

Justice for children in humanitarian action: Impact of the armed conflict in Mali¹

SUMMARY

Mali made promising steps towards the establishment of a stronger juvenile justice system over the last two decades. However, the occupation of Northern Mali by armed groups in 2012, subsequent conflict and mass displacement have rolled back progress and compromised children's access to justice, education and health. The crisis has highlighted the shortcomings of the existing national child protection system.

Existing problems have worsened

Mali struggled with multiple problems before the armed conflict, including child recruitment, labour and trafficking, early and forced marriage, female genital mutilation, abandonment of children, the marginalisation and social exclusion of street children, and Talibé children (children from Quranic schools forced to beg by their teachers known as marabouts). In regions under the control of Islamist groups, there is now a de-facto absence of the formal justice system. This has led to almost total impunity and violations of the right to due process. Some reports indicate that suspected perpetrators of sexual violence were released from detention without being charged, as part of confidence-building measures within the framework of the peace negotiations.

Lack of data on children in contact with the justice system

Specific data collection on justice for children stopped completely with the outbreak of the crisis and more general data has been lacking from rebel-held areas due to limited access. The precise impact of the conflict is therefore difficult to assess, but many protection actors note a significant rise in the numbers of victims of child rights violations and children in contact with the justice system.



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Most serious crisis the country has seen in recent history

The humanitarian context

The occupation of Northern Mali by armed groups in January 2012 and the coup against Amadou Touré from within the national armed forces two months later marked the beginning of the most serious crisis the country has seen in recent history. While earlier uprisings led to fragile pacts and peace deals in 1992 and 2006, Touareg groups striving for an independent homeland of Azawad and their Islamic allies took control of the Northern regions of Kidal, Gao and Timbuktu in 2012, which also destabilised the regions of Mopti and Segou closer to the capital, Bamako.² 2013 saw three interventions: the French-led Operation Serval, the African-led mission (AFISMA)³ and eventually the United Nations deployment (MINUSMA).⁴ In May and June 2015, agreements were signed between the Malian government and the main dissident coalitions.⁵ However, these agreements lack provisions on access to basic social services, employment or justice and have already been rejected by some parties.⁶

180,000 refugees fled to neighbouring countries at height of crisis

The armed conflict resulted in significant population movements, with up to 180,000 refugees fleeing to neighbouring countries at the height of the crisis, and more than 136,000 remaining as of June 2015.⁷ Internally displaced persons (IDPs) have been returning slowly, bringing figures down from over 300,000 at the height of the crisis to just over 100,000 in June 2015.⁸ Renewed tension and clashes made May 2015 the most violent month since 2013, with new attacks against the civilian population and waves of displacement. The situation remains volatile.⁹ These new attacks also hindered humanitarian operations and exacerbated the lack of social and health services, as well as education.¹⁰ The Child Protection Sub-Cluster in Mali estimates that the risk of repeated armed clashes would directly affect up to 2,000 children in terms of protection and up to 20,000 indirectly in the Northern and Central regions.¹¹ Apart from the armed conflict, there is a high risk of droughts and flooding, with additional risks of epidemics and diseases.¹²

Despite the peace accords and the fact that the southern region is moving towards post-conflict reconstruction, the North remains very much in emergency mode, with little or no government control or humanitarian access.¹³ The alternating periods of calm and violence have created confusion over the phase of the emergency and related responses by national and international humanitarian and development actors.¹⁴

Progress in the juvenile justice system undermined

Impact of the crisis on the judicial framework for children in Mali

While Mali was making promising steps in the establishment of a stronger juvenile justice system, the occupation of Northern Mali by armed groups rolled back progress made over the last two decades and further compromised children's access to education, health and justice.¹⁵

In 1981, Mali adopted its first law on the criminal responsibility of minors, marking a starting point for a specialised child jurisdiction.¹⁶ Since then, the Malian government ratified numerous international instruments related to children's



Inadequate provision for juveniles within the formal system

rights¹⁷ and embarked on the construction of an appropriate institutional framework to ensure child protection¹⁸ notably the adoption on 5 June 2002 of the Child Protection Code by Presidential Ordinance. However, the juvenile justice system still aims to both protect and punish children, which is seen by many as a paradox.¹⁹ Furthermore, the Child Protection Code is enforceable but has not yet been ratified by Parliament. This flaw has serious implications.²⁰ For example, it has not been legally possible to appoint child protection delegates, empowered to intervene on behalf of child victims and witnesses of crime.²¹

In the formal juvenile justice system, a child is defined by law as a person under 18 years old.²² In civil cases, a minor has no responsibility for his or her acts whereas in criminal cases, it varies depending on the minor's age.²³ The age determination should be based on the birth certificate or, by default, on the child's physical appearance or on a declaration from the child, parent or guardian.²⁴ According to the Child Protection Code, children can be held accountable only within specialised jurisdiction for children, comprised of juvenile courts, the special bench for minors in the Appeal Court and the Assize Court (Cour d'assises) for minors, and staffed by judges for children.²⁵ The juvenile courts should be established in every jurisdiction where there is a Court or a District Court.²⁶ However, in reality, this provision has not yet been implemented and there are no juvenile courts outside of Bamako. In the rest of the country, boys and girls are tried by a judge who hears under-age cases but has no special training.²⁷

In Mali, children shall benefit from special protective measures such as no placement in custody for anyone under the age of 15 during the pre-trial investigation phase.²⁸ During the prosecution phase, the judge should order an assessment of the child's personal circumstances.²⁹ If needed, the judge can order placement in a specialised juvenile detention centre. The duration cannot exceed three months if it is an offence and one year if it is a crime.³⁰ Regarding placement and detention for minors, specialised juvenile detention centres, public establishments and probation services are envisaged, but the implementation of the requirements in the law have not been completed.³¹ For instance, there are only two specialised detention centres for minors (one for boys and one for girls) for the entire country, both in Bamako. Outside the capital, children are placed in ordinary prisons.³² In most institutions, there is no proper separation between children and adults: a 2008 survey showed that out of the 54 prisons visited, 41 did not have a separate section for minors.³³

Mediation and the informal justice system

Mediation is a legal mechanism in Mali aiming to both limit the potential negative consequences of a prosecution for the child, and to foster reconciliation between the victim and the offender.³⁴ In Mali such alternative measures can take the form of verbal and written apologies to the victim, restitution of property or compensation as well as community service for the offender.³⁵ However, out of 923 children arrested in 2006 and 765 in 2007, only 68 (total) benefited from the alternative measures to prosecution and/or imprisonment.³⁶ While no figures exist for the crisis period, it can be assumed that the proportion has reduced even further.³⁷



Significant impediments to effective justice for children: structural, educational, institutional and financial

The informal justice system in Mali is based on oral tradition and used normally for minor offences.³⁸ However, these practices are used considerably, especially in areas where state control is weak³⁹ and their nature depends of the region, ethnicity, religion and family concerned.⁴⁰ Few studies have been made on the use of the Malian informal justice system and the impact of the current crisis upon it, but it can be assumed that where and when there is an absence of the official justice system, the traditional systems are invoked even more extensively. The actors of the traditional justice system are the customary chiefs, the councils of the customary chiefs, as well as the victim and the alleged perpetrator. For instance, in the village of Kirina, in the south of Bamako, if a child is alleged to have perpetrated an offence, his/her parents are convened to see the chief and are subject to a sanction on the behalf of the child. These could include reparation to the victim, reduced responsibility for the parents in the communities, or community work carried out by parents.⁴¹

In addition to the structural problems mentioned above, putting in place an effective justice system for children has been marred by ignorance of child protection instruments and their lack of translation into local languages, distribution, widespread corruption, and inadequate funding of the child protection sector as a whole.⁴²

Impunity and widespread violation of the right to due process

The recent crisis -- which gave way to the looting, destruction and closure of institutions -- has worsened the situation for boys and girls in Mali. Indeed, with the significant rise in numbers of victims of child rights violations as a result of the crisis, the lack of access to justice and associated mechanisms stated above becomes even more critical. In regions under the control of Islamist groups, there is a de-facto complete absence of the formal justice system. This in turn has led to an almost total impunity for perpetrators of all crimes, including the recruitment and use of children by armed groups, and contributed to violations of the right to due process.⁴³ Moreover, some reports indicate that suspected perpetrators of sexual violence were released from detention without being charged, as part of confidence-building measures within the framework of the peace negotiations.⁴⁴ During 2014 and 2015, the return to Timbuktu and Gao regions of some prosecutors, judges and judicial police who had fled during the armed conflict, led to sporadic progress in re-establishing the judiciary.⁴⁵ However, their ability to conduct investigations outside major towns was limited by the precarious security situation.⁴⁶

Emergency has highlighted shortcomings of existing child protection system

Major justice-related issues affecting children during the emergency

Mali's timid progress to improve its national child protection system over the years has not only been stopped by the current emergency, but it is also clear that the system was neither prepared to face such a crisis nor carry out appropriate responses. Mali struggled with several chronic problems before the crisis, including child labour and child trafficking; early and forced marriage; female



Absence of data

genital mutilation; abandonment of children; street children's marginalisation and social exclusion; Talibé children (children from Quranic schools forced to beg by their teachers known as marabouts).⁴⁷ Specific data collection on justice for children stopped completely with the outbreak of the crisis. Furthermore, even more general data has been lacking from rebel-held areas due to limited access. The impact of the crisis is therefore difficult to assess, but many protection actors agree that those problems have been exacerbated.⁴⁸

The emergency has also brought new vulnerabilities and challenges, such as being exposed to landmines and explosive remnants of war (ERW) or to sexual violence. Many girls had been victims of rape, forced marriage and other sexual violence by armed groups.⁴⁹ Due to the emergency situation, few of the victims have any access to formal or traditional justice.

Separated and unaccompanied children

The high numbers of displaced persons including separated and unaccompanied children has exacerbated an already precarious situation, as many of them have been accommodated by extended family members, themselves not in a position to support them.⁵⁰ The worsening economic situation has led to an increase in street and working children and Talibé children and amplified their risk of economic exploitation.⁵¹ In other country contexts, similar situations have led to a notable increase in these groups of children coming in conflict with the law.⁵² However in Mali, due to a complete lack of data since the outbreak of the crisis, it is impossible to gauge the numbers of children coming in conflict with the law as an indirect result of the emergency.⁵³

Children associated with armed groups or accused as jihadists

The social exclusion of children associated with armed groups or accused as jihadists, and concomitant reprisals, are issues that have gained particular attention. At the beginning of the conflict, significant recruitment and use of children by armed groups and pro-governmental militias was reported, often in exchange for money or Quranic education.⁵⁴ By the end of 2014, the UN had verified the recruitment and use of 84 children⁵⁵ but as most of these have already been released, MINUSMA estimates the overall recruitment to be in the hundreds.⁵⁶ Several armed groups have been listed in the annex of the UN Secretary General's reports on children and armed conflict.⁵⁷ The presence of children in self-defence militias was also reported.⁵⁸

The UN has had some success negotiating with armed groups for the release of children detained in jails in the Northern region of Kidal.⁵⁹ However, since access to some of the regions has been restricted, it is suspected that children remain in prisons or improvised detention facilities.⁶⁰

In 2013, several hundred suspects detained during the offensive to retake the North were held in extended pre-trial detention in overcrowded government jails and detention centres. Many appeared to have been arbitrarily detained, largely as a result of their ethnicity.⁶¹ Children recruited or associated with pro-government militias or armed groups were detained with adults in cramped conditions and



Allegations of torture, cruel, inhuman and degrading treatment

without access to family or legal counsel; most were charged for being members of armed groups and for the illegal possession of firearms and ammunition.⁶²

There have been general allegations of torture or ill-treatment against them by the Malian armed forces and the gendarmerie.⁶³ Because of the continued problem of detention of minors, the Malian government signed a memorandum of understanding with the UN on 1 July 2013. It establishes a framework and mechanism for the treatment of children associated with armed groups, including their release or transfer to child protection units and their reintegration into society.⁶⁴ The main tenet was the verification of the age of arrested minors and their transfer to the National Directorate for the Advancement of Children and Families (DNEPF) and UNICEF. However, despite the terms agreed in the memorandum, children accused of belonging to armed groups are still being arrested and detained for up to two years.⁶⁵ The age verification process has been slow and there seems to be little flexibility for judges to release children without proof of age.⁶⁶ International organisations have been working to locate documents proving a child's age, but they are extremely difficult to find, as they either never existed (due to poor birth registration processes), have been lost, or are impossible to trace as families have been displaced across the country.⁶⁷

Child Protection Sub-Cluster established in 2012 and CPMS contextualised in 2014

Initiatives by humanitarian and development actors on justice for children

The Child Protection Sub-Cluster in Mali was put in place in 2012 as a response to the crisis. According to some of its members, justice for children in general has not been treated as a high priority with the exception of a few high profile issues such as the reprisals against children associated with armed forces and groups.⁶⁸ Similarly, the current plan for preparedness and response makes little mention of the issue.⁶⁹ Contextualisation of the Child Protection Minimum Standards took place at multiple levels in Mali in 2014. The standards were contextualised for the Gao and Mopti regions and a guide was drafted on the implementation of the Standards in general. Both documents identify concrete actions and indicators for Standard 14 – Justice for children.⁷⁰ However, it is unclear if and to what extent any of these actions were taken forward. In June 2015, few members of the Protection Cluster in Bamako were aware of the Minimum Standards or how Standard 14 was implemented. Although another round of contextualisation of the CPMS was due to commence in July 2015,⁷¹ it remains to be seen if justice for children will be identified as a priority for the future and concrete action taken.

From 2008 until 2012, UNICEF carried out a major programme on justice for children with the Malian authorities, in particular the Ministry of Justice. One of its goals was “strengthening the technical skills of those working in the field (juvenile judges, judicial police officers, social workers, and prison guards) in international and national standards on juvenile justice and strengthening the logical capacities of juvenile courts”.⁷² However, this programme did not include any emergency preparedness activities.⁷³ With the outbreak of the crisis, the programme was extended until 2014, yet reoriented towards crisis response focusing on children associated with armed forces and groups, mine risk awareness, conflict-related



Legal reform envisaged by 2018

gender based violence, and unaccompanied and separated children.⁷⁴ While this reorientation responded to some pressing child protection priorities, it also meant that one of the few dedicated justice for children programmes was de facto discontinued and neither UNICEF nor any other actor has since put in place a similar programme. More recently, several actors have commenced general justice projects, with some components relating to children. For example, Lawyers without Borders, Canada, together with other partners has launched a five-year project on Justice, Prevention and Reconciliation (JUPREC) focussing on the fight against impunity, transitional justice and taking a civil society approach including women, children and other victims of the crisis. The project is supposed to initially cover the regions of Bamako and Koulikoro and then progressively extend to the Northern regions.⁷⁵ Law reform projects envisaged before the crisis have also been resumed, and the government aims to have a comprehensive legislative framework in place by 2018 protecting the rights and freedoms of citizens and in particular women and children, including the implementation of provisions that have remained only on paper so far.⁷⁶

Juvenile justice needs to be incorporated in emergency preparedness work

Data collection on justice for children has proven a major obstacle since the beginning of the crisis. Between 2006 and 2010, UNICEF supported the National Centre for Documentation and Information on Women and Children (CNDIFE) of the Ministry for the Advancement of Women, Children and the Family (MPFEF) to produce two surveys on children in conflict with the law. The 2011-2013 survey was cancelled due to the national crisis.⁷⁷ Since then, data collection on justice for children has been incoherent and the little data that exists is not necessarily reliable.⁷⁸

Several organisations have undertaken work to sensitise children and communities to dangers and risks related to the conflict, but there has been little focus on emergency preparedness in general or in on justice-related aspects in particular so far. One of the lessons learned from the crisis is that disaster risk reduction strategies need to include juvenile justice aspects and be systematically built into work with vulnerable communities in order to make them more resilient to crisis.⁷⁹

Existing capacity building carried out on an ad-hoc basis

Some capacity building activities on child protection and child rights were carried out before the crisis, for example by UNICEF within the programme on justice for children (see above). However, many actors deplored the lack of -- and the urgent need for -- capacity building within the security forces and the justice chain. For example, the president of the children's court in Bamako said that neither he nor his predecessor had received any training since 2011 and that training was especially needed for judges who hear children's cases where no juvenile courts exist. Similarly, capacity building was urgently needed for the police units often called to deal with children, such as the Youth and Morality Brigade (Brigade chargée des mœurs et de l'enfance) in Bamako. While some one-off training events were delivered by child protection actors in 2015, there has been a lack of systematic and continuous capacity building programmes on justice for children which also prepare actors for events similar to those in 2012/2013.



Crisis highlighted existing weaknesses in national child protection system and lack of preparedness

Conclusions

The crisis affecting Mali since 2012 has had an undeniably negative impact on the protection of children and their rights. However, the child protection system demonstrated flagrant weaknesses in terms of justice for children long before the current crisis, and these have been exacerbated. The judicial framework remained incomplete and poorly implemented, key actors were inadequately trained and gaps in relevant and up-to-date data on justice related issues affecting children impeded the development of adequate programmes. In many areas, the exact impact of the crisis on justice for children can only be estimated. National and local actors were poorly prepared, and existing programmes included few or no emergency preparedness components. Since the crisis, access to justice for victims of child rights violations has been limited further still, whereas the impunity of perpetrators of acts of violence, abuse, exploitation and neglect seems to have increased significantly.

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