commander, 15 April 2019; interview with MNLA former education and training secretary, 12 November 2019.

⁵⁷ Response from MNLA military staff, 11 January 2021; interview with MNLA Secretary-General, 13 January 2021.

⁵⁸ Interview with MNLA Secretary-General, 13 January 2021.

Mouvement National de Libération de l'Azawad MNLA



Conseil de Défense et de Sécurité Etat-Major Militaire

Texte organique pour l'organisation et la réglementation des forces armées du MNLA

Préambule

Le présent texte a pour objet de définir et de préciser les conditions d'organisation et de réglementation des forces armées du Mouvement National de Libération de l'Azawad (MNLA).

Il définit les conditions de son fonctionnement, le code de conduite et le cadre de sa mission. Il précise en outre la nature du matériel, des équipements et autres biens de l'Armée ainsi que les modalités de leur utilisation et de gestion.

Il comprend :

- Un cadre organique ;
- Un règlement intérieur ;
- Un code de conduite ;
- Un mécanisme de régulation et de fonctionnement.

CHAPITRE I : cadre organique

These officers are required to ensure that IHL rules are respected during military operations, in particular in relation to 'the protection of the civilian populations, prisoners of war,⁵⁹ war wounded, vital services, cultural property and environment'.⁶⁰ They are also required to ensure that detention procedures for 'prisoners of war' are respected and facilitate humanitarian access.⁶¹ Only military operations compliant with the 'rules of war' and international conventions, the Texte organique adds, must be assigned to MNLA combatants, who are required

⁵⁹ Under the law of NIACs, there is no 'prisoner-of-war' (PoW) status. This status only exists in the context of armed conflicts between states. Under the Third Geneva Convention of 1949, certain persons, notably members of the armed forces of a state party to the conflict, enjoy PoW status, which means that they cannot be tried for the mere fact of having participated in hostilities. While certain ANSAs use this terminology for the members of armed forces they detain, it is unclear whether they are always

to respect the military code of conduct and IHL norms.⁶² Violations of the 'rules of war' are considered a 'serious offence'.⁶³

In addition to these internal regulations, the MNLA has made several commitments to abide by specific IHL and human rights norms. In particular, it signed in 2017, as part of the CMA, an Action Plan with the UN to end and prevent child recruitment and use, sexual violence and all other grave violations against children. The same year, the CMA also issued a unilateral communiqué on preventing and responding to conflict-related sexual violence.

aware of the distinction between PoWs and persons in detention in the context of a NIAC.

⁶⁰ Art 19, Texte organique.

⁶¹ Art 20, *ibid.*

⁶² Arts 46 and 47, *ibid.*

⁶³ Art 58, *ibid.*

BOX 2: KEY MNLA POLICY DOCUMENTS RELATED TO IHL AND HUMAN RIGHTS

- 2011 Statut et Règlement du MNLA
- 2012 MNLA military code of conduct, October
- 2012 Action Plan: Respecting the Laws of the War, 10 October
- 2013 Texte organique pour l'organisation et la réglementation des forces armées du MNLA, 15 February
- 2013 Ouagadougou preliminary agreement, 18 June
- 2014 Directive militaire à l'intention des troupes conjointes du MAA-MNLA à Tombouctou, 26 September
- 2015 Peace and reconciliation agreement, 20 June
- 2017 Action Plan between the CMA and the UN to end and prevent child recruitment and use, sexual violence and all other grave violations against children, 5 March
- 2017 Unilateral communiqué of CMA (MNLA, HCUA, MAA) on preventing and combating conflict-related sexual violence, 10 July

Moreover, the MNLA has also used its website (www.mnlamov.net) to publicize, on a regular basis, statements on IHL and human rights issues, to condemn acts of terrorism and abuses against civilians perpetrated by other parties to

⁶⁴ MNLA, Communiqué No 15/04/2012-MNLA, 5 April 2012, <http://mnlamov.net/actualites/168-communication-nd15042012-mnla.html> (last accessed 29 December 2020); MNLA, Communiqué No 19/06/2015, 2 June 2015, <http://www.mnlamov.net/actualites/446-communication-n-19-06-2015.html> (last accessed 29 December 2020). The MNLA statute also 'condemns all forms of terrorist violence' under Art 10.

⁶⁵ Interview with MNLA Secretary-General, 13 January 2021; response from MNLA military staff, 11 January 2021; interview with MNLA former education and training secretary, 12 November 2019.

⁶⁶ Interview with MNLA Secretary-General, 11 January 2021.

⁶⁷ Interview with ICRC head of delegation, 15 April 2019; interview with CMA/MNLA legal affairs and human rights

the conflict and to express its readiness to support independent investigations.⁶⁴

From the very beginning of the armed conflict, the MNLA appointed human rights focal persons, at both central and regional levels, to underscore the importance the movement attributes to these issues.⁶⁵ These persons have been in charge of advising the MNLA leadership on human rights and monitoring compliance. The MNLA also has a focal person for humanitarian action and refugees responsible for liaising with humanitarian actors and coordinating relief.⁶⁶

The ICRC conducted a number of sensitization sessions on IHL for MNLA combatants, particularly in the early years of the conflict.⁶⁷ These sessions focused on issues relating to the protection of civilians and persons *hors de combat* as well as the treatment of detainees with the aim of making the MNLA aware of the rules of behaviour applicable in situations of armed conflict.⁶⁸ MINUSMA also held sessions on IHL and international human rights law (IHRL) for the MNLA/CMA on several occasions,⁶⁹ including on issues such as



Sensitization session on IHL for combatants of the MNLA and MAA © ICRC

secretary, 12 April 2019. See also ICRC news release, 'Mali: Armed Groups Learn About International Humanitarian Law', <https://www.icrc.org/en/document/mali-armed-groups-learn-about-international-humanitarian-law> (last accessed 29 December 2020); IHL in Action, 'Mali, IHL Training for Organised Armed Groups and Malian Armed Forces', <https://ihl-in-action.icrc.org/case-study/mali-ihl-training-organised-armed-groups-and-malian-armed-forces> (last accessed 29 December 2020).

⁶⁸ IHL in Action, 'Mali', supra fn 67.

⁶⁹ UNSC, Report of the Secretary-General on the Situation in Mali, UN doc S/2014/943, 23 December 2014, §31; UNSC, Situation in Mali: Report of the Secretary-General, UN doc S/2019/782, 1 October 2019, §71.

treatment of detainees⁷⁰ and child protection norms.⁷¹

In 2016, the CMA created a human rights commission coordinated by the MNLA secretary for legal affairs and human rights, which has regularly reported on abuses allegedly committed by the Malian armed forces, pro-governmental ANSAs and/or 'terrorist groups', a reference to radical Islamist groups, also parties to the conflict.⁷²

In the 2015 Peace and reconciliation agreement, the MNLA, along with the other signatory parties, agreed to create an international commission of inquiry tasked with investigating war crimes, crimes against humanity, genocide, sexual crimes and other serious violations of international law, committed throughout Malian territory.⁷³ The MNLA had called for the establishment of such a body on repeated occasions since February 2013.⁷⁴

The International Commission of Inquiry for Mali was finally established in January 2018 and delivered its report to the UN Secretary-General on 26 June 2020.⁷⁵ In the report, it accused the

MNLA of having committed war crimes, including the killing of civilians and persons *hors de combat*, cruel treatment of prisoners under its control, rape and other forms of sexual violence, pillaging and attacks against protected property, displacement of civilians and recruitment and use of children.⁷⁶ As early as 2012, several human rights NGOs, notably HRW, Amnesty International, the Fédération internationale des ligues des droits de l'homme (FIDH) and the AMDH, accused the MNLA of serious IHL and IHRL violations, including the rape of women and girls, the use of child soldiers, the summary execution of soldiers as well as acts of looting of protected civilian objects (hospitals, schools, churches, aid agencies and government buildings), allegedly committed by the MNLA in the aftermath of the 2012 uprising when, along with other ANSAs, it took control of Kidal, Gao and Timbuktu.⁷⁷ The MNLA has consistently denied these accusations on its website or in direct responses to the concerned organizations.⁷⁸

⁷⁰ MINUSMA, 'À Kidal, la MINUSMA promeut le respect des droits des personnes en détention', 1 April 2019, <https://minusma.unmissions.org/à-kidal-la-minusma-promeut-le-respect-des-droits-des-personnes-en-détention> (last accessed 29 December 2020).

⁷¹ Interview with MINUSMA former child protection officer, 26 October 2020.

⁷² Interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019.

⁷³ Art 46, Peace and reconciliation agreement.

⁷⁴ See MNLA, 'Le MNLA exhorte à la création d'une Commission d'enquête internationale sur les exactions', 22 July 2014, <http://www.mnlamov.net/actualites/359-le-mnla-exhorte-a-la-creation-dune-commission-denquete-internationale-sur-les-exactions.html> (last accessed 29 December 2020). The MNLA has also supported the creation of the Malian Truth, Justice and Reconciliation Commission (TJRC) mandated to document cases of serious human rights violations committed between 1960 and 2013.

⁷⁵ International Commission of Inquiry, La Commission d'enquête internationale pour le Mali conclut sa mission et soumet son rapport au Secrétaire général des Nations Unies, Communiqué de presse 001/2020, 26 June 2020, <https://www.un.org/en/pdfs/Communiqu%C3%A9%20de%20presse%20sur%20la%20fin%20des%20operations%20de%20la%20CEIM%20>

[%20version%20finale%20du%2025%20juin%202020.pdf](#) (last accessed 17 February 2021).

⁷⁶ UNSC, Report of the International Commission of Inquiry, supra fn 22, §§29–33 of Executive Summary and §§912–923.

⁷⁷ See Human Rights Watch (HRW), 'Mali: War Crimes by Northern Rebels', 30 April 2012, <https://www.hrw.org/news/2012/04/30/mali-war-crimes-northern-rebels> (last accessed 29 December 2020); Fédération internationale des ligues des droits de l'homme (FIDH) and Association Malienne des Droits de l'Homme (AMDH), *War Crimes in North Mali*, 11 July 2012, <https://www.fidh.org/IMG/pdf/mali592ang.pdf> (last accessed 29 December 2020); Amnesty International, *Mali: Five Months of Crisis: Armed Rebellion and Military Coup*, 2012, <https://www.amnesty.org/download/Documents/16000/af370012012en.pdf> (last accessed 29 December 2020).

⁷⁸ For example, in a letter to HRW dated 3 May 2012, Moussa Ag Acharatoumane, at the time MNLA's focal person for human rights, deplored the lack of neutrality and objectivity of the HRW report 'Mali: War Crimes by Northern Rebels', describing the accusations as 'baseless' and 'unverified data'. The letter invited HRW to distinguish the MNLA from other ANSAs it had distanced itself from and added that the MNLA would conduct its own investigation. Moussa Ag Acharatoumane, Right of reply by the MNLA to the article of HRW, Gao, 3 May 2012. Letter on file with the researchers.

BOX 3: ANSAR DINE AND MUJAO: DIFFERENT PATTERNS OF VIOLENCE AND RESTRAINT

In the 2018 ICRC study *The Roots of Restraint in War*, Yvan Guichaoua and Ferdaous Bouhleb look at the variations in behaviour of two Islamist ANSAs active in Mali: Ansar Dine, a primarily Tuareg movement based in the Kidal region, and MUJAO, a heterogeneous entity which occupied the disputed town of Gao in 2012.⁷⁹ Interestingly, the authors demonstrate how the two ANSAs, despite sharing a similar Salafi-Jihadi ideology, have displayed different patterns of violence and restraint. For example, according to the authors, Ansar Dine does not have MUJAO's history of regularly perpetrating suicide attacks or mistreating detainees. Ansar Dine also banned forced marriage and the taking of foreigners' hostage, while MUJAO's policy pursued both.

The study also highlights the strong influence that local actors can have over the behaviour of ANSAs. Local business elites in Gao, in particular Arab traders, established a council to engage with MUJAO and communicate populations' needs. In Kidal, Ansar Dine's greater restraint can be attributed to its community links and the moderating voice of the local Sharia judges (cadis). Ansar Dine relied on the traditional legal system to interpret rules while, in contrast, MUJAO undermined Gao's existing judicial system by appointing some of its members as judges.

These influences seem to have waxed and waned in accordance with events on the ground. Ansar Dine policy changed drastically when it formed in 2017 with former MUJAO elements and other ANSAs a coalition called the Jamā'at an-Nuṣrat al-Islām wal-Muslimīn (Group for the Support of Islam and Muslims, JNIM). The JNIM eventually endorsed the summary execution of wounded soldiers, as shown in videos released by the group. The need to formalize an alliance after the French intervention visibly took its toll on Ansar Dine's behavioural standards.

Source: ICRC, *The Roots of Restraint in War*, 2018

⁷⁹ ICRC, *The Roots of Restraint in War*, supra fn 3, pp 46–51.

⁸⁰ See Rule 1, ICRC CIHL Database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul (last accessed 29 December 2020).

⁸¹ Rule 7, *ibid.*

⁸² Rule 11, *ibid.*

⁸³ Rule 5, *ibid.*

⁸⁴ Rule 6, *ibid.*

5. MNLA POLICY AND PRACTICE WITH REGARD TO SELECTED IHL NORMS

A. PROTECTION OF CIVILIANS FROM ATTACKS

1. DISTINCTION

Under customary IHL,⁸⁰ the parties to a conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants; they must not be directed against civilians. Civilian objects are also protected against attacks.⁸¹ Indiscriminate attacks are prohibited.⁸² Article 13 of AP II, which contains similar rules, additionally provides that 'acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited'.

Civilians are persons who are not members of the armed forces;⁸³ they are protected against attack, unless and for such time as they take a direct part in hostilities.⁸⁴ Civilian objects are all objects that are not military objectives;⁸⁵ they are protected against attack, unless and for such time as they are military objectives.⁸⁶

Different internal documents of the MNLA refer to the protection of civilians. Under the *Texte organique*, the senior officers responsible for supervision, training and operations are required to ensure that IHL norms are respected during military operations, in particular in relation to the protection of civilian populations.⁸⁷ The MNLA military code of conduct stipulates that 'civilians and other persons who do not take part in the fighting

⁸⁵ Rule 9, *ibid.*

⁸⁶ Rule 10, *ibid.* In so far as objects are concerned, 'military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage'. (Rule 8, *ibid.*)

⁸⁷ Arts 19, 46 and 47, *Texte organique*.

must not be attacked. It is forbidden to spread terror among the population'.⁸⁸ Neither the internal regulations nor the military code of conduct provides details on who is considered a 'civilian'. According to MNLA officials interviewed,⁸⁹ only enemy armed forces are considered military objectives. Unarmed military or persons *hors de combat* cannot be the object of an attack.⁹⁰ Civilians are protected unless they participate directly in hostilities or collaborate with the enemy, such as by spying.⁹¹ The respect for civilians is deeply anchored in the Tuareg warrior culture, notably in the ancestral honour code called *Achak*. This unwritten code prohibits attacks on unarmed men, women, children and the elderly.⁹² The MNLA has on repeated occasions publicly condemned attacks on civilians by other parties to the conflict.⁹³

Despite these rules and statements, there have been a number of reports of attacks against civilians allegedly committed by MNLA fighters. A notorious case documented by a joint investigation of MINUSMA and the Office of the UN High Commissioner for Human Rights

(OHCHR) concerns the killing of eight civilians, including six unarmed prefects and sub-prefects, during the attack on the Kidal Governor's Office on 17 May 2014.⁹⁴ The MNLA publicly denied this version of events in a communiqué, arguing that the officials died during the clashes between the Malian armed forces and the MNLA.⁹⁵ Another report by OHCHR claims that several civilians were killed in April 2012 during a raid by the MNLA and other ANSAs on humanitarian warehouses in Gao.⁹⁶ In June 2012, also in Gao, MNLA fighters allegedly fired against youth demonstrators protesting against the murder of a municipal councillor.⁹⁷ In addition, in November 2012, a 16-year-old boy was killed in Ménaka and four demonstrators were shot and injured by MNLA members the following day.⁹⁸ And, according to the Center for Civilians in Conflict (CIVIC), MNLA fighters reportedly killed 20 people in Bougoumi village, Mopti, in March 2013.⁹⁹

Civilian objects, like civilian persons, are considered by the MNLA to be protected from attack. Only military objectives such as barracks,

⁸⁸ Art 4, MNLA military code of conduct.

⁸⁹ Group discussion with MNLA commanders, 1 December 2019; interview with former MNLA spokesperson, 16 November 2019; interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019.

⁹⁰ Interview with MNLA former education and training secretary, 12 November 2019; interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019.

⁹¹ Interview with MNLA former spokesperson, 16 November 2019; response from MNLA military staff, 11 January 2021.

⁹² Geneva Call meeting with MNLA officials, 11 October 2013. Meeting notes on file with the researchers.

⁹³ See, e.g., MNLA, Communiqué No 15/04/2012-MNLA, supra fn 64; MNLA, Réaction du MNLA liée aux événements du 17 Mai 2014 de Kidal, Press release, 26 May 2014 <http://www.mnlamov.net/actualites/34-actualites/355-reaction-du-mnla-liee-aux-evenements-du-17-mai-14-de-kidal.html> (last accessed 29 December 2020); MNLA, Communiqué No 19/06/2015, 2 June 2015, supra fn 64.

⁹⁴ MINUSMA and Office of the UN High Commissioner for Human Rights (OHCHR), Rapport sur la situation des droits de l'homme au Mali du 1er novembre 2013 au 31 mai 2014, 20 March 2015, § 63, https://www.ohchr.org/Documents/Countries/ML/Rapport_Novembre2013Mai2014.pdf (last accessed 29 December 2020). See also MINUSMA and OHCHR, Rapport conjoint sur les violations des droits de l'homme et du droit international humanitaire commis lors des événements de

Kidal, les 16, 17 et 21 mai 2014, December 2015, §§ 45–58, https://www.ohchr.org/Documents/Countries/ML/Rapport_Kidal_Dec2015.pdf; UNSC, Report of the International Commission of Inquiry, supra fn 22, §§414–418.

⁹⁵ MNLA, Réaction du mnla liée aux événements du 17 mai 2014 de kidal, supra fn 93.

⁹⁶ HRC, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali, UN doc A/HRC/22/33, 7 January 2012, §21.

⁹⁷ UNSC, Report of the International Commission of Inquiry, supra fn 22, §§243–246. See also 'Mali: 2 Killed in Anti-Rebel Protest', *The New York Times*, 26 June 2012, <https://www.nytimes.com/2012/06/27/world/africa/mali-2-killed-in-anti-rebel-protest.html?ref=africa&gwh=88F2CF108C92A05F914F188CC9DADA14>.

⁹⁸ UNSC Report of the International Commission of Inquiry, supra fn 22, §§275–279.

⁹⁹ Center for Civilians in Conflict (CIVIC), *Fending for Ourselves: The Civilian Impact of Mali's Three-Year Conflict*, 2015, p 21, https://civiliansinconflict.org/wp-content/uploads/2017/08/Civilian_Impact_of_Mali_3-Year_Conflict_small.pdf (last accessed 17 February 2021). About this incident, the International Commission of Inquiry notes that there are reasonable grounds to believe that on 18 March 2013, at least 15 men were killed by men of Tuareg origin who were allegedly associated with the

military camps, military equipment, military convoys, etc. can be targeted.¹⁰⁰ However, officials interviewed gave different accounts of whether civilian objects are protected at all times. According to some officials, the protection holds as long as the objects are not used by enemy forces for hostile acts, until there is no other alternative than to attack and no civilians are present,¹⁰¹ while others claimed that the MNLA has never attacked public buildings, even when used by enemy forces.¹⁰² When asked for further clarification, MNLA military staff responded:

It is a priority for the Movement to protect the civilian objects of the population such as schools and hospitals. However, if the object becomes a military objective, for example when the enemy occupies these places and attacks civilians and our fighters, the Movement is obliged to take action accordingly. These places are no longer considered a school or a hospital strictly speaking. Nevertheless, if we have another option than to attack the places from which the enemy is attacking, we will do that in order to avoid damaging the building.¹⁰³

MNLA military staff mentioned as an example the army attack against MNLA camps from the Kidal Governorate in May 2014. The MNLA decided to fight back and dislodge the enemy from the Governorate, which was used as a military position and thus lost its protected status.

MNLA or Ansar Dine at the time. See UNSC, Report of the International Commission of Inquiry, supra fn 22, §§343–347.

¹⁰⁰ Interview with MNLA former spokesperson, 16 November 2019.

¹⁰¹ Ibid; response from MNLA former legal adviser, 28 September 2020.

¹⁰² Interview with MNLA former commander, 15 April 2019.

¹⁰³ Response from MNLA military staff, 11 January 2021. In this response, imperative military necessity is defined by a situation when it becomes imperative for the MNLA to act, the consequences of the failure to act being deemed excessive.

¹⁰⁴ By including ‘looting’ in the present section, the researchers do not aim to take a position on the definition of looting as an ‘attack’ against civilians or civilian objects.

As mentioned above, this rhetoric and policy is inconsistent with numerous reports of pillaging of protected civilian objects allegedly committed by MNLA fighters.¹⁰⁴ According to human rights NGOs, the takeover in 2012 of cities in the north of Mali was accompanied by acts of looting of hospitals, pharmacies, schools, churches, warehouses, shops, government buildings such as the court, the town hall and local electoral archives, as well as private houses belonging to civil servants and members of the security services.¹⁰⁵ In 2014, the UN reported the looting and destruction of property in the Governorate of Kidal by MNLA and MAA fighters.¹⁰⁶

The International Commission of Inquiry reached a similar conclusion. According to testimonies obtained by the Commission and other credible and corroborating sources, in the days following the capture of the city of Gao by the MNLA and other ANSAs, members of the MNLA engaged in massive pillaging, including several churches and the Bible institute, warehouses operated by the ICRC and the World Food Programme (WFP), the regional hospital and the local health centre, private clinics, pharmacies, schools and vocational training institutions, banks, public buildings and the homes of state officials.¹⁰⁷ The Commission also documented similar acts of looting and attacks against protected property in Timbuktu and Ménaka.¹⁰⁸ The pillaging continued throughout much of the duration of the conflict, in the territories controlled by MNLA, according to the Commission.¹⁰⁹

This paragraph is included here to ease the reading of the text.

¹⁰⁵ See supra fn 77.

¹⁰⁶ MINUSMA and OHCHR, Rapport sur la situation des droits de l’homme au Mali du 1er novembre 2013 au 31 mai 2014, supra fn 94, § 67.

¹⁰⁷ UNSC, Report of the International Commission of Inquiry, supra fn 22, §§238–242 and 917–918. See also Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali, supra fn 96, §21.

¹⁰⁸ UNSC, Report of the International Commission of Inquiry, supra fn 22, §§274, 788 and 917.

¹⁰⁹ Ibid, §918. For example, on 16 February 2013, the day after the attack against the Arab community of In-Khalil, members of the MNLA reportedly pillaged the property and

In response to these allegations, MNLA officials said the movement has officially condemned acts of pillaging, which is explicitly prohibited within its rules.¹¹⁰ In reference to the events in Gao, they acknowledged that MNLA fighters had trouble controlling the situation: ‘When there is a conflict of such magnitude, there are excesses of this kind even when it comes to conventional professional armies.’¹¹¹ However, it was added, the MNLA was not the only armed force present in the town and some juvenile delinquents took advantage of the situation to sack property.¹¹² Moreover, some MNLA officials distinguish between private property, essential infrastructure and services for the population (such as schools and hospitals) and government buildings (such as a governorate or town hall). While respect for private property and public services are considered absolute, government buildings could, according to them, be used by the MNLA in its capacity as the new governing authority.¹¹³ The MNLA is of the opinion that

*when present on Azawad territory, the Malian state is to be considered as an occupying force. As a consequence, all the Malian state’s public assets belong to the movement, which is free to use them as it sees fit, including as either a civilian or a military position.*¹¹⁴

Regarding public services, MNLA officials claimed to have occupied hospitals to protect

shops owned by members of that community, stealing vehicles, money, livestock and all the goods in the shops.

¹¹⁰ Art 2(3)(e), MNLA military code of conduct.

¹¹¹ Interview with MNLA former spokesperson, 16 November 2019; response from MNLA military staff, 11 January 2021.

¹¹² Interview with MNLA former spokesperson, 11 April 2019 and 16 November 2019.

¹¹³ It is interesting to note in this regard that the MNLA ‘occupied’ the Governorate of Kidal for more than six months (May to November 2013) and handed it over to MINUSMA as a gesture of goodwill in the context of the peace talks initiated in Ouagadougou. See MNLA, Réaction du MNLA liée aux événements du 17 Mai 14 de Kidal, supra fn 95. The MNLA again occupied the same Governorate in May 2014 to respond to attacks allegedly launched from there by the Malian armed forces. It handed over the

them from being looted.¹¹⁵

2. PROPORTIONALITY AND PRECAUTION

Under customary IHL, it is prohibited to carry out an attack which may be expected to cause excessive harm to civilians and civilian property compared to the anticipated military advantage (proportionality).¹¹⁶ In addition, in the planning and conduct of military operations, the parties to the conflict must do everything feasible to avoid or minimize collateral damage (precaution). Constant care must be taken to spare civilians and civilian objects.¹¹⁷

In the MNLA’s Texte organique, the senior officers responsible for supervision, training and operations are required to ‘assess the proportionality of the use of force in the context of offensive and defensive operations’.¹¹⁸ The rule is not further elaborated in the document nor in any specific written procedures, to our knowledge. According to officials interviewed, prior to conducting an attack, the MNLA assesses the incidental loss of civilian lives and damage to civilian property and factors these into the choice of military tactics and weapons so as to avoid the use of disproportionate force.¹¹⁹

As for precautions in attack, the MNLA military code of conduct refers to this rule in Article 2: ‘MNLA soldiers should at all times avoid military actions that may harm the civilian population.’¹²⁰ According to MNLA military staff, the commanding officer in charge, before any military operation, gives instructions to fighters

building to the French Serval force a few days later. See MNLA, Remise du Gouvernorat de Kidal par le MNLA à la force Serval, 25 May 2014. Document on file with the researchers.

¹¹⁴ Response from MNLA former legal adviser, 28 September 2020.

¹¹⁵ Interview with MNLA former commander, 15 April 2019; interview with MNLA former spokesperson, 16 November 2019.

¹¹⁶ Rule 14, ICRC CIHL Database, supra fn 80.

¹¹⁷ Rule 15, *ibid.*

¹¹⁸ Art 19, Texte organique.

¹¹⁹ Interview with CMA/MNLA legal affairs and human rights secretary, 12 April 2019 and 17 November 2019.

¹²⁰ Art 2, MNLA military code of conduct.

on the aimed target, the weapons to be used and civilian objects to be avoided, etc.¹²¹

During interviews, officials provided various examples of precautionary measures allegedly taken during military operations to minimize collateral damage:¹²²

- The cancellation of attacks due to the presence of civilians (against Amachache military camp near Tessalit and against a military convoy travelling from Niafunké to Timbuktu, both in February 2012)
- Contact with the mayors of Ansogo and Bourem to persuade government forces to withdraw these towns in order to avoid fighting in densely populated areas (March 2012)
- The decision not to fight with MUJAO inside Gao town out of concern for the civilian population and objects (June/July 2012)

Generally, the MNLA has avoided fighting in urban areas. The group's strategy has been to attract enemy forces outside of the cities so as to avoid civilian casualties and the destruction of civilian goods.¹²³ When this has not been possible, warning instructions have allegedly been issued to encourage the population to move away from military objectives before the opening of fire.¹²⁴

To sum up, the MNLA does not have a record of systematic or widespread attacks against the civilian population. There are documented cases

of murder of persons not participating in the hostilities, notably during the attack against the Kidal Governorate in May 2014, but these cases do not appear to reflect MNLA official policy. The MNLA has consistently denied deliberate or random attacks on civilian targets. However, there are indications that acts of pillaging and attacks against protected property have been recurrent throughout the conflict.

B. THE PROHIBITION OF SEXUAL VIOLENCE AND GENDER DISCRIMINATION¹²⁵

Under customary IHL,¹²⁶ rape and other forms of sexual violence are prohibited. While common Article 3 to the 1949 Geneva Conventions does not explicitly refer to this terminology, it prohibits 'outrages upon personal dignity, in particular humiliating and degrading treatment'. Article 4, Paragraph 1(c) of AP II specifically adds 'rape', 'enforced prostitution' and 'any form of indecent assault' to this list.

The issue of sexual violence is addressed in different MNLA documents. Article 2.3(a) of the military code of conduct mentions rape, inhumane treatment and serious attacks on human dignity among acts that are prohibited in all situations. The Texte organique states that all forms of outrages upon human dignity are considered a 'serious offence';¹²⁷ according to MNLA officials interviewed, these include sexual violence. In September 2014, the joint command

¹²¹ Response from MNLA military staff, 11 January 2021.

¹²² Interview with MNLA former spokesperson, 16 November 2019; interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019; response from MNLA former legal adviser, 28 September 2020.

¹²³ MNLA, Communiqué de presse No 37-CTEA du 17 novembre 2012, 17 November 2012, <http://mnlamov.net/actualites/224-communiquede-presse-nd37-ctea-du-17-novembre-> (last accessed 29 December 2020).

¹²⁴ Interview with MNLA Secretary-General, 13 January 2021; interview with CMA/MNLA legal affairs and human rights secretary, 12 April 2019.

¹²⁵ In its General Recommendation No.30 on women in conflict prevention, conflict and post-conflict situations, of

18 October 2013, the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) states: 'Under international human rights law, although non-State actors cannot become parties to the Convention, the Committee notes that under certain circumstances, in particular where an armed group with an identifiable political structure exercises significant control over territory and population, non-State actors are obliged to respect international human rights'. The Committee goes on to urge 'non-State actors such as armed groups: (a) to respect women's rights in conflict and post-conflict situations, in line with the Convention; (b) to commit themselves to abide by codes of conduct on human rights and the prohibition of all forms of gender-based violence'. UN doc CEDAW/C/GC/30, 18 October 2013, §§16 and 18.

¹²⁶ Rule 93, ICRC CIHL Database, supra fn 80.

¹²⁷ Art 58, Texte organique.

in Timbuktu of the MAA-CMA and MNLA signed a military directive that called for the elimination of sexual violence against children,¹²⁸ a commitment reiterated in March 2017 with the signature, by the CMA, of an Action Plan to end and prevent child recruitment and use, sexual violence and all other grave violations against children.¹²⁹ Moreover, on 10 July 2017, the CMA issued a unilateral communiqué on preventing and responding to conflict-related sexual violence endorsed by the MNLA, HCUA and MAA.¹³⁰ The communiqué formalizes the commitment of the three movements to combat impunity for such crimes and to act, in cooperation with the UN and other partners, to curb the problem. Actions provided in the communiqué include the development of an action plan and issuance of command orders; collaboration with the national and international judicial system; exclusion of CMA fighters responsible for sexual violence from the list of candidates for integration into the armed forces; support to service provision for victims of sexual violence; and awareness-raising activities in collaboration with the UN.¹³¹

Any of these documents provides for a definition of sexual violence. According to MNLA officials interviewed, sexual violence is understood as any unwanted sexual act with the use of force, such as rape or sexual slavery.¹³² One official added that not only acts of a sexual nature in the context of the armed conflict, but also any gender-based domestic violence as well as forced marriage are prohibited by the MNLA.¹³³

The UN and several NGOs have accused MNLA fighters of having committed acts of sexual abuse, particularly in the aftermath of the

capture of Gao and Timbuktu in 2012. According to a report of the UN Secretary-General on sexual violence in conflict, dated 2013, ‘from 31 March to 15 April 2012, 50 women and girls from nine districts in Gao and Gabero were the targets of sexual violence. Survivors identified perpetrators as light-skinned men, some of whom drove vehicles displaying the MNLA flag.’¹³⁴ In a report published in July 2012, FIDH and AMDH recorded 50 cases of rape of women and girls following the capture of the towns of Gao and Timbuktu and their vicinities in 2012.¹³⁵ According to the report, these abuses were committed by armed men in military-style dress commonly referred to as ‘Saharan’; they spoke French, local Tamashek or Bambara, and drove vehicles bearing the flag of the MNLA. Some survivors were said to have been led to camps occupied by MNLA fighters where they were raped. HRW also reported in 2012 the abduction and presumed rape of 17 women and girls by ‘rebel groups’, mostly in Gao. In all but one case, witnesses interviewed by HRW believed that the perpetrators were MNLA fighters, identified by the flags on their cars and the strong MNLA presence in the neighbourhoods where the abductions took place.¹³⁶ Likewise, Amnesty International reported in 2012 that ‘women and young female minors were raped, sometimes collectively, by armed men, including members of the MNLA, particularly in Ménaka and Gao’.¹³⁷

In its report, the International Commission of Inquiry also documents cases of rape and other forms of sexual violence committed against women and girls in the cities and areas that came under the control of the MNLA at the beginning of the conflict in 2012, in particular Timbuktu,

¹²⁸ Directive militaire à l’intention des troupes conjointes du MAA-MNLA à Tombouctou, 26 September 2014. On file with the researchers.

¹²⁹ Plan d’action entre la CMA et l’Equipe Spéciale Pays des Nations Unies, supra fn 14. The Action Plan binds all ANSAs that constitute the CMA, including the MNLA.

¹³⁰ Communiqué unilatéral de la Coordination des Mouvements de l’Azawad, supra fn 13.

¹³¹ See Arts 1–5, *ibid.*

¹³² Interview with MNLA former spokesperson, 16 November 2019; interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019; response from MNLA former legal adviser, 28 September 2020.

¹³³ Interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019.

¹³⁴ UN General Assembly (UNGA), Sexual Violence in Conflict: Report of the Secretary-General, UN doc A/67/792–S/2013/149, 14 March 2013, §52.

¹³⁵ FIDH and AMDH, *War Crimes in North Mali*, supra fn 77, pp 14–16.

¹³⁶ HRW, ‘Mali: War Crimes by Northern Rebels’, supra fn 77, pp 5–6.

¹³⁷ Amnesty International, *Mali: Five Months of Crisis*, supra fn 77, pp 14–15.

Ménaka and Gao.¹³⁸ The Commission notes in its report that a large majority of the victims of sexual violence were women and girls from the Bella Tuareg and Songhai community, a traditionally slave caste which is still perceived as an inferior group within Tuareg society.¹³⁹ While acknowledging the difficulty of attributing responsibility to a particular actor, the Commission considers there are reasonable grounds to believe that at least some of those rapes are attributable to MNLA members or ‘to armed men who had demonstrated sufficient support for the group that they were able to carry weapons and operate freely in areas under the group’s control’.¹⁴⁰ The Commission does not conclude that ‘the documented incidents of sexual violence were ordered by the MNLA authorities. However, commanders must have tolerated the violence; it is difficult to imagine that they were unaware of it, since they were on the ground and were informed of at least one of the incidents’.¹⁴¹ After the signing of the Peace and reconciliation agreement, the Commission notes an overall decline in reported cases of sexual violence attributable to the MNLA and other CMA groups.¹⁴² Since 2013, the MNLA has been included in the list of parties credibly

¹³⁸ UNSC, Report of the International Commission of Inquiry, supra fn 22, §§212–214, 263–267 and 269–273.

¹³⁹ Ibid, §§725 and 751–752. According to the Commission, several other factors may explain this situation. First, the Bella Tuareg and Songhai make up the majority of the population in the northern regions, particularly in Timbuktu and Gao. Economically, they are the poorest communities and, as a result, most women and girls could not afford to leave northern cities during the 2012 crisis. In addition, they were perceived as communities that were politically supportive of the government. For further analysis, see H. Lackenbauer, M. Tham Lindell and G. Ingerstad, *If Our Men Won't Fight, We Will: A Gendered Analysis of the Armed Conflict in Northern Mali*, FOI, November 2015.

¹⁴⁰ UNSC, Report of the International Commission of Inquiry, supra fn 22, §726.

¹⁴¹ Ibid.

¹⁴² Ibid, §§738–739.

¹⁴³ Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, Secretary-General Annual Reports (2013–2020), <https://www.un.org/sexualviolenceinconflict/digital-library/reports/sg-reports/> (last accessed 29 December 2020).

suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda.¹⁴³

As mentioned above, the MNLA has to a large degree denied responsibility for sexual abuses, describing them as ‘baseless accusations’ aimed at demonizing the movement.¹⁴⁴ It argues that sexual violence is taboo in its culture and instead puts the blame on MUJAO and other groups.¹⁴⁵ When pressed on these issues, however, some officials did acknowledge that it is possible that a ‘few isolated cases’ may have occurred in March/April 2012 in Gao, but they were not part of a policy or the result of an order.¹⁴⁶ They claimed that the MNLA had conducted an internal investigation¹⁴⁷ but could not find conclusive evidence.¹⁴⁸ In other circumstances, the MNLA allegedly arrested individuals on rape charges.¹⁴⁹

With regard to the issue of gender equality, the MNLA statute states that

in accordance with international law, the movement will work to establish justice in rights between men and women. It will

¹⁴⁴ Response from MNLA former legal adviser, 28 September 2020.

¹⁴⁵ Geneva Call meeting with MNLA officials, 11 October 2013, supra fn 92; interview with MNLA former education and training secretary, 12 November 2019; interview with MNLA former spokesperson, 16 November 2019; interview with MNLA former women’s president, 13 November 2019.

¹⁴⁶ Interview with CMA/MNLA legal affairs and human rights secretary, 12 April 2019 and 17 November 2019.

¹⁴⁷ Interview with MNLA former women’s president, 13 November 2019; interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019.

¹⁴⁸ Interview with MNLA former women’s president, 13 November 2019; interview with MNLA former spokesperson, 10 and 16 November 2019; interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019. Amnesty International reported that most of the perpetrators of the 2012 acts had not been punished and that the rape victims had not received any medical care. The report added that in at least one case, a man complained to MNLA leaders, who promised to take action, but it was impossible to know if sanctions were imposed. Amnesty International, *Mali: Five Months of Crisis*, supra fn 77, p 15.

¹⁴⁹ Interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019.

*establish a policy guaranteeing women effective participation in all activities affecting the life of society and the country and at all levels.*¹⁵⁰

Contrary to many other ANSAs operating in Mali, the MNLA has a number of women in leadership positions. The example of Nina Walet Intallou, the MNLA's former women's president, is illustrative in this respect. She was a member of the MNLA Executive Committee¹⁵¹ and held several important positions, including being a member of the MNLA delegation to the Algiers peace negotiations,¹⁵² before being appointed Minister of Crafts and Tourism by the then Malian President, Ibrahim Boubacar Keïta, in 2016.¹⁵³ In addition to political activities, women have played a variety of roles such as providing economic aid and logistical support to fighters.¹⁵⁴ There are also women present in the MNLA revolutionary council and police force.¹⁵⁵

¹⁵⁰ Art 13, Statut et Règlement du MNLA.

¹⁵¹ Interview with MNLA former women's president, 13 November 2019.

¹⁵² A. Boutellis and M.-J. Zahar, *Un processus en quête de paix : Les enseignements tirés de l'accord intermalien*, International Peace Institute, January 2018, p 27, https://www.ipinst.org/wp-content/uploads/2017/06/1801_Inter-Malian-AgreementFrench.pdf (last accessed 17 February 2021).

¹⁵³ A. Baldé, 'Nina Walet Intallou, rebelle du MNLA', *Le nouvel Afrik*, 10 April 2013, <https://www.afrik.com/nina-walet-intallou-rebelle-du-mnla> (last accessed 29 December 2020).

¹⁵⁴ UNSC, Report of the International Commission of Inquiry, *supra* fn 22, §763.

¹⁵⁵ Interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019.

¹⁵⁶ Rules 136 and 137, ICRC CIHL Database, *supra* fn 80; Art 4, Paras 3(c),(d) and (e), AP II; Art 4(1), Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. In the Commentary on Rule 137, the ICRC notes that in the framework of the war crime of 'using children to participate actively in hostilities' contained in the Statute of the International Criminal Court, the words 'using' and 'participate' have been adopted in order to cover both direct

C. THE PROHIBITION OF USING AND RECRUITING CHILDREN IN HOSTILITIES

IHL and IHRL prohibit the recruitment of children into armed forces or armed groups and their participation in hostilities.¹⁵⁶ While Article 4(3) of AP II sets the minimum age for recruitment and participation in hostilities at 15 years, Article 4(1) of the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict requires that '[a]rmed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years'.¹⁵⁷

In the statute of the MNLA, it is clearly spelled out that the minimum age for becoming a member is 18 years.¹⁵⁸ This age standard, which is in line with Malian law, is also included in the 2013 *Texte organique*¹⁵⁹ and in a military directive issued on 26 September 2014 by the MNLA and MAA.¹⁶⁰ Under this directive, it is prohibited to recruit or use 'child soldiers' (boys and girls below 18 years) as fighters, bodyguards, sexual slaves, patrols, cooks, porters, messengers,

participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints. It would not cover activities clearly unrelated to the hostilities such as food deliveries to an airbase or the use of domestic staff in an officer's married accommodation. However, use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within the terminology. (Rule 137, ICRC CIHL Database, *supra* fn 80).

¹⁵⁷ Art 8(b)(xxvi) of the Rome Statute lists as a war crime 'conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities'. Although there is a growing trend towards a prohibition of any form of military recruitment or use in hostilities of persons under the age of 18 years, for the purpose of this research, we consider that ANSAs to be bound by the 15-years standard and that any commitment to the 18-years limit for recruitment of children in their armed forces goes beyond their strict obligations under international law.

¹⁵⁸ Art 40, Statut et Règlement du MNLA.

¹⁵⁹ Art 43, *Texte organique*.

¹⁶⁰ Art 1, Directive militaire à l'intention des troupes conjointes, *supra* fn 128.

couriers, to guard jails or military camps, to man checkpoints, to clean or do household chores.¹⁶¹ The directive also instructs MNLA and MAA troops not to kill, maim, abduct, rape or abuse children sexually, not to attack or occupy schools or hospitals and to hand over any children associated with their armed forces to MINUSMA for their reintegration.

The MNLA's straight-18 policy was continued by the CMA (of which the MNLA forms a part) in a declaration issued on 12 February 2016¹⁶² as well as, importantly, in the Action Plan to end and prevent child recruitment and use, sexual violence and all other grave violations against children¹⁶³ signed on 5 March 2017 with the UN. Under the Action Plan, which refers to the Convention of the Rights of the Child and its Optional Protocol, the CMA commits, *inter alia*, to end and prevent:

- The recruitment, use and association of children by its forces (Article 3.1(a))
- Rape and other forms of sexual violence as well as other grave violations of the rights of the child (Article 3.1(b))
- The occupation and military use of basic social infrastructures, notably schools and health centres, by its forces (Article 3.1(c))

In accordance with the 2007 Paris Principles and Paris Commitments, children are defined in Article 1.3 of the Action Plan as 'any person below 18 years of age who is or who has been

recruited or used by an armed force or group in any capacity, including but not limited to children used as fighters, cooks, porters, messengers, spies or for sexual purposes.' This definition is broader than the notions of recruitment and participation in hostilities as it refers to the use of children in any type of direct or supporting activity, whether combat-related or otherwise. In addition, Article 3.1(d) and (e) of the Action Plan requires the CMA to facilitate, in collaboration with the UN, the registration, separation and care of children present in their forces as well as their reintegration, and to facilitate the transfer of children from other ANSAs who joined their forces to child protection services.

Yet, despite this policy prohibiting the recruitment and association of children under the age of 18, which goes beyond what is required under IHL, and despite various measures taken to implement the Action Plan,¹⁶⁴ ensuring compliance has remained a serious challenge. The MNLA has been listed each year since 2013 in the annexes of the UN Secretary-General's annual reports on children and armed conflict for recruitment and use of children.¹⁶⁵ In 2019, the UN verified 88 cases though most of them occurred in previous years.¹⁶⁶ Various NGOs¹⁶⁷ have also documented the presence of children under 18 in the ranks of the MNLA. In its report, the International Commission of Inquiry confirms that MNLA forces have used or enlisted children under the age of 18 and documents several cases, such as the participation of armed

¹⁶¹ Ibid.

¹⁶² Report of the Secretary-General on the Situation in Mali, UN doc S/2016/281, 28 March 2016, §34.

¹⁶³ Plan d'action entre la CMA et l'Equipe Spéciale Pays des Nations Unies, supra fn 14.

¹⁶⁴ Measures include the appointment and training of regional focal points, running of awareness campaigns, screening of military camps and release of child combatants or associated children, Interview with UNICEF child protection specialist, 17 April 2019; interview with MINUSMA child protection chief, 14 November 2019. See also A. Ag Mohamed, *Commentaires de la CMA relatifs à la note trimestrielle de la Division des Droits de l'Homme et de la Protection (MINUSMA) couvrant la période du 1^{er} janvier au 31 mars 2020*, 11 June 2020. On file with the researchers. In his annual report for 2019 on children and armed conflict, the UN Secretary-General commended the continued collaboration between the CMA and the UN to accelerate

the implementation by the CMA of its Action Plan. See UNGA/UNSC: Report of the Secretary-General on Children and Armed Conflict, UN doc A/74/845-S/2020/525, 9 June 2020, §118.

¹⁶⁵ Children, mainly boys aged 13 to 17 years, were used in support roles but allegedly also as combatants and to man checkpoints. See Office of the Special Representative of the Secretary-General for Children and Armed Conflict, Annual Reports (2013–2020), <https://childrenandarmedconflict.un.org/document-type/annual-reports/> (last accessed 29 December 2020).

¹⁶⁶ Report of the Secretary-General on Children and Armed Conflict, supra fn 164, §118.

¹⁶⁷ HRW, 'Mali: War Crimes by Northern Rebels', supra fn 77, p 7; Amnesty International, *Mali: Five Months of Crisis*, supra fn 77, p 17; FIDH and AMDH, *War Crimes in North Mali*, supra fn 77, p 16.

boys among the fighters of the MNLA who stormed the Kidal Governor's Office on 17 May.¹⁶⁸ However, the Commission notes that it was unable to establish whether children under the age of 15 have been recruited or used by MNLA forces.¹⁶⁹ In addition, the UN has reported several cases of rape and other forms of sexual violence against children by the MNLA.¹⁷⁰ The MNLA has not been listed for other grave violations against children (killing and maiming, attacks on schools and/or hospitals and abduction).

MNLA officials acknowledged the difficulty of enforcing its straight-18 policy for both recruitment and association.¹⁷¹ As an explanation, they said that with the capture of towns by the MNLA, children interacted more with the combatants, often through relatives, and became associated with their activities.¹⁷² Many combatants also live with their families.¹⁷³

Yet, the presence of children in military camps or their association with combatants, due to these personal ties, has not necessarily implied their involvement in combat roles.¹⁷⁴ MNLA officials insisted that the tasks performed by

children were auxiliary in nature and limited to such roles as cleaning, making tea or bringing supplies.¹⁷⁵ While recognising the risks for children of living with combatants,¹⁷⁶ some MNLA officials argued that it has often been challenging to reject them, due to community pressure,¹⁷⁷ lack of education or job opportunities, and that it is critical to create alternatives, such as the provision of vocational training and construction of sport centres for youth, to prevent recruitment or association.¹⁷⁸ Moreover, vulnerable children such as orphans have been easy targets for rival groups or traffickers who attract them with money and weapons.¹⁷⁹ Another issue mentioned by some MNLA officials to explain compliance challenges is age verification. In the absence of birth certificates, ID cards or other documentary evidence, it has been difficult for the MNLA to establish the exact age of recruits.¹⁸⁰ As a result, military commanders have often relied on physical appearance, which could be misleading due to malnutrition.¹⁸¹ Moreover, though the legal age in Mali is 18, children over the age of 15 are traditionally considered adults.¹⁸²

¹⁶⁸ UNSC, Report of the International Commission of Inquiry, *supra* fn 22, §§419–422.

¹⁶⁹ *Ibid*, §922.

¹⁷⁰ Reports of the Secretary-General on Children and Armed Conflict 2013 and 2015, *supra* fn 165.

¹⁷¹ Interview with MNLA former education and training secretary, 12 November 2019; interview with MNLA former women's president, 13 November 2019; interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019.

¹⁷² Interview with MNLA former commander, 15 April 2019; interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019.

¹⁷³ Interview with CMA/MNLA legal affairs and human rights secretary, 12 April 2019.

¹⁷⁴ Ag Mohamed, *Commentaires de la CMA*, *supra* fn 164.

¹⁷⁵ Interview with MNLA former spokesperson, 16 November 2019; interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019.

¹⁷⁶ Interview with CMA/MNLA legal affairs and human rights secretary, 12 April and 17 November 2019. There have been cases of children associated with the MNLA being killed during combat.

¹⁷⁷ At the beginning of the conflict, many Tuareg families volunteered their children to the MNLA to man checkpoints and conduct patrols, but also to participate in

the hostilities. See UNSC, Report of the Secretary-General on Children and Armed Conflict in Mali, UN doc S/2014/267, 14 April 2014, §42.

¹⁷⁸ Ag Mohamed, *Commentaires de la CMA*, *supra* fn 164.

¹⁷⁹ Geneva Call meeting with MNLA officials, 11 October 2013, *supra* fn 92; interview with MNLA former spokesperson, 27 August 2020.

¹⁸⁰ Interview with MNLA former spokesperson, 16 November 2019.

¹⁸¹ Interview with MNLA former spokesperson, 11 April 2019; interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019. This difficulty in establishing the exact age of young recruits was already acknowledged in 2013 by the MNLA Secretary-General during a meeting with Geneva Call in Ouagadougou, 11 October 2013, *supra* fn 92. However, some MNLA officials said it was not difficult to estimate the age of a person as it would not enrol individually and 'we all know each other'.

¹⁸² For an analysis of the factors that motivate youth to join ANSAs, see Mercy Corps and Think Peace, *'Nous espérons et nous nous battons': les Jeunes, les Communautés et la Violence au Mali*, September 2017 https://www.mercycorps.org/sites/default/files/2020-01/Mercy%20Corps_Mali_Nous%20Esperons_Rapport_Francais%20Sept%202017_0.pdf (last accessed 17 February 2021).

D. PROTECTION OF EDUCATION

Under customary IHL,¹⁸³ children affected by armed conflict are entitled to special respect and protection. This notably includes access to education, food and health care. Under Article 4(3)(a) of AP II, children shall be provided with the care and aid they require, and in particular ‘they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care’. In addition, schools are considered to be civilian objects and are thus protected against attacks, unless they are used for military purposes and become lawful military objectives.

Under the principle of precaution, parties to armed conflict, including ANSAs, must take constant care, in the conduct of military operations, to spare civilian objects, including schools. In addition, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to schools. In light of this principle, the use of functioning schools for military purposes must be avoided except for imperative military reasons.¹⁸⁴

The MNLA recognizes the importance of education and has committed, in the 2014 military directive and 2017 Action Plan with the UN, not to attack or use schools for military purposes. Yet, this policy should be contrasted with reports of military use and looting of schools following the abovementioned

commitments.¹⁸⁵ When questioned about these accusations, some officials responded that it is possible that MNLA fighters have used abandoned schools as a temporary shelter to rest, thus making a distinction between abandoned schools, which could potentially be used, and functioning schools, which must be protected from use in all circumstances.¹⁸⁶ Geneva Call found similar views among other ANSAs in a recent survey.¹⁸⁷ Other officials claimed that the MNLA has on several occasions evacuated abandoned schools it sporadically used.¹⁸⁸

In terms of access to education, the Peace and reconciliation agreement identifies a number of actions to be completed for the benefit of the populations affected in northern Mali. These actions include, among others:

- Repairing damaged schools
- Encouraging the return of children, particularly girls, to school within the affected areas
- Constructing new schools appropriate to the educational programme
- Equipping schools with appropriately trained teachers
- Supplying learning materials to students and technical equipment to teachers
- Developing university centres, a public technical school (Lycée Technique Public)

¹⁸³ Rule 135, ICRC CIHL Database, *supra* fn 80.

¹⁸⁴ Rules 7 and 15, *ibid*. See also the Guidelines for Protecting Schools and Universities From Military Use During Armed Conflict, http://protectingeducation.org/wp-content/uploads/documents/documents_guidelines_en.pdf (last accessed 29 December 2020); ‘Guideline 1: Functioning schools and universities should not be used by the fighting forces of parties to armed conflict in anyway in support of the military effort. (a) This principle extends to schools and universities that are temporarily closed outside normal class hours, during weekends and holidays, and during vacation periods. (b) Parties to armed conflict should neither use force nor offer incentives to education administrators to evacuate schools and universities in order that they can be made available for use in support of the military effort.’ The Guidelines as well as the Safe Schools Declaration are non-binding instruments through which a number of states have expressed political support for and a commitment to protecting education in armed conflict. See GCPEA, ‘Safe Schools Declaration and Guidelines on

Military Use’, <https://protectingeducation.org/gcpea-publications/safe-schools-declaration-and-guidelines-on-military-use/> (last accessed 29 December 2020).

¹⁸⁵ Report of the Secretary-General on Children and Armed Conflict in Mali, UN doc S/2018/136, 21 February 2018, §41. See also above section on the protection of civilian objects from attack.

¹⁸⁶ Interview with MNLA former spokesperson, 27 August 2020; response from MNLA former legal adviser, 28 September 2020; interview with MNLA Secretary-General, 13 January 2021.

¹⁸⁷ Geneva Call, *In Their Words: Armed Non-State Actors Share their Policies and Practice With Regards to Education in Armed Conflict*, November 2017, https://www.genevacall.org/wp-content/uploads/dlm_uploads/2017/12/GC-research-on-education.pdf (last accessed 29 December 2020).

¹⁸⁸ Interview with CMA/MNLA legal affairs and human rights secretary, 12 April and 17 November 2019.

and a professional training centre within each northern region¹⁸⁹

It is unclear what role the MNLA has played in the implementation of these actions provided under the Peace and reconciliation agreement but, according to some officials interviewed, the movement has run schools in areas under its control and has trained volunteers to replace teachers who left due to the armed conflict.¹⁹⁰ The MNLA also called upon MINUSMA and NGOs to provide technical and logistical support to education services set up by civil society actors in northern Mali.¹⁹¹

E. HUMANITARIAN ACCESS

Common Article 3, Paragraph 2 of the 1949 Geneva Conventions provides that ‘an impartial humanitarian body, such as the ICRC, may offer its services to the Parties to the conflict’. This provision is considered to be one of the legal bases on which impartial humanitarian organizations may provide humanitarian relief and protection to people in need. Under customary IHL, the parties to an armed conflict ‘must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control’.¹⁹² Humanitarian relief personnel and objects must be respected and protected.¹⁹³

The MNLA has expressed its support for humanitarian access in a number of documents. Under the *Texte organique*, the senior officers responsible for supervision, training and

operations are required to ‘facilitate access to humanitarian organizations as well as the movement of relief convoys’.¹⁹⁴ The MNLA military code of conduct provides that ‘the work of humanitarian organisations must be facilitated as far as possible’.¹⁹⁵ The Ouagadougou preliminary agreement also provides that the parties will ‘facilitate the delivery of humanitarian assistance’¹⁹⁶ while in the Peace and reconciliation agreement, the parties commit ‘to facilitate access for humanitarian agencies and guarantee the security of their personnel’.¹⁹⁷

The notion of humanitarian access is not defined in any of these documents. According to one MNLA official interviewed, it is understood both as access for principled humanitarian organizations to people in need as well as, in turn, access for people in need to humanitarian services.¹⁹⁸ When specifically questioned about the rules of IHL governing humanitarian access, most MNLA officials referred to it in broad terms: ‘humanitarian access must be unhindered’. No officials made unprompted reference to the right of control or the protective emblems. It does not appear that the MNLA, unlike some other ANSAs,¹⁹⁹ has a specific policy regulating humanitarian access.

In 2012, amid the growing humanitarian crisis, the MNLA created a ‘humanitarian commission’ to advocate assistance to the civilian population, in particular refugees and displaced persons, to liaise with relief agencies and facilitate their intervention.²⁰⁰ According to officials interviewed, no specific restrictions

¹⁸⁹ Annexe 3, Peace and reconciliation agreement.

¹⁹⁰ Interview with MNLA former spokesperson, 16 November 2019.

¹⁹¹ MNLA, *Le Droit à l'éducation pour tous*, 5 October 2014, <http://www.mnlamov.net/actualites/385-le-droit-a-leducation-pour-tous.html> (last accessed 29 December 2020).

¹⁹² Rule 55, ICRC CIHL Database, *supra* fn 80.

¹⁹³ Rules 31 and 32, *ibid*.

¹⁹⁴ Art 20, *Texte organique*.

¹⁹⁵ Art 9, MNLA military code of conduct.

¹⁹⁶ Art 13, Ouagadougou preliminary agreement.

¹⁹⁷ Art 49, Peace and reconciliation agreement.

¹⁹⁸ Interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019.

¹⁹⁹ See A. Jackson, *In Their Words: Perceptions of Armed Non-State Actors on Humanitarian Action*, Geneva Call, 2016, pp 16–18, https://reliefweb.int/sites/reliefweb.int/files/resources/WH_S_Perception-of-armed-non-State-actors-on-humanitarian-action.pdf (last accessed 29 December 2020).

²⁰⁰ Interview with MNLA former women's president, 13 November 2019.

have been placed on relief agencies.²⁰¹

*The general policy of the MNLA has always been to unconditionally allow access for all humanitarian organizations ... without distinction and restrictions everywhere in the territory in question.*²⁰²

The only potential ground for denying access, one MNLA official claimed, would be a genuine suspicion of enemy infiltration or intelligence-gathering through humanitarian work, but this has never happened.²⁰³

Yet, these statements should be nuanced in light of external reports concerning the CMA as a whole. For example, in a 2019 report, the UN Panel of Experts on Mali²⁰⁴ alleged that the CMA was coercing humanitarian NGOs to comply with its rules and regulations in ways that obstruct the delivery of aid.²⁰⁵ It further alleged that, in January 2019, the CMA Regional Office for the Administration and Management of Kidal, which regulates and manages several aspects of civilian life in Kidal, including humanitarian operations, demanded that humanitarian NGOs involve CMA participation in the planning, implementation and control of their activities, including the selection of beneficiaries. The humanitarian commission allegedly issued work and residence permits to

aid workers in exchange for money or services.²⁰⁶ Moreover, the UN has regularly reported security incidents of denial of humanitarian access (such as armed robbery and carjacking) in northern Mali, which has impacted on the ability of aid agencies to deliver assistance to vulnerable populations. The MNLA has not been held directly responsible for the incidents, although some took place in areas under its control such as Kidal.²⁰⁷ In addition, there were a number of documented instances of looting of aid agencies' offices and warehouses by the MNLA in March/April 2012. According to FIDH and AMDH, the offices of humanitarian organizations in Gao as well as the WFP warehouses were sacked by MNLA fighters.²⁰⁸ To our knowledge, the MNLA has never attacked or abducted relief workers but, on the contrary, it reportedly facilitated the safe evacuation of several humanitarians at risk of being kidnapped by AQIM and/or MUJAO in April 2012.²⁰⁹

In terms of provision of services, it does not appear that the MNLA provided direct aid at the beginning of the conflict but from 2013, particularly within the framework of the interim authorities set up by the Peace and reconciliation agreement, it became increasingly involved within the CMA in the supply of drinking water, food and health care.²¹⁰ The MNLA has also periodically called upon NGOs to assist local

²⁰¹ Ibid. However, some military commanders had initial reservations about allowing the intervention of all humanitarian agencies on the ground as some might be involved in intelligence-gathering or spying. Interview with MNLA former spokesperson, 27 August 2020.

²⁰² Response from MNLA military staff, 11 January 2021.

²⁰³ Response from MNLA former legal adviser, 28 September 2020.

²⁰⁴ The Panel of Experts on Mali was established pursuant to UNSC Res 2374, 5 September 2017. It is comprised of four experts whose main tasks are to assist the UNSC Sanctions Committee in carrying out its mandate and to gather, examine and analyse information from states, relevant UN bodies, regional organizations and other interested parties regarding the implementation of the sanction measures decided in UNSC Res 2374, in particular incidents of non-compliance. See UNSC, Panel of Experts, <https://www.un.org/securitycouncil/sanctions/2374/panel-of-experts/work-mandate> (last accessed 29 December 2020).

²⁰⁵ UNSC, Final Report of the Panel of Experts Established Pursuant to Resolution 2374 (2017) on Mali and Extended

Pursuant to Resolution 2432 (2018), UN doc S/2019/636, 7 August 2019, §§143–154.

²⁰⁶ According to the Panel of Experts, NGOs have been routinely compelled to work with companies, notably for car rental, owned by individuals affiliated with CMA, to avoid threats or expulsion. Ibid.

²⁰⁷ UNSC, Report of the Secretary-General on the Situation in Mali, UN doc S/2014/692, 22 September 2014, §26.

²⁰⁸ FIDH and AMDH, *War Crimes in North Mali*, supra fn 77, pp 16–17.

²⁰⁹ Interview with MNLA former president of regional bureau, 11 April 2019; interview with CMA/MNLA legal affairs and human rights secretary, 12 April 2019; interview with MNLA former women's president, 13 November 2019. See also 'Mali : plusieurs Occidentaux exfiltrés de Tombouctou pour échapper aux rapt', *RFI*, 16 April 2012, <http://www.rfi.fr/fr/afrique/20120416-mali-plusieurs-occidentaux-exfiltres-tombouctou-echapper-rapt> (last accessed 29 December 2020).

²¹⁰ Response from MNLA military staff, 11 January 2021.

populations.²¹¹

F. PROTECTION OF HEALTH CARE

Under common Article 3, Paragraph 2 of the 1949 Geneva Conventions, the ‘wounded and sick’ shall be collected and cared for. As stipulated in Article 7 of AP II, ‘in all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones’. Medical personnel, facilities and transport that are exclusively assigned to medical purposes must be respected and protected in all circumstances, although they lose such protection if they carry out or are used to commit acts harmful to the enemy.²¹² Attacks directed against medical personnel and objects displaying the distinctive emblems of the Geneva Conventions in conformity with international law are prohibited.²¹³

The MNLA has addressed the protection of health care in a number of documents. Article 7 of the military code of conduct stipulates that

in all cases, the wounded and sick must be protected, whether they took part in violent action or not. They must be treated humanely and must be provided with necessary medical care.

According to officials interviewed, the MNLA makes no distinction between its own members,

²¹¹ See, e.g., Déclaration de Bilal Ag Acherif, Secrétaire Général du MNLA, 13 November 2012, <http://mnlamov.net/actualites/223-declaration-de-bilal-ag-acherif.html> (last accessed 29 December 2020). See also MNLA, Communiqué No 10-14/03/2012-MNLA, 14 March 2012, <http://mnlamov.net/actualites/145-communication-nd10-14032012-mnla.html> (last accessed 29 December 2020); MNLA, La CMA lance le SOS sécheresse dans l’Azawad, 28 May 2015, <http://www.mnlamov.net/actualites/445-la-cma-lance-le-sos-secheresse-dans-l-azawad.html> (last accessed 29 December 2020); MNLA, Coordination des mouvements de l’Azawad (CMA), 9 July 2018, <http://www.mnlamov.net/actualites/517-coordination-des-mouvements-de-l-azawad-cma-4.html> (last accessed 29 December 2020).

²¹² Rules 25, 28 and 29, ICRC CIHL Database, supra fn 80.

enemy fighters or civilians and provides first aid to all who are wounded and sick.²¹⁴ In the Texte organique, the senior officers responsible for supervision, training and operations are required to ensure that IHL rules related to ‘war wounded and vital services’ are respected.²¹⁵ The notion of ‘vital services’ includes health care services, according to officials interviewed. Moreover, the military code of conduct instructs MNLA combatants to respect and protect medical personnel:

Medical personnel ‘must be provided with the assistance they need in order to practice their professions, and they must not be forced to carry out acts that are in conflict with their ethics.’²¹⁶

To our knowledge, there have been no allegations of deliberate attacks against medical personnel by the MNLA. However, as mentioned above, MNLA fighters were accused, in the early days of the conflict, of having looted medicine and medical equipment as well as furniture and supplies from hospitals and clinics.²¹⁷ Moreover, some reports have accused the MNLA of using medical facilities for military purposes. For example, in his 2015 report on children and armed conflict, the UN Secretary-General alleged that the MNLA used one health care centre in Ménaka.²¹⁸ In 2017, the CMA committed to prevent and end any military use of health centres as part of the Action Plan with the UN.²¹⁹

The MNLA has reportedly provided emergency health care, in a limited scope, to the

²¹³ Rule 30, *ibid.*

²¹⁴ Interview with MNLA former spokesperson, 16 November 2019; interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019; response from MNLA former legal adviser, 28 September 2020.

²¹⁵ Art 21, Texte organique.

²¹⁶ Art 8, MNLA military code of conduct.

²¹⁷ HRW, ‘Mali: War Crimes by Northern Rebels’, supra fn 77, pp 7–8.

²¹⁸ UNGA/UNSC, Report of the UN Secretary-General on Children and Armed Conflict, UN doc A/69/926–S/2015/409, 5 June 2015, §128.

²¹⁹ Art 3(1)(c), Plan d’action entre la CMA et l’Equipe Spéciale Pays des Nations Unies, supra fn 14.

affected populations²²⁰ and has encouraged specialized agencies to run hospitals in areas under its control.²²¹ In September 2015, the CMA drew attention to a fever outbreak that had already killed 100 people in one month.²²² It said the local health-care services were overwhelmed by the situation and called for medical agencies to intervene, while reiterating its willingness to facilitate their access to affected areas. On 21 March 2020, concerned by the spread of the COVID-19 pandemic in neighbouring countries, the CMA called upon the population to observe basic preventive measures, in particular the limitation of trips and gatherings, in order to contain the virus. A special commission was set up to monitor and centralize primary emergency data and drastic measures to control passage at all checkpoints were introduced at the borders under its control.²²³ On 21 May 2020, the MNLA Secretary-General, as President of the CMA, decided to ‘pardon’ 21 people that the CMA was detaining at the Kidal prison in the context of the measures taken to respond to the COVID-19 pandemic.²²⁴

The Peace and reconciliation agreement identifies a number of actions in the area of health care for the populations affected in northern Mali. These actions include, among others:

- Upgrading health-care services
- Organizing the return of displaced health-care staff to the affected areas
- Improving the population’s financial access to health care by covering the

medical costs of indigent and repatriated persons

- Undertaking epidemiological surveillance
- Constructing new hospitals at Ménaka and Kidal
- Improving the provision of health-care services to nomadic populations.²²⁵

G. THE PROHIBITION OF FORCED DISPLACEMENT

IHL prohibits the forced displacement of civilians ‘unless the security of the civilians is involved or imperative military reasons so demand’.²²⁶ It also provides that in case of displacement, all possible measures shall be taken to ensure that the displaced persons are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.²²⁷ Displaced persons have a right to return to their homes as soon as the reason for their displacement ceases to exist and security allows.²²⁸

The MNLA military code of conduct refers to the issue of displacement. Under Article 5, it provides that

populations or sections of populations must not be moved, unless their safety is threatened or in situations of force majeure. People who have been moved must be allowed to return home as soon as it is safe.

²²⁰ Response from MNLA former legal adviser, 28 September 2020.

²²¹ Interview with MNLA former spokesperson, 16 November 2019.

²²² CMA, Epidémie de fièvre mortelle sévissant dans l’Azawad, 30 September 2015, <http://www.mnlamov.net/actualites/460-epidemie-de-fievre-mortelle-sevissant-dans-l-azawad.html> (last accessed 29 December 2020).

²²³ CMA, Décision No 006/2020/CD/CMA Portant mise en place de l’opération dénommée ‘Tagaste’, 21 March 2020, <https://www.genevacall.org/wp-content/uploads/2020/05/Mali-D%C3%A9cision-de-la-CMA-face-au-COVID-.jpg> (last accessed 29 December 2020).

²²⁴ CMA, Décision No 0015/2020/Pdt - CMA, Portant grâce à 21 détenus de la maison d’Arrêt de Kidal, 23 May 2020, <https://mnlamov.net/actualites/612-decision-no-0015-2020-pdt-cma-portant-grace-a-21-detenus-de-la-maison-d-arret-de-kidal.html> (last accessed 29 December 2020).

²²⁵ Annexe 3, Peace and reconciliation agreement.

²²⁶ Art 17, AP II and customary IHL (Rule 129, ICRC CIHL Database, supra fn 80). The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa of 1999 (Kampala Convention), to which Mali is a party, is also applicable to the Malian context.

²²⁷ Rule 131, ICRC CIHL Database, supra fn 80.

²²⁸ Rule 132, *ibid*.

According to officials interviewed, the MNLA has no specific or detailed regulations to implement this provision simply because it has never had to displace people.²²⁹

In practice, there is no evidence to suggest that there has been a policy on the part of the MNLA to cause unlawful forced displacement. Yet, the International Commission of Enquiry has reported a case of expulsion of individuals that, according to the information available, 'was not justified either by the need to provide security for the civilians concerned or by military necessity'. According to various sources, on 2 June 2013, the MNLA expelled at least 24 individuals from Kidal to Gao, where they arrived after having been stripped of their money and other valuables.²³⁰ The individuals were all 'dark-skinned' non-Tuareg men. The MNLA, which did not deny the arrests and expulsions to Gao, justified those acts on security grounds.²³¹ It further stated that the detainees had been suspected of working for the Malian army or enemy ANSAs and had been unable to justify their presence in the city of Kidal. However, the MNLA denied that the operation had been aimed at a particular community, indicating that dark-skinned persons had not been specifically targeted. Amnesty International has also reported ethnically motivated threats allegedly made by the MNLA²³² but, in general, displacement appears to have been rather prompted by armed confrontation and insecurity.

MNLA officials claimed that the movement has on several occasions demanded that civilians living near army camps leave for their own

protection. They gave the example of Hamboubare, where the MNLA allegedly provided basic necessities to civilians who fled the vicinities of the camp of Amachace in Tessalit.²³³ In the Ouagadougou preliminary agreement,²³⁴ the MNLA committed to facilitate the voluntary return of refugees and displaced people. This commitment was reiterated two years later in the Peace and reconciliation agreement, under which the MNLA (along with the other signatory parties) agreed to

*create the conditions needed to facilitate the rapid return, repatriation, reintegration and reinsertion of all displaced persons and refugees and to set up mechanisms to take care of them, in accordance with the relevant African and international instruments, including the UA Convention of 1969 regulating aspects specific to the problems of refugees in Africa and the 2009 Convention (Kampala Convention) on protection and assistance for displaced persons in Africa.*²³⁵

In several public statements the MNLA has called upon the Government of Mali and humanitarian organizations to assist displaced people and returnees 'through the development of reception sites and the establishment of basic social services and assistance with their resettlement'.²³⁶

²²⁹ Interview with MNLA former spokesperson, 27 August 2020.

²³⁰ UNSC, Report of the International Commission of Inquiry, supra fn 22, §§189–191 and 919.

²³¹ MNLA, Communiqué relatif à l'expulsion des infiltrés maliens et aux relations de l'armée malienne avec les réseaux terroristes, 3 June 2013, <http://www.mnlamov.net/actualites/288-expulsion-desinfiltrés-maliens-et-relations-de-larmée-malienne-avec-les-reseaux-terroristes.html> (last accessed 29 December 2020).

²³² In a report dated 2012, Amnesty International reported the testimony of one local of Timbuktu according to whom the MNLA had told the Bambaras to leave 'Azawad'

territory. Amnesty International, *Mali: Five Months of Crisis*, p 22 supra fn 77, p 22.

²³³ Response from MNLA military staff, 11 January 2021.

²³⁴ Art 13, Ouagadougou preliminary agreement.

²³⁵ Art 47, Peace and reconciliation agreement.

²³⁶ MNLA, Communiqué Final du 3^e Congrès du MNLA tenu du 07 au 11 avril 2016 à Kidal, 13 June 2016, <http://www.mnlamov.net/actualites/472-communiqué-final-du-3e-congrès-du-mnla-tenu-du-07-au-11-avril-2016-a-kidal.html> (last accessed 29 December 2020); CMA, Communiqué No 018/2018/CD-CC-CMA, 23 October 2018, <http://www.mnlamov.net/actualites/534-communiqué-n-018-2018-cd-cc-cma.html> (last accessed 29 December 2020).

H. USE OF LANDMINES AND OTHER EXPLOSIVE DEVICES

The use of landmines – both anti-personnel (AP) and anti-vehicle (AV) – is not prohibited under customary IHL. However, when landmines are used, particular care must be taken to minimize their indiscriminate effects.²³⁷ In addition, parties to the conflict using landmines must record their placement, as far as possible.²³⁸ At the end of active hostilities, they must also remove or otherwise render them harmless to civilians or facilitate their removal.²³⁹ Although the total prohibition of AP landmines is not considered customary law yet, more than three-quarters of states today are parties to the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.

The MNLA has a ‘no landmine use’ policy. During the interviews, all officials reiterated the MNLA’s principled opposition to the use of landmines, both AP and AV.²⁴⁰ One official emphasized that

*the MNLA has opted to oust the occupying state from the Azawad. Thus, it cannot take the risk of a boomerang effect by using indiscriminate weapons such as landmines or other weapons of mass destruction.*²⁴¹

According to a former senior military commander,

*mines are a dangerous weapon, even for combatants when they are not trained. The MNLA is a people’s army and we would run the risk of losing control were we to use such devices.*²⁴²

On several occasions, the MNLA has publicly condemned the indiscriminate use of landmines and improvised explosive devices (IEDs) by Islamist groups, pronouncing such means of warfare to be ‘terrorist acts against our populations’.²⁴³ On 20 January 2015, the MNLA claimed to have captured 12 landmines held by a ‘terrorist cell’ in Aguelhok. According to its communiqué, the landmines, all AV, were handed over to MINUSMA and Operation Barkhane.²⁴⁴

In practice, there is no evidence that the MNLA has used either AP or AV landmines in the course of the conflict. According to Landmine & Cluster Munition Monitor,²⁴⁵ in July 2013 the French media reported a rumour that the MNLA had planted unspecified landmines around the town of Kidal but the Malian army denied the claim.²⁴⁶ There are also no reports of indiscriminate use of IEDs by the MNLA.

²³⁷ Rule 81, ICRC CIHL Database, supra fn 80.

²³⁸ Rule 82, ibid.

²³⁹ Rule 83, ibid.

²⁴⁰ Interview with MNLA former spokesperson, 11 April 2019; interview with MNLA former commander, 15 April 2019; response from MNLA former legal adviser, 28 September 2020.

²⁴¹ Response from MNLA former legal adviser, 28 September 2020.

²⁴² Interview with MNLA former commander, 15 April 2019.

²⁴³ MNLA, Urgent : une voiture du mnlà vient de sauter sur une mine à kidal, 12 October 2014, <http://www.mnlamov.net/actualites/387-urgent-une-voiture-du-mnla-vient-de-sauter-sur-une-mine-a-kidal.html> (last accessed 29 December 2020).

²⁴⁴ MNLA, Arrestation de poseurs de mines dans la zone d’Aguelhok, 20 January 2015, <http://www.mnlamov.net/actualites/412-arrestation-de-poseurs-de-mines-dans-la-zone-d-aguelhok.html> (last accessed 29 December 2020).

²⁴⁵ Landmine & Cluster Munition Monitor, ‘Mali Mine Ban Policy’, last updated 25 November 2013, http://www.the-monitor.org/en-gb/reports/2013/mali/mine-ban-policy.aspx#_ftn12 (last accessed 29 December 2020).

²⁴⁶ ‘Mali : fausses rumeurs sur la destruction d’un camp militaire par le MNLA à Kidal’, *RFI*, 3 July 2013, quoted in Landmine & Cluster Munitions Monitor, ‘Mali Mine Ban Policy’, supra fn 245.

BOX 4: THE LANDMINE POLICY OF PREVIOUS TUAREG REBELLIONS

Previous Tuareg rebellions took a different stand with regards to AV mines. For example, the ATNMC led by the late Ibrahim Ag Bahanga did use AV mines during its armed struggle.²⁴⁷ In neighbouring Niger, while maintaining a no AP mine policy,²⁴⁸ the MNJ also regularly used AV mines against the Niger armed forces between 2007 and 2009. The use of AV mines was, however, subject to some internal control and regulations:²⁴⁹

- Only target enemy vehicles (Niger armed forces)
- No use in urban areas
- Surveillance of mine laying
- Removal of the landmine if it has missed its target

These regulations are consistent with customary rules of IHL.²⁵⁰ Yet, though the majority of casualties were members of the military forces, many civilians were also killed or injured by AV mines laid by the parties to the conflict.²⁵¹ The MNJ acknowledged that the placement of mines was not systematically recorded²⁵² and some AV mines may not have been removed because the sentry had been killed or had to leave the zone, thereby putting civilians at risk.²⁵³

After the cessation of hostilities in 2009, the MNJ handed over a number of AV mines to the government and cooperated with the National Commission for the Collection and Control of

Illicit Weapons in the mapping, survey and actual clearance of mined areas.²⁵⁴

I. DETENTION AND ADMINISTRATION OF JUSTICE

1. TREATMENT OF PERSONS IN DETENTION

Common Article 3 of the 1949 Geneva Conventions, Articles 4 and 5 of AP II, as well as customary IHL provide numerous rules concerning the recording and treatment of persons in detention, notably the prohibition of ill-treatment, the provision of food and water and of safeguards with regards to health and hygiene. Generally, persons deprived of their liberty are ‘entitled to respect for their person, honour and convictions and religious practice’ and ‘shall in all circumstances be treated humanely, without any adverse distinction’.²⁵⁵ ICRC access to persons deprived of their liberty is mandatory only in the context of international armed conflicts and, as such, is not an obligation for ANSAs. In the context of a NIAC, the ICRC ‘may offer its services to the parties to the conflict with a view to visiting all persons deprived of their liberty for reasons related to the conflict in order

²⁴⁷ International Campaign to Ban Landmines, *Landmine Monitor Report 2008*, p 500 <http://www.the-monitor.org/en-gb/reports/2008/landmine-monitor-2008.aspx> (last accessed 29 December 2020).

²⁴⁸ Mouvement des Nigériens pour la Justice (MNJ), Communication sur la situation au Niger, 2009, http://theirwords.org/media/transfer/doc/ne_mnj_2009_01-5d00b84cd87136ec7715ad2746a42e60.pdf (last accessed 29 December 2020). The Niger Government confirmed on several occasions that the MNJ had not used anti-personnel mines. See Landmine & Cluster Munition Monitor, ‘Niger Mine Ban Policy’, last updated 18 June 2010, <http://www.the-monitor.org/en-gb/reports/2010/niger/mine-ban-policy.aspx> (last accessed 29 December 2020).

²⁴⁹ Geneva Call interview with MNJ President, 19 October 2011. Meeting notes on file with the researchers. See also MNJ, Décision 001, 12 September 2007, http://theirwords.org/media/transfer/doc/sc_ne_mnj_2007_02-6a65c778b81b9a97bc00625f78681044.pdf (last accessed 29 December 2020); MNJ, Non aux mines!, 3 January 2008, http://theirwords.org/media/transfer/doc/ne_mnj_2008_03

-9bab295f2caa7f6bc8ce8ae511ac2a06.pdf (last accessed 29 December 2020).

²⁵⁰ Rules 81–83, ICRC CIHL Database, supra fn 80.

²⁵¹ International Campaign to Ban Landmines, *Landmine Monitor Report 2009*, p 590, http://www.the-monitor.org/media/1641881/Landmines_Report_2009.pdf (last accessed 17 February 2021).

²⁵² Geneva Call interview with MNJ President, 19 October 2011, supra fn 249.

²⁵³ Geneva Call interview with MNJ military commander, 24 August 2011. Meeting notes on file with the researchers.

²⁵⁴ Geneva Call, *Niger: The Government and the Former Rebels Join Forces Against Landmines*, 7 November 2011, <https://www.genevacall.org/niger-government-former-rebels-join-forces-landmines> (last accessed 29 December 2020); Geneva Call, *Annual Report 2012*, July 2013, p 9, https://www.genevacall.org/wp-content/uploads/dlm_uploads/2014/06/2012-Geneva-Call-Annual-Report.pdf (last accessed 29 December 2020).

²⁵⁵ Art 4, AP II.

to verify the conditions of their detention and to restore contacts between those persons and their families'.²⁵⁶ Persons deprived of their liberty in relation to a NIAC must be released as soon as the reasons for their detention cease to exist.²⁵⁷

The MNLA's detention policy is addressed in a few internal documents. Under the *Texte organique*, the MNLA's senior officers responsible for supervision, training and operations are required to ensure that IHL rules related to 'war prisoners' are respected.²⁵⁸ It is unclear whether detention procedures referred to in these regulations²⁵⁹ exist in written form. According to MNLA officials interviewed,²⁶⁰ these procedures require respect for enemy soldiers who surrender, the evacuation and care of the wounded and sick, humane treatment of detainees and the permitting of ICRC visits as well as communication with families. The MNLA military code of conduct states the following rules:

All persons deprived of their liberty must be held in a known place. Detailed information about the detainees must be made available to their families and persons having a legal interest in their case. All persons deprived of their liberty must be

*treated humanely. They must be supplied with food and drinking water, with shelter and appropriate clothing, and sanitation must be guaranteed.*²⁶¹

The MNLA has referred to these rules in various public statements.²⁶² In addition, in the Ouagadougou preliminary agreement,²⁶³ the MNLA (as well as the other signatory parties) committed to release persons detained as a result of the armed conflict as soon as the agreement entered into force. This commitment was considered a confidence-building measure between the parties to facilitate the conclusion of a final peace deal, though it did not appear in the 2015 Peace and reconciliation agreement.

In practice, the MNLA/CMA has detained various categories of individuals over the course of the conflict.²⁶⁴ These include for the most part members of the Malian security forces (armed forces, police and intelligence services)²⁶⁵ but also fighters of other ANSAs (MUJAO,²⁶⁶ AQIM, Ansar Dine and the Plateforme) as well as civilians detained for reasons related to the conflict or for common crimes.²⁶⁷

The MNLA used to regard Malian security force detainees as 'prisoners of war', to be treated according to the 1949 Geneva Conventions:²⁶⁸ 'In

²⁵⁶ Rule 124, ICRC CIHL Database, *supra* fn 80.

²⁵⁷ Rule 128, *ibid.*

²⁵⁸ Art 19, *Texte organique*.

²⁵⁹ Art 20, *ibid.*

²⁶⁰ Interview with MNLA former spokesperson, 11 April 2019; interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019; response from MNLA former legal adviser, 28 September 2020.

²⁶¹ Art 3, MNLA military code of conduct.

²⁶² See, e.g., MNLA, Déclaration de Monsieur Bilal Ag Acherif Secrétaire général du MNLA, Président du Conseil Transitoire de l'Etat de l'Azawad, 19 May 2014, <http://www.mnlamov.net/actualites/346-declaration-de-monsieur-bilal-ag-acherif-secretaire-general-du-mnla-president-du-ctea.html> (last accessed 29 December 2020).

²⁶³ Art 17, Ouagadougou agreement.

²⁶⁴ MINUSMA, Droits de l'homme et processus de paix au Mali (Janvier 2016–Juin 2017), February 2018, §§ 78-79. https://minusma.unmissions.org/sites/default/files/rapport_public_minusma_droits_de_lhomme_fevrier_2018.pdf (last accessed 29 December 2020).

²⁶⁵ 'Mali : la situation s'envenime à Kidal', *RFI*, 3 June 2013, <http://www.rfi.fr/fr/afrique/20130602-mali-kidal-mnla-touareg-songhais-bamako-azawad>; 'Mali Government Accuses Tuareg Rebels of Ethnic Violence', *Reuters*, 3 June 2013, <https://www.reuters.com/article/us-mali-rebels-kidal-idUSBRE95213420130603>.

²⁶⁶ MNLA, Combats contre le MUJAO à Anefis, 30 March 2013, <http://www.mnlamov.net/actualites.html?start=270> (last accessed 29 December 2020).

²⁶⁷ It is difficult to estimate the total number of persons, military or civilian, detained by the MNLA/CMA since 2012. According to MINUSMA, between January 2013 and June 2017, at least 445 persons were detained by the CMA and Plateforme. See MINUSMA, Droits de l'homme et processus de paix au Mali, *supra* fn 264; MINUSMA and OHCHR, Rapport sur la situation des droits de l'homme au Mali du 1er novembre 2013 au 31 mai 2014, *supra* fn 94, §65.

²⁶⁸ See for example, MNLA, Déclaration de Monsieur Bilal Ag Acherif, *supra* fn 262; MNLA, Communiqué No 10-14/03/2012-MNLA, <http://mnlamov.net/actualites.html?start=365> (last accessed 17 February 2021); MNLA, Communiqué No 11-20/03/2012, <http://mnlamov.net/actualites.html?start=360g> (last accessed 17 February 2021); MNLA, Le MNLA appelle à la retenue et dément les propos mensongers des autorités de

all procedures concerning prisoners, we have always sought to respect international conventions such as the Geneva Conventions and their additional protocols.²⁶⁹ MNLA officials denied taking hostages,²⁷⁰ its military code of conduct prohibiting this method of warfare.²⁷¹

The MNLA used to inform the ICRC of wounded soldiers' whereabouts or it evacuated the wounded itself.²⁷² It also allowed the ICRC to visit detainees in its custody and monitor their medical status, treatment and living conditions.²⁷³ The ICRC provided it with assistance such as food, hygiene items and blankets.²⁷⁴ MINUSMA had regular access to places of detention run by the CMA, notably in Kidal and Ber, in order to verify the identity of detainees, their state of health and reasons for detention.²⁷⁵

According to MINUSMA, the detainees were generally held in precarious conditions of detention and the Human Rights Division expressed concern about the ill-treatment of

several detainees between January 2013 and June 2017.²⁷⁶ The MNLA has contested this²⁷⁷ and claimed to have organized training sessions for detention centre staff to prevent abuse and improve detention conditions:²⁷⁸

As far as possible, detained persons are placed outside 'closed cells' and have the right to visit and communicate with the families. Non-nationals who wish to do so are authorized to communicate with the diplomatic representations of their countries in Mali as well as with their relatives. Medical visits are made as needed. Since the onset of the Corona Virus disease (COVID19), special measures have been taken to enforce the barrier measures. It is in this context that 21 persons detained for less serious offenses were acquitted by decision of the current Chairman of the CMA at the end of May 2020.²⁷⁹

In a report published in July 2012,²⁸⁰ FIDH and

Bamako, 18 May 2014
<http://www.mnlamov.net/actualites/345-le-mnla-appelle-la-retenu-et-dement-les-propos-mensongers-des-autorites-de-bamako.html> (last accessed 17 February 2021); MNLA, Bilan humain des combats qui ont opposé les forces combattantes de l'Azawad à l'armée malienne le 17 Mai 2014, 18 May 2014, <http://www.mnlamov.net/actualites/344-bilan-humain-des-combats-du-17-mai-a-kidal.html> (last accessed 17 February 2021); MNLA, Le MNLA respecte la personne humaine, 15 February 2012, <http://mnlamov.net/actualites.html?start=370> (last accessed 17 February 2021).

²⁶⁹ Response from MNLA military staff, 11 January 2021.

²⁷⁰ Interview with MNLA former commander, 15 April 2019.

²⁷¹ Art 3(c), MNLA military code of conduct.

²⁷² Interview with CMA/MNLA legal affairs and human rights secretary, 12 April 2019; interview with MNLA former spokesperson, 10 and 16 November 2019; response from MNLA military staff, 11 January 2021. See also MNLA, Déclaration de Monsieur Bilal Ag Acherif, supra fn 262; MNLA, Bilan humain des combats qui ont opposé les forces combattantes de l'Azawad à l'armée malienne le 17 Mai 2014, supra fn 268; ICRC, *Annual Report 2014*, vol 1, p 171, https://reliefweb.int/sites/reliefweb.int/files/resources/2014_annual_report.pdf (last accessed 29 December 2020).

²⁷³ Interview with MNLA former president of regional bureau, 11 April 2019; interview with CMA/MNLA legal affairs and human rights secretary, 12 April 2019. See also ICRC, 'Mali: ICRC Visits Detainees in the North', 31 July 2012,

<https://www.icrc.org/en/doc/resources/documents/news-release/2012/mali-news-2012-07-31.htm> (last accessed 29 December 2020).

²⁷⁴ Certificats de donation du CICR à la Maison d'arrêt de Kidal, 4 mai 2014, 23 mai 2014, 5 juin 2014. On file with the researchers. See also ICRC, 'Mali: ICRC Visits Detainees in the North', supra fn 273; ICRC, *Annual Report 2013*, vol 1, <https://www.icrc.org/en/doc/assets/files/annual-report/icrc-annual-report-2013.pdf> (last accessed 29 December 2020); ICRC, *Annual Report 2014*, supra fn 272.

²⁷⁵ MINUSMA and OHCHR, Rapport sur la situation des droits de l'homme au Mali du 1er novembre 2013 au 31 mai 2014, supra fn 94, § 48; interview with CMA/MNLA legal affairs and human rights secretary, 12 April 2019; Ag Mohamed, *Commentaires de la CMA*, supra fn 164.

²⁷⁶ MINUSMA, Droits de l'homme et processus de paix au Mali, supra fn 264, § 81; MINUSMA and OHCHR, Rapport sur la situation des droits de l'homme au Mali du 1er novembre 2013 au 31 mai 2014, supra fn 94, §66.

²⁷⁷ Interview with CMA/MNLA legal affairs and human rights secretary, 12 April 2019; response from MNLA former legal adviser, 28 September 2020.

²⁷⁸ Ag Mohamed, *Commentaires de la CMA*, supra fn 164.

²⁷⁹ Ibid. See also CMA, Décision No 0015/2020/Pdt - CMA, Portant grâce à 21 détenus de la maison d'Arrêt de Kidal, supra fn 224.

²⁸⁰ FIDH and AMDH, *War Crimes in North Mali*, supra fn 77, pp 12–14.

AMDH alleged that the MNLA (along with Ansar Dine) was responsible for the summary execution on 24 January 2012 of 153 Malian soldiers imprisoned in Aguelhok army camp, some after having been tortured. The MNLA denied both accusations, indicating that such acts would be contrary to the traditional honour code as well as its military code of conduct.²⁸¹ MNLA officials put the blame on Ansar Dine or AQIM.²⁸² In a letter dated 28 July 2013, MNLA lawyers highlighted the lack of credible evidence and requested that FIDH retract the allegations which blamed the MNLA for the summary executions.²⁸³ Soon after the event, the Malian authorities established a special commission, composed of senior military and security officers and chaired by the Inspector General of Police, to investigate the crimes in Aguelhok. The commission confirmed the summary execution of Malian soldiers²⁸⁴ but could not establish the responsibility of the MNLA. In its report, the International Commission of Inquiry reached a similar conclusion and attributed the responsibility of the crimes committed in Aguelhok to Ansar Dine and AQIM.²⁸⁵

Over the course of the conflict, HRW and MINUSMA/OHCHR reported cases of detainees,

most of them black-skinned men from non-Tuareg ethnic groups suspected of spying on behalf of the government, who were allegedly ill-treated while in MNLA custody in Kidal.²⁸⁶ The International Commission of Inquiry considers that on 15 February 2013, several dozen Arab men from Mali, Mauritania and Niger residing in In-Khalil were exposed to the sun for an entire day, blindfolded and with their hands tied. At least two persons were reported to have been seriously injured.²⁸⁷ One MNLA official acknowledged that cases of ill-treatment may have happened but claimed that action was taken to punish those responsible.²⁸⁸

The MNLA released most military and police detainees on a unilateral basis, while others were freed in exchange for the release of MNLA members and suspected supporters held by the Malian authorities.²⁸⁹ The MNLA also handed over detainees from other ANSAs (MUJAO, AQIM and the Plateforme). It is difficult to establish the total number of detainees that have been released or exchanged by the MNLA since the outbreak of the conflict. We have recorded at least 266 persons from March 2012 up to October 2017 : 201 military and police,²⁹⁰ 30

²⁸¹ MNLA, Communiqué No 11-20/03/2012, supra fn 268; MNLA, Le MNLA respecte la personne humaine, supra fn 268; MNLA, Communiqué No 06, Mise au point sur ce qui s'est passé les 18 et 24 janvier 2012 dans la localité d'Aguelhok (cercle de Tessalit, Région de Kidal), 15 February 2012 <http://mnlamov.net/actualites/125-communication-nd06-du-15022012-mnla.html> (last accessed 17 February 2021); interview with MNLA former commander, 15 April 2019; response from MNLA former legal adviser, 28 September 2020.

²⁸² Interview with MNLA former commander, 15 April 2019; interview with MNLA former spokesperson, 16 November 2019.

²⁸³ MNLA lawyers argued that the allegation contained in the report was based on the testimony of a single uncorroborated witness who claimed to have seen one MNLA flag, on a vehicle, on the day of the attack. They further argued that there was a plethora of evidence that showed MNLA fighters were not present at Aguelhok on the day of the 'massacre', including witnesses interviewed by AMDH, FIDH's local partner organization. Letter of Richard J. Rogers, Bohler Advocaten, to Antoine Bernard, Executive Director, FIDH, 28 July 2013. On file with the researchers.

²⁸⁴ Amnesty International, *Mali: Five Months of Crisis*, supra fn 77, p 16.

²⁸⁵ UNSC, Report of the International Commission of Inquiry, supra fn 22, §§165–168.

²⁸⁶ HRW, 'Mali: New Abuses by Tuareg Rebels, Soldiers', 7 June 2013, <https://www.hrw.org/news/2013/06/07/mali-new-abuses-tuareg-rebels-soldiers> (last accessed 29 December 2020); MINUSMA and OHCHR, Rapport sur la situation des droits de l'homme au Mali du 1er novembre 2013 au 31 mai 2014, supra fn 94, §41 and 66.

²⁸⁷ UNSC, Report of the International Commission of Inquiry for Mali, supra fn 22, §182.

²⁸⁸ Interview with MNLA former president of regional bureau, 11 April 2019.

²⁸⁹ Interview with MNLA former spokesperson, 16 November 2019; response from MNLA military staff, 11 January 2021.

²⁹⁰ ICRC, 'Mali: Three detainees Transferred After ICRC Visit', 1 March 2012, <https://www.icrc.org/en/doc/resources/documents/news-release/2012/mali-news-2012-03-01.htm> (last accessed 29 December 2020); HRW, 'Mali: New Abuses by Tuareg Rebels, Soldiers', supra fn 286; MNLA, Libération des prisonniers de guerre arrêtés lors des combats du 17 Mai 2014 à Kidal, 19 May 2014, <http://www.mnlamov.net/actualites/347-liberation-des-prisonniers-de-guerre-arretes-lors-des-combats-du-17-mai->

MUJAO,²⁹¹ 3 AQIM²⁹² and 32 Plateforme.²⁹³ Many detainees have been released through the intermediary of the ICRC and MINUSMA or, in the case of minors, transferred to a special transit centre via UNICEF.²⁹⁴

2. FAIR TRIALS AND ADMINISTRATION OF JUSTICE

Under common Article 3 of the 1949 Geneva Conventions and customary IHL, ‘no one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees.’ Article 6 of AP II provides further details on fair trial guarantees and the administration of justice.

With respect to its own members, the MNLA military code of conduct states in the preamble that any contravention of the code must be reported to the military command for investigation and fighters found in breach disciplined. Under the Texte organique, the penalties provided for MNLA members are linked to the different levels of offences. For

serious offences, such as disclosure of secrets to the enemy, violations of the rules of war or murder, the penalty is the arrest and removal of the culprit and his presentation before a higher court of the ‘state of Azawad’.²⁹⁵ For secondary or minor offences such as misappropriation of material belonging to the movement, disobedience to superiors or negligence of service, penalties vary from presentation before a military council to a warning or disciplinary punishment.²⁹⁶ The MNLA Action Plan signed with the UN also provides for specific sanctions against individuals responsible for grave violations against children and, where possible, the granting of reparations or other forms of compensation to victims of sexual violence.²⁹⁷

In areas controlled by the MNLA and CMA forces, it is the traditional local Sharia magistrates or judges who administer justice.²⁹⁸ The movements have reactivated the cadis by granting them powers in criminal matters, raising serious questions about the regularity, legality and legitimacy of the decisions rendered.²⁹⁹ According to MNLA officials, a

2014-a-kidal.html (last accessed 29 December 2020); MNLA, Réaction du MNLA liée aux événements du 17 Mai 14 de Kidal, supra fn 95; MNLA, Echange de prisonniers et libération d'azawadiens injustement détenus à Bamako, <http://www.mnlamov.net/actualites/366-echange-de-prisonniers-et-liberation-dazawadiens-injustement-detenus-a-bamako.html> (last accessed 29 December 2020); ‘Le gouvernement malien et les rebelles à la table des négociations’, *France 24*, <https://www.france24.com/fr/20140716-mali-bamako-groupes-armes-nord-negociations-alger-mnla-echange-prisonniers>; ‘Mali : échange de prisonniers entre le gouvernement et l'ex-rébellion’, *Jeune Afrique*, 4 October 2015, <https://www.jeuneafrique.com/269507/politique/mali-echange-de-prisonniers-entre-le-gouvernement-et-lex-rebellion/>; ‘Mali : échange de prisonniers entre Bamako et groupes rebelles’, *RFI*, 4 October 2015, <http://www.rfi.fr/fr/afrique/20151004-mali-echanges-prisonniers-bamako-groupes-rebelles-cma-processus-paix>; UNSC, Report of the Secretary-General on the Situation in Mali, UN doc S/2015/1030, 24 December 2015, §35; UNSC, Report of the Secretary-General on the Situation in Mali, supra fn 162, §32.

²⁹¹ ‘Mali: libération de trente ex-combattants du Mujao à Kidal’, *RFI*, 25 September 2013, <http://www.rfi.fr/fr/afrique/20130925-mali-liberation-trente-ex-combattants-mujao-kidal-ansar-dine-mnla-minusma-serval>.

²⁹² UNSC, Report of the Secretary-General on the Situation in Mali, UN doc S/2013/582, 1 October 2013, §47.

²⁹³ MNLA, Série de libération de prisonniers de guerre de la Plateforme par la CMA, 16 October 2017, <http://mnlamov.net/10007-constantes/491-serie-de-liberation-de-prisonniers-de-guerre-de-la-plateforme-par-la-cma.html> (last accessed 29 December 2020); UNSC, Report of the Secretary-General on the Situation in Mali, supra fn 292, §§35–36; UNSC, Report of the Secretary-General on the Situation in Mali, supra fn 39, §45; UNSC, Report of the Secretary-General on the Situation in Mali, UN doc S/2017/1105, 26 December 2017, §47.

²⁹⁴ Interview with MNLA former education and training secretary, 12 November 2019.

²⁹⁵ Arts 58 and 61, Texte organique.

²⁹⁶ Arts 59, 60, 62 and 63, *ibid*.

²⁹⁷ Art 4(1)(4), Procédures disciplinaires et de responsabilité, Plan d'action entre la CMA et l'Equipe Spéciale Pays des Nations Unies, supra fn 14.

²⁹⁸ B. Ahmed, ‘Mali : quatre ans après les accords d'Alger, Kidal demeure sous le contrôle des ex-rebelles’, *Jeune Afrique*, 13 December 2019, <https://www.jeuneafrique.com/868861/politique/mali-quatre-ans-apres-les-accords-dalger-kidal-demeure-sous-le-controle-des-ex-rebelles/>.

²⁹⁹ MINUSMA and OHCHR, Rapport conjoint sur les violations des droits de l'homme et du droit international

justice commission has existed within the movement since its creation. This commission has been responsible for ‘working with the cadis who administer justice independently, based on Islam and local customs’.³⁰⁰ In this context, when a member of the MNLA is the author of a crime or an infringement of common law, he is presented and judged by the cadis.³⁰¹

In 2014, the MNLA and the other movements from the CMA established a security or police force called CSMAK (Comité de Sécurité Mixte de l’Azawad à Kidal), which is in charge of prisons and detention centres in Kidal.³⁰² Since 2018, several initiatives have been undertaken to reinforce CMA capacity in terms of public security and law enforcement, including the construction of a new jail and the progressive deployment of mobile security teams.³⁰³

Unfortunately, it has not been possible in the context of this research to gather detailed information on the MNLA’s enforcement of disciplinary sanctions against its members and its role in the administration of justice. In the opinion of the International Commission of Inquiry, while the existing customary justice system can ease tensions by resolving small-scale commercial or marital disputes and even cases of petty crime, it is not a viable solution for addressing serious IHL violations and cannot serve as a substitute for formal criminal justice.³⁰⁴ The customary justice system does not offer the procedural safeguards essential for a fair criminal trial. Accused persons are arrested and detained by the police forces of ANSAs and are brought before a traditional judge on the same day. They do not have the right to a lawyer and are encouraged to admit responsibility for the

offence in order to be pardoned by the victim. With few exceptions, neither the accused nor the victim has the option to appeal. In the absence of written judgments and case law, decisions and sentences vary significantly depending on the judge. In addition, a perpetrator’s ability to avoid a harsh sentence may depend on their social status or wealth, which can allow them to ‘buy’ the pardon of the victim or of their family.³⁰⁵

J. THE SPECIAL PROTECTION OF CERTAIN OBJECTS, SUCH AS CULTURAL PROPERTY

Under customary IHL, each party must respect and protect cultural property. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives. Property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity.³⁰⁶ The use of cultural property for purposes which are likely to expose it to destruction or damage is prohibited, subject again to imperative military necessity.³⁰⁷ Destruction of or wilful damage to cultural property is prohibited. Parties are also obliged to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against cultural property.³⁰⁸ These rules are contained to a large extent in Article 4 of The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, a provision applicable to both international and

humanitaire commis lors des événements de Kidal, les 16, 17 et 21 mai 2014, supra fn 94, §96.

³⁰⁰ Response from MNLA military staff, 11 January 2021.

³⁰¹ MNLA officials gave the example of a fighter who mistakenly shot a youth in Ménaka in 2012. The fighter was arrested and presented to the cadis who sentenced him harshly. The MNLA offered monetary compensation to the family of the victim. Ibid.

³⁰² ‘Chapter 4: Traditional Authorities in Mali: Armed Alliances and Insecurity’, in F. Molenaar, J. Tossell, A. Schmauder, A. Idrissa and R. Lyammouri, *The Status Quo Defied: The Legitimacy of Traditional Authorities in Areas of Limited Statehood in Mali, Niger and Libya*, Clingendael, August 2019,

https://www.clingendael.org/pub/2019/legitimacy_traditional_authorities_mali_niger_libya/4-traditional-authorities-in-mali-armed-alliances-and-insecurity/ (last accessed 17 February 2021).

³⁰³ UNSC, Final Report of the Panel of Experts, supra fn 205, §84.

³⁰⁴ UNSC, Report of the International Commission of Inquiry, supra fn 22, §1015.

³⁰⁵ Ibid, §1014.

³⁰⁶ Rule 38, ICRC CIHL Database, supra fn 80.

³⁰⁷ Rule 39, ibid.

³⁰⁸ Rule 40, ibid.

non-international armed conflicts.

MNLA statute stipulates that the movement will work for the 'preservation of the cultural heritage of the Azawad people'.³⁰⁹ Under the Texte organique, the senior officers responsible for supervision, training and operations are required to ensure that IHL norms related to cultural heritage are respected.³¹⁰ The notion of heritage is not defined in these documents nor, to our knowledge, in any other MNLA policy documents. When asked specifically about this, MNLA officials gave a broad meaning to the term, seeing cultural heritage as encompassing both tangible and intangible dimensions. One representative explained that cultural heritage is 'what remains: material constructions but also morality, artisanship, and immaterial practices, such as proverbs, riddles, poetry, prose, songs and language itself',³¹¹ while another stated that those are 'places that are full of material and immaterial value, and which symbolise something important for the population'.³¹²

None of the MNLA officials interviewed were aware of the definition of cultural property provided in the 1954 Hague Convention nor the internationally recognized Blue Shield emblem. It does not appear that the MNLA has specific regulations or military instructions on cultural property, for example with regards to circumstances allowing use for military purposes or attack.³¹³ MNLA policy documents only state that cultural property must be respected. This general principle is reaffirmed in the Ouagadougou preliminary agreement.³¹⁴

³⁰⁹ Art 26, Statut et Règlement du MNLA.

³¹⁰ Art 19, Texte organique.

³¹¹ Interview with MNLA former spokesperson, 11 December 2015, Paris, quoted in M. Lostal, P. Bongard and K. Hausler, *Culture Under Fire: Armed Non-State Actors and Cultural Heritage in Wartime*, Geneva Call, 2018, p 49, https://genevacall.org/wp-content/uploads/2017/10/Cultural_Heritage_Study_Final.pdf (last accessed 29 December 2020).

³¹² Interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019.

³¹³ One official said that the MNLA would attack cultural sites if there was no military alternative, or if it was ignorant of their protected status.

³¹⁴ Preamble, Ouagadougou preliminary agreement.

MNLA officials categorically denied the looting of churches and destruction of Christian icons reported by HRW and FIDH/AMDH in 2012.³¹⁵ They claimed that the MNLA does not attack cultural or religious buildings as a matter of policy.³¹⁶ However, they shared doubts as to what qualifies as cultural heritage under international law and mentioned, as an example, the Kidal fortress built by the French colonial forces a century ago. They said that they were unsure whether such a building would be protected under international law.³¹⁷ Reportedly, the status of the fortress raised internal debate within the MNLA: some military officers called for its destruction, arguing that the fortress served as a detention and torture centre, while in contrast others urged its preservation as a 'lieu de mémoire'.³¹⁸ In the end, the MNLA dislodged the army from the Kidal fortress in May 2014 and occupied it due to its privileged military position, in a situation that did appear to fall within the military necessity requirement provided for under international law.³¹⁹ MNLA officials also mentioned practical measures taken by the movement to protect cultural sites.

They reported, for instance, the deployment of a unit to guard the archaeological site of Essouk,³²⁰ which had been subject to looting.³²¹ Another example that we could actually verify from various sources is the conservation of ancient manuscripts that the MNLA discovered in In-Khalil on 23 February 2013 following a skirmish with MUJAO fighters. In a

³¹⁵ Interview with MNLA former spokesperson, 16 November 2019.

³¹⁶ Interview with MNLA former spokesperson, 11 December 2015, quoted in Lostal, Bongard and Hausler, *Culture Under Fire*, supra fn 311, p 38.

³¹⁷ Ibid.

³¹⁸ Interview with CMA/MNLA legal affairs and human rights secretary, 12 April 2019; interview with MNLA former spokesperson, 16 November 2019.

³¹⁹ Interview with MNLA former spokesperson, 16 November 2019; interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019.

³²⁰ Interview with MNLA former spokesperson, 16 November 2019.

³²¹ UNSC, Report of the Secretary-General on the Situation in Mali, UN doc S/2015/426, 11 June 2015, §46.



Kidal fortress © Vitke

communiqué dated 11 March,³²² the MNLA stated that ‘it seized a vehicle containing three trunks full of manuscripts which were unmistakably from the Ahmed Baba Centre in Timbuktu’ and that it would be willing to bring them to any institution able to return them to their owner after confirmation of their origin.³²³ The MNLA established an *ad hoc* commission to inventory the 1019 manuscripts.³²⁴ On 22 March 2013, Ambéry Ag Rhissa, who at that time was the person responsible for culture, handicrafts and tourism within the MNLA, officially informed the Director-General of UNESCO of the discovery and requested the organization’s assistance in returning the manuscripts, of which MNLA had drawn up a specific list provided in the annexe.³²⁵ The list was also shared with the Serval force³²⁶ and the Ahmed Baba Institute, which certified that the manuscripts were not part of its collection.³²⁷ On

20 May 2013, MINUSMA staff were able to access the three boxes held by the MNLA in Kidal and took pictures of a few sample manuscripts.³²⁸ The MNLA reiterated its willingness to return the manuscripts after an expert’s authentication and the insurance that they would be stored in safe conditions.³²⁹ Following that visit, MINUSMA organized a mission with UNESCO participation to retrieve the manuscripts, and hand over to the private owner who had been identified in the meantime by different Malian experts on manuscripts, but the mission was cancelled at the last minute.³³⁰ It is not clear what finally happened to the manuscripts. According to some officials, they ultimately got destroyed when members of the local population set fire to the Governorate of Kidal where they were stored to protest the MNLA’s decision to leave.³³¹

In the Peace and reconciliation agreement, the MNLA agreed to the creation of cultural centres and regional museums.³³² These provisions were introduced at the initiative of the CMA in line with its broad vision of cultural heritage, encompassing also intangible aspects. Unlike other ANSAs operating in Mali, the MNLA has never prohibited cultural practices such as music in areas under its control.

³²² Communiqué No 57 du MNLA, Manuscrits de Tombouctou, 10 March 2013. <http://www.mnlamov.net/actualites/265-communication-nd-57-manuscrits-de-tombouctou.html> (last accessed 17 February 2021).

³²³ *Ibid.*

³²⁴ Interview with MNLA former education and training secretary, 12 November 2019.

³²⁵ Letter and annexe on file with the researchers. UNESCO confirmed to Geneva Call that they had received the letter. See Lostal, Bongard and Hausler, *Culture Under Fire*, supra fn 311, p 35. In the letter, the MNLA condemned the looting of the Ahmed Baba Institute and expressed the hope that Timbuktu would recover this rich heritage.

³²⁶ MINUSMA, confidential note regarding the status on ancient manuscripts in Kidal, 5 July 2013. On file with the researchers.

³²⁷ Letter on file with the researchers.

³²⁸ MINUSMA, confidential note regarding the status on ancient manuscripts in Kidal, supra fn 326; MINUSMA Kidal mission, confidential report, 22 May 2013. On file with the researchers. See also Lostal, Bongard and Hausler, *Culture Under Fire*, supra fn 311, p 35.

³²⁹ MINUSMA, confidential note regarding the status on ancient manuscripts in Kidal, supra fn 326.

³³⁰ *Ibid.*

³³¹ Interview with MNLA Secretary-General, 13 January 2021; Geneva Call mission to Kidal, 28 November–4 December 2019. Report on file with the researchers.

³³² Art 39, Peace and reconciliation agreement.

6. CONCLUSIONS

The following conclusions can be drawn from this case study:

- The MNLA has expressed consistent support for IHL and human rights since the outbreak of the conflict. Its founding organizational documents and military doctrine reflect key norms of the law of armed conflict and, as part of the CMA, the movement has also undertaken formal commitments with the UN to end and prevent child recruitment and sexual violence. Overall, we found no principled disagreement of the MNLA with international standards. In some instances, MNLA policy even goes beyond what IHL requires, for instance with regards to landmines (a total ban on both AP and AV mines), or the recruitment and association of children with armed forces (the prohibition of under 18-year-olds). In other instances, however, the MNLA's position on, or interpretation of, some norms is problematic. For example, the military use of certain government buildings, which are civilian in nature, is unlawful under IHL, unless required by imperative military necessity, which did not appear to be the case in several situations mentioned in this study.
- In our analysis, several factors explain this overall acceptance of IHL. First, the MNLA views IHL as largely consistent with the local norms, customs and values the movement abides by: 'we totally adhere to IHL since its principles are enshrined in our culture' said the MNLA Secretary-General.³³³ In particular, many officials interviewed in the course of the study referred to the traditional code of warfare, *Achak*, which the MNLA leadership used to promote respect for IHL among the foot soldiers:³³⁴ 'The people of Azawad have a long history of warfare and have developed an unwritten code of conduct that is known to the majority of the population.'³³⁵ Given the limited knowledge combatants have of IHL, linking its rules to local norms and values has given it greater traction.³³⁶ Another factor is the movement's actual aims and ideology. The MNLA has been fighting for the rights of the 'Azawad people'. In this sense, it has a vested interest in showing its core constituency and the international community that it cares about international norms and its human rights record. This has been vital to enhance its legitimacy as a 'liberation movement' and to gain support for its 'cause'.³³⁷ Finally, the leadership structure of the group has also played a central role. Much of the military command is made up of professional officers formerly serving in the armed forces of Libya and/or Mali. These officers received training in IHL³³⁸

³³³ Geneva Call meeting with MNLA officials, 11 October 2013, supra fn 92.

³³⁴ Group discussion with MNLA commanders, 1 December 2019; interview with CMA/MNLA legal affairs and human rights secretary, 12 April 2019 and 17 November 2019.

³³⁵ Response from MNLA military staff, 11 January 2021; interview with MNLA Secretary-General, 13 January 2021.

³³⁶ On the role of local norms and values in influencing behaviour, see ICRC, *The Roots of Restraint in War*, supra fn 3.

³³⁷ For a further analysis of the importance of legitimacy as a key driver of compliance, see Jo, *Compliant Rebels*, supra fn 5, where she argues that ANSAs which pursue legitimacy, both at home and abroad, are more likely to comply with IHL.

³³⁸ Some of them were even responsible for training on and enforcing IHL in the Libyan and Malian armies before the

and are very aware of their command responsibility to ensure military discipline. Their military experience has been instrumental in the establishment of internal regulations to control the fighters' behaviour. Moreover, the MNLA leadership realized that IHL violations may damage the movement's reputation, confuse the MNLA with 'terrorist groups' and lead to potential prosecutions by the ICC or another tribunal.³³⁹ To avoid this situation, it could rely on the activism of a number of human rights representatives and legal advisers well-versed in international law and public relations. These individuals, who had personal access to the leadership, both political and military, significantly contributed to influencing MNLA policy and promoting IHL awareness within the movement.³⁴⁰ The international lawyers contracted by the MNLA also played an important advisory role on how to conduct a war in accordance with international law.³⁴¹ In October 2012, the MNLA submitted an action plan to the UN Security Council to indicate its willingness to respect IHL and to cooperate with the ICC. These démarches paved the way for subsequent commitments undertaken with the UN on the prohibition of child recruitment and sexual violence.

- To be sure, despite its stated adherence to IHL and actual implementing measures (such as the release of wounded soldiers), the MNLA has faced compliance issues. The International Commission of Inquiry and various other sources have documented cases of murder of persons not participating in hostilities, sexual abuse, ill-treatment of detainees, pillaging and attacks against protected property, particularly in the early months of the conflict. However, though measuring compliance is complex, no evidence of systematic or widespread contrary practice has been found, except with regard to pillaging and the prohibition of recruitment and association of children between 15 and 18 years old. MNLA officials have acknowledged that isolated incidents have occurred but, according to them, these violations were egregious and do not reflect official policy. They further explained that the MNLA, in becoming a people's army, with many new recruits joining at the same time in the early months of the conflict, faced command and control challenges: 'we cannot claim that all combatants, even those higher ranking ones, were trained and that we had control over all who joined'.³⁴² The leadership realized early on the need to take measures (such as internal regulations, command orders and training), in order to enforce behaviour standards and avoid 'uncontrolled slidings'.³⁴³ The inclusion in the military code of conduct of norms addressing actual compliance issues experienced during that time, such as the prohibition of rape and pillaging, is a clear indication of this realization. The traditional honour code

conflict. Interview with MNLA former spokesperson, 17 January 2021.

³³⁹ Interview with CMA/MNLA legal affairs and human rights secretary, 12 April 2019 and 17 November 2019; interview with MNLA former human rights representative, 14 November 2019; interview with MNLA former lawyer, 10 November 2019.

³⁴⁰ They regularly visited MNLA camps to sensitize fighters to IHL rules. Interview with MNLA former president of

regional bureau, 11 April 2019; interview with CMA/MNLA legal affairs and human rights secretary, 17 November 2019.

³⁴¹ Interview with MNLA former lawyer, 10 November 2019.

³⁴² Interview with MNLA former spokesperson, 11 April 2019 and 16 November 2019; response from MNLA former legal adviser, 28 September 2020.

³⁴³ Interview with MNLA former human rights representative, 14 November 2019.

was not deemed enough to ensure restraint.³⁴⁴ It is difficult to ascertain to what extent these measures were incorporated into the inner workings of the movement and enforced in practice, but the sequence of events suggests that the MNLA brought in these measures rapidly after the capture of Timbuktu and Gao in March/April 2012, where it has weaker community links, and reports of abuses by human rights NGOs which were harming its reputation. In this sense, this external pressure and negative publicity appear to have been a turning point for the movement's policy and to have prompted corrective action.



MNLA fighters sensitized on IHL before combat
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³⁴⁴ Interview with MNLA former commander, 15 April 2019.

ANNEXES

MAP OF MALI



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