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Submission by: Front Line Defenders – the International Foundation for the Protection of Human Rights Defenders

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Front Line Defenders (www.frontlinedefenders.org) is an international NGO based in Ireland with special consultative status with the Economic and Social Council of the United Nations (ECOSOC). Founded in 2001, Front Line Defenders has particular expertise on the issue of security and protection of human rights defenders and works to promote the implementation of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders) adopted by General Assembly resolution 53/144 of 9 December 1998. In 2018 Front Line Defenders was awarded the United Nations Prize in the Field of Human Rights.

The following submission has been prepared by Front Line Defenders – The International Foundation for the Protection of Human Rights Defenders based on research carried out by this organisation and information received from independent human rights defenders in Niger from January 2016 to October 2020.

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I- INTRODUCTION AND SUMMARY OF KEY CONCERNS

This submission concerns the situation for human rights defenders (HRDs) in Niger and covers developments from January 2016 to October 2020.

Since Niger's last Universal Periodic Review (UPR) in 2016, the situation of human rights defenders has further deteriorated. Civic space, which was already limited, has been drastically restricted in recent years. Human rights defenders in Niger are regularly subjected to arbitrary arrests and judicial harassment. The adoption of draconian and restrictive laws has resulted in reduced freedoms. Since his re-election in March 2016, President Mahamadou Issoufou has continued to close the civic space by invoking the security context linked to terrorism to ban demonstrations and prevent the work of human rights defenders.

During the period under review, the following issues were of particular concern to Front Line Defenders:

- (a) Restrictions on freedom of assembly;
- (b) Restrictions on freedom of expression;
- (c) Judicial harassment, arbitrary arrest and detention of human rights defenders;
- (d) Restrictive legislative framework

II. DEVELOPMENTS SINCE PREVIOUS UPR CYCLE

Out of five recommendations received relating to human rights defenders during its review in January 2016, Niger accepted four¹ and noted one². No concrete action has been taken to implement the four accepted recommendations.

Freedoms of expression, association and peaceful assembly continued to be restricted in Niger during the period under review. Local and international NGOs expressed concerns about the shrinking of the civic space in Niger. The authorities regularly targeted, arbitrarily arrested and detained human rights defenders, journalists and pro-democracy activists for solely exercising their rights.

1- 120.135 Ensure full respect for the right to freedom of expression and media freedom by preventing all harassment and undue detention of journalists and civil society activists (United Kingdom of Great Britain and Northern Ireland); 120.137 Protect human rights defenders and ensure that they are able to carry out their work free from harassment and intimidation (Germany); 120.138 Take steps to halt all intimidations and harassment by law enforcement officials against human rights defenders (Ghana); 120.139 Take firm measures to ensure that human rights defenders and peaceful activists are free to enjoy their fundamental rights of, inter alia, freedom of expression and freedom of association (Norway);

2- This following recommendation was noted: 121.1 Refrain from criminalizing the legitimate activities of human rights defenders and repeal or amend all laws and policies which restrict their activities and rights, including by ensuring that antiterrorism legislation is not misused (Netherlands);

https://www.upr-info.org/sites/default/files/document/niger/session_24_-_janvier_2016/recommendations_and_pledges_niger_2016.pdf

III. TARGETING OF HUMAN RIGHTS DEFENDERS

A- Restrictions on freedom of assembly:

Freedom of assembly is recognized and enshrined in the Niger Constitution and international instruments ratified by Niger, but this right is regularly violated. For demonstrations in public spaces, local authorities must be notified prior and they rarely permit such demonstrations to take place. When they do take place, they are frequently violently repressed by the security forces. Human rights defenders, journalists and pro-democracy activists have faced numerous bans on demonstrations, summonses and arbitrary arrests for expressing themselves freely on national topics or for calling on the population to protest.

On **10 May 2017**, the Niger police dispersed a civil society demonstration for posing a risk of “disturbing public order”. The demonstration was called to denounce corruption, impunity, embezzlement of public funds and electricity shortages in the country.

Two peaceful protests aiming at denouncing the adoption of the 2018 finance law³ were respectively banned on **21 and 23rd December 2017**.

On **25 March 2018**, authorities banned planned protests for “security reasons”. The opposition defied the ban to demonstrate against the adoption of the 2018 finance law. On the sidelines of this demonstration, which was violently repressed, around ten people were arrested at the headquarters of the NGO *Alternatives Espaces Citoyens* including the prominent human rights defender Moussa Tchangari, secretary general of the organization. In total, 23 people who were peacefully demonstrating were arrested and charged with “complicity in the destruction of public property and organization and participation in a prohibited demonstration.”

Two weeks later, on **8 April 2018**, another peaceful demonstration organised by civil society was banned by the authorities who again invoked security reasons.

From March 2018 to March 2020, **25** peaceful demonstrations⁴ were banned by the Niger authorities, all justified by invoking security context of the country. This systematic banning of protest has limited the ability of human rights defenders to connect to the wider population on key areas where rights are being violated. The banned protest of **15 March 2020** left three dead among the protesters as well as the arrests of prominent figures of civil society.

On **October 2nd and 9th October 2020**, two peaceful protests were banned by the authorities invoking the current health crisis and the 2017 Ministerial Decree banning protests during working days. This protest was aimed at denouncing the impunity and corruption at the Defense Ministry.

³ This finance law was roundly condemned by civil society because it was considered regressive. The Nigerian state was criticized for having created new taxes through this law which would make the daily life of the population even more difficult.

⁴ https://www.ritimo.org/IMG/pdf/tlp_niger_rapport_quand_l_antiterrorisme_justifie_la_restriction_de_l_espace_civique_2020.pdf /

B- Restrictions on freedom of expression:

Despite being enshrined in the Constitution and in international treaties to which Niger has committed, freedom of expression is almost non-existent in the country. Human rights defenders have been the subject of summonses and arrests on several occasions for comments made on social media. A significant decline in press freedom has occurred over the past number of year which has led to increased self censorship from journalists.

From **4 to 6 June 2016**, three journalists⁵ were arrested for citing the names of high level authorities in a corruption case in Niger. The police searched their houses while they were in detention in order to obtain information about their sources. *Ali Soumana* and *Moussa Dodo* were imprisoned on June 8 in Niamey civil prison, while *Soumana Idrissa Maiga* was released. They were charged with "publication of documents resulting from searches", and spent 12 days in detention, They were given a suspended three-month sentence and released on 16 June 2016.

On **5 March 2020**, human rights defender and journalist *Kaka Mamane Touda* was arrested by the police over a social media post about a suspicious COVID 19 case at the Reference General Hospital in Niamey. He was charged with "dissemination of data likely to disturb public order" and spent three weeks in detention in poor conditions and was given a suspended three-month sentence. He was released on March 26th, 2020.

On **10 June 2020**, woman human rights defender and journalist *Samira Sabou*⁶ was arrested following a defamation complaint filed against her by the son of the President. The complaint referred to a social media post in which she highlighted corruption. She was released on 28 July 2020 after spending a month and half in detention.

C- Judicial harassment, arbitrary arrest and detention of human rights defenders:

During the period under review, defenders regularly faced judicial harassment after being arrested during peaceful protests and detained for months in very poor conditions. These arbitrary detentions were characterized by baseless legal proceedings which aimed not only to prevent the work of human rights defenders by keeping them in prison but also to dissuade other human rights defender from continuing their work.

Five human rights defenders⁷ arrested during the banned protest of 25 March 2018 were kept in detention for four months after they received a suspended three-month sentence. They were arrested and charged with 'organisation and participation in a prohibited demonstration', 'complicity in violence', 'assault' and 'destruction' in connection to a protest

5 Ali Soumana, Moussa Dodo, Soumana Idrissa Maiga: https://quebec.huffingtonpost.ca/2016/06/07/niger-trois-journalistes-arretes-apres-un-scandale-de-fraude-au-concours-rsf_n_10340148.html?utm_hp_ref=qc-canada-quebec&guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAGeKgFhnMQAIUyIgeElcNmLuW7aZP8dQru-YwuG4zwY-FXifwirYG5fNZ0tEr-hjeRNEO5TgostiDMonXOZAGG_yPhkZ0a4u_w9-hDOSoeUxxkn0zUtZKTW-kntPd9lQVem4ixs-qDhBme86UICL0p9Jl4Qhd1Fj_PvAjsam3g4ZS

6 <https://www.frontlinedefenders.org/en/case/journalist-samira-sabou-arrested-and-charged>

7 Moussa Tchangari, Ali Idrissa, Nouhou Arzika Ousseini Maina and Mamoudou Seyni: <https://www.amnesty.org/en/documents/afr43/8193/2018/en/>

to which they didn't take part. This protest was banned by the authorities who invoked the sensitive security context of the country.

Five human rights defenders⁸ were arrested between 15 and 25 April 2018 for organizing protests. While four of them were released in the months after their detention, Sadat Illiya Dan Malam⁹ was charged with “contempt of court” by speaking during the 23 July 2018 trial where he denounced the unfair nature of his detention and trial. He was sentenced to one year in prison and was released by the Zinder Appeal Court on 20 November 2020 after spending 19 months in prison.

Seven pro-democracy activists¹⁰ were arrested between 15 and 17 March 2020 for organizing a peaceful protest amid the preventive measures of the COVID-19 pandemic. They were charged with “organising an unauthorized gathering and complicity in damaging public property, arson, and manslaughter”. These arrests were not within the legal framework since some of the activists were arrested at a different location from the protest area while the others were arrested two days after the protest at their houses. Karim Tanko and Seyni Djibo were released on bail on 19 March, while Moussa Tchangari and Habibou Soumaila were also released on bail on 30 April. Maikoul Zodi, Halidou Mounkaila and Moudi Moussa were only released on 30 September, after spending over six months in detention.

D- Restrictive legislative framework

There are no laws protecting human rights defenders in Niger. Although freedom of assembly and expression are both enshrined in the Constitution, exercising those rights is extremely difficult. The authorities used a variety of means to undermine the work of human rights defenders and activists. They regularly target defenders with intimidation, surveillance, arrests and detention. The security context of the country, given the ongoing and repeated terrorist attacks, has provided the authorities with the opportunity to further restrict the freedom of citizens in general and human rights defenders in particular.

In a Ministerial Decree¹¹ of **12 January 2017**, the Niger authorities banned marches and other public demonstrations on working days. This decision was taken after the banning of protests on 21 December and 23 December 2016. Despite the heavy criticism of this decree by civil society, no concrete actions have been taken by the authorities to repeal it.

On **June 25 2019**, the Niger Parliament adopted a cybercrime law¹². The adoption of this law was roundly condemned and created much fear within local civil society organisations. According to human rights defenders, several provisions of this law could lead to restrictions on freedom of expression. Human rights defenders believe that this law is a new tool of repression adopted by the authorities to specifically target online dissenting

8 Ibrahim Diori, Maikoul Zodi, Abdourahamane Idé Hassane, Sadat Illiya Dan Malam and Yahaya Badamassi: <https://www.amnesty.org/en/documents/afr43/8388/2018/en/>

9 <https://www.amnesty.org/en/documents/afr43/8856/2018/en/>

10 Moussa Tchangari, Halidou Mounkaila, Habibou Soumaila, Moudi Moussa, Maikoul Zodi, Karim Tanko and Seyni Djibo.

11 Arrêté n°0010/MP/CVN/SG du 12 janvier 2017 portant interdiction de marches et de meetings les jours ouvrables et en soirée.

12 Loi n° 0267 portant sur la lutte contre la cybercriminalité au Niger.

voices. Articles 29, and 31 of this law provide a large range of prison terms and heavy fines for “Defamation by means of communication and Dissemination of fake news. Human rights defenders are concerned by these provisions which will be used as an instrument of repression of dissenting voices by the authorities to sanction almost everything they publish on social media.

On **May 29 2020**, the Niger Parliament adopted a new law¹³ authorizing interceptions of telephone communications to fight against "terrorism and transnational crime". According to this law, the evidence gathered can be used during investigations by the judicial authorities. This law has been widely criticized locally and internationally. Human rights defenders expressed their concerns that it may be misused to target them and undermine their work. There is no control mechanisms nor an appeal process to question of the grounds for interception.

IV. RECOMMENDATIONS

Front Line Defenders calls upon the member states of the UN Human Rights Council to urge the Niger authorities to prioritise the protection of human rights defenders and in doing so to:

- a) Adopt a human rights defenders protection law aiming at effectively protecting human rights defenders in Niger; ensure that this law includes special provisions for women human rights defenders; any future human rights defenders protection law should have an implementation mechanism led by a national and independent institution;
- b) Create the conditions for an inclusive dialogue with civil society organizations and ensure that peaceful demonstrations are not dispersed with excessive use of force
- c) Guarantee in all circumstances that all human rights defenders in Niger are able to carry out their legitimate human rights activities without fear of reprisals and free of all restrictions including judicial harassment and physical violence and ensure full respect for the UN Declaration on human rights defenders;
- d) Amend and/or remove, where applicable, all provisions in the 2019 cybercrime law, and abrogate the Ministerial decree of 2017 and the 2020 law on interception of communications.
- e) Drop the charges currently pending against human rights defenders, and quash the convictions of those who have already been sentenced, particularly Moussa Tchangari, Halidou Mounkaila, Habibou Soumaila, Moundi Moussa, Maikoul Zodi, Karim Tanko, Seyni Djibo, Ali Soumana, Moussa Dodo, Soumana Idrissa Maiga, Ali Idrissa, Nouhou Arzika Ousseini Maina and Mamoudou Seyni.

¹³ Articles 24, 32, and 33 require public officials, network operators and service providers to cooperate with interception operations, the failure of which could result in imprisonment for one to five years and a fine from two to ten million CFA francs (USD 3,445 to 17,222).

f) Conduct thorough and impartial investigations into the death of the three protesters killed during the 15 March 2020 banned protest and ensure the results are published in order to bring to justice those responsible for these deaths.

g) Accept and fully implement UPR recommendations on human rights defenders in a transparent and participatory manner with full involvement of human rights defenders at all levels.