



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Consideration of reports of States parties to the Convention

**Replies of the Niger to the list of issues in relation
to its report submitted under article 29 (1) of the
Convention***

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* The present document is being issued without formal editing.



I. General information

A. Replies to the issues raised in paragraph 1 of the list of issues (CED/C/NER/Q/1)

1. The Niger has already recognized the relevant bodies' competence to receive individual communications for five other international instruments, namely:

- International Covenant on Civil and Political Rights, by ratification of the first Optional Protocol thereto, on 7 March 1986
- Convention on the Elimination of all Forms of Discrimination Against Women, by ratification of the Optional Protocol thereto, on 30 September 2004
- International Covenant on Economic, Social and Cultural Rights, by ratification of the Optional Protocol thereto, on 7 November 2014
- Convention on the Rights of Persons with Disabilities, by ratification of the Optional Protocol thereto, on 24 June 2008
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, by a declaration under article 34 (6), made on 29 October 2021

2. The procedure for recognition under other conventions to which the Niger is a party of the relevant bodies' competence to receive individual or inter-State communications is ongoing, including consultations with all stakeholders. This applies to the following instruments:

- International Convention on the Elimination of All Forms of Racial Discrimination (art. 14), ratified on 27 April 1967
- International Convention for the Protection of All Persons from Enforced Disappearance (art. 31), ratified on 24 July 2015
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 21), ratified on 5 October 1998
- Convention on the Rights of the Child, ratified on 30 September 1990

B. Replies to the issues raised in paragraph 2 of the list of issues

3. As with the Convention against Torture, which has just been incorporated into national law through Acts No. 2020-02 of 6 May 2020 and No. 2020-05 of 11 May 2020, the establishment of a separate criminal offence of enforced disappearance is on the agenda of the recently restructured committee responsible for leading a review of the Criminal Code and the Code of Criminal Procedure. Since the ratification in 2015 of the International Convention for the Protection of All Persons from Enforced Disappearance, although the Convention may be invoked under national laws (Code of Civil Procedure, art. 2; Act No. 2018-37 of 1 June 2018 on the Organization and Jurisdiction of the Courts of the Niger, art. 72), no judicial decision relating to cases of enforced disappearance has yet been recorded. If the Convention is not applied, this is due not only to the fact that judges and other law enforcement personnel are unaware that the Convention exists, but above all because enforced disappearance was unknown in the country before the rise of terrorism.

C. Replies to the issues raised in paragraph 3 of the list of issues

4. Under Act No. 2012-44 of 24 August 2012 on the composition, organization, responsibilities and functioning of the National Human Rights Commission, the Commission is an independent administrative authority responsible both for protecting and defending human rights (art. 19) and for promoting them (art. 20). In accordance with the responsibilities defined in the Act, the Commission plays a dual role: promoting and

protecting human rights by monitoring the observance of those rights; and improving the legal framework for human rights. It has been accredited with category A status by the Global Alliance of National Human Rights Institutions.

5. Under its mandate to protect the rights of citizens against arbitrary acts and abuses on the part of the authorities, the Commission deals with petitions concerning violations of the human rights recognized and guaranteed under the Constitution, international legal instruments and the applicable laws and regulations. It investigates alleged human rights violations and proposes solutions or penalties.

6. Within the framework of protecting and defending human rights, the Commission is tasked with:

- Receiving complaints and conducting investigations into human rights violations
- Carrying out regular announced or unannounced visits to places of detention and making recommendations to the competent authorities
- Combating torture, acts of abuse and other cruel, inhuman or degrading treatment or punishment, in accordance with universal, regional or national human rights standards
- Combating rape and gender-based violence in public and private life
- Providing or facilitating the provision of legal assistance for victims of human rights violations, especially women, children, older persons, persons with disabilities and other vulnerable persons
- Informing the Government of all cases of human rights violations
- Combating slavery-like practices, the worst forms of child labour and equivalent practices

7. Within the framework of promoting human rights, the Commission is tasked with:

- Promoting human rights in general and the rights of women, children, persons with disabilities and other vulnerable persons in particular, through information, education and communication carried out throughout the country
- Carrying out nationwide information and awareness-raising campaigns on human rights
- Contributing to the development and implementation of human rights education programmes
- Informing the public about national and international instruments for the promotion and protection of human rights
- Encouraging and contributing to the translation of national, regional and international instruments into national languages
- Contributing to promoting the principles of equality and non-discrimination as set out in the Constitution
- Conducting studies and research on human rights
- Providing the public authorities with opinions and recommendations on matters concerning human rights
- Raising awareness among citizens regarding their rights
- Raising awareness among State actors, particularly administrative authorities and senior members of the defence and security forces, regarding respect for citizens' rights
- Holding training seminars and workshops on human rights

8. The Commission is also tasked with:

- Providing the Government and the National Assembly, either at the request of the relevant authorities or using its power to act on its own initiative, with opinions,

recommendations and proposals on any matter relating to the promotion and protection of human rights, particularly on bills and legislative proposals

- Contributing to the harmonization of national legislation, regulations and practices with the regional and international human rights instruments to which the Niger is a party, and ensuring their effective implementation
- Encouraging the competent State bodies to implement the international human rights conventions ratified by the Niger
- Monitoring the timely reporting by the competent State bodies to the United Nations treaty bodies, the Human Rights Council and regional human rights mechanisms and contributing to the drafting of the reports in a manner consistent with its independent status
- Maintaining cooperative relations with national human rights organizations at the regional and international levels and with regional and international organizations working on the promotion and protection of human rights

9. The Commission acts as the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 21-1 of Act No. 2020-02 of 6 May 2020, amending Act No. 2012-44 of 24 August 2012 on the composition, organization, responsibilities and functioning of the National Human Rights Commission, specifies that the Commission is responsible for regularly reviewing the situation of persons deprived of their liberty in places of detention in order to strengthen the protection against torture and other cruel, inhuman or degrading treatment or punishment where necessary.

10. The Commission comprises nine permanent members:

- One judge elected by his or her peers
- One lawyer elected by his or her peers
- One representative elected by human rights and democracy promotion organizations
- One female representative elected by women's rights organizations
- One representative of the trade unions
- One university lecturer or researcher in the social sciences
- Two representatives of the National Assembly
- One representative elected by farmers' organizations

11. To ensure its smooth operation, the Commission has:

- A national executive bureau consisting of four members elected from among the commissioners
- Five thematic working groups (one on civil and political rights, one on economic, social, cultural and environmental rights, one on the rights of women, children, older persons and persons with disabilities, one on migration and combating racial, ethnic and religious discrimination and slavery-like practices and one on combating arbitrary detention, torture and cruel, inhuman and degrading treatment)
- A secretary-general, who leads the technical and administrative team
- Five regional branches and two focal points

12. The Commission enjoys financial autonomy, although its budget comes under the overall government budget. It also receives technical and financial support from several partners. In 2020, the coverage rate of the Commission's branches increased from 42.85 per cent to 71.42 per cent, with five regional branches established in Tillabéri, Agadez, Diffa, Dosso and Zinder and two focal points in Tahoua and Maradi. This has allowed the Commission to train 1,937 persons from different social backgrounds on various topics related to human rights and to follow up and manage more than 66 complaints in a year.

13. For the implementation of its mandate, the Commission has the broadest possible investigative powers for all matters relating to human rights. To that end, it receives complaints from victims, their dependents, non-governmental associations and organizations and any affected person or legal entity. It then interviews the witnesses and the persons involved. It also has free access to all sources of information needed for its mission, including information, reports and documents provided by civil society associations and political organizations. It may request the Government or private citizens to provide any document needed to carry out its duties. They are obliged to provide the requested documents on pain of prosecution. In cases of slavery-like practices, the Commission may act in place of the victims. It may make use of any expert assessment needed to reach its conclusions.

14. The most recent action taken by the Commission is a fact-finding mission in May, June and July 2020 to look into allegations relating to the disappearance of 102 persons in the department of Ayorou in the Tillabéri region. Following its investigations, it issued its public report on 14 July 2021, providing a copy to the President, the Supreme Commander of the Armed Forces. In the report, the Commission concluded that the abductions had been perpetrated by “rogue elements in the army” and recommended remedial measures.

15. The Commission is not a judicial authority and cannot impose punishment or coercive measures if it finds that a human rights violation has occurred. It makes recommendations to the public authorities and may report criminal offences to the competent authorities or issue a public statement.

16. Its financial, material and human resources are very limited, given that the grant received from the State amounts to approximately 380 million CFA francs a year. It receives logistical and financial support from several partners, which allows it to properly fulfil its role.

II. Definition and criminalization of enforced disappearance (arts. 1–7)

A. Replies to the issues raised in paragraph 4 of the list of issues

17. The criminal offence of enforced disappearance is not yet provided for in legislation. However, acts constituting enforced disappearance are punishable under other criminal offences such as arbitrary detention or arrest, kidnapping, false imprisonment and torture. The ongoing process of review of the Criminal Code will allow the legislative gaps to be closed to ensure that the law is compatible with the Convention.

18. The definition of enforced disappearance within the meaning of the Convention, the non-derogable nature of the prohibition of enforced disappearance regardless of any situation of disorder or instability, exclusion of the defence of superior orders, provisions on complicity in and attempts to commit enforced disappearance and the aggravating circumstances provided for in the Convention will be taken into consideration during the ongoing review of the Criminal Code. All these principles have already been adopted in Act No. 2020-05 of 11 May 2020 on torture.

19. States of emergency may be declared in two situations in the Niger:

- In the event of imminent danger arising from serious violations of the country’s independence, territorial integrity and public order (such as terrorism)
- In response to events that, by their nature and seriousness, constitute a public disaster (such as coronavirus disease (COVID-19))

20. A state of emergency is not equivalent to an absence of the rule of law. It is only intended to reinforce the powers of civil authorities with respect to the safety of persons while limiting some public or individual freedoms. In application of a state of emergency, administrative authorities have the following powers:

- To order the house arrest within a particular administrative district or locality of any person resident in the area in question and whose activities present a threat to public safety and public order in the district
- To order the closure of entertainment venues, drinking establishments and places of assembly of all types
- To prohibit meetings that could cause or foment disorder, generally or individually
- To order the surrender of firearms, munitions and edged weapons
- To order daytime and night-time house searches
- To take all necessary measures to ensure control over the press, publications of all kinds, audiovisual and radio broadcasts, film screenings and theatrical performances
- To prohibit the movement of persons and vehicles in places and at times established in an administrative order
- To issue orders to establish protection or security areas where the presence of persons is regulated
- To prohibit any person seeking to obstruct the action of the public authorities from staying in all or part of the region

21. Thus, the executive is not all-powerful during a state of emergency. Guarantees are in place to limit the infringement of individual freedoms and the rule of law. No non-derogable *ius cogens* right may be limited. The parliament oversees the measures taken and may end them in case of abuse. The courts also perform oversight of administrative acts in the event that victims lodge appeals against acts exceeding authority. The National Human Rights Commission and civil society play the role of monitoring and of awareness-raising among all stakeholders to prevent abuse.

22. The defence and security forces involved in the war on terrorism have completed several initial and refresher training courses to remind them of their obligation to protect human dignity and to respect and defend human rights in all circumstances, without distinction as to race, colour or national or ethnic origin.

23. The non-derogable nature of the right to life and of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is well understood and observed by the defence and security forces in their operations on the ground. They always bear in mind that, regardless of the gravity of the offence committed by a civilian or combatant or the nature of the exceptional situation (state of emergency, state of alert, state of war or state of siege), nothing can justify extrajudicial executions or enforced disappearance. The defence and security forces know that the actual purpose of a state of emergency is to give them the legal means to better ensure the safety of persons and property. Various training courses on respect for human rights and international humanitarian law are provided on a regular basis to the defence and security forces by the International Committee of the Red Cross, civil society organizations, the National Human Rights Commission and the Ministry of Justice. The President of the Niger recalled the country's commitments to universal human rights standards in his address to the defence and security forces in Diffa during his visit of 9 November 2019, when he encouraged them to fight with good judgment, sparing and protecting civilian populations in accordance with human rights and international humanitarian law.

24. Every national contingent engaged in a theatre of operations includes a provost detachment of the gendarmerie whose duties include criminal investigations and the prevention of violations of human rights law and international humanitarian law.

25. Lastly, the Niger, like the other members of the Group of Five for the Sahel, has signed an arrangement on a human rights and international humanitarian law compliance framework with the Office of the United Nations High Commissioner for Human Rights.

B. Replies to the issues raised in paragraph 5 of the list of issues

26. The phenomenon of enforced disappearance has increased to an alarming extent in recent years owing to the wave of terrorism that has hit the Sahel countries. It was previously unknown in the Niger. The Diffa region in the eastern part of the country where Boko Haram operates has seen a series of abductions of civilians followed by ransom demands, orchestrated by non-State armed groups in several locations. In the Tillabéri region in the west, cases of abduction have been observed in several localities. In Maradi in the south-west, in villages along the border with Nigeria, civilians have been abducted by armed groups and ransom demands issued. The Tahoua region has not been spared the phenomenon either, with several reported cases of abductions. Finally, the Agadez region in the north is facing the migration phenomenon, with a host of persons who have disappeared while crossing the desert and the Mediterranean. Although the State is not accountable for the actions of terrorists, it is increasing its efforts to ensure peace and security in its territory. That is why more than 20 per cent of the 2022 national budget has been set aside for the security sector.

27. We do not have reliable disaggregated data on cases of enforced disappearance, but it must be noted that none of the cases mentioned above were carried out by State officials. Instead, they are perpetrated by non-State armed groups acting entirely without the support of the State. The State is doing everything possible to eradicate the phenomenon, pooling its efforts with those of neighbouring States.

C. Replies to the issues raised in paragraph 6 of the list of issues

28. We do not have statistical data on these aspects.

D. Replies to the issues raised in paragraph 7 of the list of issues

29. Before the arrival of terrorism in the Niger (the first Boko Haram attack, which occurred on 6 February 2015 in Bosso), the phenomenon of enforced disappearance was unknown in the country. On 2 July 2017, in the village of Ngléa, Boko Haram abducted 39 girls whose whereabouts is still unknown. According to witness statements, they were forced to “marry” terrorist fighters.

30. In the region of Tillabéri, in the south-west of the country, 102 inhabitants of I-n-Atès were abducted by armed men between 27 March and 2 April 2020. The National Human Rights Commission decided to look into the case and, following its investigation, concluded that “rogue elements of the defence and security forces of the Niger” were responsible. A judicial investigation to identify the perpetrators and the circumstances surrounding the events has been opened and is currently well under way.

31. Witnesses reported to non-governmental organizations that, between 27 and 29 March 2020, 48 persons on their way to or from the market in Ayorou were apprehended and taken away by armed men. On 2 April 2020, 54 more persons were abducted by armed men in several villages of the region.

32. Mass graves were discovered in several locations in the department of Ayorou. The region’s inhabitants did not dare to ask for news of the kidnapped victims or take legal action for fear of meeting the same fate.

33. This situation of insecurity forced many persons to flee to urban areas in search of safety. The national authorities spare no effort to put an end to killings and enforced disappearance, regardless of the perpetrators. Investigations are conducted and all necessary measures are taken before, during and after military operations to avoid endangering the civilian population and to prevent further violations from being committed.

34. In August 2021, the National Human Rights Commission and Timidria, a non-governmental organization, conducted a joint investigation mission in the regions of Tillabéri and Tahoua specifically relating to slavery. The main objective of this mission was to identify any human rights violations related to slavery-like practices, despite the legal frameworks in place to combat the phenomenon. Based on the mission report, it was possible to document

proven cases of slavery-like practices. A workshop was held on 20 October 2021 to present the report and Timidria committed, as it has done previously, to support victims in bringing complaints before the courts.

E. Replies to the issues raised in paragraph 8 of the list of issues

35. The bill on enforced disappearance is still being drafted by the committee responsible for the review of legal instruments, established pursuant to an order of the Ministry of Justice. This committee has been through a period of inaction owing to the departure of some of its members and changes of personnel at the Ministry of Justice. A new committee is being put in place and will begin its work very soon. All the provisions of articles 2, 4 and 7 of the Convention will be taken into account for the drafting of the new law.

F. Replies to the issues raised in paragraph 9 of the list of issues

36. The Criminal Code defines and provides for the punishment of violations of physical or mental integrity amounting to torture. Any act of this kind or instruction to commit such an act is manifestly unlawful. The orders of a superior do not constitute a justification or ground for exemption for the offender (Act No. 2002-05 of 8 February 2002 on Manifestly Unlawful Orders). Article 1 of the Act provides that “no one shall be required to carry out a manifestly unlawful order”.

37. Article 2 defines a manifestly unlawful order as “any order given or issued in flagrant violation of existing laws and regulations” and as “any written or verbal instruction given or issued by one person to another to violate a legal prohibition or to refuse to comply with a legal obligation”.

38. Act No. 2020-05 of 11 May 2020 on torture expressly provides that superior orders cannot justify an act of torture or cruel, inhuman or degrading treatment. The same will apply to the criminal offence of enforced disappearance.

G. Replies to the issues raised in paragraph 10 of the list of issues

39. The provisions of article 7 (2) (a) and (b) of the Convention will be taken into account during the ongoing drafting process for a specific law on enforced disappearance.

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

A. Replies to the issues raised in paragraph 11 of the list of issues

40. The statute of limitations for criminal prosecution will depend on the gravity of the acts in cases of enforced disappearance. In accordance with the Code of Criminal Procedure, the statute of limitations for criminal prosecution is 10 years for a serious offence and 3 years for a less serious offence. Since enforced disappearance is a continuing offence, the term of limitation only begins on the date when the disappeared person stopped being held. The term of limitation is suspended by the latest step in the criminal proceedings or judicial investigation.

41. The statute of limitations for punishment provided for in the Code of Criminal Procedure will apply to disappearance. Pursuant to articles 701 et seq. of the Code of Criminal Procedure, this is 20 years for a serious offence and 5 years for a less serious offence.

B. Replies to the issues raised in paragraph 12 of the list of issues

42. The legislation of the Niger establishes that the national courts are competent to try any offence, including those amounting to enforced disappearance, committed in its territory or onboard aircraft or ships registered in the Niger, or allegedly perpetrated by one of its nationals, or when the victim is one of its nationals. These jurisdictional criteria are set out in, inter alia, articles 642 et seq. of the Code of Criminal Procedure and article 33 of Order No. 2010-86 of 16 December 2010 on combating trafficking in persons. Thus, any national of the Niger who, outside the national territory, commits an act classified as a serious offence punishable under the law of the Niger may be prosecuted and tried by the courts of the Niger. Any national of the Niger who, outside the national territory, commits an act classified as a less serious offence under the law of the Niger may be prosecuted and tried by the courts of the Niger if the act is punishable under the law of the country in which it was committed, even if the perpetrator did not acquire the status of national of the Niger until after the act of which he or she is charged.

43. Where an offence was committed against a private individual by a national of the Niger in a foreign country, proceedings can be instituted only at the request of the Public Prosecutor's Office following a complaint by the injured party or an official complaint submitted to the judicial authority of the Niger by the country where the offence was committed.

44. The Code of Criminal Procedure provides that no prosecution may take place if the accused person can prove that he or she has been subject to a final judgment and, if convicted, has served the sentence or been pardoned or the sentence has become time-barred.

45. The gendarmerie is responsible for investigations into offences amounting to enforced disappearance committed by armed forces personnel. If the offence was committed against a civilian, the military court has jurisdiction. If the offence was committed by a member of a security or law enforcement unit, the public prosecutor will appoint another unit to conduct the investigation, for greater impartiality.

C. Replies to the issues raised in paragraph 13 of the list of issues

46. Extraterritorial jurisdiction may be exercised on the basis of the Convention, despite the lack of a criminal offence of enforced disappearance in national law. The conditions for the exercise of such jurisdiction are set out in paragraphs 42 to 44 above.

47. Extradition or surrender may not be granted where the accused is at risk of torture or other cruel, inhuman or degrading treatment (Code of Criminal Procedure, art. 649-17). Act No. 97-016 of 20 June 1997 on the Status of Refugees governs the expulsion and return of refugees and asylum seekers. Extradition is granted by presidential decree, subject to authorization by the Indictments Chamber of the Court of Appeal (Code of Criminal Procedure, arts. 649-25 et seq.).

D. Replies to the issues raised in paragraph 14 of the list of issues

48. There is currently no specific procedure for investigations or inquiries into allegations of enforced disappearance. The ordinary law procedure set out in the Code of Criminal Procedure applies; however, the seriousness of the acts will lead the investigation units designated by the public prosecutor or the investigating judge to make extra efforts to locate the victims or ascertain the truth. Investigation units may open ex officio investigations into cases of enforced disappearance provided that they report to the public prosecutor and comply with the provisions of the Code of Criminal Procedure relating to preliminary or expedited investigations.

E. Replies to the issues raised in paragraph 15 of the list of issues

49. All victims of criminal offences are entitled to legal assistance. Victims who are indigent and considered vulnerable are entitled to legal aid. Legal assistance or legal aid is provided free of charge by the National Agency for Legal Aid and Assistance. By way of illustration, legal assistance services were provided to 22,153 persons between 2015 and 2018. During the same period, legal aid was provided to 3,371 persons. The defence counsel, witnesses and relatives of the disappeared person run no risk of ill-treatment or intimidation as a consequence of filing a complaint. The recent law on torture and other cruel, inhuman or degrading treatment or punishment provides for the harsh punishment of any public official or private individual guilty of such acts. It also guarantees special protection for victims and witnesses.

F. Replies to the issues raised in paragraph 16 of the list of issues

50. Regarding allegations of enforced disappearance in the context of Operation Almahaou, the National Human Rights Commission has conducted a thorough investigation, observing the principles of the presumption of innocence and of adversarial proceedings. To this end, the Commission held meetings at its headquarters with the Minister of Defence and his staff, the regional and local authorities of Tillabéri, local elected officials, customary authorities, witnesses, victims, victims' families and those responsible for Operation Almahaou. The final report in which the Commission accused "rogue elements in the army" was widely disseminated.

51. Following this report, the Government noted that it was not possible to ascertain the truth about the events or to attribute responsibility for them to regular forces on the basis of the witness statements and other sources of information used by the Commission. Some of the witnesses' statements are inconsistent and highly unrealistic, including claims that the perpetrators abducted and killed the victims and also seized livestock, acts which cannot be attributed to a regular force. However, it has been proved that terrorists get hold of military uniforms and insignia to commit abuses against the civilian population and seize their property. Some bodies found in the graves have been identified as terrorists who died during combat. The case is currently pending before the military court and the judicial investigation is in progress.

52. As stated above, the defence and security forces involved in the war on terrorism have completed several initial and refresher training courses to remind them of their obligation to protect human dignity and to respect and defend human rights in all circumstances, without distinction as to race, colour or national or ethnic origin.

53. The non-derogable nature of the right to life and of the prohibition of torture is well understood and observed by the defence and security forces in their operations on the ground. They always bear in mind that, regardless of the gravity of the offence committed by an individual or the nature of the exceptional situation (state of emergency, state of alert or state of war), nothing can justify extrajudicial executions or enforced disappearance. They know that the actual purpose of a state of emergency is to give them the legal means to better ensure the safety of persons and property. Various training courses on respect for human rights and international humanitarian law are provided on a regular basis to the defence and security forces by the International Committee of the Red Cross, civil society organizations, the National Human Rights Commission and the Ministry of Justice. The President of the Niger recalled the country's commitments to universal human rights standards in his address to the defence and security forces in Diffa during his visit of 9 November 2019, when he encouraged them to fight with good judgment, sparing and protecting civilian populations in accordance with human rights and international humanitarian law.

54. Every national contingent engaged in a theatre of operations includes a provost detachment of the gendarmerie whose duties include criminal investigations and the prevention of violations of human rights law and international humanitarian law.

IV. Measures to prevent enforced disappearances (arts. 16–23)

A. Replies to the issues raised in paragraph 17 of the list of issues

55. Extradition, return, expulsion or surrender may not be granted to the requesting State when the person is at risk of torture or other cruel, inhuman or degrading treatment (Code of Criminal Procedure, art. 649-17). The same applies when there are substantial grounds for believing that the person involved would be in danger of being subjected to enforced disappearance.

56. Act No. 97-016 of 20 June 1997 on the Status of Refugees governs the expulsion and return of refugees and asylum seekers. An accompanying implementing decree lays down the procedures.

57. Extradition is granted by presidential decree, subject to authorization by the Indictments Chamber of the Court of Appeal (Code of Criminal Procedure, arts. 649-25 et seq.). Expulsion, removal and return are authorized by order of the Minister for the Interior. All such decisions are subject to appeal, i.e., decisions on extradition may be appealed to the judicial authorities and on return to the administrative courts under ordinary procedures or by simple petition.

58. All officials involved in making decisions on expulsion, return and extradition (public prosecutors, police officers, gendarmes, national guards and administrative officials) are trained on criminal procedure, law enforcement rules and compliance with international conventions on the promotion and protection of human rights.

B. Replies to the issues raised in paragraph 18 of the list of issues

59. Secret detention is prohibited in any place other than those established by law, which are prisons, police stations, offices of the investigative branch of the National Guard, gendarmeries and generally all premises used for investigations by criminal investigation officers. The Code of Criminal Procedure provides that criminal investigation officers who apprehend a person on any grounds must immediately inform the public prosecutor, who is chief of the criminal investigation service.

60. The public prosecutor must initiate a prosecution for arbitrary detention immediately upon being informed that a person is being detained in a secret location. Civil society, the National Human Rights Commission and victims' families are responsible for reporting acts of incommunicado detention. The persons involved face criminal penalties without prejudice to disciplinary sanctions.

61. The Act establishing the national mechanism for the prevention of torture was adopted on 6 May 2020. This law incorporated all the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Rather than establishing a new institution, the Niger chose to attach the national preventive mechanism to an existing constitutional institution meeting the independence and autonomy criteria, namely the National Human Rights Commission. The Act provides that the Commission, in its capacity as national preventive mechanism, is the interface with the Subcommittee on Prevention of Torture.

62. Under this law, the national preventive mechanism may visit any place under the jurisdiction of the State where persons are or may be deprived of their liberty, as set out in articles 4 and 29 of the Optional Protocol. The State ensures that the national preventive mechanism is able to carry out visits in the manner and with the frequency that the mechanism itself decides. This includes the ability to conduct private interviews with those deprived of liberty and the right to carry out unannounced visits at all times to all places of deprivation of liberty, in accordance with the provisions of the Optional Protocol.

63. The State affords the members and staff of the national preventive mechanism such privileges and immunities as are necessary for the independent exercise of their functions. It must not under any circumstances order, apply, permit or tolerate any sanction, reprisal or

other disability to be suffered by any person or organization for having communicated with the national preventive mechanism or for having provided it with any information, irrespective of its accuracy; no such person or organization should be prejudiced in any way.

64. The State must inform the national preventive mechanism of any draft legislation that may be under consideration which is relevant to its mandate and allow the mechanism to make proposals or observations on any existing or draft policy or legislation. The State should take into consideration any proposals or observations on such legislation received from the national preventive mechanism.

65. The State should publish and widely disseminate the annual reports of the national preventive mechanism. It should also ensure that they are presented to, and discussed in the parliament. The annual reports of the national preventive mechanism should also be transmitted to the Subcommittee on Prevention of Torture, which will arrange for their publication on its website.

C. Replies to the issues raised in paragraph 19 of the list of issues

66. The right to a defence is one of the principles safeguarding the proper administration of justice. All persons have the right to be assisted by counsel of their choosing or assigned to them from the outset of their arrest, under article 5 of West African Economic and Monetary Union regulation No. 5. Law enforcement personnel are substantially trained and informed about this legal requirement and apply it to the extent possible.

67. Arbitrary detention is detention carried out outside any legal framework or in violation of a legal provision. When there is compelling and consistent evidence that a person has broken the law, his or her arrest does not constitute arbitrary detention. National law allows for any person to be placed in police custody or pretrial detention within the framework of the discovery of the truth is carried out. If, after investigation or trial, the accused person is discharged or acquitted, he or she is entitled to claim compensation from the State in accordance with articles 143.1 to 143.4 of the Code of Criminal Procedure. Any person considering his or her detention to be arbitrary may bring a case before the courts if necessary.

D. Replies to the issues raised in paragraph 20 of the list of issues

68. Under Act No. 2016-21 of 16 June 2016, the maximum duration of police custody is 15 days. This period may be extended by a further 15 days by written authorization of the prosecutor or investigating judge of the specialized judicial unit for combating terrorism and transnational organized crime. Suspects are notified of the right to retain a lawyer from the outset of their arrest. If the end of the custody period falls on a public holiday, the person held in custody is brought before the court on the next working day. When such persons are brought before the court, a medical certificate must be produced attesting that they have not suffered physical abuse.

69. Criminal investigation officers acting in counter-terrorism cases may perform house searches and seizures if they have reason to believe they will find evidence related to a terrorist enterprise. These searches and seizures may be carried out anywhere and at any time.

70. For the purposes of an investigation and if they have reason to believe they will find evidence related to a terrorist enterprise, criminal investigation officers may be temporarily authorized, subject to written authorization from a prosecutor of the specialized judicial unit for combating terrorism and transnational organized crime, the public prosecutor with geographical jurisdiction, an investigating judge from the specialized judicial unit for combating terrorism and transnational organized crime or the competent investigating judge acting on the basis of letters rogatory, to:

- Intercept the telephone calls, electronic messages and other correspondence of suspects or any person in contact with them for a maximum duration of three months, renewable if necessary

- Infiltrate terrorist organizations and criminal associations with terrorist aims for the purpose of gathering evidence. The evidence obtained using this procedure is recorded in special reports annexed to the case file and may be used, when necessary, as evidence before the competent courts

71. The annexed reports must include the full name, rank and signature of the criminal police officer or officers who intercepted the aforementioned correspondence. They must also include the time and date of the interception, the identity of the persons whose communications were intercepted and the full name and position of the judge who authorized the interception. A copy of the prosecutor's submission or letters rogatory on which basis the interception was authorized is appended to the investigation records. The recordings are sealed and attached to the case file. The communication interception reports are records of investigative measures that may be set aside under the conditions set out in articles 161 to 165 of the Code of Criminal Procedure.

E. Replies to the issues raised in paragraph 21 of the list of issues

72. All the items listed in article 17 (3) of the Convention appear in the official registers of detention. No complaints regarding improper keeping of the official registers have been received. To avoid this occurring, public prosecutors carry out regular checks of detention facilities and cells.

73. When a person is released, the director of the institution is obliged to send the public prosecutor a notification certifying that the release actually took place. This notification, along with an address registration record, is included in the case file.

F. Replies to the issues raised in paragraph 22 of the list of issues

74. Persons deprived of their liberty and any persons with a legitimate interest may challenge the legality of deprivation of liberty before the judicial or administrative authorities, depending on the case. Subject to respect for confidentiality of the investigation, the relatives of a person deprived of liberty are entitled to have all the information relating to him or her. Lawyers may not be subject to any restriction on access to information.

V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24–25)

A. Replies to the issues raised in paragraph 23 of the list of issues

75. As enforced disappearance has not yet been incorporated into national law, the law does not provide for specific forms of reparation for victims. However, victims may initiate legal proceedings against the State or the perpetrators on the basis of their civil or administrative liability.

B. Replies to the issues raised in paragraph 24 of the list of issues

76. The legal framework applicable to missing and disappeared persons is set out in the Civil Code. When a case of a missing or disappeared person comes before a civil court, following an investigation, the court appoints a temporary administrator to administer the property of the missing or disappeared person. The administrator takes the steps to preserve or simply administer the property made necessary by the situation, under the oversight of the court. The administrator may take steps to dispose of the property only with judicial authorization.

77. Based on a judicial decision of absence, the surviving spouse may obtain a divorce and the succession may be opened. If the person had children under the age of 21 years, the

surviving parent will in principle be granted custody, unless a social investigation shows that it is in their best interest for custody to be granted to another appropriate person or legal entity.

C. Replies to the issues raised in paragraph 25 of the list of issues

78. Under article 248 of the Criminal Code:

“Persons found guilty of abducting or concealing the birth of a child, causing the disappearance of a child, substituting a child for another or attributing a child to a woman who has not given birth will be liable to imprisonment for a term of 2 to 8 years.

Attempts to commit such offences will carry the same punishment as consummated offences. If it is not established that the child survived, the term of imprisonment is between 2 months and 2 years.

If it is established that the child did not survive, the term of imprisonment is between 15 days and 2 months.” Article 249 of the Code provides that: “persons entrusted with the custody of a child who fail to present the child to the persons entitled to claim him or her are liable to the penalty provided for in the first paragraph of the previous article”.

79. We do not have any data on complaints relating to the wrongful removal of children. To prevent this type of offence, awareness-raising campaigns and training courses are regularly organized for the law enforcement personnel working at borders.

80. In the so-called imported babies case, at a public criminal hearing of 13 March 2017, Niamey Court of Appeal, handed down a decision reclassifying the offences from “attributing a child to a woman who has not given birth” to “concealing the birth of a newborn child”, pursuant to which:

- Sixteen persons were sentenced to 1 year’s imprisonment, including high-ranking public officials and their spouses
- Three officials working for the civil registration authorities were sentenced to 5 years’ imprisonment and a fine of 20,000 CFA francs for forgery and use of forged documents with intent to defraud
- Four other persons were sentenced to 6 months’ imprisonment and a fine of 100,000 CFA francs for aiding and abetting

D. Replies to the issues raised in paragraph 26 of the list of issues

81. Act No. 2019-29 of 1 July 2019 on the Civil Status Regime incorporates improvements to the system of child registration at birth, in particular with regard to children in vulnerable situation. The Act also contains provisions completely excluding any risk of statelessness.
