

Law 36/2015 on Migrants Smuggling, Republic of Niger¹

Chapter one: General provisions

Art 1:

The objective of this law is to:

- Prevent and contrast migrants smuggling
- Protect the rights of migrants victims of smuggling
- Promote and facilitate national and international cooperation for the prevention and the contrast of illegal migrants smuggling in all forms

Art 2:

The present law is applicable to all forms of migrants smuggling, whether or not they are linked to organized crime or an organized criminal group

Art 3:

For the purposes of this Act, the following definitions apply:

- **smuggling of migrants:** the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry into a State Party of a person who is neither a national nor a permanent resident of that State;
- **international migrant:** any person who lives temporarily or permanently in a country in which he or she was not born and who has acquired important social ties with that country;
- **migrant worker:** a person who is going to engage, is engaged or has engaged in a remunerated activity in a State of which he or she is not a national;
- **illegal entry:** crossing borders when the conditions necessary for legal entry into the host state are not met;
- **fraudulent travel or identity document:** any travel or identity document:
 - has been counterfeited or substantially altered by anyone other than a person or authority legally authorized to make or issue the travel or identity document on behalf of a State;

¹ This is a free translation from French to English. While it has been produced with all needed care, it may not be free from mistakes/misleading translations. You can find the original document in French following this [LINK](#).

- which has been improperly issued or obtained through misrepresentation, bribery or coercion, or in any other unlawful manner,
 - that is used by a person other than the rightful owner;
- **Ship:** any type of watercraft, including a draughtless craft and a seaplane, used or capable of being used as a means of transportation on water, except a warship, auxiliary warship or other vessel owned or operated by a government as long as it is used exclusively for non-commercial public service;
 - **Child:** all human beings less than 18 years old;
 - **unaccompanied child:** any child who has been separated from parents and other close family members and who is not being cared for by an adult who's responsible for him by law or custom;

commercial carrier: any legal or natural person who transports goods or persons for profit;

Illegal entry: crossing borders when the conditions necessary for legal entry into the territory of Niger are not met;

refoulement: any action having the effect of removing a person from a State, including: expulsion, banishment, extradition, deportation to the extraterritorial border and physical return;

non-refoulement: the prohibition on a State to return a person in any manner whatsoever to the frontiers of territories where his or her life or freedom is threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion, or where he or she would be in danger of being subjected to torture, inhuman and degrading treatment or other forms of irreparable harm;

smuggled migrant: any person who is the object of acts incriminated under this law, whether or not the perpetrators have been identified, apprehended, prosecuted or convicted;

State to Protocol: State Party to the Protocol against the Smuggling of Migrants by Land, Sea and Air, to the United Nations Convention against Transnational Organized Crime;

Organized criminal group: means a structured group of three or more persons who have been in existence for a period of time and who are acting in concert with the intent to commit one or more serious offences established in accordance with this Act in order to obtain, directly or indirectly, a financial or other material benefit;

Art 4:

The provisions of this Law, in particular the measures on the identification of smuggled migrants and those aimed at protecting and promoting the rights of smuggled migrants, shall be interpreted and applied to all without discrimination and in accordance with the principles and responsibilities of States and individuals under international humanitarian law, international human rights law, the protection of vulnerable groups and refugee law.

Such discrimination may not be based on race, color, religion, creed, age, sex, family status, culture, language, ethnicity, national or social origin, nationality, sexual orientation, political or other opinion, physical ability, property, birth.

Art 5:

The Nigerien courts are competent to deal with offences committed:

- wholly or partially on the territory of Niger by means of land or river transport;
- wholly or partly on board a vessel flying the Niger's flag or on board an aircraft registered in accordance with the law of Niger at the time the offense is committed;
- by a Nigerien abroad whose extradition is refused on grounds of nationality;
- by a person present on the territory of Niger whose extradition is refused by the Nigerien authorities for any reason whatsoever.

The courts of Niger are also competent when:

- the smuggled migrant is a Nigerien or a foreigner, domiciled or resident in Niger;
- the offense is committed by a Nigerien or a foreigner domiciled or resident in Niger;
- the offense is committed outside the territory of the State of Niger with a view to the commission of a crime or misdemeanour on the territory of Niger.

Notwithstanding the penalties provided for in the present law, the criminal courts are competent to hear all offences related to the trafficking of migrants.

The statute of limitations provided for in the Code of Criminal Procedure shall apply to the offences referred to in the present law.

Chapter II – Investigation techniques

Art 6:

For the purpose of identifying the persons involved in any of the offences provided for in the present law, is authorized the incitement to commit an offence referred to in the present law by an agent authorized to establish the offence, either directly or through a person acting in accordance with his instructions.

The decision to carry out such an act of incitement shall be taken by the public prosecutor of the alleged place of the offence, who shall control the course of the offence. The purpose of such an operation must be to gather evidence of an ongoing offence and to identify all the protagonists in order to prosecute them.

Art 7:

For security reasons, no witness has to reveal the identity of an informer or an undercover agent.

Art 8:

Where there are serious indications that bank accounts, telephone lines, computer systems or communications of acts and documents are being used or are likely to be used by persons suspected of committing or having committed one of the offences provided for by the law, or where these relate to one of the offences likely to be committed, the investigating judge may order by reasoned decision after informing the Public Minister for a renewable period of fifteen (15) days:

- the surveillance of bank accounts or similar accounts;
- the communication of all authentic or private deeds and all bank, financial or commercial documents;
- the surveillance or tapping of fixed or mobile telephone lines;
- the surveillance of activities placed on computer data exchange systems or networks (Internet).

Art 9:

Professional secrecy can in no case be invoked to refuse to give effect to the provisions provided for in the previous article, under penalty of double the sanction provided for in article 184 of the Penal Code.

In agreement with the competent authorities of the States concerned, the operations referred to in the preceding article may be transferred.

Chapter III: Offences and penalties**Art 10:**

Any person who, intentionally and for the purpose of obtaining, directly or indirectly, a financial or other material benefit, provides for the illegal entry into or exit from Niger of a person who is neither a national nor a permanent resident of Niger, shall be liable to imprisonment for a term of five (5) to less than ten (10) years and a fine of 1,000,000 to 5,000,000 CFA francs.

Art 11:

Any person who intentionally and for the purpose of obtaining, directly or indirectly, a financial or other material benefit, manufactures, procures, provides or possesses a fraudulent travel or identity document to enable the smuggling of migrants shall be liable to imprisonment for a term of three (3) to seven (7) years and a fine of 1,000,000 CFA francs to 3,000,000 CFA francs.

Art 12:

Any person who, intentionally and for the purpose of obtaining, directly or indirectly, a financial or other material benefit, uses illegal means to enable a person who is neither a national nor a permanent resident to remain in Niger, without meeting the conditions necessary for legal residence, is punishable by imprisonment for a term of two (2) to five (5) years and a fine of 500,000 to 2,000,000 CFA francs.

Art 13:

Attempt to commit the offences provided for by the present law shall be punished with the same penalties.

Art 14:

An accomplice to an offence referred to in Articles 10, 11 and 12 above shall be punished with the same penalties as the principal perpetrator in accordance with the Penal Code.

Art 15:

Whoever, having been sentenced to one or more terms of imprisonment under this Act, has, within five years from the day on which the conviction became irrevocable, committed an offence under this Act, shall be sentenced to a term of not less than twice the term served.

Art 16:

There are aggravating circumstances when:

- the offence involves circumstances that endanger or are likely to endanger the life or safety of the smuggled migrant;
- the offence involves circumstances that result in inhuman or degrading treatment of smuggled migrants, including for exploitation;
- the offence results in the serious injury or death of the smuggled migrant or a third party, including death by suicide;
- the offender abuses and takes advantage of the particular vulnerability or dependency of the smuggled migrant to obtain a financial or other material benefit;
- the offender has already committed the same offences;
- the offence is committed as part of the activities of an organized criminal group;
- the offender has used drugs, any psychotropic substance, medicines or weapons to commit the offence;
- the offence involved a large number of smuggled migrants;
- the offender is a public official;
- the offender abused his or her position of authority or position as a public official to commit the offence;
- the smuggled migrant is a child;
- the offender has used a child as an accomplice or participant in the criminal act;
- the smuggled migrant is a pregnant woman;

- the smuggled migrant has an intellectual or physical disability;
- the offender has used or threatened to use any form of violence against the trafficked migrant or his/her family;
- the offender has confiscated, destroyed or attempted to destroy the trafficked migrant's travel or identity documents.

Art 17:

Whoever commits one of the offences provided for in Article 10 of the present law with one of the aggravating circumstances mentioned above is punishable by imprisonment from five (5) to twelve (12) years and a fine from 3,000,000 CFA francs to 7,000,000 CFA francs.

Anyone who commits any of the offenses provided for in Article 10 of this law with two (2) of the above-mentioned aggravating circumstances shall be punished by imprisonment of between eight (8) and fifteen (15) years and a fine of between 5,000,000 and 10,000,000 CFA francs.

Any person who commits any of the offenses provided for in Article 10 of this law with three (3) of the above-mentioned aggravating circumstances shall be liable to imprisonment for a term of ten (10) to twenty (20) years and a fine of 5,000,000 to 15,000,000 CFA francs.

Any person who commits any of the offenses provided for in Article 10 of this law with one of the aggravating circumstances referred to above shall be punished by imprisonment for a term of twenty (20) to twenty-five (25) years and a fine of 10,000,000 to 20,000,000 CFA francs.

Art 18:

Anyone who profits from, abuses the vulnerability or dependence of the smuggled migrant, including vulnerability or dependence that results from entering the country illegally or without the required documents, from a state of pregnancy or physical or mental illness, infirmity or reduced capacity to form judgments, being a child, for profit or other material benefit, commits an offense punishable by imprisonment of twenty (20) to less than thirty (30) years and a fine of twenty (20). 000,000 to 30,000,000 CFA francs.

Art. 19:

When a person has been found guilty of an offense under the presence of law, the court may, in addition to any penalty imposed and without limitation of its other powers, order the following measures:

- confiscation of assets, proceeds of crime and instruments of the offense;
- payment of reparation or compensation to persons who have been unlawfully trafficked at their request;
- publication of the judicial decision;
- temporary or permanent prohibition to exercise, directly or indirectly, one or more social or professional activities in application of the rules governing these activities;

- temporary or permanent closure of any enterprise or establishment that has been used to commit the offense in question;
- exclusion from public tenders and contracts and/or from entitlement to public benefits or aid;
- temporary or permanent prohibition to engage in other commercial activities and/or to create another legal entity in line with the offence.

Art 20:

Any commercial carrier, individual or legal person responsible for the operation of a commercial transport activity that fails to verify that each passenger is in possession of the identity and/or travel documents required for entry into the State of destination and any State of transit, commits an offense punishable by a fine of 1,000,000 to 3,000,000 CFA francs.

Any commercial carrier, individual or legal person responsible for the operation of a commercial transport activity who fails to report to the competent authorities that a person is attempting to travel or has travelled by means of his services without the identity and travel documents required for entry into the State of destination or any State of transit, while being aware that such person is a smuggled migrant or is criminally negligent in this regard, shall, in addition to any other penalty provided for in any other law, commit an offense punishable by a fine of 100. 000 to 1,000,000 CFA francs.

A commercial carrier is not guilty of an offence and is not liable to a fine under this section if :

- there are reasonable grounds for believing that the documents in the passenger's possession are the documents required for lawful entry into the State;
- the passenger is in possession of lawful travel documents when he or she boarded the means of transport to the State or the last time he or she boarded the means of transport to the State;
- the entry into the State has taken place only because of circumstances beyond the control of the commercial carrier of the person who is engaged in the carriage of goods or passengers for profit;
- the entry into the State resulted from assistance to a person in danger in the waters or in the desert;
- A commercial carrier shall not be liable under this Article when the persons it carries have been granted protection against refoulement and/or asylum in accordance with applicable regulations.

Art 21:

Any person who joins or participates in an association with a view to committing the offences referred to in this chapter shall be punished in accordance with the provisions of the Penal Code.

Art 22:

The laundering of the proceeds of the offenses referred to in this chapter shall be punished in accordance with the provisions of Law n. 2004-41 of June 2004 on the fight against money laundering.

Art 23:

Bribery with a view to committing the offences referred to in this chapter shall be provided for and punished in accordance with the provisions of the Penal Code.

Art 24:

The Ministry of the Interior may grant a visa or residence permit to a smuggled migrant in order to facilitate the investigation and/or prosecution of an offense under this law.

Chapter IV: Protection and assistance measures

Art 25:

Smuggled migrants have the right to receive emergency medical care that is necessary to preserve their lives or avoid irreparable damage to their health, on the basis of equality of treatment with nationals of the state.

Such emergency medical care shall not be denied to them because of any irregularity in their entry into or stay in the State.

Art 26:

The competent authorities shall take appropriate measures to provide migrants with adequate protection against any violence that may be inflicted to them, whether by individuals or groups. Such measures shall take into account the special needs of women, children, the disabled and the elderly.

Art 27:

The competent authorities shall provide appropriate assistance to migrants whose lives and/or safety are endangered. Such measures shall take into account the special needs of women, children, the disabled and the elderly.

Art 28:

Any migrant who is the object of acts incriminated by the present law shall have the right to take legal action for compensation for material and/or moral prejudice suffered as a result of the specified acts without constituting the guarantees provided for by Nigerien laws.

The status of the migrant who is the object of smuggling with regard to immigration legislation or his or her return to his or her country of origin or any other reason why he or she is outside the jurisdiction shall not prevent the latter from ordering the payment of compensation pursuant to this Article.

Art 29:

When the smuggled migrant is a minor, in addition to the protection measures referred to in Articles 25, 26, 27 and 28 above:

- the best interests of the child shall be a primary consideration in all actions carried out by public officials, public bodies and courts with regard to a migrant who is a child and who has been smuggled;
- in case of uncertainty as to the age of a smuggled migrant and where there is reason to believe that he or she is a child, he or she shall be presumed to be a child pending verification of his or her age;
- any interview or hearing with a smuggled migrant child shall be conducted by a specially trained professional, in a suitable environment, in a language that the child can speak and understand, and in the presence of the child's parents, guardian or support person;
- smuggled migrant children have the right to access to education, which cannot be denied or limited because of their entry or irregular situation in the country, or that of their parents.

Art 30:

When a smuggled migrant has been arrested, incarcerated or is in custody, the authority entitled to arrest or detain him or her is required to inform him or her without delay of his or her right to communicate with consular officials.

Art 31:

To this end, all necessary measures are taken to facilitate this communication.

If the smuggled migrant wishes to contact consular officials, the authority authorized to arrest or detain him or her shall be required to notify the competent consul(s) that a national of that State has been arrested or detained, to indicate the place of detention and to facilitate contact.

If a smuggled migrant does not wish to contact the consular post, this choice must be respected.

Smuggled migrants who are held in preventive detention or incarceration have the following rights:

- Receive visits from consular officials;
- To converse and correspond with consular officials;
- To receive without delay communications from consular officials;
- Receive information about their rights in their own language;
- The authorities that have a mandate to arrest or detain the migrant shall take all necessary measures to facilitate such visits and communication.
- The authority that has the mandate to arrest or detain the migrant shall transmit without delay all mail from the smuggled migrant addressed to the consular officer.

Chapter V: National Coordination Bodies and International Cooperation on Migrant Smuggling

Art 31:

The coordination of the fight against the smuggling of migrants is ensured by the National Coordination Commission for the Fight against Trafficking in Persons (CNLTP) and the National Agency for the Fight against Trafficking in Persons (ANLTP) in accordance with the attributions of these two bodies.

Art 32:

The Ministry of Justice is the central authority for international judicial cooperation to receive, manage and transmit incoming and outgoing requests for extradition and mutual legal assistance.

Article 33:

The provisions of the Code of Criminal Procedure and the international and bilateral conventions on mutual legal assistance and extradition shall apply in matters of smuggling of migrants.

Chapter VI: Processes related to the return of smuggled migrants

Art 34:

Within the framework of the organization of the return to their country of origin or outside the borders of Niger, the competent authority may cooperate with international and intergovernmental organizations intervening in the field, in particular, the UNHCR, the IOM and civil society organizations that fight against the smuggling of migrants.

Art 35:

In organizing the repatriation of smuggled migrants, the competent authority shall ensure that migrants who seek international protection under national asylum laws, the 1951 Convention and the 1969 OAU Convention relating to the Status of Refugees or international humanitarian law, or who are in need of special protection, are promptly referred to the competent bodies responsible for deciding their case.

Art 36:

At the request of the competent authority representing another State to the Smuggling of Migrants Protocol, the competent authority of Niger shall, within a reasonable period of time, verify the authenticity, regularity and validity of travel or identity documents issued or purported to have been issued in the name of Niger and suspected of being used for the smuggling of migrants.

Art 37:

The competent authority shall facilitate the return of a smuggled migrant to his or her country of nationality or permanent residence at the request of the representative of another State to the Smuggling Protocol, the smuggled migrant or on its own initiative, without undue or unreasonable delay.

Art 38:

The competent authority shall ensure that any planned or actual return of a smuggled migrant complies with international law, in particular human rights law, refugee law, humanitarian law, including the principle of non-refoulement, the principle of non-discrimination, the right to life, the prohibition of torture and other

forms of cruel, inhuman or degrading treatment or punishment, and, where a child is concerned, the best interests of the child.

Chapter VII: Final Provisions

Art 39:

The present law, which abrogates all previous provisions to the contrary, is published in the Official Gazette of the Republic of Niger and executed as a law of the State.