



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Report submitted by the Niger under article 29 (1) of the  
Convention, due in 2017\***

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\* The present document is being issued without formal editing.



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## Introduction

1. The International Convention for the Protection of All Persons from Enforced Disappearance was adopted by the General Assembly of the United Nations on 20 December 2006. It was signed by the Niger on 6 February 2007 and ratified on 24 July 2015.
2. The present report is being submitted to the Committee on Enforced Disappearances, which was established under article 26 of the Convention, in accordance with article 29, which requires States parties to report on the measures that they have taken to give effect to their obligations under the Convention within two years of its entry into force.
3. The Niger hereby submits its initial report in accordance with the reporting guidelines adopted by the Committee at its second session in March 2012.
4. The present report provides an overview of the efforts made by the Niger since its ratification of the Convention. It also highlights the progress made in consolidating a culture that rejects all forms of deprivation of liberty that could lead to enforced disappearance of persons and thus giving full effect to the Convention.
5. The present report, which covers the period from 2015 to 2019, reflects the State's determination to comply with its international obligations. Its preparation, which involved an inclusive and participatory process was led by the interministerial committee responsible for drafting reports for submission to the human rights treaty bodies and under the universal periodic review procedure, with reference to the relevant guidelines. State bodies concerned with the rights enshrined in the Convention, civil society organizations working to promote and protect human rights and the National Human Rights Commission participated in the drafting process.
6. This process had four main stages:
  - An initial orientation workshop, held on 21 and 22 February 2019, during which all members of the interministerial committee received training on the content of the Convention, the guidelines for drafting the report and the constructive dialogue with the Committee. At the end of the training session, each committee member was assigned a specific research and data-collection task.
  - A second workshop, held from 16 to 18 April 2019, which brought together members of the Committee and resource staff to compile and review the first draft of the report.
  - A third national workshop, held from 29 to 31 May 2019, which brought together representatives of State bodies, civil society, technical and financial partners and the National Human Rights Commission to approve the report.
  - Adoption of the report by the Council of Ministers on ... (date to be specified after the meeting of the Council of Ministers).
7. In accordance with the guidelines, the report, excluding the introduction, consists of two parts covering, respectively:
  - The framework under which enforced disappearances are prohibited
  - The implementation of the articles of the Convention
8. In submitting this report for the Committee's consideration, the Niger reaffirms its commitment to human rights values and its readiness to cooperate with the United Nations human rights treaty bodies.

## Part one: General legal framework under which enforced disappearances are prohibited

### A. National legal framework

9. While domestic legislation in the Niger does not explicitly address enforced disappearance, the Constitution, the Criminal Code, the Code of Criminal Procedure and the Code of Military Justice all tacitly recognize practices constituting enforced disappearance in its various forms in their provisions concerning violations of liberty of person.

**The Constitution**

10. The concept of enforced disappearance is not explicitly enshrined in positive law. However, article 11 of the Constitution of 25 November 2010 unequivocally states that the human person is sacred and that the State has an absolute obligation to respect and protect the individual.

11. Article 12 enshrines the right to physical and psychological integrity and the right to liberty and security.

12. Article 14 (2) provides that any individuals or agents of the State who, in or during the exercise of their functions, commit acts of torture or cruel, inhuman or degrading treatment or punishment, whether on their own initiative or under orders, will be punished.

13. Article 15 stipulates that no one is required to execute a manifestly unlawful order.

14. Article 16 establishes that no citizen may be forced into exile or subjected to deportation.

15. Article 18 enshrines the principle of legality of the offence and the punishment.

**The Criminal Code**

16. The Criminal Code does not expressly refer to enforced disappearance, but acts amounting to enforced disappearance are prohibited and penalized in the following articles:

- Article 108, which stipulates that any public official or government agent or employee who orders or commits an arbitrary act or an act that violates the personal liberty or civic rights of one or more citizens is liable to imprisonment.
- Article 109, which provides for compensation to be awarded to victims of the above-mentioned acts.
- Article 110, which stipulates that prison governors who admit a prisoner without a warrant or a judicial decision are liable to punishment for arbitrary detention.
- Article 112, which provides for criminal charges to be brought against prosecutors general, public prosecutors, deputy prosecutors, judges and criminal investigation officers who detain a person or cause him or her to be detained without a valid committal order at a location other than those specified by the Government or the public authorities.
- Article 113, which provides for criminal charges to be brought against public officials responsible for policing or criminal investigation who refuse or neglect to comply with a lawful request to report an unlawful or arbitrary detention, either at a detention facility or elsewhere, and are not able to prove that they have reported the detention to a higher authority.
- Article 117, which sanctions all bearers of public authority who take measures that run counter to the Constitution and the law.
- Article 208.2, which provides that crimes against humanity punishable by the death penalty include deportation, enslavement and the widespread and systematic practice of summary executions, abductions and the subsequent disappearance of persons, torture and inhuman acts carried out on political, philosophical, racial or religious grounds as part of an organized campaign against a section of the civilian population.

**The Code of Criminal Procedure**

17. The following provisions of the Code of Criminal Procedure are designed to protect individuals from enforced disappearance:

- Article 131, which states that:

“pretrial detention is an exceptional measure. It may be ordered or maintained only in the following cases:

1. When the pretrial detention of the accused person is the only way to preserve material proof or evidence or to prevent intimidation of witnesses or victims and collusion between defendants.

2. When pretrial detention is the only way to protect the accused person, to ensure that he or she can be brought before a court, to put an end to the offence and to prevent its repetition.

3. When the offence, owing to its serious nature, the circumstances under which it was committed or the extent of the harm it has caused, has led to an exceptional and ongoing disturbance of public order that only detention can bring to an end.”

- Article 34, which makes the prosecutors general at the courts of appeal responsible for ensuring the enforcement of criminal law on the territory of the Republic of the Niger.
- Article 39, which stipulates that public prosecutors are responsible for receiving complaints and reports of wrongdoing and deciding how to deal with them.
- Article 71, which requires that suspects be notified of their right to retain a lawyer after 24 hours in custody, failing which the proceedings may be declared null and void.
- Article 80, which states that any person who claims to have suffered harm as a result of a serious offence (*crime*) or a less serious offence (*délit*) may file a claim for criminal indemnification with the competent investigating judge. In this case, the victim must pay the clerk of the court the sum deemed necessary to cover the costs of the proceedings, otherwise the claim will be ruled inadmissible.
- Article 642 (1), which states that any foreign national who commits a serious offence outside the territory of the Republic, whether as a perpetrator or an accomplice, may be prosecuted and tried in accordance with the laws of the Niger if the victim is a national of the Niger.
- Article 642 (1) bis, which stipulates that any foreign national who commits an act of torture outside the territory of the Republic may be prosecuted and tried in accordance with the provisions of the laws of, or applicable in, the Niger if he or she is present on the territory or under the jurisdiction of the Republic and is not extradited to the State of which he or she is a national or on whose territory the offence was committed or of which the victim is a national.
- Article 649 (17), which provides that extradition or surrender may not be granted when the accused is at risk of torture or cruel, inhuman or degrading treatment.

### **The Code of Military Justice**

18. The Code of Military Justice does not explicitly criminalize enforced disappearance but contains the following general provisions designed to ensure that persons are protected against any form of enforced disappearance and related offences:

- Article 62, which provides that, once the time limits for custody without charge have expired, suspects must be brought before either the Government Commissioner or the competent civilian authority. Superior officers must be informed of their transfer in writing. Pending their appearance, suspects may be held either in police custody or in a military prison.
- Article 63, which allows the Government Commissioner to exempt investigative police officers from the obligation established in article 62., in which case, suspects must be returned to the authority of their superior officer when the time limits for custody without charge expire. The superior officer may order that the returned person be held in a punishment cell pending a decision on how to proceed.
- Article 64, which requires officers of the military investigative police to include the dates and times at which custody begins and ends in their reports.
- Article 65, which stipulates that the custody of persons who are not members of the armed forces shall be overseen by the Government Commissioner or the military investigating judge with territorial jurisdiction. These individuals may delegate their powers, respectively, to the public prosecutor or the investigating judge with jurisdiction in the location in which the suspect is being held in custody.
- Article 102, which stipulates that, if a detention order or arrest warrant has been issued, the suspect or accused person will be taken to a military prison, or, if this is not

possible, to a facility designated by the authority with powers of prosecution in respect of the case.

- Article 300, which requires all military commanders to report any military offence of which they become aware to their superior officers.
- Article 317 (5), which establishes that the forcible removal of children as part of an organized plan is a form of genocide.
- Article 319, which establishes that abduction followed by the disappearance of a person is a crime against humanity.
- Article 321 (6), which penalizes the deportation and the unlawful displacement, removal and detention of a civilian protected under the Geneva Convention relative to the Protection of Civilian Persons in Time of War or persons protected for the same purposes under Protocols I and II additional to the Geneva Conventions of 12 August 1949 and classifies these offences as war crimes.

## **B. Regional and international legal framework**

19. The Niger has ratified or acceded to many international legal instruments that have a link to enforced disappearances, including the following:

- The International Covenant on Civil and Political Rights, ratified on 7 March 1986
- Protocols I and II additional to the Geneva Conventions of 12 August 1949, ratified on 8 June 1979
- The International Convention on the Elimination of All Forms of Racial Discrimination, ratified on 27 April 1967
- The International Covenant on Economic, Social and Cultural Rights, ratified on 7 March 1986
- The Convention on the Elimination of All Forms of Discrimination against Women, to which the Niger acceded on 8 October 1999
- The Convention on the Rights of the Child, ratified on 30 September 1990
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the Niger acceded on 5 October 1998
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, to which the Niger acceded on 18 March 2009
- The Convention on the Rights of Persons with Disabilities, ratified on 24 June 2008
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 7 November 2014
- The International Convention for the Protection of All Persons from Enforced Disappearance, ratified on 24 July 2015
- The Rome Statute of the International Criminal Court, ratified on 11 April 2002
- The International Convention against the Taking of Hostages, ratified on 1 October 2003
- The International Convention for the Suppression of Terrorist Bombings, to which the Niger acceded on 26 October 2004
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 30 September 2004
- The four Geneva Conventions of 1949 on international humanitarian law, to which the Niger succeeded on 16 August 1964
- The Organization of African Unity Convention for the elimination of mercenarism in Africa, Libreville, adopted on 3 July 1977 and ratified on 16 September 1980

- The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, ratified on 10 June 1977
- The African Charter on Human and Peoples' Rights, ratified on 21 July 1986
- The African Charter on the Rights and Welfare of the Child, ratified on 11 December 1999
- The ILO Worst Forms of Child Labour Convention, 1999 (No. 182), ratified on 4 August 2000
- The ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), adopted in 1958, ratified on 23 March 1962
- The ILO Forced Labour Convention, 1930 (No. 29), ratified on 23 March 1962 and its 2014 protocol, ratified in June 2015
- The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, ratified on 17 May 2004
- The International Convention for the Suppression of the Financing of Terrorism, to which the Niger acceded on 30 September 2004
- The Convention for the Suppression of Unlawful Seizure of Aircraft of 1970
- The Organization of African Unity Convention on the Prevention and Combating of Terrorism of 1999
- The African Union Convention on Extradition and Mutual Legal Assistance against Terrorism of 2008, etc.

### **C. Hierarchy of laws**

20. In the Niger, duly ratified international treaties have supra-constitutional force. Therefore, in the event of conflict between a treaty provision and the Constitution, article 170 of the Constitution provides that the relevant article of the Constitution must be amended.

21. In accordance with article 171 of the Constitution, duly ratified treaties and agreements take precedence over domestic law as soon as they are promulgated, providing that the agreement or treaty concerned is implemented by the other party.

### **D. Non-derogation**

22. Non-derogation is a principle enshrined in the international conventions to which the Niger has subscribed. Consequently, regardless of the gravity of the offence committed by an individual or the nature of the exceptional situation decreed by the authorities (i.e. state of emergency, state of alert, state of war), nothing can justify the practice of enforced disappearance. This undertaking is affirmed in the Constitution of the Niger, which places the protection of human rights among the State's primary obligations.

### **E. Justiciability and applicability of the Convention**

23. Article 2 of the Code of Civil Procedure states that all persons have the right to appeal to the competent national tribunals for acts violating their fundamental rights as recognized and protected by the Constitution, international treaties and in-force laws and regulations.

24. Article 72 of Act No. 2018-37 of 1 June 2018 on the organization and jurisdiction of the courts of the Niger provides that international treaties have priority over domestic norms. The International Convention for the Protection of All Persons from Enforced Disappearance can thus be invoked before the civil and criminal courts and before the administrative authorities. However, a distinction must be made between directly applicable provisions and those requiring measures to be taken in order for them to be implemented at the domestic level. The justiciability of the latter is in practice dependent upon the adoption of implementing provisions in domestic legislation.

## F. Competent authorities

25. The judicial, administrative and other types of authorities with competence in matters covered by the Convention include:

- The Constitutional Court, when ruling on the basis of article 170 of the Constitution, that is, when an international instrument contains a clause that is unconstitutional and when the Court must assess the constitutionality of a law in direct or collateral review proceedings
- The High Court of Justice, responsible for trying acts of high treason committed by the President of the Republic and acts classified as serious or less serious offences committed by Government officials in or during the exercise of their office
- The Court of Cassation, which exercises the highest jurisdiction in judicial matters and is responsible for hearing appeals in cassation against final rulings handed down by the courts of justice and for prosecuting persons who enjoy some form of jurisdictional immunity
- The Council of State, competent to hear, in the first and final instance, appeals brought on the grounds of abuse of power against decisions issued by the administrative authorities and appeals in cassation against final-instance rulings of the Administrative Courts
- The Appeals Courts, competent to hear appeals against judgments issued by courts of first instance
- The Assize Courts, responsible for prosecuting any persons charged with an offence other than the President of the Republic and Government officials, as stated above
- The criminal courts and police courts, responsible for trying in the first instance persons charged with less serious and minor offences
- The Military Court, responsible for prosecuting military officers and persons of equivalent status for serious and less serious offences committed in times of peace or times of war
- The Administrative Courts, competent to hear administrative disputes in first instance (full jurisdiction)
- The Ombudsman's Office, authorized to receive complaints from any citizen who claims to have suffered injury by the Administration, provided that the dispute has not already been brought before the courts
- The National Human Rights Commission, responsible for ensuring that fundamental rights and freedoms are effectively protected and promoted
- The Administrative Disciplinary Committees, responsible for punishing administrative offences committed by public officials
- The General Inspectorates of public bodies, responsible for addressing failures in the exercise of duties and proposing penalties
- The General Inspectorates of the armed forces and the gendarmerie, responsible for ensuring that the codes of ethics, discipline and conduct of the armed forces and the gendarmerie are upheld
- The General Inspectorate of the Security Services, responsible for ensuring respect for the codes of ethics, discipline and conduct of the police force and the National Guard
- The General Inspectorate of judicial and prison services, etc.

## G. Specific examples of administrative or judicial decisions

26. In national case law, there are currently no judicial decisions in which the Convention has been applied *sensu stricto*, but there are many cases involving violations of individual

freedoms such as arbitrary arrest and detention. There are no judicial decisions in which violations of the Convention have been established.

## **Part two: Information in relation to articles 1 to 25 of the Convention**

### **Article 1: Absolute prohibition of enforced disappearance**

27. The Niger is a party to the International Convention for the Protection of All Persons from Enforced Disappearance and has entered no reservations to this treaty.

28. The preamble to the Constitution, which has constitutional status, affirms the resolve of the sovereign people of the Niger to build a State governed by the rule of law that guarantees, on the one hand, the exercise of individual and collective rights, freedom, justice, dignity, equality, security and well-being, as fundamental values of society and, on the other hand, the democratic transfer of power and good governance.

29. The preamble also proclaims the people's attachment to the principles of pluralist democracy and human rights as defined in the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966 and the African Charter on Human and Peoples' Rights of 1981.

30. The following articles of the Constitution are of particular relevance:

- Article 11, which states that the human person is sacred and that the State has an absolute obligation to respect and protect the individual.
- Article 12, which states that every person has the right to liberty and security under the conditions defined by law.
- Article 16, which states that no citizen may be forced into exile or be subjected to deportation. The enforced exile or deportation of a citizen is considered a crime against the Nation and is punishable in accordance with the law.
- Article 32, which establishes that the State recognizes and guarantees freedom of movement within the conditions defined by law.

31. No derogations to the right not to be subjected to enforced disappearance exist under the Constitution. Exceptional circumstances do not give rise to a derogation. When exceptional circumstances are declared, the Constitution is not suspended and none of the State's oversight bodies are dissolved.

32. In accordance with article 67, when the institutions of the Republic, the independence of the Nation, the integrity of national territory or the fulfilment of international obligations are under serious and immediate threat, and when the regular operation of the constitutional Government is interrupted, the President of the Republic shall take such exceptional measures as are required by the circumstances after official consultation with the Prime Minister, the President of the National Assembly and the President of the Constitutional Court. He or she will so inform the Nation in an official message. The National Assembly will meet without needing to be convened if it is not in session. No institution of the Republic may be dissolved or suspended during the exercise of the exceptional powers.

33. The adoption of exceptional measures must be driven by the desire to provide the constitutional authorities, as promptly as possible, with the means to perform their duties. The National Assembly will determine, by an absolute majority of its members, the duration of the exercise of the emergency powers and will terminate them in the event of abuse.

34. There is no legal or regulatory provision authorizing enforced disappearance and, were such an act to take place, it would constitute a manifestly unlawful act engaging the criminal liability of the perpetrator and any accomplice in accordance with article 42 of the Criminal Code, which provides, in essence, that no criminal responsibility attaches to a person who carries out an act prescribed or authorized by a law or regulatory instrument or ordered by a legitimate authority, unless that act is manifestly unlawful.

35. Similarly, all public officials have an absolute duty to refrain from carrying out a manifestly unlawful order given by a superior officer. Although the Code of Military Justice provides that military officers must obey the orders of their superiors and are responsible for carrying out the tasks entrusted to them, they may not be ordered to perform and may not carry out acts that run counter to the law, the customs of war or international treaties.

36. In short, all civilian and military officers have the right and duty not to obey an order to commit or in any way participate in an offence of enforced disappearance, as such orders are manifestly unlawful.

37. Furthermore, neither a state of emergency nor any other exceptional circumstance may justify the commission of acts of enforced disappearance.

## **Article 2: Definition of enforced disappearance**

38. There is no definition in domestic law of enforced disappearance within the meaning of the Convention. However, the Constitution contains provisions that relate to situations that may constitute enforced disappearance.

39. Article 11 stipulates that the human person is sacred and that the State has an absolute obligation to respect and protect the individual. Similarly, article 12 stipulates that all persons have the right to life, health, physical and psychological integrity, liberty and security under the conditions defined by law and requires the State to guarantee for all persons the provision of basic services to meet their needs and ensure their full development. Article 14 provides that no person may be subjected to torture, slavery or cruel, inhuman or degrading treatment or punishment, and that any individual or public servant found guilty of engaging in acts of torture or cruel, inhuman or degrading treatment or punishment in or during the exercise of their functions, whether on their own initiative or under orders, will be punished in accordance with the law.

40. Lastly, article 16 provides that no citizen may be forced into exile or subjected to deportation. The enforced exile or deportation of a citizen is considered a crime against the Nation and is punishable under the law.

41. Articles 208.1 to 208.4 of the Criminal Code prohibit torture and other cruel, inhuman or degrading treatment. The Code specifically criminalizes the widespread and systematic practice of abduction followed by disappearance (art. 208.2) and arbitrary arrest and detention (arts. 265 to 268).

42. Article 248 of the Criminal Code establishes that persons found guilty of abducting or harbouring a child, concealing the birth of a child, substituting a child for another or attributing a child to a woman who has not given birth will be liable to imprisonment for a term of 2 to 8 years. Attempts to commit such offences will carry the same punishment as consummated offences.

43. Article 255.1 of the Criminal Code provides that any person who, by fraudulent or violent means, kidnaps or orders the kidnapping of minors under 18 years of age, removes, abducts or displaces minors or orders their removal, abduction or displacement from the location in which they had been placed by the authority or body to which they had been subjected or entrusted will be liable to a term of 2 to 10 years' imprisonment. Attempts to commit such offences will carry the same punishment as consummated offences. Article 256 adds that, if the guilty party was paid or was seeking the payment of a ransom by the persons under whose authority or supervision the minors had been placed, the penalty will be life imprisonment.

44. Article 270.3 (5) of the Criminal Code classifies the kidnapping of so-called slave children to place them in servitude as an offence of slavery. The penalty is 10 to 30 years' imprisonment if the minor is found alive before the guilty verdict is served. Article 257 adds that kidnapping carries the death penalty if it results in the death of the minor.

45. Article 258 (1) of the Criminal Code provides that any person who, without using fraudulent or violent means, abducts or removes or attempts to abduct or remove a minor under the age of 18 is liable to a term of 1 to 5 years' imprisonment and/or a fine of 10,000 to 100,000 CFA francs.

46. Article 324 of the Criminal Code establishes that, when a theft is preceded or followed by the rape or abduction of women, children or other persons or by the use of firearms, the death penalty will be imposed.

47. Article 265 of the Criminal Code provides that any person who arrests, detains or confines another, without being ordered to do so by the competent authorities, is liable to 1 to 10 years' imprisonment, except in cases in which the law orders that the suspect be detained. Whoever provides a place for carrying out the detention or confinement will be liable to the same penalty. Provisions concerning mitigating circumstances and suspended sentences do not apply to this article.

48. Article 266 of the Criminal Code provides that the penalty will be between 10 and 20 years' imprisonment in each of the following cases:

- If the arrest was carried out on the basis of a forged official order
- If the arrest was carried out by a person or persons in fake uniform
- If the victim was arrested or detained under threat of death

49. Article 267 of the Criminal Code provides that, in the cases covered by the preceding articles, if the persons arrested, detained or held against their will were subjected to physical torture, the penalty will be death.

50. Article 268 of the Criminal Code provides that the penalty will be reduced to a prison term of between 6 months and 5 years if those found guilty of offences under article 265 release the person that has been arrested, confined or detained unlawfully within 10 full days of the unlawful arrest, detention or confinement.

51. Articles 269 and 270 establish penalties for those who deprive another of their liberty.

### **Article 3: Investigation**

52. Despite the absence of a specific law punishing enforced disappearance within the meaning of the Convention, appropriate measures are taken to investigate acts of the nature of enforced disappearance committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to judge and punish those responsible. All the above-mentioned punitive provisions apply regardless of whether the perpetrators are private individuals acting on their own or State agents acting on behalf of the State.

53. The Code of Criminal Procedure governs the investigation, examination and trial of alleged perpetrators. As far as the investigation is concerned, criminal investigation officers, under the authority of the public prosecutor, are responsible for establishing violations of criminal law, gathering evidence and searching for the perpetrators. If criminal proceedings are initiated, the officers carry out the tasks entrusted to them by the investigating judge.

54. The alleged perpetrators are tried by the competent courts as specified in paragraph 24 above with all guarantees of a fair trial.

### **Article 4: Definition**

55. Enforced disappearance is not yet separately defined as a crime qualitatively distinguishable from other offences that may be related to, but different in nature from, enforced disappearance, such as abduction, abduction of children, arbitrary arrest, arbitrary deprivation of liberty, torture and deprivation of life or similar offences covered by the Criminal Code and other texts. However, steps are being taken to adopt a specific law on enforced disappearance.

### **Article 5: Crime against humanity**

56. Under article 208.2 of the Criminal Code, abducting a person and then causing them to disappear is classified as a crime against humanity. However, the definition of enforced disappearance as a crime against humanity in conformity with international law, namely

when it is committed as part of a widespread or systematic practice against the civilian population, has not yet been incorporated into domestic legislation.

57. Enforced disappearance is considered a crime against humanity pursuant to the Rome Statute of the International Criminal Court. It is listed among the acts constituting crimes against humanity committed on a widespread and systematic basis against the civilian population.

58. According to article 7 of the Rome Statute, enforced disappearance “means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time”.

59. In the Niger, this definition is reflected in article 208.2 of the Criminal Code, which provides that “crimes against humanity include deportation, enslavement and the widespread and systematic practice of summary executions, abductions and subsequent disappearance of persons, torture and inhuman acts carried out on political, philosophical, racial or religious grounds as part of an organized campaign against a section of the civilian population”.

60. Article 208.2 lists the abduction and subsequent disappearance of persons among the acts constituting crimes against humanity but specifies that these acts must be carried out as part of an organized campaign against a section of the civilian population. Crimes against humanity within the meaning of article 208.2 are punishable by death. Article 208.8 (1) of the Criminal Code establishes that neither the prosecution of crimes against humanity, and consequently of enforced disappearance, nor the penalties imposed in such cases, are subject to a statute of limitations, stating that “the prosecution of the crimes covered in this section and the penalties imposed in such cases are not subject to a statute of limitations”.

## **Article 6: Regime of criminal responsibility**

61. Under the positive law of the Niger, the criminal responsibility of the perpetrators of an offence and their accomplices is governed by the Constitution, the Criminal Code and the Code of Military Justice.

62. According to article 14 of the Constitution, “any individuals or agents of the State who, during the exercise of their functions, commit acts of torture, abuse or cruel, inhuman or degrading treatment, whether on their own initiative or under orders, shall be punished in accordance with the law”.

63. Article 41 of the Criminal Code establishes that a person may be held criminally liable only for their own actions. Pursuant to article 42 of the Code, “no criminal responsibility shall attach to a person who carries out an act that is prescribed or authorized by a law or regulatory instrument”.

64. Under article 317 of the Code of Military Justice, genocide is defined as an act carried out in pursuance of a concerted plan to destroy, wholly or in part, a national, ethnic, racial or religious group.

65. Article 319 of the Code provides that “crimes against humanity include deportation, enslavement and the widespread and systematic practice of summary executions, abductions and subsequent disappearance of persons”.

66. It follows from the combined reading of these different texts that any act committed outside the legal framework automatically engages the responsibility of its author.

67. The Constitution is the main document that a subordinate may invoke in order to refuse to carry out a manifestly unlawful order (art. 15). To this must be added the Convention itself, to which the Constitution confers pre-eminence over other national laws (art. 171).

68. The defence of violation of article 15 of the Constitution invoked by a subordinate who refuses to carry out a manifestly unlawful order will always be accepted.

69. According to article 108 of the Criminal Code:

“Any public official or government agent or employee who orders or commits an arbitrary act or an act that violates the personal liberty or civil rights of one or more

citizens or the Constitution shall be liable to imprisonment for a term of 1 to 5 years and may also, in accordance with article 25, be deprived of some or all of the rights set forth in article 21. If, however, the person can prove that he or she was acting on the orders of superiors for purposes within their remit and in respect of which there was a duty of hierarchical obedience, he or she shall be exempted from punishment, which in this case shall be applied only to the superiors who gave the order.”

70. In all cases where the order is manifestly unlawful, the provisions of article 42 (2) shall apply.

71. Pursuant to article 110 of the Criminal Code:

“Prison governors who admit a prisoner without a warrant or judicial decision or, in the case of expulsion or extradition, without a provisional government order, persons who detain an individual or refuse to present the individual to the police officer or the person transmitting his or her orders, without an injunction from a public prosecutor or a judge, and persons who refuse to show their custody registers to a police officer shall be deemed to be guilty of arbitrary detention and liable to a prison term of between 6 months and 2 years and/or a fine of between 10,000 and 150,000 CFA francs.”

72. Article 112 of the Criminal Code provides that “prosecutors general, public prosecutors, deputy prosecutors, judges and criminal investigation officers who detain a person or cause him or her to be detained without a valid committal order at a location other than those specified by the Government or the public authorities shall be liable to imprisonment for a term of 1 to 5 years”.

73. Article 113 of the Criminal Code provides that “public officials responsible for policing or criminal investigation who refuse or neglect to comply with a lawful request to report an unlawful or arbitrary detention, either at a detention facility or elsewhere, and who are not able to prove that they have reported the detention to a higher authority shall be liable to imprisonment for a term of 6 months to 2 years”.

74. According to article 265 of the Criminal Code:

“Any person who arrests, detains or confines another without being ordered to do so by the competent authorities is liable to 1 to 10 years’ imprisonment, except in cases in which the law orders that the suspect be detained. Whoever provides a place for carrying out the detention or confinement shall suffer the same punishment. Provisions concerning mitigating circumstances and suspended sentences shall not apply to this article.”

75. Article 266 of the Criminal Code provides that:

“The penalty shall be a prison term of between 10 and 20 years in each of the following cases:

- If the arrest was carried out on the basis of a forged official order
- If the arrest was carried out by a person or persons in fake uniform
- If the victim was arrested or detained under threat of death”

76. Lastly, article 267 of the Criminal Code states that “in the cases covered by the preceding articles, if the persons arrested, detained or held against their will were subjected to physical torture, the penalty shall be death”.

77. The General Civil Service Regulations governing the conduct of civil servants provide that there are limits to the obligation to obey orders, for example, when an order is unrelated to an official mission, when executing the order would constitute a criminal offence or when the order is manifestly unlawful and would seriously jeopardize the public interest. Officials who execute such orders are personally liable. In addition, superiors who are aware of unlawful acts committed by their subordinates are personally liable if they take no action to stop them.

78. In the same vein, the various codes of conduct applicable within the defence and security forces provide that subordinates must comply with instructions from their superiors except when an order is manifestly unlawful and would seriously jeopardize the public interest. In such cases, the subordinate has a duty to make his or her objections known to the

issuing authority, expressly indicating why he or she believes the contested order to be unlawful. If the order is upheld and if, despite the explanation or interpretation provided, the subordinate still refuses to comply, he or she shall refer the matter to the first higher authority that may be contacted. The refusal must be officially recorded. Any refusal to carry out an order that does not fall into the above category shall incur the liability of the person concerned.

79. An official who refuses to execute a manifestly unlawful order cannot be sanctioned. If the subordinate incurs a punishment for having refused to execute a manifestly unlawful order, he or she may appeal to the immediate superior of the person who gave the order or before the Council of State on the ground of abuse of authority.

80. It should also be noted that any arbitrary arrest or detention that can be qualified as enforced disappearance is manifestly unlawful and no subordinate can be compelled to comply with an order to carry out an arrest or detention of this kind.

### **Article 7: Applicable penalties**

81. The Niger reaffirmed its attachment to the principle of the rule of law in its Constitution. The Criminal Code does not specifically address enforced disappearance and contains no reference to cases where the victim is a pregnant woman. However, article 324 of the Code does refer to the abduction of women and children.

82. The punishments for the related offences mentioned above are the death penalty, life imprisonment, 1 to 5 years' imprisonment, 1 to 10 years' imprisonment and 10 to 20 years' imprisonment, depending on the seriousness of the acts committed.

83. Mitigating circumstances and grounds for exemption from punishment are provided for when the victim is released more or less promptly and/or when the perpetrators turn themselves in. Torture, death, illness and serious mutilation of the victim are considered to be aggravating circumstances.

84. Examples of aggravating circumstances include cases where the arrest or abduction is carried out by persons wearing or appearing to wear official uniform or insignia or persons assuming a false identity or using a fake official order, or where the person abducted, arrested, detained or kidnapped is subjected to physical torture. The death penalty applies if the torture results in death, serious injury or permanent disability.

### **Article 8: Statute of limitations**

85. The legislation of the Niger does not establish a statute of limitations for the offence of enforced disappearance as such, since the offence is not yet covered by the Criminal Code. However, as mentioned above in relation to article 5 of the Convention, article 208 of the Criminal Code lists enforced disappearance as a crime against humanity. Article 208.8 of the Code explicitly provides for the non-applicability of statutory limitations to crimes against humanity. Equally, the Niger has ratified the Rome Statute of the International Criminal Court, which provides for the non-applicability of statutory limitations to war crimes and crimes against humanity, and, on 26 April 2018, the National Assembly authorized the ratification of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

86. Under the legislation of the Niger, specifically article 208.8 of the Criminal Code, crimes against humanity are not subject to a statute of limitations, but there is no provision explicitly mentioning that the commencement of the enforced disappearance is not taken as a reference to apply the statute of limitations, in conformity with the Convention.

87. The Code of Criminal Procedure stipulates that the statute of limitations for sentences is 5 years for less serious offences and 20 years for serious offences, starting from the day on which the conviction becomes final.

### **Article 9: Jurisdiction**

88. The legislation of the Niger establishes that the national courts are competent to try any offence, including those amounting to enforced disappearance, committed on its territory

or on board aircraft or ships registered in the Niger, or allegedly perpetrated by one of its nationals, or when the victim is one of its nationals. These jurisdictional criteria are set out in, inter alia, articles 642 et seq. of the Code of Criminal Procedure and article 33 of Order No. 2010-86 of 16 December 2010 on combating trafficking in persons. Thus, any national of the Niger who, outside the national territory, commits an act classified as a serious offence punishable under the law of the Niger may be prosecuted and tried by the courts of the Niger. Any national of the Niger who, outside the national territory, commits an act classified as a less serious offence under the law of the Niger may be prosecuted and tried by the courts of the Niger if the act is punishable under the law of the country in which it was committed, even if the perpetrator did not acquire the status of national of the Niger until after the act of which he or she is charged.

89. Under Act No. 2016-21 of 16 June 2016 amending and supplementing the Code of Criminal Procedure, any foreign national who commits an act of torture outside the territory of the Republic may be prosecuted and tried in accordance with the laws of the Niger if he or she is present on the territory or under the jurisdiction of the Republic and is not extradited to the State of which he or she is a national or on whose territory the crime was committed or of which the victim is a national.

90. Any person who, on the territory of the Republic, becomes an accomplice to a serious or less serious offence committed on foreign territory may be tried and sentenced by the courts of the Niger if the act is punishable under both the law of the Niger and the law of the foreign country, on condition that the offence has been established in a final judgment by the foreign court. Where an offence is committed against a private individual, proceedings can be instituted only at the request of the Public Prosecutor's Office following a complaint by the injured party or an official complaint submitted to the judicial authority of the Niger by the country where the offence was committed.

91. If proceedings are instituted against a foreign national placed in pretrial detention, he or she has the right to the consular protection guaranteed by article 36 of the Vienna Convention on Consular Relations of 24 April 1963. Thus, in all cases, the Ministry of Justice will inform the Ministry of Foreign Affairs and Cooperation of the detention of a foreign national, and the latter will in turn notify the consular or diplomatic authorities of the country of which the detainee is a national.

92. The Niger is a party to several conventions and agreements that provide for mutual legal assistance and extradition, including the following:

- Agreement on judicial cooperation in criminal matters between the Republic of the Niger and the Great People's Libyan Arab Jamahiriya, signed on 2 May 2008
- Agreement on judicial cooperation between the Republic of the Niger and the People's Democratic Republic of Algeria, signed in 1984
- Agreement on judicial cooperation between the Republic of the Niger and the Republic of Mali, signed on 22 April 1994
- Judicial cooperation agreement between the Republics of Mali, the Niger and Chad, signed on 9 May 2017
- General Convention on Judicial Matters between the Republic of the Niger and the Republic of Mali, signed in 1960
- Judicial cooperation agreement between the Niger and Nigeria, signed on 18 July 1990
- Extradition agreement between the Government of the Niger and the French Republic, signed on 5 June 2018
- Organization of African Unity General Convention on Cooperation in Criminal Matters of 1961
- Judicial cooperation agreement between the Government of the Niger and the Government of the People's Republic of China, signed in 2001
- Agreement on mutual assistance in criminal matters between the Government of the Republic of the Niger and the Government of the French Republic, signed on 5 June 2018

- Agreement on judicial cooperation between the Republic of the Niger and the French Republic, signed in 1977
- Cooperation agreement between the United Nations and the Republic of the Niger on the criminal prosecution of members of Islamic State in Iraq and the Levant
- Convention on Mutual Assistance in Criminal Matters between the member States of the Economic Community of West African States, signed in 1992
- Economic Community of West African States Convention on Extradition of 1994

93. Articles 649.1 to 649.42 of the Code of Criminal Procedure lay down the general rules on extradition.

94. There are no examples of cases involving the offence of enforced disappearance in which mutual assistance was requested by or from the Niger.

### **Article 10: Pretrial detention**

95. On the basis of the national criminal provisions described above, any person guilty of enforced disappearance may be prosecuted and, therefore, detained. Pretrial detention for all offences is strictly regulated by the Code of Criminal Procedure.

96. Article 131 of the Code provides that:

“Pretrial detention is an exceptional measure. It may be ordered or maintained only in the following cases:

1. When the pretrial detention of the accused person is the only way to preserve material proof or evidence or to prevent intimidation of witnesses or victims and collusion between defendants;
2. When pretrial detention is the only way to protect the accused person, to ensure that he or she can be brought before a court, to put an end to the offence and to prevent its repetition;
3. When the offence, owing to its serious nature, the circumstances in which it was committed or the extent of the harm it caused, has led to an exceptional and ongoing disturbance of public order that only detention can bring to an end. The defendant may be assisted by a lawyer.”

97. The duration of pretrial detention is strictly limited. It may not exceed a reasonable period, taking into account the seriousness of the acts in question and the complexity of the investigations needed to establish the truth. In correctional matters, when the maximum penalty specified by law is less than or equal to 3 years’ imprisonment, an accused person who is resident in the Niger may not be detained for more than six months after his or her first appearance before the investigating judge unless he or she has previously been sentenced either for a serious offence or to more than 3 years’ imprisonment without stay of execution for a less serious offence. In other cases, the accused person may be detained for a period not exceeding six months, renewable once only by reasoned order of the investigating judge.

98. An accused person being prosecuted for a serious offence may not be detained for more than 18 months. However, the investigating judge may, on expiry of this period, decide to extend the detention for a period not exceeding 12 months by a non-renewable order under the same procedure.

99. Provisions limiting the duration of pretrial detention do not apply in cases of terrorism, murder, assassination, parricide, poisoning, criminal theft and misappropriation of public funds.

100. Release may be requested at any time by the detainee or by the public prosecution service or may be ordered ex officio by the judge, who may impose certain conditions.

## Article 11: Obligation to extradite or prosecute

101. Article 117 of the Constitution of the Niger provides that justice is administered on the national territory on behalf of the people and in strict compliance with the rule of law and the rights and freedoms of every citizen.

102. Extradition is governed by articles 649-1 et seq. of the Code of Criminal Procedure and by international conventions and agreements. The principle of *aut dedere aut judicare* is fully applied in the Niger.

103. The authorities competent to investigate and prosecute alleged acts of enforced disappearance are:

- The criminal investigation officers listed in article 16 of the Code of Criminal Procedure, namely: public prosecutors and their deputies, investigating judges, district judges, governors, prefects, the Director General of the National Police and his or her deputy, non-commissioned and commissioned officers in the gendarmerie, police commissioners and senior police inspectors, police sergeants and officers, officers of the National Guard of the Niger, non-commissioned officers of the National Guard of the Niger who have at least three years of service in their corps and who have undergone preparatory training to become criminal investigation officers, mayors and their deputies.
- Prosecutors general at the courts of appeal, responsible, under article 34 of the Code of Criminal Procedure, for ensuring the enforcement of criminal law on the territory of the Republic of the Niger.
- The Minister for Justice, who, under article 35 of the Code, is required to report any criminal offences brought to his or her attention to the Public Prosecutor's Office, enjoining him or her to instigate proceedings or have them instigated, or to refer to the competent court such written admissions as he or she sees fit.

104. Act No. 2003-010 of 11 March 2003 on the Code of Military Justice establishes the competence of the military authorities to investigate and prosecute offences amounting to enforced disappearance.

105. Article 3 of the Code provides that the Minister for National Defence is vested with powers of military prosecution and that the ministers responsible for the oversight of officers of defence and security forces other than the national armed forces exercise the same powers in respect of these personnel.

106. Military judges are appointed by presidential decree, subject to prior approval by the Supreme National Defence Council, for a renewable period of three years (Code of Military Justice, art. 13); the functions of investigating judge are exercised by the military judges thus appointed under the same conditions as judges (Code of Military Justice, art. 17). All these functions are also exercised by civilian judges on a transitional basis.

107. The Government Commissioner is the chief military prosecutor; he or she is chosen from among serving senior officers and appointed by presidential decree on the proposal of the Minister for National Defence for a renewable term of two years (arts. 20 and 21).

108. The standard of evidence for prosecution and conviction is applied under the same conditions as for any ordinary offence of a serious nature and with the same rigour whether the offender is a national of the Niger or a foreign national. This is evidenced by article 42 (2) of the Constitution, which provides that nationals of other countries enjoy the same rights and freedoms on the territory of the Republic of the Niger as nationals of the Niger under the conditions determined by law.

109. Domestic legislation provides a number of measures to ensure the fair trial of the alleged offender at all stages of the proceedings:

- The right to legal counsel: article 3 of Organic Act No. 2018-37 of 1 June 2018 establishing the organization and jurisdiction of the courts provides that in no case may anyone be tried without having been given the opportunity to put forward a defence. Lawyers have free access to all courts. All persons are free to prepare their defence and to choose defence counsel.

- Article 71 of the Code of Criminal Procedure requires that suspects be notified of their right to retain a lawyer after 24 hours in custody, failing which the proceedings may be declared null and void. However, this provision has been superseded by Regulation No. 05/CM/UEMOA of 2 August 2015 on the harmonization of the rules governing the legal profession in the countries of the West African Economic and Monetary Union, which provides for lawyers to assist their clients from the time they are first interrogated.
- Article 20 (1) of the Constitution of 25 November 2010 enshrines the principle of the presumption of innocence, as follows: “Any persons accused of an unlawful act shall be presumed innocent until proved guilty according to law in a public trial at which they have been provided with all guarantees necessary for their defence.”
- The right to equality before the courts is enshrined in articles 8 (1) and 12 (3) of the Constitution and in regional and international human rights legal instruments duly ratified by the Niger.

110. Title IX of the Code of Criminal Procedure establishes a uniform standard of evidence for the prosecution and conviction of national and foreign suspects:

- Article 642 of the Code of Criminal Procedure provides that any national of the Niger who commits an act outside the territory of the Republic that is classified as a serious offence punishable by the law of the Niger may be prosecuted and tried by the courts of the Niger.
- Article 642-1 provides that any foreign national who commits, as a perpetrator or an accomplice, a serious offence outside the territory of the Republic may be prosecuted and tried according to the provisions of the law of the Niger when the victim is a national of the Niger.
- Article 642-1 bis stipulates that any foreign national who commits an act of torture outside the territory of the Republic may be prosecuted and tried in accordance with the laws of, or applicable in, the Niger if he or she is on the territory or under the jurisdiction of the Republic and is not extradited to the State of which he or she is a national or on whose territory the crime was committed or of which the victim is a national.

111. In addition to the traditional criteria for jurisdiction, article 208.8 of the Criminal Code provides that the courts of the Niger have jurisdiction to try offences regardless of where they are committed. The courts exercise their jurisdiction in accordance with the rules described in the preceding paragraphs.

112. The Niger has no statistics on, or examples of, prosecutions or judgments relating to enforced disappearance.

## **Article 12: Reporting and investigation**

113. In the absence of a specific procedure relating to the offence of enforced disappearance, ordinary law applies. In accordance with the Code of Criminal Procedure, all the guarantees granted pertain to the authorities competent to clarify the facts of a case of enforced disappearance.

114. Under article 39 of the Code of Criminal Procedure, public prosecutors are responsible for receiving complaints and reports of wrongdoing and deciding how to deal with them. Where proceedings are discontinued, they must notify the complainant.

115. Article 80 of the Code states that anyone claiming to have been injured as the result of a serious or less serious offence may file a claim for criminal indemnification with the investigating judge. In this case, he or she must pay the clerk of the court the sum deemed necessary to cover the cost of the proceedings, otherwise the claim will be ruled inadmissible (Code of Criminal Procedure, art. 83).

116. If the competent judicial authorities refuse to examine and deal with the case, the complainant may refer the matter to international or regional bodies for the promotion and protection of human rights, the Office of the Ombudsman, the National Human Rights Commission and human rights associations.

117. The National Human Rights Commission established pursuant to article 44 of the Constitution is independent of the executive, legislative and judicial branches. It has a vocation of neutrality and impartiality in fact-finding for the protection and promotion of human rights. In the course of its investigations, it acts in accordance with a well-defined legal framework set out in Act No. 2012-044 of 24 August 2012, which determines its composition, organization, powers and functioning.

118. The Niger has no disaggregated statistics on the number of complaints of enforced disappearance lodged with the national authorities or on the outcome of investigations.

119. In the absence of a specific procedure to clarify and establish the facts relating to an enforced disappearance, ordinary law applies. Pursuant to article 69 of the Code of Criminal Procedure, criminal investigation officers conduct preliminary investigations, either on the instructions of a public prosecutor or on their own initiative. These actions are supervised by a prosecutor general.

120. Article 40 of the Code of Criminal Procedure provides that “public prosecutors shall take, or oversee the taking of, all necessary measures relating to the investigation and prosecution of criminal offences. To this end, they shall supervise the criminal investigation officers and detectives under his or her jurisdiction”.

### **Article 13: Extradition**

121. Article 649.3 (2) of the Code of Criminal Procedure provides that “extradition may also be granted on the basis of international comity, agreement, reciprocity or on the basis of assurances given by the competent authorities”. Article 649.4 of the Code provides that “extradition shall be based on a treaty or agreement signed between the Niger and another State”. These provisions amply demonstrate that the offences covered by the Criminal Code or by treaties or conventions to which the Niger is freely a party may give rise to extradition.

122. Since enforced disappearance has not yet been incorporated into the Criminal Code as a specific offence, the Niger has no specific treaty dealing with it, but it has concluded treaties with several States within the framework of mutual assistance and judicial cooperation.

123. Article 649.1 of the Code of Criminal Procedure provides that, in matters of extradition, the Ministry of Justice is the central authority. For examples of extradition agreements, please refer to paragraph 91 above.

### **Article 14: Mutual legal assistance**

124. As the legislation of the Niger currently stands, there is no mutual assistance treaty or provision applicable to enforced disappearance. Mutual legal assistance is therefore provided through bilateral or multilateral agreements. In the absence of such agreements, assistance is nevertheless possible, on the basis of domestic legal provisions, on the sole condition that the foreign authority offers its services in comparable cases on the basis of reciprocity.

125. In the absence of a convention, the Code of Criminal Procedure allows judges to submit requests to foreign judicial authorities, making offers of reciprocity.

126. To date, the Niger has not received any requests for mutual assistance in relation to acts of enforced disappearance.

### **Article 15: International cooperation**

127. To date, no requests to assist victims of enforced disappearance or to provide help with locating them or securing their release have been made or received by the authorities of the Niger. Therefore, no concrete examples can be given of international assistance or cooperation in this area.

**Article 16: Non-refoulement**

128. Extradition or surrender may not be granted where the accused is at risk of torture or any cruel, inhuman or degrading treatment (Code of Criminal Procedure, art. 649-17).

129. Act No. 97-016 of 20 June 1997 on the status of refugees governs the expulsion and refoulement of refugees and asylum seekers.

130. Extradition is granted by presidential decree, subject to authorization by the Indictments Chamber of the Court of Appeal (Code of Criminal Procedure, arts. 649-25 et seq.).

131. Expulsion, removal and refoulement are authorized by order of the Minister for the Interior.

132. All such decisions are subject to appeal. Extradition and refoulement may be appealed before the judicial authorities (ordinary courts) and the administrative courts, respectively, through standard procedures and by simple request.

133. All officials involved in making decisions on expulsion, refoulement and extradition (judges, police officers, gendarmes, national guards, administrative officials) are trained in criminal procedure, the maintenance of law and order, and compliance with international conventions on the promotion and protection of human rights.

**Article 17: Prohibition of secret detention**

134. It follows from the Constitution that the life, safety and physical integrity of the human person are sacred and protected. No person may be deprived of his or her liberty for having committed an act, unless the act was an offence defined and punishable by law prior to its commission.

135. Deprivation of liberty may take the form of police custody or pretrial detention. The rules governing police custody are set out in the Code of Criminal Procedure. They recognize the right of criminal investigation officers to remand persons against whom there is prima facie evidence in connection with a judicial investigation. Article 59 of the Code of Criminal Procedure states that if, for the purposes of the investigation, a criminal investigation officer remands in custody one or several persons against whom there is prima facie evidence, the period of remand may not exceed 72 hours. The same provisions stipulate that an extension may be authorized only by the public prosecutor or the investigating judge and for a period that may not exceed 48 hours.

136. With regard to the fight against terrorism, the time limit for police custody is set at 15 days, renewable once by the public prosecutor or investigating judge (Code of Criminal Procedure, art. 605.5).

137. Secret detention is therefore prohibited, since only places established by law may be used for detention purposes. Such places include prisons, police stations, offices of the investigative branch of the National Guard, gendarmeries and generally all premises used for investigations by criminal investigation officers. In all these different detention facilities, a record must be kept of the identities of the persons detained, the reasons for their detention, the date and time of the start of detention, etc.

138. Public prosecutors, as the chiefs of the criminal investigation police, are responsible for ensuring the lawfulness of any detention. In the event of irregularities coming to light, the persons in charge of the facilities in question are liable to disciplinary sanctions, without prejudice to any criminal penalties that they may incur.

139. During the pretrial investigation stage, persons held in custody have the right to communicate with their lawyer from the time they are first interrogated and may also communicate with their family. They must be examined by a doctor before being referred to the public prosecutor's office, failing which the proceedings may be declared null and void. If they have been the subject of an arrest warrant, they have the right to be visited by their family and other relatives.

140. When foreign nationals are held in police custody, the judicial authorities apply article 36 of the Vienna Convention on Consular Relations of 24 April 1963, notifying the consular

office or diplomatic mission of their country of origin and authorizing them to communicate with these institutions.

141. According to article 666 of the Code of Criminal Procedure:

“The prosecutor general is responsible for prison oversight and for ensuring that no person is held in prison unlawfully. The investigating judge shall visit prisons once a month, and the president of the Indictments Chamber, the district judge, the public prosecutor and the prosecutor general shall visit whenever they deem necessary. At least once during each session, the president of the Assize Court shall visit the accused persons held in the prison at the seat of the Court.”

142. Article 667 of the Code of Criminal Procedure provides that, when enforcing a conviction order or judgment, a committal order, a detention or commitment warrant, a summons that requires the recipient to be placed in pretrial detention or an arrest warrant issued in accordance with the law, the chief of the institution concerned must ensure that the details of the document are entered in the relevant register. Where compliance with the order or warrant is voluntary, the chief of the institution must copy into the detention register the relevant information from the documents submitted by the prosecutor general or public prosecutor. In all cases, the head of the institution must give notice of the committal to either the prosecutor general or the public prosecutor, as appropriate. The date of the prisoner’s release, in accordance with the release order, and, where applicable, the court decision or legal provision on which the release is based must also be entered in the register.

143. In accordance with article 668 of the Code of Criminal Procedure:

“A prison officer shall not, under penalty of prosecution and punishment for arbitrary detention, admit or hold any person except on the basis of a conviction order or judgment, a committal order, a detention or commitment warrant, a summons that requires the recipient to be placed in pretrial detention or an arrest warrant issued in accordance with the law, nor shall he or she do so without this being entered in the prison register in accordance with article 667.”

144. Article 15 of Act No. 2017-08 of 31 March 2017 setting out the basic principles of the prison system in the Niger provides that a record must be kept in all prison registers of:

- Defendants and accused persons
- Convicted persons
- Debtors
- Persons detained temporarily

145. These registers must be numbered and initialled by the prosecutor general or the president of a trial court. The Minister for Justice and the prison directors may, if necessary, order that additional registers be kept.

146. Article 16 of Act No. 2017-08 stipulates that “prison registers shall include an individual file for each prisoner, the list of required documents for which shall be determined by regulatory act”.

147. According to article 46 of the Act, “a prompt, thorough and impartial investigation shall be carried out into all allegations of torture or other ill-treatment and into any suspicious death in custody”.

148. Following the ratification by the Niger of the Optional Protocol to the Convention against Torture, a bill establishing a national mechanism for the prevention of torture has been drafted and is in the process of being adopted. The mechanism will fall under the authority of the National Human Rights Commission.

## **Article 18: Information concerning persons deprived of liberty**

149. Pursuant to article 71 of the Code of Criminal Procedure, all persons taken into police custody are informed that they have the right to, inter alia, legal assistance. Regulation No. 05/CM/UEMOA stipulates that lawyers assist their clients from the time they are first interrogated. In accordance with international conventions, such persons may also be visited

by their family or other relatives. Lastly, before being brought before a court, they must be examined by a doctor to verify that they have not been subjected to abuse.

150. Similarly, all persons placed in pretrial detention may receive visits under certain conditions, and judges may not, in any case, deny them access to their lawyer.

151. The law guarantees the right to information for relatives of persons deprived of their liberty in all circumstances, although such persons have the right to refuse any contact or the communication of any information about the reasons for their detention. With regard to consular protection, article 36 of the Vienna Convention of 24 April 1963 makes the obligation to inform the consular authorities subject to an express request from the person deprived of his or her liberty.

152. Act No. 2017-08 of 31 March 2017 provides that close relatives of detainees may visit with the authorization of the judicial authorities. However, children under 16 years of age accompanying a person with a visiting permit are exempt from having to obtain this authorization.

153. Prisoners have the right to send and receive correspondence subject to any court orders to the contrary and to provisions relating to the maintenance of public order and security. They are immediately informed of any events affecting their family and may exceptionally be allowed to visit their family or to communicate with them by telephone.

154. Article 45 of the Act states that “detainees and third parties acting on their behalf may lodge confidential complaints against prison personnel in the event of ill-treatment or inhuman or degrading treatment”. Article 46 adds that “a prompt, thorough and impartial investigation shall be carried out into all allegations of torture or other ill-treatment and into any suspicious death in custody”.

## **Article 19: Protection of personal data**

155. Act No. 2017-28 of 30 May 2017 regulates procedures for the protection of personal data. Article 3 lists the matters covered by this Act, which are:

- Any collection, processing, transmission, storage or use of personal data by a natural person, the State, local authorities or legal persons under public or private law
- Any processing, whether by automatic means or not, of data that form part of or are intended to form part of a data file
- Any processing of data on the national territory
- Any processing of data concerning public security, defence, the investigation and prosecution of criminal offences or State security, subject to the exceptions set out in specific provisions of other laws

156. According to article 5 of the Act, the processing of personal data is subject to a prior declaration to the Personal Data Protection Authority. This declaration includes an undertaking that the processing meets the requirements of the law. The Authority issues a receipt in response to the declaration, where appropriate, by electronic means. The applicant may commence processing upon receipt of this document. He or she will not be relieved of any of his or her responsibilities.

157. The following are subject to the prior authorization of the Authority:

- The processing of personal data relating to genetic and medical data and to scientific research in these fields
- The processing of personal data relating to offences, convictions or security measures ordered by the courts
- The processing of national identification numbers or any other similar identifier, in particular telephone numbers
- The processing of personal data containing biometric data
- The processing of personal data in the public interest, in particular for historical, statistical or scientific purposes

- The planned transfer of personal data to a third country

158. The request for authorization will be submitted by the data processor or his or her legal representative. The Personal Data Protection Authority is an independent body responsible for ensuring that the processing of personal data is carried out in accordance with the law.

159. The Niger does not yet have a genetic database. The objective of the law on the protection of personal data is to ensure that such data are gathered and processed for specified, explicit and legitimate purposes and are not, therefore, used for any purpose other than that for which they were gathered.

## **Article 20: Restrictions on the right to information**

160. Article 31 of the Constitution provides that “all persons have the right to be informed and to have access to the information held by public bodies under the conditions established by law”.

161. Access to information may be restricted on account of the confidentiality of a judicial investigation, as enshrined in national law. The nature and duration of any restrictions depend on the sensitivity of the case at hand. However, if so requested, the court may make the case file available to the lawyers of the person against whom proceedings have been brought.

162. Restrictions on the right to information are exceptional and cannot be applied to the detainee’s lawyer. Article 110 of the Code of Criminal Procedure states that “an accused person who has been detained may, immediately after his or her first appearance, freely communicate with his or her counsel. The investigating judge may impose a ban on communication for a period not exceeding 15 days. He or she may extend this period for a further 15 days only. Under no circumstances shall the ban on communication apply to the accused person’s counsel.”

163. Act No. 2017-08 of 31 March 2017 on the fundamental principles of the prison system in the Niger provides that all persons deprived of their liberty must be held in a prison that is a public body under the authority of the Minister of Justice.

164. With the exception of certain judges, administrative authorities and members of the National Human Rights Commission, no one may visit a prison without authorization from the Minister of Justice. The close relatives of a detainee may visit him or her if so authorized, in writing, by the competent judicial authorities.

## **Article 21: Release**

165. Every detainee who is released is subject to a release order, and is issued with an exit pass by the prison administration which also sends a notice of release to the judicial authority. When a detainee is admitted, the date of release and, where applicable, the decision or law justifying the release are noted in the prison register.

166. When persons are held by individuals (in the event of hostage-taking, false imprisonment or kidnapping, for example), the police authorities that carry out their release must draw up a report.

167. The release of persons detained by the authorities is supervised by the judicial authority, as the guardian of personal liberties (Code of Criminal Procedure, art. 130 (2)). Those held by individuals are released either by law enforcement or intelligence officers or by their captors themselves.

168. Article 666 of the Code of Criminal Procedure states that “the prosecutor general is responsible for prison oversight and for ensuring that no person is held in prison unlawfully. The investigating judge shall visit prisons once a month, and the president of the Indictments Chamber, the district judge, the public prosecutor and the prosecutor general shall visit whenever they deem necessary. At least once during each session, the president of the Assize Court shall visit the accused persons held in the prison at the seat of the Court.”

169. Article 667 of the Code of Criminal Procedure adds that: “Upon receiving notice of a conviction order or judgment, a committal order, a detention or commitment warrant, a

summons that requires the recipient to be placed in pretrial detention or an arrest warrant drawn up in accordance with the law, the chief of the institution concerned must ensure that the details of the document are entered in the relevant register. Where compliance with the warrant or order is voluntary, the director of the institution shall include in the detention register the information from the order transmitted to him or her by the prosecutor general or the public prosecutor. In all cases, the director of the institution shall give notice of the committal to either the prosecutor general or the public prosecutor, as appropriate.”

## **Article 22: Sanctions for failure to record and refusal to provide information**

170. Under article 134 of the Code of Criminal Procedure, any person deprived of his or her liberty may apply to the competent court for provisional release, as may his or her lawyer. In the event of dismissal, discharge or acquittal, the beneficiary has the right to seek reparation by request to the Compensation Commission of the Court of Cassation or by establishing the liability of the State before the Administrative Courts (Code of Criminal Procedure, arts. 143-1 to 143-4).

171. In order to prevent unlawful deprivation of liberty, arbitrary arrest and imprisonment have been made serious offences, with aggravated penalties if the perpetrator is a public official. The only places at which persons may be detained are those established by the authorities.

172. In order to ensure that all deprivations of liberty are registered, prison governors are required to register every detainee, together with his or her committal order, in a prison register and to make a note of the person who issued the committal order. It is an offence to refuse to provide this information or to provide inaccurate information.

173. In addition to the criminal penalties (imprisonment, fines and the deprivation of civil, civic and political rights), there are various administrative and disciplinary penalties, ranging from cautions to removal from post.

174. The law provides for the imposition of criminal, administrative and disciplinary penalties on the judicial and administrative authorities for detention-related failings.

175. Article 108 of the Criminal Code provides that any public official or government agent or employee who orders or carries out an arbitrary act or an act that violates the personal liberty or civic rights of one or more citizens or the Constitution is liable to imprisonment for a term of 1 to 5 years. If, however, the person can prove that he or she acted on the orders of superiors for purposes within their remit, and in respect of which there was a duty of hierarchical obedience, he or she is exempted from the penalty, which, in these cases, is imposed only on the superiors who gave the order.

176. Article 109 of the Criminal Code states that: “Damages, which may be awarded for the violations described in article 108 above, shall be claimed either during the criminal prosecution or through civil proceedings and shall be determined with due regard to the persons, the circumstances and the harm suffered.”

177. Article 110 of the Criminal Code states that “prison governors who admit a prisoner without a warrant or judicial decision or, in cases of expulsion or extradition, without a provisional government order, who detain the prisoner or refuse to present the prisoner to the police officer or to the person transmitting his or her orders without an injunction from a public prosecutor or judge, or who refuse to show their custody registers to the police officer shall be deemed to be guilty of arbitrary detention and punished by 6 months to 2 years’ imprisonment and/or a fine of 10,000 to 150,000 CFA francs”.

178. In accordance with article 25, the perpetrators may also be deprived of all or some of their civic rights.

179. Article 112 of the Criminal Code states that “prosecutors general, public prosecutors, deputy prosecutors, judges and criminal investigation officers who detain a person or cause him or her to be detained without a valid committal order at a location other than those specified by the Government or the public authorities shall be liable to imprisonment for a term of 1 to 5 years”.

180. Lastly, article 113 of the Criminal Code stipulates that “public officials responsible for policing or criminal investigation who refuse or neglect to comply with a legal request to report an unlawful or arbitrary detention, either at a detention facility or elsewhere, and who are not able to prove that they have reported the detention to a higher authority shall be liable to imprisonment for a term of 6 months to 2 years”.

### **Article 23: Training**

181. With regard to the protection and promotion of human rights in prisons, several training courses were organized for prison medical staff and other officials responsible for the custody of detainees in 2015, in Kollo, Tahoua and Zinder, among other places. These training courses are part of a programme to improve and modernize living and detention conditions.

182. Police training makes no specific reference to provisions on enforced disappearance. In practice, however, the ethics course taught at the police academy covers aspects of the prohibition of unlawful detention. The training on preliminary investigation procedures included in criminal procedure classes places an emphasis on the need to respect human dignity and the obligation not to subject a person to deprivation of liberty that removes him or her from the protection of the law.

183. Furthermore, with support from the Danish Human Rights Institute and the Faculty of Economics and Law, a human rights manual and training guide were produced by the Ministry of the Interior for the National Guard, which is responsible for the custody of detainees, in 2006 and 2010, respectively. As a result, in 2016 and 2017, 176 members of the National Guard underwent human rights training.

184. Several training modules on human rights, including the fundamental international treaties, have also been developed for a new training institution, the Judicial Training College of the Niger, which is henceforth in charge of the initial training of judges, registrars and the new staff of the prison administration established under Act No. 2017-09 of 31 March 2017.

185. As part of the partnership between the Ministry of Justice and the Danish Human Rights Institute, a human rights training programme has been developed for the defence and security forces and the judiciary. Human rights training manuals have been published for judges, police officers, members of the National Guard and prison directors. Between 2009 and 2016, 327 judges underwent training on the human rights training manual with a view to improving their application of international treaties.

186. The Ministry of Justice has also organized a series of training courses, working in conjunction with the United Nations Development Programme and the Office of the United Nations High Commissioner for Human Rights. In addition, the International Organization for Migration has trained defence and security force personnel and judges in investigative techniques for use in cases of trafficking in persons and migrant smuggling. Several more training-for-trainers courses have been provided for officers of the National Guard, the police and the gendarmerie, organized both by the Government and by non-governmental organizations.

187. In the training provided for law enforcement officers, emphasis is placed on compliance with Act No. 2002-05 of 8 February 2002 on manifestly unlawful orders, article 1 of which states that no person shall be required to carry out a manifestly unlawful order. Any order given or issued in flagrant violation of existing laws and regulations is considered to be manifestly unlawful. Orders or instructions that prescribe, authorize or encourage enforced disappearance are prohibited. No person who has given or carried out a manifestly unlawful order may invoke the defence of lawful orders in order to avoid criminal and/or civil responsibility.

188. Article 5 of the same Act stipulates that, without prejudice to any administrative and/or disciplinary penalties, the person who gave the order and the person who carried it out will receive penalties for offences under criminal law resulting from the execution of a manifestly illegal order.

189. Article 29 of Decree No. 99-368 of 30 September 1999 on the prison system provides that “wardens shall carry out the orders of the prison governor and the chief warden. Placed under the direct authority of the chief warden, their responsibilities shall include supervising

detainees, guarding prisons, maintaining order and internal discipline and ensuring that prison labour is performed properly and that all areas of the institution are cleaned. They shall immediately report any violations of regulations and orders received. They shall maintain a record of their daily observations concerning their various tasks.”

190. Thus, if they have reason to believe that an enforced disappearance has occurred or is planned, they must bring it to the attention of their superiors, who will immediately notify the police, the gendarmerie or the National Guard and report the disappearance to the administrative and judicial authorities.

## **Article 24: Rights of victims**

191. A victim is defined as any person who has personally suffered harm as a direct result of the offence (Code of Criminal Procedure, art. 80). This definition includes the disappeared person, his or her beneficiaries and associations specially authorized by law to combat enforced disappearance. There are currently no such associations in the Niger.

192. Beneficiaries and associations are heard during the inquiry. At this stage, victims are not involved in the inquiry. During the court proceedings, however, victims are recognized as parties claiming damages. They are involved in the trial, are consulted by the court whenever it intends to take a judicial decision, and are kept informed when these decisions are taken.

193. Victims have the right to instruct counsel and are informed of the findings of the investigation. The same is true at the trial stage, as noted above, where victims become parties to the case, and their rights are guaranteed by law.

194. The parties are informed of the outcomes of the investigation by the investigating judge (by notice) and the results of the trial by the court bailiffs (by service). In the course of the inquiry, investigation or trial, with a view to honouring the rights of victims, public prosecutors periodically meet victims and their lawyers in order to inform them of the progress made, the reasons for any delays in the proceedings and the possible date of the trial. These are not formal meetings regulated by law, but they have become the norm in high-profile cases that involve several victims and entail several stages (expert opinions, second expert opinions, international cooperation, etc.). Communication is then essential in order to reassure the victims and, often, to ask them to contribute to the proceedings. For example, victims may form associations, make statements that judges may not make, meet political leaders to expedite a request for extradition or the classification of documents, carry out sit-ins, etc.

195. There is no specific mechanism for dealing with enforced disappearances. However, whenever an offence is committed, an inquiry unit of the criminal investigation police or the intelligence services carries out an inquiry in which the victims participate. Victims are searched for and located. If the remains of the victims are found, they are handled with dignity and either returned to family members or stored until this is possible.

196. There are no protocols in place for handling the mortal remains of disappeared persons and returning them to their families, in accordance with international standards, but it is possible that such protocols might be introduced, including at forensic facilities.

197. There are no mechanisms in place to systematically collect ante-mortem data related to disappeared persons and their relatives and set up DNA databases to identify victims of enforced disappearance, but steps are being taken to set up such a system.

198. There is also no mechanism to store the genetic material of disappeared persons and their relatives, but it is possible that steps will be taken to establish one.

199. Any victim of an offence may take legal action to seek reparation from the perpetrator. If the identity of the perpetrator is unknown, proceedings may be taken against the State if there has been a failing on the part of one of its departments or officials. Special funds have been established for victims of terrorism and trafficking but are not yet operational. There is a specific form of reparation for cases in which the victims are State officials or members of the defence and security forces.

200. The principle of reparation entails full compensation, recognition of victim status, reparation for pecuniary and non-pecuniary damage and restitution. The State is attempting to ensure an effective guarantee of non-repetition.

201. There is a civil court procedure for reporting and declaring the disappearance or absence of a person in accordance with the provisions of articles 343 to 370 of the Civil Code.

202. The Constitution and the law establish that citizens are in general free to form associations of any kind, provided that these do not undermine morality or public order. Associations are formed by submitting a simple declaration to the town hall, but they may not commence operations until authorization has been granted by the Ministry of the Interior.

203. Some laws are drafted through a participatory process. Relevant departments and associations are consulted both at the drafting stage (the Reform Commission under the Ministry of Justice and the Technical Committee for the Verification of Legal Texts under the Secretariat General of the Government) and during voting at the commission level of the National Assembly.

204. With regard to social security in the event of a worker's enforced disappearance, his or her children continue to receive family benefits during this period for as long as the employer pays the contributions. At the end of this six-month period, the employer may legally break the employment contract, granting the family of the disappeared person the termination benefits provided for by law. In order to receive a pension, the beneficiaries must submit a death certificate and details of the findings of the family council. These conditions prevent the families of disappeared workers from receiving a pension.

## **Article 25: Children**

205. There are no reported cases of children being wrongfully removed and subjected to enforced disappearance, children whose parents have been subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance, and there are no legal provisions specific to such cases.

206. The Constitution enshrines the protection of the child. Article 21 of the Constitution provides that "marriage and the family constitute the natural and moral basis of the human community. They are placed under the protection of the State. The State and the public authorities have a duty to ensure the physical, mental and psychological health of families, and especially of mothers and children."

207. Article 22 provides that "the State must ensure the elimination of all forms of discrimination against women, girls and persons with disabilities. Public policies in all areas shall ensure that such persons can attain their full potential and participate in national development. In addition, the State shall take measures to combat violence against women and children in public and private life. It shall ensure that they are equally represented in public bodies through the national policy on gender and quotas."

208. The Criminal Code devotes an entire chapter to offences against children and the family (chap. V). The first section of the chapter establishes the offences of abduction, grievous bodily harm against a child aged under 13 years, deprivation of food and care, concealment, passing off or substitution of a child, the concealment of a child's birth, and failure to hand over a child by the person having custody of that child (arts. 248 to 250); failure to declare a birth or hand over a newborn (arts. 251 and 252); abandonment of a child or a person with disabilities (arts. 253 and 254); abduction of a minor (arts. 255 to 258); and the failure to hand over a child whose custody has been decided by the courts (art. 259).

209. Act No. 2014-72 of 20 November 2014 on the jurisdiction, responsibilities and functioning of juvenile courts in the Niger sets out child protection measures in accordance with the Convention on the Rights of the Child.

210. Article 1 of the Act defines a child at risk as "any child whose health, safety or moral well-being are at risk or whose upbringing is severely compromised".

211. Article 37 of the Act sets out the protection measures to be taken in the event that a child is at risk. It provides that: "Where the health, safety or moral well-being of a child are at risk or his or her upbringing are severely compromised, a juvenile judge or juvenile court may, following a social inquiry, order that the minor remain in the environment in which he

or she is currently living, wherever possible. In such cases, the juvenile judge or juvenile court shall appoint either a qualified person or an approved social and educational service provider to offer assistance and advice to the family in order to address the material and psychological problems that it is experiencing.”

212. However, orders for a child to remain in his or her family environment may be subject to special obligations relating to attendance at a health-care or educational institution or the exercise of a professional activity.

213. If it is necessary to remove the child from his or her current environment, the juvenile judge or the juvenile court may decide to place the child with:

- The father or mother with whom the child was not habitually resident
- Another family member or trusted third party
- An approved health-care or educational institution
- A government child protection service

214. In the first three cases, the juvenile judge or the juvenile court may appoint a qualified person or an approved social and educational service provider to offer assistance and advice to the person or institution that has taken custody of the minor.

215. The juvenile judge may also appoint a qualified person or an approved social and educational service provider to offer assistance and advice in the environment from which the minor has been temporarily removed in order to address the material and psychological problems in this environment and prepare it for his or her return.

216. The following measures have been taken to ensure respect for the fundamental principles of children’s rights in all actions concerning them:

- The consideration of the best interests of the child has been made a key principle of child protection policy at both the administrative and judicial levels and in Act No. 2014-72 of 20 November 2014 on the jurisdiction, responsibilities and functioning of juvenile courts.
- The framework document on child protection was adopted in 2013.
- A technical committee was established pursuant to Ordinance No. 051/MP/PF/PE/DPE of 25 August 2011 to consider and analyse applications for full adoption. In addition, agreements have been signed with accredited intercountry adoption agencies, namely Les Enfants du Mandé of Quebec City and Larisa of Belgium. These agreements are a way of ensuring follow-up in respect of children who have been adopted through an intercountry process.
- A decree setting the conditions for the establishment and operation of private institutions providing support, counselling, guidance and shelter for children was adopted on 4 June 2010.
- Ordinance No. 2010-86 on combating trafficking in persons was adopted on 16 December 2010.
- The National Coordinating Commission for the Fight against Trafficking in Persons and Migrant Smuggling and the National Agency for the Fight against Trafficking in Persons and Migrant Smuggling were created pursuant to Ordinance No. 2010-86 of 16 December 2010 on combating trafficking in persons.
- A central service for the protection of women and minors has been established.
- Child protection units have been created with the police, the National Guard and the gendarmerie.
- Shelter and support centres have been established for children in conflict with the law.