

Arrest and Pre-trial Detention in Niger

A review of domestic legislation

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1 Introduction

Police detention is a measure that allows an officer of the criminal investigation department of the police 'to detain one or more persons', either 'for purposes of investigation' or because there 'is sufficient reliable and consistent evidence against the person to justify pressing charges'. The period of detention may not exceed 48 hours, unless expressly extended. The purpose of pre-trial detention therefore is to prevent a person suspected of having committed or attempting to commit an offence from fleeing and/or disposing of evidence, or from influencing witnesses.¹

Given that this constitutes a deprivation of liberty, pre-trial detention may create risks for the infringement of a range of fundamental human rights. Therefore, those held in custody require guarantees that their rights will be protected, and that their detention is indeed a temporary measure.

This review examines the legal framework relating to the use of arrest and pre-trial detention by the police in Niger. A detailed review of the current domestic legislative regime is provided, and this is supported by a review of how this relates to the international framework.

¹ Lennon, JL (2006) 'Raisons justifiant le placement en garde à vue du suspect' ['Reasons for placing the suspect in custody'], *Chron.* 887

2 Methodology

This review involved a detailed analysis of the international and domestic legislative framework relating to the application of arrest and pre-trial detention. This was undertaken with a view to comparing international standards and domestic provisions in order to identify inconsistencies. This also included a review of secondary sources, including research reports, reports to international treaty bodies and other relevant literature.

3 Structure of this Report

This legislative review is presented in three parts. It begins with a profile of Niger to contextualise the discussion that follows. It then sets out the conditions, in terms of Niger's current domestic legislation, as to the application of arrest and detention. This is supported in Annexure 1 by a detailed tabulation of Niger's domestic legislation as this relates to the requirements of the international legal framework. The concluding section provides an analysis of the legal framework and a set of recommendations.

4 Profile of Niger

Niger is in West Africa and covers an area of approximately 1 267 000 square kilometres. Its population was estimated at 15 203 822 in 2010.²

It became a republic on 18 December 1958 and gained independence on 3 August 1960. Its capital is Niamey, its currency is the CFA franc and its official language is French. Niger has a wealth of important natural resources, including uranium, coal, iron, gold, phosphate, cement and petroleum. Agriculture and livestock are also important in the economy. Niger is ranked among the poorest countries in the world according to the Human Development Index (HDI). The GDP of Niger was estimated at 2.48 trillion CFA francs in 2009. The poverty rate over the entire territory was estimated at 62.1% in 2005 and 59.5% in 2008.³ This has led the country to develop an Accelerated Development and Poverty Reduction Strategy (2008–2012) with the aim of improving social indicators by 2012 and reducing the poverty rate to 42%. The literacy rate among adults (those over the age of 15) was estimated in 2004 to be 14.4%.⁴ The country is predominantly Muslim, with minority populations of Christians and animists. Niger's population is composed of nine ethnic groups: Hausa, Zarma-Songhai, Tuareg, Fulani, Arabic, Kanuri, Tubu and Gourmantché Boudouma. The vast majority of these communities are concentrated in the west and south of the country, where the soil is more fertile.

The Niger National Police Force (*Police nationale*) operate under the Ministry of the Interior, and are responsible for security and law enforcement in urban areas, and the protection of government buildings, institutions, and the security of government leaders through special agencies.⁵ Outside the urban centres, police investigations are conducted by the National Guard, which, unlike the police, has a presence throughout the territory.

2 Institut National de la Statistique-Niger, <http://www.stat-niger.org/statistique/index.php?lng=fr>, accessed 15 December 2012

3 Institut National de la Statistique-Niger, <http://www.stat-niger.org/statistique/index.php?lng=fr>, accessed 15 December 2012

4 Unesco Institute for Statistics, <http://www.uis.unesco.org/Pages/default.aspx>, accessed 13 January 2013

5 African Policing Civilian Oversight Forum (2008) *An Audit of Police Oversight in Africa*. Cape Town: African Policing Civilian Oversight Forum

5 Arrest and Pre-trial Detention in Niger

5.1 Review of Domestic Legislation

The discussion below reviews Niger's domestic legislation in terms of legal provisions relating to use of arrest and detention. This should be read together with Annexure 1, which sets out these provisions as they relate to the international legal framework.

5.1.1 Who may place an individual in police custody?

An *Officier de police judiciaire* (OPJ) may place a person in custody in terms of the Criminal Procedure Code (CPC).⁶ Under the new Criminal Procedure Code, those who are defined as OPJ include the following:⁷

- Public prosecutors and their deputies;
- Investigating judges;
- Trial judges;
- Governors;
- Prefects;
- The Director-General of the National Police Force and his/her deputy;
- Officers and senior officers of the Gendarmerie;
- Police commissioners and senior police inspectors, peace officers and police officers;
- Officers of the National Guard of Niger;
- Non-commissioned officers of the National Guard of Niger with at least three years of service, and who have undergone preparatory training as a senior officer of the criminal investigation department of the police;
- Police inspectors appointed as police commissioners and heads of the mobile brigade of the National Police Force;
- Sergeants and commanders of Gendarmerie brigades, stations or platoons;
- Police inspectors with at least three years of service in the police and appointed by order of the Minister of Justice upon nomination by the Minister of the Interior;
- Sergeants and gendarmes with at least three years of service in the Gendarmerie, appointed by order of the Minister of Justice upon nomination by the Minister of National Defence; and
- Mayors and their deputies.

The above list indicates that a wide range of officials are awarded OPJ status. It is clear, however, that few of these officials exercise this power – in practice only those who work in investigation units place people in custody.

5.1.2 When may an individual be placed in custody?

According to the CPC, placing people in custody may be done during three types of events: (1) during the investigation of cases of *in flagrante delicto*; (2) during pre-trial investigations; or (3) in execution of letters rogatory.⁸

In cases of *in flagrante delicto*, the officer may have to detain one or more persons during the investigation. The CPC makes provision for the detention of suspects⁹ and witnesses.¹⁰ For pre-trial investigations, this takes place either *ex-officio* or on the instructions of the public prosecutor and under the supervision of the Attorney-General.

6 Criminal Procedure Code, article 59

7 Criminal Procedure Code, Ord. No. 2011-13 of 27 January 2011, article 16

8 Criminal Procedure Code, article 56, para. 1 and 2

9 Criminal Procedure Code, article 56, para. 1 and 2

10 Criminal Procedure Code, article 57, para. 1

In relation to letters rogatory, this occurs when an investigating judge requires any other investigating judge or officer of the criminal investigation department under the jurisdiction of his/her court to carry out investigative measures s/he considers necessary in places subject to his/her respective jurisdictions.

5.1.3 Who may be placed in police pre-trial detention?

During investigations of cases of *in flagrante delicto* these are either suspects (in particular those individuals that the OPJ considers to be 'fleeing the scene of the crime' and 'any person whose identity it appears necessary to establish or verify during the course of the criminal investigation'¹¹) or witnesses (including people 'likely to provide information regarding the facts' that can be summoned and questioned by the OPJ).¹² Lastly, it is anyone against whom there is 'sufficient reliable and consistent evidence to justify pressing charges'.¹³

In terms of detention for the purpose of pre-trial investigation, the CPC provides that these are 'persons against whom there is evidence of guilt'. Detention may also be effected in executing letters rogatory.¹⁴

5.1.4 What rights are guaranteed during pre-trial police detention?

The discussion below reviews procedural safeguards afforded in legislation for those in detention. Some of these rights are differentiated according to the crime the individual is accused of committing, and the status of the individual involved.

[a] What is the duration of police pre-trial detention?

Limitations on the time that may be spent in police detention have been differentiated by the law as follows:

- Ordinary law: Following accusations of *in flagrante delicto*, the duration of police custody is 48 hours, which may not be extended, for persons referred to in articles 56 and 57.¹⁵
- For people against whom there is sufficient reliable and consistent evidence to justify pressing charges: The duration of police custody (usually 48 hours) may be extended upon written authorisation from the Public Prosecutor or the investigating judge.¹⁶
- Pre-trial investigation: The duration of police custody is 48 hours, extendable once upon authorisation from the Public Prosecutor.¹⁷
- For children/juveniles: Neither the CPC nor Ordinance No. 99 of 2011,¹⁸ on the establishment, composition, organisation and powers of juvenile courts includes any special measures concerning juveniles. Therefore matters relating to this group proceed according to the rules of ordinary law.
- For addicts: The duration of police custody is as provided for by ordinary law (48 hours) on the fight against drugs in Niger.¹⁹ This period may be extended twice. A first extension is for the same duration of 48 hours and a second extension is for a period of 24 hours. All extensions must take place upon written authorisation from the Public Prosecutor.
- For terrorism suspects: A recent amendment to the CPC introduced new provisions on procedures relating to terrorism suspects. Amending the previous reform of 2008, the new law increases the duration of police custody to 120 hours.²⁰ This period may be extended once for a further period of 120 hours upon written authorisation from the Public Prosecutor,

11 Criminal Procedure Code, article 56, para. 1 and 2

12 Criminal Procedure Code, article 57, para. 1

13 Criminal Procedure Code, article 59, para. 2

14 Criminal Procedure Code, article 147

15 Criminal Procedure Code, article 59, para. 1

16 Criminal Procedure Code, article 59, para. 3

17 Criminal Code, article 71, para. 2

18 Ordinance No. 99-11 of 14 May 1999

19 *Journal Officiel* [Government Gazette], No. 23 of 1 December 1999

20 Ordinance No. 2011-13 of 27 January 2011 amending and supplementing Act No. 61-33 of 14 August 1961 introducing the Criminal Procedure Code, article 605.5

acting for the special judicial division, or the investigating judge for purposes of execution of letters rogatory.

- The execution of letters rogatory: The duration of police custody is as provided for by ordinary law (48 hours).²¹ This may be extended for a further period of 48 hours upon written authorisation from the investigating judge.

[b] The right to legal representation

The person placed in detention has the right to counsel. The OPJ must inform him/her of this right. Here too, the law reflects limitations on the length of time before this notification must be given.

- In ordinary law: the suspect is required to be informed of the right to legal counsel from the 24th hour of police custody.²² Failure to inform the individual of this right results in the nullification of the proceedings. It should be noted that notification of the right to counsel as provided for in the CPC, as part of the pre-trial investigation, has not been the case for investigations following detection of *in flagrante delicto*.
- For juveniles and addicts: Notification of the right to legal counsel is not specifically prescribed by the Ordinance of 1999. Therefore, ordinary law as above applies.
- For terrorism suspects: It is required that the suspect be notified of their right to legal counsel from the 48th hour of police custody.²³

[c] The right to physical integrity

The right to physical integrity is a fundamental right guaranteed by international instruments and must be respected. The Constitution of Niger states:

No one shall be subjected to torture, slavery or ill-treatment or cruel, inhuman or degrading treatment. Any individual or public servant who is guilty of torture, abuse or cruel, inhuman or degrading treatment in the course of or in connection with the performance of his/her duties, either on his/her own initiative or on instructions, shall be punished in accordance with the law.²⁴

The CPC itself does not, however, specify offences of abuse or cruel, inhuman or degrading treatment of persons except for the provisions on assault and battery, and acts of violence. Nevertheless, when such abuse is perpetrated by civil servants or government employees, the Criminal Code provides for specific penalties.²⁵

There are, however, rules with regard to police custody to ensure that the physical integrity of persons held in custody is respected. It is required that a medical certificate must be issued certifying that the suspect has not suffered any physical harm.

- Ordinary law: The CPC provides that the person brought before the Public Prosecutor must be accompanied by a medical certificate attesting that s/he has not been subjected to abuse.²⁶
- For children/juveniles: No special measures have been provided for, and it may be assumed that ordinary law applies.
- For addicts: The law states the following: “from the outset of police custody, the Public Prosecutor shall designate a physician who examines the person in custody every 24 hours and after each examination issues a certificate of proof that is placed in the case file. Other medical examinations, which will be legal, may be requested by him/her. Medical certificates shall indicate in particular whether the person is a drug addict and if his/her state of health is consistent with being held in custody”.²⁷
- For terrorism suspects: The measure is similar to that provided for by ordinary law, and

21 Criminal Code, article 147

22 Criminal Code, article 71, para. 3

23 Ordinance No. 2011-13 of 27 January 2011, article 605.5, para. 2

24 Constitution of Niger, article 14

25 Criminal Procedure Code, articles 108-113 and 265-268

26 Criminal Procedure Code, article 71, para. 5

27 Criminal Procedure Code, article 118

states that the suspect referred to the Public Prosecutor must be accompanied by a certificate attesting that s/he has suffered no physical harm.²⁸

[d] The right to be brought before a judicial authority

International law and principles require that when a person has been arrested and placed in custody for purposes of ascertaining the truth during an investigation, s/he must be brought before a judicial authority for them to be proven guilty or innocent.²⁹ The police are therefore required to refer the individual to a competent court for adjudication of the charge.

Domestic law in Niger, however, includes no express provisions to this effect. Only articles 147 and 605.5 deal explicitly with referral at the end of the period of police custody.³⁰

In the case of letters rogatory, domestic law provides that the persons detained 'must mandatorily be brought before the investigating judge in whose jurisdiction the letters rogatory are carried out within 48 hours'.³¹

On terrorism suspects, the law states, 'When the end of a period of police custody falls on a public holiday, the detainee is referred on the next business day.'³²

Finally, general law raises the issue, but only incidentally, in dealing with the medical certificate which must accompany 'the person referred'. However, in the first paragraph of that article, it is provided that the OPJ 'must bring before the public prosecutor' the person held in custody when the period of custody is exceeded, otherwise s/he must be released.³³

It should be deduced from these provisions that the detainee has no opportunity to be brought before a judicial authority 'immediately' or 'as soon as possible'. This could only occur at the end of police custody. This also obviously depends on the duration of police custody according to the nature of the case involved or the individuals involved. They are therefore, for the duration of police custody, at the disposal of the OPJ. The OPJ is only 'required to immediately inform the public prosecutor' of 'crimes, misdemeanours and violations within his knowledge' and 'shall transmit directly to [the public prosecutor] the original copies of the minutes that have been kept together with a certified copy and all pertinent records and documents'.³⁴

Nowhere is there any mention of 'bringing the arrested person before a judicial authority'.

6 Analysis and Recommendations

6.1 Analysis

From the review presented above, it may be seen that the national legislative framework is insufficient in terms of meeting the standards set by the international framework. The country has, however, made efforts to address some of the gaps. Most notably, these have been in terms of Niger's ratification of international conventions relating to human rights, and the acceptance of various recommendations made by treaty bodies on human rights. This is also reflected in the reforms to the Criminal Code and Criminal Procedure Code which were introduced in 2003, 2004 and 2007.

28 Ordinance No. 2011-13 of 27 January 2011, article 605.5

29 International Covenant on Civil and Political Rights, 1966, article 9(3) and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nations General Assembly resolution 43/173, 9 December 1988, Principle 11

30 Criminal Procedure Code, article 147 and Ordinance No. 2011-13 of 27 January 2011, article 605.5

31 Criminal Procedure Code, article 147

32 Ordinance No. 2011-13 of 27 January 2011, article 605.5

33 Criminal Procedure Code, article 71, para. 5

34 Criminal Procedure Code, article 19

In all its official reports to the Human Rights Committee of the ICCPR, to the Human Rights Council of the UPR, and to the African Commission on Human Rights; Niger declares its respect for human rights, particularly in terms of pre-trial detention and torture and cruel, inhuman and degrading treatment. However, these arguments are based primarily on the fact that Niger has ratified and/or acceded to the international instruments relating to the protection of these rights, rather than from meeting the necessary requirements in terms of domestic law and practice.³⁵

While great emphasis has been placed on the country's ratification and/or accession to various international human rights instruments, it is important to clarify the relationship between these actions and domestic law. Contrary to the claim made in some of its reports to international bodies,³⁶ that the ratification of these treaties means that such treaties then apply in domestic legal practice, this is not so, and such international provisions must be specifically legislated for in domestic law. The same applies to the provisions of the Constitution. This conclusion is confirmed by a study which reviewed the compliance of Niger's domestic law with international human rights standards.³⁷

From Niger's most recent report to the Human Rights Council, the country has reported progress terms of the ensuring the rights of arrested and detained people, and particularly noted the specific steps that have been taken, such as the reforms since 2003.³⁸ The country has also reported that it punishes arbitrary detentions and arrests; and cruel, inhuman and degrading treatment.³⁹ While also noting the progress made in terms of legislative reform, civil society organisations' reports to treaty bodies reveal many violations of the rights of arrested and detained persons, and thus point out the gaps between the progressing legislative framework and actual practices. While this review has not sought to examine actual practices, it is important to maintain an equal focus on the implementation of the legislative regime, and whether actual practice is staying abreast of legislative reform. For example, the annual report of Association Nigérienne pour la Défense des Droits de l'Homme [Niger Association for the Defence of Human Rights] in 2008 noted significant violations of the rights of persons detained in police custody, including police brutality, and stated that 'conditions of detention do not meet minimum international standards'.⁴⁰ The report stressed, however, that the situation of detainees has improved compared to previous years.⁴¹ This has been ascribed to the transition to democracy and Niger's accession to the major international human rights instruments. The role of civil society organisations and the National Commission on Human Rights and Fundamental Freedoms (CNDHLF) in monitoring places of detention through visits was also noted as having contributed to positive change.⁴²

In terms of actual practice, it is also worth noting there are instances where practices are consistent with international standards, even if there is an absence of enabling national legislation. For example, the OPJs most often try to separate adults and children, and males and females even though this is not provided for by national legislation (this has been provided for only for detention in prisons).

Much more is required of domestic legislation in terms of guaranteeing the rights of persons during arrest and detention. This is discussed below.

35 Niger Ministry of Justice (2010) Etude en vue de la mise en conformité du droit national avec les normes internationales des Droits de l'Homme [Study for the compliance of national law with international standards of human rights]. Ministry of Justice/PAJED/EU. p.71

36 African Commission on Human and People's Rights (21 May to 4 June 2004). Initial and Periodic Report of the Republic of Niger (combining reports due from 1988 to 2002). <http://www.achpr.org/sessions/35th>, p.21-25

37 Niger Ministry of Justice (2010) Etude en vue de la mise en conformité du droit national avec les normes internationales des Droits de l'Homme [Study for the compliance of national law with international standards of human rights]. Ministry of Justice/PAJED/EU. p.71

38 United Nations Human Rights Council (24 January to 4 February 2011) National Report of Niger, Working Group on the Universal Periodic Review. A/HRC/WG.6/10/NER/1. para. 17

39 United Nations Human Rights Council (24 January to 4 February 2011) National Report of Niger, Working Group on the Universal Periodic Review. A/HRC/WG.6/10/NER/1. para. 9 and 16

40 Association Nigérienne pour la Défense des Droits de l'Homme [Niger Association for the Defence of Human Rights] (2008) Annual Report on the Situation of Human Rights in Niger, Niamey: Association Nigérienne pour la Défense des Droits de l'Homme. p.35

41 Association Nigérienne pour la Défense des Droits de l'Homme [Niger Association for the Defence of Human Rights] (2008) Annual Report on the Situation of Human Rights in Niger, Niamey: Association Nigérienne pour la Défense des Droits de l'Homme. p.35

42 Association Nigérienne pour la Défense des Droits de l'Homme [Niger Association for the Defence of Human Rights] (2008) Annual Report on the Situation of Human Rights in Niger, Niamey: Association Nigérienne pour la Défense des Droits de l'Homme. p.36

6.1.1 Arrest

While provisions relating to arrest are scattered throughout the Criminal Procedure Code, the specific rules relating to arrest are weak. For example, no distinction is made between bringing somebody in for questioning and arrest. While arrest itself is regulated by the CPC, questioning is not similarly regulated. Equally, the rights of the arrested person are not regulated in a comprehensive fashion.

This allows for a situation in which the OPJ are free to act in ways that may abuse the rights of citizens, and where the victims of such abuses have no recourse. For example, a person may be held and questioned (possibly for hours), without being informed of his/her status in terms of whether s/he is arrested, or whether s/he is being questioned and may thus be entitled to leave. The OPJ also resorts to a procedure called 'to hold available', which abuses the rights of citizens. This practice has been criticised in the Charrette Report.⁴³ The report highlights how rights are abused by referring such cases on the last day of the week with the knowledge that no legal counsel would be available, allowing for longer period of detention before being brought before the Public Prosecutor. The report also highlights longer periods in custody in the interior of the country, while there has been a clear reduction of such practices in the capital.

6.1.2 Pre-trial detention

As noted above, there are complicated provisions for the treatment of detained persons, depending on the nature of the offence that s/he is accused of committing. This results in inconsistencies in terms of the understanding of the law, and its application in practice. There is not always agreement on the rights of people in detention according to whether the suspect is involved in a preliminary investigation or an investigation in terms of *in flagrante delicto*. The same applies to the notification of the right to counsel that is provided for in terms of pre-trial investigation but not in investigations regarding cases of *in flagrante delicto*. It is the same for the medical certificate which must accompany the person in custody during referral, which is only provided for at the end of police custody, and only for the pre-trial investigation. On the other hand, when the suspect is an addict, it is provided for that a physician must examine the detainee every 24 hours and a 'justified' medical certificate is placed on file. Furthermore, medical check-ups must determine whether his/her state of health is consistent with being held in custody.

Notwithstanding the problems noted, it should be recognised that these provisions constitute improvements in the law, effected with the 2003 amendments to the Criminal Procedure Code.⁴⁴ Prior to this, legal assistance would only have been possible at the investigation or trial phase. These amendments also introduced the requirement of a medical certificate attesting that the suspect has not suffered abuse. The amendments also, significantly, provide for the nullification of the proceedings if there is a failure to notify the suspect of the right to counsel.

This is considerable progress, which may almost certainly be attributed to the comments made by Human Rights Committee regarding the improvement of conditions relating to detention. The Committee stated:

the implementation of Articles 9, 10 and 14 of the Covenant, particularly with regard to the duration of police custody, conditions of detention of persons deprived of their liberty and remedies available for violations of human rights is not satisfactory.⁴⁵

⁴³ Ministry of Justice/EU Programme d'appui à la justice et à l'Etat de Droit [European Union Programme on Justice and the Rule of Law] (2008) Réforme judiciaire et coopération intra-sectorielle' [Judicial reform and intra-sectorial cooperation]. p.7

⁴⁴ Criminal Procedure Code, Act No. 2003-26 of 13 June 2003

⁴⁵ Concluding observations of the Human Rights Committee: Niger, 04/29/1993. CCPR/C/79/Add. 17, paras. 396, 416 and 423

While this progress is important to note, it is also true that while many of the rights reflected in international law are reflected in the Constitution, they have not been translated into detailed procedural safeguards within legislation. Therefore, while the reforms of 2003, 2004 and 2007 have been important, much more is necessary.

The problems and inconsistencies that remain are detailed in the *Guide commenté sur les innovations apportées par les réformes de 2003, 2004 et 2007* (Annotated guide on the innovations introduced by the reforms of 2003, 2004 and 2007).⁴⁶

6.1.3 Oversight and accountability

The Criminal Procedure Code is not particularly clear on matters of oversight and accountability. Articles 12 and 13 are clear on the oversight role of the Public Prosecutor's office (PR and PG). Articles 216 to 222 contain provisions for disciplinary proceedings with regard to an OPJ. This is important internal measure for accountability. However, provisions relating to the oversight of senior criminal investigation officers are not sufficient, as the terms of oversight, and the details relating to the management of these activities, have not been detailed.

In terms of accountability, the provisions of the Criminal Code,⁴⁷ are not sufficient to cover all aspects of compensation for a victim of arbitrary arrest. While police officers or magistrates who are guilty of illegal actions in terms of arrest and detention must certainly be held responsible, the provisions of the Criminal Procedure Code on compensation for damages only relate to arbitrary detention.

There has been little in terms of judicial precedent to examine in terms of securing the rights of arrested and detained persons. The only judicial precedent known to date is judgment No. 93-44 in 1993 of the Judicial Chamber of the Supreme Court. In the case of PG c/ I.I. et al:

Following a complaint filed with the judicial police by M.A. for a commercial dispute against A.M., the latter was arrested and placed in custody in the police station where, on the instructions of OPJ I.I., he was subjected to physical violence on the part of APJ M. Ab., M.A., A.S. and A.D. who handcuffed his hands and feet and placed a stick between his hands and feet before hanging him from two (2) desks. According to the victim, his captors allegedly even subjected him to physical abuse with electricity, even though this OPJ was not on duty that day.⁴⁸

On the basis of articles 108 and 222 of the Criminal Code, the Supreme Court ordered an investigation into the OPJ for one count of attack on individual freedom and against the APJs for one count of assault and battery. It can be seen, therefore, that the Convention against Torture has not been applied, as this has not been incorporated into the Criminal Code. Similarly, there is no special criminalisation of the acts of torture and other cruel treatment carried out during arrest or detention in police custody. More generally, the lack of recourse to judicial proceedings for victims should be noted. Apart from this ruling, no other judgments may be found.

Finally, the gradual trend towards the improvement of the human rights of arrested and detained people may be ascribed to the significant efforts from the various stakeholders (government, civil society organisations and others) to increase awareness on human rights issues, and through the engagement with international treaty bodies, including the Universal Periodic Review (UPR) of the Human Rights Council.

⁴⁶ Association Nigérienne pour la Défense des Droits de l'Homme [*Niger Association for the Defence of Human Rights*] (2008) *Guide commenté sur les innovations apportées par les réformes de 2003, 2004 et 2007 au Code pénal et au Code de procédure pénale à l'usage des magistrats* [*Annotated guide on the innovations introduced by the reforms of 2003, 2004 and 2007*] Niamey: Association Nigérienne pour la Défense des Droits de l'Homme. p.66

⁴⁷ Criminal Procedure Code, articles 108 and 265

⁴⁸ Judicial Chamber of the Supreme Court, judgment no. 93-44, 2 December 1993. www.juriniger.org

This government's willingness to improve the situation is also reflected in a range of other developments. Recently, the Ministry of Justice established the Directorate of Human Rights which includes several sub-directorates with a focus on human rights.⁴⁹ This department also established a partnership protocol with the Danish Institute for Human Rights in February 2011 which will lead to the development and adoption of a national policy on human rights. Two committees have also been established to take this process forward: a drafting committee and a supervisory committee to oversee the process. The Ministry of Justice has also signed two annual work programmes with the United Nations Development Programme (UNDP) with regard to human rights, and a framework for dialogue on human rights under the joint chairmanship of the Minister of Justice and the chair of the technical and financial partners in human rights matters. This framework provides for periodic meetings for monitoring and further planning.

There have also been important developments in training, which may also contribute to improvements in the human rights situation of arrested and detained people. Human rights training is increasingly included in basic training, as well as in ongoing training for the defence and security forces (the National Police Force, Gendarmerie and National Guard).

Specific developments include:

- Human rights training manuals have been developed for use in training of the police, the National Guard and magistrates; and
- Police training has been ongoing, with the assistance of international organisations and local civil society organisations, with the intention of strengthening adherence to human rights-based practices in terms of arrest and detention.

Other programmes also contribute to the improvement of the situation. For example, United Nations Volunteers have been undertaking monitoring activities in some places of detention,⁵⁰ which assists in identifying problems, and highlighting what actions need to be taken.

6.2 Recommendations

Apart from the range of items noted in this review, several studies have been conducted on these and related issues. These studies have provided a range of recommendations which have, thus far, not been adequately applied, and Niger's domestic legislation remains incompatible with its international obligations as well as its own Constitution.

It is therefore recommended that the government act to ensure consistency with the international framework and institute further reforms to the Criminal Code and the Criminal Procedure Code. The first step should be the review of recent studies which have already documented the required reforms. It is recommended that, among others, the following studies should be reviewed in detail.

- 'Rapport sur Fonctionnaires de Police et Droits Humains au Niger: Perception Sociologique du Phénomène à partir d'échantillons qualitatifs dans la C.U.N, Dosso, Tillabery, Gaya et Makalondi' (Report on Law Enforcement Officers and Human Rights in Niger: Perceptions of Sociological Phenomenon from qualitative samples in the Niamey Urban Community, Dosso, Tillabery, Gaya and Makalondi), Daouda Ali, 2003.
- 'La corruption dans la justice au Bénin, au Niger et au Sénégal' (Corruption in the justice systems in Benin, Niger and Senegal), Studies and Texts No. 39, LASDEL, 2005.
- Mission report: 'Réforme judiciaire et coopération intra-sectorielle' (Judicial Reform and intra-sectoral cooperation), Patrice de Charrette, 2008;
- Mission report: 'La détention provisoire' (Pre-trial detention), Patrice de Charrette, 2009;

⁴⁹ Decree No. 2011-223/PRN/MJ of 26 July 2011

⁵⁰ United Nations Human Rights Council (24 January to 4 February 2011). National Report of Niger, Working Group on the Universal Periodic Review. A/HRC/WG.6/10/NER/1

- 'Etude en vue de la mise en conformité du droit national avec les normes internationales des Droits de l'Homme' (Study for the compliance of national law with international standards of human rights), Democracy 2000, Ministry of Justice, PAJED/EU, 2010.

Legislative reform is incomplete without subsequent investment in the training of relevant personnel and educating the public on their rights. Continued investments in such activities are necessary.

It has also been demonstrated that the involvement and support of local and international organisations and bodies has played an important role in promoting progress on these issues in Niger. Such engagement should be continued.

Annexure 1: Domestic Legal Provisions in terms of International Legal Framework

Table 1. Arrest and detention

International law	Date of accession or ratification by Niger	Specific provision	Guaranteed rights	Statute in domestic legislation	Observations
1. Universal Declaration of Human Rights	See preamble to the Constitution	Article 5 No one shall be subjected to torture, slavery or ill-treatment or cruel, inhuman or degrading treatment. Article 9 No one shall be subjected to arbitrary arrest nor detention or exile.	Right to physical integrity Right to personal liberty	<ul style="list-style-type: none"> Constitution of the 7th Republic: Article 14. The Criminal Code contains provisions for punishing assault and battery but no special provisions on cruel, inhuman and degrading treatment. Constitution of 7th Republic: Articles 12 §2, 18, 20. Criminal Code (Act No. 2003-025 of 13 June 2003 amending Act No. 61-27 of July 15, 1961, instituting the Criminal Code): Articles 265 to 268. 	Provision partially integrated into the positive law of Niger. Almost full integration of Article 9 of the UDHR by the Criminal Code establishes repression of arbitrary arrest and detention.
2. International Covenant on Civil and Political Rights of 16 December 1966	Accession 7 March 1986 (OJ No. 9 of 1 May 1986, p. 134)	Article 9.1 Everyone has the right to liberty and security of his or her person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his/her liberty except on such grounds and in accordance with the procedure prescribed by law. Article 9.2 Any person arrested shall be informed of the reasons for his/her arrest at the time of the arrest and shall receive notification as soon as possible.	Right to personal liberty	<ul style="list-style-type: none"> Constitution of the 7th republic: Articles 12 §2, 18, 20. Criminal Code (Act No. 2003-025 of 13 June 2003 amending Act No. 61-27 of July 15, 1961, instituting the Criminal Code): Articles 265 to 268. Criminal Procedure Code: Article 117 (Act No. 2003-26 of 13 June 2003). 	Provision integrated into the positive law of Niger.
		Article 10.1 Any person deprived of his/her liberty shall be treated with humanity and respect for the inherent dignity of the human person.	Notification of the charge	<ul style="list-style-type: none"> Constitution of the 7th Republic: Article 14. The Criminal Code contains provisions for punishing assault and battery but no special provisions on cruel, inhuman and degrading treatment. 	Provision partially integrated into the positive law of Niger. The CPC, in its articles 48 to 71, contains no clear provisions on notification in case of arrest by police.
3. The African Charter on Human and Peoples' Rights of 1981	15 July 1986 (OJ No. 16 of 15 August 2003)	Article 6 Everyone has the right to liberty and security of his or her person. No one shall be deprived of his/her liberty except for reasons of and under the conditions previously determined by law, in particular, no one may be arbitrarily arrested or detained.	Conditions of detention. Prohibition of cruel, inhuman or degrading treatment. Right to personal liberty	<ul style="list-style-type: none"> Constitution of the 7th Republic: Article 14. The Criminal Code contains provisions for punishing assault and battery but no special provisions on cruel, inhuman and degrading treatment. Constitution of 7th Republic: Articles 12 §2, 18, 20. Criminal Code (Act No. 2003-025 of 13 June 2003 amending Act No. 61-27 of July 15, 1961, instituting the Criminal Code): Articles 265 to 268. 	Provision partially integrated into the positive law of Niger. Provision integrated into the positive law of Niger.

International law	Date of accession or ratification by Niger	Specific provision	Guaranteed rights	Statute in domestic legislation	Observations
4. Standard Minimum Rules for the Treatment of Prisoners of 31 July, 1957 and 13 May 1977	Accession	<p>Article 7</p> <p>1. In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:</p> <ul style="list-style-type: none"> a) his/her identity b) the reasons for his/her detention and the authority which decided it c) the day and time of the admission and release. <p>2. No person may be admitted to an institution without a valid detention order, details of which have been previously entered in the register.</p> <p>Article 8</p> <p>The separation of categories</p> <ul style="list-style-type: none"> a) whenever possible, men and women must be held in different establishments b) Pre-trial detainees shall be segregated from convicted prisoners c) Persons imprisoned for debt or convicted of another form of civil imprisonment shall be detained separately from persons detained for a criminal offence d) Juvenile detainees shall be segregated from adults. 	Right to individual freedom combined with a right to physical integrity	Criminal Procedure Code: Article 667.	Provision integrated into the positive law of Niger.
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984)	5 October 1988 (OJ No. special of 9 August 1986)	<p>Articles 9 to 14 (Detention premises)</p> <p>Article 15 (Personal hygiene)</p> <p>Article 2, Article 4.1 and Article 4.2</p> <p>Each government party shall take effective legislative, administrative, judicial and other measures to prevent acts of torture from being committed in any territory under its jurisdiction.</p> <p>No exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any public emergency, may be invoked to justify torture.</p> <p>Each government party shall ensure that all acts of torture are offences under its criminal law. The same applies to an attempt to commit torture or any act committed by any person which constitutes complicity or participation in an act of torture.</p> <p>Each government party shall make these offences punishable by appropriate penalties which take into account their serious nature.</p>	The right to physical integrity	Criminal Procedure Code: Article 659 to 661.	Provision integrated into the positive law of Niger.
					Provision not integrated into the positive law of Niger.
					Provision not integrated into the positive law of Niger.
				Constitution of the 7th Republic: Article 14.	Provision partially integrated into the positive law of Niger.

International law	Date of accession or ratification by Niger	Specific provision	Guaranteed rights	Statute in domestic legislation	Observations
6. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)	Accession	<p>Principle 4 Any form of detention or imprisonment and all measures affecting the individual rights of a person subject to a form of detention or imprisonment shall be decided under effective control.</p> <p>Principle 17 Any detained person shall be eligible for legal assistance. (...) If a detained person has not chosen a lawyer, he/she is entitled to have one appointed by a judicial or other authority in all cases where the interest of justice requires it, at no cost if he/she does not have the means to pay.</p>	<p>Principle of legality of offences and penalties</p> <p>Right to legal assistance</p>	<p>Constitution of the 7th Republic: Article 18.</p> <ul style="list-style-type: none"> • Law on public defenders. • Act No. 2011-42 of 14 December 2011 laying down the rules for legal and judicial assistance and creating a public administrative institution called the 'National Agency for Legal and Judicial Assistance'. 	<p>Provision integrated into the positive law of Niger.</p> <p>Provision integrated into the positive law of Niger.</p>
7. The African Charter on the Rights and Welfare of the Child (1990)	11 December 1996 (OJ No. 16 of 15 August 2003)	<p>Article 16 Governments participating in this Charter shall take legislative, administrative, social and educational measures to protect the child against all forms of torture, inhuman and degrading treatment and especially any form of harm or physical or mental abuse, neglect or maltreatment, including sexual abuse, while in the care of a parent, legal guardian, the school authority or other person having custody of the child.</p> <p>Article 17 § 2.a Participating governments shall in particular ensure that no child who is detained or imprisoned, or who is otherwise deprived of his/her liberty is subjected to torture, to inhuman or degrading treatment or punishment.</p>	<p>Right to physical integrity of the child</p> <p>Protection of the child</p>	<p>A draft Children's Code and a draft law on juvenile courts have already been developed. It remains to be introduced into the circuit of adoption.</p> <p>A draft Children's Code and a draft law on juvenile courts have already been developed. It remains to be introduced into the circuit of adoption.</p>	<p>Provision not yet integrated into the positive law of Niger, but it is an on-going process.</p> <p>Provision not yet integrated into the positive law of Niger, but it is an on-going process.</p>

Table 2. Access to justice

International law	Date of accession or ratification by Niger	Specific provision	Guaranteed rights	Statute in domestic legislation	Observations
Universal Declaration of Human Rights	See the preamble to the Constitution	Article 8 Everyone has the right to effective remedy before the competent national courts against acts violating the fundamental rights granted him/her by the Constitution.	Access to justice, equality before the law	Constitution of the 7th Republic: Article 117. 'Justice is done in the country on behalf of the people and in strict observance of the rule of law and citizens' rights. Court decisions are binding on all public authorities and citizens. They can only be opposed via avenues and in forms authorised by law.'	
International Covenant on Civil and Political Rights	Accession 7 March 1986 (OJ No. 9 of 1 May 1986, p. 134)	Article 9.3 Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be tried within a reasonable time or released. The detention of people awaiting trial shall not be the rule, but release may be conditioned by guarantees to appear for the hearing, for all other acts and proceedings, and where appropriate, for the execution of the judgment.	Reasonable period of judgment Recourse without delay for the accused for investigation of his/her release	<ul style="list-style-type: none"> • Criminal Procedure Code: Article 379. • Criminal Procedure Code: Articles 131 et seq. and 186, para. 2. 	<ul style="list-style-type: none"> • Provision partially integrated into the positive law of Niger. • Provision of the positive law of Niger does not comply with the Covenant.
The African Charter on Human and Peoples' Rights	15 July 1986 (OJ No. 16 of 15 August 2003)	Article 9.4 Anyone who is deprived of his/her liberty by arrest or detention shall be entitled to appeal the court order so that the court may decide without delay on the lawfulness of his/her detention and order his/her release if the detention is unlawful.	Equality before the law, access to justice	<ul style="list-style-type: none"> • Constitution of the 7th Republic: Article 117. • Criminal Procedure Code: Article 186. 	Provision partially integrated into the positive law of Niger.
		Article 7 Everyone has the right to have his/her case heard. This comprises: a) the right to appeal to competent national organs against acts violating his/her fundamental rights as recognised and guaranteed by conventions, laws, regulations in force b) the right to be presumed innocent until proved guilty by a competent court c) the right to a defence, including the right to be defended by counsel of his choice d) the right to be tried within a reasonable time by an impartial national jurisdiction.	Equality before the law, access to justice, fair trial	<ul style="list-style-type: none"> • Constitution of the 7th Republic: Articles 20 and 117 • Criminal Procedure Code: Articles 64 (para. 2), 108 (para. 3) and 190 (para. 1), 218 (para. 3), 262, 263, 304 and 404. 	

Table 3. Oversight/accountability

International Law	Date of accession or ratification by Niger	Specific Provision	Guaranteed rights	Statute in Domestic Legislation	Observations
International Covenant on Civil and Political Rights	Accession 7 March 1986 (OJ No. 9 of 1 May 1986, p. 134)	Article 9.5 Any individual who is the victim of unlawful arrest or detention shall be entitled to compensation.	Right to compensation following unlawful detention	Criminal Code: Articles 108 and 109. Criminal Procedure Code: Article 143.1 to 143.4 .	Provision incorporated into the positive law of Niger but cannot be effectively implemented for lack of adoption of the application decree.

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ABOUT APCOF

The African Policing and Civilian Oversight Forum (APCOF) is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF believes that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community.

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