



**UNIVERSAL PERIODIC REVIEW
SUBMISSION FOR NIGER**

NGO Submission

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ABOUT HRF

1. The Human Rights Foundation (HRF) is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies. HRF unites people in the common cause of defending human rights and promoting liberal democracy. Our mission is to ensure that freedom is both preserved and promoted around the world.
2. We focus our work on the founding ideals of the human rights movement, those most purely represented in the 1948 Universal Declaration of Human Rights (UDHR) and the 1976 International Covenant on Civil and Political Rights (ICCPR).

INTRODUCTION

3. This submission was prepared by HRF, for the Universal Periodic Review (UPR) of the Republic of Niger (Niger). In this submission, HRF evaluates Niger's implementation of recommendations made during its previous UPR, as it relates to the current human rights situation in the country, which is characterized by systematic, widespread, and gross violations of human rights, including: the ongoing curtailment of the freedom of expression, information, association, and assembly, the use of the death penalty, and gender violence and discrimination.

FOLLOW-UP ON THE PREVIOUS REVIEW

4. As a member state of the United Nations, Niger has committed to protecting, promoting, respecting the individual rights and fundamental freedoms laid out in the UDHR. The most recent UPR of Niger by the United Nations Human Rights Council took place on January 18, 2016.
5. Although Niger accepted the vast majority of recommendations which covered a range of issues, it has not made significant progress in implementing these recommendations.
6. One of the most common recommendations by UN Member States was that Niger should ratify particular international conventions and remove reservations to core human rights instruments. Despite the number of States that made these recommendations, critically, Niger is yet to:
 - a. ratify the Convention on the Prevention and Punishment of the Crime of Genocide;

- b. ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming to abolish the death penalty; and
 - c. remove its reservations to the Convention on the Elimination of All Forms of Discrimination against Women.
7. UN Member States also made several other recommendations to Niger, including concerning:
- a. the right to freedom of expression;
 - b. the right of peaceful assembly;
 - c. the right to freedom of association;
 - d. the need to cease use of the death penalty;
 - e. discrimination against women, including in relation to forced marriage, female genital mutilation, family law, and gender violence;
 - f. children's rights, including regarding child marriage, child labor, and the right to education;
 - g. prison conditions;
 - h. the need to strengthen Niger's national human rights institution, the National Commission for Human Rights;
 - i. the rule of law, access to justice, and impunity; and
 - j. engagement with UN Treaty bodies.
8. Domestically, Niger's Constitution of 2010 (Constitution) guarantees several human rights, but in practice, individuals in Niger are subjected to human rights violations, not least by the very existence of laws that criminalize and impinge on their fundamental freedoms.

NIGER'S NATIONAL FRAMEWORK FOR PROTECTING HUMAN RIGHTS

9. Niger's Constitution¹ contains several key provisions relating to the protection of the fundamental rights and freedoms of its citizens.
10. Regarding the equal protection of individuals under the law, *Article 10* states:

All Nigeriens are born and remain free and equal in rights and in duties...

11. Regarding the fundamental rights of physical integrity and liberty, *Articles 11, 12, 13, 14, and 18* provide, respectively:

The human person is sacred. The State has the absolute obligation to respect it and to protect it.

Each one has the right to life, to health, to physical and moral integrity, to a healthy and sufficient food supply, to potable water, to education and instruction in the conditions specified by the law...Each one has the right to freedom and to security within the conditions defined by the law.

Every person has the right to enjoy the best state of physical and moral health. The State sees to the creation of the proper conditions to assure to all, medical services and medical assistance in the case of illness.

No one shall be submitted to torture, to slavery or to cruel, inhuman or degrading abuse or treatments. Any individual, any agent of the State, who is found guilty of acts of torture or of cruel, inhuman or degrading abuse or treatments in the exercise of or on the occasion of the exercise of their functions...will be punished according to the law...

No one may be arrested or charged except by virtue of a law that entered into force prior to the acts alleged against him.

12. Regarding the rights to freedom of expression, association, assembly, and religion, *Articles 30 and 32* state, respectively:

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.

The State recognizes and guarantees the freedom of movement, the freedoms of association, assembly, procession and manifestation within the conditions defined by the law.

13. Regarding women's and children's rights, *Articles 22 and 24* state, respectively:

The State sees to the elimination of all forms of discrimination concerning women, young girls and handicapped persons. The public policies in all the domains assure their full development and their participation in the national development. The State takes, among others, measures to combat the violence done to women and children in public and private life. It assures to them an equitable representation within the public institutions through the national policy concerning gender and the respect for the quotas.

Youth is protected by the State and the other public collectivities against exploitation and abandonment.

POLITICAL BACKGROUND

14. Following its independence from France in 1960, Niger was the subject of intense political instability and unrest including due to a series of coups and rebellions.ⁱⁱ
15. In March 2011, Mahamadou Issoufou became the president of Niger during an election that followed the ousting of former president Mamadou Tandja in February 2010, who had spent a decade in power.ⁱⁱⁱ A new constitution had been approved in October 2010, designed to restore democratic elections.
16. In March 2016, current President Mahamadou Issoufou was re-elected in an election that was boycotted by supporters of his opponent and was marred by several irregularities.^{iv}
17. In March 2019, the ruling Party for Democracy and Socialism, selected Mohamed Bazoum to run as its presidential candidate in the 2020 elections. President Mahamadou Issoufou pledged to follow the constitution and not seek a third term in office.^v
18. Despite these attempts at democratic elections, however, Niger is best described as a competitive authoritarian regime.^{vi}

FREEDOMS OF ASSEMBLY, ASSOCIATION, AND EXPRESSION

19. Many recommendations from the 2016 UPR for Niger are related to the safeguarding

of the rights to freedom of expression, association, and assembly, including that Niger should:

- a. Respect and fully guarantee the rights to freedom of expression, freedom of association and freedom of assembly, in particular in the context of measures undertaken to respond to violent extremism and terrorism (Switzerland);
 - b. Ensures full respect for the right to freedom of expression and media freedom by preventing all harassment and undue detention of journalists and civil society activists (United Kingdom of Great Britain and Northern Ireland);
 - c. Respect freedoms of expression and association, both online and offline, particularly leading up to this year's elections, and release political detainees (United States of America);
 - d. Take firm measures to ensure that human rights defenders and peaceful activists are free to enjoy their fundamental rights of, inter alia, freedom of expression and freedom of association (Norway).
20. The rights to freedom of expression and freedom of assembly in Niger are legally protected by the Constitution of Niger, but under President Mahamadou Issoufou, Niger has experienced an increased crackdown on dissent both online and offline. Respect for the rule of law and due process rights are eroding.
21. Authorities have used a number of repressive laws on cybercrime, electronic communications, and public order while invoking national security and the global public health emergency to stifle dissent online and offline. Police have also been involved in dispersing demonstrations with force. The following examples reflect this situation:
- a. In March 2018, dozens of protesters were arrested on charges that they had participated in a similar protest that had gone ahead without authorization.^{vii}
 - b. Between April 15 and April 25, 2018, five activists — Ibrahim Diori, Maïkoul Zodi (subject of this petition), Abdourahamane Idé Hassane, Sadat Illiya Dan Malam, and Yahaya Badamassi — were arrested in connection with the organization of protests.^{viii}
 - c. The Nigerien government controls a large proportion of Niger's broadcasting.^{ix} In 2018, several news organizations and media outlets were required to close due to failure to pay taxes.^x Other media outlets have struggled financially.^{xi}
 - d. In April 2018, journalist Baba Alpha, a frequent government critic, was expelled to Mali, a country where he had never lived. He had been convicted of alleged

- use of forged identity documents to obtain Niger citizenship and spent a year in prison for this.^{xii} Human rights groups voiced concerns about his conviction and expulsion.
- e. In July 2019, authorities enacted Law No. 2019-033 on the Suppression of Cybercrime. The legislation contains broad provisions that can be abusively interpreted to criminalize legitimate peaceful freedom of expression. For example, Article 31 penalizes the vague offense of “Dissemination of information of a nature to undermine public order” with a prison sentence ranging from 6 months to three years.^{xiii} According to Amnesty International, in 2020, eight people were arrested under Article 31 of this law between March and April.^{xiv}
 - f. Social media activists and bloggers affiliated with opposition political parties were arrested throughout 2019.^{xv}
 - g. In the first half of 2020, Amnesty International recorded *“27 arrests of activists, unionists, journalists and dissenting voices in Niger, 17 of them are anti-corruption activists who spoke out about the allegations against the Ministry of Defense.”*^{xvi}
 - h. On March 5, 2020, journalist Mamane Touda Kaka was detained after posting on social media regarding a suspected COVID-19 case in Niamey Reference Hospital. He was charged with “disseminating data tending to disturb public order.” He was released after three weeks with a suspended sentence.^{xvii}
 - i. On April 29, 2020, Amina Maiga, a civil servant, was arrested after a private WhatsApp message that she had sent criticizing the Niger government’s handling of the COVID-19 pandemic was intercepted. She was sentenced to a suspended prison sentence of three months and a fine of 20,000 CFA francs for disturbing public order.^{xviii}
 - j. On April 30, 2020, activist Moustapha Elh Adam, was detained following a complaint by a local official who accused him of assault for criticizing authorities in a public meeting over chronic power cuts.^{xix} He was sentenced to three months in prison and a fine of 20,000 CFA francs.
 - k. In May 2020, ruling party lawmakers of the National Assembly voted to enact a controversial new law giving sweeping powers to the executive authorities to intercept electronic communications,^{xx} officially in the name of enhancing national security and protecting national unity.^{xxi} The law was voted on without public consultation as opposition lawmakers boycotted^{xxii} the vote in protest of the law’s repressive nature. For example, Article 2 of the law grants unchecked power to authorize interceptions exclusively to the President and five members of the executive cabinet. Article 6 creates a seven-member National Commission

- for the Control of Security Interceptions (CNCIS) as an oversight body, but all members of the Commission are appointed by members of the executive cabinet.
- l. On June 10, 2020, journalist and blogger Samira Sabou was arrested based on a defamation complaint by the son of President Mahamadou Issoufou over a comment she posted on Facebook on a high-profile corruption scandal at the Ministry of Defence. She was charged under the 2019 Cybercrime Law but was acquitted and released after 48 days of imprisonment.^{xxiii}
 - m. On July 10, 2020 police detained journalist Ali Soumana for 48 hours and accused him of publishing false news over his publication of an article on the same corruption scandal at the defense ministry.^{xxiv}
22. HRF draws particular attention to the cases of six Nigerien civil society leaders and activists — trade union leaders Halidou Mounkaila and Sani Chekaraou, Mouidi Moussa, Habibou Soumaila, and Maikoul Zodi of Tournons La Page, and Moussa Tchangari of Alternative Espaces Citoyens — who were arrested between March 15 and March 17, 2020. The activists were arrested by men wearing plain clothing who identified themselves as police officers and apprehended the activists at their homes without a warrant.^{xxv} The men were told that they were being taken to the ‘police judiciaire.’
23. Five of the activists were charged with organizing a prohibited demonstration (under Law No. 2004-45 of June 8, 2004 governing public demonstrations). Several civil society organizations had called for a demonstration on March 15, 2020 to demand the publication of an audit of the Ministry of Defense in the wake of allegations of misuse of funds in the purchase of military material in the fight against terrorism. In line with a 2004 law regulating public gatherings, the protest organizers formally filed a permit application with the municipality of Niamey to hold the protest at Place de la Concertation, in front of the National Assembly. Under the 2004 law, the municipality was required to respond to the application within three days and had the authority to ban the gathering by decree. If it undertook this decision, it was required to notify all signatories to the permit application. In this case, there was no decree or notification issued. Two days before the planned protest, the executive cabinet announced that all gatherings of more than 1,000 people were banned, officially to limit the spread of COVID-19. On the morning of March 15, 2020, security forces blocked all the roads leading to the Place de la Concertation.^{xxvi} Protesters then rallied three kilometers away from Place de la Concertation, where

they clashed with security forces. Tear gas fired by security forces is suspected to have provoked a fire at the Tagabati market, which destroyed shops and left four people dead.^{xxvii}

24. Following their arrests, five of the activists were charged with complicity in the destruction of public property, arson, and manslaughter. The five activists were sent to far-away maximum-security prisons outside Niamey, in areas that have been under a state of emergency for five years due to threats of armed conflict between the military and terrorists.
25. On March 20, 2020, the Ministry of Justice declared in a press release that as a coronavirus prevention measure, the detainees would not be allowed visits for three months.^{xxviii}
26. The sixth activist, Sani Chekaraou, was charged with assaulting officials at the Tagabati market.^{xxix} He was incarcerated in a prison in Niamey.
27. After each spending at least a month in prison, Moussa Tchangari, Habibou Soumaila, and Sani Chekaraou were released on bail on April 30, 2020. However, Maikoul Zodi, Mounkaila Halidou, and Moudi Moussa were provisionally released by an order on September 29, 2020, having been arbitrarily detained for several months in far-away maximum security prisons, some located more than 100km from the capital, in restive areas under state of emergency, and where terrorist suspects are held.
28. All six activists currently face a possible prison sentence.
29. Indeed, the charges against each activist are clearly politically-motivated and being used to silence the activists, having a chilling effect on other members of civil society who would otherwise similarly call out government corruption and call for those involved to be held accountable.

THE DEATH PENALTY

30. A number of States recommended in the 2016 UPR that Niger Ratify the Second Optional Protocol to the ICCPR, aimed at the abolition of the death penalty. Several

other States recommended that Niger take the necessary measures to eliminate the death penalty or adopt a moratorium on it, with a view to abolishing it.

31. Since 1986, Niger had imposed a moratorium on executions. In 2014, a bill had been prepared by the Niger government authorizing the ratification of its Second Optional Protocol aiming at the abolition of the death penalty. However, this did not occur. Indeed, after several years of hiatus, in 2019, Niger recorded death sentences for eight individuals; these death sentences were commuted by presidential decree on Niger's Independence Day in December 2019.^{xxx} Despite a seemingly abolitionist practice, the maintenance of the death penalty on its books is troublesome, with the use of the death penalty being contingent on the whim of those in power. This is exemplified by reports that the Niger State House of Assembly advocated for the death penalty for rapists and other sexual offenders in June 2020.^{xxxi}

GENDER-BASED VIOLENCE AND DISCRIMINATION

32. While Niger is already a party to CEDAW, it has significant reservations to this treaty. Multiple UN Member States recommended that Niger remove these reservations and take necessary measures to achieve gender equality and protect women, in particular from gender-specific violence. This included recommendations that Niger:
- a. Adopt a family law that ensures equal rights between men and women and which protects girls from early and forced marriage (Denmark);
 - b. Actively promote women's rights and eliminate discrimination against women (China);
 - c. Further take measures in order to improve its legislation, policy and practice on gender equality and on prevention and response to gender-based violence (Portugal);
 - d. Repeal all norms/standards that discriminate against women, remove all reservations to CEDAW and promote gender equality by introducing public awareness-raising programmes (France);
 - e. Conduct an awareness-raising and educational campaign among the populations with the view to eliminate all the socio-cultural barriers which impede the full enjoyment of the rights of women (Angola);
 - f. Strengthen the measures to combat discrimination against women and girls,

- in particular, by prohibiting early or forced marriages (Argentina);
- g. Continue intensifying its efforts to promote women's empowerment through capacity-building, gender sensitivity training and public awareness raising activities (Azerbaijan);
 - h. Intensify efforts to fully eradicate female genital mutilation, also by promoting awareness-raising and educational activities particularly targeted at local community leaders and health workers (Italy); and
 - i. Create and implement a strategy to eliminate traditional harmful practices, such as female genital mutilation, child, early and forced marriage, and 'Wahaya,' and modify traditional stereotypes that are harmful to and discriminate against women (United Kingdom of Great Britain and Northern Ireland).
33. While the practice of Wahaya, the slavery practice whereby men take on an unofficial fifth wife who is treated as a domestic and sexual slave, was outlawed by Niger's highest court in 2019,^{xxxii} there are several indicators that suggest that Niger has not made much progress by way of gender equality. For example, data from UN Women states:^{xxxiii}
- a. 76.3% of women aged 20-24 years old were married or in union before the age of 18 (*i.e.*, as children).
 - b. As of February 2019, there were only 17% of parliament seats held by women.
 - c. In 2017, only 45.5% of women had their need for family planning satisfied with modern methods.
34. Additionally, according to a report issued by UN Women entitled, 'Progress of the World's Women 2019-2020; Families in a Changing World,' recent data shows that 36.1% of married or in-union women who are aged 15 to 49 are in polygynous partnerships.^{xxxiv}
35. Importantly, Niger's reservations to CEDAW reflect an inadequate commitment to the standards and ideals espoused by CEDAW. The reservations regard:
- a. The taking of all appropriate measures to abolish all customs and practices which constitute discrimination against women, particularly in respect of succession;
 - b. The modification of social and cultural patterns of conduct of men and

- women;
- c. The right of married women to choose their residence and domicile; and
 - d. The same rights and responsibilities of women during marriage and at its dissolution, the same rights to decide freely and responsibly on the number and spacing of their children, and the right to choose a family name.

RECOMMENDATIONS

36. HRF calls on Niger's government to:

- a) Protect the rights of all individuals to freedom of peaceful assembly, association, and expression;
- b) Continue promoting, without reserve, the rights to freedom of expression and association, and ensure that activists, journalists, and opposition groups can operate peacefully within Niger without fear of retribution in the form of censorship, harassment, arbitrary detention, and extrajudicial killings, among others. In particular, call for the charges against the six named Nigerien activists to be dropped to respect their freedoms of expression and peaceful assembly;
- c) Abolish the use of the death penalty for all crimes;
- d) Strengthen its commitment to gender equality, including by:
 - i) withdrawing all its reservations to CEDAW; and
 - ii) equalizing rights between both men and women in family law.
- e) Cooperate with regional and international human rights mechanisms by allowing the special procedure mandate holders to carry out an independent assessment of the human rights situation in Niger and advise the government; and
- f) Engage in constructive national dialogue with religious, political, and social groups – particularly opposition groups – to generate a sustainable solution to ensuring peace and protection of human rights within the country.

ⁱ Constitute Project, *Niger's Constitution of 2010* (2010), available at https://www.constituteproject.org/constitution/Niger_2010.pdf.

ⁱⁱ BBC News, *Niger Country Profile* (19 February 2018), <https://www.bbc.com/news/world-africa-13943662>.

ⁱⁱⁱ Ibid.

^{iv} BBC News, *Niger Profile: A chronology of key events* (19 February 2018), <https://www.bbc.com/news/world-africa-13944995>.

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- ^v Freedom House, *Freedom in the World 2020: Niger* (2020), <https://freedomhouse.org/country/niger/freedom-world/2020>.
- ^{vi} See Steven Levitsky and Lucan Way, *The New Competitive Authoritarianism*, *Journal of Democracy* (January 2020), available at <https://muse.jhu.edu/article/745953/pdf>.
- ^{vii} Freedom House, *Freedom in the World 2020: Niger* (2020), <https://freedomhouse.org/country/niger/freedom-world/2020>.
- ^{viii} Ibid.
- ^{ix} BBC News, *Niger profile* (31 July 2019), <https://www.bbc.com/news/world-africa-13943665>.
- ^x Freedom House, *Freedom in the World 2020: Niger* (2020), <https://freedomhouse.org/country/niger/freedom-world/2020>.
- ^{xi} BBC News, *Niger profile* (31 July 2019), <https://www.bbc.com/news/world-africa-13943665>.
- ^{xii} Freedom House, *Freedom in the World 2020: Niger* (2020), <https://freedomhouse.org/country/niger/freedom-world/2020>.
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- ^{xiv} Amnesty International, *Niger: 100-day detention of three activists highlights deterioration of freedom of expression* (23 June 2020), <https://www.amnesty.org/en/latest/news/2020/06/niger-day-detention-of-three-activists-highlights-deterioration/>.
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- ^{xvii} Amnesty International, *Niger: Journalist Detained for Social Media Post: Mamane Kaka Touda* (13 March 2020), available at <https://www.amnesty.org/en/documents/afr43/1976/2020/en/>.
- ^{xviii} Civicus, *Judicial harassment and arrests of activists continues unabated* (19 June 2020), <https://monitor.civicus.org/updates/2020/06/19/judicial-harassment-arrest-activists-continues-unabated/>.
- ^{xix} Civicus, *Journalist samira sabou acquitted, one HRD released while three others linger in prison* (8 August 2020), <https://monitor.civicus.org/updates/2020/08/08/journalist-samira-sabou-acquitted-one-HRD-released-while-three-HRDs-linger-in-prison/>.
- ^{xx} Privacy International, *The Nigerien bill giving broad powers to intercept communications* (2 June 2020), <https://privacyinternational.org/news-analysis/3854/nigerien-bill-giving-broad-powers-intercept-communications>.
- ^{xxi} Sputnik News, *Au Niger, l'État serre la vis électronique au nom de la lutte antiterroriste* (15 June 2020), <https://fr.sputniknews.com/afrique/202006151043953402-au-niger-letat-serre-la-vis-electronique-au-nom-de-la-lutte-antiterroriste/>.
- ^{xxii} Agence Ecofin, *Interception des communications électroniques : le Parlement du Niger adopte la loi, malgré le boycott de l'opposition* (1 June 2020), <https://www.agencecofin.com/telecom/0106-77096-interception-des-communications-electroniques-le-parlement-du-niger-adopte-la-loi-malgre-le-boycott-de-l-opposition>.
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- ^{xxiv} Ibid.
- ^{xxv} Civicus, *Judicial harassment and arrests of activists continues unabated* (19 June 2020), <https://monitor.civicus.org/updates/2020/06/19/judicial-harassment-arrest-activists-continues-unabated/>. HRF has also had direct contact with the defense lawyer of the six activists in question.
- ^{xxvi} Amnesty International, *Detained activists must be released*, <https://www.amnesty.org/en/get-involved/take-action/niger-give-detained-activists-access-to-family-and-lawyer-despite-covid-19/>.

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