

## Article

# Religious Persecution in Sub-Saharan Africa: Jihadism and ICC Prosecution

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**Abstract:** The most intense violations of religious freedom have been recently perpetrated in Asia, by governments, and in Africa, by jihadist terrorists linked to intercommunal violence, especially in the Sub-Saharan region. This work focuses on African countries where states have failed to manage the threats to the most fundamental human rights, posed by terrorist groups on religious terms. It analyzes whether and how those atrocities perpetrated by both al-Qaeda and the Islamic State, and their associates, can be prosecuted by the International Criminal Court. For this purpose, the Al Mahdi case constitutes an exceptional precedent regarding jurisdiction, accountability, and judgement.

**Keywords:** religious persecution; terrorism; jihadist colonization; Sub-Saharan Africa; International Criminal Court

## 1. Introduction: From Intercommunal Violence to Terrorism

Religious freedom, as well as other fundamental rights, could be unprotected suddenly during an armed conflict or humanitarian crisis. However, this loss is often the result of a gradual process of erosion. The agents of this erosion are certainly not democratic societies<sup>1</sup>, but most likely either totalitarian governments or international terrorist groups. This work focuses on African countries where, according to authoritative reports (Szymanski 2021), the safeguards of religious freedom are almost all gone. These states have failed not only to effectively enable the individual's exercise of the right to freedom of religion but also to manage the threats to this endangered inalienable human right. Some have identified religion as part of the problem and forced it out of the public space. Others are simply overwhelmed by the events. There, religious freedom risks disappearing under what could be called extreme persecution.

More specifically, this research focuses on the most serious violations of fundamental human rights, committed under the dictates of the extreme Islamist ideology of Salafi Jihadism. Therefore, it should be noted that the term that will be used here—religious persecution—implies a broader scope than religious discrimination. Jihadists and their manipulated fighters, using religion for political and material purposes, are not only discriminating whoever opposes that peculiar creed, but also killing, raping, enslaving or torturing in the name of God (Le Roux 2019; Krause 2020). It is not only about religious freedom but about basic human rights violations, where perpetrators misuse “holy struggle” (jihad) for both unholy means and ends.

The most intense violations of religious freedom have been recently perpetrated, and are still ongoing, in 26 countries with a population of almost four billion people (51% of the world's population). Eleven of these countries are in Africa and the rest in Asia (Szymanski 2021). In Africa, religious persecution stems mainly from intercommunal violence and jihadist terrorism. Both elements are linked, especially in Sub-Saharan Africa, where generations of poverty, corruption, pre-existing intercommunal violence, and weak state structures have turned this area into a breeding ground for marginalized and frustrated young populations (Von Riedemann 2021), a perfect recruitment pool for extremists.



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In Sub-Saharan Africa, communities and different faith groups have lived together in relative peace, historically divided between farmers and nomadic cattle herders. However, intercommunal outbreaks of violence, based on ethnic-, land rights- and resource-based conflicts, have increased due to the consequences of climate change, growing poverty, and attacks by armed criminal gangs. Without educational and labor opportunities, frustrated young people enrolled in armed groups that have evolved from local criminal gangs to affiliated jihadist groups. Youngsters are victims of a deep manipulation of religion, with promises of counter-corruption, wealth, and power.

Studies on transnational jihadist terrorism agree with the evidence that both al-Qaeda and the Islamic State, the two leading organizations, instead of starting new conflicts, “tap into local grievances, establish linkages with marginalized groups in the society, and in the long run, transform what may initially have been an ethnically, or politically motivated conflict, into a religiously framed, armed struggle” (Krause 2020).

Jihadist terrorists target authorities, the military, police, village leaders, and teachers, but also religious leaders and faithful Muslims and Christians alike (Le Roux 2019). However, the second religious group faces an increasing and specific persecution, due to growing Islamist radicalization. In a short term, this region could lose the social and religious harmonic pluralism that is characteristic to it.

The conflicts have provoked the displacement of millions of people, with forced abandonment of fields and businesses, exposure to starvation (in places where armed groups impede access to humanitarian aid), and to serious human rights violations: women and children forced into slavery and raped, boys and men forced into the ranks of the jihadists, or men beheaded if they dare refuse to embrace Salafi Jihadism.

Considering such serious violations and their actors, as examined in the following chapters, it will be also convenient to determine if they constitute sufficient evidence within the International Criminal Court (ICC or Court) jurisdiction<sup>2</sup> of offenses related to crimes against humanity, war crimes, or genocide<sup>3</sup>. Furthermore, assimilating terrorism into these categories will not be the only challenge. It will be also necessary to link the jurisdiction to one of the members of the Rome Statute (Kenny 2017). For these purposes, the Al Mahdi case<sup>4</sup> represents a crucial precedent, a useful milestone in considering ICC prosecution related to terrorism, ten years after the crimes committed in Timbuktu. In fact, this was the first case within the ICC regarding the situation in Mali, and also the first case in history where the ICC ruled against an individual on the destruction of cultural monuments. Those actions, attacking historic and religious monuments in Timbuktu, were classified as war crimes.

## 2. Jihadist Colonization

Intercommunal violence between farmers and herders has existed for centuries. However, militant Islamist groups in Nigeria, central Mali, and northern Burkina Faso have instrumentalized such disputes to inflame grievances, thereby driving recruitment (Le Roux 2019; Brottem 2021). Ironically, jihadists have been involved actors in truce agreements between herders and farmers. These amicably resolved conflicts have reduced intercommunal tension and strengthened jihadists as territory rulers who have succeeded in excluding governments from the negotiations<sup>5</sup>. Therefore, farmer-herder conflicts are also managed by terror because the rule of law has been weakened or cancelled<sup>6</sup>. A resource access issue has evolved into an ethnic conflict, then successively, criminal activity through Salafi jihadist preachers has turned into religious persecution. The culmination of the process has adopted the shape of proclaimed caliphate provinces, by former gangs transformed into affiliated groups of the Islamic State and Al-Qaeda. Now that it is very difficult to differentiate between local disputes and armed extremist groups, some notice should be given to explain such a peculiar colonization<sup>7</sup>.

After being severely beaten in Middle East, jihadists have moved from Iraq and Syria to join local criminal groups in Mauritania, Mali, Burkina Faso, Niger, Nigeria, northern Cameroon, Chad, the Central African Republic, the Democratic Republic of the Congo,

Somalia and Mozambique (Von Riedemann 2021). In a term of three years, they have developed a network of many operative groups, whose presence is already consolidated in Sub-Saharan Africa<sup>8</sup>. Once they have recruited militants, established groups, and controlled territory, maintenance is required. Apart from drug trafficking, the most traditional and powerful source of terrorist financing in any continent (Financial Action Task Force 2021)<sup>9</sup>, the other means used in the region are related to religious persecution. Unradicalized Muslims and Christians become both targets and material for their needs, becoming victims of human trafficking, kidnapping, looting, and extortion. There is also, in certain cases, another important source of financing, namely illegal resource exploitation; however, this comes with the control of the territory and its link to religious persecution should be oriented with forced labor and human trafficking. One example is the mining of precious minerals and heavy metals in the Kivu province of the Democratic Republic of the Congo<sup>10</sup>.

According to the Interpol Special Notice<sup>11</sup> related to the UN Security Council Consolidated List on the ISIL (Da'esh) and Al-Qaeda sanctions regime<sup>12</sup>, the main operating groups in Sub-Saharan Africa (as a region recently facing extreme religious persecution) are the following, distributed in operating countries.

*Mali, Burkina Faso, Niger:* Jama'at Nusrat al-Islam Wal-Muslimeen (JNIM) originated in 2017 as a merger in Al-Qaeda of the Islamic Maghreb (AQIM)<sup>13</sup>, Al-Mourabitoun<sup>14</sup>, Ansar al-Dine ("defenders of the faith")<sup>15</sup>, and Macina Liberation Front (MLF)<sup>16</sup>; Ansaroul Islam, the first native jihadi group founded in Burkina Faso in 2016, cooperates with JNIM (Zimmerman 2020) and the Islamic State in the Greater Sahara (ISGS)<sup>17</sup>. JNIM and ISGS represent two incompatible visions of insurgent social order: the first tries to build broad popular support by discrediting ISGS's often-excessive targeting of civilians (Nsaibia 2021). There is a recent clash and competition between them, ISIL, and Al-Qaeda at a regional level. However, this inter-jihadi fight waned when they were facing a common enemy, the now officially-ended French-led Operation Barkhane (Nsaibia 2021; Baldaro and Diall 2020). Still, both conglomerates are promoting the perpetration of extreme religious persecution by their respective affiliates in the region, consisting of serious violations of basic human rights, on allegedly religious grounds.

*Nigeria, Niger, Cameroon, Chad:* Jama'atu Ahlis-Sunna Lidda'Awati Wal-Jihad (Boko Haram), in Arabic "People Committed to the Prophet's Teachings for Propagation and Jihad" was founded in Nigeria in 2002, with the goal of supporting Islamic education and establishing an Islamic state in Nigeria. The group began its terrorist activity in 2009. The Islamic State West Africa Province (ISWAP) originated from a pledge by the Boko Haram leader in 2015, who refused to accept a new leader appointed by ISIL authorities a year later. It provoked a division into two factions and, depending on the interpretative criteria, either Boko Haram or ISWAP could be considered as a splinter group<sup>18</sup> of the other one since 2016.

*DR of Congo, Somalia, Kenya, Tanzania and Mozambique:* As for Central and East Africa, every group is aligned with the Islamic State<sup>19</sup>. The operating ones are the Central African province of the Islamic State (ISCAP) in the Democratic Republic of Congo, Al-Shabaab and Islamic State in Somalia (ISS), and, most recently, Ahlu-Sunnah Wa-Jama (ASWJ) in Mozambique<sup>20</sup>.

### 3. Comparative Legal Framework for Religious Freedom in the Region

As mentioned above, religious persecution in Africa is perpetrated by non-state agents and communal groups mixed with jihadist terrorists, affiliated to, or collaborating with, either IS or Al-Qaeda. This important trait<sup>21</sup> makes it appropriate to review the involved national legal frameworks related to religious freedom<sup>22</sup>, because in Sub-Saharan Africa, this fundamental right is recognized by the rule of law.

Burkina Faso, Cameroon, Chad, the Democratic Republic of Congo (DRC), Mali, Mozambique, Niger, and Nigeria share a similar legal framework regarding freedom of religion. They belong also to the group of African states experiencing recent extreme

religious persecution. The neutrality is their main trait. In those secular states, socially characterized by religious diversity, no privileges are formally granted to any religious denomination. According to their Constitutions<sup>23</sup>, discrimination based on religion is prohibited and freedom of religion is guaranteed.

Religious entities can register, as can any other non-governmental organization. Religion is not taught in public schools<sup>24</sup>, but Muslims, Catholics, and Protestants are allowed to run confessional educational institutions, as they do indeed: their primary and secondary schools must only comply with some administrative requirements, related to personnel, facilities, and curricula.

Yearly, in Burkina Faso the Muslim (representing the great majority of the population), Catholic, Protestant, and animist communities receive public subsidies related to their worship activities, but also to other activities considered to be of public interest. Furthermore, some of the countries have concluded agreements with the Holy See, governing the cooperation between state and Church institutions, and therefore giving the latter a public statute<sup>25</sup>. The agreements signed by the DRC and Mozambique also include references to the institutions of Catholic education, the teaching of religion in schools, welfare and charitable activities of the Church, pastoral care (the DRC agreement specifying care in the armed forces, prison, and hospital institutions), as well as property tax and the obtaining of entry visas and residence permits for religious personnel (*ibid.*).

In Somalia, on the other hand, the legal and governmental situation is similar to Libyan instability. The Federal Government of Somalia (FGS), in its provisional constitution, prohibits discrimination based on religion, but it is not the case in Somaliland and Puntland constitutions<sup>26</sup>. In all three jurisdictions, Islam is the state religion and the laws and courts must follow the principles of Shari'a<sup>27</sup>. Conversion from Islam to another religion is not socially accepted and expressly prohibited in Somaliland and Puntland Constitutions. And the few remaining non-Muslims are also prohibited from professing their faith in public. Islamic religion must be taught in all public schools, except for a few non-Muslim schools (*ibid.*).

#### 4. Crimes of Religious Persecution in Sub-Saharan Africa

According to the recent data about violent events compiled by the Africa Center for Strategic Studies<sup>28</sup> and the Armed Conflict Location and Event Data Project (ACLED)<sup>29</sup>, the number of incidents and reported fatalities is increasing dramatically<sup>30</sup>. Regarding the aforementioned countries, weekly ACLED Regional Overviews report continuous political violence (as defined in ACLED dashboard) attributed to Islamist militants and affiliates, describing deadly types of sub-events, such as battles, explosions, or remote violence, violence against civilians, and mob violence. The figures reveal that the number of deadly victims has more than doubled, comparing the same periods from one year to another<sup>31</sup>, and the number of displaced persons by terrorist actions has multiplied alarmingly. Some of the events, if analyzed case by case and contrasted with related news published by divulgative sources, can be labeled as religious persecution<sup>32</sup>, for example, targeting civilians during religious services or in educational and social institutions with a confessional identity, temples, or religious ministers. In consequence, not every act of violence perpetrated by jihadists should be interpreted as religion-based (i.e., a battle against security forces), but this is precisely what these terrorist groups intend.

Civil wars and foreign military intervention, from the deployment of peacekeeping forces<sup>33</sup> to mercenaries<sup>34</sup>, have been proven to function as drivers of and rationales for transnational terrorism (Crenshaw 2020). However, these multilateral interventions have also helped to bring some of the terrorists to justice—not to domestic justice in weakened states, but to complementary international justice. This was the case in the Al Mahdi prosecution and others, bringing them to the International Criminal Court (ICC).

However, it should be noted that criminal procedures, at any level, national or international, are always conducted against individuals, not groups. Lacking jurisdiction over

entities, as any other criminal court, the ICC is only able to prosecute individuals. With the purpose of enlarging the range, it has been suggested that legal changes are enacted at international and national levels, to hold corporations criminally liable for their complicity in crimes of atrocity (Delgrande 2021). Nevertheless, terrorist groups internationally defined as non-state armed groups can still be held accountable for the crimes they commit collectively in another softer way. By different resolutions, beginning with 1267 (1999), the UN Security Council imposed an arms embargo, a travel ban, and an assets freeze on designated individuals and entities associated with the Taliban, Al-Qaeda, and lately the Islamic State in Iraq and the Levant (ISIL, or Da'esh)<sup>35</sup>.

#### 4.1. ICC Jurisdiction

The ICC is an institution based on a treaty, the Rome Statute, so its basis to act is limited to compliance with at least one of the following conditions<sup>36</sup>: the State in which the alleged conduct occurred is a party or has accepted jurisdiction of the Court; the State of the alleged perpetrator's nationality is party to or has accepted the Court's jurisdiction; or a situation has been referred to the Prosecutor by UNSC, regardless of whether a State Party is involved.

Once the previous pre-requisites are met, and according to Article 13 in the Statute, the Court may then exercise its jurisdiction only when, alternatively, the situation is referred to the Prosecutor by a state party or referred by the UNSC, or the Prosecutor initiates an investigation *motu proprio* of conduct occurring within the territory of a state party.

Within the referred countries under recent extreme religious persecution in the region, most are States Parties to the Rome Statute<sup>37</sup>. As for the ones which are not parties, such as Somalia and Mozambique, a UNSC referral to the ICC regarding IS or Al-Qaeda affiliates or associates in that region would be possible. This is not the case with state forces, because the UNSC proposal would be easily vetoed for political reasons. This is what happened when trying to provide jurisdiction over Syrian State forces or opposition figures, vetoed by Russia and China<sup>38</sup>. Therefore, considering the precedent about Libya<sup>39</sup>, a UNSC referral focused on the alleged acts of IS or Al-Qaeda or related groups, excluding certain categories of persons<sup>40</sup>, with accompanying temporal and geographic limitations, would appear to be in the national interests of all UN members<sup>41</sup>. In consequence, the ICC could also prosecute specific individuals whose impunity would constitute a threat to international peace (Kenny 2017, p. 124).

#### 4.2. Al Mahdi Case as a Milestone for ICC Prosecution

In the last decade, Mali has struggled with the increasing geographic expansion of terrorist activities, as various groups of Islamic extremists have been pooling resources and cooperating to increase their scope. In August 2016, the state of Mali made headlines: not only because the first case against a member of Ansar al-Dine was sentenced in the International Criminal Court<sup>42</sup>, but also as it marked a turning point as the first case in which the destruction of cultural monuments was categorized and prosecuted as a war crime. This is remarkable, because those monuments were places of worship, so this form of terrorism has an ultimate scope of destroying the religious identity (Briones Martínez 2020).

Ansar al-Dine was an Islamic Tuareg militant organization, founded in December 2011 by Iyad Ghali<sup>43</sup>, and later disbanded in March 2017<sup>44</sup>. Since then, as mentioned above, it belongs to the umbrella group *Jamaat Nusrat al-Islam wal Muslimeen* (JNIM), along with the Sahara branch of Al-Qaeda in the Islamic Maghreb (AQIM), Al-Mourabitoun, and the Macina Liberation Front (FLM). Although primarily based in Northern Mali, they operated throughout the country with the objective of imposing strict Sharia law and expelling foreign influence from the country. Over the course of 5 years, they carried out various attacks: their primary operations being against the Mali military and opposing rebel groups (Mapping Militant Organizations 2019).

In early 2012, collaborating with the National Movement for the Liberation of Azawad (MNLA), AQIM and the *Mouvement pour l'Unification et le Jihad en Afrique de l'Ouest*



(MUJAO), they launched an offensive to invade northern Mali, dismantle Malian security forces, and take control of the province (Lebovich 2013). After assisting the MNLA in occupying the region, Ansar al-Dine took leadership to achieve its aim of enforcing strict Sharia law upon the civilian population living in the areas under its control, causing many to flee to Bamako or other southern cities, or to neighboring countries such as Mauritania, Burkina Faso, and Niger.

According to the Prosecutor of the ICC, an extreme Islamic police force was set up to impose strict rules that banned religious practices at the tombs and mausoleums of Muslim saints, prohibited music, celebrations, and public gatherings, closed public schools, segregated the sexes, and enforced total control over all media. Citizens that refused to obey were subjected to harassment, rape, torture, and murder<sup>45</sup>. In June 2012, Ansar al-Dine went on to destroy all the mausoleums in Timbuktu that did not correspond with Sharia law. These included several ancient tombs and mosques that were designated World Heritage sites by UNESCO. In early 2013, French and African forces began operations, and eventually forced Ansar al-Dine out of the seized northern territory.

Mali had signed and ratified the Rome Statute of the International Criminal Court, so the Malian authorities referred the case to the Court on 13 July 2012. The specific crime of terrorism is not expressly acknowledged in the Statute, therefore in theory, the Court only has jurisdiction over cases with respect to the following crimes: the crime of genocide; crimes against humanity; war crimes; and the crime of aggression. However, rather than waiting for terrorism to be added to the statute, various articles were able to be interpreted in a way that allowed Mali's case to be prosecuted in accordance with the existing crimes expressed in the statute. After conducting the initial stage of preliminary examinations, the ICC Prosecutor determined that there was sufficient evidence within the ICC jurisdiction of offenses related to Article 7, "Crimes against humanity", and Article 8, "War Crimes". Based on this, they opened an investigation into the alleged crimes committed on the territory of Mali since January 2012.

As mentioned before, the ICC lacks jurisdiction over entities and is only able to prosecute individuals. On 8 September 2015, a warrant was put out for the arrest of Ahmad Al Mahdi Al Faqi, a member of Ansar al-Dine and the key de facto commissioner of the Islamic Police force that had been established in the region, and on 26 September 2015 he was surrendered to the International Criminal Court (ICC) by the authorities of Niger<sup>46</sup>. This first step was already a great achievement. Such an easy international cooperation in the criminal prosecution of terrorists is due to the fact that Al Mahdi was not a state agent or a politician. Furthermore, there was a popularity factor related to this case, leading to rising international commitment for the crimes. It was not the fact that the destroyed ancient tombs and mosques were religious structures that provoked a worldwide news coverage. As with the Old City of Dubrovnik or the Mostar bridge during the Croatian and Bosnian wars of independence, respectively, the mausoleums in Timbuktu had also been designated World Heritage sites by UNESCO. They were religious, and this trait made them belong to a cultural tangible global heritage. Such a label gave the events a wide range of audiences within the international community, influencing the process of bringing it forward to the ICC.

The Al Mahdi case<sup>47</sup> was the first case within the ICC Prosecutor's investigation regarding the situation in Mali. It was also the first case in history where the International Criminal Court (ICC) had been asked to rule against an individual on the destruction of cultural monuments, and the first time that it has classified such actions as war crimes<sup>48</sup>. At the opening of the trial on 22 August 2016, Mr. Al Mahdi pleaded guilty to the war crime of attacking 10 historic and religious monuments in Timbuktu, Mali, between 30 June and 11 July 2012, for which he also expressed regret. He was sentenced to nine years imprisonment on 17 August 2017, and was also ordered to pay a €2.7 million compensation fee to the victims. He was not however prosecuted for any crimes against humanity<sup>49</sup>.

After having served two-thirds of the nine years, Mr. Al Mahdi asked the court for an early release, renewing his remorse for his actions, stating: "My conscience has now

been awakened and I hope in the future to contribute to the preservation of mausoleums, manuscripts, to ease the pain of my brothers who suffered from these atrocities" (Laplace 2021). The victims could accede to what looked like a sincere repentance, after Mr. Al Mahdi, through his defense, assured them that he wanted to do everything to contribute to the fight against religious extremism "in whatever society he finds himself" (Laplace 2021).

This case was monumental and opened the door to others such as the Al Hassan case, regarding another member of Ansar al-Dine, also *de facto* chief of the Islamic police, who faced trial in 2020 (still ongoing) for crimes against humanity and war crimes allegedly committed in Timbuktu<sup>50</sup>. It also demonstrated how the arguably limited jurisdiction in the statute can be adapted and interpreted to prosecute crimes that would otherwise avoid accountability.

#### 4.3. Accountability under the Rome Statute

Those atrocities in Mali, and afterwards in the region, perpetrated by the enumerated terrorist groups against the civilian population, are all grave acts and crimes under the Rome Statute<sup>51</sup>, which, when taken in their totality, fit the characterization of the crime of persecution. The populations in those countries have been, and still are, victims of a widespread and systematic attack within the meaning of article 7(1) of the Rome Statute, on religious and gender-based grounds, by violent armed groups imposing by sheer force their proclaimed rules and prohibitions (Bensouda 2019).

According to the Al Hassan case, and thanks to its procedures, it should now be possible to prosecute other African jihadists' crimes against humanity besides war crimes<sup>52</sup>. Events such as torture, rape, sexual slavery, and other inhumane acts, including, *inter alia*, forced marriages and persecution, would belong to the first category. As for war crimes, the sub-types to be considered are torture (again), cruel treatment, outrages upon personal dignity, passing of sentences without previous judgement pronounced by a regularly constituted court affording all judicial guarantees which are generally recognized as indispensable, intentionally directing attacks against buildings dedicated to religion and historic monuments, rape, and sexual slavery.

There are two modes of liability for considering criminal responsibility in the Rome Statute that can fit the profile and conduct of many terrorist leaders in the region: one is the commission of the crimes individually, jointly with another or through another person (article 25(3)(a)); the other is ordering, soliciting, or inducing the commission of the crimes (article 25(3)(b)).

Some advantages can be considered for being optimistic about further ICC prosecution in the region. Firstly, the path has already been opened by the Al Mahdi precedent and followed by the Al Hassan case, so it cannot be objected that terrorism is not prosecuted by the ICC. Secondly, jurisdiction is easily acknowledged, due to the Rome Statute membership in Sub-Saharan countries. Furthermore, for non-State parties' situations, permission could be found since the defendants are not state agents. Finally, and almost for the same reason, individual accountability is also possible, because these alleged criminals are terrorist leaders, not (still) political authorities.

## 5. Conclusions

In the Sub-Saharan region, multiple and consistent evidence has been collected on the statement that the civilian population has long been a victim of grave acts and crimes that characterize the crime of persecution, on religious grounds, attributed to violent armed groups and non-state agents internationally listed as terrorist entities.

Religious persecution perpetrated by jihadist terrorists has already begun to be successfully prosecuted by the ICC under the category of war crimes. Furthermore, the Malian situation has also provided the Court with some events that are currently being examined as constitutive of crimes against humanity. Due to weak governance in the region under jihadist colonization, international cooperation for obtaining the Court jurisdiction over the individuals who have been and still are committing atrocities in those territories appears to

be convenient. The treaty-based nature of the ICC should not represent an insurmountable obstacle but an inspiring challenge.

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## Notes

- 1 The European Court of Human Rights reminds that the right to freedom of religion or belief is “one of the foundations of a democratic society”. *Eweida and others v United Kingdom (dec.)*, n. 48420/10, 59842/10, 51671/10 and 36516/10 [2013] European Court of Human Rights (n. 79); *Guide on Article 9 of the European Convention on Human Rights*, 2020. [https://www.echr.coe.int/Documents/Guide\\_Art\\_9\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf) (accessed on 14 April 2022).
- 2 Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) United Nations, Treaty Series, vol. 2187, n. 38544, also published by: International Criminal Court, 2011. <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf> (accessed on 14 April 2022).
- 3 Regionally, for the European Parliament, this aspect is clear. Cfr. European Parliament resolution on the systematic mass murder of religious minorities by the so-called ‘ISIS/Daesh’ (2016/2529(RSP)), 4 February 2016.
- 4 Vid. Infra chapter about the case.
- 5 These ‘peace pacts’ also mean that in practice the state and the regular army (are forced to) give partial control over the region to Jihadi militia (De Bruijn 2021).
- 6 This situation is very different to the European approach, where a criminal legal framework does exist, nationally developed, to face terrorism. So European foreign fighters in Africa could be prosecuted in their own countries (García Rivas 2021). In a few European jurisdictions, it is also possible to find a specific protection regime for victims of terrorism (Muñoz Escandell 2017).
- 7 African jihadism did exist long before the Sahel has been reinforced with burdened MENA (Middle East and North Africa) jihadists (Echeverría Jesús 2011). But the recent and successive proclamations of caliphate provinces, made by metropolitan leaders located in another continent, provides the term colonization with a more proper sense.
- 8 North Africa is omitted, since their countries, also under jihadist attacks, have not been labelled as under extreme religious persecution in the last yearly reports (Szymanski 2021; Von Riedemann 2021). But the influence of Northern AQIM and IS over Sub Saharan Africa is obvious, also over Europe (Andreu 2018).
- 9 The close connection between international terrorism and transnational organized crime, expressly mentioning illicit drugs, was already noted by UNSC (United Nations Security Council) res. 1373 (2001), n. 4, the one adopted shortly after the events of 11 September 2001. Unlike the set of resolutions comprising the sanctions regime against Al-Qaeda and the Taliban (vid. Infra), resolution 1373 (2001) does not impose sanctions, nor does it establish a listing mechanism. Rather, it requires States to fully employ their criminal justice systems and operational capacities against terrorism and terrorists.
- 10 Kivu, Africa’s Great Lakes battleground”, News24, 6 October 2018; <https://www.news24.com/news24/africa/news/kivu-africas-great-lakes-battleground-20181005> (accessed on 14 April 2022)). Another example, more recent, is the threat to international investments in natural gas projects in Mozambique (“U.S. counterterrorism chief says Mozambique militants are Islamic State affiliate”, Reuters, 9 December 2020; <https://jp.reuters.com/article/ozatp-us-mozambique-insurgency-usa-idAFKBN28J0QL-OZATP> (accessed on 14 April 2022)).
- 11 The INTERPOL-United Nations Security Council Special Notice alerts global police to individuals and entities that are subject to sanctions imposed by the United Nations Security Council. The three most common sanctions are assets freeze, travel ban and arms embargo. <https://www.interpol.int/en/How-we-work/Notices/View-UN-Notices-Entities> (accessed on 14 April 2022). It should be also noted (for the purpose of ICC prosecution -vid. Infra chapter about the topic-) that there is a narrow cooperation between the Interpol and the ICC. Cfr. Co-operation Agreement between the Office of the Prosecutor of the International Criminal Court and the International Criminal Police Organization-INTERPOL (adopted 22 December 2004, entered into force 22 March 2005). <https://www.interpol.int/content/download/9463/69422/version/5/file/4-%20ICC.pdf> (accessed on 14 April 2022), art 2.
- 12 Consolidated list of individuals and entities available at: <https://scsanctions.un.org/3828ken-al-qaida.html> (accessed on 14 April 2022).
- 13 The Organization of Al-Qaeda in the Islamic Maghreb (AQIM), created in Algeria in 1998 as the Salafist Group for Call and Combat (GSPC was a splinter entity of the Armed Islamic Group, which was the largest and most extreme terrorist group in Algeria at the time), renamed AQIM in 2007, after the group’s union with Al-Qaeda. Its Sahara Emirate is affiliated to JNIM.
- 14 Established in 2013 by a merger of Al Moulathamoun (a splinter group of AQIM, founded in 2012) and the Mouvement pour l’Unification et le Jihad en Afrique de l’Ouest (MUJAO is a splinter group of AQIM, which formally announced its existence following the abduction of three humanitarian workers from a Saharan refugee camp in Tindouf on 23 October 2011).
- 15 Founded in Mali in December 2011. Vid. Infra chapter 4.



- 16 Also known as Katiba Macina, is based in Mali, and emerged in 2015.
- 17 ISGS is a splinter group of Al-Mourabitoun formed in 2015, based in Mali and Niger.
- 18 UNSC Narrative summary refers only that “(D)ue to infighting, ISIL-West Africa split into two factions, al-Barnawi’s faction (ISWAP) and Shekau’s faction (Boko Haram)”. But the INTERPOL Notice related to that summary states that ISWAP is a splinter group of Boko Haram. <https://www.interpol.int/en/How-we-work/Notices/View-UN-Notices-Entities#2020-14350> (accessed on 14 April 2022).
- 19 Added to the already mentioned ISWAP (including ISGS), there are other five declared IS provinces of the Caliphate in Africa: ISCAP, ISS, Sinai Province in Egypt, Algerian Province and Libyan Province (Warner et al. 2020).
- 20 There is only a narrative summary and a correspondent INTERPOL notice available for Al-Shabaab, referring the earlier terrorist actions, dating from 2008. The summaries related to the other entities, if do exist, are not still available. <https://www.interpol.int/en/How-we-work/Notices/View-UN-Notices-Entities#2014-12944> (accessed on 14 April 2022).
- 21 In the field of extreme religious persecution, this is the difference between Africa and Asia, where the persecutors are the supposed protectors: totalitarian governments dictate and apply discriminatory regimes, based on Marxist, military, or nationalist (ethno-religious) criteria (Szymanski 2021; Blanco Fernández 2011).
- 22 Within recent extreme religious persecution cases in Africa, Eritrean and Libyan ones should be aligned with Asian trend: systematic, widespread, and gross human rights violations that may amount to crimes against humanity could be imputable to authorities. Eritrea: HUMAN RIGHTS COUNCIL, *Detailed findings of the commission of inquiry on human rights in Eritrea*, 8 June 2016, Office of the United Nations High Commissioner for Human Rights, pp. 28–30. There, only four religious denominations are recognized (Eritrean Orthodox, Roman Catholicism, Lutheran Evangelical, and Sunni Islam) but strongly controlled, so they are also persecuted, together with unrecognized religious groups. [http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoEritrea/A\\_HRC\\_32\\_CRP1\\_read-only.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoEritrea/A_HRC_32_CRP1_read-only.pdf) (accessed on 14 April 2022); Libya: “Libya: Decree integrating Radaa forces into a new security apparatus overlooks need for accountability,” *Amnesty International Public Statement*, 21 June 2018. <https://www.amnesty.org/download/Documents/MDE1986292018ENGLISH.pdf> (accessed on 14 April 2022).
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- 24 DRC is the exception, where religion is taught in public school and is part of the official curriculum.
- 25 Burkina Faso: *Agreement between the Holy See and the State of Burkina Faso on the legal status of the Catholic Church in Burkina Faso, signed in the Vatican on 12 July 2019* (entry into force: 7 September 2020). “Pactio inter Sanctam Sedem et Statum Burkinae Fasanae de Iuridico Statuto Ecclesiae Catholicae in Burkina Fasana”, *Acta Apostolicae Sedis*, vol. 113, 15 September 2021, pp. 73–87; DRC: *Framework Agreement between the Holy See and the Democratic Republic of Congo on matters of mutual interest, signed in the Vatican on 20 May 2016* (entry into force: 17 January 2020). “Pactio Libellorum Diplomaticorum inter Sanctam Sedem et Rempubicam Democraticam Congensem de rebus communis rationis”, *Acta Apostolicae Sedis*, vol. 113, 15 September 2021, pp. 64–72; Mozambique: *Agreement on the principles and juridical dispositions governing relations between the Holy See and Mozambique, signed in Maputo on 7 December 2011* (entry into force: 12 March 2012). “De principiis et normis iuridicis pro publicis rationibus inter Sanctam Sedem et Rempubicam Mozambicanam”, *Acta Apostolicae Sedis*, vol. 104, n. 7, 6 July 2012, pp. 567–86.
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- 29 *Africa’s Active Militant Islamist Groups*, Africa Center for Strategic Studies, 2021. [https://acninternational.org/religiousfreedomreport/wp-content/uploads/2021/03/Interna\\_Backgrounders\\_Africa.jpg](https://acninternational.org/religiousfreedomreport/wp-content/uploads/2021/03/Interna_Backgrounders_Africa.jpg) (accessed on 14 April 2022).

- 30 There are many other divulgative sources, including news agencies and international organizations, informing about such events. Here follows a summary review of illustrative examples related to the region. Boko Haram, responsible for killings, kidnappings and looting, and the burning of entire villages, in Nigeria, Chad, Niger and Cameroon: “UNHCR outraged by attack on camp hosting displaced people in Cameroon, at least 18 people killed”, *UNHCR Briefing*, 4 August 2020. <https://www.unhcr.org/news/briefing/2020/8/5f291a704/unhcr-outraged-attack-camp-hosting-displaced-people-cameroon-18-people.html> (accessed on 14 April 2022); JNIM and ISGS, in Mali and Niger: “20 peacekeepers wounded in Mali attack: UN”, *EWN*, 10 February 2021. <https://ewn.co.za/2021/02/10/20-peacekeepers-wounded-in-mali-attack-un> (accessed on 14 April 2022); ISCAP in the DRC: “Islamic State claims its first Congo attack”, *Reuters*, 18 April 2019. <https://www.reuters.com/article/us-congo-security-idUSKCN1RU2KD> (accessed on 14 April 2022); Al-Shabaab in Somalia: “Mayor of Mogadishu dies as result of al-Shabaab attack”, *The Guardian*, 1 August 2019. <https://www.theguardian.com/world/2019/aug/01/mayor-of-mogadishu-dies-as-result-of-al-shabaab-attack-somalia> (accessed on 14 April 2022); Al-Shabaab around the Kenya-Somalia border, clearly targeting non-Muslims: “Kenya Looks to Secure Border as Al-Shabab Launches Deadly Attacks”, *VOA News*, 16 January 2020. <https://www.voanews.com/africa/kenya-looks-secure-border-al-shabab-launches-deadly-attacks> (accessed on 14 April 2022).
- 31 The Armed Conflict Location and Event Data Project, cit.
- 32 In fact, there is a new pilot project collecting real-time data on religious repression and disorder, ACLED-Religion, but it is still focused only in seven countries located in Middle East and North Africa: Bahrain, Egypt, Iran, Iraq, Israel, Palestine, Yemen. <https://acleddata.com/acleddata-religion-dashboard/> (accessed on 14 April 2022). When it comes to asylum seekers on religious grounds, it is also properly documented. Vid. i.e., procedures and cases explained by Vega Gutiérrez (2019), especially related to the focus region, in its note n. 52, about a Somali woman seeking asylum in Sweden.
- 33 For example, French military (Operation Serval-Barkhane) and the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) or African Union–mandated peacekeeping force in Somalia (AMISOM). (Mapping Militant Organizations 2018, 2019).
- 34 For example, the private company Wagner (Russian) giving support to some African Armies. The Armed Conflict Location and Event Data Project, cit.
- 35 Consolidated list of individuals and entities available at: <https://scsanctions.un.org/3828ken-al-qaida.html> (accessed on 14 April 2022), cit.
- 36 Rome Statute, arts. 12–13.
- 37 Burkina Faso, Chad, DRC, Kenya, Mali, Niger, Nigeria. Assembly of States Parties, ICC. [https://asp.icc-cpi.int/en\\_menus/asp/states%20parties/african%20states/Pages/african%20states.aspx](https://asp.icc-cpi.int/en_menus/asp/states%20parties/african%20states/Pages/african%20states.aspx) (accessed on 14 April 2022).
- 38 “Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution”, *UNSC, Meetings Coverage*, SC/11407, 22 May 2014.
- 39 UNSC Res 1970 (2011), known as Libya Referral.
- 40 Libya Referral states in its n. 32, par. 6, “that nationals, current or former officials or personnel from a State outside the Libyan Arab Jamahiriya which is not a party to the Rome Statute of the International Criminal Court shall be subject to the exclusive jurisdiction of that State for all alleged acts or omissions arising out of or related to operations in the Libyan Arab Jamahiriya established or authorized by the Council, unless such exclusive jurisdiction has been expressly waived by the State”.
- 41 Since the unanimous condemn of 9/11 events and subsequent universal commitment to fight international terrorism, all States are compelled to bring them to justice, according to UNSC res. 1373 (2001).
- 42 *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Case n. ICC-01/12-01/15, Judgment, 27 September 2016. [https://www.icc-cpi.int/CourtRecords/CR2016\\_07244.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_07244.PDF) (accessed on 14 April 2022).
- 43 In accordance with paragraph 13 of resolution 1822 (2008) and subsequent related resolutions, the ISIL (Da’esh) and Al-Qaeda Sanctions Committee makes accessible a narrative summary of reasons for the listing for individuals, groups, undertakings, and entities included in the ISIL (Da’esh) and Al-Qaeda Sanctions List. The narrative summary about Ghali is available on the Committee’s website. [https://www.un.org/securitycouncil/sanctions/1267/aq\\_sanctions\\_list/summaries/individual/iyad-ag-ghali](https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list/summaries/individual/iyad-ag-ghali) (accessed on 14 April 2022).
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- 45 *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, cit.
- 46 *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, cit.; “Situation in Mali: Ahmad Al Faqi Al Mahdi surrendered to the ICC on charges of war crimes regarding the destruction of historical and religious monuments in Timbuktu”, *ICC-CPI Press Release*, n. 1154, 26 September 2015. <https://www.icc-cpi.int/Pages/item.aspx?name=pr1154&ln=en> (accessed on 14 April 2022).
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