



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Information received from the Niger on follow-up to the
concluding observations on its initial report***

Addendum

[Date received: 18 November 2021]

* The present document is being issued without formal editing.



I. Introduction

1. The Committee against Torture considered the initial report of the Niger (CAT/C/NER/1) at its 1806th and 1809th meetings, held on 26 and 27 November 2019, and adopted its concluding observations at its 1821st meeting, held on 5 December 2019. The head of the delegation of the Niger was the Secretary-General of the Government, accompanied by members of the Interministerial Committee and diplomats from the Permanent Mission of the Niger in Geneva.
2. Following its constructive dialogue with the Niger, the Committee transmitted its concluding observations and recommendations (CAT/C/NER/CO/1). The Committee requested the Niger to submit an interim report concerning four priority recommendations before its next periodic report, due by 6 December 2023.
3. The Niger was requested to provide written information on the steps taken to follow up on the recommendations contained in paragraphs 10 (f), 16 (c), 22 (e) and 24 (b) of the concluding observations.
4. The four priority recommendations relate to the following issues:
 - Safeguards related to the issuance of medical certificates
 - The release of persons who have been remanded in custody
 - The prevention of deaths in detention
 - The establishment of a national mechanism for the prevention of torture
5. The present document, drawn up by the interministerial committee responsible for drafting reports for submission to the treaty bodies and under the universal periodic review procedure using a participatory process, constitutes the response of the Niger to those recommendations.

II. Status of implementation of each priority recommendation

A. Safeguards relating to the issuance of medical certificates

Follow-up information relating to paragraph 10 (f) of the concluding observations

6. Before 2020, there was no specific criminal offence of torture in the Niger. However, all physical and psychological assaults constituting torture were punishable through general laws. Some perceived the lack of a definition of torture and a specific offence covering the crime as intended to promote the use of torture and encourage impunity in the Niger. More than 20 years after the ratification of the Convention against Torture, the perpetrators of torture were prosecuted under other offences such as grievous bodily harm or assault and battery. Despite the lack of a specific law, the prohibition of the torture of prisoners was laid down in several instruments mentioned in the initial report.
7. The fifth paragraph of article 71 of the Code of Criminal Procedure provides that suspects must be notified of their right to retain a lawyer after 24 hours in police custody, failing which the proceedings may be declared null and void. This time period begins at the time of arrest. When such persons are brought before the public prosecutor, a medical certificate must be produced attesting that they have not suffered ill-treatment. Since the adoption of regulation No. 5 of the West African Economic and Monetary Union on 25 September 2014, suspects have been assisted by a lawyer from the time they are first interrogated.
8. Detention in police custody is a measure that may create risks of violations of a range of the fundamental rights of individuals. Accordingly, persons held in detention must have safeguards for the protection of their rights during this detention, which is a temporary measure. For this reason, the law requires that, when a person held in police custody is brought before the public prosecutor, the criminal investigation officer must present a certificate attesting that the person has not been subjected to torture.

9. In relation to drug control, article 118 of Ordinance No. 99-42 of 23 September 1999 indicates that, when the suspect is a drug addict, the public prosecutor must appoint a doctor to examine the suspect every 24 hours and a reasoned medical certificate must be included in the case file. These medical examinations are to determine whether the suspect's state of health is compatible with detention.

10. Article 605.5 of the Code of Criminal Procedure provides that when persons suspected of terrorism are brought before the public prosecutor, a medical certificate must be produced attesting that they have suffered no physical harm.

11. The requirement to produce a medical certificate is intended to protect detained persons from infringements of their physical or mental integrity while in police custody. However, the certificate is not conclusive evidence that is binding on the court. It is only an expert assessment with the probative value of prima facie written evidence, which is inconclusive evidence that may be refuted by any means. Accordingly, if the suspect continues to complain of having been physically or mentally tortured while held in police custody, despite the medical certificate having been produced, the judge will conduct investigations to ascertain the truth. The suspect is also entitled to request other medical examinations or a second expert assessment.

12. No statistics are available on the number of cases in which a certificate was not issued for a person held in police custody. The same applies to investigations conducted in such circumstances.

13. In 2020, the Niger adopted two major laws related to torture, in order to fill legislative gaps and respond to recommendations made by various international and regional human rights mechanisms. These are Act No. 2020-05 of 11 May 2020 amending the Criminal Code, in order to add to the Code a section on acts of torture and other cruel, inhuman or degrading treatment or punishment, and Act No. 2020-02 of 6 May 2020, amending the Organic Act on the National Human Rights Commission, in order to add to the Commission's mandate the powers of a national mechanism for the prevention of torture.

14. Article 232.4, which has now been added to the Criminal Code, provides that: "Any public official, member of the defence and security forces or other person responsible for providing a public service or vested with public or elective office who consents or acquiesces to, orders or commits any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind is guilty of an act of torture and shall be liable to a term of imprisonment of 1 to 5 years and a fine of 100,000 to 500,000 francs. If acts of torture committed intentionally without intending to cause death nonetheless result in death, the perpetrator shall be liable to a term of imprisonment of 10 to 20 years. Pain or suffering arising only from, inherent in or incidental to lawful sanctions shall not be considered acts of torture."

15. The new law on torture also provides for aggravating circumstances, including when:

- The victim is under the age of 18 years
- The victim is over the age of 65 years
- The victim is a pregnant woman
- The victim has a disability
- The act was premeditated or resulted in serious after-effects

16. The new law has finally established a non-derogable rule that torture cannot be justified by any exceptional circumstances or any order from a superior officer or a public authority.

17. Lastly, no statement obtained as a result of acts of torture or practices amounting to torture may be used as evidence in any proceedings, except to establish the liability of the perpetrator of the offence.

B. Release of persons remanded in custody

Follow-up information relating to paragraph 16 (c) of the concluding observations

18. Pretrial detention for all offences is strictly regulated by the Code of Criminal Procedure. Article 131 of the Code provides that: “Pretrial detention is an exceptional measure. It may be ordered or maintained only in the following cases:

- When pretrial detention of the accused person is the only way to preserve material proof or evidence or to prevent intimidation of witnesses or victims and collusion between defendants.
- When pretrial detention is the only way to protect the accused person, to ensure that he or she can be brought before a court, to put an end to the offence and to prevent its repetition.
- When the offence, owing to its serious nature, the circumstances under which it was committed or the extent of the harm it has caused, has led to an exceptional and ongoing disturbance of public order that only detention can bring to an end. The accused person may be assisted by a lawyer.”

19. The duration of pretrial detention is strictly limited. It may not exceed a reasonable period, taking into account the seriousness of the acts in question and the complexity of the investigations needed to establish the truth. For less serious offences, when the maximum penalty specified by law is less than or equal to 3 years’ imprisonment, an accused person who is resident in the Niger may not be detained for more than six months after his or her first appearance before the investigating judge unless he or she has previously been sentenced either for a serious offence or to more than 3 years’ imprisonment without stay of execution for a less serious offence. In other cases, the accused person may be detained for a period not exceeding 6 months, renewable once only by reasoned order of the investigating judge.

20. If the accused person is a minor between the ages of 13 and 18 years, pretrial detention for less serious offences is for 3 months, renewable once only on an exceptional basis. For serious offences, pretrial detention is for 12 months, renewable once only for 6 months.

21. An accused person being prosecuted for a serious offence may not be detained for more than 18 months. However, the investigating judge may, on expiry of this period, decide to extend the detention for a period not exceeding 12 months by a non-renewable reasoned order under the same procedure.

22. Provisions limiting the duration of pretrial detention do not apply in cases of terrorism, murder, assassination, parricide, poisoning, serious theft and misappropriation of public funds.

23. Release may be requested at any time by the detainee or by the public prosecution service or may be ordered ex officio by the judge, who may in some cases impose certain conditions.

24. Article 18 of the law on the prison system provides that: “Any admission to a prison without a valid committal order is regarded as arbitrary detention. The same applies to any unjustified delay to the release of a prisoner at the end of his or her sentence or whose committal order has expired.”

25. Article 19 adds that an oversight commission, whose composition, way of working and responsibilities are specified by regulations, must be established in each prison.

26. Investigating judges who place persons in pretrial detention are obliged to send their superiors a quarterly report of all such detained persons with the date of their placement in detention, the offence committed and the status of the case. This report is used to ascertain whether the legal time limits for detention are being observed and whether the processing of the case has been unduly delayed. In the event of a violation, administrative and/or judicial penalties may be imposed.

27. In recent years, the Inspectorate General of Judicial and Prison Services has conducted dozens of visits to all prisons to verify, among other things, the lawfulness of the detention

of all pretrial detainees and convicted prisoners and has not hesitated where applicable to order the release of any unlawfully detained persons.

C. Prevention of deaths in detention

Follow-up information relating to paragraph 22 (e) of the concluding observations

28. Act No. 2017-08 of 31 March 2017 regulating the prison system and its implementing decree No. 2019-609 of 25 October 2019 provide that all prisoners must undergo a medical examination at the time of their incarceration. They must comply with the rules of bodily and clothing hygiene. All prisons have an infirmary or a room equipped to accommodate patients.

29. Article 22 of the above-mentioned Act provides that: “No prisoner shall be subjected to torture or to abuse or cruel, inhuman or degrading treatment for any reason whatsoever.”

30. If a prisoner is subject to a disciplinary measure, the prison doctor may suspend it if its enforcement would endanger the prisoner’s health.

31. The above-mentioned decree incorporates all guarantees of respect for the fundamental rights of prisoners, including the right to protection of their lives and physical and mental integrity. For example, prisoners and third parties acting on their behalf may lodge confidential complaints against prison personnel in the event of ill-treatment or inhuman or degrading treatment. In the event of a suspicious death in custody, a prompt, thorough and impartial investigation is carried out, if necessary with a forensic autopsy to determine the cause of death. If the death was caused by the commission of a criminal offence, the perpetrators, accessories and accomplices are liable to criminal and administrative penalties.

32. Niamey remand prison, which regularly accommodates over 1,500 prisoners, recorded four prisoner deaths in 2020 and two in 2021, all of natural causes.

33. At the start of each year, the Minister of Justice draws up a list of the doctors, nurses and midwives attached to each prison, based on a proposal by the Minister of Health. An infirmary is established in each prison to provide prisoners with routine and emergency health care. Nurses are attached to the prison on a full-time or part-time basis and consultations take place in the prison infirmary.

34. Moreover, sick prisoners receive the necessary health care, as well as food and the medicines usually used in public hospitals, free of charge.

35. The administration, in cooperation with the prison doctor, takes all necessary measures to prevent and combat epidemic and contagious disease. The clothes and bedding used and the cell or room occupied by a prisoner who has died or been infected with a contagious disease are consistently disinfected. All cases involving the death of a person in custody must be immediately reported to an independent and impartial body, so that an inquest can be conducted to determine the circumstances of the death.

36. One of the objectives of Act No. 2017-09 of 31 March 2017 is to professionalize prison staff in order to ensure better respect for the rights of prisoners, including their rights to health and to protection of their physical and bodily integrity.

D. Establishment of a national mechanism for the prevention of torture

Follow-up information relating to paragraph 24 (b) of the concluding observations

37. To build the capacity of the National Human Rights Commission to combat torture effectively, the national mechanism for the prevention of torture was established and responsibility for it assigned to the Commission through Act No. 2020-02 of 6 May 2020. The mechanism is already in contact with the Subcommittee on Prevention of Torture to successfully carry out its mission.

38. The members of the Commission who are to lead the national preventive mechanism have recently been renewed and swore an oath before the National Assembly on 10 October

2021. The day after their swearing-in, they elected their officers and are currently taking all necessary steps to give full effect to the national mechanism for the prevention of torture.

39. Its operating methods and principles are based on two sets of obligations, those of the State and those of the national preventive mechanism.

40. The main obligations of the State are to:

- Allow the national preventive mechanism to visit any place under its jurisdiction where persons are or may be deprived of their liberty, as set out in articles 4 and 29 of the Optional Protocol
- Ensure that the national preventive mechanism is able to carry out visits in the manner and with the frequency that the mechanism itself decides, to conduct private interviews with those deprived of liberty and to carry out unannounced visits at all times to all places of deprivation of liberty, in accordance with the provisions of the Optional Protocol
- Ensure that the members and staff of the national preventive mechanism enjoy such privileges and immunities as are necessary for the independent exercise of their functions
- Not 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

41. The main obligations of the members of the national preventive mechanism are to:

- Carry out all aspects of their mandate in a manner which avoids actual or perceived conflicts of interest
- Regularly review their working methods and undertake training in order to enhance their ability to exercise their responsibilities under the Optional Protocol
- Put in place a separate unit or department, with its own staff and budget, to fulfil the functions of the national preventive mechanism
- Plan its work and its use of resources in such a way as to ensure that places of deprivation of liberty are visited in a manner and with sufficient frequency to make an effective contribution to the prevention of torture and other cruel, inhuman or degrading treatment or punishment
- Make proposals and observations to the relevant State authorities regarding existing and draft policy or legislation relevant to its mandate
- Produce reports following their visits and an annual report in which they make recommendations, taking into account relevant United Nations standards on the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including the comments and recommendations of the Subcommittee
- Ensure that any confidential information acquired in the course of its work is fully protected
- Have the capacity to and actually engage in a meaningful process of dialogue with the State concerning the implementation of its recommendations
- Establish and maintain contact with other national mechanisms with a view to sharing experience and reinforcing its effectiveness
- Establish and maintain contact with the Subcommittee, as provided for and for the purposes set out in the Optional Protocol