

Reparations for victims of terrorist acts in Sahel conflicts: The case of Niger

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Abstract

After the crisis in Mali erupted in 2012, numerous conflicts have broken out in countries of the Sahel and resulted in many violations of international human rights law and international humanitarian law. While these bodies of law were designed primarily to protect individuals or categories of individuals, they also require that reparations be made for harm suffered by the victims of such violations. Despite the ever-growing number of victims in conflicts in the Sahel in general and in Niger in particular, it is evident that States of the Sahel have not made a priority of meeting the reparation obligation, which falls mainly on them. However, the specific nature of the harm suffered (as a result, in part, of civilians being targeted) in terrorist-related conflicts calls for a prompt reaction by States, as they are the true targets of acts perpetrated by terrorist-designated non-State armed groups, while individuals and communities

are only proxy victims. A legal, institutional and operational framework for victim reparations needs to be set up by the States, but that has yet to happen, even though it is one of the conditions of durable conflict resolution. The scattered initiatives that have been launched in Niger would gain from being brought together under a holistic framework with a global strategic vision.

Keywords: Sahel, Niger, non-State armed groups, reparations for victims of terrorist acts, conflict resolution.

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Introduction

In the Sahel, a region made up of countries whose development indicators are among the lowest in the world,¹ the human toll continues to mount as conflicts are perpetuated² by attacks by non-State armed groups (NSAGs)—designated terrorist groups in many cases—and by counterattacks by government forces. The number of violent events and deaths connected with Sahel-based extremist groups has doubled every year since they began to occur in 2012. In 2019 alone, Sahel communities recorded some 2000 deaths attributable to violent extremist groups;³ in November 2019, there were 1.2 million displaced people in the region,⁴ while many others were missing or victims of various acts of violence carried out by NSAGs or government forces.⁵ Sahel States are, indeed, being challenged by various terrorist groups. This is certainly the case in Niger, where local franchises of both al-Qaeda (the Support Group for Islam and Muslims)⁶ and the Islamic State

- 1 See Stellah Kwasi, Jakkie Cilliers, Lily Welborn and Ibrahim Maïga, “The G5 Sahel Region: a Desert Flower?”, Institute for Security Studies, 15 January 2020, available at: <https://issafrica.org/iss-today/the-g5-sahel-region-a-desert-flower> (all internet references were accessed in March 2022).
- 2 See Marc-Antoine Perouse de Montclos, “L’émergence de Boko Haram et la diffusion progressive du conflit”, in Géraud Magrin and Marc-Antoine Pérouse de Montclos (eds), *Crise et développement : La région du lac Tchad à l’épreuve de Boko Haram*, Agence française de développement, Paris, 2018, available at: https://horizon.documentation.ird.fr/exl-doc/pleins_textes/divers18-05/010072290.pdf; Lorianne Thérèse Bénoni and Baba Dakono, “Are Terrorist Groups Stoking Local Conflicts in the Sahel?”, Institute for Security Studies, 14 October 2019, available at: <https://issafrica.org/iss-today/are-terrorist-groups-stoking-local-conflicts-in-the-sahel>.
- 3 Pauline Le Roux, “Responding to the Rise in Violent Extremism in the Sahel”, Africa Center for Strategic Studies, 2 December 2019, available at: <https://africacenter.org/publication/responding-rise-violent-extremism-sahel/>.
- 4 United Nations High Commissioner for Refugees, data portal on 30 November 2019 (Burkina Faso, Mali, Niger); United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *Burkina Faso, Aperçu de la situation humanitaire au 9 décembre 2019; Rapport CMP [Commission Mouvement de Populations] Mali du 21 novembre 2019*; Regional Directorate of Civil Status (DREC) Statistics Niger from September 2019.
- 5 Amnesty International, “They Executed Some and Brought the Rest with Them”: Human Rights Violations by Security Forces in the Sahel, London, June 2020, available at: <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR3723182020ENGLISH.pdf>.
- 6 Daniel Eizenga and Wendy Williams, “The Puzzle of JNIM and Militant Islamist Groups in the Sahel”, Africa Center for Strategic Studies, 1 December 2020, available at: <https://africacenter.org/publication/puzzle-jnim-militant-islamist-groups-sahel/>.

(Islamic State in the Greater Sahara and the Islamic State’s West Africa Province, a splinter of Boko Haram)⁷ operate alongside other local groups that carry out terrorist attacks against civilians and government forces near the border with Nigeria in the south and near the borders with Burkina Faso and Mali in the east. Given the predominance of terrorist-related violence and conflicts in the Sahel, this article will focus on victims of terrorist acts, although this is not meant to exclude victims of other types of violence occurring in these conflicts.

Numerous violations of international human rights law (IHRL) and international humanitarian law (IHL) have been committed against the backdrop of these armed conflicts, yet the obligation of victim reparations,⁸ which falls primarily on States,⁹ seems to have been overlooked. Despite the fact that the rules of IHL provide for reparations for harm suffered by victims, the legal framework and implementation mechanisms in Sahel countries¹⁰ remain in their infancy. Victim reparations, however, are one of the prerequisites of lasting conflict resolution.¹¹ The approach required is one that recognizes the primacy of victims’ rights and that places the victims’ interests at the core of States’ concerns and action. Not only will such an approach ensure that the physical and psychological wounds of those who have suffered are treated, but it will also help to prevent new violations thanks in part to appropriate sanctions being applied to perpetrators.¹²

International law provides mechanisms for victim reparations, yet these mechanisms are limited by the fact that they are based primarily on ordinary legal proceedings¹³ and that they are implemented principally by virtue of the

7 Vincent Foucher, “The Islamic State Franchises in Africa: Lessons from Lake Chad”, Crisis Group, 29 October 2020, available at: <https://www.crisisgroup.org/africa/west-africa/nigeria/islamic-state-franchises-africa-lessons-lake-chad>.

8 The right to reparations for harm suffered is a fundamental principle of international law. In the *Factory at Chorzów* case, in 1928, the Permanent Court of International Justice ruled that: “It is a principle of international law, and even a general conception of the law, that any breach of an engagement involves an obligation to make reparation.” See Permanent Court of International Justice, *Case Concerning the Factory at Chorzów, Claim for Indemnity, Merits*, Collection of Judgments of the Permanent Court of International Justice, No. 13, Series A – No. 17, 13 September 1928, available at: https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_A/A_17/54_Usine_de_Chorzow_Fond_Arret.pdf.

9 While NSAGs are required to comply with IHL under Article 1.1 of Additional Protocol II, there is still debate over their obligation to make reparations. Indeed, the question will surely arise as to how to apply this obligation to Sahel NSAGs for which it is difficult to sufficiently ascertain whether a clearly defined body exercises effective control and whether the group is sufficiently organized. See Aurélien Tobie and Boukary Sangaré, *Impacts des groupes armés sur les populations au nord et au centre du Mali*, Stockholm International Peace Research Institute (SIPRI), Solna, October 2019, available at: https://www.sipri.org/sites/default/files/2019-11/1910_sipri_report_impacts_des_groupes_armes_sur_les_populations_au_nord_et_au_centre_du_mali.pdf.

10 I am referring mainly to countries affected by conflicts in the “three-border region”: Burkina Faso, Mali and Niger. However, the focus of this article is Niger.

11 See Oscar Uhler *et al.*, *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 4: *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, ICRC, Geneva, 1956, Art. 8.

12 See Claus Kreß and Frédéric Mégret, “The Regulation of Non-International Armed Conflicts: Can a Privilege of Belligerency be Envisioned in the Law of Non-International Armed Conflicts?”, *International Review of the Red Cross*, Vol. 96, No. 893, 2015, available at: <https://international-review.icrc.org/sites/default/files/irrc-893-krev-megret.pdf>.

13 In the sense that they are based on common-law proceedings rather than special proceedings.

State's international responsibility and the individual's criminal liability.¹⁴ First of all, State responsibility under IHL, which is analogous to responsibility under general international law, is generally applied to situations involving inter-State relations rather than those involving individuals who are direct victims of violations of IHL.¹⁵ Criminal proceedings against individual perpetrators are indeed one way of obtaining reparations, but their criminal liability needs to be established, the victims must join the proceedings as a civil party¹⁶ and the perpetrators – if convicted – must have some financial means. These are serious obstacles for victims in the Sahel. For these reasons, a mechanism based on State responsibility rather than judicial responsibility must be created in order to ensure that reparations are made to victims of conflicts in Sahel countries – victims who are often poor and ill-prepared to exercise their right of access to justice.¹⁷ Such a mechanism is provided by the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (hereinafter “Principles and Guidelines”), a resolution adopted by the United Nations General Assembly (UNGA) on 16 December 2005.¹⁸ This text, if applied, would undoubtedly form a solid basis for appropriate reparations for victims of armed conflicts in the Sahel.

The conditions that must be met for appropriate reparations to be made to victims of IHRL and IHL violations will now be examined,¹⁹ with a focus on Niger. I will then address the legal and practical framework of these reparations.

14 Sophie Rondeau, “La réparation individuelle en application des mécanismes prévus par le droit international humanitaire”, *Windsor Yearbook of Access to Justice*, Vol. 27, No. 2, 2009, pp. 431–4, available at: https://www.canlii.org/fr/doctrine/doc/2009CanLIIDocs17#!fragment/zoupio-_Tocpdf_bk_1/BQCwhgziBcwMYgK4DsDwSzlQewE4BUBTADwBdoAvbRABwEtsBaAfX2zhoBMAzZgiITMAjAEoANMmylCEAlqjCuAJ7QA5KrERCYXAnmKV6zdt0gAynlIAhFQCUAogBl7ANQCCAOQDC9saTB80KTsIijAA.

15 However, when it comes to non-international armed conflicts, victims suffer violations within their own State and must have access to national courts in order to claim reparations under domestic law; the State's obligation to make reparations following a violation of IHL in these cases should not in principle be controversial. See, for example, United Nations Human Rights Committee, *International Covenant on Civil and Political Rights. General Comment No. 29: States of Emergency (Article 4)*, 31 August 2001, para. 14, available at: <https://digitallibrary.un.org/record/451555?ln=en#record-files-collapse-header>.

16 In countries with a civil law system, in particular.

17 Maman Aminou A. Koundy, *Les victimes de violations de droits de l'homme dans le conflit en lien avec Boko Haram*, United Nations Development Programme, Niger, April 2019.

18 UNGA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Res. 60/147, 16 December 2005, available at: <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>.

19 This article will not be limited to any given body of law, as our aim is to explore the legal bases of appropriate reparations for victims in the Sahel conflict. Also, it is now accepted that IHRL can strengthen and supplement IHL; see Robert Kold, “Human Rights and Humanitarian Law”, in Rüdiger Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law*, Vol. 4, Oxford University Press, Oxford, 2012, note 18, pp. 1040 ff.

Required conditions for appropriate and comprehensive reparations under international law

In the Principles and Guidelines, the question of reparations is not based on abstract considerations and definitions, but rather on the recognition of States' dual obligation towards victims: States are required to create remedy mechanisms and procedures for victims and ensure that these mechanisms and procedures result in effective reparations.²⁰

Various measures can be implemented to ensure that victims receive reparations following violations of their fundamental rights and other types of violations that commonly take place during conflict periods. They may include criminal proceedings, truth commissions, various types of institutional reform, transitional justice, and local initiatives to administer justice and oversee reconciliation, not to mention financial and other measures for victims. All of these initiatives are important and consist of positive aspects for both remedying and preventing violations (although to varying degrees).²¹

It is now recognized that achieving this will require a combination of initiatives designed and implemented with the involvement of the intended beneficiaries, i.e. the victims.²² The victims must therefore be grouped into categories, and the appropriate response – in view of the circumstances – must be identified.

Categorizing victims, and responsibility for reparations

In Sahel countries, a large number of gross and systematic violations of IHRL and IHL affect many people, all of whom are entitled to reparations.²³ However, the large number of people affected, and States' limited capacity to make reparations, represent important challenges. Should criteria be set out in order to define who is a victim?

In Principles and Guidelines,²⁴ the term “victims” is defined as:

persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment

20 See point “VII. Victims’ right to remedies”, in UNGA, Basic Principles and Guidelines (above note 18), which states that: “Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.”

21 See the document prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) about truth commissions, prosecutions and vetting: OHCHR, *Rule-of-Law Tools for Post-Conflict States: Prosecution Initiatives*, United Nations, New York and Geneva, 2006, available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/RuleoflawProsecutionsen.pdf>.

22 *Ibid.*

23 Amnesty International, above note 5.

24 For an analysis of the United Nations’ Principles and Guidelines resolution, see Theo van Boven, *The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, United Nations Audiovisual Library of International Law, United Nations, Geneva, 2010, available at: https://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_e.pdf.

of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. [...] A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.²⁵

This definition paves the way towards the categorization of victims. In effect, a person is a victim if they have suffered harm or a loss, regardless of whether the perpetrator is identified or has a familial relationship, and regardless of whether the harm or loss is caused by acts or omissions. Moreover, someone can be a direct or indirect victim, and the harm can be suffered individually or collectively. In any event, responsibility for reparations must be clearly set out in States’ domestic laws.

Categorizing victims

In the Sahel, and in Niger in particular, current armed conflicts²⁶ are accompanied by sporadic acts of terrorism; the victims are thus primarily victims of what are considered terrorist acts.²⁷ It is widely accepted that terrorist victims can be direct, secondary, indirect or potential victims. These four categories were laid out in the report of the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism:²⁸

- Direct victims of terrorism: natural persons who have been killed or have suffered serious physical or psychological injury as the result of an act of terrorism;
- Secondary victims of terrorism: natural persons who are the next of kin or dependents of a direct victim of terrorism;
- Indirect victims of terrorism: individuals who have suffered serious physical or psychological injury as the indirect result of an act of terrorism. This category includes: (a) members of the public (such as hostages or bystanders) who have been killed or injured through the use of potentially lethal force against suspected terrorists; (b) eyewitnesses who have

25 See point V of UNGA Res. 60/147, above note 18.

26 For an analysis that shows that it is indeed a situation of armed conflict during which acts of terrorism take place, see Maman Aminou A. Koundy, *Les obligations des Etats en matière de respect des droits de l’homme dans la lutte contre le terrorisme*, PhD thesis, Abdou Moumouni University, Niamey, January 2018, p. 205.

27 They are certainly victims of violations of IHRL and IHL at the same time.

28 Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Ben Emmerson, UN Doc. A/HRC/20/14, 4 June 2012, available at: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/20/14.

sustained serious psychological harm as the result of witnessing a violent terrorist incident or its immediate aftermath; (c) individuals who have been subjected to potentially lethal force by a public authority after being mistakenly identified as a suspected terrorist; (d) rescue workers who suffer serious physical or psychological harm as the result of taking part in emergency relief.

- Potential victims of terrorism: potential victims of future terrorist acts.

These distinctions are useful in that they encompass the various types of harm or loss suffered, whether from a physical or psychological perspective. However, in the context of the Sahel, they do not cover many victims whose property is destroyed or damaged, who have lost access to social services or who have had to leave their homes owing to the threat of terrorism, becoming internally displaced people or refugees. There are many such victims in the Sahel owing to the unique nature of the conflict, i.e. the fact that it is being perpetuated by the actions of NSAGs.²⁹ Indeed, the *modus operandi* of some of these groups has consisted of destroying villages, social services or farms, thereby forcing civilians to flee their villages and seek refuge elsewhere.

It is thus essential to include them in a victim reparations process despite the risk of secondary victimization – a term that refers to the victimization that results, not directly from the criminal act itself, but from the response provided to the victim by institutions or individuals.³⁰ Failing to consider them victims can indeed be viewed as one aspect of double victimization.

Responsibility for reparations

Until recently, wrongful acts and the ensuing reparations were treated in international law as a matter of inter-State responsibility.³¹ At least that is the basis of the ruling of the Permanent Court of International Justice in the *Factory at Chorzów* case: “It is a principle of international law that the breach of an engagement involves an obligation to make a reparation in an adequate form.”³² This is also the reasoning behind the judgment handed down by the International Court of Justice (ICJ) on 26 February 2007 concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (in the case of Bosnia and Herzegovina v. Serbia and Montenegro), in which it ordered Serbia to “take immediate and effective steps to ensure full compliance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide [...]”.³³

29 M. A. A. Koundy, above note 17.

30 Luc Barret, “Victimisation secondaire : quelle prévention ?”, in Philippe Bessole and Louis Crocq (eds), *Victime–Agresser. Tome 4: Récidive, répétitions, répétition, lien d’emprise et lois des séries*, Champ social, Nîmes, 2004.

31 OHCHR Resolution 1993/29, 25 August 1993, available at: https://ap.ohchr.org/documents/E/SUBCOM/resolutions/E-CN_4-SUB_2-RES-1993-29.doc.

32 Permanent Court of International Justice, above note 8.

33 For a commentary on that judgment, see Olivier Corten, “L’arrêt rendu par la CIJ dans l’affaire du *Crime de génocide (Bosnie-Herzégovine c. Serbie)* : vers un assouplissement des conditions permettant d’engager

These two rulings, handed down by international courts, set forth both the principle of State responsibility where a State violates its commitments, and its obligation to remedy the resulting harm with respect to another State entity.

However, customary international law regarding State responsibility strengthens the legal basis of the right that victims of violations of IHRL and IHL have to reparations, thereby modifying the traditional concept of State responsibility.³⁴ It is now recognized that the obligations assumed by a State under IHRL and IHL entail legal consequences not just with respect to other States, but also with respect to individuals or groups that fall within the State's jurisdiction.³⁵ Under the concept of State responsibility, where international obligations have been violated, the State is required to make reparations not only to other States but also to the injured people or groups. Thus, where a State fails in its obligation to protect civilians' rights, including from third-party violations, as is the case in Niger, State responsibility is engaged and the State has a duty to provide reparations to victims.

Under international law, the right to reparations also includes procedural and substantive aspects. Procedural aspects cover purely legal remedies as well as those remedies set out to ensure victims' access to domestic or international reparation mechanisms; they carry particular weight in the reparations process. This is underscored by the notion of "effective domestic remedies", which is mentioned explicitly in most human rights instruments. On this basis, the Human Rights Committee emphasized States' duty to make reparations to individuals whose rights under the Covenant have been violated, in these terms: "Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy [...] is not discharged."³⁶ Growing importance is given to the concept of effective remedy, in that it implies a right for victims and not just a duty for States.³⁷ In substantive terms, a mechanism must be created that effectively delivers reparations³⁸ in the form of restitution, compensation, rehabilitation, satisfaction and, where applicable, guarantees of non-repetition.³⁹

la responsabilité d'un État pour génocide ?", *Annuaire français de droit international*, Vol. 53, 2007, available at: https://www.persee.fr/doc/afdi_0066-3085_2007_num_53_1_3978.

34 See S. Rondeau, above note 14.

35 United Nations Security Council, Resolution S/RES/827, 25 May 1993. In this resolution on the creation of the International Criminal Tribunal for the Former Yugoslavia, for example, the United Nations Security Council "Decides [...] that the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law", available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N93/306/28/PDF/N9330628.pdf?OpenElement>.

36 Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (Eightieth Session), UN Doc. CCPR/C/21/Rev.1/Add. 13, 29 March 2004, para. 16, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2Bfud3cPVrcM9YR0iW6Txaxgp3f9kUFpW0q%2FhW%2FTpKi2tPhZsbEJw%2FGeZRASjdFuuJQRnbJEaUhby31WiQPl2mLFD6zSvMMvmQGVHA%3D%3D>.

37 *Ibid.*

38 UNGA, above note 18, paras 19 to 23.8 of the annex.

39 See Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 2: *Practice*, Cambridge University Press, Cambridge, 2005, Chapter 42, Section B, p. 3548, Rule 150,

At this stage, it is important to point out that the right to reparations is increasingly anchored in international case law, meaning it is no longer solely theoretical in scope. In its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the ICJ concluded that Israel had an obligation to make reparations for the damage caused to “all natural or legal persons having suffered any form of material damage as a result of the wall’s construction”.⁴⁰ Furthermore, the Rome Statute of the International Criminal Court (ICC) not only reaffirms victims’ right to reparations in cases heard by the ICC,⁴¹ but it also establishes a fund for victims.⁴² It is therefore clear that Sahel States involved in terrorism-related conflicts are under greater pressure from international law and practice to set up an appropriate reparations process.

Determining the appropriate response in Niger

The right to reparations encompasses not only the right to an effective remedy, but also appropriate, effective and comprehensive reparations. The reparations must therefore lead to changes in social, economic and political relationships and structures.⁴³ Achieving this will require a range of appropriate and comprehensive initiatives designed and implemented with the involvement of the victims that they are meant to help.

Appropriate reparation measures

Gross violations of IHRL and serious violations of IHL entitle the victims to reparations and impose on States the duty to provide them. However, it is obvious that the right to reparations and the duty to make them depend on the domestic legislation and policies of the State concerned. In this regard, States can draw inspiration from the suggestions on implementation measures set out in the Principles and Guidelines.

The core conditions of reparations⁴⁴ are fulfilled when the mechanism is designed to provide reparations for harm suffered in any of the forms generally

available at: <https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-ii-icrc-eng.pdf>.

40 See ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, advisory opinion of 9 July 2004, ICJ Reports of Judgments, Advisory Opinions and Orders, 2004, p. 136, available at: <https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>.

41 Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998 (entered into force 1 July 2002), Art. 75, available at: <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.

42 *Ibid.*, Art. 79.

43 African Commission on Human and Peoples’ Rights, *General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)*, adopted at the 21st Extra-Ordinary Session of the African Commission on Human and Peoples’ Rights, held from 23 February to 4 March 2017 in Banjul, The Gambia. Page 3, section 8, available at: https://www.achpr.org/public/Document/file/English/achpr_general_comment_no_4_english.pdf.

44 I have already mentioned the concept of “effective remedies” that must guide States as they set up a reparation mechanism.

accepted in international law.⁴⁵ First comes the concept of restitution, which refers to measures meant to “restore the victim to the original situation before the violations occurred”.⁴⁶ These measures may include, for example, restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property. This type of reparation could be considered to have been achieved when the Niger authorities moved victims back to their villages after rebuilding their housing and restoring social services in 2021;⁴⁷ another example is communities in which some of its members received vocational training and set-up kits at the same time that repentant ex-members of Boko Haram who turned themselves into the Niger authorities were being reintegrated into society.⁴⁸

Second, there is the concept of the compensation that should be awarded for any harm resulting from IHRL and IHL violations where an economic value can be attributed to the harm, as appropriate and in proportion to the gravity of the violation and the circumstances of each case (such as missed opportunities, lost income and moral injury). Third, rehabilitation measures are required, and they must include medical and psychological care as well as access to legal and social services. Fourth, satisfaction can be achieved through measures aimed at the cessation of continuing violations, verifying the truth, the search for the whereabouts of the disappeared, the recovery and reburial of bodies, public apologies, judicial and administrative sanctions, commemorations and tributes, and training on fundamental rights.

Lastly, guarantees of non-repetition must be provided to the victims. Such measures include institutional reforms aimed at ensuring civilian control of military and security forces; strengthening the independence of the judiciary; protecting human rights defenders; sufficiently protecting communities against third-party violations; providing human rights training; and promoting the observance of international standards relative to IHRL and IHL by public servants, law enforcement, the media and psychological and social services.

45 UNGA, above note 18.

46 Pierre d’Argent, “Le droit de la responsabilité internationale complété ? Examen des *Principes fondamentaux et directives concernant le droit à un recours et à réparation des victimes de violations flagrantes du droit international des droits de l’homme et de violations graves du droit international humanitaire*”, *Annuaire français de droit international*, Vol. 51, 2005, available at: https://www.persee.fr/doc/afdi_0066-3085_2005_num_51_1_3871.

47 See OCHA, Niger – Région de Diffa, *Analyse situationnelle trimestrielle, au 30 juin 2021*, p. 2, available at: https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ner_diffa_analyse_situationnelle_trimestrielle_juin_2021_17082021.pdf. Excerpt from p. 2: “In the second quarter of 2021, the authorities decided to return internally displaced people (IDPs) to their region on a voluntary basis. The operation was launched on 20 June 2021 by the regional and national authorities, and around 300 villages will be affected. This operation will involve all 104,588 IDPs in the region. Around 9000 IDPs from the villages of Baroua, Gagam and Kindjandji were the first to start the return process. By 20 June 2021, the return to Baroua (Bossou) involved 1187 households consisting of 5935 people, who left Awaridi (Diffa), Kindjandi (Gueskérou) and Barwa Yala (Kablewa).” (my translation)

48 More details are provided on the process of reintegrating the ex-Boko Haram members in the “Building a legal and institutional framework” section below.

Above all, reparation mechanisms must be capable of satisfying all victims, without exception.

Comprehensive reparations

The victim reparation programme that States have a duty to set up must be designed so that each victim benefits from it. It is obvious that the benefits will not be uniform, given the differences between the victims and the types of harm suffered. However, that is precisely what would make the programme comprehensive, i.e. its capacity to reach every victim, so that every victim stands to benefit. To achieve that, the objectives will have to be clearly defined before the process begins and then, once it is under way, the measures meant to guarantee this result must be put in place and remain so as long as the reparation programme lasts.

It is recognized that the development of a comprehensive programme depends on several factors.⁴⁹ First, reliable information on the victims and the reparation mechanism must be available. Information on victims can be hard to come by or inaccurate in terms of the victims' socio-economic characteristics and expectations. The reparation programme also risks being weakened by a lack of basic information, such as the number of victims that will have to be included, along with more detailed yet important information, such as the types of harm and injuries that are to be remedied. Steps will then have to be taken to ensure that the victims actually benefit from the programme. A participatory process can empower the victims, and this will increase the chances of success. This approach in itself has a remedial effect on victims, and it can also help ensure that victims who might otherwise be left out of the programme are effectively included. Lastly, the victims themselves must be aware of the reparation programme for it to be effective. This means making efforts to spread word of the programme far and wide and making it easy to receive the benefits.

In the Sahel in particular, local social structures must be taken into account. First, the process needs to factor in gender considerations, by adopting flexible measures that will bring in as many women as possible. Second, specific outreach measures aimed at displaced people must be created and implemented, as most victims in conflict-affected countries in the Sahel, and in Niger in particular, have been forcibly displaced, and most of the border villages that have borne the brunt of the conflict have been abandoned by their residents.⁵⁰

Special attention must also be paid to the victims' ability to benefit from the programme, including the level of proof required of them. The procedures and

49 OHCHR, *Rule-of-Law Tools for Post-Conflict States: Reparations Programmes*, United Nations, New York and Geneva, 2008, pp. 17 ff., available at: <https://www.refworld.org/docid/47ea6ebf2.html>.

50 See RFI, "Evacuation du lac Tchad: le rapport qui accable le Niger", 11 May 2015, available at: <https://www.rfi.fr/fr/afrique/20150510-evacuation-habitants-iles-lac-tchad-rapport-accable-autorites-niger-boko-haram-expulsion>; Agence Afrique, "Niger : 88 civils tués et plus de 18.000 déplacés suite aux attaques de Boko Haram", 5 April 2019, available at: <https://www.agenceafrique.com/16393-niger-88-civils-tues-et-plus-de-18-000-deplacés-suite-aux-attaques-de-boko-haram.html>.

requirements must not become obstacles to the programme's comprehensive scope by excluding a large number of victims from the reparations process. For example, short application deadlines will disproportionately affect female victims, who often need more time to get past their reluctance to enter into contact with public institutions⁵¹ – in most cases because these individuals were excluded or marginalized in the past. A high level of proof will also exclude many victims from the programme.

The social structure and the special role played by the traditional chiefdom in Niger must be taken into consideration during the decision-making process.⁵² Village chiefs can help to establish, through witness accounts, the truth of allegations made by potential reparations recipients. Also, the criteria employed must reflect the wide-ranging nature of the violations; while it is less difficult for someone to prove they were detained illegally or lost a loved one, it is very difficult for them to prove that they were tortured or sexually abused in cases where no physical traces remain, especially when the events in question took place in the distant past. This consideration is quite important in Niger and other Sahel countries.⁵³

All these conditions must be met for the reparations process to be capable of reconciling people within and between communities and building long-term peace. Also, adapting these conditions to the Sahel context is crucial for the post-crisis process to succeed. One of the unique characteristics of the situation, which cannot escape the notice of any observer, is that thousands of people who were poor before the conflict lost what little they had. What reparations should be provided to these people? A legal and operational framework is required to answer this question. However, the States have clearly not yet recognized the urgency of putting such a framework into place.

The legal framework and practical considerations for reparations in the Sahel: a look at Niger

As noted above, the needs of victims of violations of IHRL or IHL vary widely, depending on the extent to which each individual was affected. Moreover, these needs change over time, from the short term (right after the violation) to the medium and long term.

If victims' rights legislation were adopted, that would give victims more forms of recourse and deliver an effective message against violent extremism and

51 Humanitarian Dialogue, *Processus de sortie de crise à Diffa : Recueil des perceptions dans les 12 communes de la région*, Geneva, September 2017.

52 See Nassirou Bako-Arifari, *De la résurgence et de la ré-justification de la chefferie en contexte de démocratisation au Bénin et au Niger*, Das Arabische Buch, Berlin, 1998.

53 See Aurélien Tobie and Boukary Sangaré, *Impacts des groupes armés sur les populations au nord et au centre du Mali : Adaptations souhaitables des stratégies de rétablissement de la paix*, SIPRI, 2019, available at: https://www.sipri.org/sites/default/files/2019-11/1910_sipri_report_impacts_des_groupes_armes_sur_les_populations_au_nord_et_au_centre_du_mali.pdf.

terrorism, which are an underlying factor in Sahel conflicts. It would also make public entities more transparent and help build trust in reparation mechanisms. In addition, if the rights of victims of armed conflicts were enshrined in domestic law, these rights would stand a greater chance of being invoked and leading to an effective remedy. Beyond legislation, however, a comprehensive reparation mechanism will also require institutions capable of implementing it, along with procedures for victims to apply for benefits.

Unfortunately, the expected standards are not being met by current law, institutions or practices.

Building a legal and institutional framework

The first prerequisite for an effective reparation mechanism for victims of violations of IHRL and IHL is without a doubt the establishment of an appropriate legal and institutional framework. However, the necessary legal framework has not yet been created in conflict-affected countries of the Sahel, including Niger, and this is an objective hindrance to the post-conflict process. Let us take the case of Niger, where victims of violations of IHRL and IHL can in principle bring civil proceedings and obtain reparations from perpetrators whose guilt has been established.⁵⁴ The particular nature of the conflict and the large number of victims, however, as well as the difficulty that often-illiterate victims have in exercising their rights, are all factors that work against the awarding of reparations.⁵⁵

Niger's parliament, clearly taking into account these circumstances as well as international recommendations, introduced a new article in this regard into the Criminal Code through Law No. 2018-86 of 19 December 2018. Under this law, "victims of terrorist acts are entitled to compensation under the terms set out by decree by the Council of Ministers".⁵⁶ There is no doubt that appropriate legislation on victim reparations could be developed on the basis of this law. However, the implementing decree has not yet been enacted,⁵⁷ which means that victims of current conflicts are still considered victims of ordinary criminal offences.

Victims have little chance of obtaining any reparations given these legal circumstances. Although they may seek reparations by instituting criminal proceedings, they may be prevented from fully exercising their rights by several obstacles. First, the criminal prosecution mechanism is complex; this will confuse rural and, in many cases, illiterate individuals, who make up most of the victims of Niger's ongoing conflicts. Next, in criminal court, the judge will not award damages to a victim until the alleged perpetrators are actually found guilty, yet this is usually a very slow process that, in some cases, requires laborious evidence gathering. Lastly, even if the perpetrators are ordered to make reparations, they may not have the means to do

54 See Niger's Code of Criminal Procedure, Arts 80 ff., available at: http://www.justice.gouv.ne/images/lois/pdfs/Code_penal_et_CPP_Edition_Janvier_2018.pdf.

55 M. A. A. Koundy, above note 17.

56 Niger's Criminal Code, Art. 399.1.25 (my translation): available at: http://www.justice.gouv.ne/images/lois/pdfs/Code_penal_et_CPP_Edition_Janvier_2018.pdf.

57 More than two years have passed, at the time of writing.

so.⁵⁸ Another concern is that victims and their loved ones may open themselves up to reprisals by appearing in criminal proceedings, as their identity may not be protected and the measures needed to keep them safe may not be taken. An appropriate legal framework must therefore be put in place quickly to prevent secondary victimization, which would be prejudicial to the establishment of durable peace.

It is indeed necessary to recognize that the harm caused by conflict-related violence often goes beyond the immediate impact on direct victims to affect the entire society. Also, it is indeed because of the need to protect society that the criminal sanction was put in place. However, criminally sanctioning perpetrators is not enough. The victims should be awarded reparations under an appropriate legal mechanism. In the specific context of terrorist acts, they are the victims – whether direct or indirect – of an infraction that targeted one or more States or international organizations and that were aimed at the most highly valued interests of a State or of the international community. It is therefore absolutely necessary to assess the rights and needs of victims, to support them, and to deliver reparations that compensate them for the harm they have suffered.

The institutional framework is also lacking; there is no appropriate institution dedicated to ensuring that reparations are made to conflict victims in Sahel countries in general, and in Niger in particular.⁵⁹

The existence of a reparations process sponsored by the High Authority for the Consolidation of Peace in Niger must not, however, be overlooked. It came about when combatants and others associated with Boko Haram defected from the group in response to the government's appeal and promise of amnesty in 2016. The government authorized the creation of a reception centre for those who surrendered, in Goudoumaria, through an order issued on 4 February 2019 by the Ministry of the Interior, Public Safety, Decentralization and Customary and Religious Affairs. This legal framework is based on the post-crisis strategy in the Diffa region⁶⁰ and the framework document governing the surrender of Boko Haram members.⁶¹ It set out the legal basis for the centre, which actually began operating in February 2017.

The amnesty resulted in the surrender of at least 375 Boko Haram members, including 30 women. They all enrolled in the socio-economic

58 According to the statistics kept by Niger's specialized judicial unit in charge of terrorism cases (*Pôle judiciaire spécialisé en matière de lutte contre le terrorisme*), no reparations have been made to date, even though it has heard and handed down rulings in 100 cases per year on average since 2017. See *Pôle judiciaire spécialisé en matière de lutte contre le terrorisme et la criminalité transnationale organisée*, December 2020.

59 The only decrees that can be considered to address this issue are Decree No. 2013-214/PRN/MI/SP/D/AR/MDN/MH/E/MF of 7 June 2013, which amends and supplements Decree No. 2008-376/PRN/MI/SP/D/MDN of 21 November 2008, on the compensation of agents of the defence and security forces, their dependants, their direct ascendants and victims of operations to maintain order or defend the country, and Decree No. 2013-219/PRN/MDN of 14 June 2013, on compensation for orphans, widows, widowers, direct ascendants, military personnel and police officers who have died in the line of duty. However, these decrees only cover victims of defence and security forces and only provide for individual monetary damages, while reparations go well beyond this and also cover memorial aspects and the ability of communities to become self-sustaining more broadly.

60 *Stratégie de sortie de crise dans la région de Diffa*, Cabinet of the Prime Minister of Niger, July 2021 version.

61 High Authority for the Consolidation of Peace, *Document cadre de prise en charge de la reddition des éléments de Boko Haram*, December 2016.

reintegration programme at the centre.⁶² This programme consists of training and psychosocial support, which leads to a completion certificate, a vocational training certificate, a set-up kit and a set-up grant of 50,000 CFA francs. Participants also swear a Koranic oath, as a group, in which they renounce violent extremism. Before those eligible are accepted in the programme, anyone who committed a war crime or a crime against humanity is separated out, so that they can be criminally prosecuted. At the same time, in order to make it easier to reintegrate ex-members in host communities, and to pinpoint those communities' needs, awareness-raising meetings are held, and a programme designed to provide socio-economic support for 600 young people from these communities was set up as a way of sustaining and bolstering their resilience in the face of violent extremism.

This programme is designed in part to ensure that the objectives of justice and peace can both be achieved. However, in addition to the fact that this process suffers from a serious lack of funding, it is limited to the region of Diffa and does not appear to have taken root in the western part of the country even though, as already mentioned, it is crucial for a durable exit from the crisis. Furthermore, there is a need to more effectively outline the conceptual and legal framework of this transitional justice in Niger, turning it from a secondary mechanism, like it is now, into a primary instrument.

A recent change has taken place in the institutional framework for reparations for victims of armed conflict in Niger. The Niger government created the “*waqf*” fund⁶³ to support the dependants of agents of the defence and security forces who die or go missing in the line of duty, or who die or become disabled as a result of wounds suffered on the field of operations.⁶⁴ On 7 February 2020, the High Waqf Authority was created by Decree No. 20-136/PRN/MF. The same decree sets out the protocol for managing and monitoring this funding mechanism.

There is reason to believe that this reparation mechanism could be used for all victims, not just agents of the defence and security forces. It could, thus, be a powerful tool for Niger's government to meet its reparation obligations towards conflict victims.

A nascent practice to build on

The conflicts plaguing Niger, and the Sahel in general, have multiple causes.⁶⁵ Among them, the failure of various sectors to further develop has helped spur the

62 Jeannine Ella Abatan and Remadji Hoinathy, “Getting Goudoumaria Right: Are Boko Haram Defectors Reintegrating Safely?”, Institute for Security Studies, 8 December 2021, available at: <https://issafrica.org/iss-today/getting-goudoumaria-right-are-boko-haram-defectors-reintegrating-safely>.

63 Under Islamic law, the *waqf* is an inalienable donation to a public, religious or charitable entity, or to one or more individuals.

64 See G5 Sahel, “Lancement du premier fonds public Waqf au profit des forces de Défense et de Sécurité du Niger”, 12 April 2021, available at: <https://www.g5sahel.org/lancement-du-premier-fonds-public-waqf-au-profit-des-forces-de-defense-et-de-securite-du-niger/>.

65 Isel van Zyl, *Preventing Violent Extremism: The Role of Communications*, ISS Policy Brief, Institute for Security Studies, 31 March 2020, available at: <https://issafrica.org/research/policy-brief/preventing-violent-extremism-the-role-of-communications>.

political, economic and social marginalization that underpins radicalization within certain socio-economic groups. There is a high risk that reparation needs will not be sufficiently addressed if this situation is not properly analysed before any reparation programmes are set up.

Such programmes must also be designed and implemented with a view to achieving durable peace. The programme's design can include the forms of reparation discussed above (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) and divide them into two groups: material and symbolic reparations, which can be delivered individually or collectively.

Reparations, whether material or symbolic, can come in various guises. Material reparations can take the form of compensation, i.e. cash payments or the delivery of services such as education, health care or housing. Symbolic reparations may include official apologies, commemoration days or symbolic sites dedicated to the victims' memory. These measures would fall under the "satisfaction" category.

Reparation programmes must have both dimensions to be effective. Indeed, programmes that provide for a range of benefits—including material and symbolic—with each delivered both individually and collectively, are more likely to reach a greater proportion of victims than programmes that focus on delivering material benefits. This is because the victims, whose rights have been violated in different ways, should not necessarily receive exactly the same types of benefits; creating a broader range of benefits will ensure that more victims are covered.⁶⁶ In Niger, a solely material reparation programme may not be appropriate given the differences among the victims and the harm suffered. It will be more appropriate to set up a process that provides both cash payments and health-care services, education and housing assistance, vocational training and so on. With a complex programme of this type, benefits could reach—through collective symbolic measures in particular—a larger number of victims and other people who have been affected in one way or another, and the benefits could be delivered flexibly in order to meet the victims' specific needs.

However, it is clear that the initiatives under way in Niger's conflict zones lack overall consistency in terms of objectives and implementation. But the fact that such initiatives exist is noteworthy,⁶⁷ and, at the very least, they are contributing to the collective reparations process, including by improving the social infrastructure and fostering social cohesion and reconciliation.

Social cohesion has indeed been impaired by past violations, particularly violations of fundamental rights, including sexual and sexist violence committed by a wide range of people. Under these circumstances, a reconciliation programme must be created alongside the legal mechanism so as to promote the peaceful reintegration of perpetrators and ensure reparations are made to victims. Lasting, strategic and comprehensive solutions that reflect the needs of those affected must

66 See UNGA, above note 18; and T. Van Boven, above note 24.

67 Examples include the Stabilization Facility for Lake Chad, in the eastern region of Diffa, and the reconstruction programme in Tillaberi region in western Niger, both led by Niger's government.

be identified in consultation with the victims. In addition, to avoid secondary victimization and provide guarantees of non-repetition, an inclusive and multilateral dialogue should be set up with the goal of building trust and overcoming divisions between communities and stakeholder groups, in particular between local administrations and authorities on one hand and the communities on the other.⁶⁸ The communities need to be brought in to ensure that the reintegration process is acceptable to them. In addition, consulting victims of sexist violence and providing them with support services will facilitate their reintegration into the community. If possible, reconciliation and social cohesion programmes should be designed and put in place at the regional level (at a minimum, regional consultations should be held), and key inclusion-related actions should be run at the community level.⁶⁹

In October 2020, Niger adopted the National Strategy for Preventing Radicalization and Violent Extremism, undoubtedly in response to the need for a coherent and comprehensive vision of reparations and a durable exit from the crisis.⁷⁰ This framework, if applied, would certainly provide a better foundation for reparations for victims of conflict in Niger.

Conclusion

The severity and scope of the conflict-related crisis and its impact in the Sahel, and in Niger in particular, have only been made worse by social, environmental and both climate- and governance-related challenges over the course of recent decades. These challenges, the product of long-established economic and sociocultural practices, have worn away at the resilience of people and households and at systemic resilience, disrupting institutions, economic production and social cohesion in the region. Current armed conflicts, the effects of which add to the burden of these structural challenges, have uprooted large numbers of people, disrupted markets and social services, and damaged the economy in the affected zones. The conflicts have left behind them numerous direct and indirect victims. In response, States in the Sahel, including Niger, must comply with their international reparation obligations. This means creating the legal, institutional and practical conditions under which victims can benefit from reparations—outside of the common-law legal mechanism, if possible, in view of its known limitations.

There is an increasingly urgent need for reparations for conflict victims in the Sahel, and in Niger in particular, starting with symbolic acts of recognition.

68 It is good to see that, in this regard, the High Authority for the Consolidation of Peace is carrying out various activities aimed at community reconciliation and cohesion among social strata. This undoubtedly makes a significant difference in maintaining a certain level of intercommunity peace in Niger's conflict-affected zones, which is better than in neighbouring countries in a similar situation.

69 M. A. A. Koundy, above note 17.

70 National Centre for Strategic and Security Studies (CNESS) of the Republic of Niger, *Stratégie nationale de prévention de la radicalisation et de l'extrémisme violent*, October 2020, available at: https://www.g5sahel.org/wp-content/uploads/2021/03/SNPREV-Niger_-version-finale.pdf.

Preliminary steps should be taken to empower this group of people so that they can break free of their dependent status, which they clearly dislike.⁷¹ This phase will lay the groundwork for other, more comprehensive and effective, reparation measures.

These measures need to be part of a holistic programme so as to be coherent and coordinated with all other measures. Ultimately, victim reparations – material and symbolic, individual and collective – must be designed and implemented in a manner befitting the circumstances, the available resources and the victims themselves.

71 *Ibid.*