



What legal and institutional frameworks exist for the protection victims and witnesses in terrorism cases: Examples from Burkina Faso, Niger and Senegal

SUMMARY

Introduction	2
I- Established protection	6
A- Varying legal responses to victims and witnesses protection	6
1- A wide range of international conventions	7
2- Domestic legal instruments	8
B- A modernized institutional framework.....	9
1- Complete specialization of CT Units in Burkina Faso and Niger.....	9
2- Partial specialization of the CT Units in Senegal.....	10
II- Proven repression.....	11
A- Purely theoretical protection.....	11
1- Abandonment of the victims	12
2- Insufficient guarantee for witnesses	14
B- Essential protection for stakeholders	15
Conclusion.....	19

Introduction

The terrorist phenomenon is becoming more global and more complex. It is, therefore, with good reason that Ban Ki-Moon, Secretary-General of the United Nations, declared before the General Assembly of the United Nations: "*Terrorism strikes all nations, small and large, rich and poor. It takes a heavy toll in human lives, regardless of the age or income, customs or religion of the victims. It strikes at everything that the United Nations stands for. The fight against terrorism is the mission of all of us.*"¹

Terrorist acts around the world have reached alarming proportions in terms of their degree of violence and their societal impact. Threats to international peace and security impact all West African region, and the Sahel in particular.²

Two decades after the attacks of September 11, 2001, in the United States, the terrorist threat has never been so present and manifest in the Sahel. The Sahel is a major battleground in the global fight against terrorism, as it has witnessed kidnappings and attacks of all kinds, while providing shelter for training and recruitment camps³ of terrorist groups who exhibit increasingly sophisticated means and methods⁴ Accordingly, developments in the field of counter-terrorism in the Sahel and especially in are assuming increased relevance on a global basis using sophisticated, against terrorism, which is therefore taking on particular importance in this region, particularly in Burkina Faso, Mali, Niger and Chad.

¹ Statement by UN Secretary General Ban Ki-moon to the UN General Assembly, 16 February 2007.

² INTERPOL General Secretariat, *Global Counter-Terrorism Strategy Brochure*, Lyon, February 2017 p.2.

³ The threat posed by of recruiting foreign terrorist fighters and their ability to move anywhere in the Sahel and even around the world is unprecedented.

⁴ Violent literature and propaganda are now more widely disseminated and easily accessible in several languages, which has led to a change in recruitment and radicalization methods. In addition, the current generation of terrorists are aware of the latest technologies and very active on social networks.

The sophisticated operational and funding models of today's terrorist groups provides them with access to a larger pool of recruits, as well as the weapons and substances -- including chemical, biological and improvised explosive devices --needed to plan attacks against civilians and sensitive infrastructure.

The increased frequency of terrorist attacks by organized groups using sophisticated means have made Sahel States vulnerable to unprecedented levels of terrorism and transnational crime.

The fight against terrorism is therefore a challenge for the entire international community. In an increasingly interdependent world, no single State can effectively counter terrorism. For this reason and convinced in the effectiveness of a comprehensive, concerted and shared response, the Sahel States have resolutely committed themselves to bilateral, regional and international cooperation⁵. On 20 September 2006 the Sahel States their committed to "*cooperate fully in the fight against terrorism to discover, deny asylum and bring to justice, by extradition or prosecution, any person who assists or facilitates the financing, the planning or commission of terrorist acts*" when the Global Counter-Terrorism Strategy was adopted by the United Nations General Assembly. It is this perspective that promoted the adoption of Law No. 2010-035 of 21 July 2010 (repealing and replacing Law No. 2005-047 of 26 July 2005) on the fight against terrorism in Mauritania with the consequence of the creation of an anti-terrorist Unit at the level of the Nouakchott prosecutor's office and an anti-terrorist investigation Unit at the Court of Wilaya Nouakchott. This innovation by the Mauritanian legislator inspired the Burkinabe⁶, Malian⁷, Nigerien⁸ and Chadian⁹ legislators who created anti-terrorist Units with similar characteristics in their States.

⁵ DAGRA (M.), Foreword to the Compendium of Bilateral, Regional and International Agreements on Mutual Legal Assistance and Extradition, Volumes 1 and 2, prepared for the attention of judges in Niger by the TERRORISM Prevention Branch of UNODC and the Ministry of Justice of the Republic of Niger, Vienna, United Nations, 2008, p. iii.

⁶ See Law No. 006-2017/AN of 19 January 2017 establishing the specialized judicial unit for the suppression of acts of terrorism.

⁷ See Law n°2013-016 of 21 May 2013 amending the Code of Criminal Procedure.

⁸ See Ordinances No. 2011-11 amending Organic Law No. 2004-50 of 22 July 2004 establishing the organization and jurisdiction of the courts in the Republic of Niger, No. 2011-12 amending and supplementing the Penal Code (CP), n°2011-13 amending and supplementing the Code of Criminal Procedure (CCP) and laws No 2016-19, 2016-21, 2016-22 of 16 June 2016, n°2017-007 and 2017-10 of 31 March 2017. These laws amended the ***judicial pole against terrorism in specialized judicial pole against terrorism and transnational organized crime***.

They also introduced ***the chambers specialized in the fight against terrorism and transnational organized crime, thus dedicating full specialization to Niger***.

⁹ See Law No. 034/PR/2015 on the suppression of acts of terrorism in Chad.

In the Sahel States, policy makers and criminal justice officials working in counter-terrorism have shown renewed interest in the legal and institutional structures in place, with a view to adapting and updating the structures to more effectively address current conditions.

On the legal level, the fight against terrorism necessarily involves revision and amendment of domestic legislation. With this in mind, the G5 Sahel states have amended their penal codes. While remaining within the framework of States that respect the highest principles of protection of freedoms, guarantee of the rights of the defence and promotion of human rights, it has been necessary to define new rules derogating from the ordinary law of criminal procedure.

The activities of terrorist groups have made it necessary to adapt the institutional response to the problem. Indeed, it is a question of finding the most appropriate institutional responses to effectively combat this phenomenon, which traditional rules of criminal law have not adequately addressed. The complexity of the offences of terrorism and transnational organized crime mean that they must not only be dealt with by the agencies and officials specialized in these types of crime, but also for reasons of efficiency, prosecutions must be centralized to avoid the duplication of efforts. To address this evolution, States the G5 Sahel introduced various specialized judicial units in the fight against terrorism.¹⁰

By introducing those institutions into the law enforcement arsenal, the laws of those States are being strengthened with a view to achieving the ultimate goal in the fight against terrorism, in particular the protection of the victims of and witnesses to terrorist acts.

"*Omnis definitio in lege periculosa*," the saying goes. While it is true that any definition is, in law, the definition of concepts is indispensable to the law. Thus, an understanding of

¹⁰ See Art.1^{er} of Law No. 2016-19 of 16 June 2016 amending Law 2004-50 of 22 July 2004-50: *"In the Republic of Niger, justice is rendered in civil, commercial, social, criminal, financial and administrative matters by the Court of Cassation, the Council of State, the Court of Auditors, the Courts of Appeal, the Assize Courts, the Courts of First Instance, the Labour Courts, the Commercial Courts, the Administrative Courts, the Juvenile Courts, magistrates' courts, rural land courts, military courts, **the specialized judicial pole and the specialized chambers in the fight against terrorism and transnational organized crime.** »*

the key concepts is essential before engaging in any substantive reflection on the legal and institutional framework for the protection of those involved in criminal proceedings. Indeed, as SAVONNET-GUYOT pointed out: "¹¹*Research objects are not immediately tools of explanation or instruments of analysis. They are only likely to become so if they are properly identified.*"¹²This quote from SAVONNET-GUYOT, recalling the need to clarify key concepts, also forms the framework of any research work.¹³

Protection is according to the Larousse dictionary " *the action of defending someone against a danger, an evil, a risk* ". It is therefore a question here of " ¹⁴*defending* " the participants in a terrorism trial against the violation of their rights.

The criminal trial always makes important distinctions between the different actors, whether active or passive. This distinction of status is of particular importance in the case of terrorism regarding the trial participants in the trial.

The term intervener includes for the purposes of the case all those who contribute on the side of the actors of the trial to have the accused person tried. These are victims, witnesses, whistleblowers and experts.

The challenge of the distinction is to provide them with protection to guarantee them a safe intervention.

In the Burkinabe penal system, where the protection of the actors in the criminal justice chain is rarely taken into account, the status of the actors has evolved while risks which they are exposed to in terrorist trials have been aggravated.

In Niger, article 605.17 of the Code of Criminal Procedure provides: "*In the context of the repression of offences relating to transnational organized crime, terrorism and the*

¹¹ MARTIN (J.-C.), *International rules on combating terrorism*, Brussels, Bruylant, Travaux du CERIC, 2006, p.33.

¹² SAVONNET-GUYOT, "*Reflections on some political objects to be identified: crisis of the State, crisis of "civil society", democratic openness*", in CONAC (G.), (ed.) *Africa in transition to political pluralism*, Paris, Economica, 1993, p.125, cited by ADELOUI (A.-J.), "*Democratic transitions and cooperation. Comparative approach Benin, Mali, Niger and Togo*", Doctoral thesis in Public Law, UAC, FADESP publicly defended on November 25, 2006, p.19.

¹³ ADELOUI (A.-J.), *Op.cit.*, p.19.

¹⁴ See Wikipedia Dictionary, available on www.wikipédia.org, accessed May 22, 2021 at 4 p.m. and 50 minutes.

financing of terrorism, victims, witnesses, experts, whistleblowers and their relatives shall enjoy special protection from the State against possible acts of reprisal or intimidation. The conditions of this special protection shall be defined by decree adopted by the Council of Ministers".

The following question naturally arises: what is the legal and institutional framework for the protection of those involved in the terrorist trial? This question raises a thorny problem that has always been the subject of heated controversy, specifically, that of the protection of the interveners in the terrorist trial.

The protection of stakeholders through its legal consecration with a comparative analysis of these systems and the effectiveness of the responses they provides to the problem of terrorism in the Sahel will therefore be addressed.

I- Established protection

The protection of responders to terrorist criminal proceedings is a concern that is not new. Indeed, it is normal that those who participate in the trial benefit from protective legislation that removes them from the risks associated with this trial.

The protection of actors in the terrorist criminal trial is a challenge for the Sahel states.

To deal with it, these States have enshrined this protection through legal reforms which are supported by a revamped institutional framework.

A- Varying legal responses to victims and witnesses protection

The aim here is to give an overview of the texts that serve as a legal basis for the protection of actors in the terrorism trial in Burkina Faso, Niger and Senegal. These texts are either universal, regional or subregional in scope, nor are they national in scope. In short, a panoply of conventions with a universal purpose are implemented and supported by instruments with a national vocation.

1- A wide range of international conventions

An essential aspect of international law is the ratification and implementation of international legal instruments relating to the protection of actors in terrorist proceedings.¹⁵

The fight against terrorism has been on the global agenda continually since 1963¹⁶. Since then, the United Nations (UN) has adopted nineteen legal instruments relating to the prevention and suppression of terrorist acts.¹⁷

In addition, there are a whole series of resolutions adopted by the United Nations Security Council, including several based on Chapter VII of the UN Charter.¹⁸

At the regional level, the main legal instruments for the protection of stakeholders are the African Charter on Human and Peoples' Rights (ACHPR); the 1999 Organization of African Unity Convention on the Prevention and Suppression of Terrorism and its 2004 Additional Protocol¹⁹; and the Organization of the Islamic Conference (OIC) Convention²⁰ of 1 July 1999.

¹⁵ That is, the relevant multilateral treaties and supplementary agreements in line with the UN Global Counter-Terrorism Strategy because, in an increasingly interdependent world, no single country can cope with effectively address terrorism.

¹⁶ UNODC, *La international cooperation in criminal matters against terrorism*, United Nations, New York, 2009, P.1.

¹⁷ For a more precise analysis of all the instruments (conventional and other) adopted in this field, V. FÉRET (J.) and PEYRO LLOPIS (A.), *"The fight against terrorism: instruments and institutions »*In HENNEBEL (L.), VANDERMEERSCH (D.), (ed.), *Judging terrorism under the rule of law*, Brussels, Bruylant, 2009, p.263.

V. also annexes.

¹⁸ These are mainly Resolutions 1267(1999), 1333(2000), 1373(2001), 1390(2002), 1455(2003), 1526(2004), 1535(2004), 1540(2004), 1617(2005), 1735(2006) and 1822(2008).

¹⁹ The 2004 Protocol, whose main objective is to strengthen the effective implementation of the Convention. This Protocol in article 4 establishes the mechanism for the implementation of the African Convention on Terrorism. It entrusts the PSC with harmonization and coordination at the continental level, efforts to prevent and combat terrorism.

²⁰ It should be recalled that Burkina Faso, Niger and Senegal are also members of the OIC.

At the Community level, these are all the texts adopted under the aegis of ECOWAS, namely the Convention on Mutual Assistance in Criminal Matters of 1992 and the Convention on Extradition of 6 August 1994.

2- Domestic legal instruments

At the national level, emphasis will be placed on the internal texts of States such as Burkina Faso²¹ and Senegal. Regarding Niger, it should be noted that the normative legal framework has already been analyzed.²²

In Burkinabe law, for example, articles 14 et seq. of Law No. 026-2018/AN on the general regulation of intelligence in Burkina Faso, grants intelligence agents special protection of their identities and non-liability for offences committed in the exercise of their functions. In addition, and in all matters, the assent of the head of the intelligence coordination body is required before the arrest of any intelligence officer.

First, as a public official, attacks against criminal justice actors are aggravating circumstances in many cases. Thus, an offense against an agent holding public office is more severely punished in accordance with Articles 352-1 et seq. of the Criminal Code. The same applies to violence against the same officers according to article 353-1 which provides that "anyone who, even without weapons and without injury, shall be punished by imprisonment from one year to ten years and a fine of three hundred thousand (300,000) to three million (3,000,000) CFA francs, engages in violence or assault on a magistrate, an assessor, or any person sitting in a judicial formation in the exercise or in connection with the exercise of his functions. The maximum penalties are always imposed, if the assault or violence takes place at the hearing or in the precincts of a court or tribunal.

²¹ With regard to Burkina Faso, it should be noted that Laws No. 060-2009/AN on the suppression of terrorist acts and No. 061/2009/AN on the fight against the financing of terrorism of 17 December 2009 constitute the legal framework for the fight against terrorism.

The first, which is structured around eight chapters, provided for and punished all acts or acts considered to be terrorist offences. In articles 2 to 15 of the Act, the Burkinabe legislature transposed the international instruments on terrorism and provided that the following offences constitute terrorist acts, when by their nature or context they are intended to intimidate or terrorize a population or to coerce a State or an international organization, to perform or refrain from performing any act.

The second, on the other hand, defines the financing of terrorism and its constituent acts.

²² *V. supra., p.2.*

The court may, in addition, order a prohibition on the exercise of civil rights, a refusing entry or stay and prohibition on the exercise of any public employment for a period not exceeding five years'. Other texts also provide for the criminalization of criminal acts against professionals such as lawyers and bailiffs.

With regard to Senegal, mention should be made of Act No. 2007-04 of 12 February 2007 amending the Code of Criminal Procedure on combating terrorist acts.

What about the institutional framework?

B- A modernized institutional framework

The international community's fight against terrorism necessarily involves a reorganization of domestic legislation. To this end, Burkina Faso, Niger and Senegal have amended their penal codes. This has had the effect of changing both the legal and institutional landscape.

Thus, we have an complete specialization in Burkina Faso and Niger (1) and a partial specialization in Senegal (2).

1- Complete specialization of CT Units in Burkina Faso and Niger

In the exercise of their function, judicial actors enjoy a certain number of protections. First of all, in terms of immunity, the Code of Criminal Procedure presumes the existence of supporting facts such as self-defence when OPJs or APJs are forced to use their weapons. This is the case in Burkinabe legislation in the fight against organized crime.

In addition, the Code of Criminal Procedure allows investigators to act anonymously under certain conditions. Investigators using special investigative techniques including tracking, infiltration, image capture, are exempt from criminal liability due to the need to carry out the investigative measures.

In the statute of the judiciary in most countries such as Burkina Faso, judges have the right to carry a handgun. In addition, when they feel threatened in the context of a particular procedure, magistrates are entitled to close security while the threat lasts.

Beginning in 2005, the terrorist threat became serious with the establishment in the Sahel of jihadist groups connected to organized crime networks. Faced with the terrorist threat,

Niger reacted with reforms of its legal arsenal in 2011, to address the phenomenon of terrorism. These reforms have promoted the establishment of an institutional and normative framework for the fight against terrorism, which was subject to some changes in June 2016 and March 2017. These reforms have the merit of filling the legal void by punishing the various terrorist acts and protecting those involved in the terrorism trial.

Niger, in accordance with its criminal policy, has chosen to place specialized justice at the heart of the suppression of terrorism.

The qualification of "*specialized*" implies actors whose knowledge makes it possible to respond to a particular crime requiring special qualifications. Indeed, the links of terrorism with the transnational organised crime (TOC) have led to the establishment, at the prosecution stage, of a specialized section for prosecutors, specialized investigation offices and trial, a training composed exclusively of magistrates with advanced knowledge in the fight against terrorism, whose status is identical to that of their colleagues, placed in the same order, and which base their decisions on the same principles.²³

2- Partial specialization of the CT Units in Senegal

Senegal has signed and ratified most of the universal legal instruments to combat terrorism and the TOC. Thus, at the national level, many new legislative and regulatory texts have been adopted. Despite these measures, the threat is persisting in Senegal. The complexity and specificity of the offences concerned mean that they must be dealt with by the specialized services, but also for reasons of efficiency, prosecutions must be centralized to avoid a duplication of efforts and means, hence the partial specialization of the bodies responsible for law enforcement. However, protection of the participants in terrorism trials, meaning victims, witnesses, and government officials, is lacking in the Sahel states.

²³ The judges who make up the Judicial Unit in the fight against terrorism and transnational organized crime are appointed by decree of the Head of State, on the proposal of the Minister in charge of justice after the assent of the Superior Council of the Judiciary.

They exercise their powers throughout the national territory.

Prosecutors are appointed by decree of the Head of State on the proposal of the Minister of Justice.

II- Proven repression

If the criminal justice system is to play a role in preventing and combating terrorism, a strategy must be developed that combines criminalization, investigative powers and methods, appropriate rules of evidence and international cooperation, with a view to effectively combining substantive rules and procedural mechanisms to reduce the incidence and gravity of terrorist violence, all in compliance with the constraints and protections imposed by the criminal justice system.²⁴

Sometimes, driven by the urgency to confront a specific threat, these states have improvised new approaches and, in so doing strained the limits imposed by the law and by due process guarantees to an extreme degree. This context explains the limited nature of the protection of the participants in terrorism trials. However, this protection is indispensable.

A- Purely theoretical protection

States have an obligation to take the necessary measures to protect the human rights of persons within their jurisdiction against terrorist acts, in particular their right to life. This positive obligation fully justifies States' fight against terrorism, while respecting human rights. Therefore, measures taken by States to combat terrorism must respect human rights and the principle of the rule of law, excluding arbitrary and discriminatory treatment, and must be subject to appropriate control. This requirement is difficult to meet in the context of the suppression of terrorism in the Sahel. For this reason, the effectiveness of the protection of those involved in the terrorist trial is limited.

The term participant has been deliberately reduced to victims, witnesses and experts in order to better highlight the particularity associated with the handling of terrorism cases.

On the one hand, the eradication of terrorism in the Sahel is not concerned with the fate of the victims of this scourge and it does not offer sufficient guarantees of protection for witnesses and experts.

²⁴ *Ibid.*

1- Abandonment of the victims

There are possible classifications in the status of victims. First of all, there are the collateral victims who are targeted for having been at a specific location at the time of the attacks. Then there are victims targeted because of their status, for example, their nationality. This is regularly the case with hostage-taking.

Finally, there are distant victims, moral victims of acts of terrorism. Although interesting, this distinction has no impact on the legal regime of their protection. Article 100-1 of the Burkinabe CCP provides that "*the judicial authority shall ensure that the rights of victims are informed and guaranteed during any criminal proceedings*". The first protection is, therefore, the right to compensation. Victims of terrorism are entitled to compensation for their damages.

As they participate in the criminal trial, victims enjoy rights and protective measures when threats against their person are characterized. In terms of rights, article 251-21 of the Burkinabe CPP provides "If the victim is confronted with a person arrested, he may also ask to be assisted by a lawyer chosen by him, or at his request and at his expense, appointed by the President of the Bar".

Fair, effective and efficient justice is justice that respects the rights of victims on an equal footing with those of suspects and offenders. It must prioritize the prevention of victimization, protect and assist victims, and treat them with compassion while respecting their dignity. And victims must have access to judicial mechanisms to obtain redress for the harm they have suffered and obtain prompt reparation. They must also have access to specialized assistance to deal with emotional trauma and other problems caused by their victimization.²⁵

Terrorism imposes a very heavy physical, material and psychological price on the victims. However, in criminal justice systems in the Sahel, victims of terrorism are often forgotten and, sometimes, even victimized by the system itself. They are rarely allowed to participate fully in decisions that affect them, and they do not always receive the

²⁵ UNODC, *Cross-cutting issues, victims and witnesses, compilation of criminal justice assessment tools*, New York, United Nations, 2008, p.1.

assistance, support and protection they need. Compensation for the damage they have suffered is very often non-existent and, when this is not the case, it is often insufficient or untimely.

Victims have the right to access to judicial proceedings and prompt compensation for the damage they suffered under national law.

The application of this principle is far from effective in Burkina Faso, Niger and Senegal.

This abandonment of the victims of terrorism also translates into the difficult compensation.

In the Sahel, the plight of the victims of terrorism is deplorable. No criminal protection policy addresses victims' needs. Admittedly, the Launching a civil action within criminal proceedings is an integral part of criminal proceedings in Burkina Faso, Niger and Senegal. However, it is very difficult for the victims of terrorism to be compensated for the damage they have suffered.

Under the criminal laws of those States, compensation for the victim is the responsibility of the accused or accused convicted of a terrorist offence or crime. However, in most cases, the latter is insolvent. Where compensation cannot be paid in full by the offender or by other sources, the State must endeavour to provide monetary compensation. However, the Sahel States have not provided any mechanism for this purpose.²⁶

Faced with this shortcoming and in view of the resurgence of the phenomenon of terrorism, it is essential for States to establish mechanisms that guarantee financial and other reparation for the damage suffered by the victims of terrorist acts. Would it not be appropriate to explore the idea of setting up a State fund capable of ensuring the availability of resources to facilitate the compensation of these victims?

What about the situation of witnesses?

²⁶ Compensation for victims is often the most direct way to provide financial assistance to victims of terrorism and the CTO.

2- Insufficient guarantee for witnesses

Terrorism is a serious and complex phenomenon. In order to investigate and combat this crime, especially its most serious and complex forms, witnesses, who are the key to successful investigations and prosecutions, must have confidence in the criminal justice system. They must be assured of being supported and protected from the intimidation and violence that criminal groups may exert on them to deter or punish them for cooperating.

The United Nations Convention against Transnational Organized Crime (CTO) calls on States Parties to take appropriate measures to prevent intimidation, coercion, corruption or physical assault of witnesses and to strengthen international cooperation in this field. Often, even when such measures are enacted, they are insufficiently implemented and progress is needed, in particular with regard to cross-border cooperation. Of special relevance are changing identities and residences of threatened witnesses.

Witnesses face a lack of assistance with none existing protection measure.

To safeguard the rule of law, it is essential that a witness be able to testify in a judicial context or cooperate in police investigations without fear of intimidation or reprisals. While the cooperation of witnesses is essential to the success of prosecutions, terrorist groups are so strong that extraordinary measures must be taken to ensure the safety of witnesses. Accordingly, Niger has adopted measures to protect witnesses who by cooperating with the police authorities or testifying in court, put their lives and those of their families at risk. Article 605.17 of the CPPN provides: *"In the context of the suppression of crimes relating to transnational organized crime, terrorism and the financing of terrorism, victims, witnesses, experts, whistleblowers and their relatives shall enjoy special protection from the State against possible acts of reprisal or intimidation.*

The conditions of this special protection shall be defined by decree adopted by the Council of Ministers".

The implementation of this special protection is not yet effective in Niger because the decree determining the conditions for this special protection has not yet been adopted. As a result, witnesses to acts of terrorism lack support and protection.

In Burkina Faso, experts appear and find themselves in the same situation as witnesses or victims when they testify in court. As surprising as it may seem, there is no specific protection regime for experts. And because of the experts' *intuitu personae* choice, it would not be possible to have them work anonymously because of the rights of the defence.

This difficulty of witness protection is more acute in remote areas, particularly bushes and villages. Although these places are mostly terrorist cache information that can help combat the phenomenon is lacking. This situation is due to the fact that the residents with this information do not benefit from any special protection, and the same reasons given above also justify their reluctance. In Niger, there have been several high-profile abductions and even attacks on the lives of people who collaborated with the defence and security forces (village chiefs or family members, mayors, etc.).

B- Essential protection for stakeholders

*"In the face of terrorist acts and threats, the temptation for governments and parliaments is to react immediately with force, putting aside the legal guarantees that prevail in a democratic state. Let me be clear: it is in crisis situations such as those caused by terrorism that respect for human rights is even more important. Any other choice would play into the hands of terrorists and undermine the very foundations of our society. But respect for human rights is not an obstacle to an effective fight against terrorism."*²⁷ Therefore, to be effective, any strategy focused on the prevention of terrorism must include a strong criminal justice element based on a framework of legal standards and the fundamental principles inherent in the rule of law, due process, and respect for human rights. The perpetrators of terrorist acts are criminals in the broad sense of the term and must therefore fall under the criminal justice system, which is the most appropriate mechanism to ensure that justice is done and that the rights of the accused are safeguarded.²⁸

²⁷ DAVIS (T.), preface to the Manual: *Human rights and the fight against terrorism*, Council of Europe guidelines, Council of Europe ed. March 2005 p.5.

²⁸ V. UNODC, *The role of criminal justice in the fight against terrorism*, *Op.cit.*, p.3.

From the perspective of the fight against terrorism with the tools available to the rule of law, international cooperation in criminal matters is fundamental to effectively combat these criminal acts.²⁹

Respect for the rule of law and effective implementation of the system of protection of stakeholders are the most important elements in the fight against terrorism in the Sahel.

1. A necessary respect for the rule of law

The rule of law has undergone "an astonishing mutation: while it was a legal concept with a content tried and tested and polished by generations of jurists, it was suddenly propelled into the public square, being invested with new meanings; Transformed into an imposed figure of political discourse, he has become an essential reference, one of the necessary attributes of political organization."

The term "rule of law" has been largely defined by legal literature. For Hans Kelsen, it is "a state in which legal norms are hierarchized in such a way that its power is limited". For René CARRÉ DE MALBERG, the rule of law is "a State which, in its relations with its subjects and for the guarantee of their individual status, submits itself to a regime of law, and this in so far as its restraints on them by rules some of which determine the rights reserved to citizens, the others shall determine in advance the ways and means which may be employed with a view to achieving the aims of the State". Thus, conceived, the rule of law aims to preserve and defend the interests of citizens against the possible arbitrariness of public powers.

In his address to the UNSC on counter-terrorism on 6 March 2003, the then SG, Kofi ANNAN, highlighted the need "to develop an international agenda for action based on an unwavering commitment to uphold the rule of law", adding that "as terrorism is a deliberate use of violence in violation of the law, our response to terrorism must be aimed at preserving the rule of law."

If terrorism violates the fundamental rights of its victims, it is imperative for democratic societies to respond to such a phenomenon and respect the human rights and freedoms

²⁹ LABORDE (J-P.), *Foreword to the Compendium of Bilateral, Regional and International Agreements on Mutual Legal Assistance and Extradition Volume 1 and 2, Op.cit., p. V.*

that terrorists seek to challenge. This reminder concerns the balance between security and freedom that democratic societies in the grip of terror strive to maintain.

Human rights are at the heart of the debate on the suppression of terrorism in more ways than one. Indeed, these are perceived by some as a threat to the effectiveness of the suppression of terrorism, while for others, they guarantee the effectiveness of these measures. It is clear that human rights, freedoms and the rule of law are the key elements for the effectiveness of the suppression of terrorism in the Sahel. In this perspective, it is not a question of wanting to safeguard human rights in the context of the implementation of measures to combat terrorism, but of using them as a means of criminal policy, in particular, by implementing measures to protect those involved in the terrorist trial.

Burkina Faso, Niger and Senegal must base their military and criminal strategies in the fight against terrorism on fundamental rights and freedoms. Indeed, *"Respect for human rights is not, in this context, an idealistic demand, but rather the technical condition necessary for the effectiveness of anti-terrorist measures"*.³⁰

Criminal policy on terrorism in the Sahel must ensure that the integrity of the rule of law is strengthened and respected through effective protection of those involved in terrorist trials.

2. An essential effective implementation of the protection of stakeholders

" Strengthening the capacity of a national criminal justice system to counter terrorism requires an integrated, coherent and sustainable approach that encompasses the entire sector and is based on human rights." This integrated approach, will enhance the protection of human rights and must be based on effective legal assistance and recognition of the status of victims.³¹

The right to judicial protection, enshrined in all legal texts for the protection of human rights, as a fundamental guarantee of the enjoyment and exercise of other rights, must

³⁰ *Ibid.*

³¹ UNODC, *The role of criminal justice in the fight against terrorism*, Op.cit. p.35.

not have a purely theoretical existence in the domestic legal order of the Sahel States. The latter have the obligation to ensure its concrete and effective implementation.³²

"Terrorism can strike anyone, anywhere... It attacks humanity itself. And it is for the salvation of humanity that we must create a global forum to hear your voice and listen to you, the victims. Your accounts of how terrorism has affected your lives are our most powerful argument on which the evidence is that there can be no motivation for these heinous acts. By giving a human face to the painful consequences of terrorism, you are helping to build a global culture of fighting against it. You are the true heroes in the global fight against terrorism. The world feels humbled by your strength and courage. You deserve support and solidarity. You deserve social recognition, respect and dignity. You deserve to have your needs taken into consideration. You deserve to have your fundamental rights defended. And you deserve justice³³." This statement by Ban KI-MOON emphasizes the need to promote and protect the rights of victims of terrorism.

A victim-centric approach to criminal law enforcement is based on the idea that it is not enough to prosecute and punish the perpetrators of crimes, for justice to be done and for the criminal justice response to be considered sufficient. A justice system that merely punishes the perpetrators of criminal offences, while ignoring the needs and interests of the victims cannot fulfil its objectives in the light of the current state of international law. However, this is the currently the situation in the Sahelian States.³⁴

However, support for victims of terrorism is the main channel through which Sahel States can contribute to combating the dehumanization of victims and as such, this support can be seen as an essential component of counter-terrorism measures. We note that it is essential to integrate the needs and interests of victims into criminal trials. This recognition requires the effective implementation of strategies and legislation designed to grant victim status to certain individuals.³⁵

³² TIGROUDJA (H.), *Op.cit.*, p.217.

³³ Ban KI-MOON, *Symposium on Support for Victims of Terrorism*, organized by unsUIT, 9 September 2008.

³⁴ UNODC, *The criminal justice response to support victims of terrorism*, *Op.cit.*, p.17

³⁵ *Ibid.*

Conclusion

The fight against the terrorism undoubtedly requires security and military strategies, but also the adaptation of domestic legal systems to meet the challenges posed by terrorism, particularly its repression. Thus, for the effective suppression of terrorism, the assistance of the population is of great importance, since the latter is often in possession of the information necessary to achieve an efficient judicial procedure during a terrorist criminal trial. But the cooperation of the population cannot be expected if it is not convinced that it is protected against possible reprisals. Similarly, for the same reasons, such protection must be guaranteed to those responsible for combating and punishing terrorist offences.

In fact, the overwhelming majority of Sahel States (such as Burkina Faso, Niger and Senegal) are trying to adapt to the evolution of terrorism, which for a number of years has threatened them more than the countries of the north. However, States have been slow to discuss and adopt the legal and institutional reforms necessary for the effective fight against terrorism, despite their multiple international commitments. This is the case of Niger, which has certainly made efforts to reform its legal framework and provide special protection for those involved in the fight against terrorism. Unfortunately, however, most of the reform has been limited to the adoption of a decree to providing the mechanism of this protection, which has been slow to come into being. As a result, almost all these efforts are really not of great importance to the system. States must then accelerate their reform processes to provide special protection to actors in the fight against terrorism, a guarantee of an effective fight against the phenomenon.

The terrorist threat has increased recently throughout the world and particularly in the countries of the Sahel, as illustrated by the recent attacks in Burkina Faso, Niger and Mali, resulting in enormous loss of human life and destruction of the economic and social fabric. The fight against terrorism requires the combination of several actions and the intervention of several actors whose security, obviously threatened, must be guaranteed by an appropriate legal and institutional framework.

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