

5. MINUSMA forces

i. Violence to life and ill-treatment

934. As revealed in the report, MINUSMA forces, particularly the Chadian peacekeepers operating in the north of the country, were attacked on many occasions by extremist armed groups. While the MINUSMA contingents generally complied with international humanitarian law, the Commission documented one case in which MINUSMA peacekeepers deliberately ill-treated three civilians or persons hors de combat, resulting in the death of one of them.

935. On 18 May 2016, following the explosion of their convoy after hitting two mines, killing six of their colleagues, the MINUSMA soldiers arrested two Tuareg men and one Tuareg boy who were in the vicinity of the explosion site and, under the supervision of their commander, violently hit them on the head with the butts of their rifles. One of the men died as a result of the hits.¹⁵³⁶ All such acts constitute a serious violation of international humanitarian law and international human rights law.¹⁵³⁷

ii. Violations of the right to life or physical integrity

936. On 18 April 2016, during a violent demonstration at the airport in Kidal, peacekeepers used their firearms, causing the death of two demonstrators, including one 17-year-old, and gunshot wounds to the lower limbs of nine others.¹⁵³⁸ An internal investigation was conducted into those incidents and the investigation report was submitted to the Special Representative of the Secretary-General in May 2016. The Commission notes that most of the MINUSMA soldiers had fired shots on the ground in order to defend themselves and to ensure their retreat. However, on the basis of the information at its disposal, the Commission considers that some of the shots constituted a potentially lethal use of force that was unjustified and that was in violation of the right to life or physical integrity.

6. French armed forces

937. The Commission documented one case where an 8-year-old child was killed from a helicopter of the French armed forces of *Operation Barkhane* during an operation in Aguelhok (Kidal region). The French Ministry of Defence launched an internal investigation, issuing a report on 30 November 2017 in which the French army regretted the death of the child, but considered that he was part of a group of lookouts who "were passing information on a French army logistical convoy approaching the area, to allow planters of improvised explosive devices to kill French soldiers", and that, given that operational context, his "neutralization" was in accordance with the rules of the law of armed conflict.¹⁵³⁹

938. As explained in detail in the present report, the Commission has no evidence to suggest that the child was indeed part of a network of lookouts. Moreover, even if the child was indeed a lookout, the Commission has received no information suggesting that the "network of lookouts" had participated, at the time of the events, in an ambush or in an imminent attack

¹⁵³⁶ Case No. CEI67.

¹⁵³⁷ If the MINUSMA soldiers were directly participating in the hostilities at the time of the commission of such acts, then the acts could be considered violence to life and person constituting a war crime.

¹⁵³⁸ Case No. CEI62.

¹⁵³⁹ Document from a diplomatic source. See also Reuters, "Une enquête blanchit l'armée française pour le mineur tué au Mali", 30 November 2017.

using improvised explosive devices against the logistical convoy of the French army. In the absence of such evidence, the factual basis for the French investigators' conclusion that the child was a *direct* participant in the hostilities is unclear. Furthermore, given the young age of the victim and the fact that he personally did not constitute an imminent risk to the French soldiers, the French authorities were unable to explain why they did not consider the possibility of arresting him rather than "neutralizing" him.¹⁵⁴⁰ In the light of the information at its disposal, and in view of the absence of evidence of the child's participation in the hostilities, the Commission considers that there are reasonable grounds to believe that, in this particular case, the French armed forces of *Operation Barkhane* did not comply, at the very least, with the obligation to do everything practically possible to ensure that the objective to be attacked was taking a direct part in the conflict.¹⁵⁴¹

939. The Commission also recalls that, during the clashes in Konna on 11 January 2013, a house where a woman lived with her three young children was hit by a missile launched from a helicopter. The information collected indicates that there were no armed group fighters either in the house in question or in the mosque just behind it, which was also hit, and that extremist armed group fighters were more than 150 metres away at the roundabout, at the entrance to Konna. Taking into consideration the contradictory positions of the French and Malian authorities, along with the information in its possession, the Commission concludes that there are reasonable grounds to believe that only French "Gazelle" helicopters were used in the clashes of 11 January 2013 in the locality of Konna. Consequently, the aerial attack that killed the woman and her three young children in their compound, and that also killed another man and injured several other people near the roundabout could only be attributed to the French helicopters.¹⁵⁴² However, the Commission is not able to determine whether international humanitarian law or international criminal law was violated.¹⁵⁴³

7. *Dan Na Ambassagou*

940. On 17 June 2017, members of the armed group Dan Na Ambassagou, in retaliation for the assassination of one of their members, carried out a series of attacks against several Fulani hamlets whose inhabitants were suspected of colluding with extremist armed groups. During the attacks, they killed at least 39 civilians, including children.¹⁵⁴⁴ The Commission notes that those attacks marked the beginning of systematic or widespread attacks by the group directed against Fulani in Koro and other cercles in the Mopti region. The Commission has reasonable grounds to believe that those acts amount to murder that constitutes a crime against humanity.¹⁵⁴⁵

941. The aforementioned facts were "closely connected" to the hostilities and to the armed conflict. Indeed, it is clear from the information available to the Commission, including from the statements of leaders of Dan Na Ambassagou that the brotherhood developed, structured, organized and armed itself in response to the military shortcomings of the Malian State in the

¹⁵⁴⁰ See, for example, the Convention on the Rights of the Child of 20 November 1989, art. 38; Security Council resolution 1261 (1999) of 25 August 1999 (S/RES/1231 (1999)).

¹⁵⁴¹ Moreover, if it were established that the soldier responsible for the attack had fired the shot without regard to the victim's status, the act could constitute murder as a war crime. Case No. CEI64.

¹⁵⁴² Case No. CEI28.

¹⁵⁴³ For example, whether the attack in question constituted a war crime, a violation of the obligation under international humanitarian law to take the necessary precautions in the planning and execution of the attack, or whether it was human error in the context of an attack against a legitimate target.

¹⁵⁴⁴ Case No. CEI 91.

¹⁵⁴⁵ Article 7(1)(a) of the Rome Statute.