



**PILOT STUDY ON MIGRATION
AND RESPECT FOR HUMAN RIGHTS
FOCUS ON THE RESPONSES PROVIDED BY NIGER**





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- Some information was obtained from documents written in English; should there be difficulties in understanding the translation, references have been provided in the footnotes and will enable the reader to find the original document.

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FOREWORD

The pilot study on "Migration and Respect for Human Rights: Focus on the Responses Provided by Niger" was adopted by the African Commission on Human and Peoples' Rights at its 26th Special Session held from 16 to 30 July 2019 in Banjul, The Gambia.

This study was conducted under Article 45 (1) (a) of the African Charter on Human and Peoples' Rights, which, inter alia, authorizes the African Commission on Human and Peoples' Rights (the Commission) to "undertake studies and research on African problems in the field of human and peoples' rights". This study primarily seeks to demonstrate that it is not migration, a natural phenomenon, a manifestation of freedom of movement recognized by international human rights law, that is problematic; rather, it is the serious violations of human dignity faced by migrants during their journey and identified by the Commission, which are of concern to us. Migrants, whether regular or not, continue to enjoy their human dignity and are entitled to be treated as such.

Over its years of operation, the Commission has been involved in the protection of migrants' rights through various actions, including the adoption of several resolutions and declarations, organization and participation in training and awareness-raising workshops. To further promote respect for migrants' rights, the Commission decided in 2018, through the adoption of Resolution 404 on the need to undertake a study on human rights violations against migrants - ACHPR/Res. 404 (LXII) 2018, to conduct a series of studies on migration and human rights compliance. These studies will provide all stakeholders with a good knowledge of the realities on the ground so as to adopt policies, decisions and undertake actions more focused on respect for migrants' rights.

In accordance with Resolution 404, these studies will be carried out gradually. The limited resources and the need to undertake in-depth studies require the Commission to confine its scope to a few countries in the different regions of Africa whose profiles provide more content to be examined. The objective is therefore not to put any particular country in the dock but, taking the example of certain countries, to enlighten all stakeholders about the human rights situation of migrants, to identify areas for reflection and recommendations to be considered and implemented. This pilot study, which focuses on the case of Niger, is the first in a series of studies that the Commission hopes to undertake with the support and assistance of partners.

This pilot study, which is the outcome of a quantitative and qualitative survey, looks at the human rights situation of migrants in Niger, which is considered as both a country of departure and a transit country for migrants. In addition to the issue of human rights violations and responsibilities in this regard, the study analyses the regulatory, institutional and strategic framework that has been put in place to respect the rights of migrants in Niger. Even if migrants' countries of temporary residence (notably Algeria and Libya) could not be visited due to inadequate means, the study does not overshadow the migrants' accounts of their experiences in these countries. The pilot study also has the particularity of emphasizing the responsibilities of the Internal Security Forces and the Defence and Security Forces in

protecting the rights of migrants. Following the analysis of the data and facts, the study identifies avenues for reflection and proposes recommendations to be considered by all stakeholders intervening in the field of migration.

This document, which the Commission provides to stakeholders involved in the promotion and protection of human rights, complements other studies on migration, most of which do not however focus on the fundamental rights of migrants. Even though the study highlights the example of Niger, the information collected can be useful for many other States, since some of the elements relating to the context and challenges are often common. States, National Human Rights Institutions and all human rights defenders are urged to use it to better protect the rights of migrants. The protection of migrants' rights is "Our common responsibility", so the study will only achieve the expected outcomes if it is widely disseminated and used by all stakeholders involved in the defense of human rights.

We would like to seize this opportunity to thank our fellow commissioners for their contribution to the improvement of the study and to the Secretariat of the Commission for its assistance.

Our recognition and gratitude also go to stakeholders who provided their technical support. We would particularly like to thank the Danish Institute of Human Rights (DIHR), a long-standing partner of the Commission whose active involvement and its personnel's technical support in the conduct of this study were decisive. Our gratitude also go to all State and non-State actors of Niger who made a significant contribution by sharing their experience during the national consultations for the preparation of the study as well as those who agreed to respond to the questionnaires and provide information within the framework of this study. We also thank the consultants Koné/Tapsoba Josiane Somdata and Mossi Boureima whose technical involvement throughout the process made it possible to effectively complete the study. We would like to express gratitude to Dr. Stéphanie Lagoutte (Researcher at DIHR), for her advice on the research methodology.

We look forward to the continued support of our partners to undertake future studies, with the conviction that this pilot study and those that will follow constitute key tools for migration management based on the realities of the field and, especially, based on human rights.



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ACRONYMS AND ABBREVIATIONS

AFRICAN CHARTER: African Charter on Human and Peoples' Rights
ANLTP: National Agency to Combat Trafficking in Persons
AU: African Union
CICE/DPNM: Interministerial Committee in charge of the Preparation of the National Migration Policy Paper
CNCLTP: National Coordination Commission to Combat Trafficking in Persons
CNDH: National Human Rights Commission
CNE: National Commission for Refugee Status Eligibility
CODDHD: Collective of Human Rights and Democracy Defense Organizations
COMMISSION: African Commission on Human and Peoples' Rights
DCIM: Irregular Immigration Control Directorate
DSF: Defence and Security Forces
ECOWAS: Economic Community of West African States
EU: European Union
GIZ: German International Development Cooperation Agency (*Deutsche Gesellschaft für Internationale Zusammenarbeit - GIZ*)
ISF: Internal Security Forces
HALCIA: High Authority to Combat Corruption and Related Offences
IOM: International Organization for Migration
HGN: High Command of the National Gendarmerie
HGNN: High Command of the National Guard of Niger
JMED: Youth, Childhood, Migration and Development (JMED)
NGO: Non-Governmental Organization
OCHA: United Nations Office for the Coordination of Humanitarian Affairs
OHCHR: United Nations Office of the High Commissioner for Human Rights
OAU: Organization of African Unity
Resolution 404: Resolution 404 on the need to undertake a study on human rights violations against migrants - ACHPR/Res. 404 (LXII) 2018
UNDP: United Nations Development Programme
UNHCR: United Nations High Commission for Refugees
UNICEF: United Nations Children's Fund
UNMIL: United Nations Support Mission in Libya
UNODC: United Nations Office on Drugs and Crime
UPR: Universal Periodic Review
WFP: World Food Programme

1. INTRODUCTION

At its 63rd Ordinary Session held from 24 October to 13 November 2018, in Banjul, The Gambia, the African Commission on Human and Peoples' Rights (the Commission) adopted **Resolution 404 on the need to undertake a study on human rights violations against migrants - ACHPR/Res. 404 (LXII) 2018¹ (Resolution 404)**. This Resolution is in line with Article 45 (1) (a) of the African Charter on Human and Peoples' Rights (the African Charter), which authorizes the Commission to collect documentation and carry out studies and research on African problems in the field of human and peoples' rights.

Through this Resolution, the Commission undertook to study human rights violations against migrants in Africa. It entrusted the task to the Special Rapporteur on Refugees, Asylum-Seekers, Migrants and Displaced Persons in Africa and the Special Rapporteur on Prisons, Conditions of Detention and Police Action in Africa.

The Commission also decided to undertake the study gradually. Indeed, given the limited resources and for practical reasons, it considered it necessary to concentrate the field studies on certain countries that are representative of the different regions of Africa.

The Republic of Niger, a West African State and party to the African Charter since 15 July 1986² is the country selected for the Pilot Study, the first in a series of studies to be undertaken. This pilot study will serve as a benchmark for subsequent studies.

1.1 Background and Rationale

The decision to undertake the study on human rights violations against migrants was the result of a combination of several alarming findings made by the Commission and noted on several occasions, including through resolutions and declarations.

Already in 2007, in *Resolution 114 on migration and human rights*³, the Commission had, inter alia, noted the extent of violations of obligations and rights arising from the African Charter (right to life, freedom of movement, obligation to protect civilians, right to non-discrimination, etc.), perpetrated during migration and urged States parties to ratify and implement the relevant international and regional instruments.

On 3 May 2015, in the *Declaration on the Deterioration of the Situation of African Migrants in the Mediterranean*⁴, the Commission underscored its deep concern about the deterioration of the situation of African migrants and, in particular, the death of several of them in the Mediterranean. In that Declaration, the Commission

¹ http://www.achpr.org/fr/sessions/63rd_os/resolutions/404/

² African Union: List of countries that have signed, ratified/acceded to the African Charter on Human and Peoples' Rights, available at : https://au.int/sites/default/files/treaties/36390-sl-african_charter_on_human_and_peoples_rights_2.pdf

³ http://old.achpr.org/francais/resolutions/resolution114_fr.html

⁴ <http://www.achpr.org/fr/news/2015/05/d176/>

indicated that, according to information received by that date, on average (1) one person died every hour in an attempt to illegally reach the European coasts across the Mediterranean. The fact that several unaccompanied children were among the victims was also deplored.

In 2016, the Commission adopted *Resolution 333 on the situation of migrants in Africa*⁵. In this resolution, the various human rights concerns related to migration were highlighted in a more comprehensive manner. These include information on human casualties in the Mediterranean, the vulnerability of migrant women and children, trafficking in persons⁶ and sexual exploitation of migrants, the lack of research into alternatives to the detention of irregular migrants, detention in unsustainable conditions and the exploitation of migrants by people-smuggling networks. The Commission had therefore invited States parties to take the necessary measures to remedy this situation, including the establishment of mechanisms to report and facilitate claims for redress of human rights violations against migrants.

In 2017, the same concerns were expressed in *Resolution 371 on the implementation of the New York Declaration for Refugees and Migrants*⁷; on that occasion, the Commission mainly called on States Parties to the African Charter to adopt a comprehensive strategy on issues related to population movements.

In the *so-called "Banjul Declaration"*⁸ issued at the end of its 59th Ordinary Session held from 21 October to 4 November 2016, the Commission invited States Parties to take the necessary actions to respond appropriately to the migrant crisis, including addressing the root causes of the phenomenon.

In 2018 the Commission reiterated its views on the rights of migrants through its *Resolution 398 on mixed migratory flows, the challenges of protecting migrants and the prohibition of trafficking in persons and all forms of violence in North and Sub-Saharan Africa*⁹. In that resolution, the Commission noted the steady increase in mixed migratory flows and particularly deplored police brutality during the expulsion of migrants, including unaccompanied children and women in many parts of North and Sub-Saharan Africa, as well as the transfer and confinement of large numbers of migrants to detention centres and/or prisons in inhuman and degrading conditions.

⁵ <http://www.achpr.org/fr/sessions/resolutions?id=249>

⁶ Trafficking in persons refers to the recruitment, transportation, transfer, accommodation or reception of persons, by means of threats or use of force or other forms of coercion, abduction, fraud, deception, abuse of authority or a position of vulnerability, or the giving or receiving of payments or benefits to obtain the consent of a person having control over another person for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (Article 3 (a) of the Additional Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children)

⁷ <http://www.achpr.org/fr/sessions/60th/resolutions/371/>

⁸ <http://www.achpr.org/fr/instruments/banjul-declaration/>

⁹ http://www.achpr.org/fr/sessions/62nd_os/resolutions/398/

These repeated denunciations and appeals by the Commission are indicative of the magnitude of human rights violations that occur in the context of migration in Africa. These violations seriously undermine the African Charter to which almost all African Union Member States are bound.

This situation justifies the diligence of this study, which will highlight the different types of violations of the fundamental rights of migrants that occur during their journey and the causes of these violations in order to better guide stakeholders and, in particular, States Parties to the African Charter to take appropriate action to ensure better compliance with their obligations in the migration context.

Much of the existing research on migration focuses more on economic, political and demographic aspects without always dwelling on an in-depth analysis of the violations suffered by migrants during their journey. This study is intended to provide some analytical elements on this subject. Although data on violations of migrants' rights exist, they are fragmented; there is thus need to regroup them for a comprehensive analysis.

States have the primary responsibility to protect the human rights of migrants. In practice, the Internal Security Forces (ISF)¹⁰ and the Defence and Security Forces (DSF)¹¹ are the public officials who are most in contact with migrants and therefore have a crucial role to play in protecting them. This study seeks to identify discrepancies between regional and international obligations and the reality of the treatment meted out to migrants in practice, by focusing on the responsibility of public authorities, including ISF and DSF.

In accordance with the progressive approach adopted in Resolution 404, the geographical scope of this study is limited to the Republic of Niger. This choice takes into account the difficulty to undertake a study in each country due to limited resources but, above all, the fact that Niger is an important transit and smuggling country for migrants from West and Central Africa, striving to get to Europe via the Mediterranean¹². Migrant profiling reports published by the International Organization for Migration (IOM)- Niger in 2016 and 2017 confirm the presence of a large number of West African nationals among migrants in Niger. In 2016, testimonies collected by IOM Niger from migrants in four of its transit centres (Agadez, Arlit, Dirkou et Niamey) indicate that the majority came from West African countries¹³. The IOM Niger 2017 Profiling Report also confirms this¹⁴.

¹⁰ Police, Gendarmerie, National Guard, Customs

¹¹ Army

¹² IOM : *World Migration Report 2018*, p. 51, available at:

https://publications.iom.int/system/files/pdf/wmr_2018_en.pdf

See also, UNODC: *Global Study on the Smuggling of Migrants*, 2018, p. 33 , available at:

https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_web_small.pdf

¹³ IOM Niger: *Migrant Profiling Report 2016*, p. 10, available at : <https://gmdac.iom.int/OIM-Niger-Rapport-de-Profilage-des-Migrants-2016>

¹⁴ IOM Niger: *Migrant Profiling Report 2017*, available at :

<https://displacement.iom.int/system/tdf/reports/OIM%20Niger%20-%20Reponse%20Migratoire%20-%20Rapport%20de%20Profilage%202017%20-%20FR%20-%20FINAL.pdf?file=1&type=node&id=3728>

In addition, according to the UNODC Report, *Global Study on Smuggling of Migrants* (2018), studies indicate that in 2016, more than 330,000 individuals transited through Niger by land from West Africa to North Africa¹⁵. For example, the distribution of the different nationalities recorded during migration from Niger to North Africa between February and September 2016 gives the following percentages according to UNODC¹⁶:

- Niger, 19%
- Nigeria 22%
- The Gambia, 15%
- Senegal, 13%
- Côte d'Ivoire 7%
- Guinea, 7% -
- Guinea -Bissau 5%
- Others 12%.

This study particularly focuses on the movement of migrants from Niger (country of transit or departure) to countries of temporary residence in North Africa (notably Algeria and Libya) to settle there or to go to Europe via the Mediterranean. This limitation reflects the need to progressively undertake in-depth studies on specific cases and is therefore not prejudicial to the fact that other migration corridors deserve to be considered in subsequent studies.

1.2 Objectives of the study

The overall objective of the study is to collect information on human rights violations suffered by migrants during their journey ¹⁷to North Africa to join the Mediterranean (for some). Such information will serve as a basis for the Commission and relevant actors to undertake informed actions. To this end, the Study pursues the following specific objectives:

- Identify the different forms of human rights violations suffered by migrants during their journey (in Niger and in countries of temporary residence) as well as the alleged perpetrators of the violations;
- Use the example of Niger to analyze the regulatory, institutional and strategic responses of transit countries, highlighting positive factors, limiting factors and related areas of concern;
- Identify avenues for reflection and make recommendations to stakeholders for the promotion and integration of a human rights-based approach to the management of migration flows.

¹⁵ UNODC, *Global Study on the Smuggling of Migrants* 2018, p. 57, https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_web_small.pdf

¹⁶ *Ibid.* p. 33

¹⁷

The itinerary in this study includes the transit period in Niger (or departure period for migrants from Niger), the stay in the country of temporary residence (Libya and Algeria) and the period of voluntary or involuntary return to Niger.

1.3 Methodology and scope of the study

The study is the product of both a documentary research and a field survey.

The full study was conducted from November 2018 to early July 2019.

The documentary research entailed the use of several types of documents, including binding legal instruments, international and regional soft law instruments, relevant reports and documents of national, sub-regional, regional and international organizations, including final and conclusive observations, case law at the regional level and scientific articles. The literature search focused primarily on data that were no more than seven (7) years old; however, older data were used where necessary or in the absence of more recent data.

The literature search served as a basis for guiding the field survey; it also made it possible to cross-check the data collected and to fill in the gaps in the field survey. It focused both on general information on migration and human rights at the regional, sub-regional level and on the human rights situation of migrants at the levels of countries of transit/ departure and countries of temporary residence.

The field survey consisted of a quantitative and qualitative survey.

The quantitative survey was conducted from December 2018 to January 2019 in Niger. Out of the eight (8) regions of Niger, the field survey targeted the two regions of Agadez and Zinder because of the limited resources available.

Agadez, a region located in central Niger (cf. *infra*, administrative map of Niger) is considered the "gateway to the desert"¹⁸ and is therefore the region most crossed by migrants from several countries to go to North Africa, notably Algeria and Libya¹⁹. The surveys in Agadez specifically involved migrants at the IOM transit centre in Agadez city. Migrants in this centre come from the other two (2) IOM centres located on the border with Libya and Algeria.

As for the Zinder region, it is the main area of return of Nigerien migrants to Niger according to IOM information²⁰. Field surveys in the Zinder region were limited to the Department of Kantché, which has a large number of returning migrants. Data from a publication made in 2016 for IOM indicate that since December 2014, Niger

¹⁸ <https://www.presidence.ne/gographie>

¹⁹ UNODC: Regional strategy to combat trafficking in persons and smuggling of migrants 2015-2020, p. 9, available at : https://www.unodc.org/documents/human-trafficking/2016/UNODC_Strategie_regionale_de_lutte_contre_TdP_et_TiM_Afrique_de_lOuest_et_du_Centre_2015-2020.pdf

²⁰ <http://www.nigermigrationresponse.org/fr/Medias/Presse/zinder-est-le-principal-secteur-de-retour-des-migrants-au-niger>

and Algeria have been coordinating a repatriation operation for vulnerable Nigerien migrants from Algeria and 8,093 of them have been repatriated as of 15 February 2016. Of these migrants, 5,875 are from Zinder, 37 per cent of them are women and 38 per cent children. Of these, more than 87% are from the Department of Kantché²¹.

In Zinder, there is no reception centre for migrants; the surveys were carried out in the rural commune of Kourni and in the town of Matamey, the capital of the Kantché Department.

The field survey could not reach migrants en route to North Africa. Indeed, the human, material and financial resources available for this study are not sufficient to intercept and interview migrants on their way to North Africa. In addition, many use irregular routes.

The migrants interviewed for this study are those who have returned voluntarily or involuntarily to Niger; the objective was not only to hear their comments about their return, but also above all to hear their account of the migration path *Niger- country of temporary residence- Niger*. The relevance of the interview with the returning migrants derives from the fact that they have gone through the entire process and can testify to the difficulties encountered at the various stages. The migrants interviewed also gave testimonies about the treatment of other migrants they met. However, this sample of migrants was, a priori, more in contact with the authorities of the countries of temporary residence, which justifies that several of their testimonies also relate to the incidents experienced in these countries.

A sample of 400 migrants was selected for the field survey, i.e. 200 migrants interviewed in Agadez and 200 others in Kantché. The constraints linked to the availability of migrants during the surveys made it difficult to apply parity (gender) or distribution per vulnerable group as initially planned. The sample finally selected in the field is as follows:

- by age: 9% from 0 to 17 years old (49% boys and 51% girls); 88% from 18 to 59 years old (74% men and 26% women); 3% from 60 years old and over (64% men and 36% women).
- by gender: 28% women and 72% men
- by disability: 0%.
- by country:
 - Niger (221)
 - Burkina Faso (16)

²¹ Oumarou Hamani: *Women and children from Kantché on the road to Algeria Socio-anthropological analysis of a little-known phenomenon*, p. 8, IOM, 2016 , available at : <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKewjZ8KzGzKLjAhVOMIsKHffxB44QFjAAegQIAhAC&url=http%3A%2F%2Fwww.nigermigrationresponse.org%2Fsites%2Fdefault%2Ffiles%2FIOM%2520Niger%2520-%2520Femmes%2520et%2520enfants%2520de%2520Kantche.pdf&usg=AOvVaw2p1qm0Ut8Tnr2af70UJmHM> [Consulted on 7 July 2019]

- Mali (57)
- Guinea Conakry (50)
- Benin (8)
- Cameroon (11)
- Nigeria (12)
- Senegal (9)
- Togo (2) - Chad (1)
- Côte d'Ivoire (2)
- Central Africa (2)
- Liberia (2)
- Namibia (1)
- Sierra Leone (1)
- Somalia (1)
- Bangladesh (4)

Disaggregated sample data

Country of origin	Age of interviewee									Total		
	0 to 17 YEARS			18 to 59 YEARS			60 YEARS and more			Interviewee's sex		
	Interviewee's sex			Interviewee's sex			Interviewee's sex			Interviewee's sex		
	M	F	Total	M	F	Total	M	F	Total	M	F	Total
	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number
NIGER	9	18	27	101	83	184	6	4	10	116	105	221
BURKINA FASO	0		0	16		16	0		0	16		16
MALI	1		1	55		55	1		1	57		57
GUINEA CONAKRY	6	0	6	41	3	44	0	0	0	47	3	50
BENIN	0		0	8		8	0		0	8		8
CAMEROON	0	0	0	8	3	11	0	0	0	8	3	11
NIGERIA	0		0	12		12	0		0	12		12
SENEGAL	1	0	1	7	1	8	0	0	0	8	1	9
TOGO	0		0	2		2	0		0	2		2
CHAD	0		0	1		1	0		0	1		1
COTE D'IVOIRE	0	0	0	1	1	2	0	0	0	1	1	2
CENTRAL AFRICAN REPUBLIC	0		0	2		2	0		0	2		2
LIBERIA	0		0	2		2	0		0	2		2
NAMIBIA	0		0	1		1	0		0	1		1
SERALEONE	0		0	1		1	0		0	1		1
SOMALIA	0		0	1		1	0		0	1		1
BANGLADESH	0		0	4		4	0		0	4		4
TOTAL	17	18	35	263	91	354	7	4	11	287	113	400

This sample should in no way be interpreted as representative of migrants in Niger; it results from the availability of migrants found in the field during the survey. The majority of migrants interviewed come from Niger, which may obscure the scale of the realities experienced by foreign migrants in transit in Niger. However, the sample remained relevant to the field survey, which focused on hearing migrants'

description of the alleged violations they had suffered, as well as the locations and responsibilities of these violations.

The qualitative survey involved interviews with State and non-State structures working in the field of migration based in Niger. These include, in particular, the Directorate of Migration at the Ministry of Interior, Security, Decentralization and Customary and Religious Affairs, the General Directorate of Human Rights of the Ministry of Justice of Niger, the Ministry of Women's Development and Child Protection, the National Human Rights Commission, the National Agency to Combat Trafficking in Persons, the Municipality of Kourni Commune (Kantché region of Zinder), the Niger High Authority to Combat Corruption and Related Offences, the High Command of the National Guard, the Directorate of Territorial Surveillance of the National Police, the High Command of the National Gendarmerie, the NGO Collectif des organisations de défense des droits de l'homme et de la démocratie (Coddhd) and the NGO Jeunesse enfance migration et Développement (JMED).

The methodology used also consisted in submitting the draft zero study report for the assessment and contribution of local actors working in the field of migration in Niger. To this end, a national consultation with State and non-State actors operating in Niger was held on 11 June 2019 in Niamey. The meeting provided information and input that was used to improve the draft zero study report.

For the purposes of this study, the expression 'international migration' is understood in the broadest possible sense, i.e., any person who crosses the territory of another country for any reason whatsoever. In practice, the study focuses particularly on the case of economic migrants.

1.4 Difficulties encountered in connection with the study

In the field survey, the fact that migrants were not available at the time of the survey made it difficult to respect parity and the percentages of vulnerable groups initially planned for sampling.

In the context of the documentary survey, the difficult access to online documents was a major challenge. Besides, existing migration data are often of a general nature (not specific to the case of Niger) and are scattered in different documents that serve different purposes.

1.5 Study Plan

Following the presentation of the general context of migration in Africa and Niger in particular (2), the study takes stock of basic human rights violations against migrants during their journey(3). At this stage, the study identifies all relevant information relating to human rights violations that may have occurred both in Niger and in countries of temporary residence. Information on violations is analyzed in the light of the relevant articles of the African Charter and, alternatively, other relevant regional and international human rights instruments (3). The study then

considers the responsibility of public authorities to protect the rights of migrants while focusing on the role of ISF and DSF (4).

Based on the example of the Republic of Niger, the study then presents and analyses the legal (5) and institutional (6) framework for the protection of migrants' rights in the country in order to identify discrepancies between what is planned and what is actually happening and to highlight the existing challenges and difficulties. The questions of existing reparation mechanisms (7) and strategies (8) for dealing with violations of migrants' rights are finally explored.

Finally, the study identifies avenues for reflection and makes relevant recommendations to ensure a more effective protection of the rights of migrants (9).

2. GENERAL CONTEXT FOR THE PROTECTION OF THE FUNDAMENTAL RIGHTS OF MIGRANTS IN NIGER

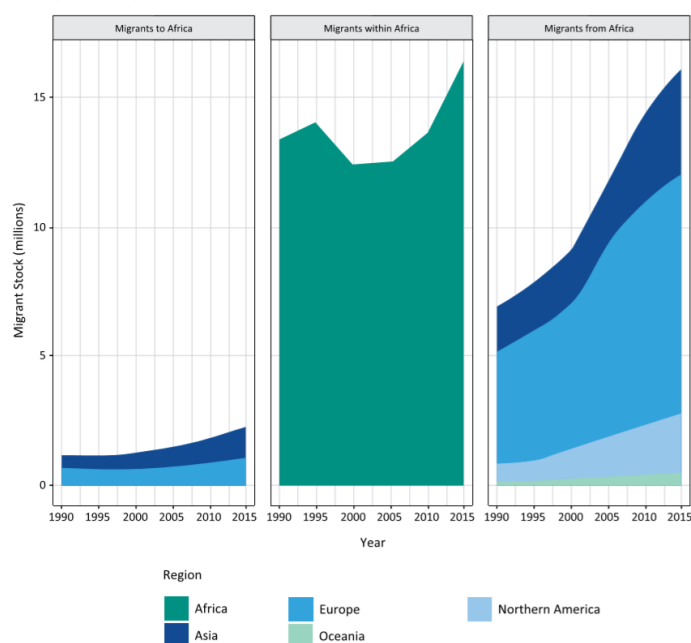
Understanding the migration phenomenon in Niger is highly dependent on a thorough understanding of the African and sub-regional (ECOWAS) migration context.

2.1 Overview of migration trends in Africa

IOM data²² show that in Africa, the number of people migrating within and outside the continent is quite similar. Recent statistics show that in 2017, more than half (53%) of African international migrants remained on the continent²³.

However, although the data indicate that the number of migrants within the continent has increased since the 2000s, the number of African migrants living outside the continent has increased more significantly; it has more than doubled (see figure below) with a higher percentage of African migrants residing in Europe than in other continents²⁴.

Figure 1. Migrants to Africa, within Africa and from Africa between 1990 and 2015



Source: UN DESA, 2015a.

Note: "Migrants to Africa" refers to migrants residing in the region (i.e. Africa) who were born in one of the other regions (e.g. Europe or Asia). "Migrants within Africa" refers to migrants born in the region (i.e. Africa) and residing outside their country of birth, but still within the African region. "Migrants from Africa" refers to people born in Africa who were residing outside the region (e.g. in Europe or Northern America).

²² IOM: *World Migration Status, 2018, op. cit.* p. 48

²³ United Nations Conference on Trade and Development: *Economic development in Africa: migration for structural transformation*, p. 2, 26 March 2018, available at :

https://unctad.org/meetings/fr/SessionalDocuments/tdb65_1_d8_fr.pdf

²⁴ IOM: *World Migration Status, 2018, op. cit.* p. 49

As a result of its geographical position, North Africa is the most important transit sub-region for illegal African migrants wishing to travel to Europe via the Mediterranean. However, in addition to being transit countries to Europe, North African countries are also destination countries for certain migrants.

Statistics show that migrants from West and East Africa occupy an important place among those who cross North Africa to reach Europe via the Mediterranean. For example, according to the IOM World Report 2018, in 2016 alone, more than 181,000 people were identified on the "Central Mediterranean Route" to Italy. The majority of those who landed in Italy in 2016 were from West and East Africa (Nigeria, Eritrea, Guinea, Côte d'Ivoire, Gambia, Senegal, Mali and Somalia) and more than half sought asylum. Of these migrants who landed in Italy in 2016, 13% (about 24,000) were women, and 15% (28,000) were children - the vast majority (91%) of whom were unaccompanied²⁵.

These migration corridors, used illegally, are the scenes of serious human rights violations, which mainly take the form of deaths at sea, in the desert and other places of transit, the disappearance of migrants, exploitation, physical and psychological abuse, trafficking and smuggling of migrants, sexual and gender-based violence, arbitrary detention, forced labour and ransom demands and extortion.²⁶

2.2 Context of migrations in the ECOWAS region

Most West African countries are members of the Economic Community of West African States (ECOWAS). Established by Treaty in 1975, ECOWAS is a sub-regional organization in West Africa with 15 Member States: Benin, Burkina Faso, Côte d'Ivoire, Gambia, Cape Verde, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

ECOWAS aims to "promote cooperation and integration in preparation for an Economic Union of West Africa with a view to raising the standard of living of its peoples, maintaining and increasing economic stability, strengthening relations among Member States and contributing to the progress and development of the African continent"²⁷. In pursuit of this goal, ECOWAS has set itself several objectives, including the removal of obstacles to the free movement of persons between Member States. The ECOWAS common approach on migration adopted at the 33rd ECOWAS Summit in 2008 highlights the fact that free movement within the ECOWAS region is among the key priorities of the integration policy of ECOWAS Member States²⁸.

²⁵ IOM: *World Migration Status*, 2018, *op. cit.* p. 54

²⁶ IOM: *World Migration Status*, 2018, *op. cit.*, p. 54; See also: ACHPR: Resolution on the situation of migrants in Africa - ACHPR/RES. 333 (EXT.OS/XIX) 2016 <http://www.achpr.org/fr/sessions/19th-ec/resolutions/333/>

²⁷ Revised ECOWAS Treaty of 1993, Chapter 2, Article 3 (1), available at: http://caselaw.ihrda.org/fr/doc/t_eco/view/fr/#p2

²⁸ http://ecowasmigration.ug.edu.gh/fr/ecowas-common-approach-migration-2008/?doing_wp_cron=1556119456.9946138858795166015625; <http://www.unhcr.fr/4b151cb1e.pdf>

ECOWAS has therefore adopted several legal instruments to guide its migration policy, including *Protocol A/P1/5/79 on the free movement of persons, the right of residence and establishment, adopted in Dakar on 25 May 1979* (Protocol on Free Movement), and its four additional protocols listed below:

- Additional Protocol of 1985 (A/SP.1/7/85) on the Code of Conduct for the Implementation of the Protocol on the Free Movement of Persons, the Right of Residence and Establishment;
- Additional Protocol of 1986 (A/SP.1/7/86) on the implementation of the second stage (right of residence) of the Protocol on the free movement of persons, the right of residence and establishment;
- Additional Protocol (A/SP.1/6/89) of 1989 amending and supplementing the provisions of Article 7 of the Protocol on the free movement of persons, the right of residence and establishment;
- Additional Protocol of 1990 (A/SP.2/5/90) on the implementation of the third stage (right of establishment) of the Protocol on the free movement of persons, the right of residence and establishment.

These texts form the basis of the free movement system in force in the ECOWAS region. In particular, Article 3 of the 1979 Protocol on Free Movement provides that:

- Any citizen of the Community wishing to enter the territory of one of its Member States will be required to be in possession of a valid travel document and international vaccination certificates;
- Any citizen of the Community wishing to reside in a Member State for a maximum period of ninety (90) days may enter the territory of that Member State through an official point of entry without having to present a visa;
- A citizen residing legally in the area and wishing to extend his stay beyond ninety (90) days must, for this purpose, obtain an authorization issued by the competent authorities.

Such provisions facilitate the free movement of nationals of ECOWAS Member States. Recent estimates reveal that the majority of international migrants in West Africa move within the sub-region²⁹. People travel through space for economic, social, environmental and security reasons. Although migration in West Africa is characterized by mixed migratory flows, it is , to a large extent, determine by economic factors³⁰.

The abolition of visas for ECOWAS nationals considerably reduces the illegality of migration in the ECOWAS region but does not eliminate it completely. There are cases where, for several reasons (lack of required documents, fear of rackets by

²⁹ IOM : *World migration status*, 2018, op.cit., p. 54, available

³⁰ IOM : *World migration status*, 2018, op.cit., p. 55, available

border security agents, unfamiliarity the texts, etc.), nationals of the region travel illegally³¹.

Nevertheless, the majority of West African migrants who transit through ECOWAS countries such as Niger to reach North Africa and often Europe are in order as long as they are in the ECOWAS region. For many of them, illegality begins when they cross the ECOWAS region because most of them are not in possession of the travel documents required to enter the other zones.

Niger is on the list of the most important migration routes used by migrants, particularly irregular migrants, to reach North Africa and Europe through the Mediterranean Sea; it is also a hub for the smuggling of migrants³².

2.3 Context of migration in Niger

The migration phenomenon in Niger is assessed in the light of the generalities related to the country's geographical, historical, political, economic, social and cultural situation.

▪ General information on Niger

Niger is a vast Sahelian country of West Africa. With a surface area³³ of 1,267,000 km², it is the largest country in West Africa and the 6th largest country in Africa. Niger is totally landlocked by 7 neighbouring countries, notably Burkina Faso and Mali in the West; in the East by Chad; Benin and Nigeria in the South; and Libya and Algeria in the North. The desert occupies a huge part of Niger's territory, particularly in its areas bordering Algeria and Libya. The Saharan and Sahelian zones represent 80% of Niger's territory³⁴.

With respect to the administrative division, the territory is divided into 8 regions (**Agadez, Dosso, Maradi, Tahoua, Tillabéry, Zinder, Diffa and Niamey**), 63 departments and 266 municipalities according to Law N° 2011-22 of 8 August 2011 transforming former administrative posts into departments and assigning the names of their capitals. The regions are administered by a governor, the department by a prefect, the urban or rural commune by an elected mayor and the village is headed by a village chief assisted by a traditional chieftaincy council³⁵.

³¹ UNODC : *Global Study on Smuggling of Migrants 2018*, p. 83, available at:

<https://www.unodc.org/unodc/en/data-and-analysis/glosom.html>

³² IOM : *World migration status*, 2018, p. 55, available at <https://publications.iom.int/fr/books/etat-de-la-migration-dans-le-monde-2018> ; Altai Consulting et OIM, *Migration Trends Across the Mediterranean: Connecting the Dots*, June 2015, available at <http://www.altaiconsulting.com/insights/migration-trends-across-the-mediterranean-connecting-the-dots/>

³³ <https://www.presidence.ne/gographie>

³⁴ <https://www.presidence.ne/gographie>

³⁵ National Statistique Institute of Niger, *Social dashboard*, 2016, P.19, available at :

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwjFx6eGh4zhAhXOsKOKHW-PD1EQFjAAegQICAB&url=http%3A%2F%2Fwww.stat-niger.org%2Fstatistique%2Ffile%2FDSEDS%2FTBS_2016.pdf&usq=AOvVaw2z5jYKqhGJKGh8kTSbiGJL

Administrative Map of Niger



Source : Institut Nationale de la Statistique du Niger

At the political level, it should be noted that Niger gained independence since 3 August 1960. It is a member of the United Nations (UN), the African Union, the Economic Community of West African States (ECOWAS), the G5 Sahel and many other international and regional organizations.

In 2017, Niger had a population of close to 21.5 million; the country has one of the highest population growth rates in the world (3.9% per year)³⁶. Despite a subsoil rich in uranium, Niger has been suffering from extreme poverty for several years. In 2018, it was ranked 189th out of 189 countries in the world according to the United Nations Development Programme (UNDP) Human Development Index³⁷.

In terms of security, Niger is facing attacks by the terrorist group *Boko Haram* and many other jihadists. The Southeast region, particularly Diffa, bordering Nigeria from where the *Boko Haram* sect operates, is among the regions most affected by terrorism. In its 2016 Report for the Universal Periodic Review (UPR), the Government of Niger indicated, for example, that following the attacks by *Boko Haram* during the period from February to July 2015, the Diffa hospital centre recorded a total of 140 deaths, including 43 women and 97 men among civilians³⁸. Similarly, in its Periodic Report for the period 2014-2016 submitted to the

³⁶ <http://hdr.undp.org/en/composite/HDI>

³⁷ <http://hdr.undp.org/en/composite/HDI>

³⁸ Government of Niger: UPR 2016, para 44, available at : <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/254/30/PDF/G1525430.pdf?OpenElement>

Commission, the Government of Niger also reported attacks in the Diffa region³⁹. In addition, attacks are also reported in other regions, including Tahoua⁴⁰ and Tillabéry⁴¹.

▪ Characteristics of migration in Niger

For decades, Niger has been a hub of trade between North Africa and Sub-Saharan Africa; this is due to its geographical location as described above. Niger is a country of origin, transit and destination for migrants.

As a country of origin, it is noted that Niger nationals themselves migrate more to ECOWAS countries than to North African and European countries. According to the CARIM According to the CARIM (Consortium for Applied Research on International Migration) migration profile for Niger, close to 90% of migrants from Niger live in ECOWAS countries (mainly Burkina Faso, Côte d'Ivoire, Nigeria and Guinea Conakry)⁴².

Niger's profile as a destination country is not very high. A profiling report prepared for IOM in 2009 revealed that the number of international immigrants residing in Niger had never exceeded 2% of the total resident population⁴³.

On the other hand, Niger is used as a real transit corridor for migrants travelling to North Africa and Europe via the Mediterranean, especially since the outbreak of the Libyan crisis in 2011. Much of this migration is illegal. Several reports indicate that Niger is an important country of origin, transit and destination for the smuggling of migrants.

In a recent report, the United Nations Office on Drugs and Crime (UNODC) describes the modus operandi of migrant smuggling from Niger⁴⁴.

From Agadez, migrants heading for Libya pursue their route to Dirkou (a rural commune in the Agadez region), usually in pick-ups organized by traffickers. In Dirkou, they often have to wait a few days until they find a trafficker who can take

³⁹ Government of Niger: *Periodic report 2014-2016 on the implementation of the African Charter on Human and Peoples' Rights. Niger's periodic report submitted to the ACHPR*, p. 92, para 427, available at <http://www.achpr.org/fr/states/niger/reports/2014-2016/>

⁴⁰ African Union, Press Release of 7 October 2016, available at :

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=2ahUKEwiCmObR5I7jAhUpzLUKHdicATkQFjACegQIARAC&url=http%3A%2F%2Fwww.peaceau.org%2Fuploads%2Fua-comm-presse-niger-7-10-2016.pdf&usg=AOvVaw0MKXeRkxzfZCB0EPsG_7wo

⁴¹ African Union, Press Release of 16 May 2019, available at : <http://www.peaceau.org/fr/article/declaration-du-president-de-la-commission-sur-le-niger>

⁴² Anna Di Bartolomeo, thibaut Jaulin et Delphine Perrin : CARIM – Migration Profile Niger, p. 9, 2011, available on <https://cadmus.eui.eu/handle/1814/22442>; Also see: OIM Niger : Niger Migrants Profiling Report 2016, *op. cit.* p. 6

⁴³ Issaka Maga Hamidou : *Migration in Niger, National profile*, p. 58, OIM 2009, available at : https://reliefweb.int/sites/reliefweb.int/files/resources/CBEDEA4F2B066BE4432576F20033E11E-Rapport_Complet.pdf

⁴⁴ UNODC: *Global Study on Smuggling of Migrants*, 2018, p. 86 et 87, available at: <https://www.unodc.org/unodc/en/data-and-analysis/glosom.html>

them further north to Libya. Most migrants bypass the border and travel across the desert to Libya with the help of traffickers. The passage from Sabha (southern Libya) to Tripoli is also facilitated by traffickers. With regard to smuggling prices, information collected by UNODC indicates that in 2013, the cost of travel from Agadez to Sabha was between \$100 and \$300, but in 2017, these prices increased significantly to between \$550 and \$850. This rise is said to be due to the increase in security controls and therefore to the fact that traffickers now need to avoid ISP and DSF.

Some migrants also travel from Agadez to the north to reach Algeria, usually by van. Most migrants cross the border illegally. Some then travel to the centre of Tamanrasset, Algeria, with the help of a smuggler, where they can stay and work for some time until they have enough money to continue their journey.

Regarding the profiles of migrant traffickers, research by UNODC suggests that there are 3 levels of traffickers⁴⁵ :

- A first level where there are actors whose participation in trafficking is only temporary or incidental, and include a certain number of migrants;
- A second level consisting of the many raiders and smugglers who are often former migrants themselves, and who earn their living from this trafficking;
- A third level where there are professional businessmen who have practically no contact with migrants, and whose role is to negotiate the means of transport and bribes necessary for the smooth conduct of the operations.

Regarding land routes from West Africa to North Africa more than 330,000 individuals transited through Niger in 2016⁴⁶.

In addition, the IOM 2017 Profiling Report details the profile of migrants in Niger based on surveys conducted from January to December 2017, including testimonies from 9,100 assisted migrants in 4 locations in Niger where IOM has transit centres (Agadez, Arlit, Dirkou and Niamey) and in the Diffa and Zinder sub-offices. There are men, women, children and unaccompanied children. The main disaggregated data in the report show the following percentages:

- More than half of the migrants assisted in the 4 transit centres in 2017 come from Guinea (17%), Senegal (17%), Nigeria (13%) and Mali (8%). There were also nationals from other regions including Cameroon, Guinea Bissau and Sudan. The percentages by country of origin vary according to the years but the predominance of West African migrants in Niger has not changed;

⁴⁵ UNODC: *The flow: Smuggling of migrants from West Africa to Europe*, p. 31, available at: https://www.unodc.org/documents/toc/Reports/TOCTAWestAfrica/West_Africa_TOC_MIGRANTS_FR.pdf

⁴⁶ UNODC: *Global Study on the Smuggling of Migrants 2018*, p. 57, available at: https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_web_small.pdf

- 88% of migrants are men, 66% of whom are between 18 and 29 years old. 62% of migrant men are single;
- 9% of migrants are minors, 42% of whom were unaccompanied;
- 12% of migrants are women, the majority of whom are between 18 and 34 years of age; 26% of them are minors;
- Almost all migrants have fled their countries of origin because of poverty and "lack of employment opportunities". 96% of the migrants interviewed left their homes in search of a "better life" (74% in search of a job and 22% to escape poverty);
- Algeria and Libya were the main countries of temporary residence for migrants: 70% remained in these two countries for a period ranging from 6 months to 1 year;
- 5% of migrants interviewed in six IOM centres reported that they had been to school (compared to 60% in 2016).

Migrants are not equally distributed in Niger. In this respect, Agadez, considered as the "gateway to the desert", is the region most crossed by migrants from several countries to go to North Africa, notably Algeria and Libya. Several migrants stay in Agadez until they have the necessary means to pursue their journey to North Africa; to this end, there are *ghettos*⁴⁷ that are supposed to serve as accommodation for the migrants⁴⁸. Other migrants, expelled from Algeria and Libya or who are voluntarily returning from North Africa, are also present in Agadez. The map below⁴⁹ shows that Agadez is one of the main migration hubs in Africa.

UNODC analyses show that the irregular migration path in Africa comprises 3 main routes⁵⁰:

- **Route 1:** For irregular migrants who wish to reach the Canary Islands, they go through coastal cities such as St. Louis in Senegal or Nouadhibou in Mauritania;
- **Route 2:** For irregular migrants who want to reach the Mediterranean boarding points, they must first cross the Sahara. For the latter, Gao (Mali) and Agadez (Niger) are key rallying points because they are gateways to the Sahara;
- **Route 3:** For irregular migrants wishing to reach Greece, they generally transit through north-eastern Nigeria and then Chad before reaching Egypt to pursue their journey through Turkey and Greece or directly to Greece by sea.

⁴⁷ Ghettos" are hostels or homes where irregular migrants are accommodated..

⁴⁸ UNODC: *Regional strategy to combat trafficking in persons and migrant smuggling 2015-2020*, p. 9, available at : https://www.unodc.org/documents/human-trafficking/2016/UNODC_Strategie_regionale_de_lutte_contre_TdP_et_TiM_Afrique_de_lOuest_et_du_Centre_2015-2020.pdf

⁴⁹ UNODC, *Global Study on Smuggling of Migrants*, 2018, p. 83, available at: <https://www.unodc.org/unodc/en/data-and-analysis/glosom.html>

⁵⁰ UNODC: "The flow: Smuggling of migrants from West Africa to Europe» p. 29 et 30, available at: https://www.unodc.org/documents/toc/Reports/TOCTAWestAfrica/West_Africa_TOC_MIGRANTS_FR.pdf

Route 2 is therefore the most interesting route for irregular migrants crossing Niger to North Africa and then Europe, for some. Whether their situation is in order or not, migrants suffer several forms of abuse and violence that infringe their fundamental rights. Irregular migrants who venture onto these routes are more vulnerable because of their irregularity. These migrants who transit through Niger to North Africa and then to Europe are therefore greatly affected by these abuses and violence.

Besides, migrants arriving in North Africa may return to Niger voluntarily or involuntarily. Most West African migrants are returned to Niger since the majority of countries of which they are nationals have no direct border with Libya and Algeria. Incidents likely to violate the dignity of migrants also occur during their return.

3. VIOLATIONS OF MIGRANTS' FUNDAMENTAL RIGHTS

Whether migrants enter Niger legally or illegally, they are confronted during their journey with several acts that obstruct the enjoyment of their fundamental rights guaranteed by the African Charter. These violations are assessed in the light of the African Charter, which has been ratified by the transit country (Niger) and the countries of temporary residence covered by the study (Algeria and Libya).

3.1 The Right to non-discrimination and equality (Articles 2 and 3 of the African Charter)

Articles 2 and 3 of the African Charter guarantee the right of every individual to enjoy the rights and freedoms recognized in the African Charter without distinction of any kind, such as "race, ethnic group, colour, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or other status" and to benefit from equal protection of the law.

The field survey of the 400 migrants revealed several allegations of discrimination based on race, language and nationality. According to the migrants interviewed, discrimination on the grounds of nationality is a common practice in Niger at internal checkpoints and at the border.

The right to leave one's country and the right of any person who is lawfully within the territory of a State to move freely therein is recognized by international human rights law. In practice, these rights refer to issues of entry and stay in foreign territories with respect to international migration. The entry and residence of foreign nationals is, in general, partly governed by Community texts or bilateral agreements between States which may provide for reciprocity in the treatment of foreign nationals.

According to some migrants interviewed, non-Nigerien migrants (including those from the ECOWAS region) are subject to the systematic payment of money before crossing security barriers at borders and within the country, while Nigeriens are not subject to any payment. Similar allegations are also made in *Mr. Abdoulaye Hamadou's* article on the management of migration flows in Niger, published in 2018 in the *Human Rights Review of the Centre for Research and Human Rights Studies*⁵¹. In this article, the author states that he made the trip to verify the alleged harassment on the road; he reports the following: "At the end of this long journey, we were able to observe nine (9) police checkpoints from Niamey to Agadez. And at each checkpoint, non-nationals are brought down for questioning and possibly to ask them for sums of money, the amount of which varies according to the documents in the migrant's possession".

⁵¹ Abdoulaye Hamadou : *The management of migration flows in Niger between commitments and constraints*, *Human Rights Review, Centre for Research and Human Rights Studies*, Vol. 14, 2018, , p. 14 (para 58) and p.23 (foot note page 97), available at: <https://journals.openedition.org/revdh/4378>

It is the requirement for aliens to systematically pay that is denounced by migrants. It does not appear from the data collected that such treatment of aliens results from the application of reciprocity clauses and even if such clauses existed, they should be in conformity with international principles and standards for the protection of human rights.

However, field workers in Niger, present at the National Consultation on the review of the Zero Draft of this study, explained that there are times when Nigeriens have to pay as well before passing through police checkpoints⁵².

In addition to Niger, the field survey also revealed allegations of discriminatory treatment on the basis of race in countries of temporary residence, particularly in Algeria. These allegations corroborate the Declaration of the United Nations Special Rapporteur on the Human Rights of Migrants ("the UN Rapporteur"), Felipe González Morales, at the end of his visit to Niger in October 2018⁵³. In this statement, the UN Special Rapporteur deplored the fact that migrants are victims of racial intimidation, discrimination and persecution in Algeria. Migrants, particularly West African migrants, are returned to Niger without reasonable notice and without the possibility of challenging the regularity of this decision. The Rapporteur urged the Algerian authorities to put an immediate end to the ill-treatment of migrants based on racial discrimination.

In addition, a Note by the Spokesperson for the United Nations High Commissioner for Human Rights indicates that in connection with expulsions, some migrants allege that once in Tamanrasset (southern Algeria), Nigeriens are transferred by bus to Agadez in Niger, while others are crammed into large trucks to be transferred to the Niger border where they are abandoned and forced to walk for hours in the desert heat⁵⁴.

3.2 The Right to Life (Article 4 of the African Charter)

The right to life is guaranteed in article 4 of the African Charter, which provides that no one may be arbitrarily deprived of it. In its *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (article 4)*⁵⁵, the Commission recalled that this right is part of customary international law and general principles of law as well as a *jus cogens standard*, universally binding at all times.

The right to life is broadly interpreted: its respect requires not only that States take measures to prevent arbitrary deprivation of life but also that justice is promptly

⁵² Information from the national consultation held on 11 June 2019 in Niamey, Niger within the framework of this study

⁵³ Statement by the United Nations Special Rapporteur on the human rights of migrants, Felipe González Morales, at the end of his visit to Niger (1-8 October, 2018), available at : <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=23698&LangID=F>

⁵⁴ Note by the Spokesperson of the United Nations High Commissioner for Human Rights, Ravina Shamdasani of 22 May 2018, available at : <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=23114&LangID=F>

⁵⁵ ACHPR, General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (article 4), para. 5

done once the right is violated. Similarly, the enjoyment of a number of other rights can collectively constitute living conditions; thus, the progressive realization by States of the various economic, social and cultural rights contributes to ensuring a full and dignified life. Therefore, in some cases, the violation of these rights may also result in a violation of the right to life⁵⁶.

The majority of migrants who lose their lives while transiting through Niger die during the desert crossing and during the Mediterranean crossing.

▪ **Loss of human lives in the desert**

According to a UNODC report, at least 500 deaths are registered in the Sahara desert in Niger and Algeria every year as a result of migration⁵⁷.

Many migrants abandoned by smugglers in the desert or blocked in the middle of the desert due to vehicle breakdowns, die from adverse weather conditions and lack of means of subsistence (water, food, etc.).

In October 2013, 92 migrant bodies (52 children, 33 women and 7 men) were found in the desert in Niger, not far from the border with Algeria⁵⁸. These migrants are said to have died of dehydration following a vehicle breakdown⁵⁹. Despite this tragedy, several deaths continue to be registered in the desert. For example, in June 2015, 48 other bodies were discovered in the Nigerien Sahara, 18 of them next to an oasis in Arlit (West of Agadez) and 30 bodies near Dirkou in the North Eastern Agadez⁶⁰. In June 2017, at least 44 migrants, including women and children, were found dead in the desert in Agadez. These migrants were also reported to have found themselves in the middle of the desert following a breakdown in the vehicle transporting them to Libya⁶¹.

In June 2017, IOM rescued 24 migrants (including Gambians, Nigeriens, Senegalese and Ivorians) who were walking in the desert near Séguédine, one of the 24 rescued finally died on arrival. The rescued persons were part of a group of 75 migrants travelling in convoys that were eventually abandoned by smugglers⁶².

⁵⁶ *Ibid.*, para 41 et 43

⁵⁷ UNODC: *Global Study on the Smuggling of Migrants 2018*, p. 83, available at:

https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_web_small.pdf

⁵⁸ Coordination of the United Nations System in Niger, Office of the Resident Coordinator: Report of the United Nations Country Team in Niger for the second cycle of the Universal Periodic Review (*EPU*), June 2015, para 72

⁵⁹ http://news.aniamey.com/h/9054.html?fb_comment_id=1402563453314395_54757

⁶⁰ Coordination of the United Nations System in Niger, Office of the Resident Coordinator: Report of the United Nations Country Team in Niger for the second cycle of the Universal Periodic Review (*EPU*), op. cit., p.13

⁶¹ <https://www.unhcr.org/news/press/2017/6/59311ced4/news-comment-unhcr-shocked-deaths-sahara-desert.html>

⁶² <https://www.iom.int/fr/news/52-morts-au-niger-tandis-que-loperation-de-recherche-et-de-secours-de-loim-sauve-600-migrants>

The story of Adaora⁶³, a young survivor of an IOM relief mission on 28 May 2017, illustrates the survival challenges faced by migrants as a result of the actions of smugglers⁶⁴.

Adaora is a 22-year-old Nigerien girl who left her country in search of a better future. She was among passengers on a truck travelling from Agadez to Libya with about 50 migrants on board. The driver eventually abandoned them in the middle of the desert and fled with their belongings, promising he would come back for them. In the face of the harsh desert climate and inadequate means of subsistence, 44 migrants died. The other 6 had to drink their own urine to survive and were able to walk until they found a truck that picked them up. She says she didn't know what to expect, otherwise she would never have left Nigeria.

The death of migrants transiting through Niger is not only confined to the desert part of Niger. Many of them also lose their lives in the desert in Libya; they die of hunger, dehydration and exposure to extreme heat⁶⁵.

Moreover, according to testimony gathered during the field study, the way in which migrants are expelled from Algeria to Niger is not conducive to the survival of migrants. They are generally transferred by bus from Algiers to Tamanrasset. They are then transported in trucks from Tamanrasset to the Niger border (at a so-called "zero point") from where they are forced to walk (between 15 to 20 km) in the desert before reaching Niger's first checkpoint and receiving assistance. The testimonies received by the UN Special Rapporteur confirm this process⁶⁶. During this long walk, migrants, including children and pregnant women, do not survive; bleeding pregnant women often arrive completely shocked at IOM's centres.

The field study reveals that the Nigerien authorities do not have national structures in place to assist migrants in distress in the desert; however, elements of the Nigerien National Guard who patrol the desert area for security reasons sometimes come across these migrants by chance and assist them on this occasion. In his statement, the UN Special Rapporteur also noted the fact that neither the Algerian nor Nigerien authorities provide assistance to migrants expelled from Algeria and compelled to walk in the desert. The only assistance provided to migrants come from IOM and other NGOs⁶⁷.

⁶³ *Ibid*

⁶⁴ Persons who facilitate the journey of irregular migrants, usually in exchange for payment

⁶⁵ <https://www.iom.int/fr/news/des-deces-au-niger-sajoutent-au-bilan-croissant-de-migrants-decedes-sur-le-continent-africain>

⁶⁶ Statement by the United Nations Special Rapporteur on the human rights of migrants, Felipe González Morales, at the end of his visit to Niger (1-8 October, 2018), available at :

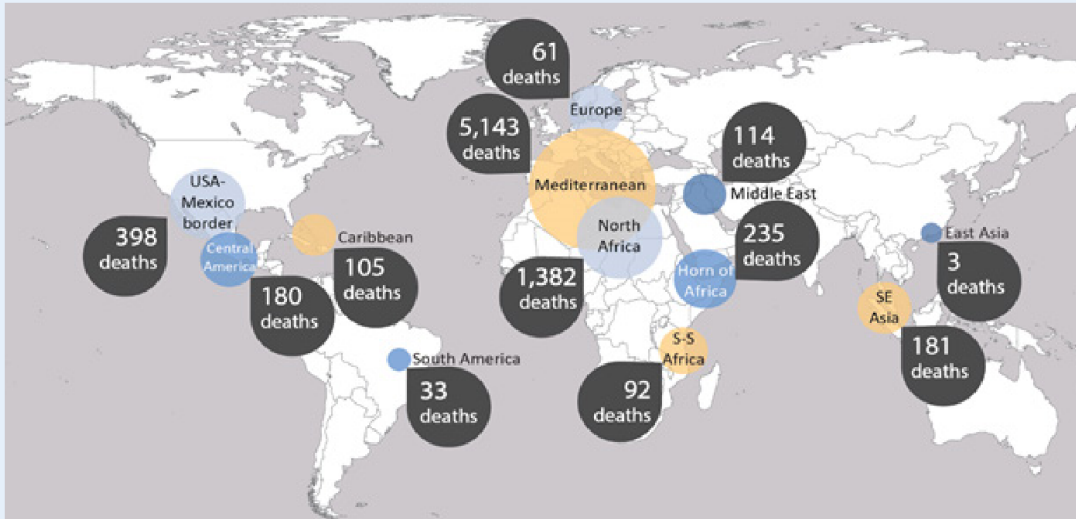
<https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=23698&LangID=F>

⁶⁷ Statement by the United Nations Special Rapporteur on the human rights of migrants, *op. cit.*

▪ **Loss of human lives in the Mediterranean**

While migrants lose their lives in the desert, they pay a heavier price when crossing the Mediterranean. In October 2013, for example, at least 368 migrants died in a wreck involving two boats near Lampedusa (Italy). Such tragedies during the Mediterranean crossing continue to be reported. For example, the figure below⁶⁸ shows the number of migrants who died or went missing at the global level but also illustrates the high proportion of human lives lost in the Mediterranean in 2016.

Recorded migrant deaths and missing migrants worldwide, 2016



Source: IOM, n.d.i.

Note: Figures correspond to deaths that occurred during the process of migration. All numbers reflect only those incidents about which IOM is aware. An unknown number of deaths remain unreported and therefore, these data comprise minimum estimates. Figures include both bodies found and migrants who are missing and presumed dead. Names and boundaries indicated on this map do not imply official endorsement or acceptance by IOM.

The number of recorded migrants' deaths or disappearances is higher in the Mediterranean than in other regions. It is difficult to know exactly what percentage of migrants from Niger lose their lives in the Mediterranean, but this percentage is probably very high when it is estimated that over 330,000 migrants transited through Niger in 2016 to reach North Africa, many of whom are trying to get to Europe through the Mediterranean. More recently, in February 2019, it was estimated that 354 migrants and "refugees" had died worldwide since January 2019, including 208 deaths that occurred on the main migration routes crossing the Mediterranean⁶⁹.

In her Inter-sessional Report presented at the 58th Ordinary Session of the African Commission in 2016, the Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa noted that 2015 is considered the

⁶⁸ IOM: World Migration Status, 2018, *op. cit.* p. 28

⁶⁹ <https://news.un.org/fr/story/2019/02/1035631>

deadliest year for migrants who have left their country for Europe through the Mediterranean⁷⁰.

- **Other cases of death**

Migrants may also be murdered on the way, or lose their lives due to road accidents, abuse or disease⁷¹.

- **Law n°2015-36 and the risks related to loss of human lives**

Some observers⁷² warn against the harmful effects resulting from Law n°2015-36 of 26 May 2015 on the smuggling of migrants (Law of 2015), whose articles 10 to 12 punish:

- those who facilitate the illegal entry or exit into or from Niger of a person who is not a national or a permanent resident of Niger
- those who produce, procure, provide or possess a fraudulent travel or identity document to facilitate the smuggling of migrants,
- those who use illegal means to allow a person who is not a national or a permanent resident to stay in Niger without fulfilling the conditions necessary for legal residence.

This law, which seeks to combat the smuggling of migrants, is believed to have several negative effects, including exposing migrants to greater risks to their physical and moral integrity and even their lives. The law is criticized for creating a more irregular context that exacerbates the vulnerability of migrants⁷³. Under this law, several drivers have been arrested, smugglers tracked down and *ghettos* (houses where irregular migrants are housed during their stay) are now considered illegal and therefore built clandestinely.

Since the application of the 2015 Law, the number of migrants travelling to North Africa and then to Europe through Niger has decreased. The decline in the movement of migrants northwards to Algeria, Libya and the Mediterranean is considerable, ranging from 333,891 in 2016 to 43,380 migrants in 2018, according to

⁷⁰ Special Rapporteur on Refugees, Asylum Seekers, Migrants and IDPs in Africa: Intersessional Report on behalf of the 58th Session of the African Commission, 2016, para 47 available at : <http://www.achpr.org/fr/sessions/58th/intersession-activity-reports/refugees-and-internally-displaced-persons/>

⁷¹ IOM: World Migration Status, 2018, *op. cit.* p. 9

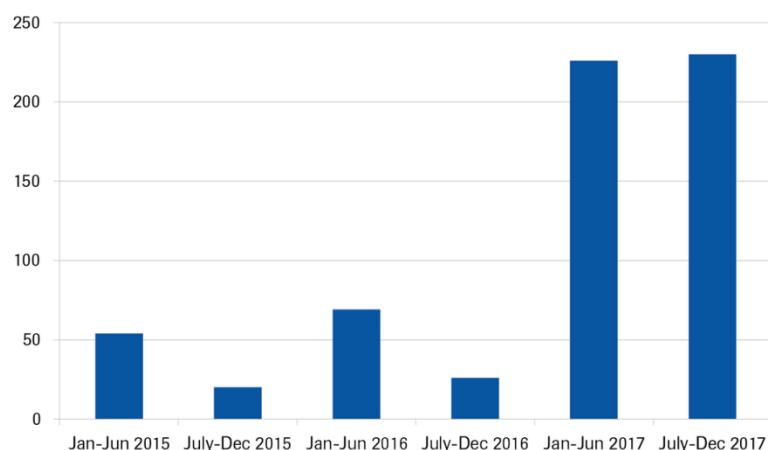
⁷² Clotilde Warin, Research Consultant at the Dutch think tank Clingendael: An overview of migration routes and the Sahel region, available at : <http://www.lecercledelalicia.org/blog/entretien-avec-clotilde-warin/>. See also : « Niger under the 'EU diktat': diminished flows, increased invisibility and risks, and political balances fragilized », available at : <https://www.clingendael.org/pub/2018/multilateral-damage/2-effects-of-eu-policies-in-niger/>. See also: Statement by the United Nations Special Rapporteur on the human rights of migrants, *op. cit.*

⁷³ Clotilde Warin, Research Consultant at the Dutch think tank Clingendael: An overview of migration routes and the Sahel region, available at : <http://www.lecercledelalicia.org/blog/entretien-avec-clotilde-warin/> See also : « Niger under the 'EU diktat': diminished flows, increased invisibility and risks, and political balances fragilized, *op. cit.*

IOM data based on monitoring trends in Arlit and Seguedine (North of Agadez)⁷⁴. However, smugglers now use more dangerous illegal routes⁷⁵, which exposes migrants to manifold risks, including abandonment in the desert, attacks by bandits, kidnapping to sell them to traffickers and the resulting human trafficking.

These additional dangers are feared to put the lives of migrants at greater risk. The estimates of the figure below allege that there has been an increase in human casualties and disappearances of migrants since the adoption of the 2015 Law.

Number of dead or missing migrants in Niger between 2015 and 2017 per semester



Extract from a publication by *Clingaendael*⁷⁶

3.3 Right to respect for human dignity (Article 5 of the African Charter)

Article 5 of the Charter provides that: "Every individual shall have the right to the respect of the dignity inherent in the human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, and cruel, inhuman or degrading punishment and treatment, shall be prohibited.

Exploitation is not a clearly defined and universally accepted concept. However, article 3 of the *Additional Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (Palermo Protocol) states that "exploitation includes (but is not limited to): the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or organ removal".

⁷⁴ Statement by the United Nations Special Rapporteur on the human rights of migrants, *op. cit.*

⁷⁵ *Ibid.*

⁷⁶ « Niger under the 'EU diktat': diminished flows, increased invisibility and risks, and political balances fragilized », *op. cit.*

During their journey, migrants transiting through Niger face several forms of exploitation, which occur both on and outside Nigerien territory. The risks of human dignity violations are present at all stages of the journey and are more so during their stay in countries of temporary residence due to the irregular situation in which they find themselves. The violence is thus mainly due to the permanent need to hide and to the abuses perpetrated by security officers, particularly during repatriation.

Besides, in November 2017, horrific images of migrant auctions in Libya were published⁷⁷. More recently in 2018, in its joint report of the United Nations Support Mission in Libya and the Office of the United Nations High Commissioner for Human Rights entitled "*Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya*" (Joint UNMIL and UNHR report), slavery, forced prostitution and forced labour are mentioned as forms of exploitation to which migrants in Libya are exposed⁷⁸. The number of foreign nationals is estimated at between 700,000 and 1,000,000 and among them, nationals of Niger, Chad, Egypt, Sudan, Ghana and Nigeria form the majority.

Moreover, the profiling report produced by IOM Niger in 2017⁷⁹ based on the testimonies of 9,100 migrants, reveals serious violations of migrants' rights. According to the report, 3400 have responded to questions relating to possible abusive treatment they have been subjected to; 80% of them reported that they have been victims of abusive treatment or violence. Brutality against migrants in Algeria, Libya and Niger is frequent. With regard to Libya and Algeria, the report indicates that respectively close to 54 and 33% of migrants staying there were victims of several violent or abusive treatment in these countries.

Torture and cruel, inhuman or degrading treatment of migrants occur mainly during arrests and detention. For example, the Joint Report of UNMIL and OHCHR refer to several cases of torture against migrants in Libya. In addition to the physical atrocities inflicted on migrants, the ill-treatment of migrants is exacerbated by prison overcrowding and difficult conditions of detention (lack of ventilation and lighting, inadequate access to sanitary facilities and latrines, constant confinement, malnutrition, etc.).

In Niger, the field investigation identified rackets and abuses of authority allegedly committed by elements of the ISF and DSF at checkpoints. According to testimonies collected, migrants in transit are subjected to threats, psychological violence and even physical brutality aimed at extracting money from them. Migrants who refuse to submit to racketeering by security officers are exposed to other types of violence, such as money confiscation or document confiscation. Moreover, the field survey revealed that of the 400 migrants interviewed, 18 alleged that they had been victims

⁷⁷ https://www.lemonde.fr/afrique/article/2017/11/15/libye-des-migrants-vendus-aux-encheres-comme-esclaves_5215509_3212.html

⁷⁸ Joint report of the United Nations Support Mission in Libya (UNMIL) and the Office of the United Nations High Commissioner for Human Rights: "*Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya*", December 2018, available at: <https://unsmil.unmissions.org/reports>

⁷⁹ IOM: *Migrant Profiling Report for Niger 2017*, op. cit.

of physical violence, 24 of psychological violence and 1 of sexual violence during transit in Niger.

In addition, the qualitative survey conducted by the National Agency to Combat Trafficking in Persons noted the different forms of trafficking in connection with migration in Niger, namely:

- exploitation of the prostitution of others;
- exploitation of domestic work;
- exploitation of child begging in the context of economic migration;
- exploitation of begging by talibé children;
- forced labour.

Moreover, women and children constitute the majority of trafficked migrants in Niger.

In addition to the actions of ISF, DSF, during the journey, migrants are subjected to inhuman treatment by smugglers and armed bandits along the way. This is reflected in several types of violence, including kidnapping or imprisonment for ransom against migrants. Daniel's story⁸⁰ is a perfect illustration of this situation.

Daniel, 26, left Cameroon earlier this year with his twin brother and uncle with the intention of going to Libya and then Europe. He says that once in Libya, the driver asked them again to pay 1,500 dinars (\$1,100) per person but that they could not pay because they lacked the money. Due to their inability to pay the said sum, they were placed in one of Libya's informal detention centres where they were beaten with arms.

Daniel was later sent back to neighbouring Niger, where his Libyan abductors subjected him to forced labour, while his family remained in Libya. When he was finally released two months later, he was helpless and still had a ransom to pay.

The effects of these acts of torture are exacerbated by lack of reparation (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition⁸¹) for the benefit of victims

⁸⁰ <https://www.unhcr.org/fr/news/stories/2017/8/59848bc1a/refugies-migrants-pris-piege-dun-commerce-meurtrier-niger.html>

⁸¹ Committee against torture, *General Comment n° 3, Application of article 14 by State Parties* (2012), available on: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f3&Lang=fr

3.4 The right to liberty and the security of the person (Article 6 of the African Charter)

Article 6 of the African Charter provides that: "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained ».

This right is also enshrined in Article 9 of the International Covenant on Civil and Political Rights (ICCPR). In its General Comment No. 35 on article 9 of the Covenant, the Human Rights Committee clarified that personal freedom refers to "non-physical confinement" and that the right to security of the person protects individuals from intentional physical or mental harm, whether the victim is detained or not⁸².

In its general comment No 2⁸³, the Committee for the protection of the rights of all migrant workers and their family members stressed that: "It is not an offence to cross a country's border without being authorized or in possession of the necessary documents, or to remain in a country after the expiry of a residence permit. Criminalizing illegal entry into a country goes beyond the legitimate interest of States Parties to control and regulate illegal immigration, and leads to unnecessary detention. While illegal entry and residence may constitute administrative offences, they are not in themselves offences against persons, property or national security. The detention of irregular migrants should therefore be an exceptional, legal, legitimate (reasonable in the light of the facts), necessary and proportional measure⁸⁴.

With regard to informal detention/retention centres for the specific case of Niger, in 2013, the Committee on Migrant Workers' Rights expressed concern about the existence in Niger of migrant workers' detention centres based in Agadez, Arlit, Dirkou and Niamey as well as the lack of information on detention conditions in these centres. The Committee also deplored the lack of statistics on cases of detention and/or custody on grounds related to irregular migration, and measures to ensure consular assistance and access to such assistance for migrant workers and their concerned family members⁸⁵.

⁸²

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=fr

⁸³

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CMW%2fC%2fGC%2f2&Lang=fr

⁸⁴ Committee for the protection of the rights of migrants workers and members of their families : *General comment n°2* para 24 and 25, available at :

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CMW%2fC%2fGC%2f2&Lang=fr

⁸⁵ Committee for the protection of the rights of migrants workers and members of their families : *Final observations on Niger's Initial Report examined on 30 and 31 August 2016*, para 32 b and c, available at :

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CMW/C/NER/C/O/1&Lang=Fr [Consulted on 7 July 2019]

The Delegation of Niger, which presented the Initial Report to the Committee on Migrant Workers' Rights in 2016, indicated that there were no migrant detention centres in Niger, but rather transit centres⁸⁶. At the end of the national consultation held in connection with this study, it was also noted that this type of centre did not exist in Niger. However, the absence of centres specifically dedicated to the detention or retention of migrants does not necessarily mean that there are no cases of migrant detention. There are indeed allegations of the growing use of retention or even detention of migrants in Niger⁸⁷. The field survey of the 400 migrants also registered 6 cases of alleged migrant detention in Niger, 34 cases of detention in Algeria and 6 cases of detention in Libya. In any event, Ordinance No. 81-40 of 29 October 1981 on the entry and stay of aliens in Niger provides for imprisonment as a sanction against aliens who have entered or are staying in Niger unlawfully⁸⁸.

In addition, data from IOM's 2016 and 2017 Annual Reports illustrate that arrests and detentions occur at all stages of the migrants' journey; respectively :⁸⁹

- For 2017, out of the 550 migrants who replied that they had been in detention, 86% of these detentions took place in Libya;
- For 2016, out of 1064, 1059 and 696 migrants reporting abuse in Algeria, Libya and Niger respectively, 2% reported to have been detained in Algeria; 15% in Libya and 10% in Niger⁹⁰.

A report by the United Nations Conference on Trade and Development (UNCTAD)⁹¹ shows that trans-Saharan migration through the Agadez-Sabha corridors (Libya) represents the main flows of illegal intra-African migration. In the context of widespread insecurity in Libya, irregular migrants are more exposed to several arbitrary acts that could affect their rights. It is reported that despite Libya's international obligations, in practice, the majority of migrants are placed in indefinite detention pending their return without having been charged, tried or convicted under applicable Libyan laws⁹².

Moreover, the right to liberty and security of the person is called into question when migrants are kidnapped by abductors, as in Daniel's above-mentioned case.

Thousands of men, women and children are detained in the centres of the Directorate for the Fight against Irregular Immigration (DCIM) in Libya without due process or access to a lawyer or judicial authorities to challenge the legality of their

⁸⁶ <https://www.ohchr.org/fr/NewsEvents/Pages/DisplayNews.aspx?NewsID=20436&LangID=F>

⁸⁷ Abdoulaye Hamadou : *The management of migration flows in Niger between commitments and constraints*, op. cit. p. 11

⁸⁸ See section 5 of this study on the legal framework in Niger

⁸⁹ IOM: Migrant Profiling Report for Niger 2017, op. cit

⁹⁰ : IOM : Migrant Profiling Report for Niger 2016, op. cit p. 23,

⁹¹ UNCTAD : *2018 Report on migrations for structural transformation*, p.61

⁹² Joint report of the United Nations Support Mission in Libya (UNSMIL) and the Office of the United Nations High Commissioner for Human Rights: *“Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya”*, December 2018, p. 25, available at: <https://unsmil.unmissions.org/reports>

detention. The overwhelming majority of detainees have never been brought to justice⁹³.

In its decision following the examination of Communication 71/92 **Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO) /Zambia**⁹⁴, the Commission denounced the fact that migrants are detained and denied the right to have their case heard.

In addition to the fact that Libya appears to be the country in which migrants are most deprived of their right to liberty, the conditions of detention in that country are deplorable as described in the joint UNMIL and HCHR report. These detentions are marked by allegations of torture, cruel, inhuman or degrading treatment, prison overcrowding, unhealthy environment, etc.⁹⁵.

In view of the heterogeneous nature of migration, there are significant risks that certain categories of migrants benefiting from special protection (victims of trafficking, children, refugees, etc.) may often find themselves among migrants detained on the grounds of irregular status.

In addition to arbitrary arrests and detention, migrants' right to safety is also severely tested during the journey when they encounter groups of bandits and rebels. These groups are responsible for the physical and psychological violence, threats, confiscation of money, property and kidnapping of migrants.

3.5 Right to have his cause heard (Article 7 of the African Charter)

Article 7 of the Charter guarantees everyone the right to have their cause heard, including through an appeal to competent courts in the event of a violation of a fundamental right, the right to a defence and the right to be assisted by a defence counsel of their choice.

Despite the atrocities experienced by migrants throughout their journey, access to justice for violations is still a major problem.

Thirty-two of the 400 migrants interviewed took legal action against the judicial authorities to seek compensation for the violations of their rights. The 32 cases recorded are divided between Niger (8 cases) and Algeria (24 cases). It should be noted that of the 32 cases, only one complaint received a favourable response in Algeria. This is the case of a Cameroonian migrant woman whose belongings had been confiscated by the Algerian police during her stay in Algeria. The claimant had

⁹³ Joint report of the United Nations Support Mission in Libya (UNMIL) and the Office of the United Nations High Commissioner for Human Rights: *“Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya”*, December 2018, *op. cit.* p. 39,

⁹⁴ African Commission on Human and Peoples' Rights: Decision on the Communication 71/92 *Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO) /Zambia*, available at : <http://www.achpr.org/fr/communications/decision/71.92/>

⁹⁵ Joint report of the United Nations Support Mission in Libya (UNMIL) and the Office of the United Nations High Commissioner for Human Rights: *“Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya”*, *op. cit.*

referred the matter to the prosecutor in the judicial district who ordered the return of her belongings. For the other complaints that have not been followed up, migrants report that they have not received any legal assistance and complain about the administrative burden that impede the handling of complaints.

As described above, migrants are often detained without being given the opportunity to defend their case or to seek redress for abuses and violence suffered during detention or return operations. When they are deported to Niger, the question of reparation for the violence suffered in the jurisdiction of Algeria or Libya becomes even more complicated.

In the specific case of Niger, the National Agency for Legal and Judicial Assistance (ANAJJ), which is responsible for providing free legal assistance to vulnerable groups, does not have the necessary means to do so. Migrants' educational level is mainly limited to primary and secondary school and even if they had a very high level of educational they would not necessarily be able to defend their own rights without legal assistance.

In addition, the fact that certain competent authorities in Niger (including police station officials) do not have sufficient knowledge about issues such as the smuggling of migrants and trafficking in persons does not facilitate the migrants' access to justice.⁹⁶.

3.6 Right of access to information and freedom of expression (Article 9 of the African Charter)

According to Article 9 of the African Charter, "Every individual shall have the right to information. Every individual shall have the right to express and disseminate his opinions within the law and regulations".

With regard to the right of access to information, it is regrettable that discussions between the Nigerien and Algerian authorities regarding the repatriation of Nigerien migrants are not made public⁹⁷.

Migrants' right to access information is also put to the test during arrests and detention. Regional and international human rights standards require that migrants be provided with a certain amount of information to be communicated to the detained persons, including the grounds for arrest, the charges against the person, the right to contact consular authorities, etc. These principles are said to be difficult to apply in practice. A Nigerian migrant who returned home in December 2017 gave the following explanation⁹⁸. »

⁹⁶ National Agency to Combat Trafficking in Persons : *Report of the data collection mission on trafficking in persons and related offences*, 2015, p. 9 available at : http://www.stat-niger.org/statistique/file/Annuaire_Statistiques/Justice/Rapport_Collecte_Donnees_Traite_Personnes_2016.pdf

⁹⁷ <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=23698&LangID=F>

⁹⁸ Joint report of the United Nations Support Mission in Libya (UNMIL) and the Office of the United Nations High Commissioner for Human Rights: "Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya", op.cit.

« In Libya, they hate blacks. They treat us like slaves and animals. We are stopped for no reason; once we are locked up, we never go out unless we pay a lot of money or die slowly. »

Moreover, some facts directly compromise the migrant's freedom of expression. For example, the refusal to submit to racketeering is a form of expression. The field study shows that in Niger, migrants who refuse to submit to racketeering by security officers are exposed to violence. Threats and intimidation compromise migrants' freedom of expression. Of the 400 migrants interviewed in the field study, 26 reported having been threatened in Niger and 144 in Algeria and 3 in Libya.

3.7 Right to freedom of movement (Article 12 of the African Charter)

Article 12 of the African Charter provides that:

- Every individual has the right to move freely and choose his/her residence within a State, provided that they comply with the rules laid down by law;
- Every individual has the right to leave any country, including his/her own, and return to his/her country. This right can only be restricted if it is provided for by law, necessary to protect national security, public order, health or morality.
- Every individual has the right, in case of persecution, to seek and obtain asylum in a foreign country, in accordance with the law of each country and international conventions;
- The foreigner legally admitted into the territory of a State Party to this Charter may only be expelled from it by virtue of a decision under the law
- The collective expulsion of foreigners is prohibited. Collective expulsion generally targets national, racial, ethnic or religious groups.

The enjoyment of freedom of movement is intrinsically linked to the issue of migration and, in this case, of international migration, which involves the movement of people from one country to another. The study reveals that the enjoyment of this right is severely tested in several cases.

As explained above, most migrants from the ECOWAS region and crossing Niger, are in good standing with regard to the free movement that prevails in the sub-region. However, the various rackets, threats and violence at Niger's checkpoints as reported by the field study are likely to discourage the free movement of people. Insecurity on the roads, including attacks on migrants by armed groups, also has the same effect.

Outside the ECOWAS region, the issue of migrant's regularity is generally the reason given for their expulsion or return from Algerian and Libyan territories.

However, the study reveals that these expulsions do not always take place in accordance with a decision taken under the law. Migrants can be arrested at any time without the means/legal assistance to defend themselves; they are often raped

on this occasion and robbed or forced to abandon their belongings before being transported in vehicles and deposited at the Niger border. Migrants are not given the opportunity to challenge the legality of their return.

Through its jurisprudence⁹⁹, the Commission has indicated that it does not question the right of any State to take legal action against irregular immigrants and to return them to their countries of origin, if the competent courts so decide. However, what it considers contrary to the "spirit and letter" of the African Charter and international law is the deportation of individuals without giving them the opportunity to have their case heard by the national authorities empowered to do so.

In particular, in its decision on **Communication 97/93_14AR John K. Modise / Botswana**¹⁰⁰, the Commission stated that "while deciding who is allowed to remain in a country is the responsibility of the authorities of that country, this decision should always be taken according to carefully and fairly applied legal procedures, and in strict compliance with applicable international standards and rules".

In a press release dated 22 May 2018, Mr. Ravina Shamdasani, the Spokesperson of the United Nations High Commissioner for Human Rights called on the Algerian government to put an end to the collective expulsions of migrants, particularly those from sub-Saharan African countries¹⁰¹.

According to testimonies received by an HCHR team that visited Niamey, Agadez and Arlit in Niger, Algerian authorities frequently organize mass roundups of migrants from sub-Saharan Africa. The latter are arrested without notice, often on the street or at their workplace. Migrants testify that they have not been individually assessed. Among those arrested, some are directly transferred to Niger, others are held in detention in inhuman conditions before being transferred to Tamanrasset (southern Algeria) and then to the border with Niger¹⁰². According to the OHCHR Releases, although exact figures are difficult to obtain, the number of expelled migrants is estimated at several thousand. Several other reports allege the mass expulsion of migrants from Algeria, including migrant children and women¹⁰³.

In Libya too, several reports indicate that migrants are being massively detained pending deportation as described in this study¹⁰⁴.

⁹⁹ African Commission on Human and Peoples' Rights: Decision on the *Communication 159/96, Union interafricaine des droits de l'Homme, Fédération internationale des ligues des droits de l'Homme, Rencontre africaine des droits de l'Homme, Organisation nationale des droits de l'Homme au Sénégal et Association malienne des droits de l'Homme / Angola*, para 19, available at <http://www.achpr.org/fr/communications/decision/159.96/>

¹⁰⁰ African Commission on Human and Peoples' Rights: Decision on the *Communication 97/93_14AR John K. Modise / Botswana*, para 84, available at : http://caselaw.ihrcda.org/fr/doc/97.93_14ar/view/fr/#merits

¹⁰¹ Note by the Spokesperson of the United Nations High Commissioner for Human Rights, *op. cit.*

¹⁰² *ibid.*

¹⁰³ <https://www.amnesty.fr/refugies-et-migrants/actualites/profilage-ethnique-en-algerie-2000-migrants-expulses>; <https://www.hrw.org/fr/news/2018/02/27/algerie-nouvelle-vague-dexpulsions>; See also <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=23698&LangID=F>

¹⁰⁴ For example: Joint report of the United Nations Support Mission in Libya (UNMIL) and the Office of the United Nations High Commissioner for Human Rights: "Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya", *op. cit.*

In both Libya and Algeria, collective expulsions on discriminatory grounds, the absence of procedural guarantees in accordance with international and regional human rights standards are likely to seriously undermine fundamental human rights. Furthermore, the way in which these expulsions take place, including the lack of case-by-case assessment, makes it impossible to grant special treatment to certain categories of vulnerable groups, including refugees, asylum-seekers, victims of trafficking, children, etc.

Even more disturbing, expulsions without the possibility of challenging the expulsion decision are likely to even affect legal migrants in the countries concerned.

Moreover, the word "migrant" seems to have acquired a negative connotation, whereas migration is only a simple manifestation of freedom of movement. The migrant in general is immediately assimilated to an individual who travels clandestinely; this perception has a negative impact on the treatment of migrants, particularly when they meet of security forces.

3.8 Right to property (Article 14 of the African Charter)

Article 14 of the African Charter guarantees the right to property and provides: "It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws." In the migration context, this right is put to the test in many situations.

Migrants face rackets at Niger's checkpoints. In a documentary by the National Human Rights Commission of Niger following a fact-finding visit to migrant transit centres and *ghettos*, migrants reported that they had been victims of racketeering at police stations crossed from their countries of origin to Niger. One of the migrants reported paying money to police at checkpoints crossed from Niamey to Agadez. This migrant's testimony argues that police officers use several strategies to force them to give money, such as undressing them to ensure that they do not hide their money in their pockets or using "blades" to open migrants' pockets to recover their hidden belongings.

Moreover, during transit through Niger, migrants often encounter armed bandits who strip them of their belongings.

In countries of temporary residence during unannounced expulsions, migrants are often forced to abandon their belongings; reports and testimonies indicate that they are expelled from their homes and workplaces without the possibility to return. In the specific case of mass expulsions of migrants, the African Commission has indicated that they violate a whole set of rights, including the right to property¹⁰⁵.

¹⁰⁵ African Commission on Human and Peoples' Rights: *Decision on the Communication 159/96, Union interafricaine des droits de l'Homme, Fédération internationale des ligues des droits de l'Homme, Rencontre africaine des droits de l'Homme, Organisation nationale des droits de l'Homme au Sénégal et Association malienne des droits de l'Homme / Angola*, para 15 & 16, available at <http://www.achpr.org/fr/communications/decision/159.96/>

Evidence from the field survey also indicates that during detention pending expulsion, migrants are stripped of their belongings, which will no longer be returned to them. Of the 400 migrants interviewed, 8, 122 and 5 migrants reported that they had been forced to abandon their belongings in Niger and Algeria and Libya respectively. There are instances when the money of migrants or that of their families is extorted by both traffickers and armed bandits, in particular through kidnappings and by State officials. The example of N, a migrant met during the field survey, illustrates how a migrant can be stripped of his possessions on several occasions during his journey.

N is a 16-year-old Guinean boy. He left Guinea Conakry by passing through Mali to reach Algeria. When he arrived at the border between Algeria and Mali, he fell into the hands of an armed group who had demanded a ransom payment of 250,000 CFA francs from his parents before allowing him to continue. His parents had to make a transfer of the amount to obtain his release. He then proceeded to Timia (rural municipality of Arlit) where he experienced the same situation and paid 150,000 CFA francs before continuing on to Algiers. When he arrived in Algiers, he worked for 1 year and 6 months before being caught by the police and deported to Niger. During the return, he was stripped of his savings (1500 euros) and his belongings. According to his testimony, migrants are given false tickets and are made to understand that their belongings will be returned to them at the border, which is never the case.

3.9 Right to work (Article 15 of the African Charter)

According to Article 15 of the Charter, "Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work".

According to the field survey, migrants are subjected to excessive working hours. Wage retention is also mentioned as one of the problems experienced by migrants. For example, of the 400 migrants surveyed, 3 migrants reported having been victims of wage retention in Niger, 35 and 7 others reported having suffered the same thing in Algeria and Libya respectively.

Wage retention is a frequent problem encountered during the journey of migrants who, at a given time and for various reasons, work temporarily to obtain money. In the IOM Niger 2016 Profiling Report, for example, on the number of migrants reporting abuse in the country of temporary residence, 9%, 3% and 2% of migrants reported that they had been victims of wage confiscation in Algeria, Libya and Niger respectively.

Mass expulsions violate a whole set of rights, including the right to work¹⁰⁶.

Testimonies received by the UN Rapporteur during his visit to Niger allege that "migrants from West African countries such as Cameroon, Ghana, Guinea Conakry,

¹⁰⁶ *Ibid.* para 15 et 16

Mali and Nigeria, many of whom have lived and worked in Algeria for years, with children born and educated in the country, are raided by police in the middle of the night and beaten, arrested and taken to the police station, where they are detained, identified, loaded onto buses and transported to Tamanrasset, the last Algerian city before the border with Niger¹⁰⁷.

3.10 Right to health (Article 16 of the African Charter)

Article 16 of the African Charter provides that every individual shall have the right to enjoy the best attainable state of physical and mental health.

While the enjoyment of the right to health is compromised for most populations, particularly in developing countries, it is more so for irregular migrants who, because of their illegal status, do not always have the opportunity to visit health facilities openly. In addition to this overall situation, the migrants' right to health is violated on several occasions.

As described above, migrants are generally detained in inhuman conditions without access to basic needs. International and regional human rights standards, in particular the *Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (Luanda Guidelines)*¹⁰⁸ and the *United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)*¹⁰⁹ specify the need to take the following minimum measures to improve the health conditions of prisoners: provide prisoners with the means to ensure their hygiene, provide them with food of nutritional value necessary to maintain their health, provide access to health care, keep prisoners in premises that reasonably take into account the climate, air volume, minimum floor area, lighting, heating and ventilation, etc.

The migrants' conditions of detention, particularly in countries of temporary residence (Algeria and Libya) as reported, are far from these standards and do not allow the enjoyment of migrants' right to health.

Similarly, mass expulsions of migrants and their belongings (forced to abandon their property, arrest and detention without procedural guarantees, etc.) plunge migrants into a psychological state harmful to their health.

In general, all physical and psychological violence (including threats) suffered by migrants severely affect their right to health. These two types of violence are the main incidents mentioned by the migrants interviewed in the field study. Violence that negatively impacts the health of migrants is also linked to travel conditions. For example, being abandoned in the middle of the desert without sufficient food.

¹⁰⁷ Statement by the United Nations Special Rapporteur on the human rights of migrants, *op. cit*

¹⁰⁸ <http://www.achpr.org/fr/legalinstruments/detail?id=12>

¹⁰⁹ http://www.unu-tu.org/Publications/Documents/244_Ensemble_des_regles_minima_des_Nations_Unies_pour_le_traitement_des_detenus

3.11 Right to education (Article 17 of the African Charter)

According to Article 17 of the African Charter, people have the right to education and to freely participate in the cultural life of their community.

The issue of the right to education is relevant to those migrant children who face the same hardships as adults. The processes of detention and expulsion of children under conditions that contravene international principles and standards are not conducive to the child's education, whether in terms of education or recreational activities that are beneficial to his or her education. In its jurisprudence, the African Commission has clearly underlined the fact that mass expulsions are likely to undermine the enjoyment of the right to education guaranteed in Article 17 of the African Charter¹¹⁰. The mass expulsions of migrants from countries of temporary residence to Niger as described in this study present serious risks of violating children's right to school education.

Apart from these cases of expulsion, the child's school education is already compromised by the fact that he or she is enrolled in an irregular migration path with his or her parents (in these situations, the fact that they are permanently in hiding makes it difficult to enroll children in school in the countries of temporary residence) or by the fact that he or she travels alone. Of the 400 migrants interviewed, for example, 35 were children and 13 were unaccompanied.

In addition, information collected within the framework of a survey undertaken on behalf of IOM in 2016¹¹¹ reveals the seriousness of the impact of migration on the educational situation of children, particularly in Kantché. Children migrate with their parents, especially with their mothers who go to Algeria, which results in low enrolment and drop-out rates for children who had already started school. Due to the migration of children, some parents refuse to send them to school, others take advantage of holidays or vacations to remove children from the classroom and travel with them along the migration routes. The said survey for IOM shows the low attendance of children in villages most affected by migration; the data below illustrate, for example, the case of two localities, *Gajéré* and *Ourfana* :

In Gajéré, the school has three levels. But due to the small number of pupils, the teacher had to regroup them in a single class. In Ourfana, a village in the municipality of Tsaouni, a school with 3 classes had 120 pupils at the beginning of 2014/2015 (40 pupils per class). In the course of the year, the principal had difficulty to have 40 pupils for the whole school.

¹¹⁰ African Commission on Human and Peoples' Rights: *Decision on the Communication 159/96*, *op. cit.* para 15 and 16

¹¹¹ Oumarou Hamani: *Women and children from Kantché on the road to Algeria Socio-anthropological analysis of a little-known phenomenon* *op. cit.* p. 21,

3.12 Protection of the family and vulnerable groups (Article 18 of the African Charter)

The family is the pillar of society and Article 18 of the Charter guarantees its protection. In addition to the protection of the family, article 18 lays down the obligation of States to ensure the elimination of every discrimination against women and children and to take specific measures to protect the elderly and persons with disabilities.

3.12.1 Protection of the family

Several migrants' testimonies report the involvement of their families in the difficulties they encounter during the journey. Some migrants are taken hostage by armed groups or kidnapped by traffickers; their release will depend on a ransom to be paid by the victim's parents, as in the case of N. In June 2017, for example, UNMIL sent information to Libyan judicial authorities about social media videos showing beaten and abused migrants and "refugees" from sub-Saharan Africa, allegedly to extract money from their families¹¹². According to one migrant interviewed during the field survey, when migrants fall into the hands of armed groups, they are stripped of their possessions and money. Those who do not have any money are detained and their parents are requested to pay ransoms.

The wellbeing of families is also affected by arbitrary expulsions. As the testimonies and reports used in this study show, sub-Saharan migrants are deported after roundups without notice, often in their workplaces. Such expulsions entail great risks of family separation. The African Commission has already indicated that the mass expulsions of migrants that separate families violate the African Charter¹¹³.

In addition, when migrants are transferred from one detention centre to another, families may be separated especially when there is no effective registration system.¹¹⁴

3.12.2 Protection of the child

Family separation affects the balance and wellbeing of the entire family as well as the rights of the child. Article 19 of the *African Charter on the Rights and Welfare of the Child* provides that " No child should be separated from his or her parents against his or her will, except when authorities decide, in accordance with applicable laws, that such separation is in the best interests of the child ". This fundamental principle

¹¹² Joint report of the United Nations Support Mission in Libya (UNMIL) and the Office of the United Nations High Commissioner for Human Rights: "*Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya*", *op. cit.* p. 29

¹¹³ African Commission on Human and Peoples' Rights: *Decision on the Communication 159/96, Union interafricaine des droits de l'Homme, Fédération internationale des ligues des droits de l'Homme, Rencontre africaine des droits de l'Homme, Organisation nationale des droits de l'Homme au Sénégal et Association malienne des droits de l'Homme / Angola*, *op.cit.* para 15 and 16,

¹¹⁴ Joint report of the United Nations Support Mission in Libya (UNMIL) and the Office of the United Nations High Commissioner for Human Rights: "*Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya*", *op. cit.* p. 40

is also enshrined in many other international and regional legal instruments for the protection of human rights.

With regard to children's rights in relation to migration, several testimonies show the disturbing increase of their vulnerability. There are two categories of migrant children, those accompanied (by family members or others) and those unaccompanied. In the field survey, it was observed that 13 out of the 400 migrants interviewed, were unaccompanied minors (out of 35 minors).

According to some unaccompanied children interviewed in connection with the field survey, parents live in extreme vulnerability and the only way they have to get them out of this situation is to try their luck in North Africa or even Europe. Parents often contribute to support the children's departure. For other unaccompanied children, the causes of their departure are more cultural than economic. The phenomenon of appreciating the "successful migrant" pushes parents to send their children on the routes of migration despite their knowledge of the risks that children incur. In addition, a report published by REACH¹¹⁵ indicates that other social factors justify the migration of unaccompanied children ¹¹⁶. According to the report, children are taking the migration routes on their own to escape family violence and other family problems, religious, ethnic or political persecution in their country.

The 2017 IOM profiling report indicates that minors accounted for 9% of the total number of migrants present in IOM transit centres in 2017¹¹⁷. Almost 43% of them indicated that they were unaccompanied. 24% reported having spent some time in Algeria, 60% had resided in Niger and 14% had spent time in Libya before arriving in IOM centres.

In general, the accompanied children include those who are with their direct parents and those who are accompanied by distant relatives, neighbours or simply people 'known' to the parents. From the study¹¹⁸ on the migration of women and children from Kantché to Algeria, undertaken on behalf of IOM-Niger, migration is strongly rooted in the culture of the inhabitants of this community.

Women migrate to Algeria with their own children. But those who do not have children negotiate with their relatives to give them children to go to Algeria with. When children are entrusted to migrants, there is a tacit agreement between parents and migrants; in fact, these children are mostly used as beggars in Algeria, the benefits from begging are divided between migrants and parents of the child entrusted to them. The children enlisted in this adventure are generally very young; the younger they are, the more "docile" they are and are supposed to attract "the pity of Algerians."

¹¹⁵ REACH est une initiative conjointe de deux organisations non gouvernementales internationales - ACTED et IMPACT Initiatives- et du UN Operational Satellite Applications Programme (UNOSAT).

¹¹⁶ Reach: *Report on "Children on the Move in Italy and Greece"*, June 2017, p. 3

¹¹⁷ IOM Niger : *Migrants Profiling Report 2017*, *op.cit.* p. 12

¹¹⁸ Oumarou Hamani: *Women and children from Kantché on the road to Algeria Socio-anthropological analysis of a little-known phenomenon*, *op. cit.* p. 31-35

Despite their vulnerability, migrant children are exposed to the same violence as adults, including harassment, intimidation, abuse, ill-treatment, labour exploitation, arbitrary arrest and detention, deportation, lack of access to food, water, health care, housing and education. In the particular case of detentions, according to testimonies received from migrants during the field survey, migrants awaiting expulsion from Algeria to Niger are held in an assembly centre without distinction; women, children and men are detained together despite international and regional standards setting out the principles for the separation of groups of detainees (except for the best interests of the child in the case of persons under 18 years of age).

Furthermore, the documentary survey shows that Nigerien children who have returned from Algeria are taken care of by the Nigerien authorities with UNICEF support and are reunited with their families. In the case of unaccompanied non-Nigerien migrant children returning from Algeria or Libya, they are referred to IOM and receive basic assistance for their return to their country of origin under IOM's Assisted Voluntary Return (AVR) programme¹¹⁹. The condition for eligibility to IOM assistance is the willingness to return. This IOM assistance does not therefore cover the case of unaccompanied migrant children who do not wish to return to their communities or countries of origin.¹²⁰.

3.12.3 Protection of women and girls

Women and girls are not only subjected to the same violence as men, but they are also more vulnerable to serious violations such as rape, sexual assault and exploitation through prostitution. During the field survey, one (1) woman reported having been sexually abused. However, this does not mean that there are no other women affected by such violence. Indeed, violence and sexual assault are extremely sensitive subjects and therefore women are less likely to report or talk about them. In considering this issue, it should be borne in mind that women and girls are the most affected by human trafficking in the world. According to the 2018 UNODC Global Report, out of 142 countries considered, more than 70% of victims of trafficking are women and girls and sexual exploitation is the first form of violence they are subjected to¹²¹. The border between trafficking in persons and migrant smuggling is extremely narrow.

In Niger, the law on the smuggling of migrants is believed to have aggravated the forced prostitution of women as a side effect, among others. Fearing the application of the law considered to be too repressive, irregular migrant are "trapped" in Agadez without the possibility to pursue their migratory journey further north. With no access to the most basic utilities and fundamentals, these women are reportedly forced into prostitution to survive¹²². It is also reported that in Agadez, women are subjected to sexual exploitation as a way of repaying debts related to their journey.

¹¹⁹ Assisted Voluntary Return

¹²⁰ Statement by the United Nations Special Rapporteur on the human rights of migrants, op.cit

¹²¹ UNODC, Global report on trafficking in person, 2018, available at: <https://www.unodc.org/unodc/data-and-analysis/glotip.html>

¹²² <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=23114&LangID=F>

Once the debt is repaid, they are sometimes taken to Libya where gangs subject them to sexual violence before putting them on boats for Europe¹²³.

The joint UNMIL and OHCHR report unveils the extent and seriousness of sexual violence against migrant women and girls in Libya. For example, it is reported that with the exception of the Tarik al-Sikka detention centre, where female guards were introduced in January 2018, none of the DCIM facilities employ female guards. Even in *Tarik al-Sikka*, the guards are not present round the clock¹²⁴. This situation greatly promotes violence against women, particularly sexual violence. Women prisoners in these centres regularly reported that they had been strip searched by or in front of male guards. Some also reported that they had been subjected to body cavity searches and caressed on the chest and buttocks during these searches¹²⁵.

According to a Nigerian migrant woman who returned home, "Being sold and forced to have sex with Arab or African men, either to pay for the trip or to get money, is a common occurrence for a woman or girl throughout the trip, from the first day in the desert to your departure from Libya". In Libya, women are often raped in the presence of their children or other family members¹²⁶.

A 30-year-old woman of Ivorian origin who arrived in Libya in April 2017 and was held in captivity for seven months, beaten and raped by traffickers, reported the following to UNMIL ¹²⁷ :

" They[the men who held them captive in Sabha] would come with their weapons and choose the women they wanted to rape and take them outside. It does not matter whether the women are pregnant or breastfeeding.... I saw three women die with my own eyes. Our men[migrants] should then pick up the bodies and dump them in the desert... The same thing[rape] happened in Sabratah campo. They[the authors] forced the women to take off all their clothes, they examined them and chose some of them to rape. I left my country in search of a better life for myself and my children; instead, I was tortured and raped. If a woman refuses to sleep with the traffickers, she does not eat, she is beaten, and she does not travel (cross the sea), even if she has already paid..... I can't express what we've been through. A man who refused to listen to the traffickers was shot dead before our eyes.

Such sexual violence against women often results in unwanted pregnancies and sexually transmitted diseases, as well as related physical and psychological trauma. Additionally, the situation of pregnant or breastfeeding women is even more disturbing. Indeed, the conditions of detention and the method of expulsion from

¹²³ Africa-Frontex Intelligence Community Joint Report 2017, p. 26

¹²⁴ Rapport conjoint MANUL et HCDH : "Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya", op. cit. p 45

¹²⁵ Joint report of the United Nations Support Mission in Libya (UNMIL) and the Office of the United Nations High Commissioner for Human Rights: "Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya", op.cit

¹²⁶ ibid

¹²⁷ ibid

the countries of stay affect them seriously, since they need special treatment in view of their situation. When they are deposited at the Niger border in the event of expulsion by Algeria and forced to walk several kilometres, pregnant women arrive bleeding at IOM's transit centres and completely in shock after their long walk in the desert¹²⁸.

3.12.4 Protection of persons with disabilities

With regard to migrants with disabilities, the field survey did not identify any among the respondents. However, on the basis of their observations, those interviewed stated that during the period of detention, no special provision is made for people with disabilities.

3.12.5 Protection of the elderly

As for the elderly, especially those aged 60 and over, they accounted for about 3% of the total sample, or 11 out of 400 migrants surveyed. IOM's 2017 and 2016 profiling reports also indicate a very low presence of elderly people among migrants. The most common incidents along the way reported by the 11 elderly people in the field survey were mainly confiscation, being forced to abandon belongings, threats and false promises. It should be noted, however, that specific data on this category of vulnerable persons among migrants are scarce; it is therefore difficult to conclude that they are not subjected to other forms of abuse and violence.

3.13 Right to freely dispose of natural resources, right to economic, social and cultural development, right to peace and security, right to a general satisfactory environment favourable to their development. (Articles 21, 22, 23, 24 of the African Charter)

Articles 21, 22, 23 and 24 of the African Charter respectively guarantee the following collective rights: the right of peoples to freely dispose of their natural resources, the right to economic, social and cultural development, the right to peace and security at both the national and international levels, and the right to a general satisfactory environment favourable to their development.

The study did not reveal any evidence of violations of these rights during the migration process. However, it disclosed that migration is highly dependent on the enjoyment of these rights. Indeed, irregular migration is mainly based on the lack of effective enjoyment of these rights recognized and guaranteed by the African Charter. Among the causes of migration, particularly irregular migration, economic, social and security problems are cited, with economic difficulties as the main reason for migration. Migrants flee their countries in search of a better future.

¹²⁸ Note by the Spokesperson of the United Nations High Commissioner for Human Rights, *op. cit*

For example, all of the 400 migrants involved in the field survey reported leaving their country for economic and social reasons. In economic terms, migrants complain about the absence of work in their country of origin, discrimination and influence peddling that limits access to jobs for certain categories of people, etc. Socially, the most frequently cited determinant factor for migrants is marital; many migrants interviewed claim to be the only breadwinners of the family to meet economic needs; they therefore migrate to look for more means of subsistence.

The 2016 IOM Profiling Report also confirms that economic factors are the main drivers of migration. For migrants assisted in four IOM transit centres in Niger in 2016, 60% of respondents said they were going in search of employment opportunities, while 27% said they were migrating to escape poverty¹²⁹. The conclusions drawn in the 2017 IOM Profiling Report are virtually the same¹³⁰.

The low level of economic development, the unequal distribution of resources and property, the impoverishment due to political and other crises in the migrants' countries of origin are the main direct causes of migration, particularly irregular migration, and are also, to a certain extent, indirect causes of human rights violations against irregular migrants during their journey.

¹²⁹ IOM Niger : *Migrant Profiling Report for Niger 2016*, p. 16, available at : <https://gmdac.iom.int/OIM-Niger-Rapport-de-Profilage-des-Migrants-2016>

¹³⁰ IOM Niger : *Migrant Profiling Report for Niger 2017*, p. 9, available at <https://displacement.iom.int/reports/niger-%E2%80%94-rapport-de-profilage-des-migrants-2017>

4. ROLE AND RESPONSIBILITIES OF PUBLIC AUTHORITIES IN RESPECTING AND PROTECTING MIGRANTS' RIGHTS

In the field of human rights, the State is primarily responsible for violations that occur either because it has failed in its obligation to promote or establish these rights or because it has failed in its obligation to protect them. In practice, the actions of various actors materialize these violations.

Only 72 of the 400 migrants interviewed agreed to speak out about the perpetrators of acts violating the fundamental rights of migrants.

4.1 Overview of the profile of perpetrators of acts violating the fundamental rights of migrants

According to testimonies received from migrants during the field survey, those responsible for acts violating the fundamental rights of migrants are the police, gendarmes, soldiers, smugglers, drivers and the population. These testimonies contend that the police are the leading perpetrators of incidents violating the rights of migrants, followed by smugglers, gendarmes, soldiers, armed groups, the population and drivers.

Violations of rights by ISF and DSF occur during crossings at checkpoints and during expulsions as mentioned above.

In the case of drivers and smugglers, migrants claim that they are often abandoned by these people on their way to the desert and without any means of subsistence.

With regard to armed groups, migrants report that they operate at borders, strip them of their belongings and often physically abuse migrants who try to resist them.

The forms of violence meted out to migrants by the population are essentially threats, psychological violence and racist statements against migrants; the fact that they are not accepted by the communities is an additional source of psychological violence.

The table below shows the different levels of responsibility in incidents that may violate migrants' rights during their journey as reported by migrants who have spoken out on the perpetrators of the incidents.

Profile of those responsible for violating the human rights of migrants

Function	Number	Percentage
ARMED GROUPS	5	7%
GENDARME	8	11%
MILITARY	5	7%
SMUGGLER	12	17%
POLICE	38	53%
DRIVER	1	1%
POPULATION	3	4%
Total	72	100%

Source : field survey conducted in December 2018 and January 2019 in Niger

The responsibility of ISF and DSF in violating the human rights of migrants is due to both their action and inaction.

4.2 The specific role played by ISF and DSF in acts likely to violate the fundamental rights of migrants

4.2.1 Violations of the human rights of migrants due to actions of ISF and DSF

According to migrants' testimonies, the most common forms of violence perpetrated by security officers (police, gendarmerie, army, etc.) against migrants are as follows: threats, psychological and physical violence, discrimination, confiscation of money and property, confiscation of documents, false promises and deception, continued detention, deprivation of food and drink, rackets, etc. These types of violence are perceptible both during migrants' transit through Niger and during their temporary stay in Algeria and Libya and upon return to Niger.

During transit in Niger: According to testimonies received, migrants in transit in Niger who refuse to submit to racket by ISF or DSF are exposed to the confiscation of money or documents and other forms of physical and psychological violence. Some migrants consider these rackets to be discriminatory because, unlike Nigeriens, non-Nigerien migrants are required to systematically pay money before crossing security barriers both at the border and within the country. In addition, it is reported that the amount to be paid differs depending on whether the migrant is from ECOWAS or not. These testimonies from migrants are largely supported by other reports. For example, in its 2016 report, *GAN Business Anti-corruption* posits that security forces in Niger frequently take bribes from migrants¹³¹.

¹³¹ GAN Business Anti-corruption Portal : *Niger Corruption Report*, 2016, available at : <https://www.ganintegrity.com/portal/country-profiles/niger/>

During the stay: Migrants who have stayed in Algeria and Libya report that incidents affecting their fundamental rights occur, in particular during their arrest, detention and deportation as described in point 3 of this document.

During the return: On return, migrants report arbitrary arrests and detention, violence, confiscation of property and many other incidents mentioned above concerning security officers in countries of temporary residence. Migrants also underscore the non-assistance of Nigerien authorities when they are deposited at the Niger border within the framework of their expulsion process; they are forced to walk for miles to get to Niger's first checkpoint.

4.2.2 Violations of the human rights of migrants due to the inaction of ISF and DSF

The inaction of ISF and SDF is reflected, on the one hand, in the lack of security in some areas used by migrants. However, States have the responsibility to guarantee the security of territory, persons and property. The issue of irregularity of migrants should not be confused or justify any lack of protection for them; moreover, some migrants are victims of transnational trafficking and end up in migrant convoys to unknown destinations against their will.

Inaction is also reflected in the complicity that results from the corruption of ISF by smugglers and traffickers, thus circumventing the fight against practices harmful to migrants, including the smuggling of migrants and trafficking in persons. In the case of Niger in particular, a *Transparency International* report contends that at roadside checkpoints north of Niamey, police systematically take migrants away to ask for bribes ranging from \$2 to \$20. According to the High Authority against Corruption and Related Offences (HALCIA), payments to security forces and local authorities would amount to \$450 per vehicle and \$30 per foreign migrant on the road linking Agadez to Libyan borders¹³².

In addition, the 2016 HALCIA Report indicates that the public sector appears to be the most affected by corruption. Public sector dismemberments are not affected by corruption to the same degree. For example, customs services (87, 36%), police services (83, 33%), gendarmerie services (78.74%) are considered to be among the dismemberments most affected by the phenomenon¹³³.

The same report indicates that, following investigations conducted in 2013, it was noted that defence and security forces and mayors illegally collect money from vehicle drivers and passengers. For example, the following amounts are paid for the Agadez (Niger)-Arlit (Niger)-Assamaka (Algeria) route.

¹³² Transparency International Niger : *Overview of corruption and anti-corruption*, 2017, p. 5, available at: https://www.transparency.org/files/content/corruptionqas/Country_profile_Niger_2017.pdf. See also: The Guardian, *Corruption stymies Niger's attempts to stem flow of migrants to Europe*, 2015. Available at: <https://www.theguardian.com/global-development/2015/jun/22/corruption-niger-attempt-stem-flow-migrants-europe-smugglers-sahara>

¹³³ HALCIA : *General Activity Report on the fight against corruption*, 2016, p. 14

AXE AGADEZ-ARLIT-ASSAMAKA

ALLER

	AGADEZ	ARLIT	ASSAMAKA
GENDARMERIE	2000-2500F/véhicule sauf les bus	5000F = cachet sur feuille route	5000 à 10.000 F par véhicule
POLICE	5000 à 10.000F par passager étranger sans reçu	5000 à 13.000F par passager étranger sans reçu 5000F = cachet sur feuille de route	2500 à 5000F par véhicule 5000 à 15.000 par passager étranger
FAN	/	1000 à 5000 F par véhicule	/
SYNDICAT TRANSPORTEURS	/	5000F par véhicule	/

Extract from the 2016 HALCIA Report

According to the HALCIA report, it appears that in Agadez and Tahoua, for example, police officers stationed at the barrier receive between 10,000 and 13,000 on each passenger. Citizens who are non-nationals of ECOWAS member countries and who do not have a visa are obliged to pay between 20,000 and 40,000 francs. This amount represents the visa fees according to the police¹³⁴.

The conniving and silent observation of scenes of corruption by ISF and DSF is likely to fuel the trafficking and smuggling of migrants and the harmful consequences on human rights associated with it.

4.2.3 Causes of the implication of ISF and DSF in violations of migrants' fundamental rights

There are several reasons why ISF and SDFs are responsible for the violence suffered by migrants.

First, the State does not have sufficient technical, material and financial means to secure all areas of the vast Nigerian territory. The very limited State resources constitute an obstacle in this regard; this can also explain corruption and rackets to some extent. For example, if some police elements lack basic resources such as working vehicles, fuel or appropriate training, it is difficult to imagine effective security in the different areas of the country¹³⁵.

Lack of effective and efficient internal control mechanisms also encourages corruption and racketeering by ISF and DSF. The High Authority against Corruption and Related Offences (HALCIA) was established in 2011 to strengthen the institutional framework for the fight against corruption.

The study further revealed a great need for training law enforcement officials on migrants' rights, including issues of migrant smuggling and trafficking in persons. Initial training received by the Police, the Gendarmerie and the National Guard, for example, is limited to human rights in general.

¹³⁴ HALCIA : *General Activity Report on the fight against corruption*, 2016, p. 65 to 67

¹³⁵ Transparency International: *Niger, Overview of corruption and anti-corruption*, p 4 et.5, available at: https://www.transparency.org/files/content/corruptionqas/Country_profile_Niger_2017.pdf. See also :

The State of Niger, in its role as guarantor of fundamental rights, has adopted a set of rules and established institutions and mechanisms to comply with its international human rights obligations, including those regarding migrants. The assessment of the measures taken to protect the specific case of human rights of migrants transiting through Niger or returning to Niger through North Africa is based on the regulatory, institutional and strategic framework that has been put in place.

5. LEGAL FRAMEWORK FOR THE PROTECTION OF THE FUNDAMENTAL RIGHTS OF MIGRANTS

In general, the legal instruments for the protection of the human rights of persons under Niger's jurisdiction also concern the rights of migrants, since the latter, whether regular or not, enjoy the dignity accorded to every human person. There are also specific instruments that address the issue of migrants.

5.1 List of main instruments

Niger's legal framework for the protection of migrants' rights is characterized by national and supranational legal instruments that deal with migrants' rights.

List of regional instruments

Year of ratification/accession ¹³⁶	Instruments
15 July 1986	African Charter on Human and Peoples' Rights
11 December 1996	African Charter on the Rights and Welfare of the Child
8 November 2011	African Charter on Democracy, Elections and Governance
16 September 1971	OAU Convention governing the specific aspects of refugee problems in Africa
7 July 2008	African Youth Charter

List of international instruments

Year of ratification/accession ¹³⁷	Instruments
7 March 1986	International Covenant on Civil and Political Rights
7 March 1986	International Covenant on Economic, Social and Cultural Rights
30 September 2004	United Nations Convention against Transnational Organized Crime
18 March 2009	Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime
30 September 2004	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
18 March 2009	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

¹³⁶ Source : <https://au.int/en/treaties>

¹³⁷ Source : <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=fr>

5 October 1998	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
27 April 1967	International Convention on the Elimination of All Forms of Racial Discrimination
8 October 1999	Convention on the Elimination of All Forms of Discrimination against Women
30 September 1990	Convention on the Rights of the Child
26 October 2004	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
24 June 2008	Convention on the Rights of Persons with Disabilities
25 August 1961	Convention relating to the Status of Refugees
29 June 2015	2014 Protocol to ILO Convention No. 29 on Forced Labour

List of sub-regional instruments

Year of ratification/accession ¹³⁸	Instruments
29 November 1979	ECOWAS Protocol on the Free Movement of Persons, the Right of Residence and Establishment adopted in Dakar on 29 May 1979 and ratified by Niger on 29 November 1979

List of the key national instruments

Constitution of the 7 th Republic of Niger adopted on 25 November 2010
Law n°2015-36 of 26 May 2015 on the illegal trafficking of migrants
Ordinance No. 81-40 of 29 October 1981 on the entry and stay of aliens in Niger
Decree No. 87-076/PCMS/MI/MAE/C of 18 June 1987 implementing Ordinance No. 81-40 of 29 October 1981 on the entry and stay of aliens in Niger
Decree No. 2014-004/PRN/MJ of 3 January 2014 establishing the criteria and procedures for proving indigence in order to benefit from legal assistance
Decree No. 2014-488/PRN/MJ of 22 July 2014 adopting the document entitled "National Action Plan to Combat Trafficking in Persons
Decree No. 2016-449/PRN/MJ of 11 August 2016 determining the organs responsible for the management and control of legal and judicial assistance funds
Ordinance No. 2010-86 of 16 December 2010 on combating trafficking in persons
Law No. 97-016 of 20 June 1997 on the status of refugees

¹³⁸ Niger : *Initial and Periodic Report, 1988-2003 submitted to the ACHPR, p. 21, available at: <http://www.achpr.org/fr/states/niger/reports/1st-7th-1988-2002/>*

Law No. 2011-42 of 14 December 2011, establishing the rules applicable to legal and judicial assistance and creating a public administrative institution called "National Agency for Legal and Judicial Assistance".
Law No. 2003-025 of 13 June 2003 amending Law No. 61-27 of 15 July 1961 establishing the Penal Code, Special Official Gazette No. 4 of 7 April 2004
Law No. 2012-44 of 24 August 2012 determining the composition, organization, powers and functioning of the National Human Rights Commission (NHRC)
Decree No. 2013-344/PRN/MP/PF/PE of 23 August 2013 adopting the framework document for the protection of children in Niger and its action plan

5.2 Content of the key instruments

5.2.1 Content of the supranational instruments applicable in Niger

The legal framework as reflected in relevant regional and international instruments recognizes the following basic human rights of migrants:

- right to legality and non-discrimination;
- right to life;
- right to the respect of one's dignity, right not to be subjected to any form of human exploitation and degradation (slavery, torture, cruel, inhuman or degrading treatment);
- right to liberty and security of the person, including the right not to be arbitrarily arrested or detained;
- right to a hearing, right to a fair trial;
- right of access to information;
- freedom of association and assembly;
- right to participate in the management of public affairs;
- right to leave and return to any country, including one's own;
- right of every individual who is lawfully within the territory of a State to move freely;
- right of ownership;
- right to work under fair and satisfactory conditions and to receive equal pay for equal work;
- right to education;
- right to protection of the family and vulnerable groups, including women, children, persons with disabilities and the elderly.

The international law binding the Republic of Niger highlights a number of rights and principles from which States cannot derogate even in emergency situations¹³⁹. These include the following rights:

¹³⁹ Article 4 of the International Convention on civil and political rights

- right to life;
- prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and medical or scientific experiments carried out without the free consent of the person concerned);
- prohibition of slavery, slave trade and servitude);
- prohibition of imprisonment of a person unable to fulfill a contractual obligation;
- legality of sentences and the principle of non-retroactivity of criminal laws (except the "softest" criminal law);
- recognition of the legal personality of each person;
- freedom of thought, conscience and religion.

In any event, derogations and restrictions on the enjoyment of a right shall not result in discrimination solely on the grounds of race, colour, sex, language, religion or social origin and shall only be applied if they are lawful, necessary, proportional and pursue a legitimate goal¹⁴⁰.

Thus, subject to the principles of international human rights law applicable to derogations, limitations and restrictions, migrants enjoy their fundamental rights.

In addition to the recognition of general human rights, some of the regional, international and sub-regional instruments to which Niger is bound deal specifically with rights relevant to migrants. These include the following instruments:

- **The ECOWAS Protocol on the Free Movement of Persons, the Right of Residence and Establishment adopted in Dakar on 29 May 1979:** this protocol is the instrument par excellence that guarantees the free movement of persons and goods within the ECOWAS region. It abolishes the visa for ECOWAS nationals as mentioned above.
- **The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime:** within the framework of the fight against the smuggling of migrants, this protocol lists several obligations towards States Parties. Among these obligations, States must:
 - Adopt legislative and other measures to penalize the smuggling of migrants (Art 6);
 - Cooperate to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea (Art 7);
 - Take the necessary measures to guarantee the integrity and security of travel or identity documents and prevent their unlawful creation, issuance and use (Art 12);

¹⁴⁰ Human Rights Committee: *General comment n° 29 State of Emergency (art. 4)*, available at : https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=fr

- Provide specialized training for immigration and other relevant officials in the prevention, humane treatment of migrants and the prevention of the smuggling of migrants - Cooperate between States and other organizations to this end (Art 14);
 - Take measures to provide or strengthen information programmes to raise public awareness of acts constituting the smuggling of migrants (Art 15);
 - Ensure the protection and assistance of trafficked migrants in accordance with applicable international law (in particular, the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment) and taking into account the special needs of women and children (Art 16.1 & 16.4);
 - Facilitate and accept, without unreasonable delay, the return of the smuggled migrant (Art 18).
- **The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime:** among the measures to be taken by States to combat trafficking in persons, the Protocol in its Article 10 (2) provides as follows: :

“States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and respecting the rights of victims, including protecting them from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society”.

- **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families:** this Convention provides, among many other principles, for the right of migrant workers to freedom, to security and to have their case heard. To this end, it provides the following rights in Article 16:
 - Migrant workers and members of their families who are arrested shall be informed, at the time of their arrest, if possible in a language they understand, of the reasons for their arrest and shall be promptly informed, in a language they understand, of any charges brought against them;
 - Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other authority empowered by law to exercise judicial authority and shall be tried within a reasonable time or released. Their detention pending trial should not be the rule, but their release may be subject to guarantees to ensure their appearance at the hearing, at all other stages of the proceedings and, where appropriate, for the execution of the judgment;

- If migrant workers or members of their families are arrested or are imprisoned or held in police custody pending trial or are otherwise detained:
 - ✓ At their request, the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State shall be informed without delay about their arrest or detention and the reasons invoked;
 - ✓ The persons concerned shall have the right to communicate with these authorities. Any communication addressed to the said authorities by the persons concerned shall be transmitted to them expeditiously and they shall also have the right to receive communications from the said authorities without delay;
 - ✓ The persons concerned shall be informed without delay of this right and of the rights deriving from the relevant treaties
- Migrant workers and members of their families who are deprived of their liberty through arrest or detention shall have the right to bring proceedings before a court for an expeditious decision on the lawfulness of their detention and to order their release if the detention is unlawful.
- Migrant workers and members of their families who are victims of unlawful arrest or detention are entitled to compensation.

Regional and international instruments also lay down fundamental principles for the protection of vulnerable groups. These include, in particular:

- **The best interests of the child:** the best interests of the child must guide any decision affecting him or her (Article 4 of the African Charter on the Rights and Welfare of the Child). This implies, among other things:
 - The obligation of the State to ensure that the child is protected from all forms of economic exploitation;
 - The right of the child not to be separated from his or her parents against his or her will, unless his or her interest is at stake;
 - If a child is apprehended by a State Party, his or her parents or guardian shall be informed by that State as soon as possible.
- **Special treatment of women:** temporary special measures may be adopted by States to achieve equality between men and women¹⁴¹. In particular with regard to detention, women must be given special treatment related to their status as women. For example, they must be provided with the facilities and supplies required to meet their specific hygienic needs.
- **Special treatment of persons with disabilities:** Reasonable adjustments and specific measures should be undertaken to ensure the de facto equality of persons with disabilities.
- **Special treatment of the elderly:** Elderly people should be provided with specific protection measures in relation to their physical or moral needs.

¹⁴¹ Article 4 (1), Convention on the elimination of all forms of discrimination against women

- **Protection of the family:** The principle of its protection is specifically laid down in Article 18 of the African Charter as mentioned above.
- **The principle of non-return:** According to this principle, no refugee should be subjected by a State to measures such as refusal of admission at the border, return or expulsion which would oblige him to return or remain in a territory where his life, physical integrity or freedom would be threatened.

5.2.2 Content of the main national instruments

The Constitution of 25 November 2010

The preamble to the Constitution of Niger proclaims the people's commitment to human rights as defined by the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1981 African Charter on Human and Peoples' Rights.

Article 32 of the Constitution recognizes the freedom to come and go under the conditions provided by law.

Ordinance n° 81-40 of 29 October 1981 on the entry and residence of aliens in Niger and its implementing decree n° 87-076/PCMS/MI/MAE/C of 18 June 1987 regulating the conditions of entry and residence of aliens in Niger

These two instruments govern the conditions of entry and residence of aliens in Niger and therefore determine the measures applicable to irregular migrants.

The Decree implementing the Ordinance establishes, in article 2, the principle that an alien wishing to enter Niger, must be in possession of a national passport, or a travel document in lieu thereof, stamped with a Nigerien visa and carry an international vaccination certificate. In addition, the alien must provide a document guaranteeing his or her repatriation (for example, a round-trip transportation ticket, a certificate from a banking institution approved by the State of origin guaranteeing the repatriation of the person concerned in the event that he or she is unable to cover the costs themselves, etc.). However, nationals of States that have concluded an agreement with Niger for the reciprocal abolition of visas under the conditions provided for in the agreement, are exempt from the requirement to present a visa (Article 3 of the Decree). Other visa exemptions are provided for by law, involving aliens transiting through Niger by air and who do not leave the airport confines during the stopover.

The 1981 Ordinance provides for sanctions against aliens who have entered Niger illegally or who have been lawfully expelled but have not left Niger within the prescribed period (Article 11 of the Ordinance). The penalties include imprisonment and the payment of a fine.

The Law of 2015

The Law of 2015 is meant to prevent the smuggling of migrants", protect the rights of smuggled migrants, and promote and facilitate national cooperation to prevent smuggling. This new law is the national legal instrument, par excellence, in the field of migrant smuggling; it sets out obligations, rights and principles to combat migrant smuggling and protect those who are victims of this practice.

The 2015 Law imposes obligations on the Nigerien State to combat the smuggling of migrants. Besides, it criminalizes the following acts:

- the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry into Niger of a person who is not a national or a permanent resident of that State or the complicity to that effect (Art 3);
- committing or attempting to commit or being complicit in the following acts (Art 10 to 15; Art 19):
 - Facilitating the illegal entry or exit into or from Niger of a person who is not a national or a permanent resident;
 - producing, procuring, providing or possessing a fraudulent identity or travel document to facilitate the smuggling of migrants;
 - Use illegal means to allow a person who is not a national or a permanent resident to remain in Niger without fulfilling the conditions necessary for legal residence.
- taking advantage of, abusing the vulnerability or dependence of the trafficked migrant (including vulnerability or dependence resulting from illegal or undocumented entry into the country, pregnancy or physical or mental illness, disability or reduced capacity to form judgments by virtue of being a child) for material benefit or advantage.

Among the aggravating circumstances for these offences, article 16 of the Law provides, inter alia, for the following cases:

- where the offence involves circumstances that endanger or threaten to endanger the life or safety of the smuggled migrant or result in inhuman or degrading treatment of smuggled migrants, including where the exploitation or offence has resulted in serious injury to or death of the smuggled migrant, including death by suicide;
- the offender is a public official (corruption with a view to committing trafficking is punished in accordance with the Criminal Code);
- the trafficked migrant is a child or the perpetrator has used a child as an accomplice or participant in the criminal act;
- the trafficked migrant is a pregnant woman;
- the trafficked migrant has an intellectual or physical disability,
- the offender confiscated, destroyed or attempted to destroy the travel or identity documents of the smuggled migrant.

The Law of 2015 also provides guarantees in terms of the principles of protection and assistance to migrants (Art 25 to 29; Art 4). These include the following:

- Emergency medical care cannot be refused because of the migrant's irregular situation;
- Protection and assistance measures must take into account the special needs of women, children, persons with disability and the elderly;
- The right of any trafficked migrant to initiate legal proceedings to seek compensation for damage caused. Neither the status of the trafficked migrant nor his or her return to his or her country of origin or outside Niger's jurisdiction should prevent the payment of compensation to the migrant;
- Any action by public actors concerning migrant children must take into account the best interests of the child. To this end, the law provides, for example, that
 - In case of uncertainty about the age of the trafficked migrant and there are reasons to believe that he or she is a child, he or she should be considered as a child pending verification of his or her age;
 - Interviews or hearings with a trafficked migrant child should be conducted by a specially trained professional in a suitable environment, in a language spoken and understood by the child in the presence of his or her parents, guardian or support person;
 - The right of access to education for migrant children, including those in an irregular situation in Niger or whose parents are in an irregular situation, is guaranteed.
- In general, the application and interpretation of the law complies with international human rights and humanitarian law, the protection of vulnerable groups and refugee law

The Law of 2015 also provides procedural guarantees for migrants deprived of their liberty (Art 30). These include the:

- right to contact consular officials, if desired;
- right to receive visits from consular officials;
- right to maintain contact and correspond with consular officials;
- right to receive communications from consular officers without delay;
- right to receive information about their rights in their original language.

The specific case of the return of migrants is also covered by the law (Art 34, 35, 37), which provides as follows:

- cooperation of the competent authority with international organizations and non-governmental organizations combatting migrant smuggling;
- rapid processing of cases of refugees and asylum seekers;
- facilitating the return of smuggled migrants to the country of which they are a national or resident at the request of a State Party to the Protocol on Migrant Smuggling or on the initiative of the competent authority.

5.3 Analysing the content of the legal framework

Niger's legal framework includes factors that are conducive to the protection of migrants' rights, namely :

- Niger is a member of ECOWAS, and a party to the Protocol that abolishes visas for nationals of the economic zone; this promotes the exercise of the right to freedom of movement;
- Niger is a party to several legal instruments for the protection of human rights at the regional and international levels, although the legal framework can be strengthened by other relevant instruments such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol);
- Niger has a national law (the 2015 Law) specifically aimed at repressing migrant smuggling and protecting and assisting migrants, which is in itself relevant to the protection of migrants' rights.
- The existence of Ordinance No. 2010-86 of 16 December 2010 on combating the trafficking in persons strengthens the protection of persons and migrants, in particular against trafficking;
- International human rights law and international humanitarian law are enshrined as basic references in the 2015 law;
- The 2015 law contains special provisions to protect refugees, children, women, persons with disabilities and the elderly who are groups in need of special protection under the African Charter and other relevant regional and international instruments;
- Trafficking in children or the use of children as accomplices or participants in criminal act and being trafficked is an aggravating circumstance; this requirement is likely to strengthen the protection of the child who is more vulnerable in the context of trafficking. The law also sets out the principle of taking the best interests of the child at heart, in any action concerning him or her;
- Trafficking pregnant women and persons with disabilities is an aggravating circumstance: There is ample evidence that women pay a heavy price in the migration context and this applies more to pregnant migrant women. Persons with disabilities also receive special protection. This requirement of the law is likely to deter anyone who would want to harm these categories of persons;
- Using or threatening to use any form of violence against the trafficked migrant or his or her family is an aggravating circumstance: This requirement strengthens family protection measures, in accordance with the provisions of Article 18 of the African Charter.

However, other aspects of the legal framework may effectively impede the protection of migrants' rights.

Actually, the 2015 Law which currently represents the legal text par excellence in Niger with regard to the smuggling of migrants, has some shortcomings and contains provisions that are not always clear and may lead to different interpretations.

In terms of shortcomings, the 2015 Law globally makes international human rights law, humanitarian law and international refugee law a basic reference in all measures to combat the smuggling of migrants. However, in view of the facts and the specific nature of certain violations, the law could have highlighted certain provisions in more detail.

Although the law emphasizes the need to protect vulnerable groups, including women, children, persons with disabilities and the elderly, it remains vague on how the protection of women, persons with disabilities and the elderly should be achieved. In view of the extent of the atrocities experienced by migrant women, the law could have more precisely addressed specific measures to better protect them as a whole. For example, the law does not specify under what conditions interviews or hearings of women should take place. The nature of the violence suffered by migrant women, however, requires professional support and moral and psychological support, especially when they come into contact with ISF and DSF. The gravity of the incidents experienced by migrant women requires specific regulatory provisions on their cases.

The right to property is one of the most affected rights of migrants during the journey, the law could have focused on measures to protect this migrant's right to property by expressly punishing cases of detention or confiscation of migrants' property in kind and in cash.

With regard to the vagueness of the 2015 Law, the main criticism is that it provides procedural guarantees for the migrant in the event of arrest and detention without specifying the reasons why a migrant would end up being detained. The law was largely based on the provisions of the Anti-Trafficking Protocol, which contains similar provisions, but as a national text, the law should be more explicit and precise to avoid misinterpretation.

Moreover, observers denounce the secondary effects of the 2015 Law, in particular the fact that its excessive repressive nature increases the clandestine nature of migration and the risks of related human rights violations. According to IOM data based on monitoring trends in Arlit and Seguedine¹⁴², the number of people migrating northwards in Algeria, Libya and the Mediterranean has decreased considerably since the enforcement of the law (e.g. from 333,891 in 2016 to 43,380 in 2018)¹⁴³. Concerns about the negative effects of the law were extensively mentioned by the United Nations Special Rapporteur on the human rights of migrants at the end of his visit to Niger in October 2018.¹⁴⁴

In its concluding observations on Niger's second periodic report, the Human Rights Committee, while acknowledging Niger's efforts towards refugees, asylum-seekers and migrants crossing its territory on their way to the Mediterranean, also expressed

¹⁴² Statement by the United Nations Special Rapporteur on the human rights of migrants, , *op. cit.*

¹⁴³ *ibid*

¹⁴⁴ *ibid.*

concern about the 2015 law which would have resulted in a *de facto* ban on travel north of Agadez and thus forced migrants to live in hiding¹⁴⁵, in conditions exposing them to numerous abuses and human rights violations. The author Abdoulaye Hamada also argues that under the 2015 law, all forms of immigration-related trade (transport, smuggling, trafficking, etc.) are punished and that enforcement becomes more problematic when law enforcement officers confuse migrants with traffickers or criminals¹⁴⁶.

Apart from the 2015 law, another worrying factor is that Ordinance No. 81-40 of 29 October 1981 on the entry and residence of aliens in Niger provides for the imprisonment of migrants in an irregular situation, whereas migrants should not, in principle, be imprisoned simply because of their irregular status.

¹⁴⁵ Human Rights Commission: Final observations on the second periodic report of Niger, March 2019, CCPR/C/NER/CO/2, para. 38. disponible sur : <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPpRiCAqhKb7yhsiL0RwcBBs1ztlRWANO4YSLvwwwxLA9SSILrXVhMnkEZsyKkZLq1tZR3djlCjCcwqoy7denW%2F%2F71k9O0kmudUIPftitsb%2FrZbaFODCrgHOPO>

¹⁴⁶ Abdoulaye Hamadou : *The management of migration flows in Niger between commitments and constraints*, op.cit, p 13

6. INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF MIGRANTS' RIGHTS IN NIGER

6.1 Overview of the institutional framework

The institutional framework is marked by the existence of specialized and other more general institutions whose role remains relevant to the rights of migrants.

6.1.1 State structures specialized in migration

- **The National Coordination Commission to Combat Trafficking in Persons (CNLTP) and the National Agency to Combat Trafficking in Persons:** article 31 of the 2015 Act provides that the fight against the smuggling of migrants is coordinated by the National Coordination Commission to Combat Trafficking in Persons (CNLTP) and the National Agency to Combat Trafficking in Persons. The CNLTP was created by Ordinance No. 2010-086 of 16 December 2010 on combating trafficking in persons and placed under the authority of the Minister of Justice, by Decree No. 2012-082/PRN/MJ of 21 March 2012, amended by Decree No. 2014-684/PRN/MJ of 30 October 2014. Its mandate is as follows:

- the promotion, design and development of policies and programmes related to trafficking;
 - support for the preparation of the Universal Periodic Review (UPR) Report and Initial and Periodic Reports to Treaty Bodies.
- **The National Agency to Combat Trafficking in Persons (ANLTP):** It is established by the same Ordinance that set up the CNLTP and placed under the authority of the Minister of Justice by Decree No. 2012-083/PRN/MJ of 21 March 2012. It is the operational structure responsible for:
- the execution and implementation of national policies and strategies adopted by the CNLTP;
 - the implementation of the related National Action Plan to Combat Trafficking. To this end, the National Agency develops and conducts awareness-raising, training and education campaigns to reduce the recurrent risks of human trafficking. It is an independent administrative authority, with financial autonomy and its own powers. In addition, ANLTP acts as Permanent Secretariat to the CNLTP.

The ANLTP undertakes awareness-raising and training activities on the concepts of migrant trafficking and smuggling for several actors, including those in the criminal justice system; it has made several efforts in this area. However, these training activities are on an ad hoc basis.

With the support of IOM, ANLTP opened in the Zinder region in July 2019, the country's first reception centre for victims of trafficking, aimed at strengthening the

capacity of Nigerian authorities to combat human trafficking¹⁴⁷. Among other things, there are plans to identify potential victims of trafficking and provide them with medical and psychosocial assistance, as well as socio-economic, administrative and legal support¹⁴⁸. In addition, victims of trafficking will be able to benefit from assistance for individual reintegration in their countries or communities of origin as part of a joint European Union-IOM initiative for protection and reintegration.

The ANLTP is also considering the establishment of two (2) other centres in Niamey and Tahoua. Similarly, with a view to strengthening the capacity of local organizations to provide victims of trafficking in persons and similar practices with community-based assistance that meets their needs, the ANLTP plans to establish reception and protection centres for victims of trafficking in the ten (10) Regional Courts of Niger and, if necessary, in the District Courts. These reception and protection centres will help support victims both in the judicial process and in their reintegration programme.

The ANLTP has also set up a Legal Affairs and Compensation Department (DAJ) under Decree No. 2018-148/PRN/MJ of 08 March 2018. In addition, a draft decree on the Special Victims Compensation Fund (FSIV) has been prepared and is awaiting adoption. Once operational, the FSIV should compensate victims of trafficking in persons. The DAJ's missions include: the development of legal instruments related to trafficking in persons and/or migrant smuggling; coordination of activities of the courts relating to trafficking in persons and migrant smuggling; the conduct of studies, surveys, legal and judicial assistance to victims of trafficking and migrant smuggling; the technical management of the Special Victims Compensation Fund (FSIV) and the support of victims in their reintegration projects.

However, ANLTP is facing financial and material difficulties (office equipment, rolling stock). The Agency does not yet have its own office. In addition, ANLTP has operational difficulties related to the mobility of already trained managers of regional offices; trained resource persons are frequently transferred to other positions. Other difficulties encountered by the Agency in combating migrant smuggling are: insufficient coordination between actors involved in the fight against trafficking in persons and migrant smuggling, the absence of a database on traffickers, the absence of a national action plan to combat migrant smuggling

- **The Inter-ministerial Committee in charge of the Preparation of the National Migration Policy Paper (CICE/DPNM):** This Committee was established by Order n°235/MI/SP/D of 13 July 2007. According to the data from the field study, eleven (11) years after its creation, this committee has not been adequately resourced to operate effectively. However, the Committee has received support from partners to carry out some basic studies. It is mandated to:

¹⁴⁷ <https://www.iom.int/fr/news/le-premier-centre-daccueil-pour-les-victimes-de-traite-souvre-au-niger>
voir également : <https://news.un.org/fr/story/2019/07/1048201>

¹⁴⁸ Ibid

- define the terms of reference of its mission;
- conduct diagnostic analysis of migration issues in Niger;
- identify the overall issue of migration in Niger;
- formulate strategic axes of intervention in the field of migration in Niger;
- draft and format a National Migration Policy Paper, an Action Plan and the legal instruments for its implementation. The said National Policy is still being drafted

The NHRC has only one representative on the CICE/DPNM.

- **The Framework for Consultation on Migration:** this framework for consultation is set up under the authority of the Minister of State, Minister of the Interior, Public Security, Decentralization and Customary and Religious Affairs, by Joint Order No. 0316/MI/SP/D/AC/R/MJ/GS of 2 May 2016. It is responsible for:
 - coordinating the actions of the State and its partners in the field of migration;
 - strengthening the synergy of structures and actors involved in migration management;
 - carrying out advocacy actions with Technical and Financial Partners in the context of migration management.

This Framework has a Permanent Secretariat entrusted with organizing and following-up of the resolutions resulting from the policy meeting. The existence of this framework is relatively recent and coordination challenges are still significant.

- **The National Commission for Refugee Status Eligibility (CNE):** This commission was set up under the Ministry of the Interior by Act No. 97-016 of 20 June 1997 on the status of refugees. Decree No. 98-382/PRN/MI/AT of 24 December 1998 sets out the procedures for implementing the Refugee Status Act. The provisions of this decree provide a set of responsibilities for the Commission, summarized as follows:
 - reception of applications for recognition of refugee status by asylum seekers;
 - recognition of refugee status, in accordance with the procedures defined by the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, the OAU Convention governing the specific aspects of refugee problems in Africa and the Refugee Status Act;
 - cancellation or cessation of refugee status against any person falling within the cases of exclusion or cessation provided for in Articles 3 and 4 of Act 97-016 of 20 June 1997, on the status of refugees;
 - exercise, on behalf of the Government, of legal and administrative protection, in relation to the ministries concerned;

- recognition, in the event of a mass arrival of asylum seekers, of the status of prima facies, without excluding the individual procedure in case of need.

6.1.2 Key Ministries

- Ministry of the Interior, Public Security, Decentralization and Customary and Religious Affairs (MI/SP/D/AC-R);
- Ministry of Humanitarian Action and Disaster Management (MAH/GC);
- Ministry of Foreign Affairs, Cooperation, African Integration and Nigeriens Abroad (MAE/C/IA/NE);
- Ministry of Justice (DOJ), which has a General Directorate for Human Rights, Judicial Juvenile Protection and Social Action;
- Ministry of Women's Development and Child Protection;
- Ministry of Primary Education, Literacy, National Language Promotion and Civic Education (MEP/A/PLN/EC);
- Ministry of Public Health (MSP);
- Ministry of National Defence;
- Ministry of Employment, Labour and Social Protection;
- Ministry of Transport.

6.1.3 The National Human Rights Commission (CNDH)

Its basis lies in the Constitution of Niger; it was effectively established by Law No. 2012-44 of 24 August 2012. The purpose of the NHRC is to promote and protect human rights in accordance with the Paris Principles. Niger's NHRC has an A status according to the criteria applied by the Global Alliance of National Human Rights Institutions (GANHRI)¹⁴⁹.

The NHRC of has had a Working Group on Migration Issues for one year. This Working Group, set up a year ago, is supported by a Technical Department. This internal framework carries out the following activities in the field:

- awareness-raising (training workshop) for stakeholders involved in migration management;
- investigations ;
- advocacy for the respect of migrants' rights.

The NHRC also has a regional office in Agadez that works extensively on migration issues by:

- receiving complaints;
- collaborating with other regional structures dealing with migrants' rights (IOM, NGOs and local associations).

¹⁴⁹ GANHRI : Global Alliance for National Human Rights Institutions

The qualitative survey of the NCHR revealed that the Agadez office is confronted with lack of human, financial and material resources to properly carry out its mission. There are other offices in the Diffa and Tillabéry regions.

The qualitative survey also revealed the need for all actors involved in the management of migration flows to consult one another, work in synergy and focus their attention on respect for migrants' rights.

6.1.4 The High Authority to Combat Corruption and Related Offences (HALCIA)

Initially, HALCIA was established by Decree No. 201144 215/PRN/MJ of 26 July 2011, then revived by Act No. 2016-44 of 6 December 2016 and placed under the authority of the President of the Republic. HALCIA is mandated to develop strategies and policies to prevent corruption and many other actions to this end

The qualitative survey noted that HALCIA has a report of a study on the link between corruption and migration in Niger's border areas; however, this report has not yet been validated.

The qualitative survey of HALCIA also highlighted the need for harmonization between the countries concerned in the fight against illegal migration and the fight against corruption, if the efforts to combat these scourges are to be effective.

6.1.5 The National Agency for Legal and Judicial Assistance (ANAJJ)

Created by Act No. 2011-42 of 14 December 2011, ANAJJ is mandated to provide legal and judicial assistance to certain categories of vulnerable and indigent persons.

6.1.6 Services of the Internal Security Forces and the Defence and Security Forces

The ISF and DSF play an extremely important role in combating migrant smuggling and promoting and protecting the rights of migrants.

- **The National Police**

The National Police is primarily mandated to ensure the enforcement of laws and regulations, protect persons and property, prevent disturbances to public order and tranquility, and fight against all forms of crime. The Niger Police comprises a General Directorate of the National Police as well as National, Regional and Departmental Directorates, Specialized Units, Police Stations, Brigades and Border Posts.

The Directorate of Territorial Surveillance (DST) or the "Border Police " is responsible for enforcing immigration and emigration regulations on the national territory of Niger. Its field missions are as follows:

- the production of statistics on migration flows;
- the preparation and issuance of residence, travel and visa documents;
- national security information.

The DST also has regional services called Regional Territorial Surveillance Services (SRST), which act as relays at the central level and antennas at border crossings.

The Police receive general human rights training (included in the National Police Academy curricula) but this does not imply specific training on the rights of migrants.

▪ **The High Command of the National Guard**

The National Guard is called upon to combat migrant smuggling by monitoring the bypass roads. The Niger National Guard has included human rights training in its training curricula; however, the training received concerns human rights in general and not the specific rights of migrants.

The Guard is present wherever the administration is located and contributes to the fight against illegal immigration and to preserve national security.

The qualitative survey of the Guard noted that the latter participates in the rescue of migrants lost in the desert; however, this is done on an incidental basis because the primary mission of the Guard's patrols is to secure these areas. The investigation also noted the need to equip the Guard and set up units dedicated to the search and rescue of migrants in the Guard's areas of competence.

▪ **The National Gendarmerie**

One of its key missions is to enforce the law in rural areas. The National Gendarmerie is a paramilitary police force that ensures the maintenance of order outside the jurisdictions supervised by the National Police, in that it also protects the rights of migrants, especially when one considers that the rural areas cover the largest part of national territory.

Gendarmes receive initial training on issues relating to human rights and humanitarian law at their Training Centre. Human rights training is also provided on an ongoing basis in order to provide guidance to professional gendarmes. Moreover, there is a specific module on trafficking and smuggling of persons, taught to gendarmes at the Training Centre.

The gendarmerie has not been provided with any specific means to ensure the protection of the fundamental rights of migrants. The resources received from the authorities by the gendarmerie are dedicated to protecting the rights of the entire population, including migrants.

The gendarmerie has specialized services for the protection of vulnerable persons, such as brigades for women and minor children.

According to the data from the qualitative survey, the gendarmerie also needs to strengthen its equipment and logistics in order to function better.

- **The National Armed Forces of Niger (FAN)**

With regard to migration, the FANs patrol the most remote areas of Niger's territory, intervene in the prevention, neutralization of illegal trafficking and rescue of migrants lost in the desert¹⁵⁰. The field survey could not determine whether the rescue of migrants by the Armed Forces is carried out on an incidental basis or whether these operations are solely for rescue purposes.

- **Customs**

In the field of migration, it helps to apprehend migrants in possession of prohibited or suspect products¹⁵¹.

- **The Framework for the coordination of work between the gendarmerie, the National Guard and the Police on the protection of migrants' rights**

The qualitative survey of the Gendarmerie revealed the existence of a framework for coordination of work between the Gendarmerie, the National Guard and the Police on the protection of migrants' rights. However, this framework has shortcomings, particularly material.

6.1.7 The key supranational organisations

Supranational structures contribute significantly to the institutional environment for the protection of migrants in Niger.

- **Office of the United Nations High Commissioner for Refugees (HCR)**

HCR carries out its operations in Niger in close collaboration with the Government, on the one hand, and with humanitarian organisations involved in protection and assistance on the other, on the basis of an updated contingency plan, if necessary.

The Inter-sessional Report of the Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons and Migrants in Africa¹⁵², presented at the 63rd Session of the African Commission, mentioned the existence of "Hot Spot" or asylum seekers' sorting centres in Niger. The study noted the existence in Niger of an Emergency Evacuation and Transit Mechanism from Libya to Niger, which was set up by UHCR under an agreement signed between Niger and HCR, the ETM (*Emergency Transit Mechanism*).

¹⁵⁰ Direction Générale de la Police Nationale, Ecole Nationale de Police et de la Formation Permanente : *Police des frontières et des étrangers*, p.40 2017.

¹⁵¹ *ibid*

¹⁵² Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons and Migrants in Africa, Intersession Report for the 63rd Session of the African Commission, 2016, para 54, available at : http://www.achpr.org/fr/sessions/63rd_os/intersession-activity-reports/refugees-and-internally-displaced-persons/

This mechanism found concrete expression in the creation of a Centre to receive asylum seekers stranded in Libya, with the aim of organizing their resettlement. Under this mechanism, refugees and asylum seekers stranded in detention centres in Libya are repatriated to Niger for resettlement through a screening system. For 2019, for example, HCR claims to have already helped 1297 vulnerable refugees leave Libya, including 711 in Niger, 295 in Italy and 291 others who have been resettled in Europe and Canada¹⁵³. Candidates for resettlement in Europe whose applications are rejected have the possibility to apply for asylum in Niger to the National Commission for Refugee Status Eligibility, which must give priority to applications through an accelerated processing.

However, the implementation of this emergency mechanism has had an impact. The announcement of resettlement for the group of refugees and asylum seekers in Libya has generated interest for Sudanese refugees in Chad. The latter flocked in large numbers to Niger in the hope of being integrated in the resettlement programme. This situation poses a serious problem for the government and HCR to take care of these refugees. Sudanese refugees even demonstrated to ask HCR to avoid any discrimination against them¹⁵⁴.

▪ **The International Organization for Migration (IOM)**

In 2004, Niger became a member of IOM and the Organization moved there, specifically to Niamey in 2006. It is mandated to:

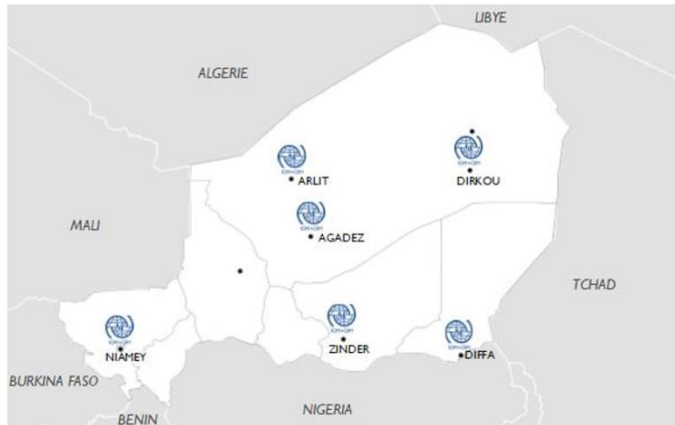
- contribute to concretely address the growing challenges of managing migration flows;
- promote understanding of migration issues;
- promote economic and social development through migration;
- work towards respect for the human dignity and wellbeing of migrants.

With regard to migration management, IOM works closely with the State of Niger and other humanitarian partners to address the multiple migration challenges, both during migrants' movements and during their return and economic and social reintegration.

¹⁵³ <https://www.unhcr.org/fr/news/press/2019/6/5d0b979ba/131-refugies-evacues-libye-vers-niger-milieu-conflit-cours-tripoli.html> [Consulted on 7 July 2019]

¹⁵⁴ <https://www.studiokalangou.org/index.php/rss/31-articles/10885-terres-accueil-refugies-soudanais-manifestent-devant-bureaux-unhcr>

Map illustrating IOM's presence in Niger¹⁵⁵



The map shows the locations where IOM is present but concerning the specific case of transit centres opened for migrants, IOM has six (6) of them distributed as follows: one in Agadez (accommodating 1,000), one in Arlit (300), one in Dirkou (150) and three in Niamey (with a total capacity of 300), one for unaccompanied minors and vulnerable women, some of whom are victims of human trafficking¹⁵⁶.

▪ **The World Food Programme (WFP)**

WFP works closely with the Government as part of its United Nations-defined mission to work for a world where every man, woman and child has permanent access to enough food to lead a healthy and active life.

In Niger, in addition to its traditional missions in the agricultural sector, WFP provides food assistance to populations affected by armed conflict and floods. Since 2012, WFP has made an invaluable food contribution in response to the government-humanitarian partners contingency plan, both in terms of assistance to refugees in Mali and Nigeria and in terms of post-flood relief.

▪ **The United Nations Children's Fund (UNICEF)**

In Niger, UNICEF has been working with the Government since 1972 in areas that particularly affect the rights of women and children, such as education, health and nutrition. Also, in partnership with other organizations of the United Nations system, UNICEF supports the implementation of the Government of the Republic of Niger's Economic and Social Development Plan (PDES). It also participates, alongside the State and Humanitarian Partners, in responding to the needs of vulnerable communities, as expressed in contingency plans relating to refugees and asylum seekers, migrants and in the event of natural disasters such as floods, famines, etc.

¹⁵⁵ IOM Niger: *Migrant Profiling Report 2016*, p 4, available at <https://gmdac.iom.int/OIM-Niger-Rapport-de-Profilage-des-Migrants-2016>

¹⁵⁶ <http://www.nigermigrationresponse.org/fr/Notre-travail/les-centres-de-transit-oiom>

- **The United Nations Development Programme (UNDP)**

In Niger, UNDP has been established since 1977, after the signing of the Agreement governing cooperation with the Republic of Niger. In this development cooperation process, UNDP supports projects and NGOs working in the area of migration to support the State of Niger's efforts to make migration more humane, affordable and less risky.

- **The United Nations Office for the Coordination of Humanitarian Affairs (OCHA)**

The Coordination Office in Niger was established in 2005. It is responsible for mobilizing humanitarian actors to provide a coherent response to emergencies and ensure that there is a framework within which each actor can contribute to the collective response. This involves the following tasks:

- mobilize and coordinate effective and principled humanitarian action, in partnership with national and international actors, to alleviate human suffering in disasters and emergencies;
- defend the rights of people in need;
- promote preparedness and prevention;
- facilitate sustainable solutions.

6.1.8 The main sub-regional organisations and those resulting from bilateral or multilateral cooperation

- **The Economic Community of West African States (ECOWAS)**

In addition to defining the regulatory framework for migration in the ECOWAS region, the Community provides substantial support for the care of migrants from Member States who are victims of expulsion or abuse by a third country. During the Libyan crisis in 2011, for example, ECOWAS provided financial support to the ad hoc committee set up by the Prime Minister's Office to repatriate Nigerians and those of other Community member States.

- **The French Office for the Protection of Refugees and Stateless Persons (OFPRA)**

The Nigerien institutional environment for migration in Niger has been marked by the presence of OFPRA since 2017¹⁵⁷. OFPRA carries out missions to Niger to interview refugee applicants and select those who are eligible for France and possibly other European countries. OFPRA's 2018 Report indicates that the majority of migrants evacuated from Libya to Niger by HCR are those eligible for

¹⁵⁷ OFPRA : 2017 Activity Report, p. 8, available at : <https://ofpra.gouv.fr/fr/l-ofpra/actualites/publication-du-rapport-d-activite-6>

resettlement in view of the great insecurity and extreme violence they faced in Libya¹⁵⁸.

- **The European Union (EU)**

As part of efforts to find ways and means to better manage migration in Niger, the EU is providing financial support through the Trust Fund to rapidly finance activities that directly or indirectly impact migration.

- **German Cooperation (GTZ)**

In Niger, German cooperation particularly supports the State and local authorities in addressing the concerns of the population, from an economic, social and cultural point of view. Several projects have been initiated and funded by the GTZ. This is particularly the case for the projects "Support for migration policies (APM)" and "Management of migration flows (Progem)" which currently help State and community structures to understand the contours of migration and the measures that need to be taken to better manage migration flows. This is in the interest of migrants and their communities and of the States concerned.

6.1.9 NGOs

Several non-governmental organizations are also involved in the promotion and protection of migrants' rights in Niger

Some NGOs are specifically mandated to defend the rights of migrants while others, with a more general mission such as the defence of human rights, also include the rights of migrants in their focus areas. The qualitative survey highlighted the need for NGOs to further pool their resources and areas of concern relating to the forces in the context of actions to protect migrants.

6.2 Analysing the institutional framework

The Nigerien institutional framework contains positive factors conducive to the protection of migrants' rights.

In fact, the existence of structures such as the CNLTP, the ANLTP, the Inter-ministerial Committee for the Preparation of the National Migration Policy Paper, the Framework for Consultation on Migration, the National Commission for Refugee Status Eligibility (CNE) is likely to strengthen efforts to combat the smuggling of migrants, trafficking in migrants and other related forms of human rights violations.

¹⁵⁸ OFPRA : 2018 Report, p. 9, available at : <https://www.ofpra.gouv.fr/fr/l-ofpra/actualites/publication-du-rapport-d-activite-7>

The existence of structures such as the CNLTP, the ANLTP, the Inter-ministerial Committee for the Preparation of the National Migration Policy Paper, the Framework for Consultation on Migration, the National Commission for Refugee Status Eligibility (CNE) is likely to strengthen efforts to combat migrant smuggling and trafficking as well as other related forms of human rights violations.

The presence of non-state structures that support the State in raising awareness about migrants' rights, providing protection and assistance to these migrants is also a factor that promotes the observance of migrants' rights.

However, this framework has inadequacies and limitations in terms of protecting the rights of migrants.

We note for example that migrants' reception and transit centres are absolutely vital in assisting and protecting migrants. However, the State seems to have fully delegated this responsibility to structures such as IOM and HCR. At the time of the study, there were seven (7) operational reception centres for migrants in Niger, including six (6) managed by IOM and the Migrant Reception and Transit Centre created by HCR as part of the ETM. The State's commitment to the creation of reception or transit centres is not very perceptible.

Besides, despite the predominant role played by ISF and DSF in the management of migration flows, the fact that they lack specific training in migrants' rights is a cause for concern. The State has made efforts to this end, but training needs are still outstanding. Migrants are a vulnerable category of persons whose special protection is provided for in both general and specific instruments binding on the State. Article 25 of the African Charter imposes on States Parties the duty to promote and ensure, through learning, education and dissemination, respect for the rights and freedoms contained in the Charter, and to take measures to ensure that the freedoms and rights arising from the Charter as well as the corresponding obligations and duties are understood. In view of the important role that ISF and DSF should play in migration, migrants' rights cannot be effectively protected unless these forces receive the appropriate awareness raising and training.

The information collected also noted that the ISF and DSF are not provided with sufficient material resources to carry out their work.

All ISF and DSF have an important role in the fight against migrant smuggling. However, lack of coordination between these actors on the ground does not encourage the synergy of forces to overcome the crisis.

Beyond the coordination difficulties at the ISF level, it was noted that there is a general lack of coordination between all actors involved in migration in Niger, despite the existence of the Framework for Consultation on Migration. Such a situation has serious risks of inconsistencies with regard to the actions undertaken by the structures concerned.

Besides, for migrants' rights to be effectively protected there has to be the possibility of obtaining compensation in the event of a violation of their rights; to this end, the role of the ANAJJ in assisting vulnerable groups is fundamental. However, this agency has operating limitations. In its concluding observations following the examination of Niger's 14th Periodic Report (2014-2016), the Commission urged the Nigerien State to make the Agency operational¹⁵⁹.

¹⁵⁹ ACHPR, Final observations on the 14th Periodic Report of Niger (2014-2016), available at: <http://www.achpr.org/fr/states/niger/reports/2014-2016/>

7. REDRESS MECHANISMS IN CASE OF VIOLATION OF MIGRANTS' RIGHTS

Nigerien citizens have manifold difficulties to access justice in Niger (inaccessibility of courts, lack of legal assistance, etc.). These difficulties are most acute for migrants who constitute a vulnerable group of people.

Migrants have the right to access justice and seek redress. The 2015 Law on the Smuggling of Migrants even states that "any migrant victim of smuggling has the right to initiate legal proceedings to obtain compensation without providing the securities prescribed by Nigerien law"¹⁶⁰. However, their lack of awareness of their rights, lack of resources and technical assistance are some examples that indicate the difficulties that migrants in Niger may encounter in accessing justice. The survey revealed that despite their vulnerability, migrants are treated on an equal footing with the entire population in terms of access to justice.

The UN Special Rapporteur at the end of his visit to Niger also deplored the lack of minimum access to justice, while noting that migrants in Niger, including children, have been detained for several days without access to legal assistance or representation. The Rapporteur also noted the inadequacy of ANJJ's resources, which impacts its effectiveness ¹⁶¹.

Another disturbing element in terms of migrants' access to justice is the lack of awareness of migrants' rights among the very authorities through which investigations into human rights violations are supposed to begin¹⁶².

There is also another issue that has been left out in the area of access to justice. It concerns reparations for migrants who are victims of human rights violations in countries of temporary residence, particularly Algeria and Libya. The study did not perceive any consideration, at the regulatory and institutional levels, of the issue of compensation for migrants who have been expelled or who voluntarily returned to Niger but who have been traumatized by the serious violations they have allegedly suffered in the countries of temporary residence. However, in the light of the various reports and allegations noted many of them are in this situation. While it is true that violations committed by foreigners on foreign territory are not a priori the responsibility of the Nigerien authority, it is equally true that the victims of these alleged violations are massively found on Nigerien territory. The issue of their right to reparation therefore deserves to be addressed in order to find possible solutions for obtaining reparation in this particular context.

¹⁶⁰ See below, section 5 on the legal framework for the protection of migrants in Niger.

¹⁶¹ Statement by the United Nations Special Rapporteur on the human rights of migrants, op.cit

¹⁶²National Agency to Combat Trafficking in Persons, Report of the data collection mission on trafficking in persons and related offences- 2015, p. 9 available at : http://www.stat-niger.org/statistique/file/Annuaire_Statistiques/Justice/Rapport_Collecte_Donnees_Traite_Personnes_2016.pdf

8. STRATEGIC FRAMEWORK TO FIGHT AGAINST THE VIOLATION OF THE FUNDAMENTAL RIGHTS OF MIGRANTS

Niger does not so far have a national migration policy; it is still being developed and should take human rights issues into account. The general framework for the protection of human rights covers the protection of migrants' rights.

However, in 2018, Niger adopted a national strategy to combat irregular migration. The strategy includes the following main themes:

- Measures relating to the Management of Land, Airport, River and Lake Borders;
- Prevention Measures in countries of origin, transit and destination;
- Law enforcement and protection measures against the smuggling of migrants and trafficking in persons;
- Measures relating to the Return of Migrants and their Reintegration;
- Transversal Measures for Data Collection and Management, Monitoring and Evaluation.

This strategy seems to focus more on border management issues than on issues related to the protection of migrants' rights.¹⁶³

Niger does not yet have an action plan to combat migrant smuggling or to protect the rights of migrants. However, Niger has an action plan, the Action Plan to Combat Trafficking in Persons.

In its periodic report for the period 2014-2016 submitted to the ACHPR, Niger indicated that it has standard operating procedures for the management of migrants¹⁶⁴. There are indeed standard procedures for the identification and referral of asylum seekers between the Directorate General of Civil Status, Migrants and Refugees and IOM and HCR, the objective of which is to establish a referral mechanism and then ensure the referral of persons concerned to the State procedures for eligibility for refugee status. These procedures therefore only concern refugees.

Other aspects of the strategy are contained in agreements signed between Niger and other stakeholders. These include the agreement signed in 2017 with IOM to strengthen IOM's direct assistance to migrants and awareness-raising activities on human trafficking.

¹⁶³ <https://www.niameyetles2jours.com/la-gestion-publique/securite/0304-2102-le-niger-se-dote-d-une-strategie-nationale-de-lutte-contre-la-migration-irreguliere> see also <http://nigerexpress.info/2018/04/04/le-niger-dote-d-une-strategie-nationale-de-lutte-contre-la-migration-irreguliere/>

¹⁶⁴ Government of Niger : *Periodic Report 2014-2016 on the implementation of the African Charter on Human and Peoples' Right sand Periodic Report Niger submitted to the ACHPR CADHP*, p.11, para 22, available at <http://www.achpr.org/fr/states/niger/reports/2014-2016/>

Regarding access to justice, Niger has developed a National Justice and Human Rights Policy with a 10-year action plan for 2016-2025. There is no policy specifically aimed at migrants' access to justice.

The State seems to be focusing its efforts on combating irregular migration while aspects such as the protection of human rights, awareness-raising, the construction of reception centres and the care of migrants are delegated to non-governmental institutions and bodies such as IOM and HCR.

It is also important for actions and strategies to be based on reliable information for greater effectiveness. However, data on migration flows in Niger and related issues are difficult to obtain on a regular basis and are scattered. These data, if they exist, should also be made public, accessible to any actor who would like to support the State in this area. The most accessible data are those of IOM based on migrant profiling and its annual reports. The qualitative survey noted that actors working in the field of migration in Niger do not share information.

In its concluding observations following the consideration of Niger's 2nd Periodic Report from 2 to 7 March 2019, the Human Rights Committee urged the Nigerien State to pursue its efforts to ensure the collection of statistical data disaggregated by age, sex and origin of victims¹⁶⁵.

Besides, the sale and prostitution of children, including child pornography, are forms of exploitation that are connected to trafficking in persons, yet the link between trafficking and the smuggling of migrants is very narrow. In this regard, CRC expressed serious concern that Niger has not established a system to collect data on child victims of offences covered by *the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. The Committee considered that lack of data on this issue makes impairs Niger's ability to prevent related offences and ensure the protection and rehabilitation of child victims of these offences by adopting the appropriate policies¹⁶⁶.

The study also noted the need for actors in the field to share information with one another.

¹⁶⁵ Human Rights Committee: *Final observations on the second periodic report of Niger*, March 2019, Para 35, available at :

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/NER/C/O/2&Lang=Fr

¹⁶⁶ Committee on Children's Rights: *Final observations concerning Niger's Report on the Optional Protocol to the Convention on the rights of the Child, on the sale of children, child prostitution and child pornography*, 24 and 25 September 2018, para 7, available at :

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/OPSC/NER/CO/1&Lang=Fr

9. AVENUES OF REFLECTION AND RECOMMENDATIONS

9.1 Avenues of reflection for the improved protection of migrants' rights in Niger

Keep the State at the centre of responsibilities: The State must be held primarily responsible for protecting the rights of migrants. Article 1 of the African Charter imposes an obligation on States to adopt legislative or other measures to implement the rights and freedoms recognized in the Charter. While collaboration with non-state actors is important and must be developed and supported, this should not obscure or even evade the primary responsibility of the State which, under international and regional human rights law, cannot be transferred to other entities.

Mainstreaming human rights in migration policies: The protection of human dignity must be a crosscutting principle that guides legislative, administrative and other measures in the field of migration. Human rights should be placed at the heart of actions relating to the management of migration flows. The repression of irregular migration should, under no circumstances, justify a violation of the human rights enjoyed by migrants.

Special treatment for vulnerable groups: Migrants are a category of vulnerable groups among the population and, among migrants themselves; there are other more vulnerable groups, such as women, children, persons with disabilities and the elderly.

Access to justice as a priority: No right is effectively protected without an effective judicial remedy for violations. Beyond the legitimacy of reparation in the event of a violation, access to justice has a potential deterrent effect on the commission of offences. Access to justice for migrants whose rights have been violated both in the country of transit and in the country of temporary residence should be a priority in the adoption of measures to protect migrants.

Taking into account the mixed nature of migration flows: There are several categories of migrants (women, children, adults, refugees, regular and irregular migrants, trafficked migrants, etc.) who often travel together for various reasons. Any migration policy should take into account the specific case of each category and avoid the tendency to adopt generalized measures.

Information as a policy guidance tool: Basing legislative, administrative and other measures on reliable facts and information is an essential condition for enhancing the effectiveness of migration policies. To better assess migration phenomena and take appropriate measures in this regard, there is need to have both qualitative and quantitative information.

Cooperation between States: The case of Niger is an outstanding example of the need for cooperation between States. Niger is an important transit country for migrants; the data highlight the predominance of foreign nationalities among

migrants going to North Africa. The data also show the large number of migrants returning to Niger after experiencing atrocities in countries of temporary residence. These facts imply the responsibility of several States; therefore, the search for solutions in the management of migratory flows, particularly the fight against migrant smuggling, trafficking in persons and other forms of abuse and violence against migrants, should be carried out within frameworks of consultation and cooperation between States.

9.2 Recommendations

9.2.1 To State actors of Niger

- **Recommendations concerning the regulatory framework**
 - Consider a comprehensive assessment of the impact of the 2015 Law to measure its effectiveness in reconciling the need to combat irregular migration with the need to protect the fundamental rights of migrants;
 - Initiate discussions with relevant actors on the integration of human rights into migration regulations;
 - Consider revising Ordinance No. 81-40 of 29 October 1981 on the entry and residence of aliens to adapt it to recent developments in international human rights law. In particular, provide in the national legislative framework for alternatives to the imprisonment of migrants in an irregular situation.
- **Recommendations concerning the institutional framework**
 - Strengthen the material and financial resources of structures involved in migration, including those of ISF and DSF;
 - Establish or strengthen specific, effective and efficient internal and external control mechanisms for the migration activities of ISF and DSF to take sufficient account of this aspect;
 - Ensure appropriate and sufficient training for ISF and DSF so that they can integrate the observance of migrants' rights into their daily activities. This implies the inclusion of migrants' rights in curricula and continuous training in this area. Training should focus on the distinctions between migrant smuggling and trafficking in persons, the similarity of the two concepts and the rights of vulnerable migrant groups. Training manuals and guides adapted to the use of ISF and DSF could be developed for awareness and training purposes;
 - Build Migrant Reception and Transit Centres to strengthen the institutional framework for the protection of migrants' rights;
 - Strengthen the capacities of the Framework for Consultation on Migration and the working coordination framework between the Gendarmerie, National Guard

and Police in the protection of migrants' rights to ensure more concerted and coherent actions;

- Strengthen the operating resources of the main structures, in particular the CNLTP and ANLTP;
- Strengthen the capacity of the DST in data collection and ensure the publication of these data for greater accessibility to actors involved in migration in Niger;
- Establish mechanisms to alert and record human rights violations against migrants and, if necessary, create a toll-free number for this purpose;
- Strengthen the capacities of the ANJJ and guarantee its effective access to migrants. To this end, consider setting up mechanisms to refer migrants to the ANJJ and take appropriate measures for the specific case of children's access to the services of this structure.

▪ **Recommendations concerning the migration flow management strategy:**

- Accelerate the adoption of the National Migration Policy and consider strengthening the presence of the NHRC within the CICE/DPNM in charge of drafting this policy to promote the adoption of a policy that takes human rights into consideration;
- Review the strategy to combat irregular migration to ensure that the repression of irregular migration does not lead to human rights violations and disseminate it to all actors;
- Develop a National Action Plan to combat migrant smuggling;
- Focus the migration management strategy on the principle of synergy of action. In view of the diversity of actors on the ground, such synergy of action is essential;
- Strengthen the capacities of existing institutions, broaden their scope of action where appropriate, instead of creating several others;
- Ensure the effectiveness of all mechanisms for coordination between all actors involved in migration, while creating a database that will facilitate information sharing among actors;
- Focus actions regarding migration flows on the findings of reliable studies and consider creating a database to facilitate access to information;
- Develop strategies that include special mechanisms for the treatment of the most vulnerable groups, particularly children and unaccompanied children, who, according to data, are in high numbers among migrants;
- Ensure primary responsibility for migration policy by developing and taking ownership of the related actions and then coordinating those of all the structures involved in the matter;
- Ensure that assistance to migrants forcibly returned to the desert gates is a full priority in the work of ISF and SDF patrolling the desert; this means that initiatives are taken specifically to rescue them rather than being isolated relief actions that accidentally occur during security operations in the desert areas;
- Develop a strategy to raise awareness on the dangers of irregular migration;
- Strengthen collaboration with local authorities in the fight against the smuggling of migrants.

- Involve former migrants in awareness-raising activities related to the protection of migrants.

9.2.2 To non-State actors intervening in Niger, particularly NGOs

Non-state actors are encouraged to pursue and strengthen support for Niger State actions in the management of migration flows, including the protection of migrants. To this end, they are urged to:

- Contribute to stepping up awareness and training of ISF and DSF on migrants' rights and also raise migrants' awareness of their rights;
- Placing human rights at the heart of assistance systems for the return of migrants;
- Initiate reflection on access to justice for reparation to migrants who have been victims of violations of their rights in countries of temporary residence;
- Increase awareness campaigns on the dangers of irregular migration;
- Use judicial and quasi-judicial mechanisms at the national level to seek redress for migrants who are victims of violations of their rights;
- Use judicial and quasi-judicial mechanisms at the sub-regional (ECOWAS Court of Justice) and regional (Commission, African Court of Human Rights) and international (UN treaty bodies) levels to seek justice and redress for migrants who experience the inaccessibility, unavailability or effectiveness of domestic remedies.
- Further pool the resources and forces.

9.2.3 Niger's financial partners

Niger is trying, with its limited resources, to provide answers to the problems related to the management of migration flows. To this end, the financial partners are providing significant funding to implement migration management activities in Niger as described above. They are urged to pursue this significant support bearing in mind the following recommendations:

- Ensure that Programmes, policies and funding to combat irregular migration are based on respect for the fundamental rights of migrants;
- Ensure that the AVR programmes they finance comply with international human rights law and that the treatment of children in this regard is based on their best interests and not on the desire to return to their home community or country of origin;
- Support the CNDH to ensure its increased involvement in the promotion and protection of migrants' rights.

9.2.4 State actors of temporary residence countries

State actors in countries of temporary residence should:

- Strengthen collaboration with the Nigerien State in the management of migration flows, notably measures to protect the rights of migrants;

- Shed light on the various allegations relating to violations of migrants' fundamental rights, to assign responsibilities, provide reparations and adopt legislative, judicial, administrative and other measures to ensure compliance with migrants' fundamental rights.;
- For Libya in particular, pursue and strengthen cooperation with HCR to facilitate the transfer to Niger of migrants stranded in Libya's detention centres under the Emergency Evacuation and Transit Mechanism.

9.2.5 To migrants' countries of origin and ECOWAS

The decision to migrate irregularly is mostly determined by the difficult living conditions in the countries of origin as reported in this study. In this regard, reducing the smuggling of migrants in Niger is also dependent on the efforts made by countries of origin. ECOWAS, as a sub-regional organization, should also pursue actions that restrict freedom of movement in the area. In both respects, countries of origin and ECOWAS should:

- Strengthen efforts to ensure the enjoyment of economic and socio-cultural rights and to this end, ensure the fair and equitable distribution of revenues and resources, in accordance with the relevant provisions of the African Charter, in particular, Articles 21 and 22 and 24[recommendation to countries];
- Guarantee the peoples' right to peace in accordance with Article 23 of the African Charter [recommendation to countries];
- Establish mechanisms to guarantee access to justice for migrants returned to Member States, including starting with studies and consultations aimed at making use of consular services.

9.2.6 To the African Union

The African Union as a continental organization dedicated to regional integration should:

- Encourage and carry out actions in favour of the ratification of the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment¹⁶⁷. This would reduce irregular migration and its negative effects since the Protocol guarantees, subject to certain conditions, the abolition of the visa and the issuance of an African passport (Article 6.2 and 10 of the Protocol);
- Accelerate the realization of the seven (7) aspirations of Agenda 2063, which would guarantee the wellbeing of the Union's citizens and thus considerably reduce the number of candidates for irregular and dangerous immigration to Europe.

¹⁶⁷ <https://au.int/en/treaties/protocol-treaty-establishing-african-economic-community-relating-free-movement-persons>

10. CONCLUSION

This pilot study revealed the high prevalence of incidents experienced by migrants along their migratory journey, particularly in transit countries and countries of temporary residence. These incidents violate fundamental human rights.

The example of Niger demonstrated the efforts of a transit country with limited resources to manage migration flows from a rights-based perspective. The example of Niger has also highlighted the challenges that transit countries may face in managing migration flows on the basis of the respect of human rights.

While this pilot study highlighted the different situations that may affect the rights of migrants as guaranteed by the African Charter and other international human rights instruments, it also identified the main issues that need to be addressed by other studies to be undertaken in the context of the implementation of **Resolution 404**.

These main issues include:

- human rights and the crossing of African migrants from the Mediterranean to Europe;
- the fundamental rights of migrants in conflict-related contexts (armed conflicts, terrorism, etc.) in Africa. This theme is relevant in view of the increase in terrorist attacks in the Sahel and the conflict situation in Libya (for example, the bombing of a migrant and refugee detention centre in Tajoura, Libya, in July 2019 which killed 44 and injured 130 others¹⁶⁸);
- human rights of migrants residing in African countries;
- human rights and the specific case of refugees and asylum seekers;
- mechanisms put in place by countries of origin to ensure the reintegration of migrants.
- the specific situation of migrant children (accompanied or unaccompanied).

Studies on these themes will provide a comprehensive and significant insight for all actors working in the area of migration in Africa, particularly those striving to improve the respect of migrants' rights.

Since respect for human rights is a common responsibility, all the States and all technical and financial partners are therefore urged to support the Commission in this initiative.

¹⁶⁸ <https://news.un.org/fr/story/2019/07/1046812>