

## **CRIMINAL JUSTICE AND THE RULE OF LAW IN AFRICA: THE PEER-TO-PEER EXPERIENCE OF THE IJ**

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Can criminal justice still play its part in anchoring and preserving the rule of law in Africa? Many doubt it, particularly in countries afflicted by terrorism in the sub-Saharan part of the continent.

Long criticised, whether rightly or wrongly, for its ineffectiveness, slowness, and lack of independence, criminal justice in this part of Africa is still struggling to strike a balance between effective counter-terrorism efforts and respect for the rule of law. With a notable escalation of terrorist activity in recent years, the situation has deteriorated completely.

Indeed, on the one hand, states overwhelmed by a multitude of priorities (health, education, etc.) are reluctant to provide the judicial system with substantial means to ensure its normal functioning. On the other hand, populations caught up in the often disproportionate use of force in the fight against terrorism and discouraged by a legal system which is supposed to protect them but is sometimes unable to guarantee individual freedoms, are gradually turning away from the republican state in its democratic conception.

In this regard, under the pretext of this struggle, one can observe here and there the arrests of thousands of people in distressful and undignified circumstances, sometimes followed by summary executions.

This disoriented population creates an opportunity for terrorist groups to establish the foundations of a new rebel state with extremist ideals. The actors within such groups consider themselves as totally free from the flaws of injustice, marginalisation, and the frustration of a republican state which, according to them, has shown its limits on all fronts.

Moreover, terrorist groups operating in the Sahel exploit this feeling of injustice among civilian populations to recruit young people into their organisations. This situation has led dozens of civil society organisations, grouped around the Citizen Coalition for the Sahel, to present, on 15 April 2021, a report recommending that states rethink their anti-terrorist approach and prioritise civilian protection, the strengthening of humanitarian aid and the fight against impunity. This approach would breathe life into commitments these states have made to international and sub-regional



norms and standards that promote the protection of human rights and the rule of law, and even guarantee those suspected of terrorism their right to a fair trial. We refer in particular to United Nations Security Council Resolution 1456 of 20 January 2003, which requests Member states to ensure that any measure they take to fight terrorism complies with obligations under international law, in particular international human rights law, refugee law and humanitarian law. One should also mention the 2006 United Nations Global Counter-Terrorism Strategy (A/RES/60/288), the fourth pillar of which calls on states to take measures guaranteeing respect for human rights and the rule of law as a fundamental basis of the fight against terrorism.

The same strategy is emphasised in Resolution 88 (2005) of the African Court on Human and Peoples' Rights (ACHPR) taken within the framework of the protection of human rights and the rule of law. This resolution affirms that African states must ensure that measures taken to combat terrorism fully meet their obligations under the African Charter on Human Rights, including the right to life, the prohibition of arrests and arbitrary detention, the right to a fair trial, the prohibition of torture and other cruel, inhuman, and degrading treatment and punishment, and the right to seek asylum.

So how can we explain the continued degradation of human rights and the rule of law in the fight against terrorism in Africa? Well, many observers attribute it, in part, to the lack of training of judicial actors in the fight against terrorism.

This deficiency is one of the challenges being actively addressed of the International Institute for Justice and the Rule of Law (IJJ), an institution inspired by the Global Counterterrorism Forum (GCTF). At the GCTF's inaugural Ministerial Plenary Meeting in New York on 22 September 2011, founding Members included within its governing principles, namely points 5 and 11, the inseparable link between the respect for human rights, the rule of law and the fight against terrorism, as well as the need to reinforce the capacities of those involved in the fight. The GCTF set out as its main mission, in point 3 of its objectives, the creation of a multilateral platform dedicated to the fight against terrorism for policy makers and practitioners around a range of initiatives: sharing of experience and good business practices, and the development of global and integrated strategies, etc.

Since its establishment in 2014, the IJJ has deftly implemented the GCTF's vision through the capacity-building programmes it develops, organises and delivers to policy makers and criminal justice practitioners. These trainings are designed by and for practitioners, which helps ensure they are adapted to needs and are disseminated in accordance with everyone's remit.

These programmes, and the entire organisation that supports them, aim to advance the legal framework within which criminal justice practitioners deliver justice in terrorist proceedings by integrating the principles of human rights, justice, and the rule of law. The IJJ's capacity-building

mission instils a dynamic of sharing experiences and good practices, and building and strengthening the IIJ Alumni Network - more than 7000 practitioners - as Ambassadors for the rule of law.

In a short period of time, the IIJ has established itself as a key regional hub for building the capacities of criminal justice practitioners by equipping actors in the field with up-to-date knowledge and deepening their criminal skills, especially in counter-terrorism matters, in a concrete way. The IIJ has received extensive feedback on notable advances recorded in several countries following the participation of stakeholders in training workshops and intensive courses it has offered. It is a new dawn for human rights and the rule of law within criminal justice in Africa.

### **Author Short Bios**

**Thomas Wuchte:** Mr. Wuchte is currently the Executive Secretary for the IIJ. In his position he oversees the delivery of the IIJ's work and leads the Institute's overall activities. He has authored many articles related to international relations, multilateral cooperation, and transnational challenges such as terrorism.

**Buğra Erdem:** Mr. Erdem is a judge at Turkish Ministry of Justice, seconded to the IIJ as Senior Legal Adviser. He mainly focuses on criminal law and international law. Mr. Erdem's area of expertise is mutual legal assistance in criminal matters and extradition. He recently co-authored the book "Basic Legal Documents of Turkish Criminal Law".

**Samna Cheibou:** Mr. Cheibou is a Resident Fellow in the IIJ's Academic Unit. He's been working as a prosecutor in Niger for twenty years including, and notably headed the CT Prosecution Office. Mr. Cheibou has led numerous national and international projects in collaboration with UNODC, the US and various African and European judicial institutions. He is also a recipient of National Ordre du Mérite of Niger.

**Emerson Cachon:** Mr. Cachon serves as a Programme Manager for the IIJ and leads the IIJ Juvenile Justice Initiative. Prior to joining the IIJ, he worked as Legal Advisor and Programme Assistant with the US Department of Justice's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) West Africa Regional Programme on transnational organised crime issues and legal and policy reforms in West Africa.