

impasse, there were food shortages, the people were becoming impatient and no satisfactory solution seemed in sight.

517. On the morning of 6 June 2016, a representative of GATIA (identified) once again visited the premises of IEDA-Relief to complain about an initial round of food distribution and the arrangements for the second round that was due to take place. While he was in the office, between 100 and 200 people who were members or sympathizers of GATIA broke down the warehouse door and stole an unspecified amount of food, consisting of millet, rice, maize, oil, salt, beans, peas and soap. According to several sources, the first people to force open the store were members of GATIA (community leaders), who then gave free rein to civilian sympathizers who were on the premises.<sup>855</sup> The Office for the Coordination of Humanitarian Affairs (OCHA) in Mali publicly condemned the pillaging in a statement issued the same day, saying that “[...]the pillaged goods were intended to cover food rations for a month for 11,000 vulnerable people across the 11 communes of the Kidal region. The first round of distributions for the year 2016 was scheduled to start in the coming days and other monthly distributions were planned until the end of the year.”<sup>856</sup>

518. When questioned about the incident, GATIA leaders did not deny the pillaging of food supplies or the involvement of the group’s sympathizers. They stated, however, that the military branch of GATIA had not been involved in the incident. The instigators had reportedly been community leaders (heads of *fractions*) who were GATIA sympathizers and were frustrated by the fact that CMA sympathizers had, according to them, already helped themselves in the warehouse in advance of the official distribution. GATIA leaders said that they had spoken with the heads of *fractions* after the incident and noted that there had been no recurrence since. They also said that they had strongly condemned the pillaging, returned some of the stolen food items and apologized to the humanitarian actors.<sup>857</sup> The Commission notes that, on the basis of the information in its possession, no investigations or judicial proceedings have been initiated to identify those responsible for the pillaging.

**iv. 30 November 2016 - An 8-year-old boy killed by a helicopter of the French forces of Operation Barkhane in the area of Tibaguaten, near Aguelhok<sup>858</sup>**

519. On 30 November 2016, an (identified) 8-year-old child from the Tuareg community was killed by a shot fired from a helicopter belonging to the French armed forces of *Operation Barkhane* that was operating in the area of Tibaguaten, near Aguelhok.

520. The use of force against the child was not disputed by the French armed forces. According to the findings of an internal investigation conducted by the Ministry of Defence of France, which were made public on 30 November 2017, the French armed forces explained that, on that day, in the area around Aguelhok, the Barkhane force had identified a network of lookouts who “were sharing information about a French Army logistical convoy that was approaching the area to enable those laying improvised explosive devices to kill French soldiers”. It was therefore decided that a helicopter patrol would be dispatched to put an end to

<sup>855</sup> Confidential document of HRPD, MINUSMA; Testimony No. 473; See also testimony No. 503; OCHA, The Humanitarian Coordinator in Mali strongly condemns the pillaging of a warehouse of humanitarian goods in Kidal, 7 June 2016.

<sup>856</sup> OCHA, The Humanitarian Coordinator in Mali strongly condemns the pillaging of a warehouse of humanitarian goods in Kidal, 7 June 2016.

<sup>857</sup> Testimony No. 503.

<sup>858</sup> Case No. CEI64.

the threat posed by the lookouts. That intervention resulted in the use of force and the “neutralization” of one of the lookouts. According to the French authorities, the action that led to the “neutralization” of the lookout was consistent with the law of armed conflict and the operational rules followed by the Barkhane force. While expressing regret at the child’s death, the spokeswoman for the Ministry of the Armed Forces said that “in the operational context of the moment, it seemed legitimate to put an end to a hostile intent towards the force”.<sup>859</sup>

521. However, information collected on the ground in relation to the child’s death clearly contradicts that version of events. That day, the boy, the son of a Tuareg family, had been sent by his father to fetch donkeys to use them to carry water from the well. People interviewed stated unanimously that the child had had no links to any armed groups. Having had no news of his son and hearing helicopters and gunfire, around 1 p.m. and 2 p.m. the victim’s father went to look for him. Carrying the empty water bottles, he went to the well, which was less than 10 minutes’ walk away. He found a donkey, which he used to carry water and returned to the camp an hour later, with no news of his son. At sunset, panic-stricken, he went to three nearby camps to look for his son but was unable to find him. He continued his search the next morning, 1 December 2016, but without success. It was not until 2 December that a small, shallow grave and bullet marks on the ground were discovered and the child’s body was identified by family members.<sup>860</sup>

522. One witness stated that, after the shooting, at around 3 p.m. or 4 p.m., approximately seven French soldiers had been dropped off by a helicopter near the camp in Tibaguaten. Three of them walked to a location east of the helicopter landing site and began to dig a hole in the ground as the witness watched them from a place with good visibility 60 to 70 metres away. He said that he had seen them put something in the hole that they had dug, and that he had then lain down under a rock out of fear. After the soldiers left, he was too afraid to go and see what they had buried. It was only after he had heard the news of the child’s disappearance that he made the connection between the two events. When he went to offer his condolences to the bereaved family, the child’s father allegedly told him that the child’s body had been found with gunshot wounds, wrapped in a blue cloth with a stick.<sup>861</sup> The French authorities acknowledged that, after the shooting, French soldiers had gone to the scene, had noted that the “lookout” was a minor and had then buried the body. Indeed, in accordance with the procedures currently in place within the French armed forces and with the international commitments of France, the soldiers of *Operation Barkhane*, where circumstances and tactical capabilities permit, are required to identify and take (security and sanitation) measures to protect enemy remains in the combat zone.<sup>862</sup> Members of the local community were particularly shocked by the burial of the child’s body, which they interpreted as a lack of respect for the family and for the community, and as an attempt to conceal the body.<sup>863</sup>

523. Based on the account of the French authorities, the Commission could not determine which facts or circumstances had enabled them to conclude that the child had been a lookout belonging to an armed group and that the principles of the law of armed conflict had been respected. However, based on the evidence collected during the investigation, the Commission

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<sup>859</sup> The report of the press conference held by the spokeswoman of the Ministry of Armed Forces on 30 November 2017 on the findings of the internal investigation is available on the Reuters website. Reuters, Une enquête blanchit l’armée française pour le mineur tué au Mali, 30 November 2017. Those public findings were confirmed to the Commission by the Ministry of the French Armed Forces. Confidential document from a diplomatic source.

<sup>860</sup> Three confidential testimonies collected by HRPD, MINUSMA; Testimony No. 436.

<sup>861</sup> Two confidential testimonies collected by HRPD, MINUSMA.

<sup>862</sup> Confidential diplomatic document.

<sup>863</sup> Testimony No. 436; three confidential testimonies collected by HRPD, MINUSMA.

considers that there are reasonable grounds to believe that the child was not a lookout and did not belong to an armed group. Given the widely conflicting accounts put forward, it would be in the interests of the family and of the French armed forces if a thorough and independent judicial investigation were conducted into the incident. Such an investigation would also respond to the local community's demands for explanations and apologies.<sup>864</sup>

**v. 2015–2017 – Attacks against MINUSMA in the region of Kidal**

524. During the third phase of the crisis, MINUSMA continued to be the target of many fatal attacks in the region of Kidal claimed by or attributed to Ansar Eddine and JNIM (since March 2017). Some examples are presented below.<sup>865</sup> One such attack resulted in violence by MINUSMA troops against a child and against two men suspected by the troops of having participated in the attack.

*28 November 2015 – Mortar attack against the MINUSMA camp in Kidal by Ansar Eddine*<sup>866</sup>

525. On 28 November 2015, at approximately 3 a.m., seven 120-millimetre mortar shells fired from nearby hills (an unidentified location within a maximum radius of 5 to 7 kilometres) exploded inside the MINUSMA camp in the city of Kidal, near the buildings of the Guinean battalion, the Bangladeshi company and the base petrol station. Two Guinean peacekeepers and two international contractors from MINUSMA (all identified) were killed in the attack. Nine peacekeepers were seriously injured, and 11 peacekeepers and 2 MINUSMA civilian personnel (all identified) suffered more minor injuries. A rapid response unit of the Chadian battalion was immediately sent on patrol near the base but was unable to determine who had fired the shots or where they had come from.<sup>867</sup> Hamadou Ag Khallini, an Ansar Eddine leader, later claimed responsibility for the attack.<sup>868</sup> In response to the Commission's request for information on investigations and prosecutions carried out by the Malian authorities in connection with the attack, MINUSMA indicated that it had none.<sup>869</sup>

*12 February 2016 – Complex attack against the MINUSMA camp in Kidal by Ansar Eddine*<sup>870</sup>

526. On 12 February 2016, at around 6.50 a.m., as a convoy of Guinean peacekeepers from MINUSMA was preparing to leave the MINUSMA camp in the city of Kidal through the south gate, approximately 10 mortar shells were fired at the camp. It was not possible to identify where the shots had come from or who had fired them. While the personnel who had been stationed at the south gate were looking for cover, an armoured vehicle filled with explosives ploughed through the gate, drove about 300 metres into the camp and exploded in front of the camp of the Guinean contingent, killing 7 Guinean peacekeepers and injuring 19 others, as well

<sup>864</sup> Two confidential testimonies collected by HRPD, MINUSMA.

<sup>865</sup> See Annex 2, Table of attacks against MINUSMA – August 2013–January 2018.

<sup>866</sup> Case No. CEI65.

<sup>867</sup> Confidential documents of MINUSMA. See also MINUSMA press release, Attack against MINUSMA this morning in Kidal, 28 November 2015. Report of the Secretary-General on the situation in Mali (S/2015/219), 24 December 2015, para. 19.

<sup>868</sup> Confidential documents of MINUSMA. See also Le Parisien, Mali: Un groupe jihadiste revendique l'attaque meurtrière d'une base de l'ONU, 28 November 2015.

<sup>869</sup> Internal memorandum dated 31 October 2019 from the Commission of Inquiry addressed to the Special Representative of the Secretary-General and Head of MINUSMA, Mahamat Saleh Annadif, concerning judicial follow-up to attacks against MINUSMA; response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA addressed to the Commission of Inquiry concerning judicial follow-up to attacks against MINUSMA.

<sup>870</sup> Case No. CEI66.