



# National Integrity System Assessment

## REPUBLIC of NIGER

With the support of:



©2011 Association Nigérienne de lutte contre la Corruption (ANLC)  
Section de Transparency International. All rights reserved.  
Transparency Ethiopia has published this study with the support of the  
European Investment Bank.  
Every effort has been made to verify the accuracy of the information  
contained in this report. All information was believed to be correct as of  
January 2011. Nevertheless, ANLC cannot accept responsibility for the  
consequences of its use for other purposes or in other contexts.

# Table of Contents

I	Introductory Information	4
II	About the NIS Assessment	8
III	Executive Summary	13
IV	Country Profile	27
V	Corruption Profile	31
VI	Anti-Corruption Activities	33
VII	The National Integrity System	39
	1. Legislature	40
	2. Executive	58
	3. Judiciary	68
	4. Public Administration	83
	5. Law Enforcement Agencies	96
	6. The Independent National Electoral Commission	105
	7. Office of the Ombudsman	115
	8. Court of Auditors	118
	9. Anti-Corruption Agencies	127
	10. Political Parties	129
	11. Media	141
	12. Civil Society	154
	13. Business	162
VII	Bibliography	172

# I INTRODUCTORY INFORMATION

# Authors

Report Author and Lead Consultant: Mr IDRISSA ALICHINA

KOURGUENI, Economist, Demographer

Study Coordinator: Mr BOUREIMA GADO, External Relations Secretary  
of the Nigerien Anticorruption Association

# Acknowledgements

It has been possible to carry out this study only due to the help and collaboration with many people and institutions. The research team would like to acknowledge and wholeheartedly thank and express our gratitude to all the people who in many ways have been involved in the organisation process of this study addressing the National Integrity Systems (NIS) in Niger. We also wish to thank the donor, the European Investment Bank, for generous support of this project.

# Acronyms

<b>NA</b>	National Assembly
<b>ANDDH</b>	Nigérien Association for the Defence of Human Rights
<b>ANDP</b>	Nigérien Alliance for Democracy and Progress
<b>ANLC</b>	Nigérien Anti-corruption Association, Transparency International Chapter
<b>CNN</b>	National Advisory Council
<b>CS</b>	Supreme Court
<b>CAB/PM</b>	Prime Minister / Cabinet
<b>CAGI</b>	General and Institutional Affairs Commission of the National Assembly
<b>CCAIN</b>	Niger Chamber of Commerce, Craft Industry and Industry
<b>CDS</b>	Democratic and Social Convention
<b>CENI</b>	National Independent Electoral Commission
<b>CSC</b>	Communication Higher Commission
<b>DGPN</b>	Directorate General of the National Police
<b>FNIS</b>	Intervention and Security National Forces
<b>FAN</b>	National Armed Forces
<b>FSEJ</b>	Faculty of Economics and Law Sciences
<b>FUSAD</b>	United Front for the Safeguarding of Democratic Gains
<b>GN</b>	National Gendarmerie
<b>LONANI</b>	Niger National Lottery
<b>M.J/GS</b>	Ministry of Justice
<b>MAE/C</b>	Ministry of Foreign Affairs and Cooperation
<b>MAT/DC</b>	Ministry of Country Planning and Community Development
<b>MDN</b>	Ministry of (National) Defence
<b>MEF</b>	Ministry of (Economy and) Finance
<b>MFP/T</b>	Ministry of (the Civil Service and) Employment
<b>MI/D</b>	Ministry of the Interior and Decentralization
<b>MNSD</b>	National Movement for a Development Society
<b>PJ</b>	Criminal Investigation Department
<b>PM</b>	Prime Ministry / Prime Minister Cabinet
<b>PNDS</b>	Democracy and Socialism Nigérien Party
<b>PRN</b>	Presidency of the Niger Republic
<b>SGG</b>	(Niger) Government (General) Secretariat
<b>SG-AG</b>	(Niger) Government (General) Deputy Secretariat
<b>NIS</b>	National Integrity Systems
<b>TI</b>	Transparency International
<b>UAMD</b>	Abdou Moumouni Dioffo University in Niamey, Niger

II

# ABOUT THE NIS ASSESSMENT

Numerous studies have shown that corruption hinders economic development. While present in all countries, corruption has been shown to be more deeply rooted in developing countries. It can take several different forms, the most visible one being that an appreciable volume of resources, allocated to improve the living conditions of populations, is diverted from their real objectives. These resources are used as “donations”, “gifts”, “grafts”, “baksheesh” or “traditional kola” in order to secure public or private procurements, to do someone a favour and so forth, all of which contribute to the general decline of institutions. Corruption is so widespread in underdeveloped countries, particularly African ones, that the International Monetary Fund (IMF) and the World Bank (International Bank for Reconstruction and Development / IBRD) recognize that prior to the introduction of any development policy, it is essential to set up structures to prevent the misappropriations of funds. Currently, before any international aid is granted, these institutions make it a compulsory condition that good governance criteria (freedom of expression, political accountability, political stability, the efficiency of the government, oversight mechanisms and respect of the rule of law and fight against corruption) are respected. Many poor countries’ sustainable development is therefore reliant on their determination of anti-corruption control. In order to combat this phenomenon, it is essential to know its roots and causes, as well as all the consequences it generates. This is the principal justification for undertaking National Integrity Systems (NIS) assessments in different countries.

#### About the National Integrity Systems (NIS)

The National Integrity System (NIS) assessment approach used in this report provides a framework to analyse the effectiveness of a country’s institutions in preventing and fighting corruption. The assessment has a strong consultative component involving the key anti-corruption actors in government, civil society, the business community and other relevant sectors with a view to building momentum, political will and civic demand for relevant reform initiatives.

The NIS concept has been developed and promoted by Transparency International as part of its holistic approach to countering corruption. A well-functioning NIS provides effective safeguards against corruption as part of the larger struggle against abuse of power, malfeasance, and misappropriation in all its forms. However, when these institutions are characterised by a lack of appropriate regulations and by unaccountable behaviour, corruption is likely to thrive with negative knock-on effects on the goals of equitable growth, sustainable development and social cohesion. Strengthening the NIS promotes

better governance across all aspects of society, and, ultimately, contributes to a more just society overall.

The Niger NIS country report offers an assessment of the principal institutions of governance responsible for enhancing integrity and combating corruption in Niger. These governance institutions are generally considered to be comprised of a minimum of 13 “pillars”:

<b>Legislature</b>	<b>Supreme Audit Institution</b>
Executive	Anti-corruption Agencies
Judiciary	Political Parties
Public Sector	Media
Law Enforcement Agencies	Civil Society
Electoral Management Body	Business
Ombudsman	

The assessment examines both the formal framework of each pillar, as well as the actual institutional practice, thereby highlighting discrepancies between the formal provisions and reality on the ground. Each pillar is assessed via a set of indicators which measure its following features:

<b>Capacity</b>	<b>Governance</b>	<b>Role within the governance system</b>
Resources	Transparency	Pillar-specific
Independence	Accountability	
	Integrity Mechanisms	

In order to take account of important contextual factors, the assessment of the governance institutions is embedded in a concise analysis of the overall political, social, economic and cultural conditions in which these governance institutions operate. In addition, the assessment is based on a holistic approach to preventing corruption, since it looks at the entire range of relevant institutions and also focuses on the relationships among them.

The research methodology uses qualitative information from legal documents, key informant interviews and secondary data sources collected by a lead researcher in-country and structured along the set of indicators for each pillar.

The NIS presupposes that a lack of integrity in a single institution could lead to serious flaws in the entire integrity system. As a consequence, the NIS assessment does not seek to offer an in-depth evaluation of each pillar, but rather puts an emphasis on covering all relevant pillars and at assessing their inter-linkages. Its results are geared towards providing constructive recommendations for strengthening the overall integrity of the governance system, and can also be used as a benchmarking tool to measure progress over time, to compare performance across institutions, and to identify best as well as bad practices.

The NIS assessment is led by a local civil society organisation which uses a consultative approach, involving the key anti-corruption agents in government, civil society, the business community and other relevant sectors in the assessment, validation and interpretation process. Thereby, the NIS approach seeks to combine the generation of valid evidence with effective engagement of a wide range of stakeholders with a view to building momentum, political will and civic demand for relevant governance reform initiatives.

The implementation of the NIS assessment in Niger involved a series of steps. In July 2009, ANLC hired Mr Idrissa Alichina Kourgeini, set up the advisory group representing government, academia, NGOs, business and media, tasked to advise on the main aspects of the project implementation and to review and comment on draft NIS report.

Beginning in August 2009, the authors of the NIS assessment collected data and information for each of the NIS indicators for all pillars. Data collection included desk research, key informant interviews and field tests aimed to ascertain how transparent and accessible the institutions are in practice.

It is important to note that all the work relating to this assessment of the Niger NIS was seriously disturbed by the socio-political situation of Niger, notably the controversial referendum the former President of the Republic, Tandja Mamadou organized on August 04, 2009, up to the February 18, 2010 military coup d'état. The coup d'état resulted in the dissolution of several institutions of the Republic and the creation of new ones, chiefly at the level of the executive, legislative, judiciary and the media. The different social, political and economic events that the

country went through from April 2009 to February 2010 negatively and considerably impacted the Niger NIS assessment. This situation of unrest is a particular feature of Niger which, since gaining its independence on August 3 1960, has been convulsed by numerous socio-political crises.

#### Specific objectives of the Niger NIS assessment

The specific objectives of this Niger NIS assessment are:

- To contribute to the creation of a baseline for future monitoring of the running of the principal institutions or pillars of Niger in charge of fighting corruption and constituting the National Integrity System (NIS)
- To contribute to an evaluation of each pillar and the interrelations between them, as well as contributing to the assessment of the constraints each pillar faces
- To contribute in the capacity building of the Nigérien Anti-Corruption Association (NACA) / [Association Nigérienne de Lutte contre la Corruption (ANLC)] members so as to better equip them for fulfilling their mission
- To have an up to date tool that can be used to develop actions and an advocacy plan that is relevant and effective in fighting corruption in Niger
- To contribute, at the end of the current transition that ends in the first quarter of 2011, to the creation of a large front in the fight against corruption in Niger. In fact, the principal organs of the current transition, chiefly the Supreme Council for the Restoration of Democracy (SCRD) / [Conseil Suprême pour la Restauration de la Democratie (CSRD)] and National Consultative Council (NCC)/ [Conseil Consultatif National (CCN)] have given themselves as principal missions to create an enabling environment for the restoration and consolidation of democracy as well as for a political and financial stabilization.

III

# EXECUTIVE SUMMARY

The main findings from the National Integrity Systems (NIS) Assessment of Niger highlight a specific characteristic of the country: it has been experiencing repetitive socio-political crises for more than three decades. Niger is one of the least advanced countries eligible to the Highly Indebted Poor Countries (HIPC) Initiative, with the world's highest infant and maternal death rates and lowest rate of education. From 1974 to 2010, it experienced four successful coups d'état, four politico-military-civil transitions and five republics.

The last military coup d'état took place on February 18, 2010, at the time the Niger NIS assessment team was finalizing the second version of the draft report. The report is based on the Constitution of August 9, 1999 that had governed the functioning of the Nigerien republican institutions for 10 years. The February coup d'état led to the dissolution of several of the republic institutions, which have now been replaced by others.

The analyses carried out in the final report consider, on the one hand the August 18, 2009 Constitution of the short-lived 6th Republic, and on the other hand the provisions issued by the transition ruling body.

At the end of the 2009-2010 Niger NIS assessment, it was clear that despite all the crises and upheavals facing the country, and the resultant permanent socio-political instability, Niger still has rich, and often clear, constitutional, institutional, legislative, regulatory and judiciary provisions. Although they could be improved, enriched and strengthened, the current constitutional, institutional, legislative and regulatory provisions very often specify the attributions and missions of the different pillars. Some have a large autonomy and even a relative legal and judiciary independence as regards the other powers. Theoretically, these provisions should enable the running of a sound National System of Integrity which promotes structures of good governance and a strong fight against corruption.

Unfortunately, the economic, political, social and cultural environment in Niger is highly unfavorable to good governance. Very low levels of general and civic education and high levels of poverty are particularly influential. Ignorance and lack of respect regarding the constitutional, institutional, legislative, regulatory and judicial texts by the main political and social actors, as well as by the citizens of Niger, also affect the potential of the governance structures in place. In Niger, there is no true public opinion; the majority of citizens, apart from the intellectuals and those from large urban centers, are not interested in the management of public matters. Public administration and private sector personnel in charge of supervising and assisting civilians, enterprises and other

development organizations are insufficient and inexperienced. Financial, material and technical resources mobilized to carry out the activities of the majority of the NIS pillars often fall short. The NIS study notably reveals the low level of financial resources made available to the pillars for implementing their missions, the weakness of material and technical resources and a shortage of competent and experienced human resources. As far as most pillars are concerned, there is no code of ethics or conduct in place. The independence and legal and judicial autonomy granted to the pillars by the existing texts are not respected. In addition it was discovered that some powers or institutions' intrude into the running of others.

These different factors help to explain the chronic institutional instability that Niger has been experiencing for many years. They also strongly influence the different pillars of the NIS.

The main and key outcomes derived from the Niger NIS assessment for each pillar are summarized below.

**The Legislature:** the Legislative power suffers from want of financial resources and insufficient transparency, as well as an excessive dependency on the Executive power. The August 18, 2009 Constitution provides that the Legislative power is exercised by two bodies: (1) the National Assembly (NA) / Parliament whose members are the Deputies / Members of Parliament (MPs). These MPs should be elected through free, direct, fair and secret universal franchise. (2) The Senate that has not been put in place. Its members are the senators, a third of whom are appointed by the President of the Republic.

The Parliament passes legislation, sees to taxes and exercises control over the Government's policies. MPs may decide to hold their proceedings behind closed doors, but they are under an obligation to report their acts and decisions back to the people. The Parliament is legally independent due to the separation of powers provided for by the Constitution, by means of its member's parliamentary immunity (granted by Article 73 of the Constitution) and some provisions of the Parliament Regulations (PR) (Articles 40, 41 and 42). But, despite its financial autonomy (Article 41 of the Parliament Regulations), the Parliament of Niger is limited in the drawing up of its budget, as well as in carrying out its missions because of the compulsory second reading of texts the President of the Republic or the Government may ask for, in accordance with the enabling legislation (Article 92 of the Constitution). The limitation is also due to the shortage of infrastructures and competent staff. In order to fight corruption, the Parliament adopted

several laws and ratified several international conventions between 2000 and 2009.

**The Executive:** With regard to the Executive, it is worth pointing out that the Constitution of the Niger 6<sup>th</sup> Republic establishes a presidential system of government. Hence, in accordance with the Constitution of August 18, 2009, the Executive power is held by the President of the Republic who is also the Head of State. The Government consists of the Prime Minister and the ministers. Any member of the Government is obliged to issue a statement of his / her net personal property (Article 43 of the Constitution). In principle the Executive power is independent from the other powers because of the separation of powers. But, in the normal course of things, the Nigerien Executive power depends strongly on the Technical and Financial Partners (TFPs) who are its principal donors and who can impose their choices in terms of economic and social policies on this Executive power. Some other social powers such as traders and other national economic actors who are the principal financial backers of the “big political parties” often influence the decision of the Executive power. The Government is accountable to the Legislative power for its actions; the Legislative power controls the Government’s policies. The President of the Republic is accountable for his deeds only in case of high treason as defined by the law.

**The Judiciary:** As far as the Judiciary is concerned, its organization and running are governed by organic laws. The Judiciary exercises controls in constitutional related matters (Article 112 of the Constitution) and administrative related matters (Article 100 of the Constitution). Yet, in practice a set of relationships come into play in this domain, essentially because of social and family pressures from members of the Judiciary within the process of their decision-making. There are also interferences from the Executive, especially to influence the activities of the Judiciary. The study has also revealed that the appointments of magistrates are biased.

**The Civil Service:** The Civil Service (CS) constitutes the tool that manages public affairs. The CS is made up of all departments and staff responsible for this. This institution is governed by the 2007 – 26 law dated July 13, 2007 relating to the General Statute of the State Public Administration. This law clearly defines the rules for managing human resources and each different organ and their respective missions. Civil servants are under an obligation to implement the tasks assigned to them. The Nigerien administration however suffers from a lack of sufficient financial, material, technical and human resources to take on its role. Worse still, in spite of the efforts made by the State to increase salaries of civil servants, it was found that many civil servants often do

not fulfill their work honestly and efficiently, often expecting a graft to provide a service for which they are already paid for by the State<sup>1</sup>. Nonetheless, in the General Statute of the State Service—a kind of code of conduct and ethics for every state employee—Article 23 attempts to regulate the behavior of state employees in order to fight corruption and address similar offences. In principle, citizens should have free access to information within the public administration. This should be transparent as far as its financial and human management is concerned. In practice however, the population faces huge difficulties in terms of access to information held by state services. The excessive politicization of state management does not enable the Nigerian administration to effectively carry out its fight against corruption.

**Law Enforcement Agencies:** The institutions and authorities in charge of ensuring respect for the law must identify the breaches of criminal law, gather evidence and look for the offenders. Nevertheless, in practice, senior staff in the hierarchy may give instructions, that are not always legal, to the agents in these institutions and authorities who in most cases are “obliged” to respect them. This study unveiled the personnel’s strong dependency regarding the hierarchy. These institutions and authorities do not have sufficient financial, human, material or technical resources to enable them to fulfill their missions of assuring law and order. In particular, there is a worrying shortage in the areas of training and supervision. In principle, the institutions and authorities in charge of ensuring the respect of laws must give their hierarchy an account of their actions. These institutions and authorities must prove transparent management relating to their activities. Unfortunately this does not happen in practice. For example, their actions in fighting corruption are unknown to citizens.

**The Independent National Electoral Commission:** The Independent National Electoral Commission (INEC) is the body in charge of the organization, conduct and supervision of the voting process in Niger. INEC also proclaims the voting results. Article 9 of the Electoral Code establishes its legal and judicial independence, and its powers. As a result of the shortage of the financial, material, technical and human resources it is provided with, INEC faces huge difficulties in fulfilling its mission. In practice, INEC does not have a total independence, with interferences from the Executive power and other people or organizations which often hinder its smooth running and its autonomy. In addition, political parties often give their representatives instructions that may not abide by the electoral law. This study also unveiled that INEC’s mission texts are not adequately precise, particularly as far as the monitoring and the resolution of electoral litigations are concerned.

**Government Accounting Office:** The Government Accounting Office (GAC) is the supreme jurisdiction for controlling public finances. It is governed by Article 18 of the Constitution. It is legally and judicially independent from the Executive power (Article 99), as well as from the other powers. For the time being, the competences of the GAC are carried out by the Accounting Chamber (AC) of the Supreme Court. The AC is made up of 16 sworn members. The study revealed that the Accounting and Budgetary Discipline Chamber of the Supreme Court is independent from the other power as far as its work is concerned. It also does not let itself be influenced by any other institution or allow its conduct be dictated by any other institution. Nevertheless, the Supreme Court's Accounting and Budgetary Discipline Chamber experiences difficulties in carrying out its mission due to the shortage of financial, material, technical and human means at its disposal.

**Political parties:** The creation, organization and running of the political parties are governed by the Ordinance N° 99-59 of December 20, 1999 relating to the Charter of Political Parties. In Niger, there are currently some 50 political parties that are legally and judicially recognized. Yet, most of them do not have enough financial resources of their own. Many of them depend on national or foreign donors who may impose some "compensation" on parties in exchange for the support they provide. Most of the Nigerien political parties are considered "small parties" that do not have premises or programs, and do not respect their own statutes and regulations if in place. The militants of Nigerien political parties lack civic and political culture and often do not have the necessary means to pay their compulsory membership fees. The majority of Nigerien political parties are managed in a patrimonial and non-transparent way.

**The media:** The media constitutes an essential pillar for promoting democracy. They are governed by the provisions of the Ordinance N° 097-67 of December 20, 1999. In Niger, the media are regulated by the Communication Higher Council / Conseil Supérieur de la Communication (CSC). Their duty is to inform the Nigerien population with respect to their Code of Deontology and Ethics. However, they face several weaknesses reflecting a lack of financial, material, technical and human resources. The management of most media is not transparent. The different media do not have real investigative journalists. There is no enabling economic and judiciary environment for the activities of the media to boom. This is due to the weakness of the advertising market, the high levels of illiteracy in the population, the low professionalism of the majority of the journalists, the existence of restrictive provisions such as the press offence, and the fact that the public media are strongly subordinate to the Executive power, who have total

stranglehold on them. In spite of all these weaknesses, some Nigerien media are active in the fight against corruption by revealing bad governance and corruption cases. Nevertheless, it is worth emphasizing that the evidence the newspapers provide is not always sufficient or convincing.

**Civil society:** The Constitution of August 18, 2009 provides that “Civil society is made up with associations, trade unions and other non-governmental organizations (NGOs) that work independently from the public administration”. These associations, trade unions and NGOs are created in view of defending citizens’ rights and interests in general, and in particular those of their militants and members. Nigerien civil society lacks sufficient financial, material, technical and human resources needed for it to play its real role. The majority of its leaders and members also do not have civic and democratic culture. Their knowledge of their genuine role is also rather limited. Further adding to the above is the fact that the culture of voluntary work and charitable donations is not well developed in Niger. Most of the civil society organizations are not managed in a transparent way. Nevertheless, civil society is quite active in its attempts to exercise control of the activities of the Executive power and fight against corruption, even if these actions are not generally successful due to the unwillingness of the Government.

**Business:** The Nigerien Constitution of August 18, 2009 provides the freedom to create an enterprise for anyone who meets the national legislative and regulatory conditions. Nigerien modern enterprises can operate normally and in total independence in accordance with the legal provisions, but face interferences and harassment from some political and administration staff. The study reveals the level of red tape that the entrepreneurs have to deal with. It also highlighted the inefficiencies of the judiciary system and abuses from tribunals that many heads of modern enterprises found unfair, biased and corrupt. The NIS study also stresses the discrepancies between regulation and the numerous problems related to a tax policy that is relatively heavy and not well enforced. Largely, there is a lack of transparency within the management of private enterprises in Niger. They do not inform the public about their activities. The notion of “good governance” is not at all spread throughout the enterprise world in Niger. There are no whistle blowing systems for denouncing corruption cases. Nor is there a deontology and ethics code at the level of modern enterprises that undergo (illegal) strong competition from the informal sector, beyond any control by the State.

Summary of weaknesses within the NIS in Niger and recommendations

The main weaknesses observed during the NIS assessment in Niger, are briefly summarized in the following chart, and should be seen in the broader context as described above.

- Lack of financial resources
- Lack of infrastructure, material and technical resources (locations, offices, computers, vehicles, documentation)
- Lack of qualified and sufficient human resources
- Poor organization of services
- Dependence on the Executive power and other stakeholders external to the pillars
- Poor communication mechanisms between those in charge of the management and citizens
- Lack of a code of ethics
- Misunderstanding and lack of respect of institutional, legislative and judicial regulations
- Poor transparency in the management

In addition to the general and common constraints and difficulties, each pillar has its own specific weaknesses which are displayed in the table below:

Main weaknesses specific to the different NIS Pillars in Niger	
The Legislative Power	<ul style="list-style-type: none"> <li>Lack of resources and security infrastructures</li> <li>Dependence on the Executive power due to the enabling laws and second reading</li> <li>Poor academic standing of the MPs</li> <li>Poor dissemination of the proceedings of the National Assembly</li> <li>Poor coverage of the National Assembly radio station</li> </ul>
The Executive Power	<ul style="list-style-type: none"> <li>Lack of respect of the criteria in recruiting people to high government posts</li> <li>Dependence on local money providers (businessmen) and Financial and Technical Partners (PTFs)</li> <li>Insufficient monitoring of property declaration of government officials subjected to this obligation</li> <li>Lack of education and little citizen interest in the management of public affairs</li> <li>Denouncers of corruption deeds are not protected</li> <li>Lack of qualified and experienced personnel specialized in the fight against corruption</li> </ul>

The Judiciary Power	Bias in the appointments of the magistrates Lack of clarity of certain procedures and in the role of the Judiciary power Insufficient judiciary control of the actions of the Executive power Collusion of the Executive power and other stakeholders to influence the work of the Judiciary power
Public Service	Insufficient supervision of new civil servants Low and unmotivating pay situation Discrimination in the recruitment of public servants Institutional instability, weakening career plan of the public servants Poor accessibility by citizens to information detained by the Government
Institutions in Charge of enforcing the respect of the laws	Insufficient training and supervision Discrimination in the recruitment of those in charge of ensuring the respect of the legal system Strong dependence of the personnel in the hierarchy Lack of financial, human, material and technical resources
Independent National Electoral Commission (INEC / CENI)	Lack of clear texts relating to the role of the INEC/CENI, namely concerning electoral disputes Political interferences in the work of the INEC/CENI Insufficient training of the essential people involved in the electoral process
Government Accounting Office	Insufficient refresher courses, training and specialization of the magistrates Lack of financial, human, material and technical resources
Political Organizations	Dependence on national and foreign donors Insufficient civic education and training of militants and populations about public affairs Poor training and sensitization of militants and political leaders about the management of state affairs and political organizations
	Lack of an entrepreneurial management of press

<p>The Media</p>	<p>organizations                      Weak advertisement market                      Lack of competent and experienced personnel                      Constraints and obstacles within the legal and institutional environment (existence of violation of the press laws / coercive press regulation)                      Weakness in investigative journalism                      Public media employees are strongly dependent on their hierarchy and insufficient plurality of opinions in the public media                      Lack of a collective agreement for the press agents in the private sector</p>
<p>Civil Society</p>	<p>Poor tradition of voluntary work and donation culture                      NGOs and associations are dependent on foreign donors                      NGOs and associations activities hindrance relating to the judiciary, institutional, legal, legislative and regulation environment                      Lack of harmonization of the texts governing the actions of NGOs and associations                      Lack of dialogue, collaboration and consultation with the public authorities                      Insufficiency and/or ignorance of the mission and the true role of the civil society                      Insufficient training of the ruling management</p>
<p>Enterprises</p>	<p>Incoherence and non-application of existing regulations                      Poor efficiency of the legal system                      Heavy and ill-applied tax system                      Too much bureaucracy                      Problems related to access to credit                      Illegal competition of the informal sector                      Recurrent intervention of the public service                      Non-transparent management of enterprises                      Cumbersome administrative procedures and administrative red tape                      Lack of arbitration department at the Chamber of Commerce                      Interventionism of the administration in the public and semi-public enterprises</p>

Recommendations

The key recommendations, aimed at strengthening good governance and the fight against corruption within the different pillars of the NIS in Niger, are essentially devised as follow:

For NACC / ANLC:

Advocacy actions are to be conducted with the administrative and political authorities and main development partners in order to reinforce the different pillars in terms of financial, material, technical and human resources, both quantitatively and qualitatively;

Information, sensitization and advocacy actions are to be introduced to make all the members of the different powers and pillars aware of the usefulness and necessity of a war against corruption and to promote good governance to improve the living conditions of the populations;

Watch-focal points at the level of the principal pillars are to be created in order to denounce all observed acts of corruption;

A partnership between the principal NGOs and associations in Niger is to be created to set up a “National Anti-corruption Front in Niger”.

For the political authorities:

The development and implementation of a capacity building plan should be worked on to address good governance and the fight against corruption for the agents in charge of running the different pillars;

To contribute to the consolidation of NIS-Niger, to the improvement in the function of the different pillars, measures should be taken by all these concerned in the advent of good governance and the fight against corruption. These include political and administrative authorities, the many associations and organizations involved in the fight against corruption, the populations themselves as well as the main development partners of Niger. The salient recommendations as regard each individual pillar are summarized next.

Key recommendations specific to the different Pillars of the NIS-Niger	
The Legislative Power	The institution of “Open House Days or Weeks on the National Assembly” during all ordinary sessions of the National Assembly Advocacy for capacity building of the MPs related to the fight against corruption and the

	<p>promotion of integrity</p> <p>Advocacy for the coverage of the Parliamentary debates by the public media</p> <p>Establish strategic alliances between the National Assembly and civil society</p>
The Executive Power	<p>Elaboration and simplification of legal texts and regulations instituting a test for accessing senior posts in the civil service</p> <p>Increasing the salary of civil servants</p> <p>Creation of a civil society watchdog body to oversee the respect of legislative texts</p> <p>Training in results-based governance</p> <p>Training in the national and international legal instruments concerning the fight against corruption</p> <p>Training in government procurement procedures</p>
The Judiciary Power	<p>Advocacy for equipping tribunals with modern management and moving materials</p> <p>Advocacy for the improvement of legal texts and judicial framework</p>
Public Administration/Civil Service	<p>Elaboration and simplification of legal texts and regulations instituting a test for accessing senior posts in the civil service</p> <p>Increasing the salary of civil servants</p> <p>Creation of a civil society watchdog body to oversee the respect of legislative texts</p> <p>Training in results-based governance</p> <p>Training in the national and international legal instruments</p>

	<p>concerning the fight against corruption</p> <p>Training in government procurement procedures</p> <p>Advocacy for the stability of institutions</p> <p>Informing and educating civil servants and citizens in the areas of legal and regulatory provisions</p>
Institutions in Charge of enforcing laws	<p>Increasing the pay of those in charge of enforcing the laws</p> <p>Advocacy for ensuring necessary resources to guarantee the good running of institutions</p>
Independent National Electoral Commission	<p>Elaboration of legal and regulations provisions to strengthen the mission of the INEC/CENI, namely in dealing with the settlement and monitoring of electoral disputes</p> <p>Monitoring and systematic evaluation by the NAA/ANLC of elections and elaboration of detailed reports on the role of agents as regards corruption practices</p> <p>Capacity building of INEC/CENI personnel regarding management and fighting corruption skills</p>
Court of Auditors	<p>Capacity building of personnel Supplying the Government Accounting Office with sufficient and competent personnel</p>
Political Parties	<p>Elaboration of an information and sensitization brochure destined to the political parties leaders, their militants and other citizens about institutional, legal information concerning associations,</p>

	<p>political parties and civic education</p> <p>Advocacy for appropriate funding of political parties</p> <p>Training of political parties in associative governance</p> <p>Training of political parties in the anti-corruption fight and its related legal instruments</p>
The Media	<p>Adoption of a collective agreement for media personnel</p> <p>Elaboration and dissemination of legislative texts and regulations instituting tests for acceding to executive positions in public media editorships, and for strengthening the mission and role of the Communication Higher Council (CHC/CSC)</p> <p>Development and implementation of a plan for journalists capacity building in management, good governance, the fight against corruption and investigative journalism</p> <p>Devise and establish a system of evaluation of public media executives</p>
Civil Society	<p>Training in associative governance</p> <p>Training in the legal and regulatory framework relating to the struggle against corruption</p>
Business	<p>Instituting “Open House Events on the Enterprise and the Citizens, and the Enterprise and the Administration”</p> <p>Training in methods of good governance</p> <p>Training relating to the fight against corruption and similar</p>

	<p>violation of the laws</p> <p>Dissemination of all texts related to the business environment</p> <p>Simplifying the procedures for accessing the enterprises departments</p> <p>Creation of an arbitration department</p> <p>Taking incentives towards the formalization of enterprises</p>
--	---

The implementation of these recommendations should help to strengthen and improve the current governance system in Niger. It will require awareness, mobilization and commitment of numerous institutions, organizations and persons at the national level, as well as at the sub-regional, regional and international level to help, accompany and assist Niger in the difficult job that is necessary to improve both governance and the fight against corruption. This could be one of the answers to the endemic socio-political instability that Niger has been experiencing for many years. The improvement of peoples' living conditions, the fight against poverty and the improvements in the level of education will obviously help to bring about stability in the country. Civil society could serve as the leading force in this struggle by devising and implementing a large-scale information, sensitization and advocacy action plan to promote good governance and fight against corruption in Niger.

# IV COUNTRY PROFILE

The Republic of Niger is a former French colony which has been independent since August 3, 1960. With an area of 1, 267, 000 square kilometers, Niger is one of the largest countries in Africa, along with the Democratic Republic of Congo (DRC), Sudan, Chad, Mali, and Algeria. Located 700 km north of the Gulf of Guinea and 1200km south of the Mediterranean, Niger is a completely landlocked country. It is bordered by Algeria and Libya to the north, Chad in the east, Nigeria and Benin to the south, Burkina Faso in the west and Mali in the northwest.

The country is divided administratively into 8 regions and 36 departments. The country has also some 266 communes, of which 52 are urban and 214 are rural.

Since its independence in 1960, Niger has gone through constant socio-political turmoil which led to the organization of a National Sovereign Conference (NSC) from July to November 1991. The NSC was regarded as a civilian coup. The country has also experienced three military coups: in April 1974, January 1996, and April 1999, and a civilian coup in August 2009. The consequences of these situations are: a political military transition from 1974 to 1991, a civilian political transition from November 1991 to March 1993, a military-civilian political transition from April to December 1999 and denial of political shift in December 2009. The country was under a one-party regime from 1960 to 1974, under an exception military regime from 1974 to 1989, and again, under a civilian-military one-party regime from 1989 to 1991.

Since 1993 the country has been experiencing a socio-political life of a complete, open and associative multi-party system, except from the periods of transitions regimes, that of the National Sovereign Conference from 1991 to 1993, and the civilian-military regimes of January 1996, April 1999 and February 2010. The different public and personal liberties, the right of association and freedom of thought are more or less respected, even if not satisfactorily. In effect, political parties often find it difficult to function normally, mainly when they happen to be the opposition, as they have limited access to public media and are often forbidden to access public places for events. The leaders of non-government organizations labelled as "hostile" to the ruling party are persecuted, mainly those from the private media or victims of harassment and imprisonment for voicing their views.

There are currently more than fifty political parties in Niger that are officially recorded, and about a thousand non-government associations and organizations, but only less than ten are truly active in defending human rights, promoting good governance promotion and fighting corruption.

The country has experienced six Republics:

the first from December 18, 1958 to April 1974 (Articles 75 and 76 from the Constitution November 8, 1960),  
 the second from December 1989 to September 1991 (Articles 110 and 111 of the September 24, 1989 Constitution),  
 the third from January 22, 1993 to January 1996 (Article 128 of the Constitution),  
 the fourth, from July 1996 to April 1999 (Article 129 of the Constitution),  
 the fifth, from August 1999 to August 2009, and  
 the sixth, from August 2009 to February 2010 (Article 160 of the Constitution).

Since February, Niger has been under an exception regime with a new military political transition whose different structures, the Supreme Council for the Restoration of Democracy (CRSD), the National Consultative Council (CCN), the Constitutional Council (CC), National Communication Observatory (ONC), the State Court, the Budget Court, and the transition cabinet are put in place.

Niger is ranked among the Less Developed Countries (LdC/PMA) and is eligible to the program "Heavily Indebted Poor Countries". According to the 2007-2008 National Survey on Budget and Households Consumption (ENBC III), the level of poverty among the Nigerien population was 59.5%.<sup>1</sup> In terms of the Human Development Index (HDI), with a score of 0.340 published on October 2009 in the world report on human development 2009 (RMDH), Niger was ranked last.

The population growth of Niger is very high, with an average growth of 3.3% a year.<sup>2</sup> Its economy is largely rural, and is run by the majority of the estimated 14 million people (third and last General Population and Habitat Census of 2001). According to the data of the 2006 Population and Health Survey with Multiple Indicators (EDSN MICS III), the gross education rate of Niger is 36.9% while the literacy rate is 16.1%. It is important to note that Niger has one of the highest infant mortality rates in the world (81%).<sup>3</sup>

Niger's population is composed of nine large ethno-linguistic groups: Hausas, Djerma- Sonrais, Tuaregs, Arabs, Peuls, Kanuris, Tubus, Gurmantchés, and Budumas. In addition to French which is the official

<sup>1</sup> National Institute for Statistics (INS), « Tendances, profil et déterminants de la pauvreté au Niger 2005-2009 », March 2008, Niamey

<sup>2</sup> Report EDSN MICS III 2006, INS, Macro International INC, Feb 2007, page 3

<sup>3</sup> « Enquête Démographique et de Santé et à Indicateurs Multiples 2006 », National Institute for Statistics (INS), Niamey Niger, Macro international INC. USA, Feb 2007

language, Hausa and Djerma- Sonrai are the two most widely-spoken languages; 70% of the population speaks one of the two. The population of Niger, who live peacefully, shares a common rich and fairly varied cultural heritage that is much appreciated by people abroad. There is a deep interconnection between the different ethno-linguistic groups, illustrated by historically observed frequent inter-ethnic marriages. Conflicts are often linked to land ownership and occupation between pastoralists and farmers, in other words, the conflicts observed have to do with economic difficulties, land management and survival reasons.

# V CORRUPTION PROFILE

There is little literature that specifically deals with corruption in Niger. The body of research about corruption is essentially made of dissertations from law students (07 dissertations), a communication presented by Abdou Hassane and Wassalke Boukary (1999), a study conducted by Dan Dah Mahamane Laouali (2000) under the sponsorship of the Canadian Mission in Niger and three major pieces of research carried out by Tidjani Mahamane Alou (2002) and Ismael Yenikoye (2007) for the Niger Association Against Corruption (ANLC), the Transparency International Chapter in Niger and the International Center for the Study and Research on African Population (C.I.E.R.P.A), sponsored by the American Embassy in Niger (2008).

The study conducted by Tidjani<sup>4</sup> pointed out that corruption exists in customs, justice systems, law and order officers (rangers, gendarmerie and police) and health agents. Results of the study show that the mechanisms and magnitude of corruption in Niger vary from one sector to another.

As for the study conducted by Yenikoye in 2006<sup>5</sup>, it points out that the fight against corruption is a difficult struggle due to the complexity of the phenomenon. The analysis of different forms of corruption in various areas shows a variety of practices across different sectors. The key findings of this study show that “all the sectors of public and private life are, at varying degree, affected by corruption. For example, 15.2% of surveyed household leaders have declared having been corruptors, while 20% and 30% confessed having been corrupted”.

According to the key results of the survey sponsored by the U.S. Embassy in Niger in September 2008<sup>6</sup>, the vast majority of the Nigerien population surveyed saw or perceived corruption as a “practice that consists in giving a person or an institution financial or material means in order to get a service (including a free of charge service)”. Most of the surveyed population linked corruption with cupidity or the search for easy gains, and poverty. The main negative consequences of corruption in Niger were that “it slows down the country’s development, decreases productivity and the production of wealth, creates unequal opportunities among citizens and tarnishes the country’s image”. Customs, the police and the justice system are regarded by the majority

---

<sup>4</sup>M. Tidjani Alou, « La petite corruption au Niger », 55 pages, LASDEL, Niamey, Janvier 2002

<sup>5</sup>M. Aboubacar Yénikoye Ismaël, « État de la Corruption au Niger », 281 pages, Niamey, Août 2006.

<sup>6</sup>Embassy of the United States of America in Niamey « Enquête au niveau des populations des principaux centres urbains des régions d'Agadez, de Diffa, de Dosso, de Maradi, de Tahoua, de Tillabéri, de Zinder et de Niamey pour l'Évaluation des perceptions de la corruption et de la campagne d'information et de sensibilisation sur la corruption », 82 pages, Niamey, Niger 2008.

of the population as the most corrupt sectors in Niger. Finally, about 8,5% to 18,9% of the surveyed populations said “to have solicited” or “to have been solicited” for a baksheesh.

VI  
**ANTI-CORRUPTION  
ACTIVITIES**

There is a unanimous agreement that corruption is an evil common to all of humanity. This agreement has led to the setting up of international shared legal instruments to fight corruption, as well as regulations specific to each country in order to prevent the phenomenon.

International instruments against corruption ratified by Niger

Niger has signed many international agreements and conventions against corruption, inter alia,

The Convention against Transnational Organized Criminality adopted on November 15, 2000 and that came into force on September 29, 2003

This text requires concerned governments to take measures necessary to promote the integrity of civil servants and prevent their corruption practices. At the national and transnational level, the text also makes provisions for the fight against impunity and an extreme repression of corruption (by means of criminalizing the misdemeanour) and money laundering. The struggle could not yield positive results without international cooperation allowing investigations, repression and extradition of the offenders.

The Fight Against Corruption Convention adopted on October 31, 2003 and that came into effect on December 14, 2005

This convention is the most recent one. Like the first instrument, it provides preventive measures and criminalizes the most common forms of corruption, both in the private and public sector. The preventive measures are the most extensive and detailed, including the prevention of corruption in all sectors, ethics on the part of public servants, transparency within public procurement processes, orthodox management of public funds, control of monetary flows and public access to information. Repressive measures aim to make crimes of corruption an offence (such as influence peddling, unlawful enrichment, corruption, misappropriation of public funds, etc.).

This convention breaks new ground in requiring the signing parties to return the property generated by corruption to the victimized countries. This measure is very interesting for countries whose resources are stolen by the ruling class with foreign complicity. Along the same lines, the African Union (A.U.) adopted a convention on July 11, 2003 on the prevention and fight against corruption which came into force on August 5, 2006. This convention contains mandatory provisions regarding corruption between individuals, transparency in the funding of political

parties, obligation to declare property by public servants, restrictions on the immunity granted to public servants and access to information sources by the media. Thus, in addition to the prescribed measures (access to information, enacting of a code of conduct, protection of informers, capacity building of independent national authorities engaged in the fight against corruption), the convention advocates for the criminalization of corruption practices. Moreover, the convention urges to ameliorate international cooperation and establishes a monitoring mechanism (creation of a consultative committee of 11 members elected by the African Union Executive Council in charge of promoting the fight against corruption, information collection and ethical code of conduct to be respected by multi-national companies). There is also a provision for the strengthening of national control measures by the signing states regarding multi-national businesses setting up conditions on their territories, to eradicate disloyal competition in the private sector and hidden “commissions” and to freeze ill-gotten wealth transferred abroad, etc.

#### The Economic Community of West Africa States (ECOWAS) Protocol on the Fight Against Corruption

As far as a protocol on the fight against corruption is concerned, ECOWAS acted before the African Union. ECOWAS adopted a protocol on December 21, 2001. This protocol is awaiting ratification. As soon as the 9<sup>th</sup> state ratifies it, it will come into effect. The ECOWAS protocol aims to strengthen efficient mechanisms to prevent, sanction and eradicate corruption in each country along with a recommendation for mutual cooperation. Unlike the African Union convention, the protocol provides for preventive measures such as the criminalization of infractions, international cooperation and a monitoring technical committee.

In addition to these regional and international conventions, Niger has its own national instruments.

#### Niger’s legal provisions regarding the fight against corruption

The legal provisions concern both prevention and repression mechanisms.

#### The Constitution of August 18, 2009, the Basic Law of Niger

The Niger Constitution of August 18, 2009 subjects the taking-up of certain posts or offices to a formality of taking an oath which can either be non-religious or denominational. This formality is mandatory for the

President of the Republic, the Prime Minister, the magistrates, the members of the Communication Higher Council (CSC) and the members of the Public Procurement Regulation Agency (ARMP).

The Constitution has also made it mandatory for certain categories of public servants, the President of the Republic, the Presidents of the State Institutions, the Cabinet Members and chiefly the Magistrates to declare their property before taking up their posts or offices, and when leaving the posts or offices (Articles 43 and 63 of the Constitution and Law N° 2002-03 of February 8, 2002). Transparency in the funding of political parties is also provided for in the Constitution. Besides the ruling class, Article 34 of the same Constitution makes it an obligation for citizens to respect and protect the public good, and encourages them to fight against corruption, embezzlement, squandering of the public good and unlawful enrichment.

The longing for good governance requires rigorous management and control of public funds, transparency and equality for all in public procurements and the struggle against money laundering. The Government Chamber of Account and Budgetary Discipline of the Supreme Court audit the state budget (the work of public accountants, different government services and administratively run public services).

On the administrative plan, the General Inspection of Finances and the State General Inspection plays the same role. A Public Procurements Regulation Agency ensures, from the onset, transparency, free competition and equality of all bidders for public procurements.

Finally, a National Unit for the Processing of Financial Information, located at the Ministry of Finance (CENTIF), supervises financial and monetary flows so as to avoid money laundering and the funding of organized crime (Law N° 2004-041 of June 8, 2004, Decree No 2004-262 of September 14, 2004). There is also a plan for the creation of a Higher Authority for Anti-corruption Fight.

However, the best prevention measure is the certainty that offenders will undergo penal sanction when they violate a norm. As a matter of fact, corruption infractions must be severely punished whether as plain corruption practice or as crime.

#### Corruption related general provisions in the Niger Penal Code

Article 130 of the Penal Code first defines corruption, then stipulates that a corruption case is punishable by a sentence ranging from one year to at least 10 years in prison, and from 10,000 CFA Francs to one

million CFA Francs (i.e. 20 to 2,000 U.S. Dollars), and possibly includes the loss of civic rights. Types of crimes committed by civil servants and elected leaders include soliciting, accepting or receiving offers, promises or gifts in return for rendering a service or abstaining from accomplishing any act, obtaining favours or any particular advantages. Corruption is said to be active when it is seen from the angle of the corruptor and passive when it is analyzed from the angle of a corrupt person. A civil servant will be more severely punished than an ordinary civilian. Another serious offence is considered a crime and has some similarities with another one defined in Article 166 of the Election Code. It relates to the use of money to influence the votes of electors. This offence is punished by one to five years imprisonment, and a fine of 50,000 to 500,000 CFA Francs (i.e. 100 to 1,000 U.S. Dollars). There are other forms of corruption related offences in the Niger Penal Code, namely the misappropriation of public funds, influence peddling and embezzlement of public money, unlawful enrichment and favouritism.

**Misappropriation of public funds:** It is punishable by Articles 124 and 128 of the Penal Code. It is the behaviour of a person, being a representative of authority or in the exercise of a public service mission who receives, demands or orders to receive as rights or contributions and taxes, an amount of money (that the person knows is not due in the first place or an amount that is higher than what is due) or who grants exemption of these rights contrary to the law. This person, either a civil servant or employees of similar status, is sentenced six to ten months imprisonment plus 50,000 to 100,000 CFA Francs, equivalent to 100 to 200 U.S. Dollars. The beneficiaries are punished as accomplices.

**Influence peddling:** It is provided for in and punishable by Article 131 of the Penal Code and offenders are sentenced to one to five years imprisonment, and a fine of 50,000 to 1,000,000 CFA Francs. Influence peddling is soliciting or accepting offers, donations or promises to take advantage of a supposed real influence, in order to gain authority or obtain distinctions, win tenders or any favourable decisions. An aggravating circumstance is added up when it is a civil servant or an elected official who is found guilty.

**Embezzlement of public money:** If the embezzled amount is below 2,000,000 CFA Francs (4,000 U.S. Dollars), the infraction is an offence. Above the mentioned amount, it becomes a crime and is punishable by 10 years of imprisonment up to a death penalty (Articles 1 and 30 of the September 12, 1985, Ordinance N° 85-26 modified by Ordinances Nos. 88-34 of June 9, 1988, and No 92-003 of February 21, 1992). Embezzlement is the withdrawal or squandering by any person, to the

prejudice of the State, local authorities, or similar organisations, of goods entrusted to any person only in the form of rental or to be held in trust, all subject to be returned or represented or to be used or employed in a pre-defined way.

**Unlawful enrichment:** In light of the Ordinance 92-024 of June 28, 1992, an unlawful enrichment is constituted as soon as a person's living standard cannot be justified by his/her legal incomes. The guilty person may serve three to at least 10 years in prison, and pay a fine equivalent to at least the amount embezzled and a maximum of double the embezzled amount, or only one of the two penalties.

**Favouritism:** It results from an amendment to the law 2003-25 of June 13, 2003. The culprit is punished, with no chance appeal, with two to at least 10 years in prison, and fined 100,000 to 10 million CFA Francs (2,000 to 200,000 US Dollars. Favouritism is the act of giving another person an undue advantage through an illegal action undertaken by a person vested with a public authority. The culprit, accomplice and beneficiary will receive the same sentence. This generally includes restricting candidates' free access to public media and unequal treatment of other citizens regarding public procurements and delegating authority (Article 134 -1 of the Penal Code).

VII  
NATIONAL INTEGRITY  
SYSTEM

# 1. LEGISLATURE

According to the August 18, 2009 Constitution, the legislative power is composed of a National Assembly and a Senate. However, in the course of this study, only the National Assembly, resulting from the much contested October 2009 elections was in place. After the coup, the National Assembly was dissolved, putting an end to the Sixth Republic. It has been replaced by a National Consultative Council (NCC) whose members, following proposals from their respective organizations, were appointed by the President of the Supreme Council for the Restoration of Democracy (CSRD) acting as head of state since the coup. The mandate of the members of the NCC will come to an end on March 1, 2011 coinciding with the end of the transition.

**Key informants:** Mr. Boubacar Sabo, Counselor and member of the General and Institutional Affairs Commission (CAGI) at the National Assembly;

Professor Tidjani Mahamane Alou, Dean of the Faculty of Economics and Law (FSEJ) of the Abdou Moumouni Dioffo University of Niamey (UAMD)

Structure and organization of the National Assembly

The August 18, 2009 Constitution of the Republic of Niger makes provision for a bi-polar Parliament: A National Assembly whose members are called Representatives / Deputies / Members of Parliament, and who are elected through a direct, universal, free, equal and secret vote; and the Senate whose members are called Senators (Articles 68 and 69 of the Constitution).

The Parliament passes the laws and determines the tax system (Article 78 of the Constitution);

The Parliament controls the Government's policies by means of interpellations, written and oral questions, and control and investigation committees.

Though the Constitution has determined a Parliament with two Chambers, it is goes without saying that for some time yet, it is the National Assembly that will fulfil all the responsibilities as it is the only Chamber that is presently in place. In effect, in its Article 155, Item 2, the Constitution states: "*until the Senate is put into place, the National Assembly will exercise the missions devoted to the Parliament relatively to the legislative aspect as specified in Articles 51, 83, 88, 92 to 98 of the Constitution*".

According to Articles 12, 13, 19, 24 and 29 of the rules and regulations of the November 19, 2009 National Assembly (NA), "the National Assembly is led by a Bureau composed of a President, four vice

presidents, four elected secretaries from the representatives, and two reporters. The NA is composed of seven Permanent General Commissions. The National Assembly of Niger has several technical and administrative services headed by a General Secretary under the authority of the President of the National Assembly. The representatives can come together on the basis of political partnership of their choice to set up Parliamentary Groups which are presently four.

The National Assembly holds two ordinary sessions every year: the first ordinary session starts the first week of March, and the session cannot exceed 3 months; a second session called the budgetary session which lasts a maximum of 2 months, from October to November (Article 79 of the Constitution, and Article 5 of the rules and regulations of the National Assembly of November 19, 2009).

The National Assembly can also hold extraordinary sessions if required to discuss a determined agenda on the request of the President of the Republic or by the absolute majority of its members” (Article 6 of the rules and regulations of the National Assembly of November 19, 2009).

During the two legislatures of the Fifth Republic, the National Assembly held an average of two extraordinary sessions per year.

#### Assessment

#### Capacity

Capacity: Resources: (legal framework)

Does the Constitution or the existing legislative and regulatory provisions guarantee the necessary resources for the Parliament to fully play its role?

We can say that the current Niger legal framework ensures, at least mainly, the necessary resources for the National Assembly to function efficiently. In light of the provisions of Article 4 in the rules and regulations of the National Assembly, the institution enjoys financial autonomy and has enough funds to function effectively. These funds are proposed by the Bureau of the Assembly after the go ahead from the Finance and Budget Commission. The budget proposal is transmitted to the Ministry of Finance by the President of the Assembly to be annexed to the State Budget Proposal (Item 3 of Article 1 of the 001 deliberation of January 4, 1994 relating to the National Assembly accounting regulation). If theoretically the National Assembly votes its budget in an autonomous way, it should be underlined that its budget must necessarily align with the principle of budgetary balance, i.e. harmony between the Government sources of finance and its sovereign

expenses (Item 3 of Article 97 of the Constitution). Clearly, the budget of the National Assembly must take into account the general orientations of the Government, relative to the resources destined to the mission of Ministries and other institutions. The objective limitation in terms of resource allocation can have consequences for the institution's infrastructures and the personnel.

Capacity: Resources (practical considerations)

Most heads of departments and sections at the National Assembly of Niger (NA) stated that the NA presently lacks in the areas of infrastructure and personnel.

To understand the capacity pattern of the National Assembly of Niger, a study conducted by Messrs. Gado Boureima, Garba Mohamadou and Jean Gré Hal<sup>7</sup> shows that all the officials interviewed during this study indicated that the National Assembly lacks material means and infrastructure and that Members of Parliament are insufficiently trained. To illustrate this situation, among other things and without being exhaustive, we can point out what follows:

“Total lack of individual or collective offices for the MPs: even seniors in rank (higher hierarchy heads) of the Assembly such as the vice Presidents, and the Presidents of Parliamentary Groups do not have their own offices inside the institution; and the offices they have outside the Assembly are pretty poorly equipped.

The mediocre quality of places where representatives can work, namely lack of a documentation services (archives and internet room;

Insufficient number of rooms at the “Representatives’ Hotel”;

Insufficient number of offices and tiny space for the personnel including the supporting structures such as “the Support Project to the Parliament” and other services (photocopy, internet, radio etc.)

Lack of a cafeteria for the Representatives;

Insufficient safety devices/systems relating to the access to the NA's premises and security devices/systems for people and property.

The same study found that “the lack of offices is worsened by the lack of working material for the Representatives: no personal computers, very few “free-service” computers, meagre documentation, scant

---

<sup>7</sup> MM. Gado Boureima, Mohamadou Lawan Garba, Jean- Yves Gréhal, « Rapport sur le renforcement des capacités du parlement », Assemblée Nationale, PNUD, 80 pages, novembre 2009

archives, etc. Nothing is provided to facilitate the work of the Nigerien Representatives. There is little support for them in terms of collective means. Administrative and secretarial services are not available for Parliamentary Groups”.

In addition to the problems of limited material support, there is little administrative support. The same study points out that the representatives are insufficiently supported by a weak administration and that Parliamentary Groups face a dire lack of technical means. The weakness of the parliamentary administration results from a global shortage of personnel: 160 agents on aggregate representing a rather low support ratio of 1.5 agents per representative, far from the rate of three agents per representative in better-off Parliaments. The study also finds:

“bad organization of services to collect information to back up recommendations and bills of law; poor mastery of research skills by the personnel; lack of methodology in presenting findings, lack of harmonizing research at the level of the commissions; the services of archives and documentation are particularly poor;

Insufficient documentary funds, quantitatively and qualitatively because there is no clear policy of acquisition /accession that seriously impacts diversification and development of the fund. This results in an insufficient allocation of resources to the documentation centre and the bad utilization of these resources”

Besides, the smooth running of the NA’s services is strongly impeded, as far as its running is concerned, due to the politicization of the management of the National Assembly of Niger. Labelled on account of their recruitment or of their overt or alleged political acquaintances, some employees are described as doing more or less what they want and behave as if their supervisor, the General Secretary of the Assembly, has no power to call the shots in the technical and administrative services.<sup>8</sup>

In addition to the parliamentary administration which seems unable to provide effective and efficient support to the representatives, according to the same study the Secretariats of the Parliamentary Groups are even weaker. The pivotal role the Political Parliamentary Groups are expected to play contrasts with the poor technical means and resources put to their disposal. No wonder, the legislative debate lacks

---

<sup>8</sup> MM. Gado Boureima, Mohamadou Lawan Garba, Jean- Yves Gréhal, « Rapport sur le renforcement des capacités du parlement », Assemblée Nationale, PNUD, novembre 2009, page 26

consistency and depth. To make the debate in the Assembly rich and useful, the political parliamentary groups must be supplied with adequate means and expertise.

Though the resources allocated to the political parliamentary groups have been improved during the second (2<sup>nd</sup>) legislature of the Fifth Republic up until 2009, they still remain insufficient: one assistant, one lawyer, one driver, one secretary and one janitor. These workers cannot provide the required technical assistance to MPs in the development and implementation of laws, as well as the control of government policies. These employees are far from making any better the role of making laws. Studies reveal that the assistant is playing the role of staff supervisor of the President of a Parliamentary Group.<sup>9</sup>

While they are notably insufficient, the resources allocated to the representatives are unfortunately handled in an ineffective way, according to the interviewees in the above-mentioned study, and the press reports that put emphasis on the poor results of an institution known to be not transparent and avoiding evaluation of its own administrative practices.

All those observations are corroborated by the evaluation of the institution conducted on May 31, 2008 by Mr. Boureima GADO, Dr Mahamane Yahaya, and Mr. Vanoost Lodewijk, as part of the Strategic Plan for the Development of the National Assembly of Niger (PSDAN) 2008-2018.<sup>10</sup> The authors note that *“among the main facilities constraints, there is a lack of offices for the parliamentary personnel, total lack of offices for the Representatives, small commissions rooms which are both meeting places and offices for the personnel, lack of an efficient simultaneous translation service in the main assembly room and an inexistence of a translation system when commissions are holding their meetings”* (PSDAN, p.2). This diagnosis shows that the administrative facilities of the National Assembly need not only to be rehabilitated, but also equipped.

Moreover, and with reference to the study, despite some visible improvement, the administrative services in charge of facilitating the role of the representatives are broadly gripped by a myriad of weaknesses that need to be addressed in order to allow the MPs to fully play their role. The parliamentary administration in Niger suffers from a

---

<sup>9</sup> MM. Gado Boureima, Mohamadou Lawan Garba , Jean- Yves Gréhal, « Rapport sur le renforcement des capacités du parlement », Assemblée Nationale , PNUD, 80 pages, novembre 2009

<sup>10</sup> MM. Gado Boureima, Dr Mahamane Yahaya, Vanoost Lodewijk, « Plan stratégique de développement de l'Assemblée du Niger 2008-2018 », Coopération Technique Belge, 80 pages, Niamey, 31 mai 2008

lack of tools and skills needed to give the Representatives the desired support. The administrative employees made available to the parliamentary commissions need an accrued professionalization to ensure better inputs and support to the Representatives.

Regarding the administrative management, the financial management of the internal budget allocated to the Assembly is seriously criticized by the population, whereas the institution is under-equipped in terms of buildings, facilities, office furniture and computer and communication related materials.

Capacity: independence (legal framework)

From a legal perspective, the present National Assembly of Niger is independent if we simply refer to the principle of the separation of power consecrated by the Constitution on the one hand, and if we refer to the universal, direct, and secret mode by which the representatives are elected on the other hand. As for the Senate, the President of the Republic chooses a third of the members. Contrary to the other legislatures, the on-going National Assembly cannot be dissolved and the Assembly itself cannot throw the

<sup>11</sup> Gado Boureima, Dr Mahamane Yahaya, Vanoost Lodewijk “Strategic Plan

for the Development of the Assembly of Niger, 2008-2018” Belgium Technical Cooperation, 80 pages, Niamey, March 31, 2008.

Government out of office.

The Parliament allocates its different structures: Bureau of the National Assembly, Commissions, Fraternity Groups and Parliamentary Networks. It is also the Parliament that exercises the Legislative power (Article 68 of the Constitution). However, as for the initiative of law, the Parliament shares the responsibility with the President of the Republic (Article 51 of the Constitution).

This independence is strengthened by the immunity granted to the Members of the Parliament. The provisions of Article 73 of the Constitution stipulates that *“no member of the Parliament can be sued, prosecuted, looked for or interviewed, arrested, detained or judged on grounds of his opinions or votes in the exercise of his duty. Unless caught in flagrante delicto, no member of the Parliament can be sued, prosecuted or arrested for penal or criminal reasons, in the course of the National Assembly sessions, without the authorization of the chamber of which he is member. No member of the Parliament can be arrested out of session without the authorization of the Bureau of the chamber he belongs to, unless caught in flagrante delicto, under authorized suing, prosecution or definitive sentencing”*.

Moreover, the Constitution and the rules and regulations of the National Assembly allow the National Assembly to call an extraordinary session on a precise agenda, at the request of the absolute majority of its members (Article 80 of the Constitution).

This independence is strengthened and reinforced by certain provisions of the rules and regulations of the National Assembly namely Articles 40, 41, and 42 relative to the power of the police. These provisions give the President of the National Assembly the power to ensure the internal and external safety of the institution. The building of the National Assembly is inviolable. The buildings, premises, and compounds that belong to the National Assembly are protected by special franchises called 'parliamentary franchises'. It is forbidden to enter the premises of the National Assembly with any type of weapon. That is the reason why defence and security officers are not allowed to be on the premises of the Assembly with their weapons or to draw up a formal document on the premises of the Assembly without a prior authorization by the President of the Assembly. Only security guards made available to the MPs and the NA are allowed to roam about and operate on and within the premises of the National Assembly. Those guards wear distinctive badges attributed to them by the administration of the National Assembly.

It is forbidden for any person being pursued for committing crime to seek refuge in the National Assembly. Any person who is foreign to the Assembly is not allowed to get into the compound of the National Assembly unless holding a due authorization. Places can be reserved for those who hold special pass cards. The persons who are allowed in the section of the National Assembly reserved for the public must be dressed decently and remain silent.

It is the conference of the Presidents that determines the schedule and agenda of a session of the Assembly taking into account the priorities of the Executive power (Article 56 of the Internal Code of Conduct). This regulatory limitation of the independence of the National Assembly derives from constitutional provisions, namely those relating to Article 83 that stipulates that "the agenda includes, primarily, the examination of the projects of law presented by the Government".

The independence of the Parliament is also limited by the provisions contained in Article 95 of the Constitution which states that "*proposals and amendments presented by the members of the Parliament are not receivable when their adoption could have as consequence either a reduction of public resources, or the creation or the worsening of a*

*public charge, unless they come with a way to increase wealth or produce equivalent savings*". This provision is a real hindrance to the legislative function of the Representative and shows the limitations of the independence of the National Assembly.

The Enabling Law is also a legal limitation to the independence of the Parliament. In effect, according to Article 92 of the Constitution, "*the President of the Republic can, in order to execute his program, ask the Parliament to use ordinance (s) for a limited period of time to take measures that are normally of the legal domain*".

In addition, the possibility granted to the President of the Republic to ask for a second reading of legislative texts already passed is a limitation to the independence of the Parliament. In fact, the President of the Republic can, before the promulgation deadline to him granted by Article 53 of the Constitution, ask the Assembly a second deliberation of a bill already partly or entirely passed by the Parliament. This second deliberation cannot be refused. The President can even demand that the second deliberation be carried out during an ordinary session following the session during which the text has been adopted after the first reading. The National Assembly follows the same procedure as during the first deliberation, and the vote requires a majority (three fifths) of the members of the Assembly to be passed.

Finally, the independence of the National Assembly of Niger is also established by a constitutional provision relating to the impossibility for any MPs to resign from their Parliamentary Groups in which they have enrolled, individually or thanks to their political party: according to those provisions, any MP who resigns or who is dismissed from his political party during a legislature, is replaced in the National Assembly by his substitute (Article 71 of the Constitution).

Capacity: independence (practical aspect)

Is the Parliament effectively independent from the other powers?

From a practical standpoint, it seems too early to offer a final judgment on the independence of the current National Assembly of Niger due to the short time it has been in place. It has only held extraordinary sessions so far. In effect, following the institutional change that occurred in August 2009, the National Assembly was only sworn in on November 14, 2009. It is therefore difficult to say whether the Executive or/and Legislative powers have any influence on the Legislative power.

It is, however, interesting to note that the Executive power decided to determine, by means of an edict, the salaries and advantages granted

to the MPs, contrarily to the Nigerien parliamentary tradition in accordance with which the MPs' salaries and advantages are determined by a legal act, to be taken only following a proposal of the amount made by actual Members of Parliament.

Relative to the previous legislatures, between 1999 and 2004, and between 2004 and 2009 for instance, most of the laws passed by the National Assembly were initiated by the Executive. In effect, during the first legislature, from 1999 to 2004, eight private (member's) Bills were submitted to the National Assembly for deliberation; four of these ones were adopted, and one rejected. During the same period, 229 Bills were passed. The laws originating from the Parliament therefore represented 2.13% of the passed Bills, and half of the initiatives reached their conclusions. During the second (2<sup>nd</sup>) legislature, 2004 to 2009 (interrupted by the dissolution of the National Assembly by the President of the Republic on May 26, 2009), 28 private (member's) Bills were sent to the Assembly, 8 out of 122 Bills were passed. Laws originating from the Parliament amounted to 9% of the adopted laws, but only 28% of the initiatives were passed.

Even if the President of the Republic has the constitutional power to dissolve the Assembly, the dissolution of the last parliament was an abusive act of interference based on his personal reasons.

Governance

Governance: transparency (legal framework)

Does the Constitution or the existing legislative and regulatory provisions that are in force allow the citizens to be satisfactorily informed about the legislative process and the other actions of the Parliament?

According to the provisions of the Constitution (Article 81), and the Code of Conduct of the Assembly, the sessions of the latter are open to the public.

Nevertheless, the National Assembly may decide to deliberate behind closed doors when the request is issued by the President of the Republic, or a third (1/3) of the Members of Parliament. In such a case, the decision is made public at least 24 hours before the opening of the session in question. When the decision is taken on the spot, the session in progress is automatically suspended to be resumed 30 minutes later. The National Assembly can later decide if the complete minutes of the proceedings held behind closed doors must be published or not (Article 65 of the Code of Conduct).

In addition, the executive reports and complete minutes of the proceedings of the National Assembly are to be published in the official bulletin / Gazette as soon as possible by the services of the National Assembly (Article 68 of the Code of Conduct of the N.A., and Item 2 of Article 81 of the Constitution). As for the proceedings of the NA's Commissions, they are not public, but the Commissions can hear any member of the Government or his assistants, as well as the representatives of the socio-professional organizations, or any person of interest. They can also hear any person capable of bringing his expertise to the debates (Article 35 of the Regulations of the NA).

But the bulletins of the commissions containing, notably the MPs' attendance (present, absentees, those authorized to be absent) and of the participants, decisions and results of the votes are confidential. The bulletins of the Commissions cannot be published or reported by the newspapers. At the closing of the legislature, the bulletins are conserved in the archives of the National Assembly.

Apart from cases of sessions behind closed doors (Article 65 of the Assembly regulations), there is no restriction of access for the media to the proceedings of the National Assembly. For the information of the public, debates on hearings and current events can be broadcast live on national radio and TV stations. The modalities for the broadcasting are set by the Conference of the Commissions Presidents. The Nigerien legal system makes no provision for MPs to declare their personal property. The President of the NA is the only one subject to such obligation.

To sum up, it appears that apart from cases of behind closed doors sessions, parliamentary proceedings can be recorded and broadcast by TV and radio stations. The field survey conductors hired in this assessment (from February 1 to March 1, 2010) to measure the access of the population to public information found it easy to collect information about Parliament.<sup>11</sup>

Governance: transparency (in practice)

Is the legislative work, and other activities of the Parliament, conducted in a transparent way?

---

<sup>11</sup>“Field Surveys Reports, NIS Assessment in Niger”, February 1 to March 1, 2010, Niamey, Niger

The legislative work, and other activities of the Parliament, is conducted in a transparent way, with the general assembly plenary debates being broadcast live by the Parliament's radio station. The public media, namely the radio and television, the public newspaper "The Sahel" give a daily account of the

Parliament's debates. It is worth indicating though that the bills and private (member's) Bills are not systematically made public before they are debated. They are summarized during their adoption or amendment at the Council of Ministers meeting.

Actually, the executive summaries and minutes of the debates are not published in the Gazette as stipulated by the Regulations of the National Assembly. However the executive summary can be accessed by interested journalists as it is adopted at the inception of every session. During the last two legislatures of the Fifth (5<sup>th</sup>) Republic, the N.A. held an average a two-yearly behind closed doors meeting specifically for the purpose of discussing the internal matters of the institution.

One of the major challenges identified in the PSDAN is developing relationships between the Parliament and citizens, as well as directly and individually drawing MPs towards the locally elected representatives, through the development of the services provided by the radio and TV of the Nigerien Parliament and through the systematization of public consultations by means of putting them in a permanent mechanism of the legislative work.<sup>12</sup>

The authors of the PSDAN went on to point out that this failure also lies in the complete lack of "open house events towards specific sectors. In most of the world's parliaments, regular visits to schools, organizations of pensioners and enterprises are part of the agenda of the Parliament. These visits are perceived as evidence. Truly, in Niger, these types of activities are unknown to both the National Assembly and civil society".<sup>13</sup>

The current assessment of the NIS-NIGER recruited eight survey conductors from February 1 to March 1, 2010 to experience for themselves the conditions relating to access to information in Nigerien public services. They found no obstacles to access information and data at the National Assembly.

---

<sup>12</sup>"Development Strategic Plan for Niger N.A., 2008-2018", Ibid, p.65.

<sup>13</sup>Mr. Boureima GADO, Dr. Mahamane Yahaya, and Mr. Vanoost Lodewijk: Development Strategic Plan of Niger National Assembly (PSDAN), 2008-2018, May 31, 2008, p.12

Governance: responsibility (legal framework)

Does the Constitution or the existing legislative and regulatory provisions in force, provide for the Parliament answering for its actions and decisions?

In accordance with the constitutional and regulatory provisions, the Nigerien National Assembly, as an institution of the Republic, does not answer for its actions and decisions. Whatever the situation, the National Assembly cannot be dissolved. But, being a body stemming from elections, its members, each MP, individually answer for their actions and decisions when elections occur. Such a case is a political sanction relating to individual MPs.

Generally, in the modern democratic system consecrating the separation of powers, parliamentary immunities are prerogatives that protect Members of Parliament from judicial harassments to allow them to ensure the free exercise of their mandate. This legal regime, derogatory to common law, results from the necessity to bring together the protection of the parliamentary mandate on the one hand, and the principle of equal rights for all before the law on the other.

Indeed in the course of their duties (passing of laws, control of the policies of the Government etc.), the Members of the Parliament benefit from an absolute immunity which, paradoxically, consecrates the irresponsibility of the Parliament in the exercise of its function. In Niger, this irresponsibility is consecrated by Item 2 of Article 73 of the Constitution.

Parliamentary immunity is a privilege the Members of the Parliament benefit from, which allows them to avoid legal proceedings instituted against them because of actions not related to their mandate. The immunity which is not absolute is consecrated by the two last items of the same Article of the Constitution. That is the reason why it is important to distinguish absolute immunity, which consecrates the irresponsibility of the Parliament in the exercise of its functions, and absolute immunity, which is a privilege granted to the Members of the Parliament to escape legal proceedings relating to actions that are foreign to their mandate, except when the immunity is suspended. Nevertheless, Article 94 of the Constitution stipulates that proposals, bills and amendments, if they are not of legal substance or if they are detrimental to public order and morale, are not acceptable. In the case of a contestation, the Constitutional Court, informed by the President of the Republic or of the Assembly, would rule within eight days.

The provisions of Article 82 of the Constitution stipulate that “the Regulation of the National Assembly cannot be applicable if, following a mandatory submission of the case by the President of the Republic to the Constitutional Court, the Constitutional Court has not declared that it conforms to the Constitution”.

The President of the Republic is also entitled, within the deadline relating to the promulgation, to ask for a second deliberation of the law or some of its articles; this deliberation cannot be denied.

The Parliament has the constitutional obligation to vote a balanced budget. Article 112 of the Constitution makes it possible for the President of the Republic, the President of the National Assembly, or a tenth of the MPs to refer laws to the Constitutional Court. It is compulsory to submit the organic laws and the regulations of the chambers to the court.

Moreover, any person, being a litigant, may raise the unconstitutionality of a law before any jurisdiction by ways of exception. A decision should be made within thirty (30) days (Article 113 of the Constitution).

In Niger, there are currently no mechanisms that allow citizens to file a case against the actions or decisions of the Parliament.

Governance: responsibility (in practice)

To what extent should the Parliament effectively have to account and answer for its actions and decisions?

Since 2005, following the vote of the controversial rectifying Finance Act that increased the VAT on staple products (rice, milk and sugar), certain activities and actions of the National Assembly have been contested by civil society. This led the authors of the PSDAN to note that “... *the Niger Civil Society, in general, believes that the National Assembly does not enough take its views, expectations and interests into account. The National Assembly suffers from a lack of a culture of dialogue that is worsened by a lack of means of structures, tools and experience in terms of organizing public consultations. Unfortunately, this lack of a culture of dialogue is also found within the Civil Society of Niger as its expectations sometimes go beyond the true role of the Members of Parliament. This is due to the Civil Society’s bad comprehension of the constitutional roles of the National Assembly. Still, it is a duty of the National Assembly to continually keep society informed.*<sup>14</sup>”

---

<sup>14</sup>“Development Strategic Plan for Niger N.A., 2008-2018”, Ibid, p.65

The years 2008 and 2009 were punctuated by demonstrations and declarations staged by many civil society organizations to contest the status of the MPs adopted by the National Assembly.

The issue of responsibility is a real concern for the Nigerien Parliament which has very limited contact with citizens. Public consultations on key issues are rare and not integrated in the Nigerien parliamentary tradition.

Governance: ways aiming at ensuring integrity (legal framework)

Are there constitutional rules, legislative or regulatory provisions aimed at ensuring the integrity of the Members of Parliament?

In Niger, there is no code of ethics specific to the MPs. However, there are constitutional, legislative and regulatory provisions that guarantee the integrity of the MPs. These provisions determine the appropriate and relevant conditions in terms of eligibility, election, the exercise of the parliamentary work, the incompatibilities with other public responsibilities, and determine what should be the model behaviour of a "Good Member of Parliament". In effect, to be eligible to the National Assembly, one of the conditions is to be a Nigerien national aged 25, enjoying his / her civic rights, and not concerned by any of the incapacity cases provided for in Article 8 of the Nigerien Electoral Code.

The cases of incapacity are:

individuals serving a definitive sentence for murder, who have not been rehabilitated;

individuals serving a definitive sentence for a crime equal or higher than one year in prison, who have not been rehabilitated;

individuals sentenced in absentia ;

individuals declared bankrupt and condemned for fraudulent bankruptcy, who were not rehabilitated;

individuals in an asylum and individuals with no right to vote"

This mechanism shows that people who are sentenced for corruption and other related crimes are not eligible for the National Assembly. In fact, Article 130 of the Nigerien Penal Code stipulates that corruption and interest peddling can result in two to, at least, ten years imprisonment.

The second mechanism that contributes to ensuring the integrity of the Representative is the incompatibility that exists between a parliamentary mandate and the cases of some civil servants employed and paid by a foreign country or an international organization (Article 119 of the Electoral Code and Article 19, Law 2003-24 of June 13, 2003 relating to the statute of the MP).

As the head of an institution of the Republic, only the President of the National Assembly is subject to the declaration of personal property. In effect, the provisions of Article 43 of the Constitution relating to the written declaration of personal property of the President of the Republic are applicable to all the heads of the institutions of the Republic. Discrepancies between the initial declaration and the annual update must be duly justified. The Constitutional Court detains all appreciation powers in that respect. The Government Accounting Office is also in charge of controlling the identical declarations received by the Constitutional Court.

The Regulations of the Nigerien National Assembly, in Article 127 forbids any MP from showing or allowing the usage of his quality in financial, industrial or commercial enterprises, or in the exercise of liberal or other professions, or as a general rule, to use his title for any other reason outside his parliamentary mandate. According to the provision of Article 120 of the Electoral Code, an MP is forbidden to allow his name and quality to appear in any financial, commercial or industrial advertisement, or else the offender may be fined 100,000 to 1,000,000 CFA Francs. The above mentioned provisions are not compiled in a code of ethics.

As for former Members of Parliament, they are simply expected "to display responsible, honourable and courteous behaviour everywhere and every time" (Item 2 of Article 42 of the statute of the Member of Parliament).

Governance: ways aiming at ensuring the integrity of the Members of Parliament (in practice)

How is the integrity of the Members of Parliament effectively guaranteed?

As the present National Assembly is at the beginning of the legislature, it is hard to assess the durability of the mechanism destined to guarantee the integrity of its members. But in practice, private

newspapers<sup>15</sup> give a very bad image of the Nigerien MPs from the public opinion standpoint, mainly in the eyes of civil society and the private written press as shown in the front pages of the Nigerien weeklies. This is chiefly the result of the political struggles, launched since 2007, between the Legislative and the Executive concerning the prolongation of the office term of the present President, Mahamadou Tanja, who dissolved the former Parliament in 2009 on grounds of the numerous political and financial scandals the Parliament was involved in, including the MEBA affair, the Statute of the Representative and the huge allowances the MPs granted themselves. Moreover, there was the fact that many Nigerien MPs are illiterate traders and businessmen more concerned with striving to flourish their businesses, than their duty. All these reasons have tarnished the image of the MPs the eyes of the Nigerien public.

Thus, according to Yenikoye (2006), "it would serve to set clear criteria for becoming a Member of Parliament. This invasion of the National Assembly by illiterate traders is indicative of the central role that money plays in the elections in Niger, and raises the question about their contribution in the political process. Clearly, the MP "businesspeople" are more inclined to take advantage of their position to win public procurements and tenders, than to work for their constituents. If, like all the others citizens, the MP-"businesspeople" have the same inalienable rights in a Republic, no one could understand that at the beginning of this third millennium, in the era of internet and a global communication society and more than forty years of independence, that an elected illiterate may be able to fulfil a legislative office that consists in controlling and sanctioning the management of public finances. This has been made possible by the Nigerien Constitution that subjected the MP to this legislative office!"<sup>16</sup>

In May 2009, after the National Assembly was dissolved, an administrative investigation was carried out by the services of the State Audit Inspectorate in the absence of the majority of the Members of Parliament. Many of them were prosecuted for the following misdemeanours:

---

<sup>15</sup>La Griffe Weekly (Issue 263, 5-26-08): "In the absence of sound arguments to justify their high-spending statute, the Representatives attacked the Civil Society, and MP Sanoussi T. Jackou, one of their colleagues". - La Roue de L'Histoire Weekly (Issue 404 of 6-14-2008): "Project of law on the statute of Member of Parliament: the Members of Parliament stick to their privileges."

<sup>16</sup>Yenikoye Ismael, op.cit.

embezzlement and complicity of embezzlement of public funds; breaches to free access and equal opportunity of bidders to public procurements and services.

For a large number of Nigeriens, this operation was seen as a mere reprisal toward the former MPs for having refused to let the former President Mamadou Tanja necessarily modify the constitution so as to be able to continue his office beyond (the second consecutive term) the constitutional term ending on December 21, 2009.<sup>17</sup>

Role

Role: controlling the Executive power (in practice)

Since its official installation, the current legislature interpolated the Government only once with regard the conditions of the execution of farming program in the regions of Dosso and Tillabery. In terms of control of the

Executive, it should be noted that during the two previous legislatures of the

Fifth Republic (1999-2004 and 2005-2009), the Members of Parliament were very active. On aggregate, six impeachment motions were recorded, of which one overthrew the Cabinet of Prime Minister Hama Amadou on May 31, 2007. The motion was triggered by the MEBA affair (MEBA: Ministry of Elementary Education and Literacy) in which several billion CFA Francs drawn from the Education Decennial Development Program (PDDE) funded by the Niger Technical and Financial Partners, namely the European Union (E.U), were embezzled. This scandal caused two Ministers to be arrested and jailed, many top ranking officials of the Ministry of Elementary Education and Literacy (MEBA) to be prosecuted, several businessmen, including three MPs as well. The case is pending before the jurisdiction. In addition to the motion, the National Assembly set up three inquiry or control commissions:

The Parliamentary Control Commission (set by the NA resolution of April 3, 2006) to investigate government services in the Department of Arlit;

The Parliamentary Control Commission (set by N.A. resolution 0005/AN of October 18, 2007) to investigate the Liptako Mines Company (SML);

---

<sup>17</sup>L'hebdomadaire "le canard déchaîné", « Vagues d'interpellations des anciens députés et agents de l'Assemblée nationale : volonté d'assainissement ou règlement de comptes? », n°393 du 7 septembre 2009

The Parliamentary Control Commission to conduct inquiry in the Nigerien Telecommunication Company (SONITEL).

Finally, in addition to the parliamentary inquiry commissions, the National Assembly has carried out about 30 interpellations and asked many oral questions to the members of the Government.

With the constitutional change of August 2009 in Niger, the National Assembly no longer has the power to dismiss a government, but it can file cases against the ministers for acts and crimes committed in the discharge of their duties. The indictment should be voted by the two-thirds 2/3 of the National Assembly, and the two-thirds of the Senate which is not installed yet.

The Nigerien Parliament plays no constitutional, legislative or regulatory role in the appointment of the Ombudsman, the President of the Government Accounting Office and the Electoral Control Commission.

Role: legislative activities (in practice)

Is the Parliament making the struggle for good governance and the fight against corruption a priority?

The Parliament of the Fifth Republic has passed several laws to fight corruption and strengthen good governance. We can cite the modification brought in the Penal Code to incorporate favouritism, mainly in cases of breach of the free and equal access of all bidders in public procurements, bids and services (Article 134-1 of the Penal Code). It also ratified the United Nations Convention Against Corruption in 2008.

In theory, the officials at the National Assembly (NA) are vocal on the necessity to wage a pitiless war against corruption; but in practice, because they are generally traders and businessmen, the MPs do not set the good example. Besides, some of them are cited in corruption scandals (MEBA in 2007, and the N.A. affair in 2009).<sup>18</sup> Twice (in 2007 and 2008) the National Assembly rejected the Executive's request to waive the offenders' immunity in order to sue them. Moreover, the

---

<sup>18</sup>The Enquêteur Weekly, Issue 361 of Sept, 14, 2009: National Assembly affair: the charges against the ex-MPs, businessmen, and civil servants".

-In 2007, three (3) Business-MPs "were involved" in influence peddling in the MEBA affair: Raja Chaibou, Bonkano Maifada, and Intarou H. Djermakoye.

private press and civil society accused the NA of mismanaging (plus wasting and overspending) its own budget.<sup>19</sup>

However, it is interesting to note the creation of an Anti-Corruption Parliamentary Network within the Nigerien National Assembly. This network was particularly active in 2007 and 2008, through the organization of information and education workshops for the Representatives and leaders of Political Parties. The network also developed a strategic plan 2008-2011 with the support of the United Nations Development Program (UNDP).

The Niger National Assembly is member of the African Parliamentarians Network Against Corruption (APNAC) whose objective is, inter alia, to coordinate and strengthen the means the African parliamentarians have to fight against corruption and facilitate good governance.<sup>20</sup>

---

<sup>19</sup>Statements issued by the Media organizations (5-25-08) calling more the mobilization of all to put an end to the despotic and greedy behaviour of the MPs of the National Assembly ( La Griffé, Issue no 263, May 26, 2008)

<sup>20</sup>APNAC (African Parliamentary Network Against Corruption):[www.apnacafrica.org](http://www.apnacafrica.org)

## 2. EXECUTIVE

In Niger, the Executive is composed of the Presidency of the Republic, the Cabinet of the Prime Minister, the different Ministries particularly the Ministry of Economy and Finance, the Ministry of the Interior (hosting also the National Police), the Ministry in charge of Defence (hosting also the National Gendarmerie) and the Ministry of Justice.

The Executive has been exercised by the Supreme Council for the Restoration of Democracy (SCRD) since February 18, 2010, the Transition Cabinet and the institutions created after the military coup. The transition is due to come to an end on March 1, 2011.

**Key informants:** Mrs. Adama Saliah, Deputy Secretary-General of the Government, Professor Tidjani Mahamane Alou, Lecturer and Researcher, Dean of the Faculty of Economics and Law (FSEJ) of the Abdou Moumouni Dioffo University of Niamey (UAMD)

#### Structure and Organization

According to the constitutional provisions, in Niger, the Executive power is mainly in the hands of the President of the Republic. The key powers of the President and the Government are specified in Articles 38, 47, 50, 51, 54, 56, 57, 61, and 62 of the Constitution of the Republic of Niger.

Thus, “the President of the Republic is the Head of State. He stands for national unity. He is above political parties. He guarantees national independence, territorial integrity, the respect of the Constitution, international treaties and conventions, ensures the regular running of public services and the continuity of the Government.

According to the Constitution, the President is “the exclusive holder of the Executive power. He is the Head of the Government; he appoints the Prime Minister and the Members of the Government and sets their attributions. The Prime Minister and the Ministers are accountable to him and he can terminate their office term”.

Other responsibilities of the President include recruiting civil servants. He also signs ordinances and acts deliberated by the Council of Ministers. The President exercises the regulatory power. In that respect, he ensures the proper execution of legal decisions and actions and takes the applications measures across the territory of the Republic. The Prime Minister coordinates the Cabinet activities and exercises his attributions in the framework of the powers delegated to him by the President.

Since the military coup on February 18, 2010 and following the force of Ordinance 001 organizing the public powers during the transition, most of the Executive Power is concentrated in the hands of the President of the CSRD who can delegate some of these powers to the transition Prime Minister.

#### Assessment

#### Capacity

Resources: (in practice)

Does the Executive power have the appropriate resources to effectively fulfil its duties?

The total amount of government charges have gone from 407,894,000,000 CFA Francs (815,788,000 U.S Dollars) in 2004 to 734,729,902,000 CFA Francs (1,469,459,804 U.S Dollars) in 2010.<sup>21</sup> The expenses on personnel have gone from 59,100,000,000 CFA Francs (\$ US 118,200,000) in 2004 to 106,961,244,331 CFA Francs (\$ US 213,922,488) in 2010.

But, despite efforts to increase the Government budget, mainly by services in charge of the control of the management of public funds, the Executive power lacks the indispensable human resources to instil the good work of a modern country. In effect, since the mid 1980s, the structural adjustment policies have caused a decrease in the number of civil servants and an exponential increase of contract workers number. In the education sector for instance, the rate of formalization by contract has reached 70% of the employees with 40,000 contract workers.<sup>22</sup>

Another fundamental problem with the human resources is the extreme politization of the administration. The consequence of such a practice is a weak capacity of the employees to put development programs into practice.<sup>23</sup>

---

<sup>21</sup>2009-06 Ordinance of November 6, 2009 on the Budget for Fiscal Year 2010 (JORN, Special Edition, Dec.24,2009).

<sup>22</sup>Interview of the Minister of National Education, Dr Ousmane S. Mamadou (Sahel Dimanche, April 10, 2009)

<sup>23</sup>Interview of Pr Tidjani M. Alou, Dean of the School of Law and Economics, University of Niamey.

Capacity: independence (legal framework)

Does the Constitution or the existing legislative and regulatory provisions ensure the independence of the Executive?

In Niger, the Executive power is effectively independent from the others as specified by Title III of the Constitution. No specific restrictions apart from those relating to the separation of powers. The power to recruit is not shared by the Executive with other institutions. In reality, in Niger, with the Presidential system of the Sixth Republic, it is the Executive that impedes upon the others.

Capacity: independence (practical framework)

Is the Executive truly independent from the other powers?

The Executive power depends primarily on the Technical and Financial Partners (TFPs) who are the main donors, and who impose their views concerning economic and social policies. Decision-making is heavily influenced by the “wise” advice of these big friends of Niger. There is a total absence of the Government in deciding and implementing development programs because of weak bargaining capabilities on the part of the Government. There is obviously a problem of autonomy and independence; for example, faced with the huge demonstrations of civil society against the increase of the Value Added Tax (VAT) in 2005, the then Prime Minister had confessed *that “the Government was helpless as it was a demand of the donors of Niger”*.<sup>24</sup>

Since the democratization of socio-political life obtained after the National Conference in 1991, the Nigerien Executive has become heavily dependent on the large national money-providers who cause elections to be won or lost.<sup>25</sup> The national donors are mostly businessmen who fund election campaigns and political leaders when they were not in the spheres of power. Subsequently, these donors demand that they be rewarded by the people they have helped to bring

---

<sup>24</sup>Interview of Pr. Tidjani M. Alou, *ibid*, cit.

<sup>25</sup>Interview of Pr. Tidjani M. Alou, *ibid*, cit

to the Executive; bids are organized in discriminatory conditions, reducing the degree of independence of the Executive in making sound political and economic decisions. Corruption practices therefore become the law of the land with the Executive incapable of stopping them. For instance, newspapers reported cases of bribery such as the one given in return of some 'intervention', by the "Niger Uranium Venture SA" to granted Hadia Toulaye Tanja (son of the former Head of State), and Ibrahim Hamidou (Director of a Multimedia Communication Group) who received \$ US 5,000,000 on top of 25% of shares in the capital of the company.<sup>26</sup>

#### Governance

##### Transparent Governance (legal framework)

Does the Constitution or the existing legislative and regulatory provisions guarantee transparency in the decision-making process of the Executive power?

The declaration of property is mandatory for the officials in the Executive (Article 43 of the Constitution). A copy of the same declaration is sent to the fiscal services.

The declaration and updates are published in the Official Gazette (Article 57 of the February 8, 2004, Law 2004-16 modifying the decree 2000-11 of Aug. 14, 2000 determining the organization and running of the Constitutional Court). The Constitutional Court is fully entitled to give its appreciation in that domain. Article 44 of the Constitution stipulates:

"In the course of his mandate, the President of the Republic cannot, personally or by delegation, purchase anything belonging to the Government or its affiliations. He cannot, personally or by delegation, tender in bids. This provision concerns the Presidents of all the Institutions of the country, the Prime Minister and Ministers."

##### Transparent governance (practical framework)

Does the Executive act and make decisions in a transparent way?

---

<sup>26</sup>APA-Niger, Aug. 2, 2009: "Serial interpellations of news reporters for having disseminated information concerning President Tanja relatives and friends.

It can be said that the Niger Executive acts in a transparent way. In effect, regular reports of the Council of Ministers meetings are issued. Every Ministry has a press attaché responsible for making the activities of the Minister public in the government newspaper ‘the Sahel’. There is a Government Communication Unit (GCU) in charge of informing the populations of the actions of the principal officers of the Executive power through public media. But in practice, the GCU behaves as a propaganda service like in totalitarian regimes, with doctrinaire approach, broadcasting more flattery and undeserved praise than true information about the actions of the Government.<sup>27</sup>

While the population does not trust the news released by the public media, private press organizations are limited in having access to the sources of information about the activities of the Executive. Moreover, the official newspapers are not published on a regular basis, and when they come out, they are too expensive for the ordinary Nigerien.

One sign of the poor transparency in the management of public affairs is that the government website is out of use. Also, to get a simple administrative document or report, one has to know an official or get an authorization from different people; otherwise, you are simply denied the right to consult the document, even on the spot.<sup>28</sup>

As required by law, members of Government should declare their personal property when taking office, every year, and when leaving office. But in practice, this declaration is a mere formality that is not followed by the population as no action has ever been taken against people who have become rich after taking office. For instance, the ‘‘Courier’’ newspaper widely reported a ‘‘fake declaration’’ of the Prime Minister Seini Omar in its issues Nos 12, 19, and 28. This investigation by the newspaper led to more than 2,000 Nigeriens sending a petition to the State Prosecutor at the Exceptional Tribunal of Niamey to set up a preliminary inquiry about him.<sup>29</sup>

Governance: accountability (legal framework)

Does the Constitution or the existing legislative and regulatory provisions make the Executive accountable for its actions and decisions?

---

<sup>27</sup>Interview of Pr. Tidjani M. Alou, *ibid*, cit.

<sup>28</sup>‘‘Field Surveys’’ Findings Reports, NIS-Niger Assessment’’, Feb. 1 to March1, 2010

<sup>29</sup>The Courier Weekly, Issue no 98, April 2010.

In Niger, there is a legal mechanism for the supervision of the actions of the Executive, and for holding it accountable. Article 85 of the Constitution states that the Legislative can interpellate the Ministers and set up inquiry commissions. No legal provision demands the Government to justify its decisions, but Article 55 of the Constitution stipulates that the President of the Republic can, after consultation with the Presidents of the National Assembly, the Senate and the Constitutional Court, submit any issue that requires the direct consultation of the people, to a referendum.

But the President of the Republic is not accountable for his actions in the course of his office term unless there is a case of high treason. In such a case he is judged by the Higher Court of Justice. There is high treason when the President of the Republic violates his oath, is found author, co-author or accomplice in the fraudulent cession of a portion of the national territory or the introduction of toxic wastes in the country. When found guilty of high treason, the President falls under impeachment which is certified by the Constitutional Court at the end of the proceedings conducted by the Higher Court of Justice. The indictment of the President of the Republic is voted to the majority of 4/5 of the members of the Parliament and 4/5 of the Senate members. Indictment of the members of the Government is voted in the same conditions to the majority of 2/3 (Articles 120 and 121 of the Constitution).

Governance accountability (practical framework)

Do the mechanisms destined to exercise control of the Executive work efficiently?

In Niger, the mechanisms destined to exercise control of the Executive work fairly. In recent years, there have been numerous hearings of the members of the Government and the creation of Parliamentary Inquiry Commissions on important issues such as the privatization of companies and the delivery of mining exploration permits. There have also been a lot of demonstrations by civil society, opposition parties and the numerous revelations made by the private press. All those organizations have exercised, and continue to exercise, their rights to control the actions of the Government by denouncing mismanagement cases, corruption and embezzlements of public funds that have taken place in the recent years.

One good example of control lies in the report written by Nigerien civil society organizations entitled "The Evaluation of the Progress of Niger

toward the Attainment the Millennium Development Goals”. The second report puts emphasis on political and administrative governance.<sup>30</sup>

In practice however, the mechanisms destined to exercise a control of the actions of the Executive do not work correctly. For example, in spite instruments to control the actions of the administration, such as the supervision services, adequate and appropriate decisions are barely taken. In addition, those instruments of management control fail to state which actions are to be taken and who should conduct these actions to remedy the weaknesses. Rather, those instruments and services are used as a means of pressure and blackmail vis-à-vis civil servants and elected leaders.<sup>31</sup>

Finally, most of the citizens are not sufficiently educated and are not fully aware of their responsibilities and the opportunities they have to hold the Executive accountable, fearing possible reprisals.<sup>32</sup>

Governance: mechanisms aimed at ensuring integrity (legal framework)

To what extent is the integrity of the Executive ensured?

In certain structures of the Government, such as the Criminal Investigation Department Officers (Policemen and Gendarmes), the prosecutors, state inspectors and auditors, there is an oath that must be taken. It can be summed up as follows “stay fair every time and everywhere, behave as a loyal and competent civil servant”. In reality, there is no code of conduct and ethics for the members of the Executive Power. There are no regulations relating to conflicts of interest or gifts and invitations. There are also no restrictions in terms of leaving the civil service to work in the private sector, or going back and forth between private and public sectors. However, Article 44 of the Constitution stipulates that “*in the course of his office term, the President of the Republic cannot, personally or through delegation of power, purchase a government real estate. He cannot, in the same conditions as before, take part in public and private auctions and public procurement*”. This provision extends to the other Presidents of the National Institutions, the Ministers and the Prime Minister, though there are no rules protecting the denouncers of acts of corruption.

---

<sup>30</sup>Evaluation of Niger Progress Toward the Millennium Development Goals, Second Independent Report of the Civil Society Organizations”, December 2009.

<sup>31</sup>Interview Bazoum Mohamed, Vice Chair of the Parliament, and Vice President of the Nigerien Party for Democracy and Socialism (PNDS), about the embezzlement case at the N.A. “ in ‘le Canard Déchaîné’, no 394, Sept. 14, 2009.

<sup>32</sup>Interview of Pr Tidjani Mahamane Alou, op. cit

Governance: mechanisms aimed at ensuring integrity (practical framework)

To what extent is the integrity of the Executive effectively ensured?

In Niger, there is Code of Ethics and Conduct for the Executive even though the leaders of the main institutions declare their property. Civil servants are reprimanded by their hierarchy, being reminded of the role of a 'true employee': honest and respectful of the rules of the Republic, polite and hard-working, mindful of the clients and users of public services.<sup>33</sup>

During the year 2009, no case of conflict of interest is recorded and brought to the knowledge of the population.

No one seems to mind the top civil servants officials who go back and forth between private and public sectors as there are no laws that protect the denouncers of corruption cases.

Governance: management of the public sector (in practice)

Is improving the governance of the public sector a priority for the Executive, and does it act accordingly?

Through speeches, the Executive in Niger gives the impression that it is willing to improve the governance of public services as shown by the New Year's speech (2006) of the President of the Republic in response to the President of the Supreme Court, "This struggle, as you aptly mentioned Mrs. President is to be won through hard work by responsible agents, conscientious of their mission of public service. I am deeply convinced; that is why I seize this opportunity to reiterate my determination to fight the evils that you mentioned, namely, corruption and interest peddling. Those evils are doing much harm to our society and are annihilating our efforts to promote good governance. We can no longer tolerate individuals who use the civil service's powers with impunity for their personal enrichment".<sup>34</sup>

---

<sup>33</sup>Interview of Mrs. Adama Saliah, Deputy Secretary-General of the Government, Former Director of Legislation, Former State Prosecutor of the Republic.

<sup>34</sup>'Speech of the President of the Republic' in the government newspaper the Sahel, Wednesday, 1-13-06

The Executive power in Niger has the institutions and mechanisms to supervise the effective work of the administration, including the state finances, ministries, audit services, the Office of Legislation and Litigation, the Multi-sectoral Regulatory Authority and the Authority for Regulating Public Procurements. All these structures aim at ensuring a good running of public services through the respect of the existing rules and procedures. Nevertheless, there is no real efficient control of their respective departments by Ministers and other public officials (Central and General Directors); there are also no incentives to help the public sector respect the principles of transparency, responsibility, integrity and integration of all social groups.

### Role

#### Operational role against corruption

Is the fight against corruption and the promotion of good governance a priority for the Executive?

In theory, the fight against corruption and the promotion of good governance are priorities for the Executive power. Laws have been passed to fight corruption and promote good governance in terms of integrity, transparency and responsibilities (proposed by the Executive and passed by the National Assembly); for instance the reform of the Penal Code in 2003 and the United Nations Convention ratified in 2008.

One major initiative taken by the former President Mamadou Tanja to the fight against corruption is summarized in his conception of re-foundation when he said: “[re-foundation] will remain a lure if justice is not fair to all citizens, if impunity continues to prosper in the country. From this conviction, I would like to solemnly call all the Nigeriens to fight corruption, preferential treatments and embezzlement of public funds by all means, including denunciation based on tangible and objective facts. I am determined to investigate any credible denunciation to clarify the situation and sanction the offenders if need be in conformity with the laws and regulations to that respect”.

In their first declaration after the military coup of February 18, 2010, the junta launched an appeal toward the national and international community to support their patriotic action to protect Niger and its populations from poverty, lies and corruption.<sup>35</sup> The military junta then signed an ordinance consecrating the creation and organization of the

---

<sup>35</sup>“Declaration on Feb. 18, 2010 by the defence and security forces”, in Sahel, 1-19-2009

Commission to fight against economic, financial, fiscal delinquency and for the promotion of good governance in the handling of public goods (May 11, 2010).

Similarly, since 2003, new structures have been put in place in order to fight corruption, such as the National Commission on Strategies to fight against corruption, the Authority for the Regulation of Public Procurements (ARMP) and the Multi-sectoral Regulatory Authority (ARM).

Finally, to make the missions of those structures successful, additional personnel and financial resources have been provided to the Inspection of Finances, the Government Litigation Office and the Inspections of Services in the different Ministries.<sup>36</sup> Audits and reports have been produced by those structures.

---

<sup>36</sup>Interview of Mrs. Adama Saliah, Deputy Secretary-General of the Government, *ibid.*

# 3. JUDICIARY

**Key Informants:** Mr. Soly Abdourahmane retired Magistrate, Former State Prosecutor of the Republic, Former Prosecutor at the Supreme Court, Former Secretary General of the Ministry of Justice, Former Minister of Justice; Mrs. Adama Saliah, Deputy Secretary-General of the Government, Former Director of Legislation, Former State Prosecutor of the Republic.

Since the military coup on February 18, 2010, some structures of the Judiciary have been dissolved and replaced by others. The Supreme Court has been replaced by the State Court, the Chamber of Accounts and Budgetary and Financial Disciplinary Court by the Government Accounting Office and the Constitutional Court by the Constitutional Council. Each has almost the same attributions as its predecessor.

#### Organization and running of the Judiciary power

In Niger, Title VI of the August 18, 2009 Constitution is devoted to the Judiciary power. As with the other foundation laws, this Constitution reaffirms the independence of the Judiciary power as regards the Executive power and the Legislative power. The Judiciary is exercised by the Constitutional Court, the Court of Cassation, the State Council, the Government Accounting Office, Courts and Tribunals (Article 99 of the Constitution). For practical reasons, the assessment of the Judiciary will not incorporate the Government Accounting Office as it is a pillar that will be analyzed in a specific way.

#### The Constitutional Court

The Constitutional Court is the jurisdiction in charge of constitutional and elections matters. It sees to the constitutionality of laws and ordinances, as well as the conformity of international treaties and agreements to the Constitution. It also interprets the provisions of the Constitution, checks the regularity and transparency of voting operations during a referendum, presidential, legislative and local elections. The Constitutional Court rules electoral disputes and proclaims the final results of elections. The procedure to follow before the Constitutional Court and its organization are determined by the Act 2000-11 and the subsequent modifying texts.

#### The Court of Cassation

The Court of Cassation is the highest jurisdiction of the Republic in judiciary matters. Its headquarters are in Niamey, and the organic law 2007-07 of March 13 determines its composition, organization, attributions and the running of the Court. It deals with lodged appeals,

cases of incompetence, violation of the law or tradition, failure to reach a ruling, default, insufficiency or obscurity of motives underpinning the rulings and judgments rendered with no possibility of appeal by the jurisdictions in the judiciary order and judgement of all matters in its competence, as well as decisions of the Councils of Labour conflicts, except litigation relating to the harmonized law that is the domain of competence of the Common Court of Justice and Arbitration of the OHADA. It also decides whether to refer a case from one tribunal to another, receives refutations in its competence, requests for reviews, submission for retraction, forgery cases, rejections of judges, jurisdictions, and their compositions, the lack of clarity of judgment or sentences between different jurisdictions but relating to the same parties and same case, files against administrative or judicial magistrates, as well as the officials, civil servants and persons specified in Articles 638 and 64 of the Code of Penal Procedures, requests to delay execution of a legal decision, and requests for stay of execution and requests compensation when it comes to a remand on custody.

#### The State Council

The State Council judges abuses of power by administrative authorities in the first and last resort, and appeals for the interpretation and appreciation of the legal conformity of administrative acts. It also receives appeals regarding decisions rendered by jurisdictions dealing with administrative matters, jurisdictional decisions rendered in the last resort by administrative organisms and professional orders and decisions rendered in the last resort by jurisdictions judging litigations relating to cases concerning registration on voting lists. The Constitutional disposition 2007-06 of March 13 determines its composition, organization, attributions and operational mode.

#### The High Court of Justice (HCJ)

According to Article 119 and the following ones of the Constitution, the High Court of Justice (HCJ) is composed of Members of Parliament that the National Assembly elects amongst its members, of senators from the Senate and magistrates of the Court of Cassation. It is chaired by a magistrate chosen among its members. The HCJ is competent to judge the government members for acts proven to be crimes or misdemeanour when in office. The HCJ is competent in defining a crime or a misdemeanour, and in determining the sentences stemming from penal laws in force at the time of the events (Article 123 of the Constitution).

#### The Courts of Appeal

In view of the constitutional provisions No. 2004-50 of July 2004 determining the organization, competence of jurisdictions in the Republic of Niger, the Courts of Appeals are competent to receive appeals of judgment rendered in the first resort by county courts, magistrates' courts, juvenile court, commercial court, administrative court and labour arbitration court. During its general assembly, the Court of Appeal judges appeals against decisions rendered by the Bar Associations on litigation matters.

Unless otherwise specified by the law or international conventions, appeals of the decisions of the Court of Appeal are taken before the Court of Cassation or the Council of State depending on the case. Niger has only two Courts of Appeal: Niamey and Zinder.

#### County courts (Tribunal de Grande Instance [TGI])

County courts are judges of all common law crimes, except those that are of the resort of other jurisdictions. For repressive matters, the county courts work jointly with magistrates' courts on offences and fines within the limits of the competences established by the Code of Criminal Law Procedures. For civil matters, all cases are treated by the county courts except those which fall under the power of the magistrates' courts or specialized courts (Article 73 and the following ones of Law No. 2004-50). There are only ten county courts in Niger, all located in the eight regional capitals, and in the departments of Konni and Arlit.

#### Magistrates' courts

For repressive matters, magistrates' courts take cognizance of offences and fines of simple police. They are also competent to deal with preliminary information about any crime or infraction (Article 76 of the law 2004-50). All the departments where there are no county courts have a magistrates' court.

#### Assessment

##### Capacity

Capacity: resources (legal framework)

Does the Constitution or the existing legislative and regulatory provisions in force guarantee decent remunerations and good working conditions within the judiciary system?

The provisions of Article 65 of the decree No 2000-11 specifying the organization, operation mode and procedures to follow before the Constitutional Court as modified by Law 2004-16 of February 8, 2004, stipulate that the members of the Constitutional Court receive a pay equivalent to that of the government members. The general statute of the magistracy, Law N° 2007-05 of February 22, 2007 in its Article 76, sets the material and social privileges granted to the magistrates. Their remunerations are broken out as follows:

Treatment subject to pension calculation;  
Weighting allowance;  
Family state benefits.

Added to those advantages are allowances, exceptionally and incidentally, representing justified expenses and fees related to duties. Appointments to the different posts of the magistracy are made through a decree taken by the President of the Republic, who also is President of the Supreme Council of the Magistracy following proposals by the Minister of Justice. Concerning the judges, their appointments only take place following an informed opinion of the High Council of Magistracy. Dismissal, with or without pensions rights, is applicable to a magistrate in cases of grave disciplinary action or behaviour. Regarding “ad hoc” appointments, the Statute of the Magistracy, in Article 40, Law N° 2007 of February 2007 says:

University faculty or college “Agrégés” professors (Professeurs Agrégés);  
Personalities appointed at the Audit Court;  
Lawyers / barristers;  
Notaries / solicitors and court clerks can be appointed magistrates, but under certain conditions.

However, the number of magistrates appointed on an “ad hoc” basis should not exceed 1/5 of the vacancies in the grade. After their appointments, these magistrates benefit from the same working conditions as the permanent ones.

There are no provisions for the decrease of remuneration for the magistrates. The “downgrading” which constitutes a decrease of remuneration is one of the disciplinary measures applicable to magistrates.<sup>37</sup>

---

<sup>37</sup> Article 54, Bill of Law No. 2007-05, 2-22-2007, Magistrates Status

Capacity: resources (practice)

Does the Judiciary system have enough human, material and financial resources to allow it to efficiently play its role?

The situation of the Judiciary system in terms of human, material and financial resources varies in Niger. There has been some improvement during the past years, mainly regarding the treatment of the magistrates with a special status. But there is a real shortage of magistrates, and not enough subordinate personnel; in-land services suffer from a lack of working material.

The working conditions in the Judiciary are tough due to a shortage of employees. The creation of the National School of Administration and Magistrature (ENAM) is a major asset in the development of the Judiciary system as the school trains a good number of magistrates within a short period, meeting the needs of the country.

The current human resources are not enough for the Judiciary to fulfil its mission successfully. According to the President of the Supreme Court (2010 New Year's ceremony), the judiciary system in Niger has only 253 active magistrates, both in the central administration and in the jurisdictions. Of this number, 129 (i.e. 50.98%) have less than 5 -year experience, meaning that the Nigerien judiciary body is relatively young.<sup>38</sup> Taking the analysis of the current resources further, it transpires that the judiciary has minimum material resources. Magistracy hence receives salaries definitely higher than the salaries paid to the other civil servants. The former has substantial allowances more than before; they earn judicature fees that increased from CFA F 75, 000 (US \$ 150) in 2006 to CFA F 200, 000 (US \$ 400) in 2008). The

---

<sup>38</sup>“Speech of the President of the Supreme Court”, New Year 2010.

operating budget of the judiciary institutions, as compared to the national budget, makes uneven progress.<sup>39</sup>

Capacity: independence (legal framework)

Does the Constitution or the existing legislative and regulatory provisions in force guarantee the independence of the Judiciary power?

The constitutional, legal and regulatory provisions guarantee the independence of the Judiciary power. In fact, Article 100, in its first paragraph, stipulates that “justice is dispensed throughout the national territory on behalf of the people, in accordance with the strict respect of the law rule, as well as in accordance with each citizen’s rights and freedom”. Paragraph two of the same law stipulates that “judicial decisions are forced upon all public authorities, as well as any individual citizen.

They can only be criticized by the ways and formats authorized by the law”. In the course of their work, judges are independent and they are solely under the authority of the law. The President of the Republic stands surety for this independence of the judges; to see to that he is assisted by the Magistracy Supreme Council (Conseil Supérieur de la Magistrature / CSM) he is presiding over. The supreme courts of law are guaranteed by the Constitution. Hence the Constitution addresses the Constitutional Court through Articles 104 and 115, Cassation Court through Article 116, State Council through Article 117, the Government Accounting Office through Article 118 and the High Court of Justice (HCJ) through Articles 119 to 123.

In Niger, all of the constitutional provisions can be reviewed, except for the republican form of the State, multiparty system, the State and religion separation principle, the three years bonus granted to the President of the Republic and the amnesty granted to the perpetrators of the 1996 and 1999 Coups d’Etat.

The judges are appointed by the President of the Republic following a proposal by the Minister of Justice and the opinion of the Magistracy Higher Council. Judges are irremovable. The Public Prosecutors are also appointed by the President of the Republic following a proposal from the Minister of Justice.

There is a Magistracy Higher Council (MHC) provided for by the Constitution through Article 101 that is completed by the Ordinance 93–

---

<sup>39</sup>It was 0.81% in 1998; 1.13% in 2000 and 0.87% in 2006

06 of September 1993 and addresses the MHC composition and organization. The magistrates have their representatives at the Magistracy Higher Council. As such, they are therefore involved in the process of the appointments of their colleagues. The appointments are done on the basis of well-established professional criteria. In fact, in accordance with Article 44 relating to the Statute of Magistracy, "before July 1<sup>st</sup>, a report per each practicing magistrate is sent to the Minister of Justice. This report contains a mark out of twenty points, a well-founded appreciation and any information regarding the magistrate's professional and moral values. Any magistrate, at his request, has the right to be informed of the content of the report developed on them. The magistrate has the right to make written observations addressing the content. The written observations must be sent to the Minister of Justice through the channel used for sending the report".

Capacity: independence (in practice)

Does the Judiciary power fulfill its function free of interferences from the Executive power or other actors?

The independence of the Judiciary power regarding the other powers is relative. Often the work of the Judiciary power experiences intrusions from the other institutions or other structures, mostly from the Executive power. Moreover, the legislator has given room to this situation for he has put the State Prosecutor under the authority of the Justice Minister. The shortage of financial resources allocated to the Judiciary power undermines its independence.

The Nigerien public does not believe in the independence of the Judiciary power. As far as numerous legal proceedings are concerned, newspapers often reported government interference aimed at getting some people arrested and/or condemned, or at preventing some people from being arrested and or condemned. According to a study conducted by Yenikoye (2006) "57.6% of the respondents found the justice system corrupt and 23.4% found it very corrupt".<sup>40</sup> The typical case example of such practices is the case of assault by Mr Dan Foulani, a trader and very close friend to former President Tanja Mamadou. Mr Dan Foulani assaulted Mr Maman Abou, founder and owner of the Nigerien private newspaper "Le Républicain". Mr Maman Abou lodged a complaint against Mr El Hadji Moussa Dan Foulani at the Regional Tribunal of Niamey on August 11, 2005 because of "Acts of violence, assault and

---

<sup>40</sup>M. Aboubacar Yénikoye Ismaël, « État de la Corruption au Niger », Niamey, Août 2006, page 179.

battery” committed on him by Mr El Hadji Moussa Dan Foulani.<sup>41</sup> The complaint came to nothing.

Nonetheless, some examples indicate that certain independence exists regarding the Executive power. This evidence includes the Supreme Court President’s New Year Address to the President of the Republic in 2005, the invalidation by the Constitutional Court of the Presidential Decree relating to the Referendum of August 4, 2009 and the New Year Address in January 2010 of the Supreme Court President to the President of the Republic.<sup>42</sup>

Some actors in the judiciary world say that there have always been interferences into the running of the Judiciary power from other institutions or structures, essentially by means of social and family pressure, in addition to the intrusion from the Executive power. So, according to Issa Abdourahamane Boubacar “to work as a judge means facing multiple cases of pressure coming from parties involved in the proceedings, since each party wants to win. Within the African context, these pressures have long come from the public power. The misuse of the justice system within an authoritarian context would discourage any recourse to tribunals to settle matters. Even when a citizen dares to defy this taboo, he should expect the judge to resist conducting an investigation into his case. Only a few cases, relating entirely to the private domain, were taken care of fearlessly as their impact on the public life was almost nil.”<sup>43</sup>

It is often noticed that good Ministers of Justice are not always law experts. In fact, contrary to judiciary specialists and experts who become Ministers of Justice, the former, once appointed Minister of Justice is inclined, in the discharge of his duties, to ask the staff and agents of the Ministry of Justice what is allowed by the law when he is asked a “favour”, whereas the others, by themselves, look for or ask the staff and agents of the Ministry of Justice ways to circumvent the law.<sup>44</sup> The Minister of Justice sometimes intervenes through instructions to members of the public prosecutor’s department, notably the State Prosecutor, to stop proceedings relating to some judiciary cases. Still, they can obey these instructions while respecting the law, but this is unfortunately not how cases are handled in practice.

---

<sup>41</sup> « Rapport annuel sur la liberté de presse pour 2004-2005, le Réseau des [www.rjdh.niger.org](http://www.rjdh.niger.org) Journalistes pour les Droits de l’Homme (RJDH) », site web :

<sup>42</sup> Voir par exemple le Journal « le Sahel Spécial du nouvel an 2010 »  
<sup>43</sup> Issa Abdourahamane Boubacar, « Les juges à l’épreuve de la démocratisation : l’exemple du Niger », Université Montesquieu - Bordeaux IV June 2003

<sup>44</sup> Interview with Monsieur Soly Abdourahamane, Magistrat à la retraite, Ancien Procureur de la République, Ancien Procureur près de la Cour Suprême, Ancien Secrétaire Général et Ancien Ministre de la Justice, le 25 février 2010

## Governance

### Governance: transparency (legal framework)

Does the Constitution or the existing legislative and regulatory provisions make it possible to suitably inform the citizens about the decision making processes within the Judiciary power?

The Constitution provides that justice is rendered on behalf of the people and that all the citizens are equal before the law. Law 61-33 of August 14, 1961, establishing the Penal Code and its subsequent and altering texts, and the Organic Law 2004-50 of July 22, 2004, that specifies the organization and the competence of the jurisdictions in the Republic of Niger, have provided that trial proceedings carried out by courts and tribunals are open to the public. Nevertheless, cases undergoing investigations are kept secret insofar as the investigations set forth have not been completed. If the tribunal believes that the publicity is dangerous, it can hold the proceedings behind closed doors. Also, the tribunal can forbid access to minors.

Law N°. 2001-34 of December 2001 subjects magistrates to declare their property. This very law specifies the other civil servants who are subjected to the obligation to declare their property. The declaration is sent to the President of the Constitutional Court. A copy is sent to the tax departments. The gaps between the initial declaration and the following updates must be duly justified. As far as this domain is concerned, the Constitutional Court is entitled all powers of appreciation.

### Governance: transparency (in practice)

Do citizens have access to information relating to the Judiciary power's acts and decisions?

Usually, the majority of the hearings and proceedings in tribunals are public. The decisions of the tribunals are rendered in public. Nevertheless cases undergoing investigations are kept secret insofar as the investigations set forth have not been completed.

When observing what is done in practice in Niger, in general, as far as the Judiciary power is concerned, the judiciary information is not kept secret. The decisions of justice are filed in the clerk's offices. The decisions are communicated among parties and in principle, this only concerns those involved in the proceedings. But, anyone can request to have access them, in accordance with the conditions set forth by the

law, notably through the payment of CFA 3,500 as legal fees. It is worth recalling that the majority of the hearings and proceedings in tribunals are public. The decisions of the tribunals are rendered in public.

During the survey in situ, relating to the NIS assessment of Niger, from February 1, 2010 to March 1, 2010, at the level of the Public Prosecutor, the surveyors have been able to get the number of cases dealt with from 2007 to 2008 at the Niamey Exceptional Court [Tribunal Hors Classe de Niamey (THC N)].<sup>45</sup>

Governance: responsibility (legal framework)

Does the existing Constitution, legislative or legal provisions in force provide that the Judiciary answers for its acts and decisions?

The legal framework relates to the discipline. Indeed, under Article 55 of 22 February 2007-05 law concerning the Statute of the Magistracy, "any failure, by a magistrate, for State reasons, honor, delicacy or dignity and professional obligations is a disciplinary fault ". The following are, among others, disciplinary faults:

- . any form of request from the criminal subject to trial in a criminal court;
- abusive tardiness in the treatment of files;
- . unjustified delay in the drafting of decisions;
- unjustified obstacle with the execution of a court order;
- absenteeism not duly justified;
- removal from one's place of residence without preliminary authorization;
- manifest or deliberate violation of the law;
- disclosure of the deliberation secrecy;
- any behavior incompatible with the exercise of legal functions.

This fault is assessed more rigorously for the prosecuting attorney, by taking account of the obligations which result from his hierarchical subordination.

Magistrates are only subjected to the authority of the law in the performance of their duties. The responsibility of magistrates, who committed a personal fault related to public utility of law, can be engaged on the recourse action of the State before the Supreme Court of Appeal.

Apart from any disciplinary action, those in charge of the courts can warn the magistrates placed under their supervision.

---

<sup>45</sup> « Statistiques des affaires entrées au parquet 2007-2008, Cabinet du Procureur », fait le 9 juillet 2009, Niamey.

According to the terms of Article 57 of law 2007-05 of February 22 2007 related to the Statute of the Magistracy "*disciplinary actions applicable to the magistrates are in ascending order:*

- reprimand with entry in the file;
- automatic displacement;
- removal from promotion list or short list;
- removal from some functions;
- relegation in steps;
- demotion;
- automatic retirement or admission to cease functions when the magistrate is not entitled to a retirement pension;
- dismissal with or without suspension of the rights to pension .

If a magistrate is prosecuted for several facts at the same time, only one of the following sanctions considered above could be passed against him.

In the event of a lawsuit, the person to be tried can challenge a judge if s/he has doubts about his impartiality (family ties, mistrust, lack of confidence). The file can be withdrawn from the judge by his hierarchy for various reasons and finally the judge can give up a file. The Prosecutor cannot be challenged as interchangeable: if the prosecutor is unavailable, he will be replaced by his substitutes.

Governance: responsibility (practical)

Does the Judiciary account for and effectively answer for its acts and decisions?

Within the framework of their activities, each of the various legal services account to their hierarchy. Thus, activity reports are prepared and sent to managers at various levels. Court presidents send their reports and send reports of their activities to the Minister of Justice, thus creating another link between the Judiciary and the Executive Branch. Courts and tribunal presidents send their reports and send reports of their activities to the Minister of Justice, creating another bond between the Judicial power and the Executive power.

The Judicial power can only answer for its acts in the event of serious breach. Thus, the judge can be called and even brought to a lawsuit, in front of the Supreme Court judges and can even be tried so that he answers to his acts. Gross negligence and professional faults are dealt

with by the State which can, if it deems necessary, and in the event of a gross negligence, be turned over against the accused judge.

Governance: mechanisms aimed at guaranteeing the integrity (legal framework)

Are there constitutional requirements, legislative or statutory provisions aimed at guaranteeing the integrity of the Judiciary?

The issue of the Magistrates' integrity has been a concern which has been taken into account in law N° 2007-05 of February 22, 2007 concerning the Autonomous Statute of Niger Magistrates of 2007. Indeed, under Article 6 of the aforesaid statute, after his training, any magistrate, during his appointment at his first station and before taking up duty, is sworn in, in the following terms:

"I swear before God and men:  
to accurately fulfill my functions;  
to respect the laws and regulations in force in accordance with the Constitution;  
to respect human rights and the freedom of the citizens;  
to comply with the rules of probity, impartiality, neutrality and integrity;  
not to take, nor guarantee any degrading measure for human dignity;  
to maintain the secrecy of the deliberations;  
to behave like a worthy and honest magistrate in any circumstance.

In the event of perjury, may I undergo the rigor of the law."

The magistrate is sworn in again when he is reinstated. He cannot, in any case, be released of this oath. The oath of the newly integrated magistrates is received in solemn audience in the Courts of Appeal, in whose competence they are appointed.

Moreover, within the framework of his activities, The Project for the Fight against Corruption which was implemented from March 2007 to November 2009 and funded by the United Nations Development Program (UNDP) in Niger, recommended the drafting of a Deontology and Ethics Guide for Niger Magistrates. The document is currently in the pipeline at the Government level and will certainly be adopted in the upcoming months. This is ongoing in spite of the coup d'état of 18 February 2010, because a consensus seems to have emerged on the utility and opportunity of this document which was amended and validated by a workshop organized by the Ministry of Justice on 19 May 2008.

Governance: mechanisms aimed at guaranteeing integrity (practice)

Is the Code of Conduct specific to the magistrates actually applied?

In his oath, the judge swears to behave as a worthy and honest magistrate. He takes the commitment "to comply with the rules of probity, impartiality, neutrality and integrity" (Article 6 of law N° 2007-05 of 22 February 2007 concerning Statute of Magistracy). However, in practice, there are many cases, in particular of corruption in which judges and magistrates are implied. Thus, according to Boubacar Issa Abdourahamane (2003) "... the jurisdictions no longer have the means of ensuring an acceptable functioning of legal service provision. This situation places the judges in a difficult position vis-à-vis the litigants. This negatively affects their quest for independence and credibility in a field where they are sometimes requested to come to a conclusion about cases with significant financial stakes, whether on the civil, commercial or penal plane. Temptations are great and sometimes irresistible".<sup>46</sup> For this reason, he notes that several judges were indicted for their alleged implication in cases of corruption and embezzlement. He makes reference to the Rulings of the Supreme Court / CH Pénale, 95-29 of 27 April, 1995, 95-37 of 8 August, 1995 and 95-40 (1995). There are also judges and magistrates who are politicians and belong to political parties. However, it should also be stressed that there are many judges and magistrates who are professionally honest and upright.

Governance: control of the Executive power (legal context and practice)

Does the Judiciary exert effective control on the Executive?

The judicial power exerts a certain control concerning some fields: thus, in terms of constitutional matter, all organic laws are checked for their constitutionality, before their promulgation (Article 112 of the Constitution). In the administrative field, the Council of State is referred to by the Prime Minister for its opinion on ordinance and bills which he considers useful to be submitted to him, before their adoption by the Cabinet meeting. He gives his justified opinion to the Government on the bills and/or any other project document for which his intervention is considered by the constitutional, legislative or regulatory provisions submitted to him by the Government (Article 20 of law 2007-06 of 13 March 2007 determining the composition, organization, attributions and

---

<sup>46</sup> Dr. Boubacar Issa Abdourahamane, "Les juges à l'épreuve de la démocratisation: l'exemple du Niger ", Afrilex, Université Montesquieu Bordeaux, <http://afrilex.u-bordeaux4.fr>, juin 2003

operation of the Council of State). Moreover, the Prime Minister or ministers can consult the Council of State on difficulties resulting from an administrative matter. The Council of State can also, of its own initiative, draw the attention of the authorities on reforms of a legislative, statutory or administrative nature which seem to be in conformity with the general interest.

Governance: Control of the Executive (practical context)

Does the Judiciary exert an effective control on the Executive?

In practice, the Judiciary does not control all the activities of the Executive. It cannot seize a corruption case by itself, nor decide by itself to control the activities of the Executive. The regulation provided conditions of referral to the Court of the Judiciary. However, the majority of those who can seize the Judiciary belong to the Executive. On the level of the Judiciary, corruption cases are regarded as private cases, involving private people, the corrupter and the corrupted. The Judiciary cannot sanction either other. However, it is difficult for private individuals involved, the corrupter or corrupted, to seize the judge. The work of the Judiciary is difficult, since in addition to referral to court, one needs convincing material evidence.

It is also worth mentioning that the operation of Niger State power is different from that of the United States: thus, in Niger, the Judiciary does not validate the appointments to the State high employments. But, in the event of a violation of the law, the members of the Executive power are litigants like the others, even if they benefit from the privilege of jurisdiction regarding the case of the magistrates.

Legal fight against corruption (practice)

How does the Judiciary sanction cases of corruption?

There are no particular sanctions of the Judiciary against corruption. Judges and magistrates apply the laws and regulations of the Republic when they are seized, or when they try lawsuits concerning corruption cases.

The only characteristic, which is of a legal order, is that '*culprits of infringement of citizens' breach of equality before public procurements are not granted suspension*', according to Article 134.1 of the Penal Code and Penal Procedure.

4.

# PUBLIC ADMINISTRATION

**Key informant:** Mr. Abdoulaye Djibey, Director of Public Service Modernization at the Ministry of Public office and Labor (MFP/T)

### **Organization and operation of the public administration**

Public administration is the management apparatus of public affairs. It can be regarded as all of the services and the people who control public action. It is the instrument which makes it possible for the authorities to prepare and implement public policies. This is why, through the General Statute of the Public office (Law 2007-26 of 23 July 2007 concerning the General Statute of the Public office of the State and the subsequent modifying texts), it is expressly stipulated that the agents of the public office have an obligation to serve the interests of the nation as a community, the State and the administrations and institutions which employ them, with honesty and probity. They must, in all circumstances, respect and enforce the respect of State authority. Public agents' offices must also take care of the respect of the law, the rights and fundamental freedoms guaranteed by the Constitution, such as the interests of public utility. They must avoid, in the fulfillment of their duty as in their private life, any action that is contrary to them, or likely to compromise the honor, morality, confidence and reserve which bind them to their functions.

A civil servant, within the meaning of Law N° 2007-26 of 23 July 2007 concerning the General Statute of Public office, is considered as:

- any appointed and established agent in one of the permanent public employment hereafter :design employments;
- employments of high level intellectual and technical services, contributing to the execution of orientation, formulation, control and follow-up evaluation missions of the state sector policies;
- . design employments, high level intellectual and technical service provision, application or execution, convergent with the implementation of the missions of sovereignty reserved for the State;
- design, application or execution employments, leading to the implementation of missions considered strategic by the State".

Decrees taken in Cabinet meetings determine, by ministry and institution, the list of permanent public employments. The acquisition of the quality of civil servant is subordinated to a performance period of one year probation. Although an integral part of public services, some entities, because of their specificities, are governed by autonomous statutes. They are:

- magistrates;
- teachers and researchers of Niamey University and similar institutions;
- staff of administration, state services and public institutions, which carry out industrial or commercial services;
- military personnel;
- personnel of the National Intervention and Security Forces (FNIS);
- personnel of the national police force;
- personnel of the Customs;
- personnel of the National Forestry Commission;
- personnel of the National School of Administration and Magistracy (ENAM);
- personnel of the local public authorities;
- auxiliary personnel governed by the Fair Labor Standards Act, the Interprofessional Collective agreement or any other specific provision;
- Parliament administration staff;
- people appointed to political employment positions.

In addition to this personnel working in public services and having an autonomous statute, there are other administrative bodies, created under the general mode and the supervision of publicly-owned establishments, state companies and semi-public companies (Ordinance 86-001 of 10 January, 1986, Ordinance 86-002 of 10 January, 1986, decrees 86-002 PCMS/MTEP/SM of 10 January, 1986), which have a personal statute (Decree 86-154 PCMS/MTEP/SE/SEM of 23 August, 1986 relating to the general statute of the personnel of semi-public companies related to commercial and industrial companies, of state and semi-public companies).

### **Assessment**

#### **Capacity**

##### **Capacity: resources (practice)**

*Does the administration have the appropriate resources which enable it to effectively carry out its role?*

Niger administration does not have sufficient resources enabling it to effectively carry out its role. Thus, in 2006, Niger public office had

27,898 agents,<sup>47</sup> that is one government official for more than four hundred inhabitants, one of the lowest rates in Africa. There are many senior executives (8,345 management officials of A rank) in the general administration, whereas proportionally with the latter, the junior and intermediate staff (8,866 B rank officials and 8,328 officials of C rank) are insufficient.<sup>48</sup>

According to the key informant, government officials' wage levels are very low and not sufficiently motivating, often leading to the development of corrupt acts. Thus, in spite of the efforts made over the last years, particularly the 10% increase of grade points and introduction of civil service allowance for all the agents, ranging from fifteen thousand (15,000 CFA) to thirty five thousand (35,000 CFA) Francs, that is between 30 and 70 US dollars, salaries remain very low. This leads to claims by the major trade union federations, for an increase of government officials' income<sup>49</sup>. Thus, a civil servant of the C1 category, of second class, first level, earns 67,947 Francs CFA per month, 136 US dollars, and an A1 official at index 600, earns 244,000 Francs CFA, or 488 US dollars. This brings about a brain-drain of the most qualified executives toward greener pastures<sup>50</sup>. This is why, some analysts of the Niger socio-political situation point out that the insufficient and low wages at the vital minimum level are the root of corruption. Admittedly, the absence of protection of salaried-employees' purchasing power in some cases, encourage civil servants to look for easy profit, but it is worth stressing the fact that in Niger, people with large incomes are those who are predominantly involved in grand corruption. Nevertheless, it is necessary to recognize that the hard periods of the accumulation of retroactive pay ended up creating unhealthy practices among some civil servants<sup>51</sup>. This situation results from the implementation of the structural adjustment plans from 1982 to 2006, which involved the departure for retirement of the most competent and most experienced agents. There is a logistics deficit in terms of working material. For example, in 2003, the Ministry of Public Office received only 10,000,000 Francs CFA, that is 20,000 US dollars,

---

<sup>47</sup> " Dashboard of the Ministry for the Public Service and Work (MFP/T)", June 2006, quoted in the " provisional Report of the national consultation for the second reading of the integrated modernization program of the administration "

<sup>48</sup> board of the Ministry of Public office and Labor ", June 2006, *ibid*

<sup>49</sup> " Newsletter 'Le Travail', of the European Public Service Progressive Workers' Union (USPT)", n°4 of 1 May 2010

<sup>50</sup> Discussion with Professor Tidjani Mahamane Alou, *ibid*.

<sup>51</sup> Djibril Abarchi, Rabo Mainassara Mamane, Mrs. Gado Hadizatou Samna, " Corruption in the sector of justice, education and health to Niger ", page 18, February 2003, Niamey, Ministry for Justice

of monthly operation expenses and 18,984,971 Francs CFA, or 37,970 US dollars, planned for 2010<sup>52</sup>.

### **Independence capacity (legal context)**

*Does the Constitution, legislative or statutory provisions in force guarantee the independence of the public office?*

The Constitution, in Article 56, poses the principle of administration neutrality. It is the President of the Republic who must see to this neutrality. Learning lessons from the difficulties of an excessive politicization in the management of government officials, the legislator adopted a text devoting the classification of the various higher State positions and the appointment conditions of their holders. Thus, Ordinance 99-057 of 22 November, 1999, determining the classification of the higher State employees and conditions of their appointments, distinguishes two categories of high employment: employments of a political nature and technical employment. The former are appointed at the discretion of the political leaders, while the second are filled on technical bases and with competence.

The General Statute of the Public Office codified and enacted the rules applicable to the political activity of the civil servant. Thus, it prohibits any government official to carry out political activities and forces him to resign or take a leave of absence, in the event of his candidacy for elective functions, to avoid conflicts of interest. But, these provisions, which are a code of ethics, deontology and control for the government official, are respected neither in itself, nor by the administration, and do not protect it from political interferences.

As far as recruitment is concerned, it is always determined by the General Statute of the Public office (Articles 47 and following) which stipulates that "access to civil service employment is carried out by way of direct or professional contest". The appointment of a civil servant to an established post can only take place under the conditions determined by the General Statute of the Public Office.

It is the administrative division of the Supreme Court which protects the civil servant from all abuses and other excesses, including abuses of power and political interventions in the management of his career. If he

---

<sup>52</sup> Schedule n°2009-26 of 06 November 2009, concerning finance law for the 2010 financial year

believes that he was the subject of injustice, of some nature, that is in the performance of his duties, he can seize this institution which has been in existence and operation for ten years. As far as Boubacar Issa<sup>53</sup> (2003) is concerned, "if in the past, administrative dispute was quasi non-existent, it is today in full expansion. Whereas between 1960 and 1980, there were only two administrative case rulings, jurisprudence of the Administrative Division of the Supreme Court have since exploded. Following the beginning of democratization in Niger in November 1991 these rulings have gone from eight in 1992, to twelve in 1993, fifteen in 1994, twenty-one in 1995, and finally thirty six in 1996.

### **Independence capacity (practice)**

*Can civil servants act freely without undergoing external interferences?*

Although in theory, Ordinance N° 99-057 of 22 November, 1999, determines the classification of higher State employees and the conditions of their appointment, and the General Statute of the Public Office makes it possible to avoid excluding some agents holding responsibility position because of their supposed membership with political parties, in practice, these provisions have never been respected. They did not put an end to partisan appointments which are real constraints to good governance, to the promotion of a quality administration and to sources of security for the career of the government official. This leads the government official to behave and act contrary to the ethics and deontology of his profession or trade, if he wants to have access to State employment or if he wants to preserve it; because of the excessive politicization of Niger administration, the government official does not act freely, in spite of the existence of legislative, statutory and appropriate mechanisms: the General Statute of Public Office in particular. The politicization of the management of State services is thus a constraint for State employees, who can be revoked for refusing to obey illegal orders, or because their political parties lost the elections.

### **Governance**

#### **Governance transparency (legal context)**

---

<sup>53</sup> Boubacar Issa Abdourahamane, op. cit.

*Does the Constitution, legislative or legal provisions in force guarantee transparency as regards the financial and human management of the administration and as regards access to information?*

The General Statute of the Public Office clearly determines the management of human resource, with the various types of bodies and their respective missions. Thus, the Advisory Council of the Public Office is in charge of knowing all the issues of a general nature relating to Public Office, the Joint Administrative Committees deal with the issues of advancements, granting tenure and discipline, and the Technical Commissions at the Ministerial level, are in charge of first degree sanctions and dismissals of contractual workers.

The management of financial resources abides by the general rules of public accounts, namely directives relating to sub-regional and regional organizations such as the West African Economic and Monetary Union (UEMOA), to which Niger belongs.

Law N° 2001-034 of 31 December 2001 determines the categories of other public agents who are not mentioned in the Constitution; people who are liable for taxes. It specifies the category of the civil servants, particularly those occupying high responsibilities in the various public services, who must declare their property, with an annual update, and with the suspension of function. All the asset declarations are published in the Official Journal and by way of press. The differences between the initial declaration and the updates must be duly justified and the Constitutional Court has all capacities of appreciation in this field.

For the time being, as regards citizens' access to information, applicable provisions are those of the General Statute of the Public Office which stipulates in Article 24: "the civil servant is also held to professional secrecy". Without damage to the provisions of the Penal Code as regards professional secrecy, the civil servant is held to obligation of discretion for anything relating to the documents, facts and information, of which he is informed in the performance or at the time of the exercise of his duties. He remains subjected to his obligation even after the suspension of his functions.

However, public office agents must provide any requested information which the users have the right to obtain. Nevertheless, information which should not be disclosed to the users must be specified for each government department or public institution by the Minister or person in charge of the institution concerned.

The General Statute of the Public Office more or less enacts some Draconian rules, indicating that communication of documents or service documents, contrary to the laws and regulations, is formally prohibited. For each government department or public institution, the proper authority must take the required measures useful for safeguarding the secrecy of service documents and determining the rules of communication to people who do not belong to the particular service.

Management of the documents produced or held by the administration, concerns the regulation relating to the files.

**Governance: transparency (practice)**

*Is the Constitution, legislative or statutory provisions in force aimed at guaranteeing transparency as regards financial and human management of the administration and as regards access to information, actually respected?*

The Constitution, legislation or statutory provisions in force aimed at guaranteeing transparency as regards financial and human management and as regards access to information, is not respected. Citizens do not benefit from easy access to information relating to the activities of the administration, although the General Statute of the Public Office allows it. Moreover, sector decrees have not been taken for the application of relevant provisions of the General Statute of the Public Office, concerning people's access to information. Public administration does not communicate well on its activities and its management, despite the existence of managements of public relations, of Press attachés in many Government departments. This situation can be related to circular letter 0491-Dircab-PM of 15 August 2006, which prohibits any systematic communication of official documents, following the MEBA case, disclosed by "Le Républicain" newspaper in 2006<sup>54</sup>. This circular, which relates to making administrative acts secure, does not make citizens' access to information and administrative documents an easy task.

Public access to information is thus difficult in Niger. This is corroborated by the results of "the survey on users' obstacles to access of public service users to public information and administrative

---

<sup>54</sup> "Annual report 2009 on the situation of human rights in Niger ", ANDDH, April 2010

documents, produced and held by the public administrations", carried out by Ali Ousseini Sountalma and Soumana Boureima Sourghia, in February 2009 and funded by the United Nations Development Program (UNDP) in Niger<sup>55</sup>. In conclusion, the authors of the study point out that in Niger, the right to information, and particularly citizens' access to information and administrative documents, are somewhat neglected by the authorities, in spite of the signature and ratification of several international documents, such as the African Public Office Charter. Following the results of this study and many others organized on this issue, a bill was initiated in 2008, to fill this vacuum and supplement the provisions of the General Statute of the Public Office. Unfortunately, it was rejected by the Government, which used the fact that the Government itself was going to initiate a bill in this direction as an excuse. However, at the date of the elaboration of this assessment report by Niger NIS, nothing had been done. The committee in charge of drafting the Fundamental Texts set up by the transition authorities resulting from the military coup d'état of 18 February 2010, has, among other missions, proposed a pilot study charter of access to information and public documents.

Within the context of Niger NIS assessment, eight investigators were hired, from 01 February to March 01 2010, to test the conditions of access to information in public services in Niger. There was a tacit refusal to provide information, particularly many non-honored appointments, at the Public Office.

#### **Governance: responsibility (legal context)**

*Does the Constitution, legislative or statutory provisions in force provide that the administration answers for its acts and decisions?*

Public office agents, whatever their rank in the hierarchy, are responsible for the execution of the tasks entrusted to them. Subject to the respect of the provisions of the law relating to the obviously illegal order, they must honestly carry out the orders and instructions of their seniors.

A public office agent, who is appointed as head of a service, is responsible for the authority conferred to him and its good operation

---

<sup>55</sup> Sountalma Ali Ousseini, Sourghia Soumana Boureima, " Report of the study on the obstacles with the access of the users of public services to public information and documents administrative products and held by the public administrations ", Ministry of Public office and Labor, UNDP, February 2009

and for the orders he gave. He has the hierarchical capacity and is held to sanction or cause the sanction of the abuses, negligence or failures made within the context of the service. He is released from any responsibilities which fall on to him, including the proper responsibility of his seniors, and that of his subordinates. In Niger, heads of department are not liable for their acts before legislative committees. However, the National Assembly, within the limitations of its missions, can carry out public service boards of inquiry or control boards.

Public office agents must devote all of their professional occupation to the exercise of their work, be present at their duty post during legal working times and carry out the tasks entrusted to them.

Arbitration is the body which is supposed to play a role in the treatment of complaints and citizens' claims. Unfortunately, this institution could not function until the coup d'état of 18 February 2010 or was dissolved, like the other institutions of the Sixth (6th Republic).

#### **Governance: responsibility (practice)**

*To what extent does the administration account for and actually answer for its acts and decisions?*

The Niger public administration accounts and answers for of its acts and decisions, because each agent must give an account of what he does to his respective hierarchy. But, the official control mechanisms of the public services are not very effective, although efforts were made in 2008 and 2009, with the multiple meetings and conferences of the people in charge of the State with the civil service, with many letters or unexpected visits to many public services, in order to send Nigeriens back to work. Service inspections are called upon to check arrivals at work, delays and absences. Many reforms are in progress, particularly concerning the setting up of a new system of real performance evaluation for government officials who will be assessed in future, according to real conditions of contract and mission specifications of their institutions and structures. Each one of the people in charge will be held to work out, their specifications<sup>56</sup>.

---

<sup>56</sup> Articles 94 to 99 of law 2007-23 of 23 July 2007, relating to the General Statute of Public Office

During the period of 2007-2009, there were also several procedures of questioning civil servants for embezzlements<sup>57</sup>. According to the key informant, the mechanisms of complaint treatment and citizens' claims are not effective. Arbitration was recently established in this sense, but was not functional at the time of the assessment, and does not exist anymore since the coup d'état of 18 February 2010.

**Governance: mechanisms aimed at guaranteeing Integrity (legal context)**

*Are there constitutional, legislative requirements or statutory provisions aimed at guaranteeing civil servants' integrity?*

One of the major provisions of the General Statute of Public Office's fight against corruption and comparable infringements, is "the prohibition made to any Public Office agent, whatever his position, to have, by himself or by any interposed person, no matter the denomination, in a company subject to the control of his administration or service, or in relation with his administration or service, of interests which are likely to compromise his independence " (Article 22 of Law 2007-26 of 23 July 2007, related to the General Statute of Public Office.

The explicit provision against corruption, aimed at guaranteeing the integrity of government officials, is envisaged in Article 23 of Law 2007-26 of 23 July 2007, concerning State General Statute of Public Office, and subsequent modifying texts. Thus, it is also prohibited for public office agents:

- to solicit, accept, claim or receive, directly or indirectly, any payment, gift, or other favour in kind, to discharge or abstain from discharging their functions or obligations even outside of the exercise of these functions but because of those;
- to offer a gift or another advantage which is likely to have an influence in their favour of the members of their families or friends, an influence on a person's judgment or action;
- to use public goods or require the services of a subordinate for activities other than those concerning their functions or mandate.

---

<sup>57</sup> « Field test results NIS Assessment Niger », of 1 February to 1 March 2010, 17 cases of embezzlement of public funds between 2007 and 2008, Office of the Prosecutor, 2009, Niamey

Public office agents assigned to employment stations, should not, after having left this employment, during a time allowed lawfully, unduly benefit from the functions previously occupied. It is particularly forbidden for them to devote themselves to some lucrative employments or accept a paid employment, in relation to their preceding functions. The nature of the functions, and duration of this prohibition, is determined by law. When the spouse of a civil servant engages in lucrative private employment on a purely professional basis, the administration or service to which the civil servant belongs must be notified. In this case, when necessary the proper authority takes appropriate measures designed to safeguard the interests of the service.

The General Statute of the Public Office is thus a kind of, deontology and ethics code of conduct of the government official. It determines the conditions of the behavior of the government official, while insisting on the criteria of accountancy in particular, such as the impact of the international environment, the charter of the African Union on the public office, with provisions on access to information and use of result-based management which gives primacy to competence.

**Governance: mechanisms aimed at guaranteeing integrity (in practice)**

*To what extent is the integrity of civil servants actually guaranteed?*

The procedures of the General Statute of the Public Office, which is a kind of deontology and ethics code of conduct of the government official, are unfortunately not applied. Some attempts were made by the administration to communicate, or make its fundamental principles known, particularly some Open Doors events on the General Statute of the Public Office organized in 2008. But, the information and sensitizing actions are insufficient. The fundamental principles are not generally known to the civil servants, or to other citizens. It should be stressed that good practices of new government officials' supervision, considered as trainees for several months, by some more experienced agents, have disappeared. On the job training and other re-training, intended to build the capacity of government officials, are increasingly rare.<sup>58</sup>

**Role**

---

<sup>58</sup> Discussion with Mr Abdoulaye Djibey, Director the Modernization of the Public Services at the Ministry of Public office and Labor (MF/T), 05 March 2010

**Public awareness-raising on the role of the administration in the fight against corruption (practice)**

*Does the administration seek to inform and sensitize the public on its own role regarding the fight against corruption?*

The only action organized by the administration to inform and sensitize the public on its own role in the fight against corruption, comprised, in 2008, the organization of an open door events, to inform the public on the General Statute of the Public Office. There are no formal programs of specific awareness raising as regards the fight against corruption. Citizens are not sufficiently informed on how and where they must denounce acts of corruption<sup>59</sup>.

**Co-operation with public authorities, NGOs and private foundations in the fight against and prevention of corruption (practice)**

*Does the administration take part in the actions led by watchdog organizations, companies or the civil service in general in the fight against corruption?*

Aside from participation in some workshops and seminars, during the last few years, Niger's administration has not taken part in any actions designed by civil society to fight corruption. There is still a lot of heaviness in the operation of Niger public administration, particularly because of the politicization of the state management.

---

<sup>59</sup> Discussion with Mr Abdoulaye Djibey, *ibid*

# 5. LAW ENFORCEMENT AGENCIES

**Key informant:** Mr. Soly Abdourahamane retired Magistrate, Former Supreme Court Prosecutor, Former Public prosecutor, Former Secretary-general and Former Justice Minister.

#### Structure and organization

It is Title I of the Law N° 61- 33 relating to 14 August 1961 institution of the Code of Penal Procedure, modified by Law N° 2003-026 of 13 June 2003, law N° 2004-21 of 16 May 2004 and law 2007-04 of 22 February 2007, which provides regulations relating to the authorities in charge of public action. In Article 11, the secret character of the examination of the case is recalled, *"except otherwise specified by the law and without damage to the rights of defense, the procedure during the investigation and case examination is secret. Any person who contributes to this procedure is held to professional secrecy under the conditions and sentences of Article 221 of the Penal Code "*.

Criminal investigation is carried out under the management of the public prosecutor, by the officers, civil servants and agents appointed under title I of the law referred to above. It is, in each competence of the Court of Appeal, placed under the monitoring of the Attorney General and control of the Court of Criminal Appeal, in accordance with Articles 216 and following of Law N° 2003-26 of 13 June 2003. It is in charge of gathering their evidence and seeking their authors as long as information is not open, according to the distinctions established with the present title and noting infringements of criminal law. When information is opened, it carries out the delegations of the jurisdictions of case examination and submits to their requisitions.

Under Articles 30, 31 and 32 of the law quoted above, "the State Council's office exerts public action, demands the application of the law and ensures the execution of court decisions. When the exercise of public action relates to the diversion or dissipation of public monies, effects or goods, with an estimated money value, the State Council can order the property belonging to the people concerned be inventoried and sequestered at the clerk's office of the Court of Jurisdiction until the final decision. The State Council is represented at each coercion jurisdiction. It attends the debates of the judgment jurisdictions; all the decisions are announced in its presence. He must make written requisitions pursuant to the instructions given to him under the conditions provided in Articles 35, 36 and 43. He freely develops the oral observations which he deems appropriate for the good of justice.

The attributions of the Attorney General at the Court of Appeal are mentioned at Articles 33 and following of the Code of Penal Procedure.

Thus, the Attorney General represents, in person or by his substitutes, the State Council at the Court of Appeal and at the Assize Court, established at the office of the Court of Appeal.

The Attorney General is in charge of seeing to the application of criminal law on the territory of the Republic of Niger. For this purpose, he receives a status of the cases within his jurisdiction every month from each public prosecutor. He has, in the performance of his duties, the right to directly require the use of the police force. The Justice Minister can report infringements of criminal law of his knowledge to the Attorney General and instruct him to engage in or make someone engage in proceedings, or seize the competent court of jurisdiction of such written requisitions which the council deems convenient.

The Attorney General has authority over all the officers of the State Council which falls within the responsibility of the court of appeals. He has the same prerogatives as those recognized to the Justice Minister in the preceding article.

The attributions of the Public prosecutor are mentioned in Articles 38 to 43 of the Code of Penal Procedure. Thus, it is expressly stipulated that the public prosecutor represents, in person or by his substitutes, the State Council at the Court of Great Instance. He also represents, in person or by his substitutes, the Court Council at the Court of Great Instance, established at the court office. He carries out the public action at the Court of Great Instance, as well as at the magistrates' courts linked to it. In the magistrates' courts, the Presidents of the magistrates' courts are under the control of the public prosecutor, vested of the powers of the latter. The public prosecutor receives the complaints and denunciations and assesses the pursuit of the case. In the event of classification without continuation, he advises the plaintiff.

Any constitutional authority, any public officer or civil servant who, in the performance of his duties, acquires the knowledge of a crime or an offence, is held to notify the public prosecutor without delay, and transmit to this magistrate all the verbal information, lawsuits and acts relative to the case. Any person, referred to the public prosecutor, can be assisted by a lawyer. When the person referred has chosen a lawyer, he can only be heard in the presence of the latter. However, the lawyer who is informed within a reasonable time limit must be present.

The examining magistrate is in charge of proceeding to information.... (Article 44); he can only inform, after being seized by an indictment of

the public prosecutor or by a complaint, by suing for civil injury under the conditions provided by the law..... the examining magistrate has, in the performance of his duties, the right to directly require the police force" (Article 46 of Law N° 2003-26 of June 13 2003).

#### Assessment

#### Capacity

#### Capacity: resources (practical)

Do the institutions in charge of ensuring law enforcement have the personnel, the necessary material and financial means to effectively perform their role?

The institutions and authorities in charge of ensuring the respect of the laws do not have the sufficient and necessary resources to properly carry out their mission, particularly in the area of public safety<sup>60</sup>. Thus, in large urban centers, like Niamey, the capital, the media regularly report cases where citizens have been victims of criminal aggression often in broad day light and in public places.

There is a serious problem of human and material resources (means of transportation, intervention tools), in both the police force or the gendarmerie. In Niamey for example, districts are left by themselves and security forces hesitate "to venture there", except in troops. Street lighting and the physical presence of members of security forces in places known as "hot", though considered as dissuasive strategies against the criminals and reassuring for the citizens, are not used by these authorities because of insufficiency of means. Thus one regularly witnesses stick ups of motorists or residences with weapons, by non-identified individuals, as well as car robberies and thefts of valuable articles. The inhabitants note the degradation of their main environments. This atmosphere has been the same for the inhabitants of Niamey urban community for ten years, in spite of the breaking up of many bands of criminals, by the forces of security. Such information is often broadcast by the media.

#### Capacity: independence (legal context)

---

<sup>60</sup> Interview with Mr. Soly Abdourahamane, retired Magistrate, Former State Counsel, Former Public Prosecutor, Former Prosecutor at the Supreme Court, Former Secretary General and Former Justice Minister, on 25 February 2010

Does the Constitution, legislative and statutory provisions in force guarantee the independence of the institutions in charge of law enforcement?

Law 2000-05 of 22 February 2007, concerning the Statute of Judicial Authorities, clearly indicates in Article 4 that the prosecuting attorneys are placed under the direction and control of their hierarchy and under the authority of the Minister of Justice.

Pursuant to Article 44 of the same law, "the magistrates of the State Counsel's office of the Supreme Court of Appeal, Court of Auditors, Court of Appeals and other jurisdictions, are graded by the Minister of Justice, in view of the appreciations and grades expressed by the Attorney Generals and Public prosecutors under whose authority they are."

Capacity: independence (practical context)

Are the institutions in charge of law enforcement actually independent?

In Niger, it is difficult to say that institutions in charge of law enforcement are independent. In practice, one notes that the majority of these authorities very often obey the orders and instructions of their seniors in rank, whatever the nature of these instructions, especially when they are political issues. Thus, when a person holds a political opinion which is contrary to that of the governmental authorities, under a "fallacious" pretext, the institutions in charge of ensuring the respect of the law are instructed to arrest him. Only a few of them would not obey these orders, be they public prosecutors, policemen or gendarmes. The following examples were provided in 2009 during the numerous arrests of members of human rights associations, as well as political opponents. While the Constitutional Court declared Mamadou Tandja's 04 August 2009 referendum illegal, the institutions in charge of law enforcement did not hesitate to repress, often very violently, the demonstrations of those who were opposed to this electoral consultation. They even prevented them access to public places (public places for meetings, meeting rooms). Can one then talk about the independence of these institutions, and are they really in charge of ensuring the respect of the law? If so, rulings of the Constitutional Court would have the force of law, and the Constitution would impose its respect on all, particularly to political, administrative, military and customary authorities with the President of the Republic in first place.

Some categories of these institution agents in charge of law enforcement have their own particular statutes and thus have salaries

which are dependent on them (the prosecutors who are magistrates, police officers and gendarmes, including many agents of the defense and security forces), considering the tactfulness of their missions and difficulties of their activities.

According to the key informant, there are no precise or known rules, which aim to prevent political interventions in the activities of the institutions in charge of law enforcement. But, in Niger, though they say, prosecutors can, constantly, within the framework of a specific case, receive instructions from the Justice Minister, the Minister of Interior, the Prime Minister or from the President of the Republic, they do not to carry out or engage prosecutions.

It is difficult, for an external actor to judge if the prosecutors' career profile abides by objective professional criteria. But, it is noted that, often, prosecutors' assignments and promotions are made on the basis of the interest of the political power. On the other hand, when trade unions do not have a word with the promotions, they quite often denounce some assignments they consider illegal.

#### Governance

Governance: transparency (legal context)

Does the Constitution, legislative or statutory provisions in force make it possible for the citizens to be suitably informed as far as the activities of the institutions in charge of law enforcement are concerned?

Ordinary court judges and public prosecutors are subjected to the declaration of their property.

Under the terms of the law, the public prosecutor receives complaints and denunciations and assesses their results. In the event of the closing a file without follow up, he informs the plaintiff.

Article 80 of Law 61-33 of 14 August 1961, concerning the institution of the Code of Penal Procedure, indicates that "any person who claims herself wronged by a crime or an offence can lodge a complaint, can sue for injuries in a criminal court before the qualified examining magistrate".

Under the terms of this law, there is no activity which must be obligatorily made public, but legal senior police officers are held to inform the public prosecutor without delay, of the crimes, offences and infringements, of which they are informed. As soon as their operations

end, they must forward the original to him directly, as well as a certified copy of the verbal lawsuits they drew up; all the acts and documents relating to it, are addressed to him at the same time; the seized objects, put at his disposal. The reports must state the rank of the Legal Senior police officer who wrote them (Article 19 CPP).

Governance: transparency (practical context)

Does the Constitution, legislative or statutory provisions in force provide that the institutions in charge of law enforcement answer for their acts and decisions?

It is noted that citizens are not well informed about the activities of the authorities and institutions in charge of law enforcement. It is a particular and very significant field. There is certainly some progress, particularly concerning the introduction of the presence of a lawyer, from the 24<sup>th</sup> hour of police custody. Court hearings are public and the doors of all the courts are, in theory, largely open to the citizens who have access there, except in case of absolute necessity. However, instruction cases are surrounded by secrecy, as long as the investigations launched are not completely finished<sup>61</sup>.

Governance responsibility (legal context)

Does the Constitution, legislative or lawful provisions in force enable the institutions in charge of law enforcement to answer for their acts and decisions?

The Code of Penal Procedure, in Articles 216 and following, indicates the provisions relating to the control of the activities of Legal Senior police officers. It is the Court of Criminal appeal which exerts a control on the activity of the civil servants. Thus, if the Court of Criminal Appeal estimates that the Legal Senior police officer committed an offence with the criminal law, it additionally orders the transmission of the file to the Attorney General, for information. The decisions taken by the Court of Criminal Appeal against the legal senior police officers are notified under the care of the Attorney General and the authorities on which they depend.

In Niger, there is no independent body where citizens can complain about the faults or mistakes made by the police force. Besides, there is no independent body in charge of investigations and prosecution, if need be, on the assumption of acts of corruption made by civil servants

---

<sup>61</sup> Discussion with Mr Soly Abdourahamane Op cit.

belonging to the institutions in charge of ensuring the observance of the law.

The law does not consider penal immunity for the benefit of the civil servants of the institutions in charge of ensuring the respect of the law. But, when a legal senior police officer is likely to be accused of a crime or an offence, which would have been made in the district where he is territorially qualified, outside of or in the exercise of his functions, the prosecutor, seizes the case and presents a request to the Supreme Court without delay and the latter proceeds and rules in terms of a judge ruling and indicates the jurisdiction in charge of the instruction or judgment of the case. Indeed, in the event of noted serious offences, the authorities and institutions in charge of law enforcement must answer for their acts. Thus, as for the judicial power, they can be prosecuted and the lawsuits can be brought to them, so that they answer for their acts. Gross negligence and professional faults are taken into account by the State which can, if it deems necessary and considers there was gross negligence, sue the accused agent (Title 8 of the Code of Penal Procedure).

Governance: responsibility (practical context)

To what extent do the institutions in charge of law enforcement account for and actually answer for their acts and decisions?

In Niger, the institutions and authorities in charge of law enforcement initially answer and account for their acts to their hierarchy. Normally, out of legal matters, in the hierarchy of the police force and gendarmerie, as a Legal Senior police officer (OPJ), this is the Justice Ministry, particularly the prosecutor. But in fact, they initially account even for lawsuits, to the Minister in charge of the Interior, for the Police officers, and to the Defense Minister, for the Gendarmes, and often not even to the Prosecutor. However, the law makes this daily report of the results of their investigations and enquiries entrusted to them an obligation to the Prosecutor. But they do not always do it<sup>62</sup>. Moreover, although all their acts must conform with the law, they often receive instructions and carry them out, in violation of the laws and regulations of the Republic: it is the case, for example, in 2009, defenders of human rights were arrested and imprisoned and international warrants for arrest were launched against political opponents, particularly against the leader of Niger opposition Mahamadou Issoufou<sup>63</sup>.

---

<sup>62</sup> Discussion with Mr Soly Abdourahamane Op cit.

<sup>63</sup> As far as Mr Mahamadou Issoufou is concerned, “this process is whimsical because in order to send an international warrant of arrest there should be failure to report an accident. Yet, in the circumstances, the chairman of the PNDS intended indeed to come back to Niger ”

Governance: mechanisms aimed at guaranteeing integrity (legal context)

Do constitutional requirements, legislative or lawful provisions exist aimed at guaranteeing the integrity of the institutions in charge of law enforcement?

When he takes function, the OPJ is sworn in and swears to act in a worthy and honest way. Like the judges and magistrates, the OPJ takes the commitment to reveal nothing of what he learns in the exercise of his functions, not to be involved in politics and not to belong to political parties. As a government official, though in a particular body, the OPJ is also ruled by the General Statute of the Public Office. As underlined in the other pillars, this statute is the first ethics and code of ethics for Niger civil servants. It is supplemented by the particular statutes of some government officials, such as the magistrates, customs officers, environment executives and police officers, who have their own particular statutes.

Governance: mechanisms aimed at guaranteeing integrity (practical context)

To what extent is the integrity of the institutions in charge of ensuring law enforcement actually guaranteed? Are the rules relating to conflicts of interests and codes of conduct actually applied? Are they the subject to specific trainings intended for the personnel concerned?

In practice, there are difficulties in compliance with the rules which govern the various bodies of the government officials. Thus, there are many OPJ who are involved in politics and belong to political parties<sup>64</sup>.

According to the key informant:

"there are many cases, particularly of corruption, in which OPJs are involved. But, it should also be stressed that there are many OPJs who do their work honestly and fairly<sup>65</sup> "

Governance: legal proceeding of corruption cases (practice)

Do the institutions in charge of law enforcement manage to find out and prosecute corruption cases in the country?

---

<sup>64</sup> Interview with Profesor Tidjani Mahamane Alou and Mr. Soly Abdourahamane, Ibid.

<sup>65</sup> Interview with Mr. Soly Abdourahamane op. cit.

The work of the authorities and institutions in charge of law enforcing in the fight against corruption is not known to society. No publicity is made about these activities.

#### Role

Role of the authorities and institutions in charge of law enforcement in the fight against corruption (practice):

There is not enough information on the work of the OPJ concerning the fight against corruption. Citizens are not well informed on this issue.

# **6. THE INDEPENDENT NATIONAL ELECTORAL COMMISSION**

**Key Informant:** Ibrahim Nomao, former Deputy, Member of the Independent National Electoral Commission (CENI).

#### Structure and organization

In Niger, the Constitution of 1999 institutionalized the body in charge of the organization and the course and supervision of the voting operations, as well as the announcement of the results. This process was the result of the evolution of the democratic process in 1991. During the First and Second Republics, the Ministry of Interior ensured only the management of the electoral consultations. It should be noted that at the time the stakes were very minor. Indeed, the successive single parties did not have any competitors and elections were not simple periodic rituals. At the end of the National Sovereign Conference (CNS), in November 1991, with its corollary of pluralist democracy, the Ministry of Interior gradually lost its exclusive monopoly of organizing elections with the establishment of the Commission in charge of the Control and Supervision of Elections (COSUPEL).

The institutionalization of the Independent Electoral National Commission (CENI) intervened during the 4<sup>th</sup> Republic with the Ordinance No. 96-14 of April 16, 1996, bearing the Electoral Code. The constitutionnalisation of the CENI was effective in the Constitution of the 5<sup>th</sup> Republic through Article 6. The Constitution of the 6<sup>th</sup> Republic maintained this constitutionnalisation. Article 9 of the Electoral Code sanctions its independence and its capacities. Indeed, this article clearly states that in Niger *"the CENI is in charge of the electoral census, the management of the electoral file, the organization, progress and supervision of the electoral and referendum operations. It is independent from any power or authority. It enjoys management, organization and operation autonomy"*.

One can say today that Niger, having learned the lessons of the past, has improved its electoral system to a significant degree. In spite of the immensity of the territory, the CENI is practically able to proclaim the provisional results of any election, 48 to 72 hours after the official end of the poll. This performance, and the perfect organization of the elections, earned the CENI many congratulations from national and international observers in 1999 and 2004. But the last elections of 2009, which were organized in an atmosphere of political crisis, which arose from the discussed referendum and illegally prolonging the second and last term

of office of former President Mamadou Tandja, were strongly criticized concerning their material organization and transparency<sup>66</sup>.

In Niger, there are three types of polls: A uninominal system with two rounds for the presidential elections, the uninominal system with one round for the legislative elections, if there is only one seat to provide, and an open list system, if there are several seats to provide for the legislative and local elections according to the best average. The electoral districts are the national territory and the embassies and consulates for the presidential elections, the special areas and districts for the legislative elections and finally the communes, the departments and the areas for the local elections.

#### Composition and organization of the CENI

Under Article 10 of the Electoral Code, the Independent National Electoral Commission (CENI) is made up as follows:

Chairman: an ordinary court judge proposed by his peers or a personality recognized for his impartiality, competence and integrity appointed by the President of the Republic after consultation with the political parties;

The first vice-chairman: an ordinary court judge proposed by his peers if the President is not a magistrate, or a representative of Niger Bar Association;

The second vice-chairman: a representative of a legally recognized federation of women;

Two rapporteurs appointed by the Independent National Electoral Commission among their members one of whom is a representative of the associations for the defense of human rights or promotion of democracy and a representative of the State.

"The other members are representatives of legally recognized political parties, associations, trade unions and female associations, as well as technical ministries concerned with electoral issues. It is indicated for each member a substitute who replaces him in the event of absence or prevention.

The Chairman of the Independent National Electoral Commission (CENI), the Vice-chairman and other members are appointed by Presidential decree of the President of the Republic. Their terms of

---

<sup>66</sup> " Niger, the confiscated democracy: observation of the process chief clerk of 4 August 2009 and the legislative elections of October 20 2009 ", Niger Association for the Defence of Human Rights (ANDDH)).

office end three months after the announcement of the final results of the poll. The Chairman, Vice- Chairmen and the national rapporteurs of the CENI, are sworn in before the constitutional Court, on the holy book of their confession. It is the same for the Regional, Departmental and Communal Chairpersons, Vice-chairmen and the rapporteurs of the Independent National Electoral Commission (CENI), in front of the Court of first instance court, the Section of Court or the magistrates' court, according to cases".

#### Assessment

#### Capacity

#### Capacity: resources (practice)

Does the Audit Board of Elections (CCE) have appropriate resources which allow it to effectively assume its role?

Niger Independent National Electoral Commission (CENI) of Niger is not very well equipped in human resources<sup>67</sup>. Political parties are the major components which make up the CENI. Yet they do not seem to take the issue of their representation at the CENI seriously. According to the key informant *"many of the people sent to the CENI by the Political Parties and Associations seem generally more concerned by the allowances and other Per diems allocated to them, than by their mission. For example, the Administrative and Legal commission, which is the most significant component of the CENI, does not have sufficient human resources. The same is true for the different Logistics and Communication sub-commissions. The representatives who are sent are not experts of electoral issues and are not motivated."*

Delays in the organization by the CENI of the various polls are sometimes noted. Still, according to the key informant "these people in charge complain that the financial means, which they need, are mobilized, and disbursed by the Executive power, only according to the interest of the election for this pillar, as proven by the examples of the presidential elections, legislative and local elections of 2004, the referendum of August 2009, and the legislative and local elections of 2009: according to cases, "the resources were completely disbursed, either from the very start, or not at all, or partially and at the end of the process, thus handicapping the CENI in its activities".

---

<sup>67</sup> Discussion with Mr Ibrahim Nomao, former Member of Parliament, Member of the Independent National Electoral Commission (CENI), February 17 2010

In Niger, the CENI is an ad hoc body and its Chairman has a maximum of three months to draw up his report at the end of the elections, after which there remains only a light structure, the Permanent Secretariat which is in charge of:

ensuring the conservation, management and updating of the electoral file;  
managing the estate of the CENI;  
managing the administrative staff of the permanent general Secretariat;  
receiving, managing and preserving any documentation relating to the elections;  
preparing and submitting the budget of the elections to the Chairman of the CENI.

There is no vocational training policy since it is a mission commission with time limit specifications. This is why, one cannot speak about career opportunities for women or ethnic minorities.

Capacity: independence (legal context)

Does the Constitution, legislation or statutory provisions in force guarantee the independence of the Audit Board of the Elections?

Theoretically, in Niger, legislative and statutory provisions guarantee the independence of the CENI. The latter is provided by the Constitution, Article 6 in particular. Article 6 of the Constitution and Article 9 of Ordinance 99-37 of 4 September, 1999 concerning the Electoral Code provides that the CENI is independent from any power or authority.

Under the terms of this ordinance, the CENI is managed by a bureau whose composition is given in Article 10 of the Electoral Code. The Chairman of the CENI, the vice chairmen and other members, are appointed by presidential decree of the President of the Republic. This situation can limit the independence of this institution. As regards recruitment, it should be noted that the law clearly states that the Chairman of the CENI must be a judge of the ordinary court, proposed by his peers, or a personality recognized for his impartiality, competence and integrity. The Chairman of the CENI is appointed by the President of the Republic, after consultation with the political parties.

Capacity: independence (practical context)

Is the Audit Board of the Elections actually independent from the other powers?

The CENI is not truly independent. First, because of resource mobilization procedures and appointment of the First Individuals in charge, who depend on the Executive power. Then, taking into account its composition and system of representation: Administration, Political Parties and Associations, there are interferences in the CENI operation. The General Rapporteur of the CENI is the Director of the Political and Legal Affairs (DAPJ) of the Ministry in charge of the Interior, one of the components of the Executive power. He sends a regular report of the CENI activities to the Department of the Minister of Interior who often sends, semi-officially, some agents to question some members of the CENI on their positions, related to some electoral issues. Political parties also often give opposite electoral law<sup>68</sup> instructions to their representatives.

Governance

Governance: transparency (legal context)

Does the Constitution, legislative or statutory provisions in force enable citizens to be properly informed as far as the activities and decision-making process of the CEC are concerned?

In Article 16 of the Electoral Code, last subparagraph, it is specifically indicated that the CENI must take care of the voters' information. Moreover, it is in charge of centralizing and publishing the elections provisional results. In Niger, the CENI attributions do not directly relate to the activities concerning the funding of the political parties and their activities. However, being the guarantor of the regularity of the polling operations and the free exercise of the rights of the voters, its report is fundamental as a matter of dispute.

Transparency (practical context)

Are the actions and decision-making processes of the Audit Board of the Elections actually transparent?

Normally, the CENI has no accounts to settle with anybody, except to the people. However, in fact, it gives account to the National Council of Political Dialogue (CNDP), which includes the representatives of the Government, various legally recognized political parties in Niger. These

---

<sup>68</sup> Discussion with Mr Ibrahim Nomao *ibid.*

make up two blocks: the ruling majority and the opposition. But, it is especially in the event of standstill in its operation, particularly in the process of mobilization and disbursement of resources, that the CENI Chairman settles account with the Prime Minister, who is the Chairman of the CNDP. Normally, the representatives of the political parties must account the CENI work to their structures, but in fact, they do not do it regularly. For example, the electoral census ended since June 2009 and the document of the electoral rolls is ready; however, out of the forty officially recognized political parties, only ten recovered the aforementioned document. Furthermore, the members of the CENI organized the controversial referendum of 4 August 2009, in spite of the ruling of the Constitutional Court which declared it illegal<sup>69</sup>.

Governance: responsibility (legal context)

Does the Constitution, legislative or statutory provisions in force provide that the CEC account for its acts and decisions?

The legal framework adequately provides for reports between the CENI and the stakeholders (administration, political parties, constitutional court). Thus, it is expressly indicated, in Article 18 of the Electoral Code, that the administrative authorities must at the time of the organization of the elections, under penalty of sanctions, provide help and assistance to it. The CENI has the obligation to make its financial statement, to a maximum three months after the end of the elections. The financial statement is transmitted to the bureau in charge of the reviewing the accounts of the State (Article 18 of the C.E).

Governance: responsibility (practical context)

To what extent does the CEC account for and actually account for its acts and decisions?

The CENI composition system, the appointment of the members by the administration, political parties and associations in particular, is an obstacle to the responsibility of this institution. CENI members do not form an institution, but each one of them works as a representative of the structure which appointed it and to which they accounts for. The behavior of the members of the CENI is thus more related to the interests of the structures which designate the members, than to the general interest or the law and the regulations in force. Besides, too

---

<sup>69</sup> " Niger, the confiscated democracy: observation of the process chief clerk of 4 August, 2009 and legislative elections of 20 October 2009 ", Niger Association for the Defence of Human Rights (ANDDH)

often, it is what leads the political parties to dispute the results of the elections announced by the constitutional court which is the only electoral judge in Niger. This is a great weakness of Niger electoral system: the CENI organizes the elections, but it neither receives nor deals with the complaints. These fall within the competence of the Constitutional Court. Like all the public institutions, the CENI is audited for its expenses and the use of resources put at its disposal by the Audit Board of Accounts and Budgetary Discipline of the Supreme Court. Taking into account the capacities of that institution, it can often only intervene several months, or several years after the organization of the elections.

Governance: mechanisms aimed at guaranteeing integrity (legal context)

Are there constitutional regulations, legal or statutory provisions aimed at guaranteeing the integrity of the Election Audit Board?

There are no precise provisions, legislative or lawful, relating to the question of integrity of the members of the CENI. However, the law makes it an obligation with the President, vice-presidents and rapporteurs of the CENI at the national level, to lend oath before the Constitutional Court, on the holy book of their confession. It is the same for the Chairmen, vice-chairmen and rapporteurs of the Independent National Electoral Commission (CENI), at Regional, Departmental and Communal levels, before the Section of the First Instance Court or the Magistrates' court, according to cases. As for the chairmen and secretaries of the polling stations, who are presented the holy book of their confession, by a qualified person, appointed by the administrative authority of the chief town of the aforementioned electoral district, in the presence of the Chairman of the Local Electoral Commission, during their training at the chief town of the aforementioned district, or if need be, the day of the poll, in the polling stations, before or during the voting operations. Moreover, the issue of the denominational oath led the magistrates to withdraw from the organization of the elections in 2004. CENI members are not subjected to the declaration of their property. There is no code of ethics and code of deontology for CENI members

Governance: mechanisms aimed at guaranteeing integrity (practical context)

To what extent is the integrity of the Election Audit Board actually guaranteed?

The philosophy of membership to CENI, "*one goes there to earn something or earn allowances and other benefits*"<sup>70</sup> weakens the members of the CENI and exposes them to all temptations. Often, political party and association representatives sent to the CENI are "unemployed" or people who "earn much more" at the CENI than in the structures where they work. They thus come to the CENI for material and financial benefits, and not for a public utility mission, namely to organize free, transparent and honest elections<sup>71</sup>.

The majority of CENI members lack professionalism, competence and experience. Moreover, they are not aware of the importance and utility of CENI mission for Niger. Some members of the CENI are afraid for their physical integrity because, it happened that some agents of the police force questioned some members of the CENI on their opinions during debates and on their stand in terms of issues relating to the electoral process<sup>72</sup>.

Governance: regulation of political funding (practical context)

Does the Election Audit Board efficiently control the funding of political parties and candidates?

In Niger, the issue of political party funding concerns the law relating to the charter of the political parties. The State grants only one subsidy to the political parties represented at the National Assembly. It does not give them other resources and does not fund their campaigns. This involves abuses because, only political parties with rich members or "well-off foreign friends", manage to mobilize significant sums to fund their campaigns and those of their candidates. The CENI does not deal with the issue of political party or candidates funding with the elections. These are the responsibilities of the Ministry of Interior which must see to the application and regulations of the laws on the management of the political parties, and of the Chamber of the Audit Board which must take care of the control of the use of the subsidies granted by the State to the political parties, and for the political parties themselves which fund their campaigns and those of their various candidates. Access to the media concerns the Communication Council High Authority (CSC).

Governance: management of the electoral process (practical context)

Does the CEC manage and control the electoral process effectively so that it is free, equitable and just?

---

<sup>70</sup> Discussion with Mr. Ibrahim Nomao *ibid.*

<sup>71</sup> Discussion with Mr. Ibrahim Nomao *ibid.*

<sup>72</sup> Discussion with Mr. Ibrahim Nomao *ibid.*

Since the Sovereign National Conference (CNS), organized by the life blood of the country from 29 July to 03 November, 1991 the CENI has been making enormous efforts to organize the electoral process, in a free, fair and just way. The presidential elections of 1999 and those of 2004 were considered free and transparent by the various national and foreign actors of Niger<sup>73</sup>. But those of 2009, the illegal referendum of August 2009, the legislative election of October 2009 and the local elections of December 2009, were strongly criticized, for their organization and their illegal character<sup>74</sup>.

Voters and political parties have the possibility of checking the reliability of the electoral roll.

The CENI has enormous difficulties in the treatment of possible complaints or complaints on the electoral process. First, the majority of the members of the administrative and legal Commission of the CENI are not professionals and lack experience on the matter. Secondly, the CENI only receives the overall results which are not accompanied by the other documents such those sent to the Constitutional Court which are more complete. Many political parties do not know the grassroots procedures to lodge complaints and claims because their local, departmental and regional representatives do not have the necessary competence. Thus they send complaints, without following the legal procedure and often without the necessary legal documents. This raises issues regarding the admissibility of the complaint. The organizational structures of the CENI (local CENI, departmental CENI and regional CENI), are also deprived of the means for managing complaints, due to a lack of competence and ignorance of the texts and procedures to be followed, and a lack of materials<sup>75</sup>.

Role

Role: promotion of good practices

The CENI carries out, on the occasion of the organization of the elections, information and awareness raising campaigns for the population on the procedures to be followed for the preparation of the elections, particularly the electoral documents, on how to vote, who

---

<sup>73</sup> Official statement of the French-speaking mission of observation of the presidential elections (second turn) and legislative of December 4 2004 in Niger

<sup>74</sup> " Niger, the confiscated democracy: observation of the process chief clerk of August 4 2009 and the legislative elections of October 20 2009 ", Association Native of Niger for the Defence of the Humans right (ANDDH).

<sup>75</sup> Discussion with Mr. Ibrahim Nomao, *ibid.*

must vote, as well as what is legal and illegal. It also carries out the training of the actors involved in the electoral process.

The duration of these actions however is very short. They are also not relayed by the principal actors concerned, particularly the political parties who, on the contrary, train their representatives on how to "cheat" during the electoral process<sup>76</sup>. Lack of sure election bases such as the biometric file, computerization of the various CENI results, polling stations at the national level, lack of fingerprint recording, failure to ensure the security of CENI resources, which is not sure until the end of the elections, and the impunity of the offences made during the electoral process, are among other major constraints in the promotion of good practice by the CENI.

---

<sup>76</sup> Discussion with Mr Ibrahim Nomaou and Dr. Souley Adjé, *ibid.*

# 7. OMBUDSMAN

This is recent institution of the Republic, as it was only established at the end of 2008, pursuant to the Law N° 2008-36, dated 18 July 2008. Under this law, the Ombudsman of the Republic is an independent authority to who claims regarding the operation of State administrations, local communities, public institutions and any other body invested with a public utility mission in their relation with the administered, are legally submitted. In the exercise of his powers, he takes no instructions from any authority.

Through his recommendations, the Ombudsman urges public services to use the intent of laws in the enforcement, especially, in cases of conflicts with citizens and accept to take into account equity, in their relations with citizens, in conformity with legislations and regulations in force. He helps upgrade public services through recommendations on streamlining the administration and reform he makes.

Any individuals or corporations who consider, in a case concerning them that the body referred to in Article 1 did not operate in conformity with its public utility mission, may, by written claim, inform the Ombudsman of the case.

The President of the Republic, the Prime Minister and MPs may also submit any claims of the same nature to the Ombudsman. Claims are valid without any conditions of time, but they can only be considered if claimants produce proof that they have already gone through the necessary channels with relevant administrations regarding review of their claims. Claims do not interrupt remedy periods, especially in courts of competent jurisdiction, but reference to such courts does not prevent the Ombudsman from trying to settle conflicts out of court.

The Ombudsman of the Republic may require competent authorities to bring disciplinary proceedings, or if necessary to refer claims to criminal courts, against any agent who has committed a major offence. If no action is taken regarding such claims, the Ombudsman shall initiate the corresponding proceeding.

The Ombudsman of the Republic shall not interfere with a proceeding initiated before a court, or challenge the merits of court judgments. But, abiding by decisions which have acquired authority of final judgments does not prevent the Ombudsman from requesting the beneficiary community to waive all, or part, of their in case of iniquity. In case court decisions are not executed, the Ombudsman shall submit prepare a special report to be submitted to the President of the Republic or the Prime Minister.

Ministers and all public authorities must assist the Ombudsman. They must authorize agents under their supervision to answer questions and, if necessary, answer summons by the Ombudsman. Control and inspection bodies must, as part of their expertise, carry out audits and inquiries requested by the Ombudsman. Agents and control and inspection bodies must comply or refer for hearing; otherwise they will face sanctions provided for in regulations in force.

The Ombudsman may communicate any document or file relating to the case under investigation to the relevant Minister or the competent authority. The secret or confidential nature of such documents cannot be claimed except in the area of secrecy regarding the judicial system, national defense, State security or foreign policy.

No interview was conducted to evaluate this pillar which was in its installation phase when the 18 February 2010 coup d'état occurred in Niger.

# 8. COURT OF AUDITORS

**Key informant:** Mr Hassane Hodi, Magistrate, President of the Audit Board and Budgetary discipline of the Supreme Court, March 07 2010

#### Organization and operation of the Audit Court (AC)

Under Article 118 of the Constitution and Organic Law 2007-22 of 02 July 2007, the Audit Court is the supreme jurisdiction of the control of public finance. At the time of the talks and finalization of the report of this evaluation, the Audit Court was not yet installed in Niger. While waiting for the installation of the Audit Court, its competences are exerted by the Audit Board and Budgetary Discipline of the Supreme Court. It exerts a jurisdictional competence and a control competence, as well as an advisory competence.

The Audit Board and Budgetary Discipline have just been replaced by an Audit Court, which is independent from the Supreme Court and set up by the new transition authorities, resulting from the 18 February 2010 military coup d'état.

#### Jurisdictional competence of the Audit Court

It checks the regularity of public income and expenses. It verifies the accounts of the public accountants. It sanctions the management of facts and management faults.

#### Audit Court control competence

The Audit Court is in charge of controlling the management and execution of the budget; it is vested for this purpose with the capacity to control:

- the management of all the constituent subdivisions and is ensured in particular, of the good use of credits, funds and values, managed by state services and the other legal entities of public law;
- execution of the finance laws;
- any development project funded by external resources;
- any organization or fund supplied by a call for public or international solidarity;
- any organization which benefits from state financial assistance or another legal entity of public law; including any organization benefiting from public companies and their subsidiaries financial assistance;

It is in charge of auditing the management accounts of:

- state public companies carrying out industrial and commercial activities;

state companies;  
companies with public financial participation;  
limited companies in which the state has a share of the authorized capital.

It is also in charge of controlling:

the annual statements of political parties;  
the organizations of social security and welfare, including the organizations of private law which ensure all or in part, the management of a legally obligatory reserve fund system;  
the asset declarations as received by the Constitutional Court.

Advisory competence of the Audit Court

The Audit Court can be consulted by the Government or the National Assembly on economic, financial or management issues of state services. It can, at the request of the National Assembly, carry out any survey or study referring to the income execution and public expenses. The head office of the Audit Court is in Niamey. Controls assigned to the Audit Court aim to:

detect any irregularity or infringement regarding the legal standards and management in force, so as to allow the necessary correction measures to be taken up in each case, and seize the proper authorities for the result of the follow up;  
engage the responsibility of the people concerned, obtain compensation or decide appropriate measures to avoid the repetition of such failures in the future;  
support the regular and efficient use of resources; promote transparency in the management of public finance (Article 2 of the Organic Law 2007-22 of 02 July 2007 determining the composition, organization, attributions and operation of the Audit Court).

The Audit Court draws up an annual public general report and other particular reports. The Audit Court includes a head office, a general counsel's office, a general secretariat, a clerk's office and a counsel's service. Ordinary Court judges of the Audit Court are appointed by Presidential decree of the President of the Republic, on a proposal from the Minister of Justice, following the opinion of the Magistrates' Council (CSM). The Ordinary Court judges are irremovable. The budget of the Audit Court is the subject of proposals, prepared by its financial services and entered in the Bill of Finance. The First President of the Court exerts the functions of administrator of the appropriations, under

the conditions prescribed by the rules of the public accounts (Article 143 of Law 2007-22 of 2 July 2007).

#### Assessment

##### Capacity

Capacity: resources (practical context)

Does the National Audit Court have suitable resources which allow it to efficiently carry out its role?

The August 18 2009 Constitution of Niger had envisaged the creation of an Audit Court. Moreover, Niger belongs to the West African Economic and Monetary Union (UEMOA), which is a sub-regional organization including the member states using the CFA franc. Within the framework of the objectives of the economic and financial convergence, some decisions and resolutions are taken to facilitate the integration of the countries. Thus, one of the actions envisaged within the framework of the implementation of Directive n° 02/2000/CM/UEMOA, concerning the "Transparency Code in the Management of Public Finance" is the setting up of autonomous Audit Courts in the 8 countries of the Union.

At the time of drafting this study report and holding discussions with key informants, the reform was not operational in Niger. Rather there was an Audit Board and Budgetary Discipline, within the Supreme Court. Following the coup d'état of 18 February 2010, which brought about its dissolution, the new transition political authorities created an Audit Court. The former Audit Board and Budgetary Discipline did not have its proper budget, and its members did not take part in any discussion process or adoption of the budget of the Supreme Court. They do have any responsibility in the management of the financial resources allocated to the Audit Board. That falls within the responsibility of the President for the Supreme Court<sup>77</sup>.

As regards human resources, they are insufficient. At the time of the study, the Audit Board had only sixteen people including five magistrates and five inspectors. This is insufficient considering the mission of Audit Board and the number of structures to audit (companies and semi-public companies, communities, political parties, state administrations, such as the National Treasury and the National Assembly). It should be stressed that some members of the Audit Board work part-time and are used by other institutions (such as the

---

<sup>77</sup> Discussion with Mr Hassane Hodi, President of the Room of the Accounts and Budgetary Discipline, March 07 2010

Administration Appeal Court and the Legal Court). Lastly, the Audit Board did not have sufficient working material, vehicles, computers, offices or office furniture, to carry out its mission satisfactorily<sup>78</sup>.

Capacity: independence (legal context)

Does the Constitution, legislation or statutory provisions in force guarantee the independence of the Audit Court?

The Audit Court is provided in Article 99 of the Constitution. The same article guarantees its independence from the Executive power. The Audit Court is an institution of the Republic. Under Articles 6 and following of Law 2007-22 of 02 July 2007, which determine the composition, organization, attributions and operation of the Audit Court, the Magistrates of the AC Head office are appointed by Presidential decree of the President of the Republic, on a proposal from the Minister of Justice, following the opinion of the Magistrates' Council (CSM).

Prosecutors are appointed by decree of the President of the Republic on proposal of the Minister of Justice. The Audit Court is also composed of officials or public figures for their expertise and experience in public finance or management and appointed as advisers or attorneys, by decree of the President of the Republic, proposal of the Minister of Justice, the Attorney General, after consultation with the Magistrates' Council (CSM). They are similar to the magistrates. Central inspectors of finance, treasury, tax, customs and other officials of equivalent category with an experience of five years, may be appointed to the AC, to serve as auditors. They are appointed by joint decree of the Ministers in charge of Finance and Justice, after consultation with the First President of the AC.

Audit Court members benefit from immunity and some privileges. Thus, except in the event of obvious offences, the members of the AC cannot be sued, arrested, detained or judged in a penal matter, without the authorization of the Magistrates' Court (CSM). In the event of authorized suits, the Supreme Court of Appeal is in charge of the instruction and gives competence to a specific jurisdiction for judgment (Article 140 of the Organic Law on the AC).

Capacity: independence (practical context)

---

<sup>78</sup> "Field Survey Reports of SNI Evaluation of the SNI in Niger ", 1 February to 1 March 2010, and discussion with the Chairman of the Audit Board and Budgetary Discipline of March 7 2010, *ibid*.

Is the Audit Court actually independent from the other powers?

The Audit Board and Budgetary discipline of Niger is independent from the other powers within the framework of its work. It does not let its conduct be influenced or dictated by any other institution. It works according to the laws and regulations of the Republic<sup>79</sup>. This institution carries out the audits of the various public institutions without any interference from other powers. The major constraint with its activities is the insufficiency of its human, material and financial resources. The President of the Audit Board and Budgetary Discipline, who has the quality of an ordinary court judge, like all the other Presidents of the other Courts of the Supreme Court, cannot be revoked during his mandate, except if he resigns by himself, or if he makes a serious error, and after the opinion of the Magistrates' Court (CSM).

Governance

Governance: transparency (legal context)

Do the Constitution, legislation or statutory provisions in force enable the citizens to be suitably informed about the activities and decisions of the AC?

Under Organic Article 135 of the law establishing the AC, every year, the AC draws up a public general report relating to the observations made at the time of the various inspections carried out during the previous year, and during management and results of the companies controlled by it. This report is submitted to the President of the Republic, the President of the National Assembly and the Prime Minister. It is made public.

The Audit Court annually draws up a report of the execution of the finance laws appended to the general conformity declaration. The general declaration of conformity and its appendices, as well as the execution report of the finance laws are sent by the Government to the National Assembly at the same time as the bill of payment. These various reports, which are detailed enough, are then published in the Official Journal of the Republic of Niger.

Governance: transparency (practical context)

---

<sup>79</sup> Discussion with the President of the Audit Board and Budgetary Discipline, *ibid.*

Are the actions and decisions of the National Audit Court actually transparent?

According to its members, the former Audit Court worked in a transparent way, in conformity with the laws and regulations and according to directives' of the West African Economic and Monetary Union [UEMOA]. But its activities were not known to the public, because the institutional establishment was not yet finished and because of an insufficiency of human, material and financial resources.

Auditing, inspecting and controlling the management of public resources is long, meticulous work which is carried out in the presence of the people involved. It often takes time, actually several months. At the time discussions were held with the key informants and during the drafting of this report, the former Audit Court had not started to present and make its reports public. Consequently, it is difficult to make an objective assessment on the contents of their reports and the quality of their work.

Governance: responsibility (legal context)

Do the Constitution, legislation or statutory provisions in force provide that the AC account for its acts and decisions?

Theoretically, the Audit Court can be held accountable for its acts, since it can, after handing down a final judgment, be challenged. Thus the accountants or managers, as well as the Attorney General, can seize the Court by request, concerning an appeal to the final court of appeal, against the final rulings of the aforementioned Court, within two months from the notification. The appeal is brought in front of the joint session of both courts. The joint session of the Courts rules without reference (Article 104 of the organic law establishing the AC).

Regarding budgetary control of the Audit Court, it should be stressed that it obeys the general rules of the public accounts. Indeed, at the end of Article 143 of the Organic Law, the President of the AC exerts the functions of a credit administrator under the terms prescribed by the rules of public accounts. The person in charge of the financial services carries out his functions under the conditions prescribed by the rules of public accounts.

Governance: responsibility (practical context)

To what extent does the CNC account to and actually account for its acts and decisions?

The members of the Audit Board are sworn in. The work carried out is submitted to the person in charge for the Supreme Court who is the direct hierarchy of the Audit Board. The former Audit Board had not started to make public reports. Because they are rather bulky, they often remain in drawers. The Audit Board itself is not yet the subject of audit by other institutions.

Governance: mechanisms aimed at guaranteeing integrity (legal context)

Are there constitutional, legislative or legal provisions aimed at guaranteeing the integrity of the National Audit Board?

In accordance with the title of the legislative provisions aimed at guaranteeing integrity, there is the oath envisaged in Article 12 of the organic law establishing the AC for the First President, the courts Presidents and the advisers. The audit inspectors, who assist the members of the AC, take the oath envisaged in Article 16. The Attorney General, the first prosecuting attorney and the prosecuting attorneys, take the oath envisaged in Article 18. The registrar and clerks of the AC, take the oath envisaged at Article 23.

Like all the magistrates, those of the AC are subjected to the declaration of their property. In addition, as a mechanism aimed at guaranteeing integrity, it is necessary to thus underline the incompatibilities enacted in Article 139 of the organic law establishing the AC. Thus, the functions of the members of the AC are incompatible with membership of the Government, National Assembly or ministerial cabinet. They are also incompatible with the exercise of the professions of officers of the court and generally with the exercise of any private lucrative activity, of any political function, whether public or elective.

Governance: mechanisms aimed at guaranteeing integrity (practical context)

To what extent is the integrity of the National Audit Court actually guaranteed?

There is currently no concrete data making it possible to judge the behavior of the people in charge, and the members of Audit Board, concerning the issue of their integrity. No newspaper articles have been written on the members, and no studies have been carried out on this institution.

## Role

### Role of the Audit Court in the effectiveness of the audits

Does the National Audit Court carry out effective audits of public finance?

The audits carried out by the members of the Audit Court are not very effective yet. Indeed, the magistrates of the Audit Court have not been trained in financial matters and the financial agents do not always follow the procedures enacted by the West African Economic and Monetary Union [UEMOA]. According to the President of this institution, he often gave his collaborators copies of some countries reports, such as Burkina Faso, Senegal and France, for inspiration. Lastly, the current personnel of the Audit Court are insufficient and does not have the necessary experience yet<sup>80</sup>.

### Role of the Audit Courts in the detection and sanction of embezzlements

Does the National Audit Court manage to detect and sanction embezzlements made at the time of the management of the public fund?

It should be recalled that audit procedures are long and contradictory, that the personnel of the former Audit Court and Budgetary Discipline was insufficient and did not have the necessary experience to fulfill the mission which is entrusted to them. Since the reports of the former Audit Court have not been made public, it is difficult to come to a conclusion about their contents and know if it has succeeded in detecting embezzlements made at the time of the management of the public fund.

### Governance: improvement of financial management

Does the AC manage to improve the financial management of the administration?

---

<sup>80</sup> "Statistical of the reports/ratios of the investigation of ground of the evaluation of the SNI of Niger", 1 February to 1 March 2010 and discussion with the President of the Audit Board, *ibid.*

The Audit Court is currently not completely functional. The reports of the former Audit Court and Budgetary Discipline have not yet started to be made public.

# 9. ANTI-CORRUPTION AGENCIES

The effective establishment of a High Authority of Fighting Corruption was clearly outlined in the Accelerated Development Strategy and Poverty Reduction Paper (SDRP) of August 2007, the main reference framework of the Economic Policy and Development orientations of Niger. At the national level, it should be in charge fighting corruption, in all its forms, and impunity.

The establishment of this High Authority is one of the proposals initiated by the National Commission In charge of the Strategies to Fight Corruption and which had been established by the Government in 2005. It worked for more than three years. It should be replaced by this High Authority, with the assistance of external partners, Millennium Challenge Corporation Project (MCC) in particular.

The establishment of this High Authority is not yet effective and it is difficult to even consider it in the short run. Indeed, taking into account the current social and political situation, with the suspension of Niger's co-operation with some countries and organizations such as the United States, which announced the suspension of all their non-humanitarian projects with Niger, the creation of this High Authority will take certainly more time than envisaged.

The military coup d'état of 18 February 2010 brought about the dissolution of many institutions of the Sixth (6<sup>th</sup>) Republic. The new political and administrative authorities reaffirmed their commitment to fight corruption without mercy and undertake many actions for the financial and economic cleansing of Niger. This will enable the resumption of the co-operation with the major partners of Niger, even before the end of the transition and the establishment of the structures such as the High Authority of Fight against Corruption.

It should be stressed that the new authorities, resulting from the military coup d'état of 18 February 2010, has just created a commission in charge of the fight against economic and financial crimes and of the cleansing of the social and political life of Niger. In addition, for a few weeks, during May 2010, several inspection operations concerning the management of many public institutions and organizations have been carried out, in order to give a practical direction to this will "to tidy up " the management of public affairs in Niger.

# 10. POLITICAL PARTIES

**Key informant:** Mr. Souley Adj, Lecturer and researcher at Abdou Moumouni University of Niamey

#### Structure and organization

The establishment, organization, operation and funding of political parties, as well as the conditions of suspension of their activities and their dissolution, are governed by the provisions of Ordinance N° 99-59 of 20 December 1999, concerning the political parties charter. The latter also determines the conditions of access to public media and the establishment of press organs and political parties. They are non-profit making associations, which in accordance with the Constitution, include Niger citizens around a community project and a political program in order to contribute to the voting expression for all and to take part in political life, through democratic and peaceful means.

Political parties can freely contract alliances or regroupings, form federations or amalgamate. In order to preserve transparency in the democratic play, alliances and the regroupings of political parties must be made public without delay, and instruments establishing these alliances or regroupings must be submitted to the ministry of the Interior within thirty days, under penalty of nullity. Political parties have the obligation to ensure the awareness raising and training of their members, and contribute to opinion forming. Under the terms of the same ordinance, any political party or group of parties must work out and present a project in conformity with the great principles and ideals prescribed by the Constitution.

The activities of the political parties are part and parcel of the strict respect of the Constitution and the laws and regulations in force. According to the political party charter *"Political parties are held to respect the dignity and honor of others and ban insults and any unfair operation tending to throw anathema and discredit upon others. Speeches and invectives on regional, ethnic or religious matters are also prohibited. Any political party must, through its objectives, program and practices, contribute:*

- . to safeguard national unity and territorial integrity, without excluding any regional and sub-regional integration enterprise, which would attempt to national interests;
- to reinforce national independence;
- to defend democracy;
- . to protect the republican form and nondenominational character of the State;
- to protect fundamental freedom and human rights;

- . to contribute to the training in civics and political education of its militants;
- . to safeguard the environment.

Any Niger citizen enjoying his civil and political rights, is free to join the political party of his choice. However, the personnel of the forces of defense and security (the army, gendarmerie, national forces of intervention and security, the police force, customs officers and the National Forestry Commission) and the magistrates in activity in their bodies of origin, as well as the traditional heads, cannot in any circumstance join a political party. Moreover, the personnel of the public administration submitted to the duty of professional discretion should not undertake political activities in and/or at the time of the performance of their duty. Namely:

- . Command executives (region governors, prefects, sub-prefects and their assistants, heads of administrative station, managing directors);
- . Ambassadors, consul generals;
- . Permanent Secretary-general and Associated Secretary-general of the Independent National Electoral Commission (CENI).

The activities of the political parties are funded by means of resources including:

membership contributions;  
proceeds from the sales of membership cards;  
gifts and legacies;  
incomes related to their activities;  
subsidies and possible assistances from the State under the conditions determined by the law

The above mentioned funding means are, except for the gifts and legacy, the parties' own resources. Political parties can receive gifts and legacy from natural people or legal entities of Niger nationality. These gifts and legacies must be the subject of a declaration to the ministry in charge of the interior within a one month period. The identity of the givers, the nature and value of these gifts and legacy are appended to this declaration. The amount of these gifts and legacy should not exceed 50% of the total amount of the party's own resources. Political parties can also receive gifts and legacy from abroad. The amount of these gifts and legacy cannot, in any case, exceed 20% of the party's own resources. Political parties cannot receive gifts and legacy from Niger public companies. They cannot receive advertisement expenses from the latter.

An annual state subsidy is granted to the political parties, in proportion to their representation at the National Assembly. All political parties must hold a private account and an inventory of their movable and real estate property. They are held to present annual statements, at the latest on March 31, of each year at the Audit Board of the Supreme Court for inspection. This inspection concerns the morality and sincerity of the party's accounts. Political parties are held to answer the requests formulated by the Audit Board of the Supreme Court tending to obtain the justification of the source of their financial resources and their use".

#### Assessment

#### Capacity

#### Capacity: resources (practice)

Do political parties have sufficient financial resources to participate in electoral competition?

When this study was underway, there were around fifty political parties officially recognized by the Ministry of Interior in Niger. Political parties in Niger do not have the necessary resources to participate in electoral competition. In fact, the majority of militants and supporters do not even have the means to pay their contributions. It should be highlighted that in various UNDP reports on human development, Niger has ranked last. The majority of Nigeriens live in extreme poverty; with often less than one USD a day. In light of this, it may be said that there are around ten major political parties led by "big bosses", in other words, parties which were created and financed by them and which they manage as family undertakings. Often, they are nicknamed "Founding Fathers" or "PF". Such PFs use their national and international networks to mobilize most of the financial resources of their parties for electoral purposes and maintain them. The other parties, which represent the majority, are regarded as "small parties", as they "waste away" and most cases, cannot even organize simple ordinary and statutory meetings of their bodies on their own<sup>81</sup>.

Like the majority of civil society and media organizations, most political parties in Niger do not have headquarters of their own. Those who hire premises find it difficult to meet their obligation to pay rent. Indeed, as underlined in the "Diagnostic Report on the Evaluation of Capacity Building Needs for Political Parties in Niger" which was financed by UNDP Niger in September 2009, and conducted by Mr. Alkache

---

<sup>81</sup> Interview with Souley Adjji Ibid

Alhada, Ganda Zakara and Oumarou Narey (pages 18 and 19), *“in Niger political parties experience significant financial problems which constrain sustainable rooting of democracy in Niger. Such problems are essentially attributable to the fact that political actors ignore the legal and institutional environment and to lack of financial and material resources as well as to poor internalization of democratic values<sup>82</sup>”*. Most political parties do not have sufficient automotive equipment or physical facilities (tables, computers, offices, chairs) for electoral competitions. Some provisions provide for grants to political parties with MPs at the National Assembly.

There are political parties which have never had any MPs at the National Assembly or any municipal and local councilors or mayors. Such “small parties” do not have any national coverage and during electoral competitions, they can only present candidates in some regions or are compelled to have common candidates with other “bigger” political parties, or otherwise support the candidates of other political parties.

In Niger, the financial resources of political parties are not stable and diversified. The “Founding Fathers” and some big businessmen or traders are the only national source of money for political parties. The majority of militants and supporters do not pay their contributions and do not satisfy their obligations. They expect the “Founding Fathers” and national businessmen or external donors to finance their political parties. However, such support is often unreliable and in some cases, it is linked to certain conditions.

Capacity: independence (legal framework)

Do the Constitution, legal or regulatory provisions in force guarantee free formation and operation of political parties?

The Constitution and legal provisions guarantee the free formation and operation of political parties. Indeed, Article 9 of the Constitution of 18 July 2010 expressly stipulates that political parties and association of political parties recognized and guaranteed by the Constitution, shall freely carry out their activities, provided they comply with the principles of national sovereignty and the laws of the Republic.

The legal procedure used to create a political party is indicated in the Political Charter Order. In Niger, a political party must be represented in at least 5 of the 8 regions of the country to be approved.

---

<sup>82</sup> “Multi-Year Capacity Building Program for Political Parties”, Alkachhe Alhada, Ganda Zakara, Narey Oumarou, UNDP, 2009

The Political Party Charter expressly provides for the rules governing State control, inquiries and dissolution of political parties.

Independence (practice)

Do political parties operate effectively without any interferences of the Government?

The independence of political parties, NGOs, associations and the media is relative. In their operations, there are often interferences from other institutions or structures or some nationals or foreigners, attributable to the fact that they do not have sufficient resources of their own and depend on funding by such organizations and persons<sup>83</sup>.

Political parties do not maintain sincere, constructive dialogue which takes into account the identity of each political party and the interests of democracy, especially between political parties which form the ruling majority and those of the opposition. To remedy this situation, a structure referred to as National Council for Political Dialogue (CNDP) was created in 2004. This structure brings together all political parties (those of the ruling majority, on the one hand, and those of the opposition, on the other hand) and the Government. Many sessions of CNDP were organized to discuss and take consensual decisions on some major political issues, such as the Electoral Code. However, this did not prevent the political crisis related to the controversial 4 August 2009 referendum. This consultation extended the second and last legal term of office of the former President of the Republic, which was supposed to come to an end on 22 December 2009, by three years. This political crisis generated the 18 February 2010 military coup d'état suspension of the major institutions of the Republic. In 2009, during the crisis, opposition political parties, unions and civil society associations were denied access to public media and some public places, such as conference and meetings rooms, protest marches and meetings. This limited the visibility of the activities conducted by such organizations which were compelled to use private media and premises. Thus, Nigerien newsmen conducted a powerful inquiry on access to public media<sup>84</sup> which shows that *“during the 14-18 June 2009 week, while supporters of the referendum were granted 121 minutes on the air during the television news of the public television, 97 during the Regional News broadcast, 116 on Voix du Sahel (the national radio)*

---

<sup>83</sup> Interview with Professor Tidjani Mahamane Alou and Souley Adji Idib

<sup>84</sup> Assessment conducted by Niger Network of Journalists for Human rights (RJDH) on the use of media under the referendum organized in Niger on 4 August 2009

*and 2 and half pages in public newspapers, opponents of the referendum were only granted 1 and half minutes to express their views<sup>85</sup>”.*

So far, no political party has been dissolved, but in some cases political parties found it difficult to be legally recognized, attributable to the fact that those who submitted the documents would have links with people having problems with the regime, such as the party Lumana, close to the former Prime Minister, Hama Amadou<sup>86</sup>.

Like civil society organizations and the media, political parties in Niger are vulnerable and their activities compromised, because they cannot mobilize sufficient financial resources and lack political awareness and training.

Capacity: transparency (legal framework)

Are there provisions which compel political parties to publish their financial statements?

Under Article 26 and following articles of Political Parties Charter Order N°99-59 dated 20 December 1999, “every political party must maintain a private-like accounting system and an inventory of its personal property and real estate. It is required to submit annual financial statements by 31 March of each year to the Chamber of Accounts for audit. Such audit shall focus on the morality and reliability of the financial statements of the party<sup>87</sup>”

Political parties are required to answer requests made by the Chamber of Accounts for the purpose of obtaining justification of the source and use of their financial resources. An annual financial audit report on political parties will be published in the Official Gazette of Niger. Otherwise, the party that fails to produce its financial audit report by 31 March will be called upon by the Chamber of Accounts to produce its financial statements within three months. No new Government subsidies will be granted to beneficiary political parties before the previous fiscal year’s financial statements have been produced. Such subsidies will be permanently suspended for the fiscal year under consideration if the concerned parties do not answer the request of the Chamber of Accounts. The latter shall impose fine of CFA 300,000, equivalent to USD 600 on relevant parties. At the request of the

---

<sup>85</sup> Assessment conducted by Niger Network of Journalists for Human rights (RJDH) on the use of media under the referendum organized in Niger on 4 August 2009, page 6

<sup>86</sup> « le Courrier » newspaper, N° 6  
<sup>87</sup> Political Parties Charter Order N°99-59 dated 20 December 1999, Article 26

Chamber of Accounts, the Ministry of Interior decrees the suspension of any political party which does not comply with its obligation to submit its annual financial statements within an additional deadline of 2 months.

It should be highlighted that Article 29 of the Political Parties Charter provides that “every political party is required to open an account in a financial institution in Niger. The state subsidy shall be directly paid into such an account. No political party shall maintain an account abroad. Any non-compliance with the provision shall result into the suspension of relevant parties until regularization”.

#### Capacity (practical framework)

Do political parties actually publish their financial statements?

According to some watchers of the political scene in Niger, the management of the majority of political parties is opaque and non-transparent<sup>88</sup>. Thus, since their creation in 1990; no parties have yet published their financial statements or annual balance sheets. For the time being, no political parties make public balance sheets of electoral competitions. However, a minority of political parties do submit their annual reports and balance sheets to the Chamber of Accounts within the Supreme Court. Thus, the “Report of the evaluation meeting on financial audit systems and results of financial audits”, conducted in 2007 in the Member States of WAEMU/UEMOA and prepared in April 2008 by the UEMOA’s Chamber of Accounts shows that in Niger, on the financial audit of political parties, the Chamber of Accounts and Fiscal Discipline found that out of some 30 parties, only 12 had produced their 2004 financial statements. Out of the 12 financial statements produced, the Chamber declared that three were reliable and that the remaining 9 were non-reliable. They therefore called on the political parties which did not produce their financial statements to do so within a deadline of 3 months and requested that a summary of the report be published in the Official Gazette, pursuant to the provisions of Article 22 of Act N° 2000-10, dated 14 August 2000.

In Niger, it is difficult, even impossible, for militants or supporters of political parties, not to mention other citizens, to obtain information on the financial statements of political parties. Some activities of political parties, including fundraising, mobilization and management are shrouded with secrecy, suspicion and mistrust<sup>89</sup>.

#### Accountability (legal framework)

---

<sup>88</sup> Interview with Professor Tidjani Mahamane Alou and Souley Adjidi Idib

<sup>89</sup> Interview with Professor Tidjani Mahamane Alou and Souley Adjidi Idib

Are there provisions which institute control of the funding of political parties?

In Niger, there are provisions that control the funding of political parties. The Political Parties Charter explicitly specifies their sources of funding. Thus, Article 21 of Political Charter Order N° 99-59 of 20 December 1999 stipulates that the activities of political parties shall be financed by the following resources:

- Contributions of members;
- proceeds of the sales of cards;
- gifts and legacies;
- income from activities;
- Government's potential subsidies and assistance under the following conditions.

"The financial resources referred to hereunder shall be, except gifts and legacies, the equity resources of political parties. The latter may receive gifts and legacies from individuals or corporations of Niger. Such gifts and legacies shall be declared to the Ministry of Interior within a period of one month. The identity of donors, nature and value of such gifts and legacies shall be attached to the declaration. The value of such gifts and legacies shall not exceed the total amount of the equities of parties.

Political parties may also receive gifts and legacies from abroad. The value of such gifts and legacies shall not, in any case, exceed 20% of the equities of political parties. Political parties may not receive gifts and legacies from public Nigerien enterprises. They may not receive publicity fees from such structures" (Article 23 of the Political Parties Charter)<sup>90</sup>

During national or local elections, the Government shall provide political parties with sample ballots necessary for their electoral campaigns.

The Government grants an annual subsidy to political parties, proportionate to their representation at the National Assembly. But such a subsidy is insufficient in view of the capacity of some parties and the socio-economic, political and cultural environment in Niger.

The Ministry of Interior is the public authority in charge of seeing that political parties comply with the law and regulations of the Republic.

---

<sup>90</sup> Political Parties Charter Order N°99-59 dated 20 December 1999

Capacity: accountability (practical framework)

Is the control of the funding of political parties effectively conducted? Do political parties publicize their financial statements? Are such statements reliable and comprehensive?

Control of political parties' financing is not very effective. Such control is the responsibility of the Chamber of Accounts. All reports and balance sheets of political parties must be submitted to this institution.

Political parties do not systematically abide by the laws and regulations of the Republic, or by their own authorities. They do not submit their annual financial statements or hold their statutory meetings (conventions) in the prescribed time. Notwithstanding this, they have not yet sanctioned.

Though they receive subsidies from the Government, information communicated to the Government by political parties, especially those with MPs at the National Assembly are neither reliable nor comprehensive. In fact, according to private media, political parties receive hundreds of millions of CFA from abroad or from national tradesmen and other businessmen. But such information is only found in the accounts of political parties.

Over the last years, some political parties which are represented at the National Assembly and which, as a result, receive subsidies from the Government, are audited on a regular basis by the Chamber of Accounts of the Supreme Court.

Governance

Governance: mechanisms to guarantee integrity (legal framework)

Are there constitutional rules or legal or regulatory provisions to guarantee the democratic governance of political parties?

Article 14 of the Political Parties Charter stipulates that the creation of a political party calls for, inter alia, "the *submission of the Statutes with the following information:*

- the precise basis and objectives of the political party, i.e., Society project and political program;
- the composition of decision-making bodies;
- the composition, election and renewal arrangements as well as the term of office of the executive body.

In addition, Article 20 of Order N° 99-59 makes it compulsory for political parties to comply with the periodicity of their ordinary conventions, as provided in their respective statutes. If, after four months, following the expiry of the statutory deadline, a party has not held its convention, it shall be automatically suspended by the Ministry of Interior.

Governance: mechanisms to guarantee integrity (practical framework)

In Niger, internal governance of political parties is not democratic, in general. Political parties are managed in a client-centered way, with family or clannish concerns. The operation of political parties is undermined by positioning struggles with much impact. During the renewal of structures of the majority of political parties, the national bureau often imposes on regional and local bureau people who must be responsible for such structures. Choices are not always free and democratic<sup>91</sup>.

Political parties disregard their own authorities (Statutes and Rules of procedure). In addition, gender issues are not integrated, as very often, there are not many women and youth, or they hold low level and minor positions. Important, traveling, mission positions or which open doors to appointment to positions that pay dividends, in case of victory following elections, are systematically held by close friends, relatives and other courtiers of the main officials of political parties or "Founding Fathers"<sup>92</sup>.

During elections, holders of key positions (President, Vice President, and Secretary General) within the bureau of political parties are in general known in advance. Elections are only a formality. Founding fathers have a major role to play with the development of cliques. This is attributable to the socio-political environment, lack of political training and culture in communities, militants, and supporters, who find it normal that those who contribute more, support political parties and to whom they are the courtiers, are the obvious officials of political parties; especially as they themselves cannot meet their obligations and pay their contributions.

Role

Role and representation of political parties in society

---

<sup>91</sup> Interview with Souley Adji Ibib

<sup>92</sup> Interview with Professor Tidjani Mahamane Alou and Souley Adji Ibib

Do political parties sufficiently represent the various socio-economic interests of the country?

In Niger, 'big parties' represent the different social groups of the country to some extent. Although, people do not vote for current political programs, when general or local elections are held in a free, fair and transparent way, they mobilize to vote in favor of candidates of these parties, as they believe they represent their regions, districts, villages, ethnic groups or socio-cultural groups.

Existing 'big parties' have some legitimacy at national, regional and local levels. Some specific interest groups dominate the management and activities of certain political parties, including, tradesmen and businessmen, who are the main donors and who guide the decisions of such parties to serve their own interests, as they have the necessary financial resources to do so. In addition, there are senior managers who act as pressure groups; guiding, and implementing decisions, and contributing financial resources, if they are appointed to fruitful positions of responsibility (enterprises, public companies and para-public companies, governors, prefects, secretary generals, general directors and directors).

There are client-oriented relations between individuals or small groups, and some political parties.

Because of the political and socio-economic history of Niger, under democratization and common struggles conducted together since 1991, very close links have developed between political parties, unions and civil society organizations, as shown by the creation of the Forces for Democracy and the Republic (CFDR), which brings together more than one hundred political parties, unions and CSOs, who opposed the 4 August 2009 referendum, organized by the former President of the Republic<sup>93</sup>.

The anti-corruption role of political parties (practice)

Do political parties pay a particular attention to public accountability and anti-corruption issues?

In theory, political parties pay particular attention to anti-corruption issues in Niger. A lot of political statements and political programs focus on the importance and relevance of anti-corruption action. In particular,

---

<sup>93</sup> PNDS Website 'Declaration of creation of CFDR'

political parties pay a lot of attention to the issues of accountability. Thus, over the last 15 years, the major opposition party, PNDS, has focused its struggle on the fight against injustice and impunity, promotion of competence and integrity, promotion of merit and competitiveness, defense of rigor and transparency requirements, and promotion of good governance.

Over the last few years, opposition political parties have made many declarations on corruption. For example, on 6 February 2010, the *Front pour le defense de la Démocratie* (FDD) released a declaration which blew the whistle about the existence of a negotiated contract signed in November 2008 worth CFA 7,379,516,250, equivalent to USD 14,759,033, between the Government of Niger and *Société Poly Technologie Inc.*, a Chinese company, for the installation of 720 prefabricated classrooms<sup>94</sup>. The FDD brings together political parties, unions and CSOs, who have resolved to defend compliance with the Constitution and prevent a project aimed at extending the second and last legal term of office of President Tandja Mamadou. However, when they embark on fundraising operations, political parties are not immunized against such acts of corruption. Thus, there is currently a heated debate within political parties, on the importance of businessmen within management bodies and elected offices. As they finance political parties, the latter find it quite difficult to change the electoral code or demand a minimum level of education from candidates to legislative elections, for example.

---

<sup>94</sup> PNDS Website ‘FDD’s 6 February 2010 Declaration’

# 11. MEDIA

They include both public and private newspapers, radio and televisions.

**Key informant:** Mr. Ousmane Toudou, journalist and Director of Anfani, former member of the Communication High Council / *Conseil supérieur de la Communication* (CSC).

#### Structure and organization

In Niger, the media are governed by 2 statutory laws: Audiovisual Communication Order N° 93-031, dated 30 March 1993 and Freedom of the Press Order N° 97-67, dated 20 December 1999. These 2 regulations arose from the willingness of the National Sovereign Conference (CNS) to liberalize the sector of communication, regarded as a critical pillar for the promotion of democracy and rule of law. All successive fundamental laws have entrenched information as an inalienable human right. As a result; the media sector in Niger has been quite dynamic since it was liberalized. Indeed, print or audiovisual media, as well as broadcast and printing are free. Article 26 of 18 August 2009 stipulates that *'every person is entitled to freedom of thought, opinion, expression, religion and worship'*. This is why Articles 1 and 2 of Order N° 093-031 stipulate that audiovisual communication is free and results from the services provided by the public communication department, private sector enterprises and non-profit making organizations.

Under Order N° 097-067, the following publications are regarded as general news media:

- periodicals, any regular publications or news agencies which are sources of information on current national or international events, which release information destined to their readerships on a regular basis;
- any audiovisual media, made available to the general public or categories of the public, through any telecommunications, signs, signals, writings, images, sounds or messages of all nature different from private correspondence.

However, the following publications are not considered as general news media and are subject to the provisions of this Order, despite the fact that they might look like newspapers, magazines, fliers, catalogues:

- ads, fliers, catalogues or almanacs;
- works published by delivery, which are published over a limited period or which supplement or update works that were already published;

- publications main whose objective is to seek or develop the transactions of commercial, industrial enterprises or specifications;
- publications whose main objective is to disseminate timetables, programs, quotations, models, plans or drawings;
- publications representing administrative documentation media.

According to Articles 4 and 5 of the same order, “any newspaper or general information periodicals may be published without any prior authorization. The place where they are printed must be declared to the office of the State’s Attorney in forms prescribed by law. The method of creation of private audiovisual undertakings shall be determined by the CNS creation, composition, organization and operation order. All general news print or audiovisual media must have an editor, who is a professional journalist of Niger. However, if a newspaper or periodical is published by a company, union, association or a political party, its editor shall be chosen from the members of the board of directors or managers according to the type of company, or from the members of the executive committee, in the case of unions or associations, or from the members of the politburo, in the case of political parties.

Where the editor enjoys parliamentary privilege, he must designate a co-editor, chosen from people who do not enjoy parliamentary privilege. The editor, and if possible the co-editor, must be a person of full age, with civil rights, who is not deprived of such rights on court conviction grounds.

All legal obligations imposed on the editor by this order shall also be applicable to the co-editor. The declaration together with the visa of the manager of the print or audiovisual medium shall include the following:

- Title and publication mode of the print or audiovisual material;
- subject matter and nature of the newspaper or periodical;
- name, surname and home address of the editor;
- address of the news-room and administration;
- name and address of the printing plant where it is to be printed;
- information on, as the case may be, owners, shareholders and the capital of the publishing company;

- police records of the editor or the promoter of the press organ that are less than 3 months old.

Moral surveys must be conducted on the editor and the promoter of the press organ. Any changes in the above mentioned conditions must be reported to the State's Attorney within 5 days.

Any person who performs information collection and processing activities within one or several print, radio or television, daily or periodical media undertakings, and makes such activities his main, regular and paid occupation as his major source of income is considered as a professional journalist. Any person who performs information illustration activities under the same conditions, except advertising men, and all persons who in any capacity only provide collaboration work from time to time will also be included in this category. The following persons may also claim the status of professional journalists: holders of degrees in journalism, who perform within public administrations.

Under the supervision of the Minister of Communication, professional journalists shall be governed by a collective agreement, freely negotiated between them and print and or audiovisual media undertakings. They shall abide by the Charter of Professional Journalists. Failure to do so shall be sanctioned, in conformity with the provisions of the CNC composition, organization and operation Order<sup>95</sup>

A specific constitutional body was set up to regulate the public and private media sector. The mission of the Higher Council of Communication (CNC) as an administrative authority is to ensure and guarantee the freedom and independence of print and audiovisual media. It also ensures compliance with information deontology and equitable access of all citizens, associations and political parties to official media.

In view of its constitutional missions, CSC regulates the media sector. It plays a major role in the democratic game. This role is becoming more and more important with the multiplication of private radios, of which currently there are more than 40, community radios, currently more than 101, private television stations, as well as private newspapers, currently more than 20, including weeklies.

Since the media sector was opened to the private sector, the contribution of the media has become very important in the information

---

<sup>95</sup> Freedom the press Order N° 97-67, dated 20 December 1999

and awareness-raising of the Nigerien populations on corruption cases which affect different institutions, at high levels. Thus, since 1993, several cases of corruption have been exposed by newspapers and radios, often leading to legal proceedings against the offenders and their accomplices. The media is therefore a major anti-corruption instrument in Niger.

However, the new composition of CSC, which excludes plurality in representation, challenges the principle of its independence, secured since the organization of the National Sovereign Conference. Indeed, Article 130 of the 18 August Constitution stipulates that "*CSC, shall be composed of 7 members, appointed by decree by the President of the Republic for 3 year term of office, renewable once, including: 4 appointed by the President of the Republic, 1 appointed by the Chairperson of the National Assembly, 1 appointed by the Speaker of the Senate and 1 appointed by the Minister of Communication*". With the new provisions, the 7 members are appointed by only 2 authorities: the Executive and Parliament, whereas in former legislations, at least 1/3 of CSC members were elected by socio-professional organizations and other associations and independent Government institutions.

In addition, little readership, including a majority of illiterate persons, is a major constraint for newspaper printing and dissemination. The lack of logistical and financial resources is also a major constraint for their contribution to the fight against corruption. The majority of public and private media workers are not properly trained to conduct investigations on complex and multifarious topics such as corruption.

Finally, penalty for breach of the press laws translates into self-censorship for fear of imprisonment which is a widespread phenomenon in Niger. The cases of 'Republican' journalists, imprisoned in 2004 and 'Canard déchaîné' in 2009 are examples of such practice. Fortunately, draft legislation, initiated in 2009 is being adopted by the current transition authorities, who promised to delete breaches of press law and thus secure journalists in their information and awareness-raising work for the Nigerien population.

Assessment

Capacity

Capacity (legal framework)

Does the Constitution, or legislative provisions in force, promote an environment conducive to the existence of independent and diversified media?

In Niger, the Constitution and legislative provisions are conducive to the existence of independent media. Indeed, print or audiovisual media, as well as broadcast and print media are free. Article 26 of the 18 August 2009 Constitution stipulates that “*Everyone is entitled to freedom of thought, opinion, expression, conscience, religion and worship*”. Order N° 03-031 provides in Articles 1 and 2 that “*Audiovisual communication shall be free and shall result from the services of the public information service and private communication undertakings and non profit making association*”. According to Article 5 of the same order, any person, either associate or not, shareholder, sponsor or donor, may create information media, provided that the journalists who work there are nationals of Niger, in their majority. If the founder of information media is a business corporation, the shares must be registered shares. No shares of the founder shall be assigned without the consent of the board of directors of the company. Rules aimed at limiting concentration are quite clear. Thus, no Nigerien individuals or corporations may own more than 5 information media, except the Government. Nigerien individuals and corporations can only own 1 news organ.

Capacity (practical)

Are there diversified independent media providing a diversity of points of view?

In Niger, there are diversified independent media which give many points of view. Many newspapers and radio and televisions stations were established, under cover democratization of the socio-political life in 1990. This has been much accelerated over the last 10 years. Such media were often created by journalists, depending on their political sensitivity, were based on their relationships in some political parties to mobilize resources necessary for the operation of such media or for the operation of private media<sup>96</sup>.

Public media generally offer the viewpoints of the Government and of the ruling majority. It is observed that the same event reported by media is analyzed in a different way and assessments depend on the political sensitivities and editorial policies of media<sup>97</sup>.

---

<sup>96</sup> Interview with Ousmane Toudou, journalist, former member of CSC, Director of Anfani radio, on 7 March 2010

<sup>97</sup> Interview with Ousmane Toudou, Ibid

The price of newspapers in Niger, CFA 300 (less than 1USD) per weekly, is regarded as prohibitive for the majority of Nigeriens, whose incomes do not allow them to read newspapers on a regular basis. Advertising expenses are quite high in newspapers and on the radio; on the average, CFA 50,000, equivalent to USD 100 for quarter of a page or minute of radio or television spot.

Capacity (legal framework)

Do the Constitution, legislative provisions or regulatory rules in force guarantee the operation of media independent from the Government?

Article 26 of the 18 August 2009 stipulates that 'every person is entitled to freedom of thought, opinion, expression, religion and worship'. On these grounds, Articles 1 and 2 of Order N° 93-031 stipulate that "audiovisual communication is free and results from the services provided by the public communication utility and private sector enterprises and non profit making organizations". Within the meaning of Order N° 99-067, the following are considered as general information papers:

- periodicals or any periodical publications or press agencies which are a source of information on national or international current events and which release information destined to their readerships on a regular basis;
- any audiovisual media, made available to the general public or categories of the public, through any telecommunications, signs, signals, writings, images, sounds or messages of all nature different from private correspondences.

However, the following publications are not considered as general news media and are subject to the provisions of this order, despite the fact that they might look like newspapers, magazines, fliers, catalogues:

- ads, fliers, catalogues or almanacs;
- works published by delivery, which are published over a limited period or which supplement or update works that were already published;
- publications whose main objective is to seek or develop the transactions of commercial, industrial enterprises or specifications;
- publications whose main objective is to disseminate timetables, programs, quotations, models, plans or drawings;

- publications representing administrative documentation organs<sup>98</sup>.

One of the powers of CSC is to ensure the independence of public and private information media (Article 7 of CSC on, organization, powers and operation Law N°2006-24, dated 24 July 2006). Under this law, especially Article 11 and subsequent articles, licenses for television stations are issued, without any political considerations. Indeed, CSC is the body which, on behalf of the Government, issues licenses to operate radio broadcasting, television services or any other private audiovisual communication services.

Capacity (practical)

Are media bodies genuinely independent from the other powers?

Media bodies enjoy relative independence in Niger. As in the case of CSOs, other institutions or socio-political organizations often interfere with their operations. The main reason why media accept such interferences is related, in addition to their political sensitiveness, to the fact that they lack personal resources, which translates into their dependence on “their donors”. The latter, including political actors of both the ruling majority and opposition parties, intervene to guide comments and analysis of media.

It should be underlined, as Mr. Marou Amadou, President of FUSAD rightly put it that with regard to media, there is also non-sincere and constructive dialogue, which is respectful of the identity and relevance of the multiplicity of media and viewpoints for the purpose of strengthening and developing democracy. The Government considers media, which intend to work independently, as “rebels” or “enemies” which hate their country. The only choice public media have is to voice the opinions of their “masters”. Political parties and civil society activists who do not share the same political sensitiveness with the ruling majority are denied access to public media. Censorship is a reality in Niger and the Government went to the extent of banning live radio and television debates, during the period of the 4 August 2009 referendum<sup>99</sup>. Censorship also translated into very frequent intimidations and threats of closing media in 2009 (Radio Sahara FM, Radio Dounia). For fear of persecutions, including physical threats, some journalists often avoid speaking or writing on issues regarded as

---

<sup>98</sup> Freedom of the press Order N° 99-67, dated 20 December 1999, Articles 2 & 3  
<sup>99</sup> Media Barometer in Niger, RNJDH, June 2009, op. cit.

sensitive by the Government, such as the 2005-2007<sup>100</sup> and 2008 rebellion and the illegal nature of the 4 August 2009.

Subsidies, which have been granted to media over the last years are not appropriate (only around CFA one hundred millions per year, equivalent to USD 2 hundred thousands, for around ten press groups, radios, televisions and newspapers).

As in the case of CSOs, media in Niger lack political, social and cultural culture and the roles for each of them are not properly identified. The economic environment is also not conducive to efficient operation of media, especially private media, attributable to the scarcity of advertising and communiqués. According to our key informant, some promoters and journalists find themselves in often difficult socio-economic situations. They are not well paid, and are always after “support and perdiems”. This makes them quite vulnerable to the interventions of pressure groups that finance private media. Their comments therefore depend on the size of perdiems or envelopes collected<sup>101</sup>

#### Governance

Governance: transparency (legal framework)

Do the Constitution and legislative and regulatory provisions provide for transparent operation of media?

Under the law, promoters of newspapers or periodicals are compelled to give information on owners, shareholders and capital of publishing companies. If they are not Nigeriens, promoters must justify least 51% of Nigeriens' proprietary interest and use of qualified Nigerien staff to be issued operating permits for radio, television broadcast and audiovisual communication services. With regard to the editorial policy, it is only indicated in Article 5 of Order N° 99-067 that *“when a general information medium makes a radical change of orientation, journalists who consider that they can no longer work there may refer to the conscience clause and claim the same compensations as those granted in case of wrongful dismissal.”*

Governance ( practical framework)

---

<sup>100</sup> Seizure of « le Témoin » newspaper in December 2005 for having published an article on the abduction of 4 law enforcement agents by armed movements and suspension of RFI in 2008 and their correspondent for around 1 year

<sup>101</sup> Interview with Ousmane Toudou

Does the media operate in a transparent way?

Most of the private media organizations in Niger are not managed in transparent way<sup>102</sup>. In addition, very few media have the required administration, including an administrator, a director, an accountant and a cashier. Roles are not specifically defined or respected and there are no financial and accounting manuals to manage most media. Often, the manager plays many roles: administrator, accountant, director and cashier at the same time. In some rare cases, media such as “le Republicain” newspaper, ANFANI Multimedia Group, Tenere and Dounia Radio and Television groups, Canal 3 submit financial statements at the end of fiscal years. Media are considered by some promoters and journalists as an instrument to achieve their personal objectives<sup>103</sup>. It should be made clear however that the Freedom of the Press Law and the Penal Code provide for sanctions in case of breach of deontology. Such sanctions shall be taken by the body in charge of regulating media.

Governance: accountability (legal framework)

Do the Constitution and legislative and regulatory provisions in force provide accountability for media?

A specific statutory body was created to regulate public and private media. As an administrative authority, independent from the political power, the mission of CSC is to ensure and guarantee freedom and independence of audiovisual media and newspapers. It must ensure compliance with deontology and equitable access of citizens, associations and political parties to official information and communication media. Given its different missions, CSC regulates the media sector. This role is becoming more and more important with the multiplicity of private radios, which currently number more than 40 , private community radios (101), private television stations (3) and private newspapers (around 20), composed mainly of weeklies.

However, the new composition of CSC, excluding multiplicity of representation, challenges the principle of its independence, secured since the National Sovereign Conference was organized. In fact, Article 130 of the Constitution stipulates that: *“CSC, shall be composed of 7 members, appointed by decree by the President of the Republic for 3 year term of office, renewable once and include: 4 appointed by the President of the Republic, appointed by the Chairperson of the National Assembly, 1 appointed by the Speaker of the Senate and 1 appointed*

---

<sup>102</sup> Interview with Ousmane Toudou

<sup>103</sup> Interview with Ousmane Toudou, Ibid

*by the Minister of Communication*". Under the new composition of CSC, the 7 members are appointed only by 2 authorities: the Executive and Parliament, whereas in former legislations, at least 1/3 of CSC members were elected by socio-professional organizations and other associations and independent Government institutions.

Governance (practical framework)

Are media genuinely accountable?

Media are enterprises which mobilize resources, invest, pay expenses, and advertise products. They are also public utilities which inform, sensitize and educate communities. In the conduct of their missions, they have to abide by existing laws, regulations and procedures. They must therefore comply with the law. Yet, many managers of media are not aware of this fact. When they break the law, when they are prosecuted, when citizens or administrative or political authorities grumble on the content of their articles, considered defamatory or offending, they cannot understand that the relevant regulatory provisions should be imposed on them, that the structures in charge of ensuring that media are accountable, or that CSC, Peer Council or Press Council could sanction them.

In the media sector, there is an amalgamation between the mission and work of media and professional misconducts, because it is believed that the former may discharge the latter. Thus, there is a sort of almost automatic solidarity, in case a media is prosecuted without its colleagues wondering if it has genuinely committed such an offence<sup>104</sup>.

Very often, Nigerien media grant right of reply to people who feel targeted by their articles or audiovisual comments, as they are legally required to do so. But, not all media do so in systematic way or in good faith. On the contrary, others take this advantage to make additional comments, which are more insulting, against the concerned person. This person may lodge a complaint, feeling defamed and insulted.

Media regulatory bodies in Niger have not properly functioned recently. Public opinion considers that the main body (CSC) is controlled by the Government and acts according to the instructions of the Government. Examples of threat, formal demands and closing of private media are proof of this state of affairs<sup>105</sup>. On their part, professional bodies,

---

<sup>104</sup> Interview with Ousmane Toudou, Ibid

<sup>105</sup> Seizure of « le Témoin » newspaper in December 2005 for having published an article on the abduction of 4 law enforcement agents by armed movements and suspension of RFI in 2008 and their correspondent for around 1 year

especially, journalists' associations, play the role of firemen and too late. Their actions aimed at trying to regulate the sector are not effective, especially, when they try hard to make the majority of journalists professional journalists, who analyze facts in equity, having verified them first.

There is much debate on various political, economic and above all socio-cultural issues, which are organized by some public and private Nigerien media. The general public listens and follows such debates and actively participates in them, especially through telephone calls from listeners or viewers who are recorded during such broadcasts.

Governance: mechanisms aimed at ensuring integrity (legal framework)

Are there constitutional rules, legislative or regulatory provisions aimed at protecting the integrity of media personnel?

In Niger, there is a Professional Journalists' Charter, which has issued ethical and professional conduct rules.

Governance: mechanisms aimed at ensuring integrity (practical framework)

To what extent is the integrity of media genuinely protected?

The issue of integrity in the behavior of media managers and members is quite relative. According to specialists of the sector, the majority of media members are honest and responsible, despite their poverty. By ignorance of their role, insufficient training and lack of professionalism, many media do not comply with the Code of Ethics in their Charter<sup>106</sup>.

There are professional organizations in charge of having journalists and media comply with the Code of Ethics and proposing sanctions in the case of breach of such a code, such as the Press Council, Private and Public Journalists' Associations and Unions (ANEPI, SYNFO). Very often, such organizations would call on their members to comply with deontology. However, the majority of journalists and media managers do not abide by the rules regarding gifts and invitations, because, like civil servants, they do not distinguish between what is morally acceptable and unacceptable with regard to gifts.

Role

---

<sup>106</sup> Interview with Ousmane Toudou, Ibid

### Role of media in investigation and disclosure of corruption cases

Is the media generally active and efficient in the area of investigation and disclosure of corruption cases?

In Niger, media and CSOs are very active in the disclosure of corruption cases.<sup>107</sup> But the efficiency of such activism may be challenged, as the majority of information has no impact and the Executive does not in general follow up on such issues. In addition, investigations are poorly conducted, as media information is not supported by any proofs or concrete or precise facts. This translates into discredit on media, which justifies the multiplicity of libel actions against them and which often result in prison sentences<sup>108</sup>. But investigations also require some competencies and professionalism, and a lot of material resources which the majority of media do not have. Investigative journalism is not a major component of the activities of journalists in Niger, as journalists do not have the required training and the necessary skills, and media do not have the necessary resources for such an activity. However, many visible cases of corruption have been revealed by journalists, which led to the indictment and imprisonment of 2 Ministers and several senior staff of the Ministry of Basic Education and Literacy (MEBA)<sup>109</sup>.

### Role of media in public information policy on the issue of corruption and its impacts

Is the media generally active and efficient in public information on the issue of corruption and its impacts?

In this area, media are active but not efficient. Denunciations by media are not acted on by the Government and often citizens doubt about the reliability of the facts reported by the media.

There are educational programs developed by media to sensitize the public on corruption and the means of combating such corruption. For example, in 2007 and 2007 USAID supported media with a caravan which visited the capital cities of regions to convey the anti-corruption message. Articles were published in many newspapers and reported by public and private radios and televisions. When the project was being

---

<sup>107</sup> « la Roue del’Histoire » newspaper N° 404 , dated 14 May 2008 and « la Griffie » newspaper, dated 28 May 2008

<sup>108</sup> APA-Niger , « 2 August 2009 : Series of arraignments of journalists for the publication of information involving close relations of Tandja regarding commissions received for “services rendered” during adjudication of mining contracts

<sup>109</sup> « le Républicain » newspaper, dated 27 December 2007 and CPJ report « attacks on the media in 2009 in Niger » February 2010

launched, the Ambassador of the USA was received by the President of the Republic and in the regions, and governors provided visible support to the organization of the caravan. Such awareness-raising campaigns were highly valued by communities, who indicated their satisfaction during the evaluation survey conducted in 2008 by CIERPA, a consulting firm. 78.4% of interviewed men, and from 46.3% to 60.9% of interviewed women, except in Agadez (46.3% and 35.3%, respectively), responded that the anti-corruption campaign, organized by the USA Embassy in Niger was profitable for the country<sup>110</sup>.

Public information on governance issues (practical)

Do media generally actively and efficiently inform on the activities of the Government and other public stakeholders?

Both public and private media inform the population of the activities of the Government and other public actors on a regular basis. In general, people do not believe in public media information and resort to private media or “rumors in town”<sup>111</sup>. Information provided by private media is rather general information. Information on the true activities of the Government is difficult to obtain by professional journalists, not to mention simple citizens.

---

<sup>110</sup> “Survey on the perception of communities in major urban centres of Niger on corruption cases”, Embassy of the USA in Niger, 2008, Ibid

<sup>111</sup> Interview with Ousmane Toudou and Professor Tidjani Mahamane Alou, Ibid

# 12. CIVIL SOCIETY

## Civil Society

It includes associations, NGOs and unions.

Key informants: Marou Amadou, President of an associations group, United Front for the Safeguard of Democracy (FUSAD); Kader Naino from the National Lottery; and the Director of Development NGOs and associations, within the Ministry of Community Development and Land use Planning (MDC/AT).

### Structure and organization

In Niger, the 18 August 2009 Constitution stipulates that “civil society includes associations, unions and other non governmental organizations (NGOs) which are independent from the Government”.

Thus, Article 9 of the Constitution stipulates that “ as part of the freedom of association recognized and guaranteed by this Constitution, political parties, groups of political parties, unions and other associations are freely established and carry out their activities, provided they comply with the principles of national sovereignty, democracy and the laws of the Republic”. In addition, Article 29 of the Constitution explicitly stipulates that “the Government shall recognize and guarantee freedom of movement, freedom of association, assembly, procession and demonstration”. Furthermore, according to Article 29 of the Constitution, “The Government shall recognize and guarantee the right of union, and the right to strike which shall be exercised under the requirements of laws and regulations”.

Associations and NGOs are specifically governed by Order N° 84-006, dated 1 March 1984 and subsequent legislations. Handicraft cooperatives are governed by handicraft cooperative regime Order N° 2006-23, dated 29 June 2006. Rural cooperatives are governed by rural cooperative regime Order N° 97-067, dated 9 November 1986.

To date, there are 843 associations and NGOs, 7 labor bodies and tens of unions, which are active in all areas of the socio-economic life of Niger, including good governance and corruption control. In their majority, these associations do not conduct visible activities. Development associations and NGOS are the most numerous and account for more than 50% of civil society organizations<sup>112</sup>.

---

<sup>112</sup> « National inventory of NGOs active in Niger », Ministry of Land Use Planning and Community Development, UNDP 2008

Under Associations Regime Order N° 84-006, dated 1 March 1984, and subsequent amending legislations, “an association is an agreement whereby 2 or more individuals or corporations who freely, or in an informed way, accept to permanently pool their capacities or activities for a specific purpose, other than profit sharing . The validity of associations is governed by the general principles of the applicable law of contract and obligations”<sup>113</sup>.

In Niger, associations work under a double tutelage, the Ministry of Interior, for all types of associations, assisted by sector Ministries, each in its area of competence. It should be recalled that in accordance with the provisions of Article 10 of Order N° 84-006, dated 1 March 1984, supervisory administrative authorities may ensure, using appropriate methods, that the property of associations is well managed. It may at any time require submission of the books of accounts and accounting documents of associations.

In Niger, CSOs play a critical anti-corruption role. Like the media, they contribute much to the information of awareness-raising in communities. They play a central role in the promotion of good governance, in general, and corruption control, in particular. They are very active in whistle blowing and in the fight against impunity, through demands to prosecute offenders and their accomplices, in corruption cases. Information and awareness-raising activities conducted by CSOs in Niger have had some impacts on the behavior of those in power, who after a period characterized by mistrust and refusal to listen, increasingly consider them as true partners.

#### Assessment

Capacity: resources (legal framework)

Do the Constitution and legislative and regulatory provisions in force guarantee a favorable environment for CSOs?

Right of association is guaranteed by the Constitution. Pursuant to Associations regime Order N° 84-006, dated 1 March 1984, and its subsequent modifying legislations, it is very easy to create a NGO or an association at a low cost in Niger.

NGOs are granted fiscal exoneration and inconformity with the type of contract they have signed with the Government.

---

<sup>113</sup> Regime of Associations Order N° 84- 06, dated 1 March 1984, Article 1.

Capacity: resources (practice)

Do NGOs have sufficient resources to operate and work effectively?

CSOs in Niger do not currently have the necessary human, material or financial resources to operate and work effectively. In fact, the majority of NGOs and associations do not have premises for their headquarters. Those who lease find it difficult to meet their obligations, including paying rent. They do not have any, or sufficient, human resources, automotive equipment or material resources (tables, computers, offices, chairs)<sup>114</sup>.

A study shows that the 108 NGOs interviewed received CFA 58.957.763. 070, equivalent to USD 117.915.526 in 2007<sup>115</sup>.

Voluntary work is not well developed in Niger and is not rooted in communities. Members of NGOs and associations cannot afford to contribute on a regular basis. They also do not have the necessary technical and professional skills to manage NGOs and associations. According to Marou Amadou, *“Government subsidies are not available. In Niger, we are familiar with charity and gifts for “individuals”, rather than organized groups and associations. There are no gifts and legacies at the national level. There are no stable and diversified funding sources for NGOs and associations. However, bilateral and multilateral foundations, NGOs and cooperation agencies assist and support national NGOs and associations, which to a large extent owe their survival to such external assistance”*.

In general, Nigerien NGOs do not have a solid base of members and volunteers. Their memberships are reduced to the friends and relatives of managers of NGOs and associations.

Only some NGOs and associations can hire qualified permanent personnel, because the majority of them do not have the financial resources necessary to pay them on a regular basis and for a long time. The activities of NGOs and associations are not often visible. They also cannot supplement their resources by income generated by such activities or financial incomes.

Independence capacity (legal framework)

---

<sup>114</sup> Interview with Marou Amadou, President of the United Front for the Safeguard of Democracy (FUSAD), on 1 March 2010.

<sup>115</sup> « National Inventory on NGOs active in Niger : Financial Achievements » , Ibid

Do the Constitution and legislative and regulatory provisions allow NGOs to work without any interference from the Government?

In Niger, the Constitution allows NGOs to work without any interference from the Government. Citizens have the right to create associations and be active in organizations which promote good governance and corruption control. However, Article 2 of Order N° 84-006, dated 1 March 1984 expressly stipulates that *“any association based on a cause, or created for a purpose, contrary to the legislative and regulatory provisions in force, morality or for the purpose of breaching law and order, integrity of the national territory or the form of government, shall be null in law”*.

From a legal point of view, nothing prevents foreigners from becoming members of the Board of Directors of a national association or NGO. The only restriction on the management or administration of an association relates to non emancipated minors or who do not have their own livelihoods.

Capacity: independence (practical framework)

Can NGOs and associations genuinely exist and operate in total independence from the Government?

NGOs and associations enjoy relative independence. Often, other institutions and structures interfere in their operation, because they lack resources and therefore depend on such organizations. According to a report of the Ministry of Community Development, out of CFA 58.9957.763.070 received in 2007, external subsidies<sup>116</sup> represent CFA 56.957.763.070.

With the Government of Niger, according to civil society activists, there is no sincere, constructive dialogue, respectful of the identity of NGOs and association and their interests and democracy. The Government regards NGOs which intend to operate independently and in a self-supporting way as “rebels”. To punish them, the Government grants them no subsidies or assistance. They are rather harassed and threatened to be dissolved or their officials threatened to be imprisoned. On the contrary, NGOs and associations which follow the instructions of the Government are considered as “good” NGOs and associations, and are granted subsidies. Thus, Mamane Wada from ANLC and Marou Amadou from FUSAD were arrested and imprisoned on account of opinions they expressed on the extension of the second and final legal

---

<sup>116</sup> National Inventory, Ibid

term of office of Tandja Mamadou and also on account of a so-called “illegal management of associations”<sup>117</sup>.

Some activists estimate that CSOs in Niger face difficulties and constraints in their operation, because of lack at national level of political and social culture and because the roles of each partners are not clearly identified.

The lack of resources and weak volunteer work culture makes NGOs and associations vulnerable and undermine their action. In addition, increasing incursion of associations into the political arena generally impeaches their credibility in some opinions and undermines their autonomy and neutrality.

#### Governance

##### Governance: transparency (practical framework)

Transparent management of NGOs and associations is NGO-dependant. There is a real ethical problem regarding a lack of political and social culture, and inappropriate identification of roles of each NGO, which translate into the fact that some NGOs and associations boil down to their officials. Some officials regard the resources of NGOs as their personal property and as tools to achieve their own development. This is the reason why NGOs and associations are managed in an opaque and non-transparent way.

However, some NGOs and associations such as ANLC, ANDDH are managed in a transparent way and are very active in the promotion of democracy, good governance and corruption control.

But, in rare cases, NGOs and associations publish their financial accounts and publish the composition of their Board of Directors. In addition, the majority of NGOs and associations have no boards of Directors.

##### Governance: accountability (practical framework)

Are NGOs are accountable to their members?

The accountability of CSOs is quite relative, as already indicated, members, not to mention communities ignore what officials of many NGOs and associations are doing.

---

<sup>117</sup> Marou Amadou was detained for more than 3 months at the high security prison of Koutoukalé for “illegal management of association”.

May NGOs do not have Boards of Directors or management structures, as often, NGOs and associations boil down to some officials who carry out all activities. The responsible Ministry in charge of administrative and technical control of the management of NGOs and associations, the Ministry of Interior and the Ministries in charge of NGOs (Planning, Community Development , Economy) do not control them on a regular basis and effectively. Therefore, there is non-efficient control on the activities and organization of NGOs.

Governance: integrity provisions (legal framework)

Are there provisions aimed at guaranteeing integrity?

One of the legislative provisions aimed at guaranteeing the integrity of CSOs relates to the control that the relevant administrative authority may conduct, by all means to ensure that NGOs' and associations' properties are well managed. This authority may, at any time, have books of account and accounting documents submitted to it (pursuant to the last sub-paragraph of Article 11 of the Order N° 84-006, dated 1 March 1984).

The majority of NGOs and associations in Niger are not after self-management. They are managed by in informal way and as personal property. There is no specific code of conduct applicable to the sector of NGOs and associations.

Governance: mechanisms aimed at guaranteeing integrity (practical framework)

Is the integrity of NGOs and associations genuinely ensured?

The issue of integrity in the behavior of the officials and members of NGOs and associations is quite relative. Some are honest, and law and regulation abiding. But, this is not the case of a number of NGOs and associations' officials and members, who do not accomplish their missions. There is no effective control and evaluation to assess if they comply with the requirements of codes of conduct. This should be the responsibility of the Ministry of Interior and ministries in charge of NGOs and associations (Planning, Community Development, and Economy).

Capacity to make the Government accountable

Do CSOs act in such a way that the Government is accountable for their actions and decisions? Do NGOs actively perform their watchdog function? Are there success stories in this regard?

In Niger, national NGOs and associations control the activities of the Executive. Thus, for many years, they have been working to make the Government accountable for their activities through demonstrations, meetings and declarations and other questionings. There are numerous examples of mediated actions, including, press campaigns organized by the *Réseau des organisations pour la Transparence et l'Analyse budgétaire* (Network of Organizations for Transparency and Budget Analysis) (ROTAB) and the Think Tank on Extractive Industries (GREN), following the dismissal by Parliament of the draft resolution on the establishment of a parliamentary control committee on the terms and conditions under which mining licenses are granted in Niger. In fact, the objective of this campaign was to show the opaque conditions in which mining licenses are granted in Niger, though our country is a party to the Extractive Industry Transparency Initiative. In the face of the refusal of transparency by the Parliament, CSOs active in the area of extractive industries, ROTAB and GREN issued a communiqué to criticize this situation.

#### Role

##### Role of CSOs in the fight against corruption

Are NGOs actively involved in the promotion of pro-anti-corruption reforms?

In Niger, many NGOs and associations, such as Niger Anti-Corruption Association (ANLC), Niger Human Rights Advocacy Association (ANDDH), the United Front for the Safeguard of Democratic Achievements (FUSAD), ROTAB and GREN are actively involved in the fight against corruption and promotion of good governance. They monitor the management of public resources and in case of mismanagement; they expose offenders and require the Government to take appropriate action. Unfortunately, such actions are not successful in their majority, because the Government has no political will to support them.

In addition, national NGOs actively seek to have anti-corruption laws adopted. They lobby political leaders and administrative authorities and conduct activities in this regard (workshops, seminars, demonstrations, meetings, articles, radio and television broadcasts)<sup>118</sup>.

---

<sup>118</sup> Interview with Kader Naino, civil society activist, on 5 March 2010



# 13. BUSINESS

**Key Informant:** Elhaj Lawal Chaibou, Secretary General of the Chamber of Commerce, Industry and Handicraft of Niger (CCIAN)

#### Structure and organization

The 18 August 2009 Constitution guarantees property rights by stipulating that “every person shall be entitled to property rights. No one shall be denied his property for public purposes, provided he/she is paid fair and prior compensation”. This provision is supported by other legislations and regulations, including Order N° 093-015, dated 2 March 2009, fixing the guiding principles of the Rural Code, with regard to land ownership which is acquired according to Article 8 “by customary law and on grounds of written law”.

With regard to the legal and institutional environment, it should be noted that Niger is party to the Organization for the Treaty establishing Harmonization of Business Law in Africa (OHADA) with the following 15 countries: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo Brazzaville; Cote d’Ivoire, Gabon, Guinea Conakry, Guinea Bissau, Equatorial Guinea, Mali, Senegal and Togo. The objective of this treaty is to promote the economic development and integration of the region and legal and judiciary security of business community. It gives priority to uniform instruments over national laws and their direct application. However, it does not apply to taxation, which is a reserved area for state parties to the treaty. The following uniform instruments, adopted under OHADA also apply in Niger:

- Commercial Law application Uniform instrument, dated 17 April 1997;
- Uniform Instrument of 17 April 1997 regarding company and economic interest grouping<sup>119</sup> law;
- Securities Organization Uniform Instrument, dated 17 April 1997;
- Organization of Simplified Recovery and execution Order, dated 10 April 1998;
- Organization of Collective Liability Reconciliation Order, dated 10 April 1998;
- Uniform Instrument regarding arbitration law;

---

<sup>119</sup> Economic Interest Grouping

- Organization and Harmonization of Business Accounting Order, dated 22 March 2000;
- Uniform Instrument of 22 March 2003 regarding land transportation of goods contracts.

In conformity with the different uniform instruments regarding OHADA commercial law in general, and pursuant to the regulatory provisions in force in Niger, including Book 1 of the Commercial Code, any individuals or corporations who qualify as tradesmen may conduct commercial activities. To that effect, individuals and corporations are subject to registration in trade and credit on personal property registry as well as to other administrative formalities.

At the institutional level, many institutions participate in the organization of the private sector in Niger, including CCIAN, which is governed by Order N° 2009-21, dated 3 November 2009. Under this order, the missions assigned to CCIAN essentially relate to the promotion of the private sector and focus on the following thrusts:

- representation of the economic interests of Niger;
- sensitization and information of economic operators on different aspects of economic process;
- consultation with economic operators and the Government on all legal, tax, economic and financial issues;
- corporate human capacity building;
- management of economic interest infrastructures;
- expertise through assistance and guidance to business proposal promoters and contractors;
- preparation of economic studies on business community;
- promotion of economic activities through the organization of fairs, shows, exhibitions and commercial missions;
- preparation of studies on some major aspects of business community;
- training of economic operators and business leaders.

CCAIN includes several structures, namely, the Chamber of Trade, National Private Investments Board (CNIP) and Corporate Formality Center (CFE).

The Chamber of Trade of CCIAN, which is the main structure in charge of monitoring and supporting the private sector, serves as an interface between the Government and economic operators. On these grounds, it strives to organize and develop corporations and enable them to better contribute to the economic growth of the country. To fully play such a role, new bodies which were created in 1998 identified the following priority areas:

- Revival and structuring of the institution with a view to giving rise to the adhesion of its members and support from development partners;
- diversification of services and extension of intervention areas.

The missions of CNIP, created by Decree N° 2007-388/PM, dated 14 September 2007, include:

- advise and assist the Government in the promotion of the private sector to enable the Government to contribute to the development of this sector through the implementation of appropriate support measures;
- identify regulatory and legal constraints and other constraints which undermine the development of our enterprises and their competitiveness;
- establish and maintain a “Government–Business community” consultation framework, to overcome the barriers to commerce and investment in Niger and create a positive economic climate for investment and growth.

Despite such mechanisms, the findings of a study conducted by the World Bank in 2006 on the investment climate, reproduced under the Accelerated Development and Poverty Reduction Strategy (SDRP), is quite damning. Thus, this study shows that the business climate is not generally favorable to the private sector. The most important weaknesses include:

- important perception of corruption;
- incoherent regulations;

- bureaucracy and excessive legal formalities;
- low productivity of manufacturing firms.

As a result of the little competition in business climate, the informal sector has been able to develop.

The structure of the GDP is characterized by the predominance of the informal sector, which, including the agricultural informal sector, increased by 6.7% in 2008 and represented 74.2% of GDP. The regulated sector continued to be impacted by low domestic demand and poor competitiveness of local industries. This increasing informal nature of the Nigerien economy has negative impacts on the mobilization of internal revenues, as testified by the low level of tax revenues collected each year. In fact, this has impacts on business development; as the Government will tend to heavily tax businesses which work under the legal framework. Thus, in 2008, the economic accounts of the Government, according to the estimates of NIS, the informal sector by economic sector and in terms of factor costs, were as follows:

- the primary sector (47.3% of GDP, in terms of factor costs) is essentially an informal sector;
- the secondary sector is the weak point of the economy of Niger. It only accounts for 12.3% of GDP in factor costs. In this sector which is more than 47.3% informal, extractive activities, including, uranium, would account for more than 1/3 of value added;
- the tertiary sector, 40.4% of GDP in factor costs. The weight of this informal sector in GDP represented 85.6% of the value added.

According to the National Institute of Statistics (NIS), the share of the informal sector in GDP has increased in the following proportions: 72.6% in 2005; 72.1% in 2006; 69.5% in 2007, and 70.7% in 2008.

#### Assessment

##### Capacity (legal framework)

Do the Constitution or legislative and regulatory provisions in force create a positive climate for private businesses to be started and developed?

In Niger, the Constitution or legislative and regulatory provisions in force create a positive climate for private businesses to be started and

developed. Indeed, procedures for establishing businesses or commercial establishments have been seriously relaxed, with the establishment of the Business Formality Center (CFE), which is “a useful tool to facilitate formalities and the only entry door for businesses to reach administrations and organizations in charge of installation formalities”.

Other legislative and regulatory provisions relate to the capital of businesses with the participation of the Government, including Order N° 86-02, dated 10 January 1986, specifying tutelage and control of public authorities, Government corporations, and mixed enterprises; major enterprises such as *NIGELEC*, *SONIDEP*. Major formalities have been reduced to one-stop shopping, available at CCIAN where all formalities can be carried out.

Capacity: Resources (practice)

Do private businesses genuinely enjoy a favorable environment to be started and developed?

According to CCIAN officials<sup>120</sup>, it is easy to start a business in Niger. They underline the establishment of a one-stop shopping on the very premises of CCIAN, which make it possible to create enterprises or carry out out-of-business formalities in less than 10 days. Officials also refer to “MP III Project” which assisted CCIAN in the formalities for starting a business. Unfortunately, the political climate, especially the organization of the illegal and controversial 4 August 2009 referendum, has translated into the closure of this project, largely financed by the USA cooperation. But, according to these very officials, there are still some difficulties with the operation of this one-stop shopping, including with the legal system, as the majority of registrars who collect fees do not pay them to the finance department.

The World Bank does not share the same optimistic view with CCIAN officials on the status of businesses in Niger. Thus, an inquiry conducted in 2006<sup>121</sup> shows that “*the business climate in Niger is not favorable to the private sector regardless of sectors, from an international perspective*”. They refer to a comparison of the perceptions of business leaders in Niger and those of business leaders in other countries, which underlines that even if they seem to share similar viewpoints on issues raised, business leaders in China, Turkey

<sup>120</sup> Interview with Elhaj Lawaly Chaibou, Secretary General of the Chamber of Commerce, Industry and Handicraft of Niger, on 17 March 2010

<sup>121</sup> World Bank, « Business survey exercise, Niger”: Diagnostic study on Trade Integration; 2006

or Cambodia are apparently less concerned by such issues and often have less negative perceptions about the mentioned constraints. Results of this inquiry show that negative points are numerous and important ones related to corruption considered as widespread, are incoherent regulations and application of regulations, low effectiveness of the legal system, the rather bureaucratic taxation system, access problems and cost of credit and finally, high competition from the informal sector. In addition, there are still major infrastructure issues.

Capacity: independence (legal framework)

Do the Constitution or legislative and regulatory provisions in force enable businesses to operate independently?

The Constitution or legislative and regulatory provisions in force do enable businesses to operate independently. The articles of CCAIN, the main structure in charge of monitoring and controlling businesses, make it largely autonomous in its activities and facilitate such independence of businesses. CCAIN's officers, chiefs of administration and Secretary General are elected by economic operators. As elected representatives, mandated by business leaders, they are quite sensitive to the concerns of such leaders. This makes them independent from the Government.

Capacity: Independence (practice)

Can businesses genuinely operate in an independent way?

In practice, there is no consensus on the genuine independence of the business community in Niger. According to CCAIN officials, Nigerien businesses are indeed independent in their operations. The legal framework does not allow the Government to interfere with the creation and operation of private businesses<sup>122</sup>. However, in practice, there were cases where Government officials attempted to exercise pressure on private businesses through abuse of authority. Thus, in 1998 and 2002, Government officials attempted to influence the establishment of the bureau of CCAIN, including the election of its chairperson. But, economic operators resisted all pressures and elected the chairperson they wanted to elect. In 2003, other Government officials created a cellular telephone company, known as X.COM in an attempt to recover the shares of some private cellular telephone companies, such as CELTEL. According to our informant, this issue was considered during a meeting held by the National Investment Board (CNI), which brings together the Government and business management. The case was

---

<sup>122</sup> Interview with Elhaj Lawaly Chaibou, Secretary General of the Chamber of Commerce, Industry and Handicraft of Niger, Ibid

referred to a court and CELTEL was sentenced in the first instance to pay fines amounting to CFA 1,600,000, every ten days, if it did not transfer its internal call property to X.COM, which hid Government officials. Fortunately, on appeal, justice found CELTEL not guilty, thus ending this attempt by political leaders<sup>123</sup> to recover a private company.

However, the opinion of Nigerien business leaders is much more nuanced than the opinion of the structure in charge of their supervision. Thus, the results of the World Bank's inquiry conducted in 2006<sup>124</sup> show that Nigerien business leaders have little trust in the coherence of the regulatory framework and the judicial system. Almost 50% of Nigerien business leaders interviewed estimate that the interpretation and application of regulations and laws affecting their commercial establishments by Government officers are unpredictable. Almost 60% of manufacturing firm leaders in Niger considers that courts are unjust, biased and corrupt. Interviewed leaders reported that they devote around 15% of their time to administrative problem solving.

Governance: transparency (legal framework)

Do the Constitution or legislative and regulatory provisions in force guarantee the transparency of business activities?

Niger is party to several sub-regional, regional and international treaties, such as EUMOA, OHADA, and SYSCOA. Such treaties impose demanding business accounting and management norms. Governments often use independent audit firms and impose them on businesses where they hold an interest, and on businesses where they receive assistance from technical and financial partners.

Like all financial institutions of UEMOA Member States, Nigerien banks submit processes imposed by the Central Bank of the West African States (BECAO) to an inspection.

Governance: transparency (practice)

Do businesses operate in a genuinely transparent way?

The issue of genuinely transparent operation of businesses in Niger is difficult to evaluate. the majority of private businesses in the formal sector only represent 8 -10% of the total number of businesses in Niger. Even if they use modern accounting norms (SYSCOA; OHADA) to

---

<sup>123</sup> Interview with Elhaj Lawaly Chaibou, Ibid  
<sup>124</sup> World Bank, « Business survey exercise, Niger”: Diagnostic study on Trade Integration; 2006, Ibid

manage their activities and publicize their statutory meetings, only reports prepared by external institutions make it possible to form an opinion on their activities. Their financial statements do not provide public opinion with information on what they are actually doing. Yes, financial statements are often audited by independent third parties, in conformity with the legislation in force, but the actual financial and economic situation of businesses is not known to the general public.

In addition, the majority of modern businesses in Niger are not concerned by issues of sustainable development and social accountability.

Governance: transparency (legal framework)

Are there legal provisions governing private business governance?

In Niger, there are legal provisions governing private business governance. They are sub-regional, regional and international in scope (SYSCAO; UEMOA).

Governance: accountability (practice)

Are businesses accountable for their actions in practice?

In practice, most legislative or regulatory provisions which govern the governance of private businesses in Niger are complied with and enforced. Their sub-regional, regional and international scope makes them compulsory and mandatory on most formal sector businesses. Such businesses prepare their balance sheets and submit them to their deliberative bodies for decision (shareholders' meetings, Board of Directors) on a yearly basis. CCAIN, which supports businesses, ensures that businesses do meet their obligations.

Mechanisms aimed at protecting integrity (legal framework)

Are there mechanisms aimed at ensuring the integrity of businesses?

The Constitution and legislative and regulatory provisions in force, in theory, guarantee the integrity of business leaders and paid employees. There are no formal codes of conduct in the different economic sectors. There are no rules regarding individual attitudes and behaviors, issues of conflict of interests, passive corruption, sound trade practice, gifts and invitations, whistle blowers and those who expose cases of corruption. This makes businesses more fragile and thus promotes corruption in trade practices, especially in the conquest of Government contracts and their relations with the Government.

## Mechanisms aimed at protecting integrity (practice)

In Niger, it may not be said that the integrity of private business leaders and salaried employees of the formal sector are protected. Most businesses do not have their own codes of conduct, and if this is the case, they do not enforce or abide by them. Corruption cases involving businesses are not visible. There is no whistle blower and disclosure system for cases of corruption. In addition, the 2006 World Bank's inquiry shows that *"corruption is a serious cause for concern for almost 58% of formal sector contractors in Niger and 43% of urban informal operators. Corruption is also regarded as a major constraint by business leaders in other economic sectors. This puts Niger in a rather bad position in terms of internal comparisons, as the country is ranked among the countries where this issue is considered as major issue by manufacturing business leaders. The cost of corruption is not negligible, as it ranges between 4.1% and 13.2% of annual turnovers, according to sectors"*.

## Role: Involvement of businesses in the fight against corruption (practice)

Nigerien businesses often encourage the Government to take action against corruption. In fact, during their annual general assemblies, meetings with Government officials, businesses and CCAIN discuss issues of bureaucracy and the impacts of corruption on the economy and businesses in detail, which are the primary victims of such a cancer. In some cases, the management of businesses publicly calls on the Government to combat corruption. But very often, they would rather make such a call discretely not to hurt Government officials and agents who are their main partners in a country where the State is the biggest economic operator<sup>125</sup>.

## Support of businesses to CSOs

In their majority, Nigerien businesses in the informal sector do not support CSOs in their anti-corruption activities. There are no concrete examples of anti-corruption initiatives involving businesses. There are no examples of businesses which finance the anti-corruption initiatives of CSOs.

---

<sup>125</sup> Interview with Elhaj Lawaly Chaibou, Ibid

VIII  
BIBLIOGRAPHY

18 August 2009 Constitution (6th Republic) promulgated by Decree N° 2009-256/PRN , dated 18 August 2009, Special issue of the Official Gazette of 16-20 August 2009, page 190 (Executive, Legislative and Judiciary);

Electoral Code Order N° 99-37 , dated 4 September 1999 (Executive, Legislative and Judiciary);

Rules of procedure of the National Assembly (Legislative);

Political Parties Charter Law, dated 13 June 2003 (Legislative)

Political Parties Charter Order N° 99-59 dated 20 December 1999 (political parties);

Global Corruption Report 2007, Transparency International, Cambridge University Press (General);

Transparency International, Combattre la Corruption, Enjeux et Perspectives, adopted from TI Source Book 2000, Jeremy Pope, by TI partners in Africa (general) ;

Système national d'Intégrité, TI, Cameroon 2007 ;

Système national d'Intégrité TI, Maurice, 2008 (general);

La corruption au Maroc, synthèse des résultats des enquêtes d'intégrité, publications de l'Université de la Transparence (general) ;

Criminal Code and Code of Criminal Procedures (Judiciary);

Statute of Government Civil Service Law N° 2007-26, dated 23 July 2007 (Executive);

Law N° 2001- 34, dated 31 December 2001, specifying the other agents subject to the obligation of declaring their property (Executive);

Anti-money laundering Law N° 2004-024, date 8 June 2004;

Illegal Enrichment Order N° 92-024, dated 18 June 1992;

Decree N° 2004-263 PRN/ME/ME/F dated 14 September 2004 on the creation, organization, and operation of the National Financial Information Processing Unit (CENTIF) (Executive);

Law N° 2000-10 specifying the composition, organization; powers and operation of the High Court of Justice (( Judiciary and Court of Auditors);

Law N° 2007-22 , dated 2 July 2007, specifying the composition, organization; powers and operation of the High Court of Justice (Court of Auditors);

High Court of Justice organization, operation and Procedures Law N° 97-007, dated 5 June 1997 (Judiciary and Legislative);

Organization of the Ministry of Justice Decree N° 2008-029, dated 31 January 2008 (Judiciary);

Decree N° 2005-48/PRN/MJ , dated 18 February 2008, specifying the powers of the Minister of Justice, Keeper of the Seals (Judiciary);

Decree N° 93-06 , dated 15 September 1993, specifying the organization and powers of the central departments of the Ministry of Justice (Judiciary);

Decree N° 93- 06, dated 15 September 1993, determining the composition, organization and operation the High Judiciary Council and subsequent modifying legislatures (judiciary and Executive);

Judiciary Statute LAW N° 2007-05, dated 22 February 2007;

Decree N°2007-261/PRN/ME/F ,dated 19 July 2007 specifying the powers of the Minister of Economy and Finance (Executive), Official Gazette of 1 December 2007;

Decree N°2007-253/PRN/MI/SPD, dated 19 July 2007 specifying the powers of the Minister of Interior, Public Security and Decentralization (Executive), Official Gazette of December 23, 2007;

Organization of the Services within the Office of the Prime Minister Decree N° 2007-37 , dated 4 September 2007, and specifying their powers (Executive), Official Gazette N° 21 of 1 November 2007;

Decree N° 2007- 396/PM, dated 1 October 2007 modifying Organization of the Services within the Office of the Prime Minister Decree N° 2007-37 , dated 4 September 2007, and specifying their powers (Executive), Official Gazette N° 21 of 1 November 2007;

Organization of the Office of the President Office Decree N° 2007-379, dated 1 October 2007;

Decree 2007-4473/PRN, dated 15 October 2007, laying out the organization, powers and operation of the Millennium Challenge Account (MCA) Programs Coordination Unit;

Law 2004-03, dated 12 January 2004, determining the Autonomous Statute of the National Police;

Decree 95-79/PRN/MT/AT, dated 4 May 1995, laying out the attributions and the organisation of the Directorate General of the National Police;

Decree 96-99/PCSN, dated 16 April, modifying decree 95-79/PRN/MT/AT dated 4 May 1995, determining the attributions and organisation of the Directorate General of the National Police;

Decree 2006-123/PRN/MDN dated 5 April 2006, laying out the composition, organisation of the National Gendarmerie Command, in Official Gazette of May, 15 2006;

Public Procurement Code Order 2002-007, dated 18 Septembre ;

Order N°118/ME/F/SG 2006, creating the Unit in charge of the verification of the respect of the public procurement implementation procedure, Official Gazette of May 15, 2006;

Decree n°97-272 PRN, dated 8 July 1997, laying out the powers and operation of the State General Auditing Inspectorate;

Republic of Niger, Ministry of Economy and Finances, Commission in Charge of the internal resources, Department of Taxes, Combined Wages, Salaries and Revenues Single Tax Scale (IUTS) deducted at source by the Employers and Payers of an Annuity, Edition 2010;

Republic of Niger, National Communication Observatory, Advocacy for the Freedom of the Press in Africa, the Acts of the International Colloquium relating to the exercise of the freedom of the Press in Africa, in Niamey, Niger 08-10 May 2001;

Republic of Niger, Communication Higher Council, Laws and Regulations ruling the World of Communication, Edition of May 1993;

Republic of Niger, Thematic Compilation of Laws and Regulations intended for the Actors of the Justice System, Part 1, Ministry of Justice in Partnership with the Official Gazette Directorate, Edition of 2008;

Republic of Niger, Thematic Compilation of Laws and Regulations intended for the Actors of the Justice System, Part 2, Ministry of Justice in Partnership with the Official Gazette Directorate, Edition of 2008;

Republic of Niger, Thematic Compilation of Laws and Regulations intended for the Actors of the Justice System, Part 3, Ministry of Justice in Partnership with the Official Gazette Directorate, Edition of 2008;

Republic of Niger, Labour Code of the Republic of Niger, Ministry of Justice, National School of Administration and Magistracy (ENAM), Niamey, Edition of 2005;

Republic of Niger, Ministry of Economy and Finances, Commission in Charge of Development, Programme of Good Governance and Well Shared Sustainable Growth, Supporting and Consulting Team in Governance, Final Report, Review of Studies Conducted with the support of Programme of Good Governance and Well Shared Sustainable Growth 2004-2006, November 2007;

Republic of Niger, Ministry of Territory Planning and Community Development, Good Governance et Well Shared Sustainable Growth Programme, National Directory of the NGOs Operating in Niger, October 2008;

Republic of Niger, Prime Minister Cabinet, National Council for Political Dialogue (CNDP) Permanent Secretariat, Diagnostic Report of the Capacities of the Political Parties in Niger, September 2009;

Republic of Niger, Nigerien Association for the Defence of Human Rights (ANDDH), 2009 Annual Report on the situation of Human Rights in Niger, April 2010;

Republic of Niger, Diagnosis of the Capacities of the Nigerien Civil Societies Organisations, Intermediate Report, September 2009;

Republic of Niger, Prime Minister Cabinet, Poverty Reduction Strategy Permanent Secretariat (SRP) Second Generation, «The Fight Against Poverty, Challenge to All of Us», Strategy for Accelerated Development and Poverty Reduction (SDRP) 2008-2012, August 2007;

Republic of Niger, Ministry of Justice, Project for the Support of Justice and Rule of Law (PAJED), the Remits of the Magistrates : Judges and Public Prosecutors / District Attorneys ;

West African Economic and Monetary Union (WAEMU/UEMOA), Revenue Court, Report of the Meeting about the Evaluation of the Systems for the Control of the Accounting and Results of the Audit Carried out in 2007 in WAEMU Member countries, Ouagadougou, April 07-10, 2008;

Republic of Niger, United Nations Development Programme (UNDP), Long-term Programme for Political Parties Capacity Building, October 2009 ;

Republic of Niger, « Transition Towards Democracy au Niger : analyses et proposals for building a real rule of law and for realizing democratic advances», Executive Summary of the Days for Reflection organised by ANDDH and Alternative Espaces Citoyens, held in Hôtel Ténéré, Niamey on March 13-14, 2010;

Republic of Niger, Niger Chamber of Commerce, Industry and Craft Industry (C.C.I.A.N), Note on the Economic Situation, October 2009;

Supporting and Consulting Team in Governance, United Nations Development Programme (UNDP), Good Governance et Well Shared Sustainable Growth Programme, Ministry of Public Service and Employment, Nationwide Consulting Mission for a Review of the Integrated Program for a Modernization of the Administration, Intermediary Report, November 2006;

Republic of Niger, Ministry of Public Service and Employment, Good Governance et Well Shared Sustainable Growth Programme, Study of the Obstacles to the Access of the Users to public services publics, public information and administrative documents produced and held by the public administrations, February 2009;

Republic of Niger, United Nations Development Programme (UNDP), Diagnostic, Report on Accountability, Receptivity, and Efficiency Building of the public Institutions, Component A : Development of the Parliament deliberative and legislative capacities, version Number 2 of October 20, 2009;

Republic of Niger, National Assembly, Belgium Technical Cooperation, Strategic Plan for the Development of the Niger National Assembly, 2008-2018, Intermediary Report dated May 31, 2008.



