The Constitution of the Republic of Niger of 25 November 2010

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I. Origins and Historical Development of the Constitution

The origins of Niger's 2010 Constitution[1] go back a long way and remain deeply linked to the evolution of the socio-political situation of the country. Before embarking on an analysis, it is important to note that the Republic of Niger, before becoming an independent state, was under occupation by France for several decades. Niger gained independence in 1960. From its independence to date, the Republic of Niger has experienced three types of political regimes, four periods of exceptional regimes, and seven constitutions.

After the proclamation of the Republic of Niger on 18 December 1958, a Constituent Assembly was established. In February 1959, the Constituent Assembly adopted the country's first Constitution.[2] This Constitution was almost identical to that of France. The Constitution established what was then known as the rationalised parliamentary system of government.[3] This system allowed the executive to wield enormous powers. The rationalised parliamentary system of government was maintained under the 8 November 1960 Constitution. During the exceptional regime established by Colonel Seyni Kountché, the 1960 Constitution was suspended. Even if the parliamentary system of government was reinstated by the 1992 Constitution, it had demonstrated its limitations. One of these limitations was the difficult cohabitation between the President of the Republic, Mahamane Ousmane, and the Prime Minister, Hama Amadou.[4] It can be said that such an uneasy cohabitation formed the foundation for the military to take over the reins of the country through a coup of 27 January 1996 staged by Colonel Baré Mainassara. After a short period of transition, on 12 May 1996 Baré Mainassara presented a draft constitution

[1] That of 25 November 2010.
[2] That of 25 February 1959.
[3] See n 6 below and accompanying text.
[4] See http://nigerdiaspora.net/index.php/component/k2/item/14483-histoire-politique-du-niger--dela-p%C3%A9riode-coloniale-%C3%A0-nos-jours.

that was adopted through referendum. This was the Constitution of the fourth Republic of Niger. This Constitution established the presidential system of government that would supposedly cure the mischief of the parliamentary system.

At the outset, the presidential system of government that was established under the 1996 and 2009 Constitutions has been a total failure because there has never been political agreement among political actors on its establishment. Clearly, both the presidential and the parliamentary systems of government with which the country experimented[5] did not yield any of the expected results. This is why the Republic of Niger finally decided to adopt the semi-presidential system of government under the 9 August 1999 Constitution. The following lines are devoted to analysis of this system.

Since its independence, the Republic of Niger has faced political and constitutional instability, partly because France, the colonial power, did not prepare the newly independent state to respond to challenges related to globalization and development. This lack of preparation may be evidenced by frequent military coups, including those of 1974, 1996, 1999, and 2010. To this may be added the deficit in democratic culture and the level of illiteracy in the country, which do not make it easier for the conquest of power to be rational and the exercise and devolution of power to flourish. This partly justifies the ineffectiveness of all the constitutions of Niger.

The reasons that led to the failure of the first two of the country's constitutions were, first, that the Constitution of March 1959 was bequeathed to the people by France without any sort of local participation. This is why the rationalised parliamentary system of government,[6] with enormous power in the hands of the executive, was proposed to all members of the *communauté*. Second, the 8 November 1960 Constitution, which was adopted unanimously by the members of the Assembly, unfortunately did not represent the aspirations of the people since there was serious mistrust between the people and those who purported to represent them. Therefore, neither the 1959 nor the 1960 Constitutions played their role as a social contract.

[5] The parliamentary system of government and the presidential system of government.

[6] This is a political system organized in such a way as to avoid chronic ministerial instability through the implementation of the reciprocal responsibilities of the government and parliament and to allow the proper functioning of the institutions. See <https://fr.wikipedia.org/wiki/Parlementarisme_rationalis%C3%A9>.

With regard to the Constitution of December 1992, one should note that at the end of the military regime of the Supreme Military Council (CMS), chaired by Colonel Seyni Kountché from April 1974 to 1987, the people of Niger were justified in the organization of a National Sovereign Conference so as to break with the then authoritarian regime.[7] Thanks to this Conference, the country enacted the Constitution of 26 December 1992 that marked the beginning of the third Republic of Niger. One of the limitations of that Constitution was its failure to clarify the distribution of powers between the President of the Republic and the Prime Minister, particularly during cohabitation periods. This was one of the reasons for the demise of the Mahamane Ousmane presidency and the third Republic, because the then Prime Minister, Hama Amadou, granted to himself the power to convene and chair the Council of Ministers, a power which actually rests with the President. This hoarding of presidential powers unfortunately resulted in the slowdown of the functioning of the country's institutions. This once again provided grounds for the military to intervene in politics through the military coup which was masterminded by Colonel Baré Mainassara on 27 January 1996.

Following external pressures and after a brief transition, Colonel Baré had no choice other than to submit a Constitutional Act to referendum. The proposed constitutional bill was adopted on 12 May 1996. It marked the beginning of the fourth Republic. The 1996 Constitution was the result of an electoral masquerade and did not address the political instability the Republic of Niger had faced since its independence. At that time, opposition political parties strongly resisted the concentration of power in the hands of President Baré until he was assassinated on 9 April 1999 during the military coup staged by Daouda Malam Wantché.

It can be said that the only period in which Niger has had political stability was during the regime of the 9 August 1999 Constitution. During this period, the semi-presidential system of government was in place. This system was characterized by a strict separation of powers and mutual checks and balances between the different arms of government. However, while the

[7] National sovereign conferences were seen as platforms for dialogue between all the socio-professional sectors of the country in order to unravel the very tense political situation at the time. It is a Beninese invention that has been spread throughout Africa. The conference was held in Niger from 29 July to November 1991. For more information see <https://fr.wikipedia.org/wiki/Conf%C3%A9rences_nationales_en_Afrique_francophone>.

country was about to have its first alternation of power, the then incumbent Mamadou Tandja initiated a constitutional amendment in order to prolong his presidential term[8] for three more years, supposedly in order to finalise his development projects. The initiative was declared unconstitutional by the Constitutional Court in Decision No. 04/CC/ME of 12 June 2009.[9] In this petition, the Constitutional Court was seized by members of the National Assembly from the opposition. In spite of the Court's decision, President Mamadou Tandja presented the draft constitution to referendum. This led to the adoption of the Constitution of 4 August 2009, the Constitution of the sixth Republic, which established the presidential system of government. This Constitution lasted only approximately six months because it was suspended following the military coup of 18 February 2010.

Scholars have judged most Niger constitutions adopted since independence as being inadequate for the country's social and cultural reality. To this may be added the issues of national unity and an inadequate democratic culture. The Constitution of the seventh Republic sought to cure political instability by instituting safeguard mechanisms, such as enforcement of and respect for the alternation of power,[10] the participation of citizens in public affairs,[11] respect for fundamental rights,[12] and the strengthening of national unity.[13]

A. The Advent of the Constitution of 25 November 2010

The Constitution of 25 November 2010, unlike those before it, was adopted in the aftermath of a political, constitutional, and institutional crisis. It is necessary to recall its context. At the end of his second and last constitutional term, on 9 August 1999 President Mamadou Tanja initiated a constitutional amendment that sought to prolong his constitutional term by three more years

[8] Article 47 of the Constitution provides that 'the President of the Republic is elected through universal, free, equal, direct and secret suffrage for a five years term renewable once'.
[9] See Decision No. 04/CC/ME of 12 June 2009 of the Constitutional Court, available at <http://www.courconstitutionnelle-niger.org/arrets_electorale_2009.php>.
[10] 2010 Constitution, Art. 47.
[11] 2010 Constitution, Arts. 6 and 7.
[12] 2010 Constitution, Art. 14.
[13] 2010 Constitution, Art. 46.

despite the fact that he was elected for a five-year term, renewable once.[14] Notwithstanding the warning that the amendment sought was unconstitutional and would plunge the country into a political quagmire, President Tandja submitted the tailor-made amendment bill to referendum. The bill was finally adopted in July 2009 and was promulgated the following month. It marked Niger's passage from the fifth to the sixth Republic. The forced nature of this amendment did plunge the country into a quagmire, which led the military to intervene in politics once again. A coup was staged on 18 February 2010. The military established a transition, which ended a year later. One of the things the military actually achieved was to institute a technical committee tasked to work on fundamental legal instruments. The committee developed the draft constitution which was referred to referendum and promulgated on 25 November 2010. This was how the current Constitution came into being. It certainly constitutes a break from its predecessors, notably because of the principles it consecrates.

II. Fundamental Principles of the Constitution

The Constitution of Niger, like many modern constitutions, adheres to principles of liberal constitutionalism. These principles are couched primarily in the preamble which, if closely analysed, can be said to be more progressive than its predecessors.

A. Government of the people, by the people, and for the people

Under the 2010 Constitution, the political power in Niger is 'people property'. In other words, sovereignty belongs to the people. According to the Constitution, a portion of the people may not exercise sovereignty alone. This is why the people have the power to elect their leaders through direct and indirect universal suffrage.[15] For more rationalized public management, the Constitution provides that '[i]n the exercise of the power of the State, personal power, regionalism, ethnocentrism, discrimination, nepotism, sexism, the clan spirit, the feudal spirit, slavery in all its forms, illicit enrichment, favouritism, corruption, racketeering and the influence-

[14] 1999 Constitution, Art. 36.
[15] 2010 Constitution, Art. 7.

trafficking are punished by the law'.[16] In other words, political power is republican. Any action which aims to destabilize the democratically-established constitutional order is outlawed. It is precisely in this respect that military coups and armed insurrections are banned[17] and the alternation of power and good governance must be promoted.[18]

B. Separation of state and religion

The 2010 Constitution consecrates the secular nature of the state. Under Article 8, the Constitution provides that 'it [the State] respects and protects all beliefs. No religion, no belief can abrogate the political power or interfere in the affairs of State'.[19] From this provision it can be inferred that any campaign to promote a particular religion or belief is strictly prohibited and sanctioned by law in the Republic of Niger. These are reasons why Article 9 provides that 'the political parties and the groups of political parties concur in the expression of the suffrage. The same prerogatives are recognized to all Nigerien citizens enjoying their civil and political rights and meeting the conditions of eligibility provided by the law'.

In the same vein, the Constitution consolidates many other principles on which it is founded, including social justice and national solidarity.

C. Social justice and national solidarity

On social justice, John Rawls provided for three elements that should be met by any society for it to be just: the equal guarantee of basic freedom for all, equal opportunities, and the enforcement of those inequalities that benefit marginalized persons.[20] Norms should,[21] furthermore, protect everyone and not only a portion of the people.[22] In so doing, social justice emerges as a tool for

[16] 2010 Constitution, Art. 4.
[17] See also the Bamako Declaration, adopted on 3 November 2000 by the Ministers and Heads of Delegation of the States and Governments of French-Speaking Countries at the International Symposium on the Review of the Practices of Democracy, Rights and Freedoms in the French-speaking world, at p. 14.
[18] 2010 Constitution, preamble.
[19] 2010 Constitution, Art. 8.
[20] J. Rawls, *Théorie de la justice* (translation to French, Paris, Le Seuil 1989).
[21] The law in general.
[22] Jean-Fabien Spitz, *John Rawls et la question de justice sociale*, Etudes 2011/1 (Tome 414), pp. 55-65.

economic, social, and cultural development. All the fundamental laws of the world devote social justice as a fundamental principle.[23] To effectuate this principle, the Niger Constitution proclaims not only the independence of the judiciary *vis-à-vis* other powers,[24] but also provides that 'justice is rendered on the national territory in the name of the people and in strict observance of the rule of law, as well as the rights and freedoms of each citizen'.[25]

In order to attain that ideal, it is imperative for justice to be accessible to citizens. It should also be accessible to all social and professional sectors. However Niger has yet to attain that ideal because in 2012, the country had about forty-five tribunals and 337 judges.[26] This is why the government of the seventh Republic amended Act No. 2204-50 of 22 July 2004 on the organization and competence of the judiciary in the Republic of Niger to increase the number of courts, judges, and prosecutors.[27] This reform led to the recruitment of new judges and magistrates in the judiciary between 2017 and 2018.

Solidarity, understood by Robert as 'a relationship between persons who are aware of a community of interest, which entails, for one element of the group, the moral obligation to serve others and to assist them',[28] is a fundamental principle that is in line with human nature. At the national level, solidarity entails that the different communities that make up the country should work hand in hand and assist each other. From this perspective, Article 165 of the Constitution provides that '[t]he State seeks the harmonious development of all the territorial entities on the basis of national solidarity, social justice, regional potentialities and interregional equilibrium'. Such a principle is important in Niger as there is an unequal distribution of wealth between regions. Solidarity in that area would certainly promote the unity of the country. This may be the justification for the fact that the Constitution provides that '[i]ncomes generated from the natural

[23] 2010 Constitution, Art. 3.
[24] 2010 Constitution, Arts. 116 and 165.
[25] 2010 Constitution, Art. 117.
[26] See <www.stat-niger.org/statistique/file/Annuaires_Statistiques/.../Justice_Chiffre_2013.pdf>.
[27] See for more information <http://lesahel.org/index.php/component/k2/item/15762-assembl%C3%A9e-nationale--la-loi-fixant-lorganisation-et-la-comp%C3%A9tence-des-juridictions-auniger-vot%C3%A9e-par-les-parlementaires>.
[28] See Le Grand Robert, *French Language Dictionary*.

resources and the subsoil are divided between the budget of the State and the budgets of the territorial entities according to the law'.[29]

III. Protection of fundamental rights

The Constitution recognizes different categories of fundamental rights and freedoms: civil and political rights; social, economic and cultural rights; and collective rights. To safeguard these rights, judicial and non-judicial mechanisms are provided for under the Constitution and may be utilised by citizens.

A. Civil and political rights and economic, social and cultural rights

Fundamental rights and freedoms are recognized in many different ways in the constitutions of civilized states. This tendency was observed after the end of absolutism that saw the adoption of human rights instruments such as the French Declaration of the Rights of Man and the Citizen (1789), the Universal Declaration of Human Rights (1948), and the African Charter on Human and Peoples' Rights (1981). These instruments have held a prestigious place in the preamble to the seven Niger constitutions and hold constitutional value. The Constitutional Court has referred to these instruments on many occasions to protect the fundamental rights that they proclaim.[30] We can then argue that the 2010 Constitution is the vehicle for respect for and protection of fundamental rights.[31] Formally, the following rights are consecrated: the right to freedom in all its forms, the right to a fair trial,[32] the non-retroactivity of laws and regulations,[33] the right to vote and to be eligible for political positions,[34] and the rights to life,[35] to health, to physical and

[29] 2010 Constitution, Art. 152.
[30] See Decisions No. 004/CC/MC of 2 May 2014, No 006/CC/MC of 15 May 2014 and No. 09/CC/MC of 18 July 2018 of the Constitutional Court of Niger, available at http://www.cour-constitutionnelleniger.org/arrets_constitutionnelle_2014.php>.
[31] 2010 Constitution, Title II, Rights and Duties of the Human Person.
[32] 2010 Constitution, Art. 20.
[33] 2010 Constitution, Art. 19.
[34] 2010 Constitution, Art. 7.
[35] 2010 Constitution, Art. 11. A paradox exists at this level because, despite the sacred nature of human life, the death penalty has yet to be abolished in Niger.

moral integrity, to healthy food, to security, to education, to potable water,[36] to property,[37] to the privacy of correspondence,[38] to the inviolability of the domicile,[39] to information,[40] to a healthy environment,[41] to religion,[42] etc.

Some of the Constitution's innovations are that it enjoins different arms of government to work toward promoting the moral and material development of youth,[43] protecting older persons,[44] persons with disabilities,[45] and to the development of women and young girls. In any event, the state and its various branches have the constitutional and conventional obligation to guarantee respect for these rights of citizens. This is in line with a state that abides by the rule of law.

However, despite the constitutional recognition of these rights, some, such as civil and political rights, are not fully enjoyed by political opponents. As an illustration, in 2011 the applications of several opposition members as candidates for legislative elections were invalidated[46] on the basis of what may be considered as subjective criteria.[47] The same situation had occurred in 2010, when Ibrahima Saidou Maiga was banned from running for the 2011 presidential elections. If the principle of good morality (provided for in Article 47 of the Constitution)—the basis on which he was supposedly banned—had been duly applied, many other candidatures could also have been rejected.[48]

[36] 2010 Constitution, Art. 12.
[37] 2010 Constitution, Art. 28.
[38] 2010 Constitution, Art. 29.
[39] 2010 Constitution, Art. 27.
[40] 2010 Constitution, Art. 31.
[41] 2010 Constitution, Art. 35.
[42] 2010 Constitution, Art. 30.
[43] 2010 Constitution, Art. 24.
[44] 2010 Constitution, Art. 25.
[45] 2010 Constitution, Art. 26.
[46] See Decision of the Temporary Constitutional Council No. 002/11/CCT/ME of 13 January 2011, available at <http://www.cour-constitutionnelle-niger.org/arrets_electorale_2011.php>.
[47] See Decision No. 002/11/CCT/ME of 13 January 2011 and Decision No. 002/CC/ME of 29 January 2016, available at <http://nigerdiaspora.net/index.php/idees-opinions-archives/item/28329-rejet-des-dossiers-decandidatures-pour-les-le%CC%81gislatives-par-le-conseil-constitutionnel--la-classe-politique-ende%CC%81route>.
[48] See Decision of the Temporary Constitutional Council No. 02/10/CCT/ME of 22 December 2010, available at <http://www.cour-constitutionnelle-niger.org/arrets_electorale_2011.php>.

B. Collective rights

Citizens also enjoy collective rights. These are enjoyed collectively and in accordance with the law and regulations in force. According to Article 32 of the Constitution 'the State recognizes and guarantees the freedom of movement, the freedoms of association, assembly, procession and manifestation within the conditions defined by the law'.[49]

Analysis of this provision shows that there are three types of collective rights. The first is the right to freedom of association. Through this right, two or more natural or juristic persons voluntarily and knowingly, in a permanent manner within a defined time, can join their capacities or their activities for a specific purpose, other than to share profits.[50] This freedom has grown significantly, as there has been a sort of profusion of associations established by Niger's citizens, in almost all sectors. The second is the right to freedom of assembly, which makes it possible for citizens to assemble freely in order to discuss issues pertaining to their rights, the protection of their material and moral interests, and their full development, providing that they abide by laws and regulations. The third is the right to demonstration. In accordance with the principles of democratic pluralism, this freedom enables citizens to indicate their disagreement with the manner in which public affairs are being managed or their cultures are being valued.[51] Moreover, as a collective right, the Constitution's Article 9 provides for the possibility to form a union to defend the interests of workers, and to establish political parties to contribute to the expression of universal suffrage[52] during general elections. These different recognized rights can only be fully enjoyed when fundamental guarantees exist to enforce respect for them.

C. Guarantees for respect of fundamental rights

In order for human rights to be effective and useful, judicial and non-judicial mechanisms have been established so as to enforce these rights. With regard to judicial mechanisms, one can note

[49] 2010 Constitution, Art. 32.
[50] Ordinance 84-06 of 1 March 1984 on the Regime of Associations, Art. 1.
[51] See Act 2004-45 of 8 June 2004 on Public Demonstration.
[52] 2010 Constitution, Art. 9.

the classical ordinary and extraordinary remedies before courts and tribunals,[53] and particularly, but not exclusively, recourse before administrative courts for complaints of excess of power.[54] A number of administrative decisions that infringed fundamental rights and freedom have been quashed by these courts. For example, through Ordinance 12 of 7 April 2018, the High Court (*Tribunal de Grande Instance*) of Maradi quashed the decision of the President of the Municipal Council who banned a demonstration that was to be organised by civil society on a public road. Similarly, the High Court outside Niamey (*Tribunal de Grande Instance hors Niamey*) quashed the decision that unlawfully banned the Labari Media Group on 25 March 2018. In 2017, through the procedure of remedy for excessive administrative powers, the Council of State quashed sixteen decisions out of the 124 that were submitted to it for control.[55]

Non-judicial mechanisms instituted to enforce fundamental rights and freedoms encompass actions of the National Human Rights Commission (CNDH),[56] which is regarded as an independent administrative authority established under Article 44 of the Constitution. As such, the CNDH is not under the direct control of the executive, the legislature, or the judiciary. The CNDH is neutral and impartial in its human rights functions. The activities of the CNDH, notably those pertaining to investigations, are regulated by a well-defined legal framework. According to its President, these activities abide by the law and the principles of justice, the rule of law, and democracy.[57] The CNDH may be seized by any citizen who alleges the violation of a fundamental right. The CNDH can also seize itself on any issue that it finds important to bring to the attention of the political authorities.[58] The CNDH wields enormous powers with regard to complaints concerning human rights, in conformity with Articles 30 and 31 of the law establishing it.[59] Some of these powers include free access to various sources of information that may help it duly perform its functions, such as information, reports, and documents provided by

[53] See Organic Law 2004-50 of 22 July 2004 on the Organisation and Functioning of the Judiciary in the Republic of Niger.
[54] Organic Law 2013-02 of 23 January 2013 on the Composition, Organisation, Attributions and Functioning of the Council of State ('Organic Law on the Council of State').
[55] See the 2017 Annual Report of the Niger Council of State.
[56] Act 2012-44 of 24 August 2012 on the Composition, Organisation, Attributions and Functioning of the National Human Rights Commissions ('Act on the CNDH').
[57] See <http://lesahel.org/index.php/component/k2/item/15836-journ%C3%A9e-parlementairedinformation-sur-l%C3%A9tat-des-droits-humains-au-niger--pr%C3%A9sentation-du-rapport-annuel-2017-de-la-cndh-sur-l%C3%A9tat-des-droits-humains-et-des-libert%C3%A9s-fondamentales>.
[58] Act on the CNDH (n 56), Art. 32.
[59] Act on the CNDH (n 56), Arts. 31 and 31.

civil society organizations and political organizations. In cases of slavery, the Commission can substitute itself for a victim. Even if the Commission does not issue binding decisions, the reports it presents before the National Assembly are regarded as a warning to the political authorities to encourage them to respect human rights.

There are also other mechanisms aside from the CNDH. One is the High Council of Communication (CSC).[60] It is a non-jurisdictional organ established to oversee respect for fundamental rights. In accordance with the law pertaining to its organization, the CSC's mission is to ensure and guarantee the freedom and independence of means of communication in accordance with the law.[61] These can be audio-visual, newspaper, or electronic means of communication. The second is the National Independent Electoral Commission (CENI). This has been established in accordance with freedom and transparency in the expression of universal suffrage through the right to vote, as provided for in the 2010 Constitution. The CENI is tasked with the organization, conduct, and supervision of voting operations. It is also competent to proclaim provisional results of elections.[62]

These mechanisms are supported by others that are neither judicial nor quasi-judicial. One is the Nigerien Association for the Defense of Human Rights (ANDDH). It is one of various other civil society organizations that work towards ensuring that citizens effectively enjoy their fundamental rights. The ANDDH issues periodic reports on the human rights situation in the country and makes declarations and public statements any time human rights are allegedly being violated. Niger has also established a mechanism of independent administrative authorities, such as the Mediator of the Republic.[63] The Mediator clearly does not have binding powers. It can however plead the cause of citizens before public authorities so as to find solutions to the problems that may arise from the relationship between institutions and citizens.[64]

[60] See 2010 Constitution, Title VIII.
[61] Act 2012-34 of 7 June 2012 on the Composition, Attributions, Organisation and Functioning of the Superior Council of Communication, Art. 7.
[62] 2010 Constitution, Art. 6.
[63] See Act 2011-18 of 8 August 2011 establishing a Mediator of the Republic in Niger.
[64] See the 2015 Annual Report of the Mediator of the Republic of Niger, available at <http://www.mediateurniger.ne/index.php/documentation/rapports-d-activites>.

Despite the existence of these remedies and the establishment of institutions aimed at protecting fundamental rights, it can be said that the application of human rights in Niger has yet to become effective. Thus basic rights such as the right to demonstration, the right to freedom of expression and opinion, and sometimes the right to life are denied to citizens under deceptive motives.[65] This trend may be evidenced by the fact that civil society activists have been arrested a number of times because their demonstrations were not authorized in advance.[66] Furthermore, even if the government has made efforts to alleviate poverty, a significant proportion of Nigerien live under the poverty line.[67] The rights to education and to health are not respected, partly because demographic growth is yet to be controlled, making forecasting difficult.[68] In the same vein, it is unfortunate to note that the Niger Constitutional Court has not involved itself sufficiently in the protection and promotion of fundamental rights by receiving directly complaints lodged by individuals, as is the case of the Benin Constitutional Court.

IV Separation of powers

In his seminal book *De l'Esprit des Lois*, Montesquieu proposed to governments and modern democracies the observance of the principle of separation of powers, arguing that 'in order that we cannot abuse power, it is necessary that, by the arrangement of things, power should stop power'.[69] This argument begot the principle of separation of powers that is currently inscribed in almost all the constitutions of the world. It is enshrined in Article 116 of the 2010 Niger Constitution, which provides that 'the judiciary is independent from the legislature and the executive'. From such a provision, the existence can be inferred of the three classical arms of governments: the executive, the legislature, and the judiciary, as well as their reciprocal independences. However, before analysing the three arms of government and the way they are currently organised, it is important to describe the nature of the current political regime of Niger.

[65] See Amnesty International, Report 2017/18, p. 334.
[66] See <http://www.rfi.fr/afrique/20180724-niger-liberation-imminente-leaders-societe-civile>.
[67] See <https://www.banquemondiale.org/fr/country/niger/overview>.
[68] See Amnesty International, Report 2017/18, p. 335.
[69] See Montesquieu, *De l'esprit des lois* (Ligaran, 2015), p. 199.

A. The nature of the political regime established by the 2010 Constitution

The political regime established by the Constitution of 25 November 2010 is not obvious. Before the establishment of the current semi-presidential system of government, Niger was ruled under the parliamentary system in 1960,[70] and then under a typical presidential system between 1996 and 2009.[71] It can be said that the deficit of power equilibrium that characterized the previous political regimes informed the choice of the constituent power of 1999 and that of 2010 to resort to the model established under the Constitution of the French fifth Republic. This Constitution established the semi-presidential or mixed political system of government. The latter system, which is characterized by elements of both the presidential and the parliamentary systems of government, is not formally mentioned in Niger's 2010 Constitution, but it can be found through reading the nature and scope of the powers of the various arms of government. The purpose of such a system can be said to be the wish to curb the political instability generated by the unequal distribution of political powers. Today, a successful rationalization of institutions exists in Niger.

B. The executive power

Under the 2010 Niger Constitution, the executive power is bicephalic. This means it is made up of the President of the Republic, who is the head of the executive, and a government chaired by the Prime Minister. The Prime Minister can emerge from the majority in Parliament. When the majority in Parliament is not led by the President of the Republic's party or a coalition, the President and the Prime Minister may then be said to be in a situation of cohabitation. In the following sections, this report discusses the institutions of the President of the Republic, the Prime Minister, and the situation of cohabitation.

1. The President of the Republic

[70] See the Niger Constitutions of 25 February 1959 and 8 November 1960.
[71] See the Niger Constitutions of 27 January 1996 and 4 August 2009.

The President of the Republic is the important personality of the state. He is elected under universal, free, direct, equal, and secret suffrage, in majority-type elections, for a five-year term, renewable only once.[72] When the President is sworn in, he becomes the head of state, the guarantor of national independence, national unity, territorial integrity, and respect for the Constitution and international treaties and conventions. He ensures the proper functioning of public powers and the continuity of the state.[73] The President of the Republic is not responsible (accountable to) before the National Assembly. Though he might be liable in criminal matters,[74] this is only possible when the President has allegedly committed a high treason[75] offense. The procedure to impeach the President of the Republic is more complex.[76]

The President of the Republic wields enormous executive powers. These are provided for from Article 56 to Article 72 of the Constitution. After consultation with the President of the National Assembly and the Prime Minister, the President of the Republic may dissolve the National Assembly.[77] The President of the Republic may submit to referendum whichever legal instrument he deems necessary to obtain the opinion of the people, except for amendment to the Constitution, which is regulated by the procedure provided for under Title XII.[78] The President of the Republic controls the armed forces.[79] Under exceptional circumstances, the President of the Republic may take exceptional measures, after consultation with the President of the National Assembly, the Prime Minister, and the President of the Constitutional Court. These circumstances include when the institutions of the Republic, the independence of the nation, territorial integrity, or the implementation of international agreements are severely and gravely threatened and the regular functioning of the constitutional public powers is interrupted.[80]

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[72] 2010 Constitution, Art. 47.
[73] 2010 Constitution, Art. 46.
[74] D. Abarchi, 'La responsabilité pénale du Président de la République', in O. Narey (ed.), *Les actes du séminaire de l'Association nigérienne de Droit constitutionnel (ANDC), sur le régime semi-présidentiel au Niger* (Harmattan, Senegal, 2017), p. 213.
[75] 2010 Constitution, Art. 142.
[76] To this effect, Article 144 of the 2010 Constitution provides that '[t]he impeachment of the President of the Republic is voted by public ballot by the majority of two-thirds (2/3) of the Deputies composing the National Assembly'.
[77] 2010 Constitution, Art. 59.
[78] 2010 Constitution, Art. 60.
[79] See 2010 Constitution, Arts. 62 and 63.
[80] 2010 Constitution, Art. 67.

However, although the President of the Republic takes the oath to respect and enforce the Constitution that the people have adopted,[81] numerous violations of the Constitution of the seventh Republic have not been prosecuted. The most serious and obvious case happened in 2017. The President of the Republic, Mahamadou Issoufou, decided to organize partial elections that were aimed at electing a Member of Parliament in order to replace a Member who had passed away, pursuant to the Electoral Code.[82] The death of the Member of Parliament was confirmed by the Constitutional Court through Decision 002/CC/ME of 7 March 2017[83] as required by the law. To that effect, the President of the Republic enacted a decree on 7 May 2017 that scheduled partial elections on 30 July 2017.[84] Surprisingly, the President enacted a new decree on 15 June 2017 postponing the partial elections *sine die* without providing reasons. At the time of writing, the vacant seat in the National Assembly has yet to be filled.

2. The government

The current government of Niger is a collegial organ made up of the Prime Minister and other ministers. Thus, although the Prime Minister is appointed by the President of the Republic from the majority in Parliament, the other ministers are appointed by the President of the Republic under propositions made by the Prime Minister.[85] As head of government, the Prime Minister leads and coordinates governmental action, ensures the implementation/enforcement of laws,[86] and determines and conducts the policy of the nation.[87] The government may initiate laws concurrently with members of the National Assembly,[88] controls the public administration and the public security forces, and can control the national army under conditions provided for by the law. Furthermore, for the efficient coordination of governmental actions, the Prime Minister may delegate some competences to other ministers within the government for them to act on behalf of the Prime Minister.

[81] 2010 Constitution, Art. 50.
[82] See Ordinance-Law 2010-96 of 28 December 2010 on the Electoral Code of the Republic of Niger ('Ordinance on the Electoral Code'), Art. 124.
[83] See Decision 002/CC/ME of 7 March 2017 of the Niger Constitutional Court.
[84] See Ordinance on the Electoral Code (n 82), Art. 124.
[85] 2010 Constitution, Art. 56.
[86] 2010 Constitution, Art. 73.
[87] 2010 Constitution, Art. 76.
[88] 2010 Constitution, Arts. 109, 110, 111, and 112.

Such a delegation of competences is however regulated by a clear legal framework. In accordance with administrative regulations relating to the development and adoption of legal instruments, the government is supported by two organs, the General Secretariat of the government and the Council of State. This is confirmed by Article 139 of the Constitution in the following terms:

> The Council of State gives its opinion on the bills of law and bills of ordinances that are submitted to it by the Prime Minister, before their adoption in the Council of Ministers. It gives its justified opinion to the Government on the drafts of decrees or on any other draft of a text for which its intervention is specified by the bills, legislative, or regulatory provisions, or provisions submitted to it by the Government.

The mission of the General Secretariat of the government is to support the government in the organization of the Council of Ministers, assist ministers when they are called to respond to questions in Parliament, and manage the state dispute settlement mechanisms. However, because of the mixed nature of the political regime, it is important to emphasize that the government has a two-fold responsibility. The first is to the President of the Republic. The President has the power to dismiss the government. The second is to the National Assembly pursuant to Articles 107 and 108 of the Constitution. Article 107 provides that 'the responsibility of the Government may be engaged before the National Assembly either by the vote of a motion of censure, or by a vote of no confidence' and Article 108 provides that '[w]hen the National Assembly adopts a motion of censure, disapproves of the program or of a declaration of general policy of the Government or denies to it its confidence on the occasion of the vote of a text, the Prime Minister presents to the President of the Republic the resignation of the Government'.

In any event, the presidential powers and the powers of the government as discussed above can only be enjoyed when the presidential majority coincides with the majority in Parliament. In other words, when the two majorities are not the same, the management of the executive may seem difficult because of the obligation for the President and the parliamentary majority to cohabitate.

3 The cohabitation

When the majority in Parliament is different from the presidential majority, cohabitation in the management of the executive becomes unavoidable. In this particular instance the President must nominate a Prime Minister, not from their ruling coalition but from the list of three personalities that are proposed by the parliamentary majority.[89] This situation will certainly narrow the powers of the President of the Republic and the implementation of his political programme may be compromised.[90] This situation has arisen once, under the regime of the third Republic. It plunged the country into a serious institutional crisis which had negative implications on society. How did it happen?

At the end of the National Sovereign Conference,[91] a political transition of fifteen months was established. Transitional authorities were tasked with organizing presidential and legislative elections. The latter elections were won by the *Alliance des Forces du Changement* (AFC) which was led by President Mahamane Ousmane. The alliance however did not last long, partly because the then Prime Minister and head of the *Parti Nigerien pour la Démocratie et Socialisme (PNDS-Tarayya*) member of the AFC, Mahamadou Issoufou, decided to resign. Because the President did not have the majority, he enacted Decree 94-154/PRN on 17 October 1994 that dissolved the National Assembly. Following anticipated elections on 12 January 1995, a government of cohabitation was established. The government was now led by Hama Amadou. Unfortunately, the cohabitation between the President of the Republic, Mahamane Ousmane, and Prime Minister Hama Amadou appeared to be more conflictual. One of the reasons for such conflict was the fact that the Constitution was silent with regard to attributions of the President of the Republic and the Prime Minister, which then paralysed the functioning of the state machinery. Prime Minister Hama Amadou then used this situation to convene and chair the Council of Ministers without the authorization of the President of the Republic. This was partly what led the army to intervene in the country's politics, by staging a coup in 1996. Attempts by

[89] 2010 Constitution, Art. 81.
[90] 2010 Constitution, Art. 82.
[91] The Conference was considered as a moment of dialogue and de-escalation of the political situation, which was tense before 1990 in almost all African countries, including Niger.

the Supreme Court to rationalize the behavior of political actors did not yield any results.[92] It can be noted however that the regime of cohabitation illustrates the drawbacks of the semi-presidential system of government, which straddles parliamentarism and presidential rule as a function of the shift of the majority to the National Assembly, which embodies the legislative power.[93]

C. Legislative power

Legislative powers are placed in the hand of a unicameral parliament composed of the National Assembly. Members of the National Assembly are called *Députés* (Members of Parliament).[94] They are elected through universal, free, direct, equal, and secret suffrage among Nigeriens aged at least twenty-one years. They must enjoy full civil and political rights without any distinction based on sex.[95] Although they are elected, each in a particular district (*circonscription électorale*), Members of Parliament represent the entire nation. In other words, any imperative mandate is null.[96] To exercise their mandate with all their conscience, Members of Parliament enjoy parliamentarian immunities on the basis of which they cannot be prosecuted for statements made within the scope of their duties, unless in the case of *flagranti delicto*.[97]

The National Assembly is chaired by a president elected by their peers for a five-year term. There is a Bureau of the National Assembly, the composition of which must reflect the diversity within the Assembly. This means that the political forces that are represented in the National Assembly must have some sort of representation in the Bureau. Thus, pursuant to Article 12 of the Internal Rules of Procedures of the National Assembly, the current Bureau is constituted, aside from the President, by Vice-Presidents who each come from a Parliamentary Group, Parliamentary Secretaries who each come from a Parliamentary Group, and two finance

[92] See Decision 95-05/CC of 5 September 1995, where the Supreme Court of Niger, owing to the fact that the Constitution was silent, tried to delineate the competences of the Prime Minister and the President of the Republic and to provide clarity as to what should be considered as cohabitation.
[93] O. Narey (ed.), *Les actes du séminaire de l'Association nigérienne de Droit constitutionnel (ANDC), sur le régime semi-présidentiel au Niger* (Harmattan, Senegal, 2017).
[94] 2010 Constitution, Art. 83.
[95] 2010 Constitution, Art. 84.
[96] 2010 Constitution, Art. 87.
[97] 2010 Constitution, Art. 88.

managers. The order of precedence among the Vice-Presidents is guided by the strength of each Parliamentary Group.[98] While the President of the National Assembly's term is consecutive to the duration of the legislature (five years), the other members' term is to be renewed each year. The President of the National Assembly may however be dismissed by the Members of Parliament if they have lost confidence in him. This is how, for example, the then President of the National Assembly, Hama Amadou, was dismissed in 2014.[99]

Just like the executive and the judiciary, the legislature via the National Assembly has enormous powers. As a result, in addition to the fact that it votes upon the law and sets the tax (notably through the finance law, which is the main tool for implementing the government's policy),[100] it also controls the actions of the government.[101] This is what Article 112 of the Internal Rules of Procedure of the National Assembly means: 'members may, individually or collectively, appeal to the Prime Minister or any other member of the Government, by means of a petition, on any action of the Government whose gravity and urgency call for a position [to be] taken by the National Assembly'. The National Assembly can also create a parliamentary commission of inquiry for well-defined facts that have not given rise to a prosecution and a conviction.[102] It can also dismiss the government by a vote of a motion of censure or defiance.[103] The most illustrative case in the political history of Niger occurred in 2007 under the regime of the Constitution of 9 August 1999, when the government of Prime Minister Hama Amadou was dismissed through a motion of censure filed by the political opposition, of which the current President of the Republic, Issoufou Mahamadou, was the leader. In addition, it is also up to the National Assembly, as the representative of the people of Niger, to approve a declaration of war.[104] The National Assembly or its Bureau must be consulted when a state of emergency is envisioned.[105] And finally, in accordance with Articles 99 and 100 of the Constitution, the

[98] See Article 12 of Resolution 003/AN of 19 April 2011 instituting the Internal Rules of Procedures of the National Assembly as amended by Resolution 0005/AN of 21 June 2011 and Resolution 0011/AN of 21 May 2012.
[99] See Decision 16/CC/MC of 20 November 2014 of the Constitutional Court of Niger, available at <http://www.cour-constitutionnelle-niger.org/>.
[100] 2010 Constitution, Art. 101.
[101] 2010 Constitution, Art. 90.
[102] See Chapter III of Resolution 003/AN of 19 April 2011 on the Internal Rules of Procedures of the National Assembly as amended by Resolution 0005/AN of 21 June 2011 and Resolution 0011/AN of 21 May 2012.
[103] 2010 Constitution, Arts. 107 and 108.
[104] 2010 Constitution, Art. 104.
[105] 2010 Constitution, Art. 105.

National Assembly has its own domain in which any intervention by the executive will not be tolerated.

Despite these powers, the activity of the National Assembly of Niger has yet to contribute to the consolidation of the rule of law, partly because it has always accompanied, rather than controlled, the government, even in instances where it had had opportunities to sanction the government. What comes to mind recently is the debate during the adoption of the law on finances of 2018. This law was criticized as being anti-social and unconstitutional by a number of specialists.[106] Unfortunately, Members of Parliament decided to adopt the law without submitting it to control of constitutionality before the Constitutional Court, despite the fact that the people had shown their dissatisfaction with the law.[107]

D. Relationship between the executive and the legislature

In order to facilitate 'dialogue' between the different arms of government, including the executive and the legislature, and to avoid the slowing down of the functioning of institutions, the Constitution clarifies the relationship among these powers under Title V, which reads 'Relationship between the executive and the legislature'. Consequently, the head of the executive, who is the President of the Republic, can at any time communicate with the National Assembly, and the latter is responsible for informing the President of the Republic as well as the government of the agenda of its sessions and its meetings and that of its committees.[108] Members of the government also have access to the activities of the National Assembly. Furthermore, the power to initiate laws rests with both Parliament and the executive. This means that Members of Parliament may submit proposals for laws and the government may also submit projects for laws before the National Assembly.[109] It is under these circumstances that the government is called upon to present before the National Assembly the project of the laws for finances. The majority of laws that have been adopted by the National Assembly have been proposed by the

[106] See <https://www.facebook.com/moussa.zaki?ref=br_rs>.
[107] See <https://www.alternativeniger.net/memorandum-du-cadre-de-concertation-des-osc-rendupublic-le-dimanche-14-janvier-2018-apres-une-marche-suivie-de-meeting/>.
[108] See 2010 Constitution, Arts. 95, 96 and 97.
[109] 2010 Constitution, Art. 109.

government. It can then be said that the executive has control of the agenda of the National Assembly. A close analysis of the relationship between the executive and the legislature warns that there is an imbalance of power in favor of the executive.

One of the concrete manifestations of this imbalance in favor of the executive is the fact that 'the Government may, for the execution of its program, request of the National Assembly the authorization to take by ordinance(s) for a limited time period, the measures that are normally of the domain of the law.'[110] This means that even when the National Assembly is out of session and there is some urgency, the government can legislate by ordinances. These will be ratified by Parliament as soon as the next session begins. However, to limit possible abuses by the government, all orders must be subject to compulsory control by the Constitutional Court. And when the ordinances are not ratified within the specified time, they become obsolete.[111] These two safeguards undoubtedly contribute to compelling the executive to limit its intrusion into the legislative domain.

4.5 The judiciary

Under the principle of separation of powers professed by Montesquieu, it is incumbent upon the judiciary to decide over matters that arise between citizens themselves and between citizens and various organs of the state. The judiciary in Niger is made up of courts and tribunals including the Constitutional Court, the Court of Cassation, the Council of State, the Audit Courts, and other courts and tribunals.[112] In this section, particular emphasis will be given to the Court of Cassation and the Council of State which, respectively, are the apex courts in judicial and administrative matters in the Republic of Niger. Section VI below is devoted to the Constitutional Court.

Before it became an autonomous court, the Court of Cassation was one of the chambers of the erstwhile country's Supreme Court. The Court of Cassation was instituted under Organic Law

[110] 2010 Constitution, Art. 106.
[111] Id.
[112] 2010 Constitution, Art. 116.

2007-07 of 13 March 2007 on the Composition, Organisation, Attributions and Functioning of the Court of Cassation adopted under the regime of the 9 August 1999 Constitution. Its establishment was rendered effective following the adoption of Organic Law 2013-03 of 23 January 2013 that amended and complemented the 2007 Organic Law on the Court of Cassation. The Court of Cassation has five services[113] which are divided into three chambers.[114] Its functioning is assured by a Prime President, three Presidents for each of the three chambers, a minimum of ten judges known as *Conseillers*, a General Prosecutor, a Prime General Advocate, a minimum of two General Advocates, one Secretary General, one Principal Registrar, one Chief of the office of the Prosecutor, registrars, several *Attachés des parquets* and *Attachés des parquets adjoints*, and several Auditors.[115]

Attributions of the Court of Cassation are defined under Articles 36 and 37 of its Organic Law. The Court of Cassation decides on appeals brought before it on the lack of jurisdiction of inferior courts, violation of law or custom, failing to decide judicial matters, default, and insufficiency or obscurity in the motivation of judgments rendered at the last resort by inferior courts within the hierarchy of the judiciary in various matters of its jurisdiction. It is also competent to decide on appeals brought against decisions of the Council of Arbitration in collective labour disputes. Its competence does not extend however to appeals against decisions in business-related matters which, on the basis of the Treaty on the Organisation for the Harmonisation of Business Law in Africa (OHADA), are to be dealt with by the Common Court of Justice and Arbitration.[116] The Court of Cassation is also competent to decide on the following matters: referrals from one court to another; the regulations by judges and *recusation* when they fall within its jurisdiction; applications for revision of inferior court decisions; applications for revocation; registration of forgeries; accusations made against judges, their jurisdiction, or the composition of such jurisdiction; contradictions of judgments or judgments rendered as a last resort between the same parties and on the same means by different jurisdictions; the prosecution of magistrates/judges of the judicial and administrative order as well as officials or persons designated under Articles

[113] These are the state of siege, the Office of the General Prosecutor, the Secretariat General, the Registry, and the services of the Prosecution.
[114] The Civil and Commercial Chamber; the Social and Customary Matters Chamber; and the Criminal Affairs Chamber.
[115] See Organic Law 2013-03 of 23 January 2013 on the Composition, Organisation, Attributions and Functioning of the Court of Cassation ('Organic Law on the Court of Cassation'), Art. 7.
[116] Organisation pour l'Harmonisation en Afrique du Droit des Affaires.

638[117] and 640[118] of the Code of Criminal Procedure; applications for suspension of execution of decisions; and claims for compensation due to provisional detention.[119]

The exercise of these competences has allowed the Court of Cassation to render important decisions.[120] Some of these decisions are contrary to substantive positions that other courts, such as the Constitutional Court, have adopted, notwithstanding the fact that its decisions are final, may not be appealed, and are opposable *erga omnes*.[121] The singularity of its decisions may be seen in the decisions rendered in the cases famously known as the *Affaires des 'bébés importés*'. The former President of the National Assembly, Hama Amadou, was accused of having trafficked in children and was sentenced, after the appeal, to imprisonment for one year. He brought an appeal (*pourvoi en cassation*) before the Court of Cassation. Pursuant to Article 579[122] of the Criminal Procedure Code, the Court of Cassation ruled that the *pourvoi en cassation* was not in order and could therefore not be exercised by the accused. The accused

[117] The provision stipulates: 'When a magistrate/judge of the judiciary, or a prefect or sub-prefect, is to be charged with a crime or offense committed within or without the scope of their duties, the Public Prosecutor seized of the case transmits without delay the file to the Public Prosecutor at the Supreme Court who therefore receives competence to engage and exercise public action. If he considers that there is ground for prosecution or if there is a complaint by an individual for civil liability (seeking the payment of damages), the Public Prosecutor requires the opening of information. This is common to the accomplices of the person prosecuted, even though they would not perform judicial or administrative functions. The Judicial Chamber of the Supreme Court is responsible for this information. It commits one of its members who will prescribe all necessary acts of instruction, in the forms and conditions provided for in Chapter I of Title III of the First Part. Judicial decisions, in particular those relating to the placing or keeping in detention, or the release of the accused, as well as those that terminate the information, are rendered by the Judicial Chamber. On the requisition of the Public Prosecutor, the President of that Chamber may, before his meeting, issue a warrant against the accused. Within five days after the arrest of the accused, the Chamber decides whether or not to keep him in detention'. (emphasis added).

[118] The provision stipulates: 'When a judicial police officer is likely to be charged with a crime or misdemeanour, allegedly committed in the district where he is territorially competent, within or without the scope of their duties, the Prosecutor of the Republic seized of the case presents without delay request to the Supreme Court, which proceeds and rules as in the matter of the settlement of judges and designates the court responsible for the investigation or judgment of the case. The Supreme Court decides in the week following the day on which the request reaches him'.

[119] Organic Law on the Court of Cassation (n 115), Art. 36.

[120] See <https://juricaf.org/recherche/+/facet_pays_juridiction%3ANiger_%7C_Cour_de_cassation%2Cfacet_pays%3ANiger>.

[121] 2010 Constitution, Art. 134.

[122] The provision read as follows: 'Appellants who have been sentenced to a term of imprisonment of more than six months, whose appeal is not in order or who have not obtained, from the jurisdiction which pronounced, dispense with or without bail are declared to be deprived of their appeal. The act of their imprisonment or the judgment granting them the dispensation is produced before the Supreme Court, at the latest at the moment when the case is called there. In order for his appeal to be admissible, it is sufficient for the plaintiff to prove that he was constituted in a penitentiary establishment, either in the place where the Supreme Court is sitting or in the place where the sentence was pronounced; the director of this prison receives him following the order of the public prosecutor at the Supreme Court or the head of the public prosecutor of the jurisdiction of the judgment'.

argued that Article 579 of the Criminal Procedure Code was inconsistent with his fundamental rights guarantee under international and regional human rights instruments listed in the preamble[123] to the 2010 Constitution. Hama Amadou consequently referred the matter to the Constitutional Court, arguing on the basis of Article 132 of the Constitution that the provision was unconstitutional. In its decision of 21 March 2018, the Constitutional Court found that the impugned provision was consistent with the Constitution under the reservation that it should be construed to mean that the failure to put an appeal in order (*le défaut de mettre le pouvoir en état*) should not be a reason for non-admissibility of the appeal.[124] Although the reservation in interpretation is not an act through which judges modify the law,[125] they nonetheless do invite the legislature to fill the gap in the law in order to ensure that its application is smooth, as was the case of Article 579 of the Criminal Procedure Code in the *Affaires des 'bébés importés*'. However, despite the circumspection of the Constitutional Court in declaring Article 579 valid under the reservation that it did not deprive an appellant of the right to appeal, clearly the Court of Cassation did not take into consideration the reservation of interpretation made by the Constitutional Court in its Decision 02/CC/MC of 21 March 2018 in order to protect the fundamental rights of Hama Amadou. This is because on 13 April 2018 the Court of Cassation confirmed that Hama Amadou could not exercise the right to appeal for cassation. Such a situation is deplorable because the refusal to abide by a decision of the apex court in a constitutional matter constitutes a violation of the Constitution.

The Council of State, like the Court of Cassation, had a rough history before becoming an autonomous jurisdiction. Before then, the Council of State was part of the earlier Supreme Court as its administrative chamber. The establishment of the Council of State as an autonomous court started with the adoption of Organic Law 2007-06 of 13 March 2007 pertaining to the Composition, Organisation, Attributions and Functioning of the Council of State. Despite the

[123] See 2010 Constitution, preamble, para. 6, which provides as follows: '[p]roclaim our attachment to the principles of pluralist democracy and of human rights as defined by the Universal Declaration of Human Rights of 1948, the International Pact Relative to Civil and Political rights of 1966, the International Pact Relative to the Economic, Social and Cultural Rights of 1966, and by the African Charter on Human and Peoples' Rights of 1981'.

[124] See Decision 02/CC/MC of 21 March 2018 of the Niger Constitutional Court, available at <http://www.cour-constitutionnelle-niger.org/arrets_constitutionnelle_2018.php>.

[125] See the reservation of interpretation by the Constitutional Council, available at <https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/pdf/Conseil/reserves.pdf >.

adoption of this Organic Law in 2007, the Council of State was established in 2013.[126] It is composed of the Prime President, presidents of chambers, a General Secretary, State Councillors in ordinary services, State Councillors in extraordinary services, Auditors, a Principal Registrar, and Registrars.[127] The functioning of the Council of State, as determined by Chapter II of the Organic Law, revolves around the Prime President and the presidents of the advisory and contentious chambers.[128]

The Council of State is the highest court in administrative matters. It is competent to decide on complaints of excess of powers by administrative authorities at the first and last resort. It is also able to make decisions on the conformity of administrative acts and actions with laws.[129] The Council of State can decide on appeals brought against decisions rendered at the last resort by courts in administrative matters, or by administrative organs and professional orders. It may also decide on appeals brought against decisions rendered at the last resort by the jurisdiction deciding on matters pertaining to the inscription of candidates on electoral lists.[130] The Council of State has advisory competence. It can provide an advisory opinion on bills of laws and ordinances when seized by the Prime Minister before their adoption by the Council of Ministers. It also gives reasoned opinions to the government on draft decrees or any other draft instrument for which its intervention is required by the Constitution, laws or regulations, or when it is purposefully submitted to it by the government.[131] It can also be consulted by the Prime Minister or ministers on administrative issues.[132]

It can be said that through its action, the Council of State, acting as the apex court in judicial matters and the 'Advisor of the government', contributes considerably to respect for and enforcement of the country's Constitution. Some of its advisory opinions,[133] however rare, have been said to have contributed to clarifying many legal problems the government has faced. The Council of State has also rendered a number of decisions that pertain to fundamental rights of

[126] See Organic Law on the Council of State (n 54).
[127] Organic Law on the Council of State (n 54), Art. 25.
[128] See Organic Law on the Council of State (n 54), Chapter II.
[129] 2010 Constitution, Art. 137.
[130] 2010 Constitution, Art. 138.
[131] 2010 Constitution, Art. 139.
[132] 2010 Constitution, Art. 140.
[133] It rendered twenty-five advisory opinions in 2015 and six in 2016.

citizens. Of the 124 decisions it rendered in 2017, eighty concerned the excess of power wielded by administrative authorities. This type of remedy in administrative matters is an excellent tool for preventing arbitrariness by the administration.[134]

Pursuant to Article 116 of the Constitution, which consecrates the independence of the judiciary *vis-à-vis* other branches of the state, judges are called upon to respect the law. On their appointment following approval by the High Council of the Judiciary,[135] judges have full security of tenure (*inamovibles*).[136] The decisions they render are binding upon everyone, including public authorities and citizens. Their decisions can be criticized only through legal remedies provided for by the law.[137] However, the theoretical independence of the judiciary is met with practical interference by the executive in judicial issues. These interferences call upon constitutional reforms so as to, firstly, remove the President of the Republic as the President of the High Council of Magistracy; secondly, to remove the Minister of Justice as the hierarchical superior of the Prosecutor General; and thirdly, to ensure that judges and prosecutors have financial independence. By doing so, citizens' fundamental rights and freedoms might well be enforced and principles of the rule of law upheld.

It is certainly from that perspective that the Niger Constitution of 2010 has imparted decentralization as one of the fundamental principles of political governance in the country.

5 Decentralization / De-concentration

On the basis of Article 3 of the 2010 Constitution, one would certainly argue that Niger is a unitary state. According to the Constitutional Law Dictionary, the 'unitary state' is understood as a state in which a single will is expressed, from the point of view of both its political organization and its legal order.[138] In other words, decisions are taken from the capital city. The rigidity of this mode of administrative organization has led to the establishment of political reforms. The current political organization of Niger is the result of a long process. Since the

[134] See the 2017 Annual Report of the Council of State.
[135] See Act 2011-24 of 25 October 2011 on the Composition and Functioning of the High Council of Magistracy.
[136] 2010 Constitution, Art. 119.
[137] 2010 Constitution, Art. 117.
[138] See P. Avril and J. Gicquel, « Que sais-je ? », Lexique de droit constitutionnel, PUF, 14e éd. 2013, p. 47.

earlier Constitutions of 12 March 1959 and 8 November 1960, decentralization and de-concentration were instituted as means of territorial organization. Whilst de-concentration involves the transfer of administrative powers from the central government to the local level for the benefit of one of its agents, decentralization instead consists of transferring administrative powers of the central government to local authorities whose governing bodies are elected by citizens.[139]

Given the conjunctures related to political and constitutional evolution in the country, there has been some hesitation in the process of implementation of these two modes of territorial organization. The hesitation has been characterized by four major stages: the post-colonial period,[140] the period of exception, where the process of decentralization/de-concentration was put on hold,[141] the advent of the institutions for the development of society,[142] and the post-National Sovereign Conference period.[143] This report will focus mainly on the decentralization and de-concentration process during the period that followed the National Sovereign Conference, so discussion relating to the three periods that preceded it are beyond the scope of this report. They have however been discussed in a brochure produced by the Ministry of Decentralisation.[144]

At the time of writing, Niger has about 255 communes, among which four have special status or are called 'cities'. They are divided into fifteen *arrondissements communaux* (municipal districts) and seven regions.[145] Under the General Code on Territorial Entities (CGCT), the commune and the region are the only decentralized entities,[146] which have to be distinguished from de-concentrated entities. The following entities can also be considered as de-concentrated entities: the division, and to some extent the region, because both the Prefect and the Governor are appointed by the executive. The Governor is also tasked with controlling the legality of acts

[139] Id.
[140] The period from 1961 to 1974.
[141] Between 1974 and 1983.
[142] Between 1983 and 1991.
[143] From 1991 to date.
[144] See Brochure on information relating to decentralization in Niger, available at <http://www.decentralisation niger.org/images/publications/decentralisation/brochure_information_decentralisation.pdf>.
[145] Id.
[146] See Ordinance No. 2010-54 of 17 September 2010, the General Code of Territorial Entities of the Republic of Niger ('Ordinance on the CGCT'), Art. 2.

and organs of territorial entities (*collectivités territoriales*), coordinating state services that are established in de-concentrated entities, and assisting elected organs and officials in accomplishing their missions.[147]

Although decentralization and de-concentration contribute to the rationalization of the central power, in practice they are different due to the fact that decentralization always involves election and de-concentration is about appointed administrative leaders. In other words, while the executive and legislative organs are elected under decentralization, in de-concentrated entities, the central government appoints representatives. To regulate both decentralization and de-concentration, the Republic of Niger has adopted a number of legal instruments. In addition to the country's Constitution, the following laws have also been adopted:

- Act 2002-14 of 11 June 2002 on the Creation of Communes and Establishment of Names and Capital Cities as modified and complemented by Ordinance No. 2009-002/PRN of 18 August 2009;
- Act 2003-035 of 27 August 2003 on the Composition and Delimitation of Communes as modified and complemented by Ordinances No. 2009-003/PRN of 18 August 2009 and No. 2009-016 of 22 September 2009;
- Act No. 2008-42 of 31 July 2008 pertaining to the Organisation and Administration of the Territory of the Republic of Niger as modified and complemented by Ordinance No. 2010-53 of 17 September 2010;
- Ordinance No. 2010-54 of 17 September 2010 on the General Code of Territorial Entities of the Republic of Niger as modified and complemented by the Act No. 2014-17 of 04 June 2014;
- Ordinance No. 2010-55 of 17 September 2010 on the Status of Municipalities with Special Status or Cities;
- Ordinance No. 2010-56 of 17 September 2010 Changing Urban Entities of Niamey, Maradi, Tahoua and Zinder into Communes with Special Status or Cities and Changing the Communes of these Cities into *Arrondissements*;

[147] See Brochure on information relating to decentralization (n 144).

- Act No. 2011-20 of 8 August 2011 Determining the General Organisation of the State's Civil Service and its Missions;
- Act No. 2011-22 of 8 August 2011 Changing former Administrative Entities into Division and Determining the Names of their Capital Cities;
- Act No. 2014-01 of 28 March 2014 on the Regulation of Presidential, Local and Referenda Elections;
- Decree No. 2014-136/PRN/MISP/D/ACR/MF of 7 March 2014 on Modalities of Functioning of the Support Fund to Decentralisation (FAD); and
- Decree No. 2014-137/PRN/MISP/D/ACR/MF of 7 March 2014 on Modalities of Financing and Management of the Equalization Fund (FP).

On the basis of these legal instruments, the commune and the region are administered autonomously by their legislative organs and the executive, which are democratically elected by the people. Their elections are conducted under direct and universal suffrage for a five year term. The term can only be prolonged for six months when necessary.[148] To this effect, it is important to highlight that the decentralization process has been hampered by the delay in the organization of local elections. The last elections were organized in 2011 and whilst elected officials of the municipal and regional organs were to be replaced in 2016, they continue to exercise power through special delegation.

With regard to their functioning, the commune and the region enjoy legal personality and financial autonomy, which makes it easier for these entities to accomplish the mission conferred by the law. They have a budget, a staff, and a personal domain.[149] They can develop their own budget but these budgets have to be consistent with principles and orientations laid down under the central state budget. The budgets of the communes and regions are financed from the fund generated by taxes. Two types of taxation systems can be distinguished: resources from taxes generated by the communes and the regions themselves, and resources from national taxes that are conferred to these entities by the central state. The budgets of local entities are also funded

[148] Ordinance on the CGCT (n 146), Art. 23.
[149] Ordinance on the CGCT (n 146), Art. 3.

from non-tax-based resources. These include products from nature (*produits par nature*), exceptional resources, and miscellaneous products (*produits divers*).[150]

Apart from the communes' and regions' competences as defined by Article 30 of the General Code on Territorial Entities (CGCT) of the Republic of Niger,[151] the state can transfer to decentralized entities a number of competences for the efficient management of local affairs.[152] In accordance with Article 158 of the CGCT, the distribution of competences between the state and territorial entities is to be conducted through blocs of competence and in compliance with the principle of subsidiarity.[153] When such a transfer is undertaken, the state must make sure that necessary resources are transferred equally.[154] With regard to the judiciary, territorial entities are under the jurisdiction of common courts and tribunals. This implies that they do not have their own courts and tribunals, as may be the case in a federation.

However, even if the legal instruments that institute and organize the decentralization system are very clear, in practice the implementation of the decentralization system since 2004 has met with limitations and failures. These failures have been caused by three basic elements. The first is the principle of the uniqueness of the state coffers, which implies that even when local authorities can mobilize substantial resources, they cannot incur expenses. In other words, their financial autonomy is not effective. The second is that the guardianship exercised over them by the central authorities is extremely rigid, which deprives them of a margin of manoeuvre in their management. Lastly, the local elections that were due in 2016 unfortunately were not organized in time. This immediately makes it possible for the central authorities to intervene by managing through special delegations, as is currently the case in several communes. Important steps have been made towards realising decentralization in Niger, but a number of things must be achieved through the implementation of legal instruments pertaining to decentralization in order to render public administration more effective.

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[150] See Ordinance on the CGCT (n 146), Art. 224.
[151] The Municipal Council decides over the following issues: the communes' developmental policy, creation and management of collective equipment, creation of service of interests to the commune, public hygiene and sanitation, management of the property of the commune, including land property, urbanization and development of the territory, as well as the financial and administrative management of the commune.
[152] See Ordinance on the CGCT (n 146), Arts. 31, 32, 33, 34, 35, and 36.
[153] Ordinance on the CGCT (n 146), Art. 158.
[154] Ordinance on the CGCT (n 146), Art. 159.

VI The Constitutional Court

One of the important achievements of the public debates that swept through the African continent, including the Republic of Niger, in the 1990s was without doubt the establishment of constitutional courts to deal with constitutional adjudication. In many countries these courts were one of the three chambers of supreme courts. Niger's Constitution of 2010 establishes the Constitutional Court under Article 120. The Court is made up of seven members aged a minimum of forty years.[155] Unlike many constitutional jurisdictions, including the French Constitutional Council, many organs and organizations (institutions, civil society organizations, corporations, and unions) are involved in the appointment of members of Niger's Constitutional Court. Concretely, those involved are the President of the Republic, the Bureau of the National Assembly, the High Council of the Magistracy, the Bar, academics, and civil society organizations specialized in the defense and promotion of human rights.[156] In other words, all these organs and institutions are represented in the composition of the Court. After having been chosen by the respective elements, all the members are appointed by the President of Republic acting under a decree.[157]

Through such an unusual appointment model, the drafters of the 2010 Constitution intended to ensure real independence for the Court, since it was assumed that it would be difficult to influence all the elements that participate in the appointment of members of the Court. To bolster the independence of the members of the Court, they have been made unremovable throughout the duration of their term,[158] and they enjoy jurisdictional immunity[159] except in the case of a *flagranti delicto.* As the apex court in constitutional matters, the Constitutional Court has been bequeathed enormous powers by the Constitution. These can be classified in three orders. First, the Constitutional Court has contentious jurisdiction that it may exercise *a priori* or *a posteriori*. *A priori,* the Court renders decisions on the conformity to the Constitution of Organic Laws

[155] 2010 Constitution, Art. 120.
[156] 2010 Constitution, Art. 121.
[157] Id.
[158] 2010 Constitution, Art. 122.
[159] Organic Law No. 2012-35 of 19 June 2012 Determining the Organisation and the Functioning of the Constitutional Court and the Procedure before it ('Organic Law on the Constitutional Court'), Art. 58.

before their promulgation, the internal rules of procedure of legislative assemblies before their application, ordinances, and treaties and conventions before their ratification.[160] It can also control the conformity of an ordinary law to the Constitution after its adoption and prior to its promulgation. *A posteriori,* the Constitutional Court, seized by an ordinary court, may be called upon to control the conformity of a provision of an Act already in force when one of the parties to the matter is of the belief that the provision violates their fundamental rights and freedoms.

It is in this light that Article 132 of the 2010 Constitution provides that '[a]ny person party to a trial may raise the unconstitutionality of a law before any jurisdiction, by way of pleadings. This jurisdiction must postpone its decision until the decision of the Constitutional Court, which must intervene within a time period of thirty (30) days'. Although this provision gives the impression that fundamental rights are supposed to be properly protected by the Court, two decades of practice show that the outcome has been somewhat less. This is because even when the Court is seized of the unconstitutionality of legal provisions, most applications lodged with it are declared inadmissible. Some reasons for this could be that the procedure before the Court is not understood by people,[161] and the Court does not have the clear competence to protect fundamental rights as is the case of the Constitutional Court of Benin. In other words, proceedings before the Constitutional Court through the exception of unconstitutionality are rarely decided upon. The rare applications that have been declared admissible by the Constitutional Court—such as that of 21 March 2018 wherein the Court issued a declaration of unconstitutionality of Article 579 of Niger's Criminal Code with respect to the 2010 Constitution,[162] under the reservation of interpretation—do not yield results because, as in this case, the Court of Cassation before which the exception was made had decided not to abide by the decision of the Constitutional Court in the *Affaires des bébés importés*.[163]

With regard to *a posteriori* control, the Constitutional Court decides on the distribution of competences between the law and regulation either during parliamentary discussion when it is

[160] 2010 Constitution, Art. 120.
[161] See for example Decision No. 05/CC/MC of 23 April 2018, wherein the application was declared inadmissible because of the non-respect for the periods legally provided for seizing the Court.
[162] See Decision No. 02/CC/MC of 21 March 2018 of the Constitutional Court of Niger, available at <http://www.cour-constitutionnelle-niger.org/arrets_constitutionnelle_2018.php>.
[163] See Decision No. 18-025/CC/CRIM of 11 April 2018 of the Criminal Chamber of the Court of Cassation of Niger.

seized by the President of the National Assembly or by one-tenth of Members of the National Assembly, or to remove a legal provision that has impacted on the domain of the regulation when it is seized by the Prime Minister.[164] The Constitutional Court is also competent to adjudicate over electoral disputes and referendums. The Court controls the regularity, transparency, and legitimacy of referenda and presidential and legislative elections, and publishes the final results.[165] The Court is also competent to decide on the eligibility of candidates, and the incompatibility or the forfeiture of the elective mandate.

The Constitutional Court is strict in the observance of the conditions for eligibility of candidates for general elections as provided for by the law. For example, in Decision No. 001/CC/ME of 9 January 2016, the application of Bakoussou Abdoul Karim was invalidated by the Court on the grounds that the certificate of a medical visit and counter-visit that had to be established by two medical doctors registered in Niger was not consistent with the legal requirements.[166] Decision No. 04/CC/ME of 19 June 2018 shows how strict the Court can be in forfeiting the parliamentary mandate. A number of questions have remained unanswered[167] with regard to the judicial case of the former President of the National Assembly, Mr. Hama Amadou, who was accused of international trafficking of children. By a judgment adopted in conformity with the Constitution, the electoral laws, and Decision No. 18-025/CC/CRIM of 11 April 2018 of the Criminal Chamber of the Court of Cassation, the Constitutional Court noted Mr. Amadou's forfeiture of his seat as a Member of Parliament on the grounds that his situation fell under one of the conditions enumerated in Article 147 of the Electoral Code of Niger.[168] In any event, the abundance of decisions by the Constitutional Court with regard to electoral issues that have

[164] See Organic Law on the Constitutional Court (n 159), Art. 34.
[165] 2010 Constitution, Art. 120.
[166] See Act No. 2014-01 of 28 March 2014 Regulating Presidential, Local and Referendum Elections in Niger, Art. 10, which provides: 'The candidate for the presidential elections must make a legalized declaration of candidacy and including: (...) a certificate of medical visits and counter-visits of less than three (3) months delivered by doctors of the public administration named on a national list prepared by the Order of Physicians, Surgeons, Pharmacists and Dentists of Niger (...)'.
[167] These are, among others, the regularity of the procedure to dismiss Hama Amadou, the attempt to move the burden of proof to another person, and the rejection of exceptions of unconstitutionality raised before the Court of Appeal, including the appeal made before the Court of Cassation, despite the fact that the Court was sceptical about the conformity to the Constitution of Article 579 of the Code of Criminal Procedure.
[168] See Ordinance on the Electoral Code (n 82), Art. 147.

arisen during previous elections demonstrates how the Court is playing its role as an adjudicator of electoral disputes.[169]

Apart from contentious jurisdiction, the Court also has advisory jurisdiction, under which it issues opinions on the interpretation of the Constitution.[170] The Court can also render opinions on all the bills of ordinances before they are tabled in the Council of Ministers.[171] The other types of opinions that are compulsory are issued when the Court is consulted by the President of the Republic pursuant to Article 67 of the Constitution. This is so particularly in periods of crisis that endangers the survival of the nation. The consultation of the Court by the President of the Republic is required when the latter envisions submitting a legal instrument to popular approval (referendum).[172] The exercise by the Court of its consultative jurisdiction has provided scholars with important jurisprudential and academic lessons. It has contributed to the preservation of citizens' legal security[173] by quashing many legal provisions that were contrary to the Constitution.

Finally, and importantly, the Court is competent to confirm the vacancy, resignation, and impeachment of the President of the Republic.[174] It receives the oaths of the President of the Republic and the President of the National Assembly,[175] as well as the declaration of their assets.[176]

For the Court to exercise its jurisdiction, it has to be seized by an application. Unlike some constitutional jurisdictions, such as those of Gabon and Benin, those who are entitled to seize the Niger Constitutional Court are political actors, separate from the case of a citizen. These actors are the President of the Republic, the Prime Minister, the President of the National Assembly,

[169] The Court rendered 57 decisions in 2004, 53 decisions in 2009, 19 decisions in 2011, and 24 decisions in 2016.
[170] 2010 Constitution, Art. 133.
[171] 2010 Constitution, Art. 106.
[172] 2010 Constitution, Art. 60.
[173] See for instance Decision No. 09/CC/MC of 17 July 2018, where the Constitutional Court observed that 'Article 183(2) of the Code of Criminal Procedure violates the Preamble to the Constitution and Article 10. It also violates Article 7 and 10 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights'.
[174] Organic Law on the Constitutional Court (n 159), Art. 50.
[175] 2010 Constitution, Art. 89.
[176] Organic Law on the Constitutional Court (n 159), Arts. 54 and 55.

and one-tenth of Members of Parliament.[177] Limiting the number of actors that are permitted to seize the Court might have the advantage of not overwhelming the Court. It is believed, however, that the Constitution would be better protected and the rule of law adequately consolidated by democratizing the seizure of the Court. Once democratized, mechanisms to filter applications to the Court could then be conceptualized, as is the case in Senegal and France. The strength and the legitimacy of the Court reside in the nature of its decisions, which are not appealable. These decisions are binding upon public authorities and all other administrative, civil, military, and jurisdictional authorities. Failure to abide by the Court's decisions is sanctioned in accordance with laws in force.[178] Through this provision, the Court has distinguished itself from other African constitutional courts. This was the case of Decision No. 04/CC/ME of 12 June 2009, by which the Court invalidated the proposed bill for the amendment of the Constitution initiated by President Mamadou Tandja to secure three more years for his presidential term.[179]

In conclusion, the Constitutional Court of Niger is undoubtedly one of the more active constitutional courts in Africa. It is however regrettable that it has not achieved much towards the protection of fundamental rights of individuals, as is the case of the Constitutional Court of Benin. Two things could be done to rectify this. First, citizens should be allowed to directly seize the Court to seek enforcement of their fundamental rights. Second, decisions issued by the Court should be enforced and respected by all, including public authorities.

7 International treaties and African regional integration

Although international treaties and conventions properly ratified by the Republic of Niger, after their publication, are said to have superior value to national laws, under the reservation that each treaty and agreement must be applied by the other contracting parties, the national legal system seems to demonstrate the characteristics of a dualist system. This is in part because in Niger, international norms must be incorporated in the national legal system through ratification. It is in that understanding that Article 169 of the Constitution submits the ratification of any treaty to

[177] See Organic Law on the Constitutional Court (n 159), Arts. 21 and 25.
[178] 2010 Constitution, Art. 134.
[179] Decision No. 04/CC/ME of 12 June 2009 of the Constitutional Court of Niger. See also Decisions No. 003/CC/MC of 30 June 2017, No. 009/CC/MC of 21 November 2013, and No. 001/CC/MC of 3 April 2014.

prior authorization by the National Assembly.[180] The President of the Republic is entitled to negotiate treaties.[181] In order to avoid contradictions between international and national norms, the Constitutional Court must be seized by the President of the Republic, the President of the National Assembly, the Prime Minister, or one-tenth of Members of Parliament so as to verify whether or not the international agreement is consistent with the Constitution.

The process of incorporating an international treaty into the national legal system of Niger involves three types of organs. The first is the executive, which may be represented by the President of the Republic, the Prime Minister, and the Minister of Foreign Affairs. The executive is entitled to negotiate the treaty. Next, the National Assembly provides authorization for ratification, only for treaties of the type that are clearly stated in Article 169. Lastly, the Constitutional Court is entitled to control the conformity of the treaty to the Constitution.

With regard to regional integration, on the basis of Article 172 of the Constitution, Niger can enter into agreement with any African country in a matter of association or community. This may entail the total or partial abandonment of sovereignty. Niger is a member state of sub-regional organizations such as the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (UEMOA). In fact, having abandoned part of its sovereignty, almost all the norms that are established by these organizations must be applied somehow directly in the Niger legal system.

VIII Conclusion

In view of this analysis, it can be said that the 2010 Constitution of Niger has been an important instrument for the regulation of political powers, the protection of fundamental rights of individuals, and for the furtherance of development in the Republic of Niger. This is particularly evident in the balance of powers and institutions, the mechanisms in the Constitution to combat fraud, openness to sub-regional integration, the enshrinement of fundamental rights for citizens,

[180] 2010 Constitution, Art. 169, provides: 'The treaties of defence and peace, the treaties and agreements relative to the international organizations, those which modify the internal laws of the State and those which involve a financial engagement from the State, may only be ratified following a law authorizing their ratification'.
[181] 2010 Constitution, Art. 168.

and judicial and quasi-judicial guarantees for the protection of these rights. However, due to some anachronistic practices that are being manifested more often, such as violation of some constitutional provisions by political powers,[182] violation of freedom of the press and expression,[183] and bad governance,[184] one might wonder whether the Constitution has thus far been able to address the issues that informed its elaboration and adoption. In fact, if such practices continue, the political and constitutional situation of the Republic of Niger might worsen because, as is generally the case, the same causes of instability may produce the same effects. This specifically means that lack of respect for the established constitutional order, serious human rights violations, and bad governance will again create more instability in Niger, as was the case before the 1990s. In any event, for the Constitution to be able to play its full role as a social contract, it is absolutely essential that its provisions be respected.

[182] This is particularly the case of non-enforcement of judicial decisions, such as Decision No. 002/CC/ME of 7 March 2017 of the Constitutional Court

[183] One should note the instances of arrest and sentence of a number of journalists, while criminal offences through the press have been abrogated since 2010.

[184] Several cases of embezzlement have been identified but were never followed by serious legal proceedings. This is for example the case of the *Uraniumgate*.

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