The rights of the indigenous peoples to self determination: Attempts to address the violation of human rights with specific reference to Mali

Submitted in partial fulfilment of the requirements of the degree LLM (Human Rights and Democratisation in Africa), University of Pretoria

By

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29 October 2010
DECLARATION

I, Lahyerou AG ALY declare that the work presented in this dissertation is original. It has never been presented to any other University or Institution. Where other people’s works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LLM Degree in Human Rights and Democratisation in Africa.

Signature ..................................................
Date..........................................................

Supervisor: s Odile Lim Tung

Signature ..................................................
Date..........................................................
THOUGHTS

“What we are doing here...is an example to many people around the world. We are fulfilling our pact with the United Nations during this decade on Indigenous peoples”

Deputy President Thabo Mbeki

“I am convinced that all Africans are indigenous, but I am not convinced that all Africans are marginalized and discriminated’

L. AG ALY
ACKNOWLEDGEMENTS

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### Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACHPR</td>
<td>African Charter Human Peoples’ Rights</td>
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<td>CERD</td>
<td>Convention on the Elimination of All Forms Racial Discrimination</td>
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<td>Declaration/UNDRIP</td>
<td>United Nations declaration on the Right of the Indigenous Peoples</td>
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<td>HCR</td>
<td>Human Rights Committee</td>
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<tr>
<td>FIAA</td>
<td>Front Islamique Arabe de l’Azawad</td>
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<tr>
<td>MFUA</td>
<td>Mouvement et Fronts Unifies de l’Azawad</td>
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<tr>
<td>MPGK</td>
<td>Mouvement Patriotique Ganda Koy</td>
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<tr>
<td>MPA</td>
<td>Mouvement Populaire de l’Azawad</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant Civil Political rights</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<tr>
<td>IP</td>
<td>Indigenous People</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>Working Group</td>
<td>African Commission’s Working Group on the Rights of Indigenous Populations/Communities</td>
</tr>
</tbody>
</table>
# Table of Contents

Plagiarism declaration ii  
Dedication iii  
Thoughts iv  
Acknowledgment v  
Acronyms vi  
Contents vii  

Chapter one: Introduction 1  
  1.1 Background 1  
  1.2 Problem statement 6  
  1.3 Research question and objectives 6  
  1.4 Significance of the research 7  
  1.5 Literature review 8  
  1.6 Methodology 9  
  1.7 Limitations 9  
  Chapter outline 9  

Chapter two: Historical context of Indigenous Peoples of Mali: Kel Tamacheks and Hassanya 10  
  2.1. Introduction 10  
  2.2. Historical, social and cultural context 10  
  2.2.1. Presentation of the indigenous peoples’ Kel Tamacheks 10  
  2.2.2. Outline of the Kel Tamachek context before and under the colonization 11  
  2.2.3. Kel Tamacheks’ relationship with other peoples 15  
  2.3. Discrimination, marginalisation and conflicts 16  
  2.3.1. Discrimination, marginalization and conflicts during the colonization 16  
    A. Kel Tamacheks Indigenous people’s resistance to the French invasion 16  
    B. French strategies to weaken and to dominate Kel Tamacheks 17  
  2.3.2. Discrimination, marginalisation and conflicts under the decolonization 21  
    A. The attempts to Self determination for the north of Mali 21  
    B. The misunderstanding between Mali and the Kel Tamacheks people 23  
  2.3.3. Indigenous Peoples socio-economic conditions 24  
  2.4. Conclusion 26  

Chapter three: Indigenous people rights in International Human Rights Law 27  
  3.1. Introduction 27  
  3.2. Right to life 27
3.3. Right to non discrimination

3.4. Right to land

3.5. Right to culture

3.6. Right to participate

3.7. Rights to health and education

3.8. Right to self determination under International Human right law
  3.8.1. Right to self determination under the International Bill of Human Rights
  3.8.2. Right to self determination under the Declaration (UNDRIP)
  3.8.3. Right to self determination Under the ILO Convention 169
  3.8.4. Right to self determination under ACHPR

3.9. Conclusion

Chapter four: Right to self determination under the Malian domestic law

4.1. Introduction

4.2. The Malian Constitution of the 25 February 1992
  4.2.1. Right to identification and recognition
  4.2.2. Right to non discrimination
    4.2.3. Right to access to justice
  4.2.4. Right to education and to culture
  4.2.5. Right to self determination
  4.2.6. Enforcement of the constitutional rights

4.3. The Agreement of National Pact (Pacte National)
  4.3.1. Historical of the National Pact
  4.3.2. The content of The National Pact
    A. The measures to national unity
    B. Economic and financial aspects
    C. Special Status (Le Statut Particulier)

4.4. The agreement of Alger 4 July 2006 (L’Accord d’Alger)
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.5. Enforcement of the agreements</td>
<td>52</td>
</tr>
<tr>
<td>4.6. Conclusion</td>
<td>53</td>
</tr>
<tr>
<td>Chapter five: Conclusions and recommendations</td>
<td>55</td>
</tr>
<tr>
<td>5.1. Conclusions</td>
<td>55</td>
</tr>
<tr>
<td>5.2. Recommendations</td>
<td>56</td>
</tr>
<tr>
<td>Bibliography</td>
<td>58</td>
</tr>
<tr>
<td>Annex</td>
<td></td>
</tr>
</tbody>
</table>
1.1. Background to the study

The *Kel Tamachek* and *Hassanya* are nomadic people who live in Sahel-Sahara but some of them have become semi-nomad or sedentary throughout the time. Since the independence they were divided in five countries. In Mali they occupy the 75% with 932 490 sqm of the territory which is 1 241 238 sqm and 10% of the population’s 13 millions. Their area is the north Mali which is administratively divided in three regions: Timbuktu, Gao and Kidal called also respectively the 6th region, 7th region and 8th region. They share the area with other ethnic groups such as *Fulbe* which are nomadic peoples and indigenous peoples and the *Songhai or Sonrhai*, *Sorko* and *Bambara*.

The Kel Tamachek as other indigenous peoples of the world were discriminated and marginalized which started since the colonization. The colonizers tried to exterminate them because of their resistance and their refusal to be dominated and assimilated. The Frenchmen after establishing their power on the colonies started to ‘civilize’ their subjects. However, the nomads were forgotten in these programs because no school was created in their area. And when an exceptional leader Mohamed Ali Ag Attaher Alansary understood that the best arm for combating the colonizers was to learn their knowledge which will ensure also the success for the future. Thus, he decided to send

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1 Tuareg is an exotic word. Their name is ‘Kel Tamachek’ (singular masculine: Utamachek or Outamachek) it means that the People who speak Tamachek. And tamachek is their language. They are members of their big family called ‘Berber’ another exotic word, those also they called themselves Imajghen, Imazighen or Imouchagh the pronunciation varies from the region to region or the tribe to tribe. In our work we will use ‘Kel Tamacheq’ as they call themselves by this name. The activists’ defenders of human rights of these peoples are against the usage of the exotics words and claim everywhere to be called by the names which they use to identify themselves; which they know all and which identify their identity. So, let us respect their identity.

2 Hassanya are called also Arab or Moor and some of them are called barabish they speak Hassanya which is a dialect derived from Arabic language. In this work, the word Kel Tamacheks will be used also in representation of Hassanya, aiming to get space more because numbers of words are limited.

3 In this work we will identify ‘Kel Tamachek and Hassanya’ together by ‘nomads of desert’ which is common to them. The fulbe are nomads also but they are traditionally known in the Sahel and Sudanese areas. And when we use nomad or nomad the word in its singular or plural form identify all kind of nomads of Mali.

4 Mali, Niger, Burkina Faso, Libya and Algeria.


6 Amnesty international report (2010) the state of the word’s human rights, Mali P 220.

7 They called themselves in Mali as fulbé and their language is fulfuldé, they are nomadic people and they are recognised also as indigenous peoples in Mali.

8 Songhoy they speak songhoy thini, it is difficult to pronounce correctly this word because latin alphabet cannot express exactly how it is pronounced in their language. They are descendants of the Empire of Songhai.

9 The fishermen, they are also inhabitants of the north of Mali. They live on the borders of the river of Niger.

10 They called themselves Bamanankan they are the same family of Malinké, which is the family of the Empire of Mali.

11 The leader of Kel Tamachek, Kel Antsar of Timbuktu in 1920.
the nomads children to school which was for him the best way to ensure the victory for his people.\textsuperscript{12} He created the private nomadic school for the nomadic children in 1920 in Goundam.\textsuperscript{13}

Hence, against all expectations the project failed because of the refusal of the majority of his people who did not understand his plan and mainly the colonizers’ opposition to his project. He was discouraged in his project and the children were discouraged by the Frenchmen to continue the studies.\textsuperscript{14} However, other ethnic groups were receiving the training by force and providing them all the conditions for their success which was showed by their training almost at all level and some even went to the University of Sorbonne in France.\textsuperscript{15} In 1946-1947 the colonizers started providing a few primary schools for nomadic peoples.\textsuperscript{16}

Before the independence, in 1950 the Frenchmen tried to create the OCRS\textsuperscript{17} justifying this by saying that its inhabitants\textsuperscript{18} were not prepared for their independence and they did not receive the same training as others Sub-Saharan’s ethnic groups. The African politicians refused the project and considered that the intentions of the colonizers were to extend the colonization in that area because of its mineral resources. Thus, the project failed because of the unity of the nomads of desert leaders and theirs Sub-Saharan’s brothers.\textsuperscript{19}

However, at the independence the Kel Tamacheks were surprised and they were disappointed by the new dictatorial power. They were excluded again by the power through the policies applied by the state such as the political participation from 1960 to 1980 Kel Tamacheks electoral ward were appointed by the US RDA\textsuperscript{20} from other ethnic groups that means no one nomad who was appointed as a representative of his people at the parliament. They were administered by the military administration until 1990 under an absolute control and domination. Their region remained in

\begin{footnotesize}
\begin{enumerate}
\item[13] Currently, it is a municipality of the region of Timbuktu. It was in that time one of the Saharan municipalities which were added to French Soudan.
\item[14] Mohamed Ali AG Ataher Inasar (n 10 above).
\item[16] As above.
\item[17] Saharan’s Region Oragnisation (Organisation Commune des Regions Sahariennes) which aims was to create other sahelo-saharian’s state.
\item[18] Tuareg, Arabe, Tubu, Chambas.
\item[19] Union Soudanaise Pour le Rassemblement Democratique Africain.
\end{enumerate}
\end{footnotesize}
extreme isolation no investment of development such as the lack of road, health and school infrastructures. No development programs were adopted for the improvement of the nomadic life. They were expropriated from their lands by the socialist regime.

The new administration had been seen as colonization through the tax imposed without reason, the tax for each someone protection, tax of ears and tax of eyes. The assimilation imposed by the state was based on the culture, the violations of the local traditions and customs by the representatives of the State. This situation provoked the first protest of the Kel Tamacheck in 1963 and was met by a harsh suppression from the Malian military through the poisoning of wells, aerial bombardment and other tactics. Many nomads of desert fled to other countries to avoid the conflict and the humiliation.

From 1968 to 1973 a severe drought in their area killed many peoples and their livestock. The government assistance was considered insignificant and the international community aid was hijacked by the administration. In 1983-1984 other drought again killed people and livestock the government action was not appreciated by the victims because did not reach them. In 2010 also they were victim of another drought detected by the experts on time but the government did not take measures to avoid the catastrophe. In addition to that the lack of rain hence a drainage of their lakes and the climate change reinforced the impoverishment of the pastoralists. All these situations pushed some nomads of desert to leave the rural area to the cities in the suburbs in Mali in other countries.

No legislation addresses properly this situation of the nomadic people life. The national law provides an equal treatment for all the citizens, however, the practice shows inequality in access to socio-

21 Mali’ history and natural environment Page 29-34
22 See the testimony in the film of the group tinariewen ‘The soul rebel’. It was a misuse of authority of some civil servants particularly the security of force.
23 The Captain Diby Sylla Diarra said that in 1963 in the region of Kidal ‘The tamachek People does not a culture so they should adopt bambara culture.’ He blackmailed in bambara the group tuareg festival by force for the national cultural competition.
24 In the region of Kidal, region of Gao in that time.
26 Algeria, Libya, Mauritania and Saudia Arabia.
28 P Boilley As above.
economic rights such as lack of school (no nomadic school no boarding school in the nomadic people area), no infrastructures of health for the nomadic people. The African Commission on Human and Peoples’ Rights recognized that the Kel Tamachek people have suffered from the violation of their right to existence in Mali and Niger where they have been killed by the army and militia; their cultural rights were violated and they are marginalized from social services.  

As the Malian State does not recognize the indigenous peoples’ status for the Kel Tamachek people and did not ratify or sign any international instruments adopted in favor of the indigenous peoples. Therefore, it is an obstacle for the enforcement of these international norms such as the UNDRIP and the other ILO conventions particularly the ILO 169 which provides positive condition for nomadic peoples as indigenous people. However, other legal international instruments, were ratified by Mali should protect the vulnerable people, such as the ACHPR, The ICCPR and the ICESCR etc.

In addition to that the Malian constitution in its preamble subscribes to the Universal Declaration of the Rights of the Man of December 10, 1948 and to ACHPR of June 27, 1981 human rights and protects cultural and linguistic diversity. It commits to ensure improvement of the quality of life, the protection of the environment and of the cultural heritage.

All these factors provoked a Kel Tamachek uprising and their frustration successively and the State repressed decisively the first revolt with the negative consequences mentioned previously. The second revolt resisted more and contributed in the changing of the military regime to the democratic regime in 1991 even though the consequences were more negatives for the north of Mali than the first because of its extension on the three regions where the Kel Tamachek live and the racial connotation was given where the rebel was synonym of the white Kel Tamacheks.

31 African Charter Human and Peoples’ Rights (ACHPR). It was ratified by Mali 21/12/1981.
32 International Covenant on Civil and Political Rights (ICCPR), GA Resolution 2200A (XXI) (1966). It was ratified by Mali 23/03/1976.
33 International Covenant on Economic, Social and Cultural Rights (ICESCR), GA Resolution 2200 A (XXI) (1966). It was ratified by Mali 03/01/1976.
35 Many foreigners were killed because of their colour such as mauritenean and some fulanis.
Finally, the Malians\textsuperscript{36} understood the necessity to resolve the internal conflict. Thus, the first agreement of the cease fire was signed between the rebels and Malian government on January 6, 1991, in Tamarrasset.\textsuperscript{37} The most important agreement was the National Pact signed on the 11 April 1992 in Bamako. During all these different agreements the will to get self determination was manifested by the representatives of the rebels. In August 1992, the representative of the rebels, at the National Conference, tried to include in the project of the new constitution the self determination to the North. It could not reach his aim.

It was recognized for the first time that injustice was committed against other Malian citizens.\textsuperscript{38} It provided a treatment seems to be an affirmative measure for the people of North Mali.\textsuperscript{39} Henceforth, they will manage their local affairs through the Special Status ‘Statut Particulier’; that is integration in some branches such as the administration and military of the Kel Tamachek and Hassanya who were excluded totally during that time. Thus, Songhai and Fulbe benefited also from these measures through MPGK\textsuperscript{40}

In regard to the application of this agreement something was done but it remains a lot to do, the delay of its application and the omission of some provisions such as the self determination of this area by its inhabitants. It seems that, this constitutes the cause of the third Kel Tamachek protest in Mali. The mutiny, in the barracks of Kidal and Menaka in 2006, led by the Colonel Hassan Fagaga\textsuperscript{41} and Ibrahim Bahanga,\textsuperscript{42} who claimed again equal treatment for all Malian respecting the cultural difference through the enforcement of the National Pact which, provides a solution for the conflict between the North-Malian and the State.

Thus, the last agreement was signed in Alger the 4\textsuperscript{th} July 2006. It seemed that it provided a better participation in decision making, the socio-economic and cultural development to the region of Kidal. However, the lack of enforcement of these agreements increased the insecurity in the region, the presence of Al-Qaida and the traffic of drugs that worries the people. Consequently, the Colonel

\textsuperscript{36} Tuareg rebels and the Malian government and the civil society.

\textsuperscript{37} In the South of Algeria.

\textsuperscript{38} Kel Tamachek and Hassanya.

\textsuperscript{39} Tuareg, Hassanya, Sonrhai and Fulani.

\textsuperscript{40} Mouvement Patriotique Ganda Koy (Ganda Koy’s Patritic Movement) ‘Ganda Koy means master of the land.’ It was created in defense of the black farmers interests.

\textsuperscript{41} The Highest military during the integration.

\textsuperscript{42} A deserter of the national army and eternal rebel.
Hassan Fagaga sent a letter\textsuperscript{43} to the President of Mali, on the 4 July 2010, reminding him what was created opportunities for other protest. So, it was urgent to prevent a rebellion from occurring again.

It appears that the solution of the nomads of desert conflict became a matter in suspense because all the agreements signed to solve the problem have failed. So the misunderstandings between nomadic Kel Tamachek and the Malian State caused and maintained by the underdevelopment of the nomadic Kel Tamachek region and the lack of the appropriate specific legal norms and non implementation are still remaining obstacles.

1.2. The problem statement:

Whilst approaches and policies used by the Malian government in view of integrating the Kel Tamachek in Mali, have been considered as inappropriate, radical and not in accordance with international standards, the procedural and substantial aspects of the agreements that were devised to find a solution to these issues, can still be put into question with a weak enforcement framework. The measures, policies and legal agreements elaborated by the Malian government to integrate Kel Tamachek in Mali, call for an objective evaluation and analysis in order to determine how far the right to self-determination of Kel Tamachek in Mali is being respected.

1.3. Research question and objectives:

This dissertation proposes to examine how far the right to self-determination of Kel Tamachek in Mali is being respected by the Malian government in light of the measures, policies and legal agreements devised to find a solution to the integration issues of Kel Tamachek in Mali.

Sub questions:

1 - What does indigenous People mean? What does ,indigenous peoples’ rights’ mean?
2 - What is self determination of Indigenous People in international law basing on the Declaration ?
3 - Right to Self Determination vis-à-vis State sovereignty
4 - How the Agreements have signed by the both parties? What is their understanding of the terms of their agreements?

\textsuperscript{43} The letter was published by the website ‘Kidal.infos’ and some independent news papers.22 Septembre 12/07/2010.(news paper) see: http://www.maliweb.net/category.php?NID=62873 (acceded 20/10/2010).
5 – Which are the insufficiencies of these agreements?
6 - Do the laws of Mali sufficiently protect indigenous peoples such as Kel Tamacheks?
7 -How can we ensure that existing laws and the agreements between Kel Tamacheks and the Government of Mali are properly observed and executed?
8 -What are the protections provided for indigenous peoples such as Kel tamacheks under international law and mechanisms?

The objectives of the researches are:
1 - To define clearly the meaning of indigenous peoples and their rights and which implications the relation to State
2 - To define the concept of the self determination for indigenous peoples under international law, the meaning given by the Declaration.
3 - To analyze the possibility of the self determination for indigenous peoples vis-à-vis domestic law of Mali.
4 - To analyze the protection of the rights of indigenous peoples particularly in Mali.
5 - To make recommendation concerning to solve the persistent National conflict of Mali reinforcing a best unity and national integration without affecting the territorial integrity and the indigenous peoples’ rights.

1.4. Significance of the study:

This study will focus on the difficulties met by the indigenous peoples hence the identification of issues which are the violations of human rights. To analyze particularly the attempts of the resolution of the Kel Tamachek conflict through the main agreements signed between Kel Tamachek rebels and the Malian government in 1992\(^{44}\) and 2006\(^{45}\) and their enforceability seeking a solution. Thereby, this research seeks to analyse the violations of human rights of the indigenous peoples in Mali and to contribute to filling the gaps between the lack of the enforcement of the existing agreements and the solution expected.

1.5. Literature review:

\(^{44}\)The Pact National signed in Bamako on the 11 April 1992.
\(^{45}\)Accord d’Alger signed on the 4 July 2006 in Alger.
The Commission’s working group of experts on indigenous peoples in Africa recognized the indigenous peoples in Africa are facing the violations of human rights in different aspects. In Mali they underlined the violations of the right to exist and the rights to access social services.

Helene Claude Hawad in her work ‘Touareg voix solitaire sous l’horizon confisqué’ showed that the Kel Tamachek people are victim of the discrimination established by the colonizers and inherited by the current powers. Her work aimed to give a voice to the peoples without voices and to analyze the conflict between government and Kel Tamachek focusing on the both parties.

Pierre Boilley considers that the Kel Tamachek protest aiming was not to reject the black power but a conditions for this conflict were created by the colonizers and the new Malian regime did not solved or avoided otherwise it continued using the structures of domination and isolation of the nomadic peoples.

Anne Saint Giron considers that the Kel Tamachek rebellions were and are still in 2007 a reply for the unfair situation as a result of the political will expressed freely by the authorities non Kel Tamachek which aim to marginalize and exterminate the white nomadic population of the north. André Brougeot thinks that the Kel Tamachek conflict comes from their behavior. The Kel Tamacheks are warriors by nature and the concept of State is unknown to them. So, they have not been organized well politically.

A new Malian generation wrote on the application of the agreements they concluded that in general the solution should be political with a political will and the courage. The Malian State should be taken a serious action aiming to solve this problem. Farma Mahamane thinks that the causes of the Kel Tamachek rebellions are the droughts, the poverty and the changing of the society related to the modernity.

Many authors researched on the Kel Tamachek society and since 1990s the Tuareg conflict became a topic for the debate particularly outside of Mali. Because, in Mali is considered as a sensitive topic because it deals with the security of the state through the reason of the State. So, as the freedom of expression is not a reality at now and the reason of the state is always above, many academicians prefer to ovoid it.

1.6. Methodology:
This work combines analysis of primary sources such as laws, both international and domestic, cases and policies as well as literature review of secondary sources. Interviews via e-mail may also be conducted.

1.7. Limitations:

The main limitation is the lack of the books or researches related to this topic particularly in the legal aspect. The researchers who worked in this Tuareg area were anthropologists, sociologists and historian. In my research I did not find a research which focused really in my topic.

1.8. Chapter outline:

The work is divided into five chapters. The first chapter will focus on the background to the study. The second will deal with the historical context of the exclusion of the indigenous people in Mali. The third will present what international law provides as a protection for these vulnerable peoples. The fourth Chapter will analyze the Malian domestic law effectiveness in its application vis-à-vis indigenous people and the policies adopted related to them. And the last Chapter five will conclude and will propose recommendations aiming to better address the problem Malian indigenous people.

46 The nomads of desert in Mali.
Chapter two:
Historical Context of Indigenous peoples of Mali: Kel Tamachek and Hassanya

2.1. Introduction:

This chapter will focus on the historical analysis of the Kel Tamachek people of Mali, with their specific situation. It seeks to show how this people lived from the colonization to now. It focuses on their socio-cultural life and political relationships with the external powers. Thus, how the current international context, globalization and climate change are still affecting them.

The chapter will be concluded with an analysis of the past dominations by the powers and the reaction delivered by these indigenous peoples, who are still fighting for their existence.

2.2. Historical, social and cultural context:
2.2.1. Presentation of the indigenous peoples’ Kel Tamacheks:

Located in the Sahel-Saharan, the Republic of Mali is the second vaster country of West Africa after Niger. It is a civilisation crossing with the multiethnic and multicultural mosaic established on a ground of prestigious history characterized by the succession of the great Africans’ empires. The Republic of Mali has a population of approximately 13 million inhabitants made up of a diversity of people, but only two of them are recognised as indigenous peoples. These are Kel Tamashek and Fulbe. The identification of these groups as indigenous peoples results from the application of the relevant criteria universal and regional in particular definite by ILO No 169 and the report of the African Commission’s working group of experts on indigenous populations/communities. Under the terms of these texts, four noncumulative criteria can be used to guide the identification of the indigenous peoples, namely:

- Occupation and the use of specific territory;
- The perpetuation of cultural characteristics, which could understand the aspects touching with the language, the social organisation, the religious and spiritual values, with the mode of production, like at the laws and institutions;

47 Colonial power and Malian power
48 Art:1
49 P, M EBA, Rapport non publié sur les Dispositions Constitutionnelles, Législatives et Administratives relatives aux peuples autochtones et nomades au Mali P 3-4
- Self identification and the recognition by the other groups as a distinct community; and
- An experiment of constraint, marginalisation, expropriation, exclusion or discrimination.

No standard definition to indigenous peoples but criteria which qualify a population, community or group as indigenous peoples. The UN working group to IP as well as the African working group IP consider that is not necessary to get a definition and it could be inconvenient for the IP.

2.2.2. Outline of the Kel Tamachek context before and under the colonisation:

The Kel Tamacheks are nomadic people who live in the Sahel-Sahara, from the Mediterranean to the Oudalan.50 ‘Their main activities are the breeding, the Saharan trade, and the arts and crafts’.51 In addition, their domination of Sahara allowed them to make a trade exchange with the sub-Saharan peoples, beyond to the Songhai which are their foster-brothers,52 it seems that they had relations with the Dogon, the Bambara, the Mossi, the Hausa and the Ashanti people.

They constitute a bridge between the Maghreb and the Sub-Saharan African. Kel Tamacheks considers themselves as a people who have his territory. Thus, Edmond Bernus defines the borders of Kel Tamacheks’ territory, it is limited the north by the Maghreb and the South by the Sudanese people.53 It is also limited at west and east respectively by the people who are nomads, and belonging to the desert, which are the Moorish people of Mauritania who are also the origin of Amazigh and the Tubu people of Chad. The two last populations found them pertaining to the majority in Mauritania and Chad. However, Kel Tamachek found themselves divided between five countries, where they are minorities all of them.54

Kel Tamacheks consider themselves different from other populations of Mali through their specificities such as their language ‘Tamachek’ with its original alphabet called ‘Tifinagh’. They are

50 The region belong to the Kel Tamachek in Burkina Faso.
52 See the legend of Tondibi below page
53 ‘Sudan’ is arab word, it means black in arab. So, Bernus wants to say their territory at south is limited by the black people. The meaning here is other black who are not Kel Tamacheck. It is important to precise that because Kel Tamacheck also some of them are black.
54 E Bernus ‘Etre Touareg au Mali’ Politique africaine, No 47, octobre, 1992, 23.
those who kept Amazigh culture under the different dominations exercised by the foreigners in the North Africa from the Roman to the European colonisation.\textsuperscript{55}

Their socio-political organisation based on the hierarchy, which is common to almost all West African sub-Saharan societies.\textsuperscript{56} It will present the social and political organisations:

The social organisation can be classified the following manner: the nobles (\textit{Ilalan}) this class is composed by the warriors by excellence (\textit{Imajeghan}), the religious (\textit{Ineslim}) some of them are the warriors also and the tributary or vassal here also we find the warriors (\textit{Imghad} and other social groups similar); the second group by the blacksmith and black cherry (\textit{Inhaden}), the third group by the serfs liberated (\textit{Idarfan} or \textit{Ekhawelan}), and the last group the serfs (\textit{Eklan} \textit{Bella}).\textsuperscript{60} While, another thesis considers that the word Bella characterises the former black peoples living in Sahel, so, a Bella was one of the most important Kings during the Empire of Songhai.\textsuperscript{61} However, the bondage disappeared a long time in Kel Tamachek society but some serfs are still working or living with their former nobles either of good social relationship as they are from the same family or by the economic necessity. This society is manly ruled by the Honour code ‘\textit{Achak id Ataki}’.\textsuperscript{62} It must be respected by all the members of the Kel Tamachek society. This code was not written but it is still known by the society. Contrary to what Europeans researchers thought the honour of code is not only for Imajaghan.\textsuperscript{63}

\begin{itemize}
  \item \textsuperscript{55} M, Rachida (historienne)see http://www.amazighworld.org/studies/articles/touareg_histoire.php (accessed 06/10/2010).
  \item \textsuperscript{56} For example: Songhai society, Fulbe society and Bamanan society.
  \item \textsuperscript{57} Elel: the singular for the noble; Ilalan: plural of the nobles. The nobility is defined by blood.
  \item \textsuperscript{58} Inhaden: they are the same family but they have two functions, respectively, the first his job is to work iron to produce jewels and arms; the second is to play guitar and to record the history of the society. During the war the nobles cannot run away because the Inhaden are always there, to report all and to encourage also their nobles reminding them the Honor code.\textsuperscript{59}
  \item \textsuperscript{59} The Eklan are always black but all Kel Tamacheq black are not a serf; some of them are neither serfs nor former slaves. They are vassals. For example: \textit{Ikorchatan, Ikawalatan, Kel Talmen and others}.
  \item \textsuperscript{60} Bella: is not a tamacheq world. Its origin should come from a Songhay or a Fulfulde. It is a pejorative noun. Communally, they people say that, the Songhay and Fulbe use it in joking with the tamachek serfs. The Hausa call it ‘\textit{Buzu}’. Thus, in Songhai the serfs are called ‘\textit{Baga}’ and in Fulfulde they are called ‘\textit{Machoude}’.
  \item \textsuperscript{61} A AG MAKO (2007) ‘Etude sur la situation de la communauté Bella du Gourma Rharous’ \url{http://www.mali-nord.de/download/pdf/2008_06_Les_Bellahs_de_Gourma_Rharous.pdf} \textsuperscript{PS}
  \item \textsuperscript{62} It means literally the doubt but in practice it is all the bad things or bad actions which should be avoided by Kel Tamachek.
  \item \textsuperscript{63} For example: \textit{Imajaghan} should not fight \textit{Ineslim}; men should treat women fairly, and they must respect and protect them. The principle which was taught to the young was that ‘life is not eternal but honour is eternal’. After your death the society will remember you, and what you have done if it is dishonourable, it will be a shame for your family, your tribe and your society. Thus, kel tamachek said that, to die defending your honor is better than to live in the dishonour.
\end{itemize}
The political organisation, traditionally, Kel Tamacheks people is organised in federation and confederations. Thus, in the twentieth century the Kel Tamashek society was organised in five great confederations such as: the Tadamackt in the South West, Kel Ahagar in the North West, Kel Air in the East south and the Kel Ajjer in the East north.  

In this political system, the leader is called ‘Amenokal,’ he has a democratic power, as Cortier explains it: ‘Amenokal is a constitutional chief whose orders are obeyed only when they are in agreement with the intentions of the sub chiefs’ Here the sub-chiefs are the chiefs of the federations in the case of the confederation. Thus, this rule is applied to the whole society. The chief should respect the will of the tribe, because if the tribe or the men are not agree with the chief, if, he did not convince them it is the end of his power. As Cortier said:

‘[...][]If some chiefs refuse any agreement, Amenokal will be disarmed with respect to them and without means of forcing them; and so even Amenokal has intentions opposed to the majority of its tribe, it could be deposited by the sub chiefs and replaced in current session.’

In Kel Tamachek society, the power is symbolised by Attebel. The Attebel is always in charge of the Inhaden who use the drum in case of necessity. It could be used for calling to the meeting, to the war or other reasons, but when the men hear the sound of the drum they could know the aim of the calling. Inhedan know how to beat it, to informing and calling the men.

The power is transmitted by matrilineal way. However, some tribes transmit the power by patriarchal process. In other tribes, the Amenokal should be elected democratically by the men of the tribe. In general the proposition of the former is always accepted by the men not because he was Amenokal, but, because he focuses on someone who was appreciated by the society and demonstrated already his ability to lead. The crowing of the Amenokal constitutes always a big ceremony.

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64 H, Claud-Hawad, Neither segmentary, nor centralised: the Socio-political-Organisation of a Nomadic Society (Tuareg) beyond categories 59-60.
65 P Boilley (n 27 above) 50, Citing Cortier, 1908.b,pp.281-282.
66 It means drum. For example ‘Nak mex nekaned in Attebel wan ided mandam’ (I belong or we belong to the drum of X or Y). Each tribe, federation or confederation has its ‘Attebel’
67 Amenokal to his nephew viz the son of the daughter’s Amenokal.
68 The brother or the son of the Amenokal.
69 For example: Kel Tamachek, Kel Antsar.
In opposite to what Pierre, Hélène and Cortier think about Kel Tamachek, Hamani Djori think that Kel Tamachek were facing internal and they were never organised politically. Their unity appeared when they started fighting external forces. Brougeot supports this idea and thinks that Kel Tamachek society has not a concept of State.

In addition to Achak, the society is ruled by the moderate Islamic norms. Kel Tamacheks are Sunit Muslims and they practice a tolerant Islam, for them the religious issues are personal between Allah and his servants. The ‘Alkali’ does not play the judicial function. The institution is very independent vis-a-vis the executive power. The beliefs on the omnipotence, omnipresence and omniscience of Allah and its final judgment reinforce the independence and the credibility of this legal institution. For the same reason the subjects implement always the recommendations of the Alkali or its ordinances. As to, the enforcement of the law or to protect the nation called ‘Tumast’ against enemies. All men are always ready to defend Tumast. Each man has his arms inherited or given by the parents. They believe also in the spiritual protection given by the ‘Alfakitan’ and the blessing of the parents.

Tamachek is one of the main languages spoken in North Africa and West Africa. It is important because of its original alphabet ‘tifinagh’. According to the linguistics tamachek is a rich language in grammar and poetry. ‘It is also one of the oldest languages of the world. In Africa, it was proven by the researchers through its writings and engravings on the stones and rocks of the Sahel-Sahara thousands years before Jesus Christ.’ However, it is listed as ‘definitely endangered’ in UNESCO’s interactive Atlas of the world languages in danger. The Tamachek music is also very appreciated by the world particularly the music of resistance or music of ‘Ishoumar’.

‘The Tuareg region in the Sahel is prone to environmental challenges, including the drought, desertification, deforestation, soil erosion and insufficient supply of potable water.’ From independence of Mali to now including this year four of five severe droughts affected significantly

70 It is the imam who is in charge to judge. The word Alkali comes from the Arab, it was adopted by French and Spanish, it called respectively ‘Le Cadi’ and ‘Alkalde’.
71 It is the synonym of the motherland, the fatherland and the homeland.
72 Experts in religion and holders of the supernatural power, by their knowledge and power they can give supernatural protection. For example: to make a combatant an invulnerable man in front of his enemies.
73 M, Rachida (As 55 above).
75 See http://www.lastfm.fr/tag/tamasheq and www.youtube.com/wach?v=GHB-yMoDHYo
76 This word names the Tamachech youth who initiated the rebellion in 1990s. It has two origins according to the researchers; some of them say that the noun comes from French as ‘Chômeur,’ which means unemployed. Others think that, it comes from the Tamachek word: ‘Achmor’ which means patience in French and English too.
the Tuareg people through the loss of human being and theirs livestock. This is one of the main reasons to the Kel Tamachek exile toward big cities, other countries and their settlements in the ghettos. No objective solution was adopted to avoid these natural catastrophes which changed drastically the nomadic life. In this year, the attempts proposed by the representatives of FAO\textsuperscript{78}, AVSF\textsuperscript{79} and ICRC\textsuperscript{80} did not avoid the traditional continuity which is the destruction of the nomad life through the death of his animals. The proposition which does not save the livestock should not be accepted by the pastors. They will not be able also to sustain the nomadic life. Thus, Oxfam and the ICRC proposed ‘using dried meat as a remedy’\textsuperscript{81}that was rejected by the majority of the shepherds. According to the representative of AVSF, if they would act early they could save the loss of the animals. While, the experts and the indigenous peoples alerted on time the authorities of the drought in view of what looked inevitable because of lack of rain of the previous year. Thus Marc Chapon\textsuperscript{82} said it.\textsuperscript{83}

Another problem is the misunderstanding and the lack of knowledge of the experts about the relation which exists between the pastors and their animals. The animals are more than wealth to the nomad. Their relation presents another complex mystery very. The animals communicate with their shepherds they are part of them, so, they cannot be managed as money and as inanimate goods are managed.

2.2.3. Kel Tamacheks’ relationship with other peoples:

‘Anybody can love you, but your uterine brother can be your enemy.’\textsuperscript{84}

Historically, Kel Tamacheks have a good relationship with the peoples of Mali and of the sub-region it was proved by the different former administrations of the empires such as Ghana, Mali, and Songhai. According to some historian during that time Kel tamachek have always their freedom and they managed their own issues. Because of that, they did not fight those powers.\textsuperscript{85}

\textsuperscript{78} Food and Agriculture Organisation (FAO) of the United Nations.

\textsuperscript{79} Agronomes et Vétérinaires sans Frontières (AVSF).

\textsuperscript{80} International Committee of the Red Cross (ICRC).

\textsuperscript{81} Mali: La viande séchée comme remède (using dried meat as a remedy) see http://www.irannews.org/fr/ReportFrench.aspx?ReportId=90600 (Acceded 06 October 2010).

\textsuperscript{82} The National Coordinator of the AVSF in Mali.

\textsuperscript{83}‘We are with the current of the crisis for a long time - since November 2009. If we had responded earlier to [the needs of the cattle], we could have reduced displacements and the remaining animals would have remained in life’

\textsuperscript{84} This Tamacheq proverb illustrates how the relationships between Kel Tamachek and other peoples are very kind and anybody could integrate the society. Kel Tamachek are very pragmatic in this matter as the proverb expressed it. You could be appreciated more than the brother all depends on your behavior.

\textsuperscript{85} See Mali’s History and Natural Environment(n 21 above ) P 3-7.
Another reason is a historical social links, i.e. much of societies or tribes have parental bonds. Thus, Tuareg and Moors have the same origin ‘Arabo-Berber’ and you find some Berber who became Arab and vice-versa. The Touré called larbou\textsuperscript{86} are descendants of the Arabs. The Songhai also comes from Yemen so their origin also converges with Kel Tamachek-Hassanya because many Kel Tamacheks think that they are descendants of Arab. All these societies are bound by alliances. They must respect their social pact.\textsuperscript{87} The legend of Tawsa illustrates the importance of the respect of this social pact in life.\textsuperscript{88}

It concludes by this proverb: ‘A close neighbour is better than a distant relative’\textsuperscript{89}

2.3. Discrimination, marginalisation and conflicts:

It seems that Kel Tamachek of the Central Sahara were never dominated since also far in their history until the French colonisation.\textsuperscript{90} Thus, from the time of French colonisation to now, Kel Tamachek’s life is strongly marked by their marginalisation, stigmatisation, exclusion and even their extermination by the colonial power that attributed them the stereotypes. In addition to that the colonial power applied the policies opposing Kel Tamachek people to his neighbours.\textsuperscript{91} These policies were followed and applied again by the African state at the independence.

2.3.1. Discrimination, marginalisation and conflicts during the colonisation:

A. Kel Tamacheks Indigenous people’s resistance to the French invasion:

\textsuperscript{86} The meaning is arab it means arab. Arma they were called Arab because they are descended from the invader of Empire of Songhai coming from Morocco.

\textsuperscript{87} It called in Tamacheq ‘Ehaf’ or ‘Akhfi’ french or English do not translate the meaning of these words, but I think that, social pact is close to the meaning of these words.

\textsuperscript{88} ‘Great rocks dominate the river. Legend has it that a woman and her two quarrelling sons (a Targui-the singular of Touareg-and a Songhoy) were turned to stones here. Between the heedless half-brothers, where the river swirls and eddies angrily in the narrows, stands the mother attempting to keep her quarrelling sons apart. In West Africa, you may disobey your father, but you must never disobey your mother. God heard the curse of the mother at Tawsa and turned her warring sons to stone. Henceforward the brothers should never again fall into anger. The moral is clear: the woman’s surviving children—the Songhoy and the Touareg—must live in peace with one another despite their differences of language, way of life, and complexion.’

\textsuperscript{89} Arab’s proverbe.


\textsuperscript{91} P M EBA (in 49 above) 6.
The European researchers find that the causes of the marginalisation and discrimination imposed to Kel Tamachek people by the colonial power comes from their hard resistance to the European occupation. They refused to be dominated by Europeans, particularly during all the colonisation and their total rejection of the French domination.

Thus, vis-a-vis this Tuareg resistance, the Commander Betrix in his plan of ‘Tuareg penetration’ defines the Tuaregs as ‘a race which is without a social value’. Thus, it appears in his political report of the Municipality of Agadez of September 1916, that.

This report shows that the aim was beyond to exclude Kel Tamacheks, but to exterminate them like it was attempted by the American against the indigenous peoples of America. The report exposes the racial speech. It also justifies committing a genocide against this indigenous peoples.

At the same time in 1916, Kaocen the leader of resistance against the French occupation, ordered and encouraged the combatants in these terms: ‘No rest for us as long as the enemy occupy our territory. Let us fight until the invader leaves our country and moves far from the populations close to ours.’ It appears that, the leader does not aim to liberate only his people but all the peoples close to his territory, which is a sign of solidarity and good relationship with their neighbours’ peoples. Another responsibility appears also, which is to protect his neighbours. It is also showed that the war was waged against an invader. These facts proved that, Kel Tamacheks have used the self defence vis-a-vis the aggression. It seems, to be understandable and acceptable according to the custom and law of the indigenous peoples.

B. French strategies to weaken and to dominate Kel Tamacheks:

The continuity of Kel Tamachek resistance worried French because of successes gained on the military context. What delayed French plans especially the controls of Trans-Saharan trade. Thus, French became keen towards Kel Tamachek and undertook provisions aiming at even weakening

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93 As above.
94 ‘The Tuaregs do not have any more reasons to exist that did not have any formerly the ‘Peaux rouges’ (The meaning in English is ‘the red skin’ a pejorative name given by the colonizers to the American Indians). Unfortunately, the climate of the desert and the fantastic being that is the camel creates us of the obstacles that did not know the Americans.’
95 One of the main leaders Tuaregs of the ‘Air area’ against the French occupation.
96 H Claude Hawad (n 92 above ) 27.
them to exterminate them. They decided to stop this resistance through: ‘two frightening and concomitant strategies.’97 Expressed in the following administrative communication:

‘since one could never be able to be made friends or allies of these tribes [Tuaregs and Moors] in consequence of religious hatred and of race that they dedicated us, and of the impossibility in which put we them food of plundering and of flight, which is their only resource, they should be removed if one can, and that in that causes hunger one, men by preventing them from buying cereals which they need, animals in their prohibiting banks of the river. It will result from it or that these tribes will die of misery, or that they will flee towards other areas, or that finally feeling impotent they will go to mercy and then we will be able to impose a kind of life to them which will prevent them from harming to us. [...] To arrive at this result it will be necessary to install on the river a certain number of stations who will inspire confidence. In these stations there will be deposits of weapons and ammunition with the use of the populations; the villages will be strengthened; to the need one will distribute to the inhabitants of rifles old model. One will install militia to which one will make small periods of instruction mixed to the skirmishers; one will train them how to shoot.’98

According to Patrick, these strategies left after-effects which still appear in the territory of Kel Tamacheks. Firstly, the objective was to prevent Kel Tamacheks from reaching the river which is their source of supply for them and their animals; secondly, to separate them from their close farmers, to deprive them of exchanges and to oppose them. I call this is the policy to divide and rule. From these policies started the land expropriation and dispossession of Kel Tamacheks Indigenous peoples in Mali. Therefore, the strategies were maintained by the colonial administrative powers against Kel Tamacheks in the ‘delta interieur du Niger’ the prohibition to access the river and the division between nomads and farmers even after their capitulation. The capitulation of Kel Tamacheks provided the prohibition for them to access the west bank of the river 99 ‘with the restriction which provides that the farmers’ villages remain independent and conserve their rights of pasture-land’100

It seems that these policies were taken on a racial and discriminatory basis with respect to Kel Tamacheks. While some peoples think that, they result from the official policy. However, the

99 P M EBA (n 49 above ) 17.
100 P M EBA As above 17
preference of agriculture compared to the breeding is expressed in the administrative decisions, and in general they advanced this argument to justify the disproportionate treatment between stockbreeder and farmer, is not scientifically founded. As the following administrative policy provided it:

‘It is of our duty, as well from the economic point of view, as from the political point of view, to support the farmer rather as that the shepherd. Whereas this last devastates covers and causes the desiccation of the ground and the progression of the desert, the farmer multiplies the protective cultures: he collects them in entirety, while shepherd wastes of it half under trampling of his herds. Lastly, our political action is exerted much more easily on the sedentary than on the nomad.’

The argumentation of this policy appears very ambiguous, controversial or non scientific. By experience, in the *delta interieur du Niger* the breeding and agriculture are supplemented. In summer, the farmers recommend that animals feed in their fields before the period of the seeds. Because this will bring to them natural manure for the plants. Currently where climate change with the mode, where the scientific research showed the reasons of the progression of the desert. Could be able to accept this thesis whose animals are at the base of the progression of the desert?

The policy preferably agricultural was changed radically the local land practices. The land practices, especially in the *delta interieur du Niger*, were characterized by the occupation of the islands and the ‘*bourgoutières*’ by the nomadic stockbreeders in order to make, there, feed their herds in dry season; however, since 1907, of the policies adopted and imposed by the colonial administration dramatically affected these rules of occupation centenaries, source of survival to the pastoralists and their herds until nowadays. The following policies are which called ‘conventions’ related to the management of the land between Shepherds and farmers:

‘In an absolute way, the islands belong to the villages and must be to them allotted. [...] At that time, the Tuaregs were committed to the future respecting the delimitations of the grounds of the villages, such as they will be made by the commander of the area after agreement of the parts in question, Tuareg on the one hand, village of the other. The grounds in question are those of the edges of the river; it will be advisable to adopt as bases delimitations:

1) That the cultivated grounds each year by the villages must be allotted to them;

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101 P M EBA As above 17
102 The kind of grass.
103 P M EBA (n 49 above) 17.
2) That the cultivated grounds in an irregular way, but which were never definitely abandoned by the farmers, will have to be allotted to them also;

3) That it will be necessary to take account of the probable extension of certain villages to allot grounds to them of which it is allowed to provide today that they will be able to need in brought closer an enough future.104

Analysing this document, called in nowadays the ‘conventions’, needs to think and to consider the historical context and how the document was elaborated, why and by who? The document was elaborated and submitted to the parties, when Kel Tamacheks capitulated further to defeat vis-a-vis the French army. Kel Tamacheks lost morally and physically their power in front to the French power. In these conditions mentioned, the document was elaborated by the military Commandant who prohibited them during many years to get access to the river. So, they had no choice to discuss or to express their consent.

Following, the same ways Gremont discovered another practices and policies which in fact aimed at expropriating and dispossessing the nomads from their lands. The administrator Henri Leroux, undertook the constitution of a land register, to the lands precisely located in the valley of the river. Its function was to prevent the land conflicts which already started at that time. In the register they inscribed the rights of usufruct established by the traditional chiefs. The names of the beneficiaries and their areas are mentioned in the register. And each beneficiary has an original paper as a title. However the representatives of Kel Tamacheks did not understand the aim of that activity and kept some away.105

These practices and policies deeply touched the nomads, Fulbe and Kel Tamachek. Therefore, the case of Kel Tamachek was more dramatic because besides the expropriation of their lands it was also prohibited for them to collaborate with the farmers. A militia was created against them for enforcement of these policies. In addition to that, other policies were adopted to limit their access to some pasturage.

In summary, the strategies aimed to exterminate Kel Tamacheks physically or to oblige them to leave. While Kel Tamacheks are considered by the Frenchs enemies of the Frenchs, other Frenchs

think the contrary and understand and justify the resistance of Kel Tamachek. For Them, Kel Tamacheks are hospitable, it was seen through how the received the first Europeans explorers\textsuperscript{106} who lived with them in peace. It is in their tradition to receive well the visitor. But they do not accept to be dominated in their territory, and started killing the Europeans with the occupation.\textsuperscript{107} In addition to that their concept of territory and land are different from the European concept. For them it should be allowed to the foreigners to live everywhere and to share the resources\textsuperscript{108} with them as much as they do not disturb the inhabitants. You can do whatever you want to do without disturbing the peace. And for them the domination is symbolised by allegiance through paying something to the dominator or recognising him as dominator in exchange to this recognition he protects you. Thus, when Kel Tamacheks were defeated by the French army in exchange to their recognition of the French they will be secured by conqueror. They control their territory, which is recognised by their neighbours.

In regard to the land\textsuperscript{109}, Kel Tamacheks do not have a concept of property. For example the land is not a private property because it belongs to the whole tribe, including the future generations. So nobody has a power to sell this land. In addition to that land is not only an economic resource; it is also spiritual and religious. However, in the Europeans concept the land is a private property characterized by three criteria from the Roman law, which are: \textit{Usus, fructus} and \textit{abusus}. Since the colonization started a conflict related to this colonial concept. It was introduced also the concept of ‘Title,’ it is a paper which gives someone a property of land. For the indigenous peoples it does not make sense. Thus, they lost their lands and are still fighting for their rights’ lands.

2.3.2. Discrimination, marginalisation and conflicts under the decolonisation:

A. The attempts to Self determination for the north of Mali:

The fear to be ill treated, marginalised and discriminated by the new regime was felt by some leaders of the north Mali early. They prophesied that before the independence through some declarations, demands and petitions. Thus, they demanded to the colonial power to be independent vis-à-vis the others peoples because of their specificities from the historical point of view, cultural and social. The following declaration, sent to the President of France, expressed that in its introduction:

\textsuperscript{106} Gordon Laing, René Caillé, Heinrich Barth or Henri Deveyrier.
\textsuperscript{107} À Saint Giron (n 90 above) 9, Citing A Brougeot (1995), ‘Collaboration et résistance’ 285
\textsuperscript{108} The pasturage-land, the water of well, the river etc.
\textsuperscript{109} Here land is related to the houses or other things viz a personal private property.
'We have the honour to declare very sincerely that; we want to remain always French Moslems with our dear private status. We affirm you our formal opposition well aware of being included in an autonomist or federalist system of Black Africa or North Africa. Our interests and our aspirations could in none the cases being validly defended [...] This is why we request your high equitable intervention to be separate politically and administratively and as soon as possible of with French Sudan to integrate our country and its Boucle du Niger (Boucle area of Niger) into the French Sahara to which belonging historically and ethnically.'

According to Pierre Boilley and Hélène Claude-Hawad this letter was sent not only by Kel Tamachek, but by all the communities of the north of Mali such as the Songhai, Arma etc. The letter was signed also by the Traditional chiefs of nomads and farmers led by the Imam, who was the Cadi also of Timbuktu Mohamed Mahmud Ould Check claiming all to be joined to the Saharan French. In addition to that, Pierre Boilley précised that, the authors of the letter envisaged the oppression of part of the population Sudanese by another, followed by the ‘internal conflict’ or a massive emigration towards North Africa or the Middle-East. If the creation of the Saharan state delayed; this was the project of OCRS mentioned already.

The prophecies or predictions of these leaders are true or false? We will respond to this question through examples in this chapter.

Another demand was addressed to the President of France on behalf of the Kel Tamachek. One of the witness and actor declared in substance the content of the letter.

This petition expressed clearly the will of this people, which was to create his State and to gather his nation in his own territory. During decolonisation also they claimed to recover their territory, identity and nation in one country as it used toe. These petitions show how Kel Tamacheks people were worried by the pronouncement of the independence. It appears that, the claim to get independence or self determination included inevitably others peoples who share the territory with kel Tamacheks, as Kaocen expressed it during his fight for the liberation of their territory.

110 Lettre ouverte par les chefs coutumiers, les notables et les commerçants de la boucle du Niger (Tombouctou, Gao et Goundam) à sa majesté Monsieur le Président de la République Française, 30 mai 1958, Cited by P, Boilley (n 27 above) 292.
111 H, Claude-Hawad (n 57 above) 37 citing this letter.
112 Kel Tamacheks of Air and all others Kel Tamachek. It was sent by the Kel Tamachek of the East, 11 days before the independence of Niger.
113 ‘As you leave the Tuareg country, return to us our country such as you tore off it to us after the defeat of Kaosen. As independence is announced and that you give it, then us also, the Tuaregs, we want to lead ourselves and to gather our whole people, where it is, in our country. We want to unite our people in one country only’
However, the demands and the petitions claiming the independence or the self determination for the creation of the OCRS failed for many reasons but only two main reasons will be exposed in this analysis. Firstly, this independent movement was supported by the colonial power with the aim to remain in the Sahara because of its minerals and other resources. Secondly, the leaders of the south particularly the Songhai parliamentarian of the US RDA convinced their brothers Kel Tamachek traditional chiefs and they promised them that, nobody will dominate them they will manage their own issues better than under the colonial rule. Therefore, they should vote for independence and chase the French *Ikoufar*.\(^{114}\) They will stay together as they did it in the past.\(^{115}\) Thus, ‘yes’ was voted largely by the citizens of the Sudan French in Mali. It is important to mention that other internal and external factors also influenced the failure of the OCRS.

**B. The misunderstanding between Mali and the Kel Tamacheks people:**

During the first year of the independence the divergences between the new power and Kel Tamacheks representatives appeared clearly. The representative\(^ {116}\) of the government in his first mission in the municipality of Kidal explained the ideology of the new Republic which was socialist. The internal autonomy claimed by representatives of the people was totally rejected. The colonial policies related to the land, saw by the Kel Tamachek unfair and inequitable, were maintained. In addition to that some new policies were adopted which attained the indigenous culture such as the family code. It provided 20,000 FCFA for the dowry and it reduced the wedding in one day.\(^ {117}\) That was not possible for the Kel Tamachek who in their tradition they spend one week for the wedding and they give a lot of money for the dowry which is considered as proud for them traditionally and a respect to women. In addition to that they reached imposing to the people the paroxysm of the humiliation.\(^ {118}\)

This management of power provoked a several incidents between the new Malian authorities and some Kel Tamacheks, who refused to be subjected to the omnipotence considered by them as a misuse of authority by the soldiers; an armed revolt bursts in Kidal. The reprisals carried out by the

\(^{114}\) Akafar the single and Ikoufar the plural. It is an arab word adopted in Tamacheq, the meaning is who was not a believer, for example non Muslim.
\(^{115}\) P, Boilley (n 42 above) 292-299.
\(^{116}\) The Governor of the Region of Gao in that time called Mr. Baraka Diallo.
\(^{117}\) P, M EBA (n 31 above) 18-20.
\(^{118}\) ‘The blacks started by making with the Tuaregs things very revolting. If they had known how to manage people, or if they had known their traditions a little they would not have done that. Initially they took the women Tuaregs of force, and they maltreated people with whom they live’ (P, Boilley (n 31 above) 315).
Malian army were disproportionate with the few shots drawn by the insurrectionists. Thus, many civilians are humiliated, tortured and killed. In the years which follow, of the exactions continue a stigmatisation falls down on the whole of the Kel Tamacheks society of Mali. Kidal was declared restricted area for foreigners and the north was placed under the exclusive control of the army with the authorisation for the militaries to kill whose which would be in prohibited area. This inhuman policy led to the summary executions and massacres of civilian and the elimination of the livestock. 119 The only true encounter between the insurrectionists and the military Malians would have made two deaths on each side.120

Thus, the new Republic of Mali did not reach the expectations of the north people of Mali particularly Kel Tamacheks. Because the Malian administration continued following the colonial policies and practices toward nomads, therefore, the Kel Tamacheks were stigmatised as ‘bandit’ like the highwaymen, ‘proslavers’ and the people not civilised and not should be confidence in them. So, the Malian also considered that to confide a strategic place to Kel Tamachek is a danger or a suicide to the power. Kel Tamacheks are not a workers and their life does not contribute to the national economy in contrary to the farmers who were considered the main sustain of the national economy.121

Although these perceptions were unfounded, however, its popularization continued sowing the germs of Kel Tamachek revolts thus in the country and misunderstandings between the power and the Kel tamacheks’ communities. This stigmatisation and exclusion were magnified during the post colonial country and led to the arbitrary arrests and summary executions made during the conflicts opposing the national army and the rebellious forces. In addition to that the economic and social destitution in which live the Kel Tamachek populations of their territory.122

2.3.3. Indigenous Peoples socio-economic conditions

The colonial occupation was created the first discriminations between white nomads and black farmers. The current regions of the north Mali suffered from a chronic under-administration: 4

[120] As above
[121] P, M EBA (n 31 above 6) citing P, Boilley (n 49 above) & E, Bernus (n 54 above).
[122] As above
municipalities, 10 schools including 4 known as ‘regional’\textsuperscript{123} 10 dispensaries and infirmaries. The most negative result will have been that nothing was undertaken for the social aspect, physical or cultural wellbeing pastoralist populations.\textsuperscript{124}

The independent State recognised and exhibited how these nomadic Indigenous peoples were discriminated by the colonial power. The French power did not deny it, and it tried to exploit it as a pretext to the creation of the OCRS in the aim to fill the gap created between the nomadic peoples and others communities of Mali.

Economically, the nomadic life was ruined by these different occupants’ powers which in common considered that only the sedentary life is paying. The main pillar of the nomadic economy was the trans-Sahara commerce. However, the conquest colonial in Sahara had as interest to conquer the roads caravan which link Maghreb to Sub Saharan African Empires under the absolute control of Kel Tamacheks. So, it seems that the colonisation is purely business enterprise before others pretexts such as ‘civilisation’, ‘humanitarian’ etc. Kel Tamacheks lost this flourishing commerce when Timbuktu and Insalah\textsuperscript{125} were respectively occupied by the French in 1894 and 1899\textsuperscript{126}. In addition to that they imposed policies to the nomads preventing them to practice freely their nomadism.

At the independence, it seems that, the colonial rule was followed. The new state needed money for its management others kind of taxes were imposed to the nomads such the taxes for the protection of environment. It was prohibit for the pastors to cut a branch of tree or to kill wild animal all these thing are part of the indigenous life, and the indigenous know how to protect the environment. So, in 1962 when the Mali created its own currency\textsuperscript{127}, new taxes were imposed again, where each pastor must pay a tax for each animal. It was also prohibited to exchange with the neighbour countries while the local currency could not be used outside. The prices of the animals were devaluated by the state because he was alone buyer. It was a deep isolation of the Malian Kel Tamacheks who considered that situation another form of exploitation and their impoverishment.\textsuperscript{128}

\textsuperscript{123} Primary education on the level of the Capital towns of the municipalities.
\textsuperscript{124} N Keita (n 15 above ) 4-6
\textsuperscript{125} Currently in the south of Algeria.
\textsuperscript{126} A Saint Girons (n 90 above ) 3 & 10.
\textsuperscript{127} Franc malien.
\textsuperscript{128} P Boilley (n 27 above )315-316.
The policies imposed by the government unilaterally constitute one of the causes of the rebellions. So, the rebellions and the droughts ruined the areas of the north and the maintenance of the colonial policies and others incomprehensible.

2.4. Conclusion:

In summary, the Tuareg people were one of the big peoples of sahelo-sahara. Who lived in with different peoples without problems until the arriving of the colonizers, who aimed to dominate and exploit Africa. From that time, they started to resist protecting what they are. Thus, they were treated by all kind of stereotypes. The invader did not understand and did not support to be rejected by people which it under estimated because it was seen a saviour. In return all the means were used to dominate and to destroy these people. The policy to divide to reign became the principal weapon. Thus, he divided the people and inculcated them the germ of division. This is why after him, its ideas remained and continue to dominate and destroy that which refused them. Who finally became minority and different. Thus, his rights are violated and continue to be violated; this is why it is named indigenous people.
Chapter three:
Indigenous people rights in International Human Rights Law

3.1. Introduction:

This chapter will seek to examine whether indigenous peoples’ rights in Mali are violated and in which wage. Thus, here it will analyze the legal protection of these rights in the light of international law.

International law is classified in two types of instruments which are: binding legal instruments such as the charters, conventions, treaties etc. And the non-binding legal instruments called soft law such as declarations and resolutions etc. However, a soft law instrument can become partially ‘hard law’ when it becomes part of customary international law. The UDHR is an example.129 The Declaration is in process and we hope it will become part of customary international law as the UDHR. The analysis will focus on the international bill of human rights, the ACHPR regional instrument which is also international instrument, the ILO 169 which is a binding instrument and the Declaration which protects indigenous peoples. We will touch the following rights: right to life, right to non discrimination, right to land, right to participation, right to health, right to education and finally right to self determination. It seems that, the last one is for indigenous people a sine qua non condition for the exercise of the others rights.

3.2. Rights to life:

The history of the majority of the indigenous peoples is marked by massacres. Thus, Kel Tamachek indigenous people are not an exception to this rule. From the time of colonial time until now, Kel tamachek Malians have known at least three to four massacres caused by the powers.130 The Tuareg is rejection of centralization power was already evident in their resistance to the French.131 In 1894, the Kel Tamacheks under the Chief Cheiboun Ag Fandagamo destroyed the French troops led by Col. Bonnier, at Takoubao near To Timbuktu. The brutality of French’s revenge is still talked about in the north. When the French trapped Firhoun Ag Inlansar in Andranboukane, they killed 750 of the Oulimiden clan.132

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129 F Viljoen (n above) 19-30
130 Colonial power & the current power.
131 Mali’s history and natural Environment (n 21 above) 25.
132 As above
After the independence in 1963, in the region of Kidal the successor regime used fighter bombers in reaction to the protest of some civil nomads.\textsuperscript{133} Nobody can give exact figures. And an ethnic purification sucked carried out in north against the white people,\textsuperscript{134} particularly in many villages.\textsuperscript{135} The conflict has known very significant human losses without considering the material losses. Thus, on the level of the civil population: It was estimated that a few tens of sedentary people lost the life continuations with the attacks of rebels (villages, markets, vehicles). But one can probably estimate at nearly 2000 the white number of civilians killed in consequence of reprisals and burs of the security forces.\textsuperscript{136}

These actions constitute a flagrant violation of human rights particularly arts 4\textsuperscript{137} which states that:

‘Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of person. No one may be arbitrary deprived of this right.’

The following articles were violated an arts 3, 4 and 5\textsuperscript{138} violation also of the ICCPR\textsuperscript{139}

3.3. Right to non discrimination: (5, 19 African charter)

The indigenous people are discriminated against by the powers and the dominant communities. Kel Tamacheks indigenous people suffer also against the policies and measures adopted by the colonial power and maintained by the independent Malian state.\textsuperscript{140}

Even after independence, the Kel Tamacheks are still being victimised by the same stereotypes by their African brothers who took power, in addition to other prejudices there are new words such as a ‘Feudal’, ‘Petty noble’, ‘racist’, ‘separatist’, ‘non Malian’ etc. The extreme discrimination was seen with the Captain’s Diby Sylla Diarra who killed five Kel Tamachek traditional chiefs because they sent

\textsuperscript{133} See introduction and Chapter II, The misunderstanding or disappointment between Mali and the Kel Tamacheks people, 26-28 above
\textsuperscript{134} Kel Tamacheks and Hassanya
\textsuperscript{136} Rapport Conseiller
\textsuperscript{137} ACHPR.
\textsuperscript{138} UDHR
\textsuperscript{139} Art 6.
\textsuperscript{140} See the precedent Chapter: socio-historical context, the misunderstanding or disappointment between Mali and the Kel Tamacheks people, 26-28.
their children to school late. He killed also many Kel Tamacheks, and during the public execution, the militaries obliged the society to attend the execution and to applaud.\textsuperscript{141}

In 2007, a gendarme was killed, because he was Utamachek by the militaries in presence of the leaders of the army in Gao, after introducing himself.\textsuperscript{142} These prejudices caused the reject of the Kel Tamachek by the others communities and the power and for the Kel Tamachek also to hate this power. It is a violation of the ACHPR (article 5\textsuperscript{143}) the following articles 2, 3, 18(3) and 28 \textsuperscript{144} It is also a non respect of the ICCPR\textsuperscript{145}

3.4. Right to land

The land it is the cornerstone of the indigenous people’s life. The expropriation of Kel Tamacheks from their land started during the colonization aiming to kill them by hunger. Thus, the colonial powers’ policy to prevent them access to the river and where they can get cereals. The militias were created to control the area under the direction of the French militaries. The disproportionate policies were adopted aiming to withdraw the nomad land and to give it to the farmers as it appears in the letter of the Colonel AUDEOUD.\textsuperscript{146}

It appears that, since their arrival, their policy was against the nomads until before the independence. In addition to that, they are limited the freedom of movement of the nomads. It was prohibited o the nomads to access some areas. The policies were adopted aiming to control the nomads through the limitation of their movement which is in contradiction with their life.

In 1950, Gremont discovered how the Tuaregs were expropriated and dispossessed through the policies. The administrator, Henri Leroux had created a land register.\textsuperscript{147}

\textsuperscript{141}Boilley (n 27 above) 341 interview of Iknan Ag Ahmed, Bamako, 10/2/94.
\textsuperscript{142}B Dakouo source: Numero 2274 du Mercredi 17 octobre 2007. Infomatin. (The source it is a newspaper called ’Infomatin’).
\textsuperscript{143}Everyone shall have the right to the respect of the dignity inherent in human being and to the recognition of his legal status. All forms of exploration and degradation of man particularly slavery, slave trade, torture cruel, inhuman or degrading punishment and treatment shall be prohibited.
\textsuperscript{144}ACHPR
\textsuperscript{145}Arts 2, 3 & 26.
\textsuperscript{146}See the precedent chapter, socio historical context, French strategy to weaken and to dominate Kel Tamacheks 22.
\textsuperscript{147}As above 23-24
It seems that, the act of capitulation of Kel Tamachek provided the prohibition for the Tuareg to access the delta intérieur du Niger ‘With the restriction the sedentary villages remain with the conservation of the right of pasture-land.’ These are violation of the following articles.

Nowadays, it appears a new shape of spoliation of the land of the indigenous people of Mali such as the attribution of the licenses of exploitation of the mining resources. Thus, many licences were given, to the multinationals, by the Malian government without the consent of the indigenous people. It is a threat for the nomadic life. Other problem is to ask if the contracts respected the international norms for avoiding what happened in the north of Niger. Where the indigenous people receive misery and contamination, wealth is for the multinationals and the government. All these actions mentioned in regard to the spoliation of the indigenous land violate many articles such as article 20 which provides that ‘All people shall have right to existence.’

It sure that, no one cannot exist without land particularly the case of indigenous where the land is everything for them. These Articles 21 provides that all peoples shall freely dispose of their wealth and natural resources. The people should not be deprived and the right shall be exercised in the exclusive interest of the people.’ Article 22. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of making.’ The article 24 ‘All peoples shall have the right to a general satisfactory environment favourable to their development.’ There is no satisfaction without an environment favourable to the development.

3.5. Right to culture

Culture is one of the main criteria of the indigenous people. However, it is frequently violated against them. The application of the principle of Uti Posseditis constitutes a basis of the undermining of the African culture in particular Kel Tamachek culture. For example the peoples who were the same before the external powers visiting each other freely, organising their cultural ceremonies together, and exchange all, these things were stopped with the balkanisation of their

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149 ACHPR
150 As above
151 As above
152 As above
territory. They cannot visit their brothers who are living in Algeria, in Niger or in Burkina without ID card, and when the authorities meet them without passport or ID card they punish them. However, the conditions were not created for providing these ID cards. Sometime the authorities punish their own citizens because they do not know the difference between the Algerian, Malian, Nigerien or Burkinabe kel Tamachek. It is a violation of the Art: 35 of the Declaration.

Another violation of the indigenous culture is the *Bambarisation*. So, in Mali they tried to destroy indigenous institutions and to impose one language and prohibiting the peoples to speak their mother tongue. The policies were applied to separate the children from their parents and to force all people to speak French and ‘Bambara’: the official language inherited from the colonial power and the language spoken by the majority in the south of Mali. School became compulsory; however, the nomads were because to them their children will be spoiled. For Kel Tamachek pupils holidays were cancelled they should spent all the time at school to attend the ‘Cultural Revolution’ to inculcate them the ideology opposite to their society ideology. One of the victims said that:

‘[...] after the class where the French is inevitably used, it is an obligation to express yourself in Bambara the dialect of the south. The songs and the theatres are translated to the audience who does not understand the language used. To speak your mother tongue ‘Tamacheq’ is an insult the Revolution. You must please to them is to deny your roots and to exhibit that. [...]’

Even today this policy continues through other forms. For example in the public Medias the languages of communications are still being in French and Bambara, mainly in Bambara; even the head of State addresses to the nation some time in Bambara without any translation. In the south particularly in the Capital, in the public offices the language of communication in practice is Bambara, and when someone protests sometime they will not attend him. However, many Malian do not understand Bambara. In addition to that, the official language is French; Bambara is one of the national languages. So, these actions constitute an alienation of the indigenous peoples and the minorities. There is a violation of the Declaration (Art 33) and the ACHPR (Art 22) non respect to the ICCPR

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153 All citizens would speak the Bambara. It was a language imposed by the first communist regime. It undermined the minorities’ cultures:, because some minorities lost their language.
154 P Boilley (n 27 above) 356-360.
155 As above 359.
156 All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of making. 2. The state shall have the duty, individually or collectively, to ensure the exercise of the right to development.
157 Art 27.
This is what the Malian government is trying to do developing and improving the culture through festivals. However, it seems that the festivals in the north are seen as a folklore and it undermines the culture through it is not respect of the local culture.

3.6. Right to participation

Both the colonial power and the Malian power did not try to integrate Kel tamachek people in army. In their management of this people what was common vis-à-vis this nomadic people is mistrust and the cruelty of repression well done. Indeed, until 1993 the Malian administration opposite to the colonial power did not integrate the Kel tamachek-Hassanya in the army forces. The ‘Garde goumiers’ integrated by the French power were maintained by the Malian power. Their duty remained to collect taxes and no training for them no promotion significantly to the contrary to their others countrymen. Until 1990 at EMIA Kel Tamachek could not be admitted. From the 1960 to 1990 only two Kel Tamachek-Hassanya reached the subordinate military official rank. From the first republics to the second, to confide a strategic responsibility particularly military to the Kel Tamacheks-Hassanya it was unbelievable and a suicide for the State.

In the political field, during the first republic no one Kel tamachek-Hassanya was appointed as deputy. US RDA. Two Songhais were appointed as deputies for the kel Tamacheks Municipalities, Menaka and Kidal. In addition to that the traditional structures were totally destroyed as the ideology was communist. However, the second Republic rehabilitated the traditional system partially, and for the first time Kel Tamachek-Hassanya were appointed by the one-party system, they are still participating until now. But, their political participation is purely considered symbolic because of their reduced manpower, with 147 parliamentarians; the parliamentarians of the north are less than 30. These facts show the non respect of the ACHPR (Art 13).

With the National Pact, the third Republic made an effort. Several northerners integrated the armed forces and the public administration even though many Kel tamachek-Hassanya renounced to their

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158 The police of the desert created by the colonial power.
159 C Gremont (n 81 above ) 12.
160 Ecole militaire Inter-armes (Military academy school)
161 C Gremont (As above)
162 P Boilley (n 27 above ) 353.
163 Union Soudanaise du Rassemblement Démocratique Africain (US RDA). The Socialist political party which led the first republic of Mali: from 1960 to 1968.
places because of the marginalization particularly in the army. Decentralization was adopted to allow a large participation of the basic populations in the management of their business. It replaces also the Particular status contained in the National Pact, with an aim to standardize the management of the country. However, the inhabitants of the North think that decentralization is not advantageous for the nomads because of the inappropriate territorial reforms and of others norms legal no conform to the indigenous people life. Therefore, the Special Status is better.

3.7. Rights to health and education

In spite of the various agreements signed between the government and the rebels from the 1991 to 2006; efforts made by the government, the financial backers and the support of ONGs in improvement of the socio-economic conditions. But, poverty and access to education and health remain major concerns within the indigenous populations in the North of Mali. For example, the percentages of antenatal consultations and births assisted by a health professional are the lowest in the North of Mali (Timbuktu, Kidal, Gao) where the indigenous people live.

Percentage of the births assisted by health professionals by region

<table>
<thead>
<tr>
<th>Regions</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kayes</td>
<td>23</td>
<td>26</td>
<td>34</td>
<td>40</td>
</tr>
<tr>
<td>Koulikoro</td>
<td>40</td>
<td>38</td>
<td>45</td>
<td>53</td>
</tr>
<tr>
<td>Sikasso</td>
<td>52</td>
<td>53</td>
<td>66</td>
<td>64</td>
</tr>
<tr>
<td>Ségou</td>
<td>32</td>
<td>39</td>
<td>49</td>
<td>50</td>
</tr>
<tr>
<td>Mopti</td>
<td>23</td>
<td>29</td>
<td>30</td>
<td>34</td>
</tr>
<tr>
<td>Timbuktu</td>
<td>14</td>
<td>15</td>
<td>18</td>
<td>24</td>
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<tr>
<td>Gao</td>
<td>19</td>
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<td>17</td>
<td>20</td>
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<tr>
<td>Kidal</td>
<td>9</td>
<td>14</td>
<td>14</td>
<td>18</td>
</tr>
<tr>
<td>Bamako</td>
<td>90</td>
<td>93</td>
<td>94</td>
<td>97</td>
</tr>
<tr>
<td>Total Mali</td>
<td>40</td>
<td>42</td>
<td>49</td>
<td>53</td>
</tr>
</tbody>
</table>


Percentage of antenatal consultations per region

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164 Colonel Hassan Fagaga in his interview he said that he was administrated by his subordinate which is in contradiction with the army rules.

165 P M EBA (n 49 above) 11-12.

166 As above.
In matter of education, there are deep disparities between the North and the other part of the country. According to the UNDP, the rate of schooling at the national level in 1997 was of 47% compared with 31% for the three regions of the North (Timbuktu, Gao and Kidal) and the national average of elimination of illiteracy was of 23% compared with 14% in these three regions.\(^{168}\) However, it is important to underline that these statistical data do not reflect the representation at the school of the nomadic children. It is a representation of the children of the north who are mainly sedentary children because all the schools are situated in the towns. No program was conceived to the schooling the nomadic children or nomadic women. This is a violation of the following arts 13(2) Equal right to access to the social and education services of your country; art 17(1); and the right to health art16(2) all their articles of African Charter.

In summary all these policies and measures rejected by the nomads and considered as inappropriate to their life constitute a conflict between the power and these nomads. So, the main problem is a misunderstanding between the both parties. However, They should be consulted in regard to the decisions related to their life as the international norms provide that such as the ILO N°169, the ICCPR and the ICSECR, the Declaration, the ACHPR etc.

### 3.8. Right to self determination under Human rights Law

This right is guaranteed by the UN Charter (Art 1(2)). So, it is a principle of the people to dispose of themselves, which became a fundamental principal of international law since its inscription in the Charter.\(^{169}\) Many scholars think that this principle allows two forms of self determination which are

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\(^{167}\) As above

\(^{168}\) As above

the external aiming to reach the independence and the internal respecting another principle of international law, which is the principle *Uti Posseditis*.\(^{170}\)

However, it does not need to deal with the academic and politico-legal debate related to the concept of self determination as it is a semantic word with various concepts in its practice. Because in this subject the case became clear since 2006 with the declaration of the ADC *du 23 mai*. In this declaration, Kel Tamachek rebels recognized the territorial integrity, the national unity, hence; the intangibility of borders. Therefore, they claimed the right to self determination internal based on their specificities, which are different from other part of Mali and the policies imposed to them by the Malian State. Taken in consideration the National Pact signed since the 11 April 1992. They also identified themselves\(^{171}\) as an indigenous people who should self manage their internal issues. They encouraged the Malian government to be inspired by others countries\(^{172}\) which gave an opportunity to their indigenous peoples to manage themselves. It should be the best manner how to reach a real national integration.\(^{173}\)

In reaction to this declaration, the President of Mali Amadou Toumâni Touré replied saying that, in *Djema*, all can be negotiated once the integrity territorial is saved. Both parties reached an agreement called ‘*Accord d’Alger,*’ which was not necessary for some Malians who were against because according to them it does not add anything more than the content of the National Pact.\(^{174}\) Both agreements will be analyzed in the next chapter, so, we will know about them later.

### 3.8.1. Right to self determination under the International Bill of Human Rights

This right of self determination is contained also in other international instruments such as both the International covenants (ICCPR and ICESCR) and their common art 1. It provides that:

(1) All peoples have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

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\(^{170}\) As above  
\(^{172}\) Canada and Scandinavian Countries, South Africa where indigenous peoples’ rights are respected.  
\(^{174}\) Opposition Political Parti particularly, Rassemblement du Peuple Malien (RPM)
(2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

(3) The states Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Government and Trust Territories, shall promote the realization of the right of self determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

This shows the importance given to the right to self determination which is not only a right of States but also a matter of human rights. In addition to that, in the formulation of the common article 1 of the Covenants mentioned above, the qualifications of the national unity and territorial integrity of states are not included. The appearance of a right to self determination, in many documents of human rights including the international bill of human rights, shows how it is considered.\(^{175}\) The activists’ indigenous peoples’ rights insisted on the necessity of the self determination to the full enjoyment and exercise of all indigenous peoples’ rights. As it appeared in the following document that the ‘travaux préparatoires of the international covenants reveal the reasoning that before any rights are enjoyed it is vital for the people to be masters of their own political destiny’.\(^{176}\) It confirms the interdependence between the self determination and the full enjoyment of the human rights. It respected also the order recognizing that before any right enjoyed it is necessary for the peoples to be master of their political power.

This statement appeared in the travaux préparatoires was confirmed by the General Comment 12(21) on art 1 UN Doc A/39/40, the Human Rights of the UN HRC, the body responsible for supervising ICCPR.\(^{177}\)

Even though, this comment used the term of the individual human rights that does not prevent all people their right to self determination when they will feel the necessity to exercise it.

### 3.8.2. Right to self determination under the Declaration (UNDRIP):

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\(^{176}\) As above 163 cites J Castellino International Law and Self determination (200) 31.

\(^{177}\) The right of self determination is particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that states set forth the right of self determination in a provision of positive law in both covenants and placed this provision as article 1 apart from and before all of the other rights in two Covenants.
The adoption of the Declaration constitutes a proof and recognition of the exercise of the right to self determination to the peoples outside of the context of the decolonization. As it is provided by article 3\textsuperscript{178}

The indigenous peoples have also a right to exercise their autonomy through their self administration in regard to their internal and local issues. They can also finance their autonomous activities. All these rights and activities constitute part of the exercise of their right to self determination.\textsuperscript{179} In addition to that they have also the right to maintain and reinforce their political institutions, legal, economic, social and cultural distinct to the institutions of the others peoples who share with them the country or State, while preserving the right, if such is their choice, to take part fully in the political life, economic, social and cultural of the State.\textsuperscript{180}

The ADC in its declaration claimed the applicability of the provisions of the declaration. They think that they could get their self determination to lead their own political affairs. The problems that they have cannot be solved by the administrators trained for the sedentary peoples who do not know and understand nomadic life.

3.8.3. Right to self determination Under the ILO Convention 169\textsuperscript{181}:

The ILO 169 is the binding international norm relating to indigenous peoples, so, it is one also of the key instruments in the body of international law in regard to the indigenous peoples.\textsuperscript{182}

For the first time an African country ratify the ILO 169 which is the Republic of Central Africa, so, the policies will be taken to achieve the protection of the indigenous people of Central Africa such as the Pygmés and the Mbororos.\textsuperscript{183} It is a positive step for Africa, which should be followed by the others African countries. The ILO 169 revolutionized how to protect indigenous peoples’ rights, through the obligation of the governments which ratified the ILO 169 to consult the indigenous peoples through

\textsuperscript{178}‘Indigenous peoples have a right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.’
\textsuperscript{179} UNDRIP (Art 4).
\textsuperscript{180} Declaration (Art 6).
\textsuperscript{181} Indigenous and Tribal Peoples Convention ILO 169 at <http://www.idrap.or.id/docs/convention169.pdf> (acceded 18/10/2010).
\textsuperscript{182} IFC Finance Corporation world bank group ILO 169 and Private sector Questions and Answer for IFC Clients, What are the key obligations under ILO 169? March 2007.
\textsuperscript{183} ICRA News
their representatives whenever consideration is being given to legislative or administrative measures which may affect them directly.\textsuperscript{184}

It recognizes also the indigenous peoples as a people and their lands as territories. Thus, it provides them with the right to decide their own propieties for the development relating to their lives, beliefs, institutions and spiritual well-being and the land they occupy or otherwise use, and to exercise control over their own economic, social and cultural development. The government shall cooperate with them in regard to their self management of their own issues. They have the right to retain their own customs and institutions where there are not incompatible with fundamental right defined by the domestic law and with internationally recognized human rights.\textsuperscript{185}

In relation to the land, the governments, before undertaking or permitting any program for the exploration or exploitation of mineral or sub-surface resources pertaining to the indigenous lands, shall establish or maintain procedures through which they shall consult these indigenous peoples. These peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.\textsuperscript{186} As both instruments the Declaration and the ILO 169 provided the right to self determination to the indigenous peoples respecting the intangibility of the borders. It seems necessary to give self determination to the indigenous peoples.

3.8.4. Right to self determination under African Charter on Human and Peoples’ Rights (ACHPR)

The ACHPR showed its revolutionary character through the recognition of the collective rights, compared to the other international institutions of human rights, which were especially limited to the individual rights in the development of their texts. It recognizes and protects the rights of the peoples (collective rights) through the repetition of the term ‘Peoples’ and its philosophical spirit is opposed to any kind of domination and recognized the equality between peoples.\textsuperscript{187}

The right to self determination is recognized and protected by the Declaration which provides that all peoples shall have right to exercise their right to self determination. Thus the advisory opinion of ACHPR:

\textsuperscript{184} ILO 169 (art 6).
\textsuperscript{185} ILO 169 (Arts 7-8).
\textsuperscript{186} ILO 169 (Art 15).
\textsuperscript{187} Report of the African Commission’s working group of experts on indigenous populations/communities (n 29 above) 80.
‘the fundamental importance of the right of all persons to self determination and considers that no provision of the present declaration can be invoked to deny a people, whatever they may be, of their right to self determination exercised in conformity with international law.’

So, the right to self determination is recognized and protected by the Charter which provides that all people have a right to existence. They shall have the unquestionable and inalienable right to self determination. (Art 20.1). The second paragraph specifies that the peoples under colonization or domination shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

However, in the case of Katenga Peoples’ Congress which claimed to be free from Zaire, the commission explored the meaning of the ‘peoples’ it recognized that also the exercise the right to self determination could be applied in many forms with the agreement of the wishes of the people. But, it added that, this self determination could be acquired only under the respect of the principle of the sovereignty and the integrity territorial. In addition to that the commission did not deny the quality of the Katenga Peoples’ Congress as a people, but it alleged that no evidence of violation of human rights that is why the request was rejected as had any merit under the ACHPR.

3.9. Conclusion
In summary the violations of Kel Tamachek people rights to self is proved through the reject of the Malian State to respect the Charter ratified by him. The Charter recognizes Kel Tamachek as indigenous people who claim internal self determination which is guaranteed by the ACHPR in addition to that the Declaration arti 4 provides self determination to the indigenous peoples.

It appeared that the Kel Tamachek problem causes through the colonial policies; it was created by the colonizer because of the non submission of the Kel Tamachek people to the colonization. Unfortunately, the new Malian state did not adopt the policies aiming to unite the country, because at the independence, the same norms imposed to the Kel Tamacheks by the colonial power, were applied by the Malian State to Kel Tamacheks again, in some aspects the new state was worst that

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190 As above Paras 6 & 7.
191 Art 20.
the colonial power\textsuperscript{192} (see historical context). However, that was not the expectations of the Kel Tamacheks People from their new country. They were expecting to get their self determination and to materialize the meaning of the Malian Motto: One People One Purpose One Faith (\textit{Un Peuple Un But Une Foi}).

\textsuperscript{192} See the chapter of the historical context.
Chapter four
The right to self determination under the Malian domestic law

4.1. Introduction:

The Working Group on the Indigenous peoples of African Commission has investigated in Mali and the experts have identified two ethnics’ indigenous peoples in Mali which are the Kel Tamachek and the Fulbe. It was underlined that the Fulbe are integrated the Malian society more than the Kel Tamachek. Therefore, the Kel Tamachek are marginalized and discriminated more than the Fulbe. In the report of the African commission it was mentioned the violations of the Kel Tamacheks. However, the republic of Mali did not recognize the indigenous peoples and in the last report it was mentioned that the Malian government sees the recognition of the indigenous peoples as a threat to the national unity. This is why the legal texts were adopted prohibiting any ethnic or regional associations. In spite of the non recognition of the indigenous peoples, the Malian government recognized the marginalization of the Kel Tamacheks and the under development of the north. So, the Kel Tamachek rebellion was understood whose the causes were the under development, hence, the cultural identity. Thus, several agreements, between the Kel Tamachek rebels and the Malian government, were signed aiming to solve the problem of the north. The National Pact remains the fundamental reference to the solution of the north conflict. However, the lack of the effectiveness of its applicability constitutes a handicap of the resolution of the Kel Tamachek problem. It seems that, the Agreement of Alger aimed to update the application of the National.

In this chapter, I will evaluate the Malian Constitution provisions, agreements, laws and other policies, measures in regard to the indigenous peoples’ rights.


The current Malian Constitution is the fruit of the Revolution of March 26th, 1991. It marks a significant change in the life of the Malians. Thus, the preamble and the first title of 24 articles are dedicated to the respect of human dignity. However, it does not mention the term of the
‘indigenous peoples’, but it guaranteed the ethnic, cultural and linguistic diversity. It does not mention the self-determination.

4.2.1. Rights to identification and recognition:

The Malian constitution does not mention the indigenous peoples, but it protects the cultural and linguistic diversity of the national community.\(^{196}\) It appears that the Malian government considers the recognition of indigenous peoples as a threat for the national unity. In his report to the UN HRC it underlined that, in spite of the mixing of the communities of the North, the country knew two rebellions from 1960 to 1994 which menaced the national unity.\(^{197}\) Therefore, the Malian government should protect jealously the national unity. Thus, the constitution reaffirms their determination to maintain and to consolidate the national unity.\(^{198}\) In fact, it is a historical Malian position, because it was a first president of Mali Modibo Keita, who proposed the adoption of the principle of *Utī Possedētīs* in Cairo in 1964 to OUA just after defeating military the first independence Tuareg protest.\(^{199}\)

Thus, the Malian government took legal ordinance in 1991, which prohibits the creation of any ethnic religious, linguistic, sexist, and professional or regionalist political organization.\(^{200}\) For the government the interdiction aims to discourage the ethnic or regionalist yearning aspiration of the diverse ethnics and calling to order the necessity to consolidate the unity national without denying the cultural, linguistic diversity.\(^{201}\)

However, the HRC had another opinion about this problem opposite to Malian opinion. For the HRC the regionalism was not necessary the racist and ethnocentric manifestation and the right of each ethnic group to express itself could be an important factor to the consolidation of the unity national.\(^{202}\)

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196 The Preamble of Constitution para 4
198 The Preamble of the Constitution para 5
199 L AG ALY (2004) thesis the graduation ‘El rol del Gobierno de la Republica de Mali en la Integracion Africana’
202 As above
In spite of the non-recognition of the Indigenous peoples in Mali; Kel Tamacheks and the Fulbe are identified as indigenous peoples in the report of the expert on indigenous peoples of African Commission on HRP; and they are recognized as indigenous peoples in Africa by the resolution which was adopted by the African Commission Human Rights. In addition to that the international criteria for the recognition correspond to the Kel Tamacheks and Fulbe and they identify themselves as different from other communities.

4.2.2. Right to non discrimination:
The Constitution its article 2 provides that:

‘All Malians are born and live free and equal in their rights and duties. Any discrimination based on social origin, color, language, race, sex, religion or political opinion is prohibited’

This guaranteed constitutional provision equality of all the Malians without distinction, who they are nomads, sedentary, white or black. However, in spite of this constitutional protection, it remains formal and even virtual, because it seems that the practice shows its opposite. Thus, in the practical life the decisions, the political speeches, the media campaigns do not cease discriminating the Kel Tamacheks and continue to perpetuate this racist ideology each time the situation arises.203

The following exchange between the delegation of the Movement Burkinabé des Droits de l’Homme et des Peuples (MBDHP)204 which went to Bamako between on August 26th and on September 2nd, 1992 to inform itself largely near Association Malienne des Droits de l’Homme (AMDH)205 and other people and structures available on the consecutive situation to Mali to the Kel Tamachek rebellion and the signature on April 11th, 1992 of the National Pact devoting the Particular Status of the North of Mali.206

According to the delegation of Burkina, the AMDH estimates that the Touareg problem is a cultural problem involved in an opposition between nomads and sedentary; white nomads and idlers living of raids, proslaver and feudal; and black sedentary, farmers, producers of coveted richesses.207

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203 P M EBA (n 49 ab 38.
204 Movement of Human Rights and the Peoples of Burkina.
205 Malian Association of Human Rights.
206 A Saint Giron (n 90 above) 32.
207 As above.
In 1992, the Patriotic Movement Ganada Koy\textsuperscript{208} appears with the publication of the the heading tract \textit{La voix du nord, organe de combat des peoples sédentaires} (The voice of the north, organ of the combat of the sedentary peoples). In the tract it appeared that ‘the nomads: Tuareg, Moor, Arab wanted and organized their current isolation. They are bandit since always living of stealing, raid, and brigandage.’\textsuperscript{209} In the same tract it appeared also the following message: ‘Sedentary black peoples, from Nioro\textsuperscript{210} to Menaka\textsuperscript{211}, organize ourselves, arm ourselves for the great battle which is current.’ Drive back the nomads in the sand of Azaoud.’\textsuperscript{212} The same tract asserted that, the nomads’ tribes are trying to acquire a dominant position, by the National Pact, on the lands where the vital parties belong to the sedentary peoples, without the sedentary region there is no north it remains only desert and wandering tribes. Where are the villages and cities of Kel Tamacheh?\textsuperscript{213}

It seems that the opinion of AMDH defines the Kel Tamachehs as a savage people, lazy people, racist people and proslaver who are in conflict with the farmers because of their wealth.

As regards the tract of the MPGK, firstly, it asserts the same idea with AMDH vis-a-vis the white nomads; it denies also any property to the Kel Tamachehs and qualifies the nomads as wandering people. Secondly, it addressed a message to the black sedentary all, to chase the white Arab, Moor and Kel Tamachek driving back them in the sand, it is an incitement the black peoples against white nomads. These words could be seen as a racial discrimination. So, it seems that a non respect of the CERD\textsuperscript{214} definition of discrimination appears in its article 1\textsuperscript{215} this provision qualifies these facts as a racial discrimination against all the Kel Tamachehs peoples were qualified as bad, so, inferior to the farmers who are good.

Therefore, it confirmed the non respect of the Malian constitutional provision anti-discrimination and its non respect attends in the practical life. However, these actions were tolerated by the government.

\textsuperscript{208} Mouvement Patriotic Ganda Koy (MPGK)
\textsuperscript{209} C Gremont (n 81 above) 17. Citing ‘La voix du Nord, organe de combat des peoples sédentaires,’ N°00 1992.
\textsuperscript{210} It is name of city, it is located in the north-west in Mali, it is a limitation where the arab, moor and Tuareg live in Mali.
\textsuperscript{211} Menaka, is also a city located at the eats in Mali at the border with Niger. So, the limitation at east where live the arab, tuareg and moor.
\textsuperscript{212} A Saint Giron (n 55 above) 33.
\textsuperscript{213} As above
\textsuperscript{214} Convention on the Elimination of all forms of Racial Discrimination (CERD), General Assembly resolution 2106 (XX) of 21 December 1965, ratified by Mali on the 15/08/1974.
\textsuperscript{215} In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
In 1994, appeared the collusion of the State, according to Gremont, with the desertion of the Songhai Captain, who deserted with important arms and munitions and joined the MPGK which became a military movement, probably he was supported by his hierarchy. This doubtful opinion of Gremont was confirmed true by *le monde diplomatique* through this assertion: ‘the relations are good between the army and movement Ganda koy and the military officers deserters continue receiving their salaries, said Mr. Mahmoud Alpha Maiga one of the leaders of Ganda Koy.’

In 2008, with the rebellion of the ADC and Ibrahim Bahanga, the Malian government created two militias; one of the Imghad tribe led by the Colonel Gamou and the second of the Arab tribe led by the Colonel Meydou the both colonels were the former rebels who integrated national army through the National Pact. The aim was to impose the peace to the rebels. The Malian government called these militias as ‘legal’ militias. Here also it seems appear again the racial discrimination because the division was based on the different tribes between the Kel Tamacheks and between Kel Tamacheks and Hassanya. These facts also seem showing again the non respect of the CERD (Articles 2, 3, 4, 5) and the non respect of the right to equal treatment and the prohibition of discrimination through other international instruments such as the ICCPR (Articles 2, 3, 20, 26) and the ACHPR (Articles 2, 3, 18 (3) and 28). Apparently, it is confirmed that the constitutional provision anti discrimination is not respected.

The CERD Committee in his opinion the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression. It appears that the precedents paragraphs 2 and 3 of these recommendations were not respected by the State.

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217 C Gremont (n 81 above) 21.
219 As above See: Para-2. The Committee recalls its General Recommendation VII in which it explained that the provisions of article 4 are of a mandatory character. To satisfy these obligations, States parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced. Because threats and acts of racial violence easily lead to other such acts and generate an atmosphere of hostility, only immediate intervention can meet the obligations of effective response. Para-3. Article 4 (a) requires States parties to penalize four categories of misconduct: (i) dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another color or ethnic origin; and (iv) incitement to such acts.
In summary, these stereotypes try to show that some communities are better than other which a racism.

4.2.3. Right to access to justice

The Constitution provides the right to access justice and legal protection in its articles 9 and 10. The article 9 says that the punishment is individual. All accused are presumed innocent until their guilty may be established by a competent court. In addition to that the right to defense, with assistance by a lawyer of choice, is guaranteed from the outset of interrogation.

The application of this provision is guaranteed by the decree\textsuperscript{220} and the law n° 01-082 du 24 août 2001 which governed the legal assistance in Mali. Thus, the admission to the legal assistance is decided by a committee composed by the representatives of the different institutions such as the representative of the State or his delegate, the Mayor or his representative, The chief of the service of the recording and the Chief of the recording service and housing or his representative\textsuperscript{221} or his representative, a representative of the bar where the applicant lives, the chief of the village, area or fraction\textsuperscript{222} of the applicant.\textsuperscript{223}

However, the government noticed that the participation was very low; the reason should be the lack of information about the assistance legal.\textsuperscript{224} In addition to that, several factors make difficult the access to Malian justice. Firstly, justice is not credible with the eyes of the citizens in particular the most vulnerable such as the indigenous peoples. It is seen like a justice belonging to the peoples who have power. Secondly, it is not free, while the majority of Malians lives in poverty. Thirdly, its administrative organization (geographically) makes its access more difficult; in some jurisdictions the national bar has not a representation. For example in the region of Kidal, there is only one judge who lives in the regional capital; there is no representation of the bar. In the whole country there are only three courts of appeal which are located respectively in Bamako, Kayes and Mopti, all in the


\textsuperscript{221} Le Chef du service de l’enregistrement et des domaines ou son représentant.

\textsuperscript{222} It is a proper term to the nomads. It defines a group organized administratively. It does not coincide always with the tribe, because in some cases the colonizer divided the tribes and united the peoples coming from different tribes and to put them together under a responsibility of who respected the colonial power.

\textsuperscript{223} As above 1-2.

\textsuperscript{224} P M EBA (n 49 above) 44.
south of the country. In addition to that the language is a handicap also; the majority of the Malian does not speak French particularly the Kel Tamacheks.225

They claim to restore their traditional system of justice which is better for them than the European system justice because they believe in it, it is not corrupted, all the indigenous understand and know it, the judgments are applied in their language, and the judges are not appointed but elected by the society, so, it is more effective for them.226 These facts show clearly the art 9 is not been respected in practice by the government of Mali.

4.2.4. Rights to education and culture

The Malian constitution recognizes the right to education.227 It is also a right to every citizen. In the public education it is mandatory, free, and secular. The private education is recognized and regulated in the conditions defined by law.228 Basing on the data229, it appears that the government does not respect the article 18.

Historically, the dominant powers use an education as a tool of domination. For example the colonial power had aim to assimilate African. And the first Malian Republic, through education, inculcated the communist ideology to the children which was opposite to the Islamic ideology. So, it is appeared as an acculturation of the indigenous people society.230 The indigenous people are seen also by the foreign teachers as an uncivilized society which should be civilized which constitutes an attempt to their culture231, hence, a conflict with the learners it is one of the reasons why the indigenous protect themselves against foreign education.

4.2.5. Right to self determination

The Malian constitution does not mention the right to self determination. However, during the elaboration of this constitution the representative of the rebels tried to incorporate the self

225 See the datas related to school in page
226 Pour un Statut Particulier de la région de Kidal (To a Special Status of the region of Kidal), See: http://imp.online.net/horde/util/go.php?url=http://www.kidal.info/docs/statut‐particulier.rtf&Horde=9b7f2b3bb4f4965a3358eb2cd5a410b5 (acceded 24/10/2010)
227 Constitution Art 17.
228 Constitution Art 18.
229 See the precedent chapter the subtitle: the right to education and to health, 37-38.
230 See the precedent chapter the subtitle: the right to education and health.
231 It is a non respect of the constitution which protect a cultural and linguistic diversity, see chapter
determination for the north of Mali and it was rejected. \(^{232}\) But the constitution provides the territorial collectives in its articles 97 and 98 known as decentralization. These collectives are defined by these laws. \(^{233}\) It is focus on the three following structures the region, the municipality and the commune which have a legal personality and a financial autonomy. The local representatives are elected by the communities. This system replaced the National Pact provided to the north. However, for Mr. Patrick, it is not reached the expectations of the indigenous people because of its insufficiencies, and the government recognizes some of them. \(^{234}\) It appears that the decentralization is not conforming to the indigenous people life; it affects the customary law and the territorial pasturage. \(^{235}\) In spite of the insistence the demand of the self determination by the indigenous peoples, since the independence to now, their claims are still seeing as danger to the national unity.

4.2.6. Enforcement of the constitutional rights

In Mali, the control constitutionality is very limited. So, the Constitutional Court must decide on what is provided by the constitutional article 86. \(^{236}\) In addition to that the Constitution Court shall

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\(^{232}\) See the intervention of the representative of the Tuareg rebels at the National Conference in 1991, during the elaboration of the current constitution of the 25 February 1992. Chapter three

\(^{233}\) La loi n° 93-008 du 11 février 1993, modifiée par la loi n° 96-056 du 16 octobre 1996, et 037 du 10 août 1999 qui précisent les conditions de la libre administration des collectivités territoriales, 
-la loi n°94-009/AN-RM du 1er février 1994 déterminant les principes fondamentaux de la création, de l’organisation, de la gestion et du contrôle des services publics,
-la loi n° 96-050 du 16 octobre 1996 portant principes de constitution et de gestion du domaine des collectivités territoriales,
-la loi n° 96-051 du 16 octobre 1996 et 00-044 du 7 juillet 2000 déterminant les ressources fiscales des communes.

\(^{234}\) (i) delays in the transfer of ownership of local and regional development to the local authorities; in fact, these delays hamper the transfer of powers, property and resources (human and financial) despite the political will expressed in all the laws and regulations adopted; (ii) difficulties in ensuring consistency between the sectoral strategies at the national level and the choices and priorities of the local and regional authorities; (iii) difficulties of the supervisory authorities, especially at the decentralized level, to appropriately carry out their missions of advisory support services, monitoring and control for the decentralized local authorities; (iv) the low capacity of human resources and low mobilization of human and financial resources at the local level; (v) excessive concentration, at the central level, of human resources and decisions for implementation of public expenditure; and (vi) inadequate involvement of the civil society, as custodian of rights and duties towards Local Authorities and representative of local authorities (HCCT, AMM, ACCRM) and as defender and negotiator with the Government on the challenges of decentralization.

\(^{235}\) P M EBA (n 49 above) 41.

\(^{236}\) The constitutionality of organizational laws and other laws before their promulgation; the interior regulations of the National Assembly, the High Council of Collectives and of the Economic, Social and Cultural Council before they are put in application pertaining to their conformity to the Constitution; the arbitration of conflicts between institutions of the State;
rule, in a case of contesting the validity of an election, of any candidate, any political party or delegate of the Cabinet, according to the conditions defined by an organizational law. Only the representatives of some institutions can apply to the Constitutional Court, they are mentioned by the constitutional article 88.

However, the Malian constitution protects human rights in its preamble and in 24 articles which protect the Rights and Duties of Human Dignity under the first title. This protection it could be seen by the citizens as a mockery, reminding that this constitution is a result of the great sacrifice which is symbolized by the Monument of martyrs. So, the constitution should fill the expectations of the citizens. In addition to that some provisions are not clear and cannot be enforced by Constitutional Court even though it allows applying. For example the article 98 ‘the collectives shall administer themselves freely the elected councils and according to the conditions established by law.’ So, what remained depends on the will of the legislator who will elaborate these conditions, so, constitutionally the citizens are not protected as said it the Professor Charles Fomba in his constitutional comparative study in Africa. So, no enforcement for the citizens through the constitutional court, it seems that these rights are like a decoration in the Malian constitution, however, it is contrary in the South Africa Constitution, see the application of Bill of Rights in its section 8.

In summary, it appears that the Malian constitution does not respect itself see its article 85. The Constitutional Court is the judge of constitutionality but no one possibility was created to the individual to apply to this Court; it is a gap which should be filled. It is also in violation of the ACHPR article 7(1) ‘Every individual shall have the right to have his cause heard.’ The same article allows to

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237 Constitution Art 87.
238 The President of the Republic, the Prime Minister, the President of the National Assembly, one tenth of the deputies of the National Assembly, the President of the High Council of Collectives or one tenth of the National Counselors, or by the President of the Supreme Court.
239 (1) This Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
(2) A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
(3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court – (a) in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and 
(b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).
(4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.
240 The Constitutional Court is the judge of the constitutionality of the laws and it shall guarantee the fundamental laws of the individual and public liberties. It is the regulating body of the functioning of the institutions and the activity of the Public Powers.
every individual to appeal his competent national organs ‘the right to an appeal to competent national organs acts violating his fundamental rights as recognized and guaranteed by the conventions, laws, regulation and customs in force [..].’ The constitution should be revised to allow the individuals to apply as the article 85 provides it, to incorporate also the ACHPR. Through this provision the indigenous people can claim their internal self determination which is guaranteed by all international instruments such ICCPR\textsuperscript{241}, ICESCR\textsuperscript{242}, ACHPR\textsuperscript{243}, and ILO 169\textsuperscript{244}.

\textbf{4.3. The Agreement National Pact \textit{’Pacte National’}}

\textbf{4.3.1. Historical of the National Pact}

The roots of the rebellion come from the colonization but it seems important for this section to mention briefly the main steps from the independence to the signature of the National Pact. To resume in some points the content of the Pact and its application.

In 1963, appears the first Kel Tamachek protest against the domination imposed by the Malian power.\textsuperscript{245} In 1990, started the rebellion which signed the first agreement in Tamarasset on the 06 July 1991. In March 1991 succeeded the Coup d’Etat against the military regime, the second republic. The transition recognized the respect of the agreement signed by the military regime. Thus, the rebels were invited to form part of the CTSP\textsuperscript{246} because they played a main role in the ending of the regime military. The 11 April 1992 the National Pact was signed by the Malian government and the MFUA\textsuperscript{247}.

\textbf{4.3.2. The content of The National Pact}

It appears that the National Pact in its spirit and its provisions, it is an act of national unity aiming to reach an absolute integration for the communities of the north of Mali in the whole national Malian community. It is the first legal instrument which gave to the north communities hopes to integrate deeply the Malian society.\textsuperscript{248}

\begin{verbatim}
241 Art 1.
242 Art 1.
243 Art 20
244 Arti 1.3
245 See the historical context chapter.
246 Comité de Transition pour le Salut du Peuple (CTSP)
247 Mouvement et Fronts Unifiés de l’Azawad (MFUA)
\end{verbatim}
It is composed the seven titles but we summarize the content in the following three chapters: A. the measures to national unity, B. the economic rehabilitation, and C. the Special Status. Almost twenty years after, it appears that many provisions were partially or totally enforced, however, other are still without any enforcement for some reasons such as political, financial or legal conditions. In addition to that other measures were taken in regard to the socio economic rehabilitation of the combatants demobilized.

A. The measures to national unity
In this chapter the measures concern particularly the integration of the north people in the national structures. Therefore, the first step was the realization of the peace, where 1500 combatants integrated the national defense (army and paramilitary sectors) in 1995, and five years after the signatory of the agreement. In 1996, following an exchange between the MFUA with Ganda Koy and the government it was decided to integrate certain people into the civil service. Thus, 120 people coming from the different communities of the north without any distinction integrated different civil structures.

B. Economic and financial aspects
It is in relation to the economic development. It was recognized that the regions of the north are under developed more than the south regions for many factors such as the lack of infrastructures in all kinds, the isolation imposed by the military administration during decades and the hostility of the climate. So, it was proposed to fill this gap through many projects for the development to these regions.

However, it seems that the situation is still the same in these regions. And it appears that the conditions are regressing because of the insecurity characterized by the terrorism. Therefore, the humanitarian’s ONGs left, while they are the main helpers and savors of the indigenous peoples in matter of the health, educations and other aspects.

C. Special Status (Les Statut Particulier)
It is recognized to the north in the Title III of the National Pact. It provided that the inhabitants of the north of Mali will self-manages their own issues. The three regions each of them will be led by a regional assembly and the three regional assemblies will be led by the inter-regional assembly. This inter regional assembly will be composed by 15 parliamentarian elected or appointed respectively by the three regional assemblies in accordance with 5 representatives by each region. The content of

249 As above.
the National Pact satisfies the north-Mali it is a self determination claimed during all protestations and agreements.\textsuperscript{250} However, it was abandoned in favor of the decentralization already explained in this chapter. It was said that the decentralization does not satisfies the expectations of the indigenous peoples. It appears that it is one of the reason why the protest of 2006 in kidal happened.\textsuperscript{251} The delay is one of the reason of misunderstand between the parties. It seems that the rebels think that it is a lack of political will.

Thus, since 2002 former rebels appointed a group composed mainly by the official militaries claiming the fully application of the National Pact. It seems that their demands were rejected implicitly. In reaction to that some individuals led by the Colonel Hassan Fagaga decided to be in rebellion. This rebellion ends by the agreement ‘Accord d’Alger’.

4.4. The agreement of Alger 4 July 2006

This agreement could be considered a protocol of the National Pact. It appeared in the claims to apply fully the National Pact. So, it seems important for us to see what is new in this agreement comparing to the National Pact. It is important because, the both parties which signed the Accord d’Alger affirmed that the National Pact stills as a reference to the resolution of the Kel Tamachek conflict.

The specificity which appears in this agreement it is its provincial character. It focused on the region of Kidal. Indeed, Kidal has its particularities in comparison to the two other regions of the north. kidal at now it is recognized only to Kel Tamacheks-Hassanya indigenous people region. However, Timbuktu and Gao are shared by Tamacheks-Hassanya, Songhai and Fulbe. Kidal has not access to the river. It is the last nominated as a region. It is the only region which lives essentially by breeding. It seems that nothing was added to the content of the National Pact. But, the Agreement of Alger seems to be very important to the Kel Tamachek movement. It reminded that the Special Status (self determination) replaced by the decentralization, is needed by the inhabitants of the north particularly in Kidal. It could be seen also as a recall to the Malian government related to the National Pact. It updated the National Pact in regard to the security, the special unities militaries should be provided to secure the desert against the terrorism. However, the Agreement of Alger followed also the National Pact, the lack of their application.

\textsuperscript{250} Pacte National Titre III Statut Particulier
\textsuperscript{251} P M EBA (n 49 above)
4.5. Enforcement of the agreements

The both agreements have a weakness which is the lack of the provision how to remedy the non respect of the agreement. For example in the case of one of the contracting party did not respect the agreement, you cannot obliged him to comply his engagement, if the provisions are silent in regard to that. Therefore, as regards to the application of these agreements the provisions provide only the witness and the necessity and the *bona fide* to apply this agreement.\textsuperscript{252} They did not adopt or to foresee any law or arbitration in case of their misunderstanding. It seems that the parties believed extremely in their engagements based on the solemn engagement.\textsuperscript{252} In addition to that, the parties engaged their responsibilities on behalf of people to respect the content of the agreement.\textsuperscript{254} It appears that, probably because of that always they are in conflict and accusing each other. It seems that the both parties did not like to be bind.

The Agreement of Alger provided a committee composed by the both parties and the facilitator to the implementation of the agreement during one year.\textsuperscript{255} However, until today the committee was not in function.

4.6. Conclusion

In summary, it appeared that the indigenous peoples are not recognized by the Malian constitution, but the constitution protects all citizens without any distinction. However, it showed that the constitution court is not accessible to the individuals, only the representative of some structures can apply to there. In addition to that the rights provided by the constitution are not accessible to the indigenous peoples particularly in socio-economic rights and justice. These constitutional rights are not enforceable. With the agreements many things were done for improving indigenous people’s life but is remained a lot to do. It seems that the agreements do not express the hopes of the indigenous people. Because the declarations of the representatives’ indigenous which appear in the Medias contrast the content of the agreements signed on behalf to them. It appeared that the weakness of the agreements is justified by the lack of power of the representatives to contract. The representatives of the State always contract the agreement which they will not respect for many reasons, but it appears that they do not believe in Kel Tamachek. However, a behavior like this, does

\textsuperscript{252} National Pact, article 76: The two Parts affirmed that the guarantee first of respect and implementation of this Pact lies in the fundamental interests of peace, of unity and stability which are the aim of this document, in the bona fide which animates them and their irreversible engagement definitively to restore the national concord and stability in the country and the sub region.

\textsuperscript{253} As above article 79: This is why the two Parties expressed solemnly their irreversible engagement to take care of the sincere, integral and inalterable implementation of all the provisions of this Pact.

\textsuperscript{254} As above articles 77-78.

\textsuperscript{255} Accord d’Alger, ‘Mécanisme de suivi’, Para 1. The follow-up will be ensured by a Committee which will take care of the implementation of the measures enumerated above. It will be composed of the representatives of the Government, the provisional district council of coordination and follow-up, once created, and of the facilitator.
not help to build confidence which is the only way could lead to the peace, development and building of the nation. The national unity cannot build basing on the lies and distrust one another.

It appears that the indigenous peoples are different culturally to other social groups of the State. So, that improve their marginalization through the programs of development not adapted to them such as justice; education etc. Therefore, it seems that the self-management will improve better their participation and the exercise of their rights.
Chapter five
Conclusions and recommendations

This chapter will focus on the conclusions and recommendations in regard to the main aspects discussed in the precedents chapters. It will propose a solution to the problems found.

5.1. Conclusions:
The study focused on the analysis of the integration of Kel Tamacheks people in the Malian society. The results of this research show that several factors were at the base of the failure of a good national integration. Firstly, it was revealed that the source of the failure is resulting from a colonial legacy through the adoption and the application of the colonial discriminatory texts and measures towards Kel Tamacheks. Secondly, all the attempts of development and social integration lamentably failed because of the lack participation of the populations concerned and it not conformity with their lifestyle. In addition to that the policies aimed to settle the nomads. Thus, no development policy was designed for the pastoralism, hence, no respect of the socio-cultural specificities and self determination. Thirdly, it seems that the unity and the construction of the nation Malian specifically her national integration between the south and the north appear to be built on a lie from where a reciprocal mistrust between north and the south transformed into mistrust between white and blacks.

The study analyzed also the national and international legal framework in relation to the recognition and the protection of the indigenous people in Mali. At the national level, the indigenous people are not recognized. In addition to that the constitutional rights are not enforceable as many francophone constitutions. As regard to the agreements analyzed, it recognized strongly the difference of the indigenous people and the specificities of their region, which is the north of Mali. A self-determination (Special Status) was granted to the north in the agreements; however its application remains to be wished. So, the agreements present a weakness of their enforcement. Therefore, its application depends on the bona fide of the parties. However, at the international level the indigenous people are recognized and protected by the international instruments such as ICCPR, ICESCER and ACHPR which ratified by Mali. And the ILO169; they provide all, the right to self determination to the indigenous people under the integrity territorial. In addition to the binding law, there are also soft laws such as UDHR, UNDRIP etc.
In summary, this study exhibited many flagrant violations of human rights of Kel Tamacheks aiming to integrate them by force, first in the colonial society, secondly in the Malian society. However, they refused through an outright resistance to the colonization and domination. It seems useful to conclude with the quotation of Ibrahim Ag Litni, representative of the rebels Kel Tamachek of Mali:

‘ The administration of the areas Tuareg never took account the reality of the Tuareg, of the lifestyle of the Tuareg, the needs of the populations […] Even a broad decentralization will be appropriate to us. We did not choose to live in the State-nations. Thus, the States where we are locked up should satisfy our needs not to push to envisage a pure a simple independence.’\textsuperscript{256}

5.2. Recommendations:
This study, which showed the reasons why the indigenous people are not integrated in the whole nation society, finds that nothing justifies the refusal of the official recognition of Kel Tamacheks-Hassanya as indigenous people in the respect of international law and the texts ratified by the country. Thus, recommendations are divided into national and international level.

**National level**

1. Considering, the persistence of the north conflict in Mali. Recognition asserted and repeated the difference of the north with the south, based on its cultural identity, by the Malian government through the agreements signed with the rebels, which also provided a self determination to the North. International instruments of human rights which recognized Kel Tamachek as indigenous people and provide to them the self determination. The historical will of this region to be autonomous. We recommend to the Malian government an enforcement of the Special status to the North from where an autonomy which respects the intangibility of the borders. To enforce also the content of the agreements: the National Pact and L’Accord d’Alger.

2. To recognize Kel Tamachek as indigenous people through the adoption and the application of the United Nations Declaration on the Rights of the Indigenous Peoples. To ratify the ILO 169. To respect also all the legal international instruments, ratified by the Malian government, and those treaties bodies recognized Kel Tamacheks as indigenous peoples.

3. To reform the Constitution and to implement the constitutional rights. The Constitutional Court should respect its art 85 and art 7 of ACHPR.

\textsuperscript{256} Cited by T Sandrine ‘Les dessous de la rébellion Touarègue ‘ In : Croissance, n° 359, P 39.
4. To avoid to participate directly or indirectly or to tolerate the creation of the militias in the country whatever the reasons because no ‘legal militias.’ To stop the discrimination and marginalization against the white Kel Tamachek-Hassanya through the Medias, declarations, campaign and other ways.

5. To create the democratic conditions in the country and to encourage aiming to transform the army rebels movement in political movements. To transform the freedom of gossip limited to the real freedom of expression.

**International, regional and sub regional**

1. To take adequate decisions to impose the respect and the application of the treaties on the States these ratified them.

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Annex: The map of Hélene Claude Hawade, the territory of the Kel Tamacheks during the arrival of the colonial power.
Aire d'influence politique touarègue au début du siècle et États sahro-sahéliens actuels.

- Espace politique touareg
- Principaux axes des relations extérieures
- ADER Région
- Frontières des États actuels
- Aïjer Pôle de fédération

Constitution of the Republic of Mali

The Republic of Mali
One People – One Purpose – One Faith

Translation for Constitution Finder by Jeffrey Craver, University of Richmond School of Law

Preamble

Title I - The Rights and Duties of Human Dignity

Title II - The State and Sovereignty

Title III - The President of the Republic

Title IV - The Cabinet

Title V - The National Assembly

Title VI - Interaction between the Cabinet and the National Assembly

Title VII - The Judicial Power

Title VIII - The Supreme Court

Title IX - The Constitutional Court

Title X - The High Court of Justice

Title XI - The Territorial Collectives

Title XII - The High Council of Collectives
Preamble

The Sovereign People of Mali, fortified by their traditions of heroic struggle, committed to remain faithful to the ideals of the victims of repression and the fallen martyrs killed in battle for the advent of a nation of law and of pluralist democracy,

- affirm the will to preserve and to reinforce the democratic accomplishments of the Revolution of March 26, 1991,

- solemnly engage to defend the republican form and secularity of the State,

  - proclaim their determination to defend the rights of women and children as well as the cultural and linguistic diversity of the national community,

  - reaffirm their determination to maintain and to consolidate the national unity,

  - commit themselves to assure improvement to the quality of life, the protection of the environment and of the cultural heritage,

  - subscribe to the Universal Declaration of the Rights of Man of December 10, 1948 and to the African Charter of the Rights of Man and the People of June 27, 1981,

  - reaffirm their attachment to the formation of the African Union, to the promotion of peace, to regional and international cooperation, to peaceful resolutions of the differences of opinion among states in respect to justice, equality, liberty and the sovereignty of the
Title I

The Rights and Duties of Human Dignity

Article 1: The human dignity is sacred and inviolable.

Each individual has the right to life, liberty, and the security and integrity of his person.

Article 2: All Malians are born and live free and equal in their rights and duties. Any discrimination based on social origin, color, language, race, sex, religion, or political opinion is prohibited.

Article 3: No one will be put to torture, nor to inhumane, cruel, degrading, or humiliating treatment.

Each individual, each agent of the State who is found guilty of such acts, either on his own initiative, or by another’s command, will be punished at law.

Article 4: Every person has the right to freedom of thought, conscience, religion, worship, opinion, expression, and creation in respect to the law.

Article 5: The State recognizes and guarantees, under conditions established by law, freedom to come and go, freedom of choice of residence, freedom of association, assembly, following, and demonstrations.

Article 6: Residence, property, private and family life, confidentiality of correspondence and communication are inviolable.

They may only be undermined according to the conditions defined by law.

Article 7: Freedom of press is recognized and guaranteed.

This is expressed according to the conditions defined by law.

Equal access for all to the media of the State is assured by an independent organization; that organization shall define the laws which assure such access.

Article 8: Freedom of artistic and cultural creativity is recognized and guaranteed. This freedom shall be carried out according to the conditions defined by law.
Article 9: Punishment is individual

No one may be pursued, arrested or charged in violation of a law promulgated after the fact.

All accused are presumed innocent until their guilt may be established by a competent court.

The right to a defense, which includes assistance by a lawyer of choice, is guaranteed from the outset of interrogation.

Article 10: Any person who objects to an action to deprive them of liberty has the right to be examined by a doctor of their choice.

One may only be detained for more than forty-eight hours as a result of a decision motivated by a Magistrate of the court.

One may only be detained in a penitentiary by a delivered mandate by a Magistrate of the court.

Article 11: That which is not forbidden by law cannot be made a crime, and one may only be constrained for what the law does not permit.

Article 12: No one may be forced into exile.

Anyone persecuted because of their political or religious beliefs, their ethnic membership, may benefit from the right of asylum in the Republic of Mali.

Article 13: The right to own property is guaranteed. One may only be deprived of that right for the purpose of public utility with just and prior compensation.

Article 14: Freedom of enterprise is vigorously guaranteed within the scope of the laws and regulations.

Article 15: Every person has a right to a healthy environment. The protection and defense of the environment and the promotion of the quality of life is a duty of everyone and of the State.

Article 16: In the case of a reported national disaster, every citizen has a duty to give aid according to the conditions defined by law.

Article 17: Education, instruction, training, employment, housing, leisure, health and social protection constitute some of the recognized rights.

Article 18: Every citizen has a right to education.
Public education is mandatory, free, and non-religious.

Private education is recognized and it must be carried out according to the conditions defined by law.

Article 19: The rights to employment and furlough are recognized and shall be equal for all. Every citizen has a duty to work but one may only be restricted to specific employment in the case of fulfillment of a service of exceptional public interest, equal for all according to the conditions defined by law.

Article 20: The freedom of unions is guaranteed. Unions must perform their activities without constraining or limiting others aside from those activities provided by law.

Article 21: The right to go on strike is guaranteed. It is vigorously guaranteed within the scope of the laws and regulations.

Article 22: Defense of the homeland is a duty of every citizen.

Article 23: Every citizen must work for the common good.

Every citizen must fulfill all civic obligations, notably contributing monetary donations.

Article 24: Every citizen and every person living in the Malian territory has the duty to respect, in every circumstance, the constitution.

Title II

The State and Sovereignty

Article 25: Mali is an independent, sovereign, indivisible, democratic, secular, social Republic.

Its principle is to be a government of the People, by the People and for the People.

The institutions of the republic are:

- The President of the Republic;
- The Cabinet;
- The National Assembly;
Constitution of the Republic of Mali

The Supreme Court;

The Constitutional Court;

The High Court of Justice;

The High Council of Territorial Collectives;

The Economic, Social and Cultural Council.

The National emblem shall be composed of three equal vertical stripes of green, gold and red.

The motto of the Republic is "One People – One Purpose – One Faith" (Un Peuple – Un But – Une Foi).

The National Anthem is "LE MALI".

Law will determine the Seal and the Coat of Arms of the Republic.

French is the official language.

Law will determine the method for making official and promoting national languages.

Article 26: The Sovereignty of the nation belongs entirely to the People, who shall exercise it through their representatives or by vote of referendum.

No faction nor any individual may exclusively claim this exercise of sovereignty.

Article 27: The right to vote is universal, equal and secret.

According to conditions defined by law, all citizens of voting age are electors demonstrating their civic and political duties.

Article 28: The political parties shall concur as to the expression of suffrage. They may form and exercise their activities freely within the conditions determined by law.

They must respect the principles of national sovereignty, democracy, integrity of the territory, national unity, and the secularity of the State.

Title III
The President of the Republic

Article 29: The President of the Republic is the Chief of State.

He is the guardian of the Constitution. He embodies the national unity. He is the guarantor of national independence, territorial integrity, and respect for international Treaties and Accords. He keeps watch over the regular functioning of public authority and assures the continuity of the State.

Article 30: The President of the Republic shall be elected for five years by direct universal suffrage, by election on a majority basis from two rounds of ballots.

He may only be elected once.

Article 31: Every candidate for the office of President of the Republic must be of Malian national origin and must have fulfilled all civic and political duties.

Article 32: The Presidential elections shall be between twenty-one and forty days before the exit of the incumbent president.

Article 33: The law shall determine the procedure, conditions of eligibility and presentation of the candidacy for Presidential elections, development of the election system, counting of ballots, and proclamation of results. The law shall lay out all the required elements so that elections are free and in order.

The President of the Republic shall be elected by absolute majority of cast votes. If no absolute majority can be obtained after the first round of votes, a second round shall be held, the second Sunday following. This second round is open only to two candidates determined by the largest number of votes.

If one of the two candidates withdraws, the ballot shall be open to the next candidate coming in order of cast votes.

If, in the seven days preceding the deadline for the declaration of candidacy, one of those, less than thirty days before such date, who has announced publicly his decision to be a candidate, decides not to or finds himself unable to continue, the Constitutional Court shall declare a postponement of the election.

If, before the first round of ballots, one of the candidates decides not to or finds himself unable to continue, the Constitutional Court shall declare a postponement of the election.

In case of death or an unforeseen preventative obstacle of one of the two favored candidates in the first round of ballots before any possible returns, or one of the two candidates remaining after these returns, the Constitutional Court shall decide whether to repeat the elections.
The convocation of electors is made by decree held in the Council of Ministers.

The Constitutional Court shall control the regulation of these operations, make rulings regarding complaints, and proclaim the results of the election.

Article 34: The functions of the President of the Republic are incompatible with the exercise of any other political function, with any elective mandate, with any public use, or with any other lucrative or professional activity.

Article 35: During his period of office, the President of the Republic cannot, through himself or another, buy or lease anything which belongs to the State’s domain without prior authorization of the Supreme Court under the conditions laid out by law. He may not participate, through himself or another, in public or private markets for the administrations or institutions under the State’s authority or subject to its control.

Article 36: When the President of the Republic is temporarily unable to fulfil his duties, his powers shall be provisionally exercised by the Prime Minister.

In case of a vacancy of the Presidency of Republic for some unforeseen, disruptive cause that is an absolute or unavoidable obstacle, noted by the Constitutional Court, and the President of the National Assembly and the Prime Minister, the functions of the President of the Republic shall be carried out by the President of the National Assembly.

A new process for election of a new president for a new period of five years shall then commence.

The election of the new President shall take place between twenty-one and forty days after the official recognition of the vacancy or preventative obstacle.

In every case of a preventative obstacle or vacancy, Articles 38, 41, 42, and 50 shall not be applied.

Article 37: The President Elect shall enter into office fifteen days after the official proclamation of the election results. Before entering into office, he shall declare before the Supreme Court the following oath:

"I swear before God and the Malian People to preserve in perfect fidelity the Republican Regime, to respect and to create respect for the Constitution and the law, to carry out my duties in the superior interest of the People, to preserve the democratic establishment, to guaranty the national unity, the independence of homeland and the integrity of the national territory.

I solemnly and on my honor commit myself fully to implement the realization of African Unity."
After the inauguration and within a period of 48 hours, the President of the Supreme Court shall publicly announce the oath of the President of the Republic.

This declaration shall be the subject of an annual announcement.

Article 38: The President of the Republic shall name the Prime Minister. He shall put an end to the Prime Minister’s functions on presentation by the Prime Minister of the resignation of the Cabinet. On proposition by the Prime Minister the President of the Republic shall name the other members of the cabinet and [also] terminate their functions.

Article 39: The President of the Republic shall preside over the Council of Ministers. The Prime Minister will stand in for them under the conditions supplied by this Constitution.

Article 40: The President of the Republic shall promulgate the laws within fifteen days following transmission to the Cabinet of the definitively adopted text.

He may, before the expiration of this time period, demand a new deliberation of the law or certain of its articles by the National Assembly.

This new deliberation may not be refused shall suspend the timeline of the promulgation.

In case of urgency, the timeline of promulgation may be reduced to eight days.

Article 41: The President of the Republic, by proposal of the Cabinet, during the duration of its sessions or by proposal of the National Assembly, after the opinion of the Constitutional Court is published in the Official Journal, may place under referendum any and all questions of national interest, any law related to the organization of public powers, consisting of an approval of an accord of union or an authorization of a treaty which, without being unconstitutional, would have effect on the function of the Institutions.

When the referendum has concluded that the proposal is to be adopted, the President of the Republic shall promulgate it in the manner prescribed in Article 40.

Article 42: The President of the Republic may, after consultation with the Prime Minister and the President of the National Assembly, declare the dissolution of the National Assembly.

General elections will follow between twenty-one and forty days after the dissolution.

The National Assembly cannot be dissolved in the year that follows these elections.

Article 43: The President of the Republic shall communicate with the National Assembly and the High Council of Collectives by memoranda that are to be read by the President of the National Assembly or
Article 44: The President of the Republic is the Supreme Chief of the Armies. He shall preside over the Superior Council and the Committee of Defense of the National Defense.

Article 45: The President of the Republic is the President of the Superior Council of the Magistracy.

Article 46: The President of the Republic shall sign ordinances and decrees from the Council of Ministers.

He shall name senior civil and military leaders, as determined by law.

The Grand Chancellor of National Order, General Officers, Ambassadors, Special Envoys, Regional Governors, Central Administration Directors shall be named by decree of the Council of Ministers.

Article 47: The Members of the Supreme Court shall be named by decree of the Council of Ministers.

Article 48: The President of the Republic shall empower the Ambassadors and Special Envoys when engaged with foreign powers.

Article 49: The President of the Republic shall declare, after deliberation in the Council of Ministers, a state of siege or a state of emergency.

Article 50: When the Institutions of the Republic, independence of the Nation, integrity of the national territory, or the execution of international engagements are immediately or gravely threatened and the regular functioning of the constitutional public powers are interrupted, the President of the Republic shall take emergency measures as required by the circumstances, after consultation with the Prime Minister, the Presidents of the National Assembly and of the High Council of Collectives as well as the Constitutional Court.

He shall inform the nation of the situation by an announcement.

The application of these emergency powers by the President of the Republic must not in any case compromise the national sovereignty nor the territorial integrity.

The emergency powers must seek to assure the continuity of the State and reestablish the institutions conforming to the Constitution in the event of an interruption of normal State function.

When the National Assembly is assembled it may not be dissolved during the President’s exercise of emergency powers.
Article 51: The President of the Republic may delegate certain powers to the Prime Minister.

Actions of the President of the Republic other than those established in Articles 38, 41, 42, 45, and 50, as well as the previous paragraph of the present Article, shall be countersigned by the Prime Minister and, if such should be the case, any other involved Ministers.

Article 52: The Law shall establish the salary of the President of the Republic and organize the method for establishing a pension for former Presidents of the Republic in their civilian lives.

Title IV

The Cabinet

Article 53: The Cabinet shall determine and direct the political institutions of the Nation, the armed forces, and their administration.

Article 54: The Cabinet is responsible before the National Assembly according to the conditions and following the procedures established by Articles 78 and 79.

Article 55: The Prime Minister is the Head of the Cabinet: with this title he shall direct and coordinate governmental action.

He shall assure the execution of the laws. With respect to the provisions of Article 46, he shall exercise his ruling power. He is responsible for the execution of the political institutions and the national defense.

He may delegate certain powers to the other Ministers.

He shall stand in for, if such should be the case, the President of the Republic in the presidency of the Council and of the Committee as defined by Article 44.

He shall stand in for the president of the Council of Ministers, by virtue of an express delegation or an order of business.

Article 56: The actions of the Prime Minister shall be countersigned, if such should be the case, by the Ministers charged with their execution.

Article 57: Before entering into service, the Prime Minister must deliver to the Supreme Court a written declaration of the Cabinet’s intentions.

This declaration shall be the object of an annual announcement.
The elements of Article 35 above shall be applicable to the members of the Cabinet.

Article 58: A member of Cabinet shall not act by any parliamentary mandate, any function of professional representation, at the national or local level, any public endeavor, or any professional or lucrative activity.

One comprehensive law shall establish the conditions in which provisions for the replacement of officers of each office, occupation, or position.

The replacement of members of Parliament shall be made by the Cabinet with conformity to the provisions of Article 63.

**Title V**

**The National Assembly**

*(The Parliament)*

Article 59: Parliament shall be comprised of one house called the National Assembly.

Article 60: Members of the National Assembly shall be called Deputies.

Article 61: Deputies shall be elected for five years by direct universal suffrage. Law shall establish the methodology for this election.

Article 62: Deputies shall enjoy parliamentary immunity.

No member of the National Assembly may be pursued, investigated, arrested, detained or tried for his opinions or votes that arise from the exercise of his functions.

No member of the National Assembly may, during the time when parliament is in session, be pursued or arrested in a criminal or correctional manner without the authorization of the National Assembly, except in the case of a flagrant offense.

No member of the National Assembly may, outside of session, be arrested except with the authorization of the Office of the National Assembly, except in the case of a flagrant offense, authorized pursuits or definite condemnation.

The detention or pursuit of a member of the National Assembly shall be suspended if the National
Article 63: Organizational law shall establish the number of members of the National Assembly, their indemnities, conditions of eligibility, scheme of ineligibilities and incompatibilities.

Organizational law shall also determine the conditions for election of those called to assure, in the case of a vacant seat, the replacement of Deputies until the re-election of the National Assembly.

Article 64: Every imperative mandate is null.

The right to vote of the members of the National Assembly is individual.

Organizational law may authorize, for exceptional reasons, delegation of a vote. In this case no one may receive the delegation beyond what is mandated.

Article 65: The National Assembly shall meet by their own right biannually.

The first session shall commence on the first Monday of October.

The session may not exceed seventy-five days.

The second session shall commence on the first of April and may not exceed a duration of ninety days.

Article 66:

The National Assembly may meet in an extra session at the request of the Prime Minister or by an order from a majority of the members.

When an extra session is held on demand of the members of the National Assembly, the end of the session shall come as soon as the business for which the session was called is completed, and at most fifteen days after the date of reunion.

The Prime Minister may demand a new session by order before the end of the month that follows the closing of session.

Article 67: Except for the case in which the National Assembly meets by their own right, extra sessions shall be commenced and brought to a close by decree of the President of the Republic.

Article 68: The National Assembly shall establish its own procedure. The President of the National Assembly shall be elected for the duration of the legislature.
Article 69: The sessions of the National Assembly shall be public. However, they may meet in a closed session by their own initiative or on demand by the Prime Minister. Their internal procedure shall establish the methodology a closed session. The account of the internal debates from public sessions shall be published in the Official Journal.

Title VI

Interaction between the Cabinet and the National Assembly

Article 70: The law shall be voted on by a simple majority in the National Assembly.

However, laws to which the present Constitution confers the characteristics of an organizational law shall be voted on in the following conditions:

- the proposal or project may only be subjected to deliberation and vote of the National Assembly after the end of a fifteen-day time period following its deposit in the office of the National Assembly:

the text may only be adopted by an absolute majority of the members composing the National Assembly. Organizational laws may only be promulgated after a declaration of the Constitutional Court of their conformity to the Constitution.

Law shall establish regulations concerning:

- civic rights and fundamental guaranties provided to citizens so they may exercise their public liberties, constraints imposed by the National Defense on themselves and their possessions;

- nationality, civic rights, state and capacity of people, marriage, inheritance and donations, property system, actual rights and civic and commercial obligations, factions of society, expropriation;

- crimes and offenses in addition to their applicable penalties, criminal procedure, police judiciary, extradition, amnesty, the creation of jurisdictions, the status of Ministerial Officers, the status of juridical and judicial Professions;

- the status of civil servants;

- the general status of the personnel of the Armed forces;
-the system of distribution of money, the tax base, taxes and methods of collection.

Law shall equally determine the fundamental principles of

- the general organization of the defense and national security;
- the right to work, social security, the right to form unions;
- the organization and competency of professional orders;
- education and research;
- the protection of cultural heritage and archaeology;
- public compatibility;
- the creation, organization and control of public services and organizations;
- the nationalization of enterprises, denationalization and transfer of property of enterprises from the public sector to the private sector;
- the electoral system;
- the free administration of local collectives, their competence and their resources;
- the administrative organization of the national territory;
- the management and alienation of the State’s domain;
- the organization of the national product;
- the organization of the justice system;
- the penitentiary system.

The law of the Treasury shall determine resources and the government expenditures.

The budget must be adopted by the National Assembly. It shall establish the objectives of the economic and social actions of the State.
Article 71: Declaration of war shall be authorized by the National Assembly in a special meeting for that purpose.

The President of the Republic shall then inform the nation by an announcement.

Article 72: States of emergency and states of siege shall be declared in the Council of Ministers. Their extension beyond ten days may only be authorized by the National Assembly.

Law shall determine the conditions.

Article 73: Other matters than those which are of the domain of the judiciary shall have a statutory make-up.

Bills of legislative form arising before ratification of the present Constitution may be modified by decree following judgement of the Supreme Court.

Such bills which arise after ratification of the present Constitution may only be modified by decree if the Constitutional Court has declared that they are of statutory make-up according to the preceding paragraph.

Article 74: The Cabinet may, in the execution of its functions, or within its domain as established by law, request Parliamentary authorization to take by Ordinance, during a limited time period, measures which are normally the domain of the law.

These Ordinances must come from the Council of Ministers following the opinion of the Supreme Court.

They shall come into effect as soon as they are adopted, but shall become null and void if they are not ratified by the National Assembly before the date established by their own qualification. At the expiration of the time period mentioned in the previous paragraph of the present Article, Ordinances may only be modified by law on matters which are in the legislative domain.

Article 75: The initiation of laws belongs concurrently to the Cabinet and to the members of the National Assembly.

Legal proposals shall be deliberated in the Council of Ministers following the opinion of the Constitutional Court and shall be presented to the office of the National Assembly.

Article 76: The members of the National Assembly and the Cabinet have the right to make amendments.

After the opening of debate, the Cabinet may oppose any amendment that was not previously submitted to it.
Article 77: The National Assembly shall address the budget as soon as the normal session proceeding the budgetary period commences. The budget must plan for the necessary formula to cover the expenses.

If the National Assembly is not established at the time of the commencement of the budgetary period or if it does not vote-in a budget, the Cabinet shall return the budget in the fifteen day period when the National Assembly meets in special session for this reason. The National Assembly must then decide in eight days. If this deliberation does not result in a voted-in budget, the task shall then be taken up by the Cabinet based on the formula of the previous result and following the opinion of the Supreme Court.

Article 78: The Prime Minister, after deliberation of the Council of Ministers shall discuss the responsibility of the Cabinet within the National Assembly’s plan either before the Assembly or by a declaration of the general politics of the Cabinet.

The National Assembly shall defeat action of the Cabinet by passing a vote of no confidence. Such a motion is only admissible if it is signed by at least one tenth of the members of the National Assembly. A vote must take place within forty-eight hours of the motion. Those who are polled to be in favor of the vote of no confidence may only come from the majority of the two tiers of the members composing the Assembly. If the motion of the vote of no confidence is rejected, the signers may not propose a new motion within the course of the same session.

The Prime Minister may, after deliberation with the Council of Ministers, engage the liability of the Cabinet before the National Assembly regarding the vote on a bill. In this case, the bill is considered to be adopted, unless a motion of no confidence, made in the next twenty-four hours, is voted-in.

Article 79: When the National Assembly adopts a new motion of no confidence or when it disapproves of the plan or a declaration of the general politics of the Cabinet, the Prime Minister must submit to the President of the Republic the resignation of the Cabinet.

Article 80: The adjournment of normal or special sessions may be delayed to allow, should the case be such, for the application of the elements of Article 78.

Title VII

The Judicial Power

Article 81: The judicial power is independent of the executive and legislative powers. It shall be exercised by the Supreme Court and the other Courts and Tribunals.

The power of the judiciary is the guardian of the liberties defined by this Constitution.
It guards the rights and liberties defined by this Constitution.

It is charged to apply, in its proper domain, the laws of the Republic.

Article 82: Magistrates shall not be suppressed in the exercise of their duties, but by the authority of the law.

Seated Magistrates may not be removed.

The President of the Republic is the guarantor of the independence of the judicial power.

The Superior Council shall watch over the management of the Magistrates’ careers and shall give its opinion on any question concerning the independence of the Magistracy.

The Superior Council of the Magistracy serves as the Council of discipline for the Magistrates.

Organizational law shall establish the composition, organization, allocations, and functioning of the Superior Council of the Magistracy.

Law shall likewise establish the status of the Magistracy with respect to conformity with the principles of this Constitution.

Title VIII

The Supreme Court

Article 83: The Supreme Court shall be comprised of

-a Judicial section;

-an Administrative section;

-an Accounting section.

Organizational law shall establish the rules and organization of its functioning in addition to the procedure for the court.

Article 84: The Supreme Court shall be presided over by a judicial Magistrate named by the President of the Republic and conforming to a proposition of the Superior Council of the Magistracy.
Title IX

The Constitutional Court

Article 85: The Constitutional Court is the judge of the constitutionality of the laws and it shall guarantee the fundamental laws of the individual and public liberties. It is the regulating body of the functioning of the institutions and the activity of the Public Powers.

Article 86: The Constitutional Court must decide on

- the constitutionality of organizational laws and other laws before their promulgation;

- the interior regulations of the National Assembly, the High Council of Collectives and of the Economic, Social and Cultural Council before they are put in application pertaining to their conformity to the Constitution;

- the arbitration of conflicts between institutions of the State;

- the regularity of presidential and legislative elections and the operations for referendums of which it shall declare the results.

Article 87: The Constitutional Court shall rule, in a case contesting the validity of an election, of any candidate, any political party or delegate of the Cabinet, according to the conditions defined by an organizational law.

Article 88: Organizational laws shall be submitted by the Prime Minister to the Constitutional Court before their promulgation.

Other categories of laws, before their promulgation, may be referred to the Constitutional Court either by the President of the Republic, the Prime Minister, the President of the National Assembly, one tenth of the deputies of the National Assembly, the President of the High Council of Collectives or one tenth of the National Counselors, or by the President of the Supreme Court.

Article 89: The Constitutional Court shall rule within a time period of one month according to the procedure for which the methodology shall be established by organizational law.

However, by request of the Cabinet in a case of emergency, the time period may be reduced to eight days.
Appeal shall suspend the time period of the promulgation of the law in question.

A provision deemed or declared unconstitutional may not be promulgated or applied.

Article 90: International engagements laid out in Articles 114 to 116 must be referred to the Constitutional Court before their ratification, either by the President of the Republic, the Prime Minister, the President of the National Assembly, one tenth of the deputies of the National Assembly, the President of the High Council of Collectives or one tenth of the National Counselors.

The Constitutional Court shall determine, in a period of one month, if these engagements contain a clause contrary to the Constitution.

However, by request of the Cabinet, if there is an emergency, this time period may be reduced to eight days.

In the event of an affirmative reply, these engagements may not be ratified.

Article 91: The Constitutional Court shall comprise of nine members who hold the title of Counselors with periods of office of seven years, once renewable.

The nine members of the Constitutional Court are assigned in the following manner:

- three named by the President of the Republic of which two must be jurists;
- three named by the President of the National Assembly of which two must be jurists;
- three Magistrates designated by the Superior Council of the Magistracy.

The Counselors are chosen from Professors of law, Lawyers and Magistrates having at least fifteen years of practice, in addition to qualified personalities who have served the State honorably.

Article 92: The President of the Constitutional Court shall be elected by his peers.

In case of temporary inability, his position shall be filled by the eldest Counselor.

In case of death or dismissal of a member, the newly named member, by the respective nomination authority, shall continue the period of office already commenced.

Article 93: The functions of a member of the Constitutional Court shall not be compatible with any public, political, or administrative activity or any private or professional activity.
The members of the Constitutional Court shall give an oath in a ceremony solemnly presided over by the President of the Republic before the National Assembly and the Supreme Court. They shall proclaim:

"I swear to conscientiously fulfill the duties of my office, with strict respect to the obligations of neutrality and reservation, and to conduct myself with dignity and loyalty to my public office."

Article 94: The decisions of the Constitutional Court are not susceptible to any recourse. They shall intrude upon public powers, all administrative and jurisdictional authorities and on the morals and actions of the individual.

The rules of organization and function of the Constitutional Court, in addition to the procedure followed before it, shall be determined by an organizational law.

Title X

The High Court of Justice

Article 95: The High Court of Justice is competent to judge the President of the Republic and Ministers upon accusation by the National Assembly of high treason or of crimes or offenses committed while exercising their functions as well as their complicity in case of a conspiracy contrary to national security.

Accusation shall be publicly debated and requires the votes of 2/3 of the deputies composing the National Assembly.

The High Court of Justice is vigorously bound by the presentation of crimes and offenses and the determination of the penalties resulting from the penal laws as provided by the prosecution.

Article 96: The High Court of Justice shall be composed of members designated by the National Assembly at each general renewing [of the National Assembly]. The Court shall elect is president from its members.

Law shall establish the number of its members, the rules of its function as well as the procedure of the court.

Title XI

The Territorial Collectives

Article 97: The Territorial Collectives shall be created and administrated according to the conditions
Article 98: The Collectives shall administer themselves freely the elected Councils and according to the conditions established by law.

Title XII

The High Council of Collectives

Article 99: The mission of the High Council of Collectives is to study and give an opinion about every issue of local and regional development.

It may make proposals to the Cabinet on any issue concerning protection of the environment and bettering the quality of life of the citizens within the collectives.

The Cabinet shall await the opinion of the High Council of Collectives for all actions concerning the areas cited in this article.

Article 100: The High Council of Collectives shall be seated at Bamako. It may be transferred to any other location if necessary.

The High Council of Collectives may not be dissolved.

Article 101: The members of the High Council of Collectives shall carry the title National Counselors.

No member of the High Council of Collectives may be pursued, investigated, or tried for opinions given while in session of the High Council.

Organizational law shall establish the number of National Counselors, their indemnities, conditions of eligibility, the system of ineligibilities and incompatibilities as well as their conditions of replacement.

Service as a Deputy shall be incompatible with service as a National Counselor.

Article 102: National Counselors shall be elected for five years by indirect suffrage.

They shall assure the representation of the Territorial Collectives of the Republic.

Maliens abroad shall be represented by the High Council of Collectives.

Article 103: The High Council of Collectives shall come to normal session biannually by convocation of
its President.

The duration of each session may not exceed thirty days.

Its sessions shall be public. The account of the debates shall be published to an Official Journal.

Article 104: The President of the High Council of Collectives shall be elected for five years.

Article 105: The National Assembly and the High Council of Collectives may be seated in committee subject to the request of the Prime Minister. The President of the National Assembly and the President of the High Council of Collectives may call a joint session of the Deputies and the National Counselors.

The order of business for this session must relate to a local or regional problem of national interest.

The duration of this session may not exceed fifteen days.

Title XIII

The Economic, Social and Cultural Council

Article 106: The Economic, Social and Cultural Council is competent regarding all aspects of economic, social and cultural development.

It shall participate in every commission of national interest of Economic, Social or Cultural nature.

Article 107: The Economic, Social and Cultural Council shall collect and draft, with the participation of the entities of which it is composed, to the attention of the President of the Republic, Cabinet and National Assembly, a collection of expectations, needs and problems of the civil society that have arisen out of its orientation and proposals.

Article 108: The Economic, Social and Cultural Council must be consulted on every project within the law of finances, every plan or program of the economy, society or culture as well as any legislative provisions of a fiscal, economic, social or cultural nature.

Article 109: The Economic, Social and Cultural Council may designate one of its members to appear before these bodies and present the opinion of the Council on projects or proposals which have been submitted to it, at the request of the President of the Republic, Cabinet or National Assembly.

The Cabinet and the National Assembly shall be obliged, when they are seated, to give a conclusion to the opinions and reports presented by the Economic, Social and Cultural Council within three months for the Cabinet and before the end of the present session of the National Assembly.
The Economic, Social and Cultural Council shall receive a description of laws, ordinances and decrees
as soon as they are promulgated. The Economic, Social and Cultural Council shall follow the execution
of the decisions of the Cabinet related to economic, social, and cultural organization.

Article 110: Members of the Economic, Social and Cultural Council are:

-the representatives of syndicates, associations and socio-professional groups, elected by the association
or group of origin;

-the representatives of the collectives designated by their peers;

-the representatives of Malians abroad.

Associate members shall be senior officers of the State from within the realm of economy, society and
culture.

Article 111: The Economic, Social and Cultural Council shall meet biannually in fifteen day sessions at
the convocation of its President.

The sessions of the Economic, Social and Cultural Council shall be public.

Article 112: The President and Vice-President of the Economic, Social and Cultural Council shall be
elected for five years from within the Council by their peers at the opening of the first session.

No member of the Economic, Social and Cultural Council may be pursued, investigated or tried for
opinions given while in session of the Council.

Article 113: The internal organization and rules of order and conduct of the members of the Economic,
Social and Cultural Council shall be established by law.

Title XIV

Treaties and International Accords

Article 114: The President of the Republic shall negotiate and ratify the treaties. He shall be informed of
any negotiation leading to the conclusion of an international accord not submitted for ratification.

Article 115: Treaties of peace and commerce, treaties or accords related to international organizations,
treaties involving the finances of the State, treaties relating to the condition of individuals, treaties
Article 116: Treaties and accords that are properly ratified or approved have, from the time of their publication, superior authority over laws of the State.

**Title XV**

**On African Unity**

Article 117: The Republic of Mali may conclude accords of association or community with every African State that comprise partial or total abandonment of sovereignty, in light of the possibility of African unity.

**Title XVI**

**Revision**

Article 118: Initiative to revise the Constitution rests with both the President of the Republic and the Deputies.

A project or proposal of revision must be voted-in by the National Assembly with a majority of the two tiers of its members. A revision is only definite after being approved by referendum.

No procedure of revision may be engaged in or pursued when it undermines the integrity of the territory.

The republican form and the secularity of the State as well as multipartyism may not be made the object of revision.

**Title XVII**

**Final Arrangements**

Article 119: Legislation shall give vigorous attention to subjects that are not contrary to the present Constitution and where the subject is not the object of an express repeal.

Article 120: The present Constitution must be put to referendum. In the event that it is welcomed by a majority of the votes cast, the President of the Committee of Transition for the Good of the People shall
Constitution of the Republic of Mali

proceed with promulgation within the conditions established by the present Constitution.

Article 121: The foundation for every power of the Republic of Mali resides in the Constitution.

The republican form of the State may not be revised. The people have the right to civil disobedience in order to preserve the republican form of the State.

Any coup d’Etat or putsch is a crime against the Malian people.

Title XVIII

Transitory Arrangements

Article 122: Until the establishment of governmental institutions, the Committee of Transition for the Good of the People and the Cabinet shall take the measures necessary to ensure functioning of the public powers, the life of the Nation, protection of citizens and safeguarding of their liberties.

Translation by Jeffrey W. Craver
University of Richmond, T.C. Williams School of Law, class of 2000

Notes on the Translation:

- For the purpose of simplicity, any usage of the third person singular pronoun was translated in the masculine. This was a decision of the translator and is not a reflection of an intention of the Malian constitution.
- Where it was possible, this translation follows the original form of sentence structure laid out by the French speaking writers. However, in some cases, the structure had to be altered to capture the meaning as it would be comprehended by American readers.
- Please send any errors, omissions or interrogatories to jjones@richmond.edu.
PACTE NATIONAL
CONCLU ENTRE
LE GOUVERNEMENT DE LA RÉPUBLIQUE DU MALI
ET LES MOUVEMENTS ET FRONTS UNIFIES DE L'AZAWAD
CONSACRANT LE STATUT PARTICULIER DU NORD DU MALI

Le Gouvernement de la République du Mali et les Mouvements et Fronts Unifiés de l'Azawad dénommés les deux Parties dans le cadre du présent Pacte,

Ayant analysé de manière approfondie toutes les origines du douloureux conflit armé qui sévit dans le Nord du pays, et après avoir relevé toutes les graves conséquences que cette situation a entraîné,

Désireux d'aboutir à une solution pacifique négociée, juste et définitive au douloureux conflit armé qui sévit dans les 6ème, 7ème et 8ème Régions de la République du Mali appelées Azawad par les Mouvements et Fronts Unifiés de l'Azawad, une solution qui tienne compte des diversités culturelles, géographiques et socio-économiques qui existent dans la République du Mali et, en même temps, une solution qui tende à la consolidation de l'unité et de l'intégrité nationales,

Réaffirmant leur attachement à la Constitution de la République du Mali en date du 12 janvier 1992,

Soulignant les dispositions de la Constitution de la République du Mali par lesquelles elle souscrit à la Déclaration Universelle des Droits de l'Homme du 10 décembre 1948 et à la Charte Africaine des Droits de l'Homme et des Peuples du 27 juin 1981, et proclame sa détermination à défendre les droits de la femme et de l'enfant ainsi que la diversité culturelle et linguistique de la Communauté Nationale,

Ont, à l’issue de leurs négociations de paix à Alger, sous la médiation de la République Algérienne Démocratique et Populaire dénommée Médiateur dans le cadre du présent document, convenu de ce qui suit :

Titre I

PRINCIPES DIRECTEURS DU PACTE

1. Le présent Pacte est le cadre dans lequel seront restaurées la paix juste et définitive dans le Nord du Mali et la réconciliation nationale entre tous les Maliens.

2. Le contenu du présent Pacte est un engagement solennel et des dispositions irréversibles convenues par les deux Parties, liant tous les Maliens réconciliés et leurs institutions. A cet égard, la pérennité des dispositions statutaires de ce Pacte et la mise en œuvre de ses autres dispositions seront garanties par l’État.

3. Les dispositions du présent Pacte constituent un ensemble indissociable dont la mise en œuvre sera menée conformément au calendrier défini dans le Pacte lui-même.


Le Gouvernement de la République du Mali n’est pas opposé à l’appellation "Azawad" pour ces Régions. Cependant, il reste respectueux du droit des populations de décider librement de l’appellation de leur territoire local, régional et inter-régional et, en attendant que ces populations puissent exercer ce droit par le biais de leurs instances élues locales, régionales et inter-régionales et ce dès leur première session, les deux Parties, devant la nécessité de faire prévaloir la restauration de la paix dans cette partie du territoire national, ont décidé de la désigner à travers ce Pacte par Nord du Mali.

Titre II

DE L’ARRÊT DÉFINITIF DES HOSTILITÉS ET DU RÈGLEMENT DES QUESTIONS DÉCOULANT DE LA SITUATION DE CONFLIT ARME

5. Un cessez-le-feu définitif entrera en vigueur à zéro heure le lendemain de la signature solennelle du Pacte National.


7. Dans les soixante jours suivant la signature du Pacte, il sera mis en exécution un programme portant sur les mesures concomitantes ci-après :
A - Dans le cadre des mesures de restauration de la confiance, de l'élimination de facteurs d'insécurité et d'instauration d'une sécurité définitive, il sera :

- procédé à l'intégration totale, sur une base individuelle et volontaire et selon les critères de compétence, des combattants des Mouvements et Fronts Unifiés de l'Azawad (MFUA) dans les différents corps en uniformes de l'État,

- mis sur pied pour une année, des unités spéciales des forces armées composées majoritairement des combattants intégrés des Mouvements et Fronts Unifiés de l'Azawad,

- institué un corps de sécurité intérieure (Gendarmerie Nationale, Garde-Goum, Police) comprenant toutes les composantes des populations locales, y compris des combattants des Mouvements et Fronts Unifiés de l'Azawad, mis à la disposition des Autorités locales dans le cadre de leurs pouvoirs de police,

- créé des unités spéciales de l'Armée largement ouvertes à toutes les composantes des populations locales, dont la mission se limitera à la préservation de l'intégrité et de la sécurité extérieures du territoire national.

Les dispositions relatives à l'intégration de la totalité des combattants des Mouvements et Fronts énoncées ci-dessus porteront sur le retour des éléments de ces derniers avec leurs armements. Cette opération sera menée avec le concours de la Commission de Suivi du Cessez-le-Feu.

La sécurité et l'intégrité physique des combattants et des membres réintégrés des Mouvements et Fronts ainsi que celles des populations déplacées rapatriées seront totalement garanties.

B - Par ailleurs, et dans ce même cadre des mesures de restauration de la confiance, d'élimination des facteurs d'insécurité et d'instauration d'une sécurité définitive, il sera procédé à un allègement substantiel, graduel et approprié des forces armées actuelles dans le Nord, de sorte à aboutir à leur retrait majoritaire. Cette opération sera menée conformément :

- à la cessation définitive des hostilités, conformément au cessez-le-feu décidé au paragraphe 5 ci dessus.

- à la mise en place des mécanismes et dispositifs de sécurité prévus au paragraphe 7 ci-dessus.

- au changement des missions dévolues à l'Armée Nationale chargée à l'avenir des missions de défense nationale, entraînant un programme étalé de redéploiement des installations et implantations militaires hors des centres urbains et des zones de pâturage et de pacage, ainsi que la transformation de certaines installations de l'Armée en centres et écoles de formation militaire ou paramilitaire, et l'utilisation de certaines des casernes désaffectées en centre de formation professionnelle.

8. L'entrée en vigueur du cessez-le-feu et la mise en œuvre des dispositions le concernant énoncées au paragraphe 7 ci-dessus, seront surveillées par une Commission de Suivi du Cessez-le-Feu, composée et animée comme suit :

A - La Commission du Cessez-le-feu sera composée de représentants de chacune des deux Parties et du Médiateur à raison de dix éléments chacun. Elle aura pour mandat la conduite de la mise en œuvre des dispositions définies au paragraphe 7 ci-dessus.

C - Pendant la période de soixante jours de mise en application des mesures énoncées au paragraphe 7 ci-dessus, la Commission du Cessez-le-feu siégera en permanence sous la présidence du Médiateur et avec la participation permanente des représentants de celui-ci. En cas de besoin, cette période pourrait être prolongée jusqu'à parachèvement de la mise en œuvre des mesures susvisées.

D - Au delà de ladite période, la Commission du Cessez-le-feu siégera en permanence pendant une année avec la participation des Représentants des deux Parties et sous leur présidence mensuelle alternante, la première Présidence revenant aux Mouvements et Fronts.


9. Un programme de rapatriement des personnes déplacées sera préparé à partir de la signature du présent Pacte. La mise en œuvre de ce programme sera entamée 60 jours après la signature, soit à la fin de l'exécution des dispositions relatives au cessez-le-feu énoncées au paragraphe 7 ci-dessus qui se lit comme suit :

Dans les soixante jours suivant la signature du Pacte, il sera mis en exécution un programme portant sur les mesures concomitantes ci-après :

A - Dans le cadre des mesures de restauration de la confiance, de l'élimination des facteurs d'insécurité et d'instauration d'une sécurité définitive, il sera :

- procédé à l'intégration totale, sur une base individuelle et volontaire et selon les critères de compétence, des combattants des Mouvements et Fronts Unifiés de l'Azawad (MFUA) dans les différents corps en uniformes de l'État,

- mis sur pied pour une année, des unités spéciales des forces armées composées majoritairement des combattants intégrés des Mouvements et Fronts Unifiés de l'Azawad,

- institué un corps de sécurité intérieure (Gendarmerie Nationale, Garde-Goum, Police) comprenant toutes les composantes des populations locales, y compris des combattants des Mouvements et Fronts Unifiés de l'Azawad, mis à la disposition des Autorités locales dans la cadre de leurs pouvoirs de police,

- créé des unités spéciales de l'Armée largement ouvertes à toutes les composantes des populations locales, dont la mission se limitera à la préservation de l'intégrité et de la sécurité extérieures du territoire national.
B - Par ailleurs, et dans ce même cadre des mesures de restauration de la confiance, d'élimination des facteurs d'insécurité et d'instauration d'une sécurité définitive, il sera procédé à un allègement substantiel, graduel et approprié des forces armées actuelles dans le Nord, de sorte à aboutir à leur retrait majoritaire. Cette opération sera menée conformément :

- à la cessation définitive des hostilités, conformément au cessez-le-feu décidé au paragraphe 5 ci dessus.

- à la mise en place des mécanismes et dispositifs de sécurité prévus au paragraphe 7 ci-dessus.

- au changement des missions dévolues à l'Armée Nationale chargée à l'avenir des missions de défense nationale, entraînant un programme étalé de redéploiement des installations et implantations militaires hors des centres urbains et des zones de pâturage et de pacage, ainsi que la transformation de certaines installations de l'Armée en centres et écoles de formation militaire ou paramilitaire, et l'utilisation de certaines des casernes désaffectées en centre de formation professionnelle.

Tout effort sera déployé pour que ce programme de rapatriement soit parachevé dans un délai de 60 jours qui suivront son lancement.

10. Le programme de rapatriement sera conduit en collaboration par le Gouvernement et les Mouvements et en coopération avec les Autorités des Pays d'accueil, ainsi qu'avec les pays amis et les Organisations humanitaires internationales qui seront sollicités à cet effet.

11. La réinsertion des populations déplacées et l'assistance aux victimes de toutes les conséquences du conflit armé du Nord Mali donneront lieu à la création de deux Fonds :

- un Fonds de développement et de réinsertion devant favoriser la création de Petites et Moyennes Industries (PMI) et de Petites et Moyennes Entreprises (PME) et l'insertion des populations déplacées dans le circuit de production,

- un Fonds d'assistance et d'indemnisation aux victimes civiles et militaires des deux Parties et à leurs ayants droit de toutes les conséquences du conflit armé. Ce Fonds servira en priorité à indemniser les victimes à l'issue des travaux de la Commission d'Enquête Indépendante.

Un mécanisme permanent d'assistance aux victimes militaires des deux Parties et à leurs ayants droit sera institué.

Ces deux Fonds seront créés dans les trente jours qui suivront la signature du présent Pacte.


13. Dans le cas où les deux Parties n'auront pu régler dans le délai mentionné au paragraphe ci-dessus la question de la composition totale de la Commission d'Enquête Indépendante, la Commission du Suivi du Pacte - prévue par le présent Document - réunie sous la présidence du Médiateur, à la fin du premier mois suivant la signature de ce Pacte, sera saisie de la question et dégagera les voies et moyens de dépasser cette entrave pour permettre le fonctionnement de la Commission d'Enquête Indépendante dans les termes convenus entre les deux Parties et rappelés au paragraphe ci-dessous.
14. La Commission Indépendante d'Enquête oeuvrera selon les dispositions arrêtées entre les deux Parties et qui se lisent comme suit :

Mandat de la Commission :

La Commission Indépendante d'Enquête aura pour mission d'enquêter sur tous les événements qui ont eu lieu au Mali en relation avec les problèmes du Nord, à savoir : les crimes perpétrés contre les populations civiles dans leurs personnes physiques et morales ainsi que contre leurs biens, les atteintes à l'environnement et les destructions de bétail, les vols, pillages ainsi que tout acte de vandalisme et de spoliation. La Commission oeuvrera à définir les responsabilités de ces actes, leurs conséquences, à évaluer les dommages et les réparations dues aux victimes.

Organisation de la Commission :

A - La Commission sera composée comme suit :

- cinq (5) représentants du Gouvernement de la République du Mali,
- cinq (5) représentants des Mouvements et Fronts Unifiés de l'Azawad,
- un maximum de sept (7) et un minimum de cinq (5) experts indépendants choisis d'un commun accord par les deux Parties, à raison d'un expert par nationalité dans les pays suivants : Algérie, Burkina Faso, France, Libye, Mauritanie, Niger, Sénégal.

B - Les deux Parties arrêteront le liste nominative des membres de cette commission lors de leur prochaine rencontre.

C - La Commission sera présidée par un expert indépendant élu par ses pairs.

D - La Commission débutera ses travaux au plus tard trois semaines après son installation.

E - Les frais de fonctionnement de la Commission seront pris en charge par le Gouvernement de la République du Mali. Ce dernier s'attachera également à faciliter la tâche de la Commission par son plein concours matériel et administratif. Les deux Parties s'engagent à réunir les conditions de sécurité nécessaires au bon fonctionnement de la Commission.

Fonctionnement de la Commission :

A - La Commission exécutera son mandat en toute indépendance et d'une manière impartiale.

B - L'immunité sera accordée aux membres de la Commission.

C - La Commission statuera à la majorité simple, la voix de son président départageant l'égalité des voix.

D - La Commission établira son propre règlement intérieur et organisera ses travaux.

E - La Commission rendra ses conclusions dans les trois mois suivant la date de son démarrage. En cas de besoin, ce délai peut être prolongé d'un commun accord entre les deux Parties et sur demande de la Commission.
F - Les délibérations de la Commission et son rapport seront placés sous le sceau confidentiel.

G - Le rapport de la Commission sera adressé au Président de la République du Mali de même qu'il devra être adressé pour ampliation aux Mouvements et Fronts Unifiés de l'Azawad et au Médiateur.

Mise en oeuvre des conclusions de la Commission :

A - Les deux Parties s'engagent à respecter les décisions et recommandations de la Commission.

B - L'État du Mali s'engage à saisir les instances appropriées judiciaires et autres qui mettront en exécution les décisions et recommandations de la Commission dans un délai maximum de quarante-cinq (45) jours après la date de remise du rapport de celle-ci au Président de la République du Mali.

Titre III

STATUT PARTICULIER DU NORD DU MALI

Conscientes de l'importance de l'organisation de la gestion des affaires des populations dans le cadre du règlement pacifique et définitif du conflit armé dans le Nord du Mali, les deux Parties ont convenu du statut particulier suivant pour le Nord du Mali.

Dans ce même esprit de prise en charge des affaires inter-régionales, régionales et locales par les populations et en vue de les en rapprocher, le principe d'un re-découpage administratif portant sur chaque niveau d'organisation territoriale du Nord du Mali est convenu entre les deux Parties. Ce re-découpage sera proposé par les instances locales appropriées et consacré par la Loi.

15. Ce statut définit et consacre les compétences des Assemblées locales, régionales et inter-régionale.

Ces Assemblées éluées sont compétentes pour :

A - organiser leur vie communautaire urbaine et rurale,

B - Définir et promouvoir le programme de développement économique, social, culturel qu'elles désirent. De tels programmes globaux ou spécifiques, locaux ou régionaux, couvriront des secteurs et des activités telles que l'agriculture, l'élevage, l'hydraulique, l'urbanisme, l'habitat, la préservation de l'écosystème, l'industrie, le transport, la communication, la santé, l'éducation, la culture, le tourisme, la recherche et la promotion des langues locales, l'artisanat, l'aménagement et la protection des sites historiques, la gestion du patrimoine foncier et l'incitation à l'exploration des ressources naturelles.

C - assurer elles-mêmes, à travers leurs élus, le contrôle des forces et des activités de maintien de l'ordre au niveau local et régional,
D - participer pleinement et efficacement à la sécurité de leur région et à la défense du territoire national, laquelle est un devoir national,

E - assurer la concertation, la coopération et la coordination de leurs actions et de leurs instances de représentation tant au plan horizontal que vertical, entre les différentes collectivités de chaque niveau d'organisation, et entre les différents niveaux d'organisation de la collectivité de base jusqu'au niveau inter-régional commun à tout le Nord du Mali,

F - organiser et animer les échanges et les actions de complémentarité entre les collectivités locales et régionales du Nord et celles des autres Régions du Mali,

G - organiser tout échange d'expérience et d'assistance avec des populations de localités ou de régions d'autres pays et ce, par le biais de jumelage entre les localités et régions du Nord du Mali d'une part et des instances similaires d'autres pays d'autre part, ainsi que par le biais de la coordination des échanges et des initiatives entre régions voisines dans le cadre transfrontalier, de même que de susciter l'assistance des Organisations Non Gouvernementales (ONG) de développement et d'en bénéficier, conformément aux accords cadres en la matière.

16. A cet égard, les collectivités locales, régionales et inter-régionales sont :

- l'Assemblée inter-régionale,

- la Région,

- la Commune, l'Arrondissement et le Cercle.

17. Au niveau de ces collectivités se retrouveront :

- une Assemblée élue,

- un Exécutif désigné au sein de l'instance élue de la Commune, de l'Arrondissement, du Cercle et de la Région.

- Un représentant de l’État siégera au niveau de la Région.

- Par ailleurs, l'Assemblée inter-régionale sera dotée d'un Secrétariat Permanent.
Chapitre 1

AU NIVEAU INTER-RÉGIONAL

18. Dans le respect de l'unité de l'État et de la Nation du Mali, et dans le but de favoriser une politique de développement dans une partie du territoire national partageant une très forte similitude de paramètres géographiques, climatiques, socio-économiques et culturels, au profit des populations concernées et au bénéfice de la République du Mali, il sera institué une Assemblée Inter-régionale au niveau des Régions du Nord du Mali.

19. L’adhésion des Régions du Nord du Mali à cette Assemblée Inter-régionale se fera sur une base volontaire.

20. L’Assemblée Inter-régionale sera élue par les Assemblées des Régions y adhérant pour un mandat de 05 ans. Chaque Région adhérente y disposera de 05 sièges. L’Assemblée Inter-régionale élira son Président.


22. L’Assemblée Inter-régionale aura compétence pour :

A - élaborer tout programme de développement ou d'activité socio-économique et culturelle à vocation inter-régionale,

B - coordonner toute activité ou projet d'intérêt mutuel pour les Régions associées,

C - faire aboutir en concertation avec le Gouvernement, sur la base de la volonté des Régions et des collectivités locales de celles-ci, toute suggestion de re-découpage régional,

D - proposer au Gouvernement toute action ou projet d'animation ou de développement dépassant les limites de la Région,

E - faire aboutir, en concertation avec les instances nationales concernées, et veiller à son exécution, tout projet relevant des domaines de formation, de la santé et de la culture à dimension commune à toutes les Régions concernées et de nature à améliorer la satisfaction des besoins des populations (exemple : facultés, hôpital universitaire, annexe de radio ou de télévision à vocation inter-régionale...),

F - participer, en consultation avec les instances nationales concernées, à toute élaboration de programme concernant les Régions membres de l’Assemblée Inter-régionale, en matière de défense nationale, de défense civile, et de lutte contre les calamités et catastrophes naturelles,

G - contribuer à l'animation et à la promotion du développement transfrontalier avec les pays voisins.
Chapitre 2

AU NIVEAU RÉGIONAL

24. Chacune des Régions du Nord du Mali sera dotée d'une Assemblée démocratiquement élue par les populations locales. Cette Assemblée sera élue au suffrage indirect pour un mandat de cinq années. Elle sera composée d'un nombre de sièges correspondant à un nombre de circonscriptions électorales à définir en relation avec la densité démographique et l'étendue géographique avec au minimum un élu par Cercle.

25. L'Assemblée élira son Bureau et son Président.


27. Un représentant de l'État auprès de la Région sera nommé par le Gouvernement. En sa qualité de représentant du Gouvernement, il veillera, en relation avec le Président de l'Assemblée régionale, à la conformité des décisions de l'Assemblée de la Région avec la législation et la réglementation nationales.


29. L'Exécutif régional sera assisté de cadres représentant les différents services déconcentrés de l'État étoffant l'Administration de la Région. Dans le respect de l'unicité de l'Administration nationale, une priorité particulière sera réservée aux ressortissants de la Région dans le recrutement.

30. L'Assemblée de la Région est compétente pour :

A - entreprendre toute action de nature à assurer le développement de la Région,

B - promouvoir l'investissement dans la Région,

C - donner son avis motivé dans le cadre du programme national de développement,

D - gérer à travers l'Exécutif, les crédits affectés par le Gouvernement à la Région,

E - définir, conduire et exécuter le programme d'équipement de la Région et veiller à son application,

F - définir et promouvoir une politique de développement rural notamment dans les domaines fonciers, de l'habitat, de la lutte contre la désertification, de l'hydraulique, de l'élevage et de la préservation de l'écosystème,

G - encourager et promouvoir le développement industriel et artisanal de la Région, notamment par la création de zones industrielles, la création ou l'exploitation d'unités artisanales locales ou de toutes unités de nature à satisfaire les besoins locaux,

H - prendre toute mesure nécessaire pour la promotion du tourisme et le développement des transports,
I - concourir au développement social et culturel de la Région par :
- la promotion d'une politique sanitaire et éducative harmonieuse au niveau de la Région,
- des propositions d’actions au Gouvernement,
- la promotion locale des activités sociales et culturelles à même de favoriser l’épanouissement du patrimoine culturel de la Région, d’assurer sa diffusion à travers le pays et d’assurer la diffusion des autres variétés du patrimoine national au niveau de la Région. À cet égard, toute possibilité de création d’annexes de radio ou de télévision sera concrétisée,

J - favoriser la coordination des efforts et actions entre les collectivités locales à l’intérieur du pays et entre celles-ci et leurs homologues de l’étranger,

K - étudier et proposer en concertation avec les instances de base tout programme de re-découpage des collectivités locales au niveau de la Région.

31. A travers son Président, l’Assemblée de la Région veillera à dégager auprès de l’État les effectifs régionaux suffisants des corps de sécurité intérieure. Elle exercera un pouvoir de contrôle des forces de police et de maintien de l’ordre civil au niveau régional.

32. Dans le respect de la souveraineté nationale et des engagements de l’État, l’Assemblée de la Région a compétence pour promouvoir une politique de développement transfrontalier et un programme de coopération et d’échanges avec des institutions similaires de pays voisins.

33. L’Assemblées de la Région vote le budget de la Région. Celui-ci est alimenté par les recettes de la fiscalité locale, par les dotations annuelles ou spéciales versées par l’État ainsi que par les dons et legs. Elle vote également les emprunts au niveau national décrétés par la Région pour soutenir le développement régional.

Chapitre 3

AU NIVEAU LOCAL

34. Dans le but de rapprocher les populations de la gestion de leurs affaires locales, les Communes, Arrondissements et Cercles seront dotés d’une organisation similaire à celle de la Région à savoir :
- le Secrétaire Général de la collectivité locale, nommé par le Président, veillera à la conformité des décisions du Conseil avec la loi et la réglementation nationales.

35. Au niveau de leur circonscription, les Conseils de Cercles d’Arrondissements et des Communes exer-
ceront des compétences similaires à celles dévolues à l'Assemblée Régionale.

36. Le budget de la Commune, de l'Arrondissement et du Cercle sera voté par son Conseil. Il sera alimenté par des recettes locales et par des dotations octroyées par la région sur la base des crédits alloués par l'État ainsi que par des dons et des legs.

37. Cette politique de rapprochement du citoyen de la gestion de ses affaires locales sera consolidée par un programme de renforcement du réseau des communes urbaines et rurales dans le Nord du Mali. Le nouveau découpage communal sera le fruit d'études et de propositions qui seront conduites et élaborées par chacune des Régions en consultation avec ses échelons inférieurs (Cercle, Arrondissement, Commune), propositions qui seront soumises à l'échelon national concerné pour leur concrétisation.

38. Additionnellement à ces structures civiques élues, tout syndicat d'initiative ou toute association professionnelle locale, régionale et inter-régionale est autorisée à travers le Nord du Mali, dans le cadre du respect de la loi et de la réglementation nationales.

39. Les Communes, Arrondissements et Cercles susciteront des programmes d'échanges ou de complémentarités avec des instances similaires des autres Régions du Mali.

40. Les Cercles, Arrondissements et Communes sont habilités à promouvoir des actions de coopération et d'échange avec des instances similaires d'autres pays.

Chapitre 4

**DE LA MISE EN OEUVRE DU PRÉSENT STATUT**

41. Dans le respect du caractère irréversible de la lettre et de l'esprit du présent Statut, toutes les dispositions législatives et réglementaires seront prises pour sa mise en œuvre.

42. Le calendrier de mise en œuvre de ce Statut est précisé au calendrier général de mise en œuvre du Pacte National tel que énoncé au titre IV ci-dessous.

Titre IV

DE LA CONSÉCRATION DE LA SOLIDARITÉ
ET DE L’UNITÉ NATIONALES DANS LE NORD DU MALI

Sous-titre A

MESURES DE CONSÉCRATION DE LA SOLIDARITÉ NATIONALE

44. Tel que mentionné au paragraphe 11 titre II, la réinsertion des populations déplacées et l’assistance aux victimes de toutes les conséquences du conflit armé du Nord du Mali donneront lieu à la création de deux Fonds :

- un Fonds de développement et de réinsertion

- un Fonds d'assistance et d'indemnisation aux victimes de toutes les conséquences du conflit armé.


46. Aux fins de permettre un fonctionnement réussi de ces deux Fonds, les deux Parties s’associent dans un appel à la générosité nationale du peuple malien tout entier et un appel à l’assistance humanitaire et financière de la Communauté internationale.

47. Un programme spécial de développement du Nord du Mali sera arrêté pour une période de dix années et lancé en deux tranches quinquennales successives.

48. Ce programme aura pour vocation de résorber les inégalités entre le Nord du Mali et le reste du pays dans les domaines économique, social et culturel. Il aura également pour finalité de consolider les infrastructures du Nord du Mali de sorte à rendre attractif l’investissement dans cette Région.

49. Le programme spécial de développement sera défini et son plan de financement arrêté 06 mois après la signature du présent Pacte. Les Assemblées des Régions et l'Assemblée Inter-régionale soumettront au Gouvernement leurs propositions en la matière.


51. Un régime fiscal préférentiel et incitatif sera défini pour le Nord du Mali. Ce régime sera de nature à encourager et attirer l’investissement. Il sera annoncé dans les 03 mois suivant la signature de ce Pacte et demeurera en vigueur pendant une période de 10 ans.
52. Tout en tenant compte des qualifications minimales nécessaires, le Gouvernement fera un effort particu- 
lier pour assurer l'intégration à titre spécial de cadres des Mouvements et de personnes des populations 
du Nord du Mali dans les instances centrales de l’État-major de la Défense Nationale et des autres corps 
de sécurité.

Cette mesure qui sera exécutée dans les deux mois suivant la signature du Pacte est de nature à consolider 
la confiance et à associer une partie importante du peuple malien à la tâche de défense nationale.

53. Par ailleurs, et dans le même esprit, le Gouvernement fera un effort qui, tout en tenant compte des qua-
lifications requises, visera à une intégration de cadres des Mouvements et de personnes des populations du 
Nord du Mali dans les différentes instances de l'Administration publique et parapublique.

Cette mesure qui sera exécutée dans les deux mois suivant le signature du Pacte vise également à la conso-
olidation de l'esprit de réconciliation et de confiance et tend aussi à assurer une présence équitable des popu-
lations de chaque Région du pays dans l'appareil de l’État.

54. Afin d'assurer la plénitude de leur représentation au sein de l'Assemblée Nationale, et dans le but d'y 
assurer une réelle participation des populations du Nord, y compris des personnes déplacées du fait du 
conflit, il sera créé à titre exceptionnel pendant la première législature, un total de 04 sièges que pourvoi-
ront les populations du Nord du Mali déplacées.

55. Ces sièges seront pourvus par le biais d'élections qui seront organisées à l'issue du programme de rapa-
triement des personnes déplacées et pas plus tard que 130 jours après la signature du présent Pacte.

56. Par ailleurs, et à ces sièges sus-mentionnés, s'ajouteraient un ou deux sièges qui assureraient la repré-
sentation complémentaire des populations maliennes essentiellement du Nord installées à l'étranger, et ce 
dans le cadre des sièges à l'Assemblée Nationale prévus pour les Maliens de l'Extérieur et qui seront dotés 
lors d'élections partielles.

57. L'unité nationale exigeant l'égalité de droits et devoirs entre tous les citoyens maliens, celle-ci trouve-
ra sa meilleure garantie dans un programme d'enseignement et de formation équitablement appliqué à tra-
vers le territoire national. A cet égard, un programme spécial de formation civile et militaire et d'ensei-
gnement sera engagé au profit des populations du Nord du Mali, programme qui sera prolongé par une 
carte nationale d’organisation égalitaire de l'éducation, dans le respect des compétences respectives de cha-
cun des niveaux local, régional et national. En outre, les populations du Nord Mali auront accès aux 
bourses de formation octroyées dans le cadre de la coopération internationale que ce soit au titre des offres 
faites à l’État malien ou dans le cadre de programmes de coopération transfrontalières entre collectivités 
similaires.
Titre V

LA COOPÉRATION SOUS-RÉGIONALE ET INTERNATIONALE

AU SERVICE DE LA PAIX ET DU DÉVELOPPEMENT

58. Convaincu que la solidarité et l'unité nationales trouvent leur prolongement naturel dans la solidarité et l'unité africaines, le Gouvernement de la République du Mali a réitéré sa détermination à soutenir son action de réconciliation et de paix nationales par un effort pour la promotion de la coopération et du développement sous-régionaux.

59. A cet égard, le Gouvernement de la République du Mali redoublera d'action pour la relance de la coopération entre les États et les peuples de l'Organisation des États Sahariens, complément indispensable des autres Organisations sous-régionales auxquelles appartient la République du Mali.

60. Par ailleurs, l'État du Mali s'engage à solliciter activement le concours des Organisations internationales pertinentes (FIDA, FNUD, PAM, UNESCO, BAD, BID...) pour soutenir la résorption du retard économique, social et culturel dans le Nord du Mali.

61. Enfin, l'État du Mali sollicitera des pays amis pour concourir, dans le cadre de la coopération intergouvernementale, à la formation ou au recyclage des jeunes issus des populations déplacées du Nord du Mali qui, soit n'ont pu avoir accès à une formation, soit ont été contraints de l'arrêter, soit l'ont reçu à l'étranger.

Titre VI

DU CALENDRIER DE MISE EN OEUVRE DES DISPOSITIONS

DU PACTE DE RÉCONCILIATION NATIONALE

62. Les deux Parties s'engagent à respecter le caractère indissociable de l'ensemble des clauses du présent Pacte. Aux fins d'en assurer la mise en œuvre sereine et loin de toute contestation ou malentendu, les deux Parties s'engagent sur le calendrier de mise en œuvre ci-après :

63. Soixante douze heures après sa signature par les deux Parties en sol malien, le présent Pacte sera promulgué au journal officiel de la République du Mali par la Présidence du Comité de Transition pour le Salut du Peuple (CTSP).

64. Le cessez-le-feu définitif entrera en vigueur le lendemain de la signature à zéro heure.

65. L'ensemble des dispositions relatives à l'arrêt définitif des hostilités décrites au titre II du présent Pacte seront mises en œuvre de manière concomitante, dans un délai de soixante jours suivant la signature, sous la supervision et le contrôle de la Commission du Cessez-le-Feu.

En cas de retard dans la finalisation de la composition de cette Commission, les dispositions visées au paragraphe 13 du présent Pacte seront mises en œuvre pour permettre le démarrage de la Commission Indépendante d'Enquête.

67. Dans les 60 jours suivant la signature du Pacte, le poste de Commissaire pour le Nord du Mali, chargé d'animer la mise en œuvre du présent Pacte pendant une durée de cinq années, sera pourvu en consultation avec les Mouvements.

68. Dans les 30 jours suivant la signature du Pacte, seront créés et approvisionnés le Fonds de développement et de réinsertion des populations déplacées et le Fonds d'assistance et d'indemnisation aux victimes de toutes les conséquences du conflit armé.

69. Soixante jours après la signature du Pacte, sera lancé avec l'aide des pays hôtes ainsi que des pays amis et des Organisations internationales humanitaires et en coordination entre l’État et les Mouvements, le programme de rapatriement volontaire des populations du Nord déplacées dans les pays de la sous-région. Ce programme sera parachevé dans un délai de soixante jours avec l'assistance à la réinsertion octroyée par les Fonds visés au paragraphe 68 ci-dessus.

Durant ce même délai, l'assistance aux personnes demeurées à l'intérieur du pays et sinistrées du fait des conflits sera octroyée.


72. Trois mois après la signature du présent Pacte, les instances législatives et exécutives concernées entament la préparation des mesures nécessaires à la création des Assemblées et des mécanismes propres aux Communes, Cercles, Arrondissements, Régions et Assemblée Inter-régionale.


73. Six mois après la signature du présent Pacte, seront organisées les élections des Assemblées des Communes, Arrondissements, Cercles et Régions.

L'Assemblée Inter-régionale sera constituée un mois après l'élection des Assemblées Régionales.

L'installation des Exécutifs et Secrétariat Permanent y afférent tel qu'énoncé au titre V du présent Pacte, interviendra dans le mois suivant leur constitution respective.
74. Dans l'intervalle entre la signature du présent Pacte et l'entrée en fonction des nouvelles institutions locales dans le Nord du Mali, la Commission de Suivi veillera, en collaboration avec le Commissaire pour le Nord, au respect des dispositions du présent Pacte, notamment en matière de sécurité des populations et du territoire dans le Nord du Mali, de réinsertion des personnes déplacées, d'aide aux victimes et de préparation des mesures prévues par le Pacte.

75. Six mois après la signature du présent Pacte :

A - seront créées les unités spéciales de l'Armée largement ouvertes à toutes les composantes des populations locales, dont la mission se limitera à la préservation de l'intégrité et de la sécurité extérieure du territoire national, et qui font l'objet du dernier alinéa du paragraphe 7 A ci-dessus.

B - le programme spécial de développement du Nord du Mali est lancé conformément aux dispositions du titre IV paragraphe 47 à 50.

C - le régime fiscal préférentiel et incitatif est édicté et appliqué dans le Nord du Mali conformément aux dispositions du titre V paragraphe 51.

D - le processus de re-découpage communal et administratif dans le Nord du Mali, tel qu'énoncé au paragraphe 37 ci-dessus, est lancé et sera parachevé à la fin de l'année suivant la signature du présent Pacte.

Titre VII

DE LA GARANTIE DE LA MISE EN OEUVRE DU PACTE

76. Les deux Parties ont affirmé que la garantie première de respect et de mise en œuvre du présent Pacte réside dans les intérêts fondamentaux de paix, d'unité et de stabilité auxquels œuvre le présent document, dans la bonne foi qui les anime et dans leur engagement irrévocable à restaurer définitivement la concorde nationale et la stabilité dans le pays et dans la sous-région.

77. La Partie Gouvernementale a rappelé que la Constitution de la République du Mali en date du 12 janvier 1992 consacre la volonté du peuple malien de sceller la réconciliation et la concorde nationale entre tous les fils du Mali.

78. De leur côté, les Mouvements et Fronts Unifiés ont réitéré leur volonté et celle des populations qu'ils représentent de reprendre leur place dans la Nation malienne, dans leurs droits recouvrés dans une paix définitive fondée sur l'application du présent Pacte.

79. C'est pourquoi les deux Parties ont solennellement exprimé leur engagement irrévocable à veiller à la mise en œuvre sincère, intégrale et inaltérable de toutes les dispositions du présent Pacte.

80. Conscientes de leurs responsabilités nationales et sous-régionales, les deux Parties prennent à témoin de cet engagement solennel le peuple malien, le Médiateur, les pays frères et amis du Mali et les personnalités amies invitées à la cérémonie de signature de ce Pacte National.

82. Ladite Commission sera installée dans les 15 jours suivant la signature de l'Accord et mènera sa mission pendant une année.

La Commission de Suivi sera composée en permanence de représentants des deux Parties au nombre de 04 pour chacune d'entre-elles. Elle sera présidée sur une base régulière par chacune des deux Parties avec alternance mensuelle, la première présidence revenant à la Partie des Mouvements et Fronts Unifiés de l'Azawad.

83. La Commission de Suivi tiendra périodiquement des sessions spéciales en présence et sous la présidence du Médiateur qui y désignera ses représentants. Ces sessions, chargées d'examiner et de solutionner tout contentieux éventuel lié à la mise en œuvre du présent Pacte, se tiendront à l'issue du deuxième et du troisième mois suivant la signature de l'Accord, puis à l'issue du deuxième trimestre, et à l'issue du deuxième semestre suivant la signature. Ces sessions seront sanctionnées par des Procès-verbaux et des Communiqués de presse.

DISPOSITIONS FINALES

84. Le présent Pacte de réconciliation nationale est établi en trois originaux en langue française signés par chacune des deux Parties. Un exemplaire original sera conservé par chacune des deux Parties et par le Médiateur.

85. Les observateurs invités à la cérémonie de signature et sollicités comme témoins recevront chacun une copie du présent Document.

86. Le présent Pacte sera promulgué au journal officiel de la République du Mali par la Présidence du Comité de Transition pour le Salut du Peuple.

Fait à Bamako, le

P° le Gouvernement de la République du Mali

P° le Bureau de Coordination des Mouvements et Fronts Unifiés de l’Azawad.
Réaffirmant notre attachement à la troisième République du Mali;

Réaffirmant également notre attachement au respect de l'intégrité territoriale et de l'unité nationale;

Soucieux de préserver la paix, la stabilité et la sécurité dans notre pays et de se consacrer aux tâches de développement socio-économique des régions du Nord dont celle de Kidal ;

Désireux de promouvoir une dynamique à même de résorber les retards auxquels fait face la région de Kidal dans les domaines social et économique;

Souignant la nécessité de promouvoir la diversité culturelle du Mali en tenant compte des spécificités des Régions du Nord

Rappelant les acquis du pacte national d'avril 1992 qui a reconnu la spécificité du Nord du Mali, la nécessité, pour ce faire, d'une prise en charge des affaires locales par les populations de chaque région, leur association à la gestion nationale et l'institution d'un processus économique d'assistance et de développement avec l'apport des partenaires étrangers

Compte tenu de l'état de dénuement de la région de Kidal entièrement désertique, vu son enclavement et son manque flagrant en infrastructures nécessaires à son développement et vu la dépendance des populations de cette région de l'élevage ;

Convaincu qu'il ne peut y avoir un développement durable sans la mobilisation de toutes les ressources humaines et la valorisation des potentialités locales ;

Tenant compte de l'interdépendance entre le développement, la sécurité et la stabilité ;
Vu l'engagement du gouvernement à trouver une solution politique durable, voire définitive à cette situation de crise, les mesures ci-dessous seront prises pour la région de Kidal :

I. Pour une meilleure participation au processus décisionnel

1. Création d'un conseil régional provisoire de coordination et de suivi.

2. Ses membres sont désignés de manière consensuelle par les deux parties et le facilitateur..

3. Le conseil régional provisoire de coordination et de suivi est désigné pour un an, par arrêté du Ministre de l'Administration Territoriale et des Collectivités Locales.

5. Ses compétences :

Il est consulté par le Département de tutelle à l'élaboration des projets de loi et textes touchant les spécificités de la région de Kidal.

Il participe à la promotion de la bonne gouvernance politique en aidant à une meilleure utilisation des compétences locales et régionales dans les rouages de l'Etat.

Il est chargé d'appuyer l'Assemblée régionale dans l'exercice de ses compétences, en matières :

• D'actions de coopération avec les bailleurs de fonds dans le cadre du développement économique, social et culturel de la région, conformément à l'article 32 du Pacte National.

• De tous les aspects de la sécurité de la région, conformément aux alinéas C et D de l'article 15 du Pacte National.

• Budgétaire pour la région, conformément à l'article 33 du Pacte National.

Il est chargé d'aider, de concert avec les autorités administratives et politiques, à la préservation d'un bon climat social par les canaux traditionnels de dialogue et de concertation.

Il est consulté pour tous les aspects de médiation et de développement spécifiques et contribue à éclairer l'administration dans la préservation de l'harmonie et la cohésion sociale de la région.

II. Développement économique, social et culturel

1- Organisation d'un Forum à Kidal sur le développement en vue de la création d'un fonds spécial d'investissement pour mettre en œuvre un programme de développement économique, social et culturel. Ce programme couvrira les activités telles que l'élevage, l'hydraulique, le transport, la communication, la santé, l'éducation, la culture, l'artisanat et l'exploitation des ressources naturelles ;

2- Accélération du processus de transfert des compétences aux collectivités locales ;

3- Dans le domaine de l'emploi, créer des petites et moyennes entreprises, octroyer des crédits et former les bénéficiaires dans les domaines de la gestion ;

4- Définition et coordination des échanges entre régions des pays voisins dans le cadre transfrontalier conformément aux accords bilatéraux signés avec ces pays ;
5- Instauration d'un système de santé adapté au mode de vie des populations nomades;

6- Exécution d'un programme durable pour l'accès à l'eau potable au niveau de toute la région et notamment les localités importantes ;

7- Dans les domaines de l'équipement et de la communication :
- Désenclavement de la région par le bitumage des axes routiers principaux : de Kidal vers Gao, Menaka et l'Algérie ;
- réalisation de l'aérodrome de Kidal ;
- réhabilitation de l'aérodrome de Tessalit ;
- électrification des chefs lieux des cercles et des communes;
- une couverture de communication téléphonique au niveau des chefs lieux des cercles et des communes;
- mise en place d'une radio régionale et d'un relais de télévision nationale afin de promouvoir les valeurs culturelles de la région et rendre une image plus positive des populations de la région et la formation des techniciens en audiovisuel et prévoir une heure d'antenne par jour pour la région dans les programmes de la radio et de la télévision nationale.

8- Encourager les programmes de recherche et d'exploration des ressources naturelles

9- Mise en place d'un système éducatif adapté à nos valeurs sociales, culturelles et religieuses et octroi de bourses à l'étranger pour les bacheliers les plus méritants de la région de Kidal

10- Mise en place d'un programme spécial en direction des diplômés en langue arabe dans le cadre d'un recyclage et d'une spécialisation

11- Reconduction pour une durée de dix (10) ans du régime préférentiel fiscal défini par le Pacte National pour les régions du Nord du Mali en vue d'attirer et d'encourager l'investissement.

III Prise en charge des préoccupations sécuritaires immédiates

1- Mise en place du conseil régional provisoire de coordination et de suivi.

2- Poursuite du processus du processus délocalisation des casernes militaires dans les zones urbaines conformément aux dispositions du Pacte National ;
3- Retour, sous l'égide du facilitateur, de toutes les armes et munitions ainsi que tous autres matériels enlevés depuis les attaques du 23 mai 2006 de Kidal, Menaka et Tessalit selon les modalités arrêtées dans le présent accord ;

**Unités spéciales de sécurité**

4- Création en dehors des zones urbaines de Kidal d'unités spéciales de sécurité, rattachées au commandement de la zone militaire et composées essentiellement d'éléments issus des régions nomades, dans les proportions assurant l'exécution efficace des missions des Unités Spéciales de Sécurité.

L'acte de création de ces unités déterminera leur nombre, leur tableau d'effectif et de dotation, leur implantation et leurs caractéristiques.

Elles seront chargées notamment des missions suivantes :

- Protection et gardiennage des édifices publics.
- Protection des personnalités.
- Reconnaissance et de patrouilles.
- Assistance à la police judiciaire.
- Intervention.
- Toutes autres missions qui, seront définies dans l'acte de création.

Elles agiront de manière coordonnée et en complémentarité avec les forces de sécurité nationales;

Elles relèvent organiquement du commandement de la zone militaire.
Elles sont placées, pour emploi, sous l'autorité du Gouverneur de la région.

Elles sont rattachées aux unités de la Garde nationale.

Elles sont commandées par un commandement opérationnel des unités spéciales dont le commandant sera issu des personnels visés aux Chapitre III, Point 5 et dont le second proviendra des autres corps des forces armées et de sécurité nationales. Le commandant opérationnel des unités spéciales dépend hiérarchiquement de l'Etat major de la Garde Nationale.

Les officiers issus des personnels visés dans le chapitre III, point 5, peuvent servir éventuellement dans les unités spéciales. Toutefois, lorsque l'unité est commandée par un officier issu des personnels visés dans le chapitre III, point 5, son second proviendra des autres corps des forces armées ou de sécurité nationale et vice versa.

Leurs besoins en personnel seront complétés à partir des autres corps de défense et de sécurité nationale.
Ces unités et leur commandement opérationnel seront dotées en personnel et en moyens conformément au tableau des effectifs et de dotation, arrêté par voie d'arrêté de l'autorité dûment habilitée, sur proposition du groupe technique de sécurité après avis du Comité de suivi.

Elles disposent d'une structure spécialisée chargée de l'action sociale au profit de leurs personnels.

A la date qui sera fixée par le Ministre de la Sécurité Intérieure, sur proposition, du groupe technique de sécurité et après avis du comité de suivi, les personnels devant servir au sein de ces unités aux missions assignées entreront en formation pour être préparées aux missions assignées à ces unités. Les programmes de formation seront établis par l'autorité dûment habilitée, sur proposition du groupe technique de sécurité, après avis du Comité de suivi.

Le lieu de formation sera déterminé par l'autorité dûment habilitée, sur proposition du groupe technique de sécurité après avis du Comité de suivi. Il servira également de lieu de cantonnement du personnel visé dans le chapitre III, points 4 et 5. Il est placé sous la supervision du groupe technique de sécurité.

L'opération de restitution des armes, des munitions et autres matériels enlevés se fera dans le lieu du cantonnement, à l'admission du personnel visé dans le chapitre III, points 4 et 5, et de manière simultanée avec la régularisation de la situation socio-professionnelle du personnel cantonné.

5- Gestion avec discernement des officiers, sous-officiers et hommes de rang, qui ont quitté leurs unités d'origine pendant les événements du 23 mai 2006, en les intégrant si besoin dans les unités spéciales de sécurité en mettant à contribution la structure spécialisée visée plus haut pour faciliter la régularisation de leurs situations administratives, financières et de carrière, ainsi que leur participation aux opérations de maintien de la paix.

6- Renforcement de la participation effective des cadres issus de la région dans les différents rouages de l'Etat conformément à l'esprit d'équité prôné par le Pacte National.

7-Création d'un fonds de développement et de réinsertion socio-économique des populations civiles, notamment les jeunes touchés par les événements du 23 mai 2006 sans exclusion de tous les autres jeunes de la région de Kidal, sous le contrôle du conseil régional provisoire de coordination et de suivi. Le conseil sera en outre largement consulté sur le choix du gestionnaire de ce fonds.

8- Prise en compte du retard de Kidal dans l'élaboration et l'exécution du budget national ;

9- Création des centres de formations professionnelles avec des mesures d'accompagnement.
IV. Mécanisme de suivi


2. Il sera mis en place par un arrêté du Ministre chargé de l'Administration Territoriale et des Collectivités Locales qui en mentionnera la composition, les modalités de fonctionnement et son champs de compétence territoriale, sachant que chacune des parties y sera représentée par trois membres et que son siège sera établi à Kidal.

3. Le Comité de suivi établira des rapports périodiques sur l'application de l'accord et procédera à une évaluation complète de sa mise en œuvre, une année après sa signature, et peut recommander toute mesure de nature à adapter cette mise en œuvre aux réalités du terrain.

4. Le Comité de suivi adopte son propre règlement intérieur et créera en son sein, chaque fois que de besoin, des groupes techniques dont celui de sécurité.

1. Mesures prioritaires

1- Insertion au journal officiel de la République du Mali du présent accord après sa signature.

2- Arrêté ministériel portant création du Comité de suivi après signature de l'accord.

3- Signature et remise au Comité de suivi, dès la publication de l'accord, de l'arrêté ministériel portant création à Kidal, composition, missions et fonctionnement du Conseil régional provisoire de coordination et de suivi.

4- Libération de toutes les personnes détenues à la suite des événements du 23 mai 2006.

5- Installation, par le Comité de suivi, du groupe technique de sécurité qui sera chargé, selon les dispositions portant création du Comité de suivi, de :

Mettre en œuvre les points 2, 3, 4, et 5 du chapitre III de l'accord relatifs respectivement à la délocalisation des casernes, le retour des armes, munitions et autres matériels enlevés depuis le 23 mai 2006, les unités spéciales de sécurité et la gestion des personnels
- Faciliter la mise en œuvre du retour du dispositif militaire et sécuritaire déployé dans Îla région, à son niveau antérieur au 23 mai 2006.
- Proposer les mesures appropriées pour une meilleure utilisation des compétences de la région dans les institutions de sécurité et de défense du Mali.
Dans le cadre du plan de recrutement et de formation des jeunes de la région, élaborer un programme pouvant les préparer à servir, dans des proportions en adéquation avec les besoins opérationnels, dans les unités spéciales de sécurité, les corps de la garde nationale, de la gendarmerie, de la police, de la douane et des eaux et forêts.

6- Promulgation de la loi prorogeant de dix (10) ans le régime préférentiel fiscal et incitatif défini par le Pacte National pour les régions du Nord du Mali.

7- Mise en place du fonds de développement et de réinsertion prévu par le chapitre III point 7.

8- Organisation du Forum de Kidal sur le développement dans les trois (03) mois suivant la signature de l'accord.

VI. **Dispositions finales**

Le présent accord est établi en trois originaux en langue française signés par chacune des deux parties et du facilitateur. Un exemplaire original sera conservé par chacun des signataires.

Le présent accord sera inséré au journal officiel de la République du Mali.

**Fait à Alger, le 4 juillet 2006**

Pour le Gouvernement de la République du Mali
Gal. Kafougouna KONE Ministre de l'Administration Territoriale et des Collectivités Locales

Pour le facilitateur

SE Abdelkrim Gheraieb Ambassadeur de la République Algérienne démocratique et Populaire