



## **Meetings and exchanges between actors in the fight against terrorism in Niger:**

### **Army and civilian populations, two key actors in the heart of the criminal chain**

Terrorism in the Sahel has become a social phenomenon that benefits from local vulnerabilities such as poverty, low school enrolment, frustration, etc., to spread further each day.

On the criminal justice level, the fight against this phenomenon is based on values and standards enacted on a global scale. However, the application of these standards cannot achieve the desired results if it does not take into account the local context and the reality on the ground. This combination of international standards and local realities is widely emphasized in the IJJ's recommendations for judges in the Sahel and West Africa<sup>1</sup>. This is also what the criminal justice actors in the fight against terrorism in Niger, one of the poorest countries in the world, seem to have understood. Indeed, they have managed to integrate two major actors in the field, into the process of dealing with terrorism namely the army and local communities. This has been done gradually and meticulously. This unprecedented approach has produced convincing results in terms of respect for the rules of presumption of innocence, the prohibition of torture, the respect of the rule of law and fair trial etc. This article highlights this unthinkable coordination between the criminal justice system, the army, and the civilian population in the criminal justice treatment of terrorism.

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<sup>1</sup> These recommendations, published in 2019, were developed as part of the implementation of the Hague Memorandum on Good Practices in the Judicial System for Trying Acts of Terrorism. These recommendations follow a series of capacity building programs for judges in the Sahel and West Africa and focus on practical implementation of standards and good practices that consider the financial capacities of states.

It all started in 2006, when the Salafist Group for Preaching and Combat (GSPC), a remnant of the Algerian Armed Islamist Group, became Al-Qaeda in the Islamic Maghreb (AQIM)<sup>2</sup> only two months after perpetrating a series of attacks in Algiers -- including the attack on Brown, Root and Condor (BRC), an American construction company<sup>3</sup> -- the organisation knew that it was squarely in the sights of the international community. By that time, it was determined to make this area its new sanctuary and a base for launching of attacks on Western targets.

The United Nations, pursuant to its charter, prioritizes the maintenance of international peace and security, and in furtherance of its charter, has put in place a universal legal framework to fight terrorism. This framework consists of Security Council and General Assembly resolutions, and international treaties.,

This global legal framework is built around a strategy based on four pillars<sup>4</sup>:

1. Measures to eliminate the conditions conducive to the spread of terrorism
2. Measures to prevent and combat terrorism
3. Measures to strengthen the capacity of States to prevent and combat terrorism and to enhance the role of the United Nations system in this regard
4. Measures to ensure respect for human rights and the rule of law as a fundamental basis of the fight against terrorism

While the UN bodies and the international instruments contain the obligations on countering terrorism, it is, of course, up the Member States to implement and operationalize these obligations. Implementation typically begins with the formulation of national policy and enactment of domestic legislation and extends to the training of experts and officials who will ultimately be responsible for implementing the relevant legislation and policies. With the inception of the Sahelian branch of Al-Qaeda, knowledgeable security officials in the region recognized that terrorism had just made its definitive entry into Africa, particularly in its sub-Saharan region. They also knew that this part of the world, is home to peaceful and pious populations which coexist peacefully despite sometimes dire living conditions, amid moments of uncertainty, as was the case elsewhere, moments of insecurity against a backdrop of community, ethnic and religious conflicts etc.

However, at the time what these terrorism specialists feared most was how States would react, whether they were and are prepared and whether they have the means to counter the new threat.

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<sup>2</sup> *AQMI ET AL-MOURABITOUN le djihad sahélien réunifié ?* Études de l'Institut français des relations internationales (IFRI), janvier 2017, Marc Mémier.

<sup>3</sup> *This attack, the first of its kind on Westerners, was perpetrated on 10 December 2006 and left one dead (an Algerian) and at least nine injured (1 American, 4 English, 2 Lebanese, 1 Canadian and 1 Algerian). In its claim, the GSPC warned "all Muslims in Algeria to stay away from the interests of the infidels" Journal "Le figaro" of 12/12/2006.*

<sup>4</sup> <https://www.un.org/counterterrorism/fr/un-global-counter-terrorism-strategy>

For some states, terrorism is a phenomenon that impacts only others, in distant locations. They have therefore, on occasion, walled themselves off in an almost disconcerting indifference.

For States who saw the threat at their borders, their responses were progressive and timely, tracking the movements of AQIM.

These criminal groups, chased out of Algerian territory, sporadically continued their attacks, some more deadly than others, and slowly began to settle in the Sahel. Initially, there were clashes with the armed forces of the countries bordering Algeria, Mali, Mauritania, and Niger, during incursions into these states by terrorist groups for supplies or by chance of unexpected encounters.

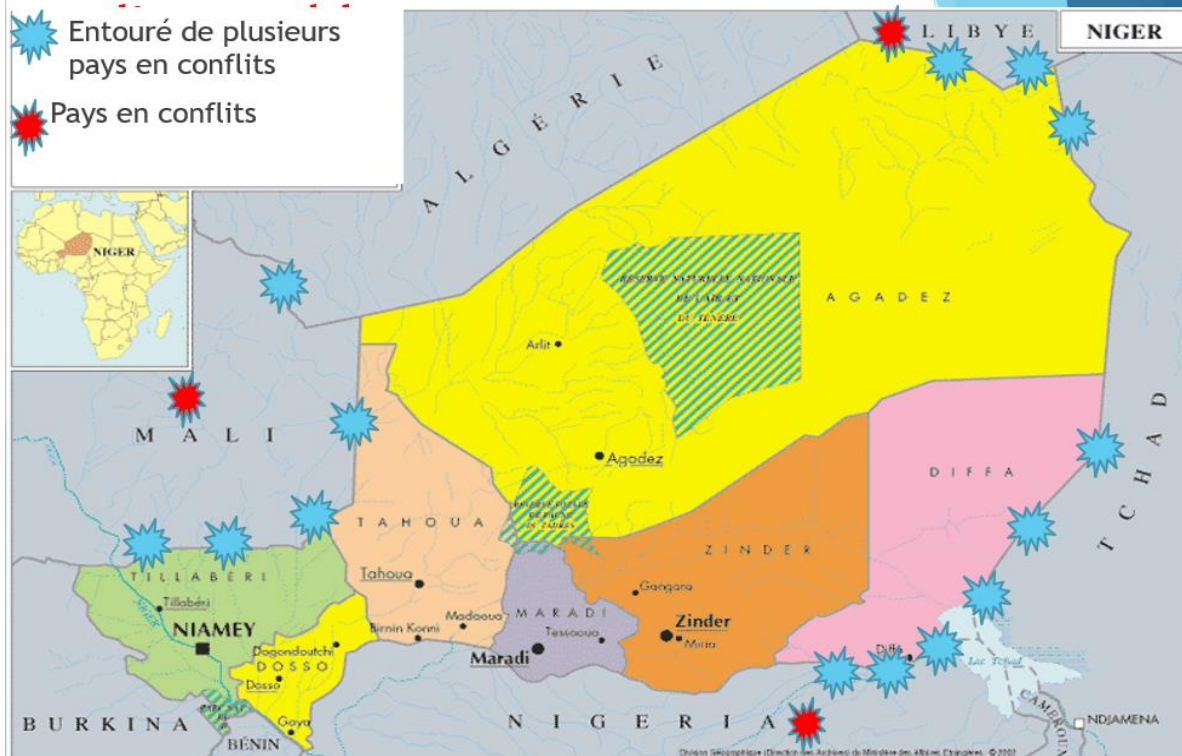
Then came the stage of hostage-taking, throughout the Sahel. Here again, the terrorist groups took on a new dimension. These actions enabled them to raise funds and, above all, AQIM to make itself known internationally.<sup>5</sup> Finally, there was the phase of security breakdown in which the entire Sahel now finds itself, forcing the population to live under the yoke of these growing groups.

Niger is a vast Sahelian territory covering 1,267,000 square kilometers, which is landlocked and largely desert, economically weak, with a nomadic population. Initially Niger found itself in a so-called “ring of fire”, surrounded by centers of insecurity in the north on the border with Libya, where terrorists are supplied with firearms, in the east in the Lake Chad basin with the terrorist group Boko Haram, and in the west, facing the terrorist groups of northern Mali. Finally, like its neighbors, Niger has fallen into a vicious cycle of recurrent terrorist attacks.

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<sup>5</sup> *The Sahel has become the area of greatest attention in the rapid evolution of terrorism*

## Le Niger dans un cercle de feu



In order to contain this terrorist wave, Niger equipped itself with a legal and institutional framework for the fight against terrorism from January 2011<sup>6</sup> onwards and initiated a vast campaign to strengthen the capacities of criminal justice actors with the support of the international community. Indeed, it was essential to quickly develop the skills of practitioners to enable them to counter the new threat which bears the seeds of the destruction of the modern state.

Niger's efforts to strengthen the capacities of criminal justice practitioners, as well as those of its neighbors and the international community are to be commended. However, the delivery of this capacity building in Niger has sustained some criticism<sup>7</sup>. Critics have noted the following points:

- The absence of a prior evaluation of the needs for counterterrorism criminal justice officials: the identification and analysis of difficulties noted in the field, the location of these needs, the establishment of monitoring and evaluation indicators such as, for example, the number of dismissals, etc.)

<sup>6</sup> Until 2011, only article 399 of the penal code referred to a terrorist offence, in this case the hijacking of aircraft. On 27 January 2011, two weeks after the spectacular kidnapping of two young Frenchmen in the heart of Niamey, Niger passed Ordinance No. 2011-12 amending and supplementing Organic Law No. 2004-50 of 22 July 2004 establishing the organisation and jurisdiction of the courts in the Republic of Niger.

<sup>7</sup> The recent decision by the Ministry of Justice to entrust the initial and ongoing training of magistrates to the Niger Judicial Training School (EFJN) is to be welcomed. We are particularly pleased that the Centre for Legal and Judicial Studies has been attached to the EFJN, and we hope that the organisation of capacity-building training for judicial actors will improve.

- The lack of evaluation of the impact of training on practitioners' activities
- The lack of planning of training activities:

It is also impossible to draw up an exhaustive list of the actors who have taken training courses on site or abroad, the types of courses received. Further, Niger has had trouble in applying the lessons received. Indeed, either the people who benefit from these training courses are not the ones in charge of implementing them in the field, or when they are good people, they do not write a training report, which is an effective way of maintaining the participant's commitment during the training and a source of information for the community of practitioners.

To all these shortcomings, one must add the instability of criminal justice functions. A lack of analysis of the context sometimes makes it very difficult to implement the lessons received in the field. On this last point, it is also regrettable that the training sessions were not conducted in cooperation with national training centers such as the Niger Judicial Training School and the National Police School, and with research and analysis centers on security issues, which are very active in the field. This would undoubtedly have made it possible to consider two major actors in the fight against terrorism: the army and local communities. The phenomenon of terrorism requires these two actors to develop a new relationship.

Indeed, the armed forces are confronted with an asymmetric conflict, very different from the conventional conflicts they used to face (including when they were opposed to internal insurrection movements, based on political demands).

The civilian populations, for their part, are faced with threats that are difficult to sustain. Whereas in the past they supported the insurgencies that took shape in the territories (the insurgents being in a way the spokespersons of their grievances), today they can only try to minimize the damage by finding, as best they can, a form of forced cohabitation with the terrorists.

As a result, the army, whose traditional role is to defend the integrity of the territory and the defense of the nation against any external aggression, has found itself at the heart of the criminal chain overnight, without being a natural or legitimate actor. In fact, conflict zones are generally inaccessible to investigators and other internal forces, and only the army has the capacity to move there. It then collects intelligence, analyses it, carries out arrests, organizes hearings and interrogations and transfers suspects to the criminal justice system. It is true that in some localities, brigades of the provost gendarmerie accompany the military detachments to assist in the collection of clues and elements of proof. However, the network of these brigades is far from effective<sup>8</sup>. Faced with a mobile, stealthy enemy that is everywhere and nowhere, so far away and so close at the same time, the army is trying to play a role for which it is not at all prepared. The measures taken in the framework of the

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<sup>8</sup> This difficulty in setting up and networking also concerns the police component of the G5 Sahel force, which includes Mali, Mauritania, Burkina Faso, and Chad.

fight against insecurity, notably the state of emergency<sup>9</sup>, have only reinforced this new role of the military force.

For their side, the populations are at the heart of this conflict and the focus of all reflections on the real causes of terrorism and its development. Some believe that the areas affected are those where the populations are marginalized, abandoned by the state, and where poverty, disease and unemployment are rife, and who therefore live in real precariousness. Others link this security crisis to inter-ethnic tensions or to conflicts between herders and farmers. In short, everyone has their own comment. Never has a social phenomenon seemed to generate so much reflection. And here and there, specialists of all kinds have sprung up on the subject. All the conclusions of these reflections are more often about the consequences of a phenomenon than about its causes. What is certain, however, is that the battered populations find themselves caught in the crossfire. On the one hand, the terrorist groups who want to enslave them at all costs, win their hearts and minds and finally occupy the territory, and on the other hand, the state, through its repressive system whose first link in the penal chain now seems to be the army in a brand-new role.

Many will be skeptical about the inclusion of these two actors in terrorist proceedings and will no doubt ask why, how and at what stage to involve them? To explain their skepticism, they will certainly point out that the procedure in this area is already defined by law and international legal instruments.

It is precisely in these circumstances that these legal instruments must be brought into line with the needs and realities on the ground.

### **Why involve the army and local communities in the criminal justice processes of dealing with terrorist acts?**

It must be understood that in villages affected by insecurity, everyone knows everyone else. When a member of the village is absent and crosses the border, whether in the tri-border area or in the Lake Chad basin, the information is quickly relayed. The first to notice his absence are his neighbors in the house, in the fields, or those with whom he shares the same mosque, etc. Also, when a suspect is arrested in this village and all the inhabitants, led by the village chief, take it upon themselves to testify to the suspect's innocence, one must then question the reliability of the source or informant who led to the suspect's arrest. In this respect, several cases of denunciation for various reasons have been noted. This was the case, for example, of Y M born around 1999, a young, divorced woman living with her mother and supporting her by selling doughnuts, who was pulled out of her sleep by soldiers at their home in her village on the border with Nigeria. Arrested and handed over to the gendarmerie for suspicion of participation in the terrorist group Boko Haram, YM had little difficulty in realizing the situation in which she found herself as many others before her.

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<sup>9</sup> As part of these restrictive measures, decisions were taken to ban the movement of motorbikes and the sale of fish and peppers in the Lake Chad basin, which are considered to provide resources to terrorist groups.

She had little hope of getting out of this nightmare and the only thing on her mind at that moment was the grief of her mother who was already affected by the security crisis and who stood to be stigmatized. Fortunately for her, analysis of her mobile phone enabled investigators to identify numerous calls from her accuser, sometimes very late at night. This resulted in her accuser being exposed.

For O B , born around 2002, single, without children, farmer, without military status, nor any history with the law, illiterate, and Elh C B, born around 2000, single, without children, farmer, without military status, nor any history with the law, literate at CP level, two young people from the region, their misadventure in the custody cell of the investigation unit is due to the fact that they had claimed the balance of their debt from their whistleblower. The latter denounced them to the military as Boko Haram informers. They were taken to the military camp in conditions they describe as teary-eyed, and then to the investigation unit where they were held for several days. The informant interviewed by the investigators said that the accused had acted as informants for Boko Haram fighters during the attack on a military base in the region. He added that the information was given to him by a Fulani herdsman who was grazing his cattle in the area and who spotted them disembarking from a Toyota Hilux vehicle belonging to Boko Haram fighters before they headed for the scene of the attack.

When asked who the Fulani herdsman was, the informant replied that he did not know his identity or his address. Finally cornered, the informant admitted the existence of a claim between him and the two young people who were finally released and totally exonerated.

Similar examples abound and can be cited at will. **It is therefore clear that knowledge of the field and the social environment is an essential aspect in the criminal justice fight against terrorism**

Similarly, when a suspect pursued by the police takes refuge in a village and you cannot find any volunteers to identify him, you will come to understand that the villagers have chosen to end up in prison for non-indictment, concealment of a terrorist offender, rather than being killed by terrorist groups. Or when, relying on the legal obligation of a village chief to denounce any offence by virtue of his position as a representative of the administration in the village, you demand his cooperation without being able to ensure his security, the only thing you will succeed in doing is destroying an already fragile environment.

As far as the army is concerned, it must be understood that it has its own organization and its own way of working. It receives information from various sources, including human sources, makes arrests and reports directly to its hierarchy. The judicialization of this action is done by transferring the suspects to the gendarmerie, which in turn makes them available to the nearest specialized unit. Unfortunately, these suspects are most often handed over to the competent structures without any elements linking them to any terrorist offence. Even if such elements exist, they are usually destroyed or polluted during the operations. This is the case, for example, of the material seized from the suspects and burnt on the spot (motorbikes, goods, vehicles, etc.) or of the telephones collected from several suspects, placed in the same container without any details, and therefore without it being possible to attribute a telephone to its owner. Sometimes, on the other hand, the information received by the army is very

precise. But the fact that this information has not been processed in accordance with human rights and the rule of law makes it very difficult for the criminal justice actors, as these elements cannot be included in the procedure at the risk of having it annulled.

It is in these conditions that several thousand suspected terrorists have been arrested and placed under the supervision of the criminal justice system. These people were and still are released immediately upon the opening of the investigation, or have their cases dismissed, not investigated, or acquitted. This situation crystallizes the tense relationship with the army as much as it causes frustration among those released after several months or even years of detention.

Thus, in March 2017, during the first hearings of the specialized judicial division of the Niamey High Court, a particularly low conviction rate was noted. Only 10% of people who were tried during the first session of the assizes were found guilty of the terrorism offences for which they appeared. The many people who were released after several years of pre-trial detention returned to their places of origin with a feeling of frustration and a total loss of confidence in a criminal justice system that they consider unfair. When one adds to this the conditions of return of these people<sup>10</sup>, the loss of their means of subsistence for them and their families, the lack of a reintegration mechanism, the risks of stigmatization by their relatives and neighbors including their families, we realize to what extent this faulty continuum, of which the criminal justice system is a part, contributes to the production of terrorists.

To monitor the massive and arbitrary arrests carried out by the army and on the initiative of the prosecutor's office of the specialized center of Niamey, the availability cards were designed and made available to the military during 2018. The introduction of this simple monitoring tool was prompted by the categorical and recurrent rejection by suspects of the accusations made against them and even of the circumstances surrounding their arrest. These cards provide information on the date and place of the arrest, the precise identity of the person arrested, the circumstances of the arrest and a detailed list of the objects and documents that the person was carrying.

This duly completed form is attached when the respondent is handed over by the military to the gendarmerie brigade. This release form is now one of the first acts of rapprochement between the military and the criminal justice sector<sup>11</sup>. It allows investigators to have at least a basis for their investigations and is also the starting point for the period of police custody<sup>12</sup>.

Unfortunately, these cards are not used effectively throughout the country and are sometimes very poorly filled in. Hence the need to continue raising awareness and training the actors concerned.

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<sup>10</sup> For example, without resources either for their travel from the prison to the village or for their subsistence.

<sup>11</sup> *“Quand la poussière retombe”, la justice face au terrorisme dans le Sahel*, Junko Nozawa et Melissa Lefas, octobre 2018 éditeur, **Global center on cooperative Security**.

<sup>12</sup> The question of the starting point of the period of police custody continues to be debated. Is it to be considered that this period begins to run from the moment where the suspect is arrested by the army or only from his transfer to the investigative unit? Due to insecurity of the area and distance with the criminal justice services, suspects are held in military camps for days prior to their transfer.



Moreover, many questions have not yet been addressed in the context of handovers via this form, first and foremost the reliability of the information that led to the arrest and the question of respect for human rights before the suspects are transferred to the gendarmerie by the military.

In view of the above developments, is it possible to ensure effective criminal justice treatment of terrorist cases without considering these two major actors, the army, and local communities?

### **How and at what stage of the process should these two main actors be involved?**

The procedural laws do not specifically provide for a mechanism to involve these two actors, the military and local communities, in the adjudication of terrorist cases. However, with reference to the Rabat Memorandum on Good Practices for Effective Counter-Terrorism Actions in the Criminal Justice Sector, cooperation between domestic governmental bodies with counter-terrorism responsibilities or intelligence should be encouraged. Thus, to encourage this cooperation between the criminal justice sector, the army and the local population, the State of Niger, through the High Authority for Peacebuilding<sup>13</sup> (HACP) and with the support of its partners, has initiated a series of exchange meetings between these actors.

### **Coordination between all the stakeholders, an initiative and a good practice that should be encouraged and duplicated**

It consists of bringing together around the same table all the actors involved in the fight against terrorism: the state, the administration, the army, the intelligence services, the actors of the criminal justice sector (investigators, prosecutors, judges) and the populations represented by the customary chiefs. This composition is not exhaustive and is extended whenever necessary to other actors such as prison officials, religious leaders, etc. From these meetings and exchanges, the president of the High Authority for Peacebuilding said: 'Security requires mutual understanding between the parties involved in this mission: the defense and security forces (SDF), the justice services, and the local communities. The HACP has diagnosed that these three categories of actors do not understand each other well, often because they do not know each other's perceptions and operational constraints. Citizens' forums and dialogue spaces were organized to allow each of them to express themselves freely; commitments were then made to make their relations more fluid. There is evidence that such an approach will have a positive impact on the security of the community. For example, in regions such as Diffa and Tillabéry: when actors from numerous sectors participated in the criminal justice process, the communities provided more information to the SDF; the latter

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<sup>13</sup> Created in 1994 during the country's rebellions, the HACP has gradually adapted to the multiple challenges of social cohesion posed by the security crisis linked to terrorism.

no longer look at communities as potential suspects and are less inclined to use force; relations between the judiciary and the SDF have improved"<sup>14</sup>.

The organization of these meetings does not follow a particular formal framework, but falls within the remit of the HACP, whose role is to promote peace. These meetings have the great advantage of establishing a permanent and constructive dialogue with the traditional actors of the penal chain. For a better understanding of the realities on the ground, these meetings are relocated to areas affected by terrorism, such as the tri-border area or the Lake Chad basin.



*Visit of the local prefect shortly before the opening of the first exchange between criminal justice actors, SDF, and local communities in Ouallam in Niger towards the Malian border - June 2018*

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<sup>14</sup> *Stabiliser les zones de conflits : Capitalisation de l'expérience de la haute autorité à la consolidation de la paix 1994-2020*, October 2020. HACP Multi-Printed Paper, ISBN 978-2-37235-195-9



*View of the meeting room of the exchange meeting between SDF, justice actors and local communities*

During these meetings, several subjects are discussed, including:

- Analysis of the security situation in the area, including an overview of the terrorist groups operating in the area, their recruitment and financing methods;
- The collection of clues and evidence.
- The use of the information sheets provided by the military.
- The role of ordinary investigation units called first responders<sup>15</sup>.
- The issues surrounding the collaboration of local populations.

### **The proven impact of dialogue between the army, the justice system, and local communities**

As demonstrated below, these meetings have made it possible to significantly improve the quality of terrorism-related proceedings and to increase the conviction rate, as shown in the table below and the following diagram:

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<sup>15</sup> Art. 605.4 of the Criminal proceeding Code.

## Situation of the specialized judicial center of Niamey from 2017-2020

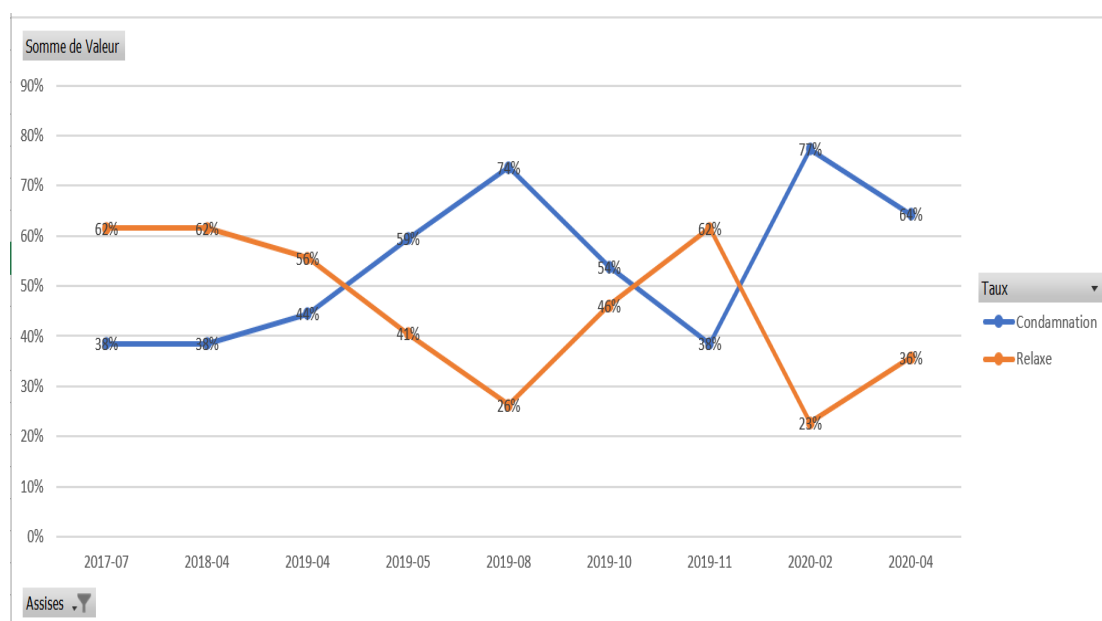
Headings	2017	2018	2019	2020	Total
Number of persons tried	589	408	360	106	<b>1463</b>
Number of persons acquitted	178	148	109	53	<b>488</b>
Number of persons dismissed	290	156	150	14	<b>610</b>
Number of persons granted provisional release	17	25	15	2	<b>59</b>
Number of persons sentenced	104	79	86	37	<b>306</b>

**Source: Statistics of the Anti-Terrorist Prosecution Office Niger**

An analysis of these data shows that between 2017 and 2020, i.e., in the space of three years:

- A gradual reduction in the number of people charged with terrorism who were finally dismissed by the investigating judge, from 290 in 2017 to 14 in 2020.
- A massive reduction in the number of suspects provisionally incarcerated (i.e., before trial) from 17 in 2017 to 2 in 2020.
- Finally, a major reduction in the number of acquittals following hearings held by the judicial division, from 178 in 2017 to 53 in 2020.

### Evolution of conviction and discharge rates during the special sessions of the specialized judicial division of Niamey



Graphical representation of the statistics of the hearings of the specialized judicial unit

The graph above, entitled *Statistics of the hearings of the specialized judicial unit* gives the evolution of the number of people acquitted and sentenced by the specialized judicial unit. We note an increase in the number of people convicted from 2019 to 2020 sometimes reaching a rate of 77% and a clear decrease in the rate of people acquitted falling below 23%. This progress is the result of the various exchange meetings held among the actors of the fight against terrorism.

Clearly, these meetings, which facilitate exchanges and strengthen dialogue amongst actors in the criminal justice system, the population, and the army, have had a pronounced impact on the conduct and proceedings of terrorist cases. It is to be hoped that this good practice will be implemented in all countries facing these challenges. It initiates a real dialogue, a dialogue that has been longed for but never achieved in several international forums and meetings, among the criminal justice sector, the civilian populations, and the defense and security forces. They also encourage genuine training between peers, in that they allow for institutional dialogue and acculturation to the powers and constraints of each of the actors involved and, in the long term, to rationalize the action of all, while respecting fundamental rights.

On closer examination, we also realize that this good practice has also made it possible to deal with pending cases, to open the number of investigations, to clear the stock of judgments pending against detainees, and to help reduce prison overcrowding.

This unprecedented rapprochement among actors in the criminal justice system, defense and security forces, and local communities is a real opportunity to move on to another dimension, that of preventing the commission of terrorist offences: attacks, kidnapping, recruitment, financing, etc., including by opening proactive investigations, before the attack occurs, when the material elements gathered make it possible to establish the existence of a terrorist plot and to arrest the perpetrators.

Indeed, "The main objective of any effective criminal justice response to terrorism is the prevention of terrorist incidents to avoid their widespread casualties and other devastating effects, while fully respecting the applicable provisions of international law and promoting the rule of law"<sup>16</sup>.

Preventing terrorist acts saves human lives and the destruction of public and private property. It also strengthens the credibility and authority of the state and restores the confidence of citizens.

This is one of the priorities of the capacity building activities of the International Institute for Justice and Rule of Law (IIJ). This Malta-based institute was created in 2014 by twelve States and the European Union as one of the three institutions inspired by the Global Counter-Terrorism Forum, also known as the GCTF. The GCTF is a non-political, multinational platform

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<sup>16</sup> Extracts from the conclusions of the Criminal Justice / Rule of Law Sector Working Group on the Rabat Memorandum at the meeting held in Washington on 7-8 February 2021, <https://www.thegctf.org>

whose mission is to strengthen the international architecture to better address the evolving terrorist threat.

The IJ develops and delivers lessons on good practice and tools from the GCTF, the UN and other internationally recognized rule of law bodies. It also works to strengthen networks of criminal justice partners to promote justice, security, and human rights, to effectively combat terrorism, which means respecting human rights.

The relevance of the content of the IJ's teaching, which remarkably combines inter-service coordination, intelligence processing and international judicial cooperation, disseminated within this framework of exchanges created in Niger is a real lever in the fight against terrorism in the Sahel.

**Samna Cheibou, Resident Fellow, Academic Unit, April 2022.**

**Keywords: Army, civil society, Niger, Rabat Memorandum**