



## **MFVA SUBMISSION TO THE SECOND UPR OF NIGER**

### **DEVELOPMENTS SINCE FIRST UPR**

1. Around and since the time of Niger's first UPR in February 2011, Niger has made commendable efforts in promoting and protecting the right to freedom of expression. In particular, Niger has made progress reforming its laws since a coup d'état in February 2010 and its transition to regular governance in April 2011. Over the last five years in Niger, journalists and others trying to express themselves have been subjected to physical attacks, threats, arbitrary arrests and detentions, court sentences, excessive punitive fines, and censorship, all of which have violated the right to freedom of expression. An overwhelming majority of these violations were committed by state actors.

### **METHODOLOGY**

2. The information in this submission is based on reports of violations by the Media Foundation for West Africa's (MFWA) trained correspondents. The MFWA also collated reports of violations issued by members of the IFEX global network, of which the MFWA is a member, and by other international and local freedom of expression and human rights groups.

## **NATIONAL FRAMEWORK FOR FREE EXPRESSION RIGHTS**

3. The rights to freedom of expression, freedom of assembly, and freedom of association are guaranteed under Niger’s Constitution (2010) and international and regional human rights treaties ratified by Niger.
4. Article 30 of Niger’s constitution guarantees the right to freedom of expression:

“Any person has the right to freedom of thought, of opinion, of expression, of conscience, of religion and of worship.  
The State guarantees the free exercise of worship and the expression of beliefs.  
These rights are exercised with respect for public order, for social peace and for national unity.”
5. Article 32 of Niger’s constitution guarantees the rights to freedom of assembly and to freedom of association:

“The State recognises and guarantees the freedom of movement, the freedoms of association, assembly, procession and manifestation within the conditions defined by the law.”
6. In 2010, the transitional government of Niger decriminalised media offenses. Prison sentences were replaced with fines for the offenses of libel and the publication of false information.
7. In November 2011, the first democratically elected president of Niger, Issoufou Mahamadou, was the first head of state to endorse the Declaration of Table Mountain, which calls both for the repeal of criminal defamation and insult laws and for greater press freedom across Africa.
8. In 2011, the transitional government passed an access to information regulation directed at administrative bodies. Niger is one of six countries in West Africa with such a legislation or regulation. However, accessing information remains difficult due to implementation challenges.
9. Expression online is generally free; however, internet penetration is very low (1.7% in 2013).

## **CONTEXT OF THE MEDIA**

10. Niger has dozens of private newspapers and one state daily newspaper.
11. Radio is the most accessible news source for Nigeriens. While the state dominates radio broadcasting, there are some private radio stations that broadcast in French, which is the official language of Niger, as well as local languages. Foreign services, such as Voice of America and Deutsche Welle, also broadcast in Niger.
12. There are three private and two state television stations.
13. Niger's state-run media regulatory body, the National Observatory on Communication (ONC), and the Niger Independent Monitoring Centre for Media Ethics and Conduct monitor media broadcasts and publications. Occasionally, these bodies have censured and even suspended outlets due to their content.
14. Online, the High Commission for Technology and Communication ordered the state-owned telecommunications company, Sonitel, to block the websites of Boko Haram and other terrorist organisations.
15. Some journalists, especially those who work for government-owned media outlets, practice self-censorship.
16. In 2012, the government doubled the press support fund, which was established by law to support the public service functions of the media and encourage the media to promote democracy, from 100 million CFA to 200 million CFA (US\$200,000 to \$400,000).
17. In 2013, the government held the first Press Freedom Night, an event aimed at promoting press freedom and professional ethics.

## **SITUATION OF FREEDOM OF EXPRESSION ON THE GROUND**

18. Since Niger's first UPR, there were 30 distinct reported incidents of violations of freedom of expression, including violations of the interrelated freedoms of assembly and association. All but one of these incidents were perpetrated by state actors: 25 by police or security forces, 3 by courts, and 1 by the media regulatory body ONC. The remaining incident was perpetrated by individual supporters of Niger's ruling political party.

## **FOLLOW UP ON ACCEPTED RECOMMENDATIONS FROM THE 2011 UPR**

### **Actual Attacks and Excessive Fines Inhibit Freedom of Expression.**

19. Niger accepted three recommendations by the Working Group to respect and protect the right to freedom of expression. Niger supported the following recommendations to:
  - “Further strengthen the institutional framework for the protection of freedoms of press and expression and guarantee these rights to all citizens”;<sup>1</sup>
  - “Ensure, in accordance with its international obligations, that the right to freedom of expression is fully respected”;<sup>2</sup> and
  - “Ensure freedom of expression and assembly and that human rights defenders are respected and protected.”<sup>3</sup>
20. However, actual attacks, including physical attacks and arbitrary arrests and detentions, and excessive punitive fines have violated the right to freedom of expression in Niger since its first UPR. In addition, such actions may contribute to a chilling effect on speech, and the lack of accountability for violations may foster impunity in Niger.

#### ***Physical Attacks***

21. On 18 August 2012, BBC-Hausa female reporter Tchima Illa Issoufou was physically attacked in Maradi by supporters of Niger’s ruling coalition over her coverage of the country’s food crisis and high cost of living. After the incident, the BBC transferred her to its Zinder office. No action has been taken against the perpetrators.
22. On 17 January 2015, police entered the premises of Ténéré media group, without a permit or prior notice, and asked the radio to stop its transmission. The police physically attacked and threatened journalists and shut the radio down for about 15 minutes.
23. Also on 17 January 2015, police physically attacked a team of reporters from Ténéré and Labari media groups.

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review of Niger, A/HRC/17/15, ¶ 76.58 (by Germany).

<sup>2</sup> A/HRC/17/15, ¶ 76.59 (by Slovakia).

<sup>3</sup> A/HRC/17/15, ¶ 76.60 (by Sweden).

24. On 18 January 2015, police and security forces verbally and physically attacked journalists with Canal 3, Niger 24, Liptako, Africable, Radio RM, and Sarraounia with clubs and teargas.
25. Also on 18 January 2015, about ten policemen physically attacked journalists with the Bonferey media group with clubs and teargas.
26. On 21 May 2015, Samira Sabo, a journalist with the state-owned publishing corporation l'Office National des Editions de Presse, was whipped by a member of the presidential guard for undisclosed reasons.

### **Threats**

27. On 3 September 2013, Moussa Aksar, managing editor of the bi-weekly newspaper, *L'Evenement*, received a threatening message from an army lieutenant. The threat followed a 2 September publication in *L'Evenement* about the lieutenant and others' arrests and involvement in a coup attempt the month prior. Aksar lodged a complaint with the authorities, but they did not act.

### **Arbitrary Arrests and Detentions**

28. On 15 June 2013, three Al-Jazeera journalists—Yvonne Ndege, Romuald Luyindula, and Mohamed Abubakar—and their driver, Rabiou Abdullah, were arrested and detained for two days after covering conditions of refugees who fled fighting in Nigeria between the Nigerian army and Boko Haram. They were arrested for “travelling without accreditation”; although they had visas and permission from the local authorities, they were not formally accredited by the Ministry of Communications. The crew was given no food or water before they were released without charge. They were then detained for some more hours being released again.
29. On 23 January 2014, police arrested and detained Soumana Idrissa Maïga, editor of the independent daily *L'Enquêteur*, for allegedly threatening national security in a 17 January article. A magistrate released him without charge on 27 January.
30. On 27 January 2014, police in Niamey arrested and detained *L'Union* editor Ousmane Dambadji and Canal 3 TV presenter

Zakari Abdou over commentary made on a 14 January Canal 3 broadcast. They were released on 30 January 2014.

31. On 25 January 2015, three Nigerien opposition leaders—Soumana Sanda, Youba Diallo, and Ousseini Salatou—and social media activist Ibrahim Bana were taken into police custody. Their lawyer said their arrest followed the execution of letters of request by a magistrate regarding the January 2015 demonstrations against the cartoons of the Prophet Mohammed in the French satirical newspaper, *Charlie Hebdo*.
32. On 18 May 2015, Moussa Tchangari, managing editor of the bi-monthly *Alternative* and Secretary-General of the organisation l'Association Alternative Espace Citoyen, was arrested for alleged involvement in a criminal conspiracy with Boko Haram.
33. On 24 May 2015, civil society activist Nouhou Arzika was arrested at about 8pm and detained at the Criminal Investigation Department for allegedly breaching national security. His arrest and detention is likely a result of a TV interview in which he condemned the “poor conditions” of Nigerien soldiers fighting Boko Haram in Diffa Region, which borders Nigeria.

***Detentions in Violation of Niger’s 2010 Law Decriminalising Libel and the Publication of False Information***

34. On 21 July 2011, Modibo Oumarou Aliou, managing editor of *Le Canard Déchaîné*, was arrested and detained overnight in prison in Niamey. He was charged with “dissemination of false information” for repeatedly publishing “false theft” allegations against Alhaji Ousman, the former press secretary of General Djibou Salou, after Ousman filed a complaint with the police. This arrest came after the decriminalisation of press offenses and thus violated the new decriminalising law.
35. On 7 October 2011, Zakari Alzouma and Ayouba Karimou, publisher and managing editor respectively of the *Opinion*, were arrested and detained for about six hours at the Criminal Investigative Department (CID) headquarters in Niamey. On 13 October 2011, they appeared before the state prosecutor to answer

questions regarding a 28 September article that alleged the magistrates' body in Niger had committed acts of corruption.

36. On 25 January 2014, Abdoulaye Mamane, presenter of a Hausa-language talk show on Radio Télévision Bonferey, and a guest on his 16 January show were detained after the guest had accused the president of corruption. A magistrate released Mamane without charge on 27 January.
37. On 31 March 2015, Oumarou Aliou Modibo, managing editor of the private weekly satirical *Canard Déchainé*, was arrested and then questioned by a prosecutor following a libel accusation by a former Minister of Justice.

### ***Court Sentences and Excessive Punitive Fines***

38. On 2 July 2012, director of *Jeunesse Infos* Marcus Issaka Lawson, was sentenced to prison for nine months for committing forgery after falsely attributing an article. He was also fined 500,000 CFA (US\$1,000) for libelling former leader Salou Djibo's wife.
39. On 10 September 2013, Ali Cisse Ibrahim, director of the private newspaper *L'Actualité*, was tried and found guilty of libelling a foreign minister. The Tribunal of Niamey ordered Cisse to pay five million CFA francs (US\$10,000) to the plaintiff. Cisse was initially brought in for questioning on 27 May and had appeared before a judge on 28 May.
40. On 21 January 2015, the Niamey Magistrate's Court ordered Souleymane Salha and Issoufou Oumarou Alzouma, staff of *Le Courrier*, an independent weekly newspaper, to pay damages of 10.5 million West African CFA francs (US\$18,500) to Minister Ali Mariama El Ibrahim for libel.

### ***Censorship***

41. On 8 July 2011, Niger's media regulatory body, the ONC, temporarily suspended eight newspapers for "unwarranted attacks on citizens by flagrantly violating the provisions of the charter of professional journalists." While the articles included exaggerations, they reportedly did not satisfy the libel threshold.

## **Police Violate the Right of Assembly.**

42. During its 2011 UPR, Niger accepted two recommendations by the Working Group to respect and protect assembly rights. Niger accepted recommendations to:
- “Ensure freedom of expression and assembly and that human rights defenders are respected and protected”;<sup>4</sup> and
- “Respect the legitimate exercise of freedom of association and ensure all human rights activists operating in the country, including individuals cooperating with United Nations human rights mechanisms, are spared from any harassment or intimidation.”<sup>5</sup>
43. However, police have violated both the right of assembly of demonstrators and the right to freedom of expression of journalists covering demonstrations. The spate of police brutality against demonstrators and journalists, coupled with the impunity characteristic of many West African states, indicates Niger’s failure to respect and protect the right to freedom of expression and the right of assembly.
44. Furthermore, actions by police and security forces have not conformed to international principles on crowd control, which say the use of force must be strictly necessary. Before resorting to force, police must apply non-violent methods insofar as using them is possible.<sup>6</sup> In fact, police are restricted in their use of violence to disperse even unlawful and/or violent assemblies. If assemblies are unlawful but non-violent, police must avoid the use of force or, if absolutely necessary, employ force only to the minimum extent necessary to disperse the crowd.<sup>7</sup> If assemblies are violent, police must still limit the use of force and firearms to the minimum extent necessary and may only use firearms when less extreme means are insufficient.<sup>8</sup>

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<sup>4</sup> A/HRC/17/15, ¶ 76.60 (by Sweden).

<sup>5</sup> A/HRC/17/15, ¶ 76.61 (by Slovakia).

<sup>6</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, ¶ 4.

<sup>7</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, ¶ 13.

<sup>8</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, ¶ 14.

### ***Physical Attacks***

45. On 19 May 2011, police beat several student demonstrators and briefly detained six others during a protest at a mining school in Agadez.
46. On 6 December 2011, police used batons, whips, and teargas to disperse protesters demonstrating against the trial of a political activist. One student demonstrators, Laminou Mai Kanti, was hit in the head with a teargas canister and died as a result. Thirteen more demonstrators were hospitalised and numerous others were injured. Positively, the officer suspected of firing the teargas canister that struck Kanti was arrested and detained.
47. On 7 December 2011, students and others demonstrated against the police brutality of 6 December. A female bystander was killed by a policeman's stray gunshot.
48. On 17 April 2012, police physically attacked protesters demonstrating against the destruction of a mosque with teargas. The police also arrested several of the demonstrators.
49. On 21 October 2012, police attacked civil society groups planning a demonstration by seizing their loudspeaker-equipped vehicles. Some of the organisers were also detained for a while at a police station.
50. In February 2013, an innocent bystander, schoolboy Zaiyanou Hassane, was killed by a policeman's stray gunshot during a demonstration against the government's treatment of motorcycle taxis in Gaya. Following this incident, student groups in Niamey held peaceful, but sometimes violent, protests.
51. On 15 February 2013, police physically attacked four journalists—Souleymane Ousmane and Issaka Lawali, journalists and cameramen with Bonferey Radio and Television; Hadiza Amadou of Dounia Radio and Television (RTD); and Nassa Seydou of Ténére Radio and Television—as they tried to cover peaceful teachers' protest. The police tear-gassed the journalists, seized Amadou's camera, and beat up the RTD crew before chasing them all away. Nine people were injured during this act of police brutality and some were also arrested and detained for hours.

52. On 17 January 2015, police tear-gassed protesters demonstrating against the cartoon of the Prophet Mohammed in *Charlie Hebdo*. Two Dounia TV journalists passed out after inhaling the teargas.

***Arbitrary Arrests and Detentions***

53. In August and September 2013, residents of Goudel neighbourhood in Niamey demonstrated against the installation of barriers that blocked direct access to and from downtown and that also increased the price of public transportation. Authorities arrested an unknown number of demonstrators along with a local parliamentarian; however, all demonstrators were released by the end of 2013.

## **MFWA'S RECOMMENDATIONS TO THE GOVERNMENT OF NIGER**

### **To Law Enforcement**

54. Sensitise police and security forces on Niger's 2010 law decriminalising libel and the publication of false information to prevent future unlawful arrests and detentions for these acts.
55. Develop and implement national guidelines for police and security forces prohibiting violence against journalists and others exercising their free expression and assembly rights.
56. Develop and implement national guidelines for police on crowd control that conform to international principles, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Guidelines must clearly indicate when it is and is not permissible to use force and/or firearms, including teargas, to disperse demonstrations.
57. Hold police and security forces accountable for using excessive force through internal mechanisms and external mechanisms, such as supporting criminal investigations into police brutality.

### **To the Judiciary**

58. Stop issuing excessive punitive fines, which tend to have a chilling effect on freedom of expression.

### **To Public Bodies and Private Bodies Performing Public Functions**

59. Raise awareness on the right to information and educate the public on how they can access public information.
60. Sensitise information holders on their directive to provide access to public information and administrative documents.