



Rule of Law Promotion in Times of Covid-19

No. 3

Covid-19 in Mali: Effects of the Pandemic on the Rule of Law

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I. Introduction

The current paper series seeks to illustrate the effects of the measures taken against the spread of Covid-19 on the rule of law.

While the pandemic has already overloaded health systems of wealthier countries around the globe, fear of the effects of the crisis in the Global South has increased. Responding to this threat, governments have taken drastic measures, which do not always comply with the rule of law. In many countries the state of emergency has been imposed, fundamental rights have been restricted, parliaments and other democratic control mechanisms suspended. In some countries, the line between civilian and military means is blurred when armed forces are used to execute orders aimed at preventing the spreading of the disease. There are also cases where political rights are curtailed, and the freedom of the media is restricted.

This paper examines the measures taken against the pandemic in Mali, and their effects on the constitutional order, the justice and security sector and state-citizen relations. It is based on research carried out by the RSF Hub team and an expert talk held on 4 June 2020.

II. Background information: Mali

Following the end of a military dictatorship in 1991, Mali adopted a new constitution, establishing a multi-party democracy within a semi-presidential system.

Since a military coup in 2012, the country has been experiencing political instability and severe security issues: Tuareg rebels and Islamist extremists brought large parts of the northern regions of the country under their control. Soon after, the former President Amadou Toumani Touré was overthrown. France intervened militarily in 2013, and since then combats jihadist groups in the Sahel region. Furthermore, the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) was established to support political processes and stabilise the country. Despite these attempts to ease the situation, interethnic violence and terrorist attacks continue to spread from the sparsely populated north to central regions and to the south, where most Malians live.

Next to the fragile security situation, Mali faces several challenges: The UNDP Human Development Report 2019 ranks the country 184th out of 189, listing it in the "poor development" group. Over 50 percent of the population lives below the poverty line, and roughly two-third of the population is working in the agricultural sector. Since economic activities such as farming, livestock breeding and fishing are vulnerable to weather conditions, climate change jeopardises not only Mali's agricultural sector but also food security.

Another challenge is the poor health infrastructure. Medical centres are limited, especially outside of the capital Bamako. Mali has few possibilities of Covid-19 testing and only a small number of intensive medical care beds for its 19 million residents. Furthermore, the living situation of many people is not compatible with measures against Covid-19 like social distancing. As of 3 June 2020, the Malian Ministry of Health had confirmed 1,386 positive Covid-19 cases, 79 deaths and 788 recoveries.

According to the 2020 Rule of Law Index of the World Justice Project, Mali ranks 106th out of 128 listed countries worldwide. Within Sub-Saharan Africa, the country finds itself in the last third. Mali shows major deficits in the areas "Constraints on Government Powers", "Absence of Corruption", "Civil Justice" and "Criminal Justice". Compared to other countries in the region, it performs well in "regulatory enforcement" and medium in "open government" and "fundamental rights".

Since 2015 Mali has been in a constant state of emergency, which allowed an expansion of security services' authorities and the imposition of far-reaching restrictions.

III. The impact of the pandemic on the constitutional order

The government responded to the first Malian Covid-19 cases on 25 March 2020 by declaring the state of health emergency and by imposing a night curfew lasting from 5 pm to 9 am. A week earlier, Malian President Ibrahim Boubacar Keita had restricted public gatherings to up to 50 persons, closed schools and suspended flights from affected countries to prevent the spread of the virus. However, places of worship were not affected by restrictions, presumably to ensure the support of religious leaders in the upcoming parliamentary elections. On 8 May, the curfew was lifted in response to several protests across the country.

On a constitutional level, a lack of clarity and differentiation was noted at the outset of the expert talk: According to article 72 of the Constitution, the state of emergency can be declared. Law No. 2017-055 lists the conditions under which the measures of the state of emergency can be taken and defines the powers and limitations of fundamental rights. However, a state of “health emergency” as such is not foreseen by article 72 nor the Law No. 2017-055, which leaves the current situation without a legal basis.

Since the state of emergency declared in 2015 had already increased the power of the executive, there was however agreement among the experts that the newly declared state of health emergency to fight the pandemic had not further weakened the separation of powers.

The relationship between Malian society and political institutions has long been marked by distrust, accusations of corruption and a lack of legitimacy. Elections for the National Assembly were postponed several times due to security concerns, affecting popular confidence in the political system. In light of the need to regain legitimacy, the government insisted on holding the parliamentary elections despite the on-going pandemic, a decision that was criticised by civil society groups and several opposition parties due to a lack of hygiene precautions. In addition, terrorists tried to keep the population from voting by threatening them, attacking electoral agents and destroying electoral material. The kidnapping during his electoral campaign of Soumaïla Cissé, the most important opposition politician, was but the tip of the iceberg of how insecurity impacts on democracy.

In the end, the elections were held on 29 March and 19 April 2020 and did little to increase the legitimacy of the National Assembly. The Malian Constitutional Court overturned many of the provisional results registered by the Ministry of Territorial Administration, and ruled overwhelmingly in favour of President Keïta’s party “Rally for Mali” and their strongest ally “ADEMA” (Alliance for Democracy in Mali – Pan-African Party for Liberty, Solidarity and Justice), thus creating a majority for these parties in Parliament. According to observers, the Constitutional Court was inconsistent with regard to the validation of complaints and evidence depending on whether they came from the majority or the opposition. This seriously further negatively affected the credibility of the Constitutional Court which was already under fire for earlier arrests and opinions, for example on the constitutionality of the referendum for the constitutional revision and the prolongations of the mandate of the previous National Assembly.

The legitimacy and appearance of independence of the new legislature was further weakened by the fact that the Members of Parliament then elected a protégé of President Keïta as President of the National Assembly, against the candidate that his own party had proposed.

IV. Effects on the justice and security sectors

In relation to the justice sector, the experts in the talk highlighted that the pre-pandemic situation had already been problematic. Although some judicial staff is deployed to the courts of the north and the centre, access to the formal justice system is mostly limited to the capital Bamako and the southern part of the country. As a consequence, informal systems are the main justice provider in the centre and the north of the country. This situation has been slightly exacerbated by the fact that lawyers from the capital have stopped travelling to the rural areas, fearing the critical security and health situ-

ation. Nevertheless, the lack of lawyers is just one of many reasons for the lack of access to justice, and the experts agreed that the impact of Covid-19 in that regard should not be overestimated.

To prevent the spread of the virus in overcrowded prisons, around 200 detainees were transferred to less crowded facilities. In addition, President Keita pardoned overall 1,879 people (1,447 in a first round and another 432 in a second round of presidential pardons). As a consequence, 1,303 detainees were released and 576 received a partial remission of their sentence. The release only included prisoners who were allegedly sentenced for relatively minor offenses, whose prison terms had almost come to an end or whose medical conditions would have put them in grave danger if infected with Covid-19. Even though the crimes for their sentences are recorded it is not clear whether a person might have been a perpetrator of grave human rights violations.

At the same time, unlawful and arbitrary detentions continue to occur. During the talk, experts expressed concerns about several instances of disproportionate use of violence by security forces to enforce the curfew.

Due to the pandemic, most court hearings have stopped or were rescheduled, except for urgent – mainly criminal or family-related – cases. This leads to rising backlogs of work, which will affect further administration of justice. It was also noted during the talk that the government had made plans for an increase of the funding for the justice sector before the Covid-19 pandemic. Due to the current change of circumstances it remains doubtful whether additional financial resources will actually be available for this purpose.

V. State-citizen relation

In general, the measures taken against the spread of the pandemic were either not followed, or, as in the case of the curfew, were quickly withdrawn and had little legitimacy due to great distrust in the Malian government. In some regions armed groups highlighted the governments' failure to respond to Covid-19, positioning themselves as protectors of the communities.

On 5 June 2020, in the aftermath of the controversial electoral results, a movement of religious, political and civil society leaders organised a mass demonstration demanding the resignation of President Keita. The protests focused on the failure in security policy, corruption, arbitrary arrests and the organisation of the last legislative election. Some also complained about missing facemasks, which were originally promised by the government with the slogan "One Malian, one mask". About 20,000 citizens attended the demonstrations.

Yet, the on-going protests primarily focus on topics unrelated to the pandemic, presumably because the curfew had already been suspended and other restrictions were not very invasive. Furthermore, Covid-19 is just one of many challenges in Mali. Another reason discussed in the expert talk could be that many people in Mali do not believe that Covid-19 is real but a fraud by the government to request more development aid. The government is thereby confronted with a high level of mistrust among the population, which greatly limits its ability to act.

The resulting power vacuum is used by religious leaders actively engaging in politics who try to secure the support of the population. The experts expressed different sentiments on the consequences of religious interference. While some feared that this will lead to a regression in the rule of law, others

were convinced that religious leaders will disenchant themselves once they are actually in power and thereby strengthen the credibility of political institutions. At the same time, it was underlined that religious groups are only one part of the very diverse opposition movement where political discourse is taking place.

VI. Possible long-term effects on the rule of law and democracy in Mali

The experts agreed that it was still too early to evaluate in detail possible long-term effects of the pandemic on the rule of law and democracy in Mali. Yet, fears were expressed that terrorists could use the government's health and legitimacy crisis to continue their attacks. On a positive note, it was argued that the pardons, provisional release and transferral of prisoners in response to the pandemic could have a future positive impact on the management of detainment in general. Also, development in digitalisation could be accelerated by Covid-19, for example by making hearings of witnesses via videoconference possible.

On the other hand, it was clear to all experts that the pandemic might also have many negative effects on the rule of law in Mali. For example, the pandemic will probably further increase the backlog of court cases. Lastly, the ongoing health crisis challenges rule of law assistance, since travelling is suspended, many international experts had to leave for their home countries and funds could soon be diverted to more stringent health and humanitarian priorities.

VII. Contributors

This paper is based on the expert talk "Covid-19 in Mali: Effects of the Pandemic on the Rule of Law", which was held on 4 June 2020. On behalf of RSF Hub, Tilmann J. Röder (moderation), Johannes Socher and Stephanie Lorang participated. RSF Hub is grateful to all scholars and practitioners who contributed to this paper:

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About RSF Hub

RSF Hub is a project-based think tank funded by the German Federal Foreign Office fostering knowledge transfer between politics, academia and field practice in the area of rule of law promotion and related topics such as transitional justice. RSF Hub organises, in collaboration with various partners, expert talks and round tables. Team members teach at universities and train ministry staff, speak at events, contribute to blogs and publish academically. For more information on the Hub's activities see <http://www.fu-berlin.de/rsf-hub>.

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