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HUMAN
RIGHTS
WATCH

HRW.org

June 24, 2014

Honorable Mohamed Ali Bathily
Minister of Justice and Human Rights
Republic of Mali

Re: Creation of a Special Investigation Cell in Bamako

Dear Honorable Minister Bathily,

We are writing on behalf of Human Rights Watch to encourage you to support the creation of a special investigation cell in Bamako tasked with investigating grave crimes that took place during the 2012-2013 armed conflict, identifying individuals responsible, and building cases against them for prosecution.

For the reasons we outline below, we believe a special investigation cell is the best option for ensuring prompt and fair justice for victims and the accused, and would also contribute to building the capacity of the Malian judiciary. Given the ongoing security challenges in the north, a Bamako-based special cell would greatly minimize security risks to victims, witnesses, evidence and the accused.

During Human Rights Watch's recent visit to Mali, we were struck by several factors that, in tandem, create a true window of opportunity to ensure justice for victims and, in the longer term, take a meaningful step forward in addressing the impunity which has previously characterized grave crimes committed during past armed conflicts. The creation of a special investigation cell would in our view be the best way of capitalizing on this window.

First, there exists a notable hunger for justice among the victims of the 2012-2013 violence as evidenced in the fact that dozens of victims have filed complaints (*porté plainte*) with the authorities to seek justice and compensation for what they suffered. Many of these victims and families have formed victims associations and are waiting eagerly for their right to redress. Many are being accompanied in their pursuit of justice by the Malian Association of Human Rights, International Federation for Human Rights, and Malian Association of Jurists. We understand many more victims and their families will present complaints in the coming months.

Second, there appears to be a growing trust in the judiciary's ability to ensure redress, evidenced by the willingness of victims from all sides of the conflict to file complaints. Furthermore, the progress by the national judiciary demonstrated in the "Red Beret dossier" – the 2012 enforced disappearance and torture of at least 21 soldiers – has appeared to create momentum and increased expectation for justice for other serious crimes.

Third, there exists considerable donor, institutional, and moral support for the reform of the judiciary and strengthening rule of law from bilateral donors, the

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United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), the UN Independent Expert, and the European Union, among others. The support of these actors could help your Ministry advance many of the reforms that you currently envisage.

We are encouraged by the numerous commitments to ensure justice for graves crimes by all sides made by President Keita, the Prime Minister and yourself. However, we remain concerned about the very few investigations that have been opened by the judges of the Bamako court given jurisdiction for crimes in the north by a January 2013 Supreme Court decision. We have also seen little evidence of, other jurisdictions, notably Mopti, conducting investigations into crimes committed during the conflict.

Furthermore, while we are encouraged by the recent return to the north of judicial personnel, which is essential to facilitate the return of rule of law country-wide, we believe tasking those courts with the investigation of crimes committed during the 2012-2013 armed conflict poses numerous very serious security and resource challenges, which could actually undermine efforts to realize accountability for serious crimes.

We are confident the creation of a special investigation cell in Bamako would be the best means to both ensure fair and credible investigations and trials and capitalize on the current momentum for strengthening rule of law and breaking the cycle of violence and reprisals.

Human Rights Watch believes that such a special investigation cell would promote justice in Mali for the following reasons:

1. A special investigation cell would centralize expertise in certain areas making it more likely that investigations are successful and prosecutions move forward. The areas include expertise for:
 - The investigation of certain crimes that have not often been handled by ordinary Malian courts such as sexual slavery, forced marriage, use and recruitment of child soldiers, and the destruction of cultural heritage;
 - The identification of linkage evidence between low-level perpetrators and senior officers, some working with international criminal or regional terrorism networks;
 - To effectively identify and manage insider witnesses and establish protocols to support reluctant or traumatized victims and witnesses.
2. To the extent that serious international crimes are committed according to an overarching policy, consolidating expertise also means that prosecutors, investigating judges and judicial police tasked with investigating crimes committed pursuant to that policy are better placed to make links between crimes that may be otherwise charged separately (and in multiple jurisdictions). When investigated and prosecuted separately the cases may otherwise appear unconnected.
3. There is a marked absence of defense lawyers in the north, thus making the right for the accused to have counsel a very serious challenge.
4. Basing the judges, prosecutors, clerks and gendarmes tasked with investigating very sensitive cases in the north, especially in smaller jurisdictions, would make them vulnerable to attack, threats and other forms of intimidation. As a practical matter, it is easier and more

cost effective to ensure protection for a limited number of personnel working on sensitive cases.

5. It is also easier to develop an effective system of witness protection to service one specialized unit (and corresponding proceedings) centralized in one location as opposed to a number of prosecutor's offices and courthouses across the country.
6. Given the fragile security situation and frequent attacks in the Gao, Timbuktu and Kidal regions, housing evidence and staff in different *palais de justice* in the north (especially in smaller jurisdictions) heightens their risk of being targeted.
7. The previous arrest and detention in Bamako of several high-profile suspects credibly implicated in ordering and, in many cases, carrying out serious human rights abuses in the north could help facilitate the investigation process by the proposed Bamako-based special cell.
8. A Bamako-based special cell is better placed to investigate allegations of torture by state security forces since many alleged victims, particularly members of northern armed groups detained for criminal offenses, are being held in Bamako Central Prison.
9. More broadly, we have concerns about inevitable delays associated with waiting for justice institutions to become fully functional in the north.

As we envision, the special investigation cell would consist of a sufficient number of investigative personnel including prosecutors and investigating judges, ideally with prior experience in handling serious crimes. The assignment of judicial personnel in the cell should be long term as investigations of cases involving serious crimes can, due to their complexity, last months or even years. Furthermore, personnel in the cell should benefit from training and capacity building from Mali's development and justice reform partners.

We thank you for taking the time to consider our reasons for creating a special investigation cell in Bamako. We believe it is the best option for helping to fulfill what the Malian government has rightly identified as one of the most pressing priorities: the fight against impunity. Human Rights Watch stands ready to assist you in this important endeavor.

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