



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

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Committee against Torture

**Initial report submitted by the Niger under article
19 of the Convention, due in 1999***

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I. General information

A. Introduction

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force on 26 June 1987, and the Niger acceded to it on 5 October 1998.

2. Under article 19 of the Convention, the Niger should have submitted its initial report in 2000 and periodic reports every four years. The delay encountered in the drafting process can be attributed to certain administrative hurdles that prevented the Government from honouring its commitment in a timely manner. Until 2010, there was no State body specifically responsible for drafting reports to the human rights treaty bodies.

3. Following the establishment of an interministerial committee in 2010, the Niger renewed its dialogue with the treaty bodies and has submitted several reports to them. This committee updated the country's 2010 common core document in January 2014 and set a timetable for the drafting of reports under other conventions, including the present report. The committee's status was enhanced by Presidential Decree No. 2017-010/PRN/MJ of 6 January 2017. Its membership, organization and functions are determined by an order of the Minister of Justice of 21 February 2017. It is composed of representatives of various ministries and State institutions concerned by the rights enshrined in the various treaties.

4. Although the Niger has not submitted any reports to the Committee against Torture, it has taken a number of measures since its accession to ensure the promotion and protection of the human rights enshrined therein.

5. The preparation of this initial report demonstrates the State's willingness to comply with its obligations under the Convention. The report contains information covering the period 1998–2017 to make up for the delay.

6. This report was prepared in accordance with the guidelines on the form and content of initial reports under article 19 to be submitted by States parties to the Convention against Torture. Before beginning the process of reporting proper, the members of the committee first received training on the Convention itself and the guidelines on the drafting of initial reports.

7. The committee based its work largely on data and information collected from State institutions, international bodies and civil society organizations. The National Human Rights Commission, trade unions and civil society organizations were consulted at the drafting and data-collection stages. They then actively participated in a national workshop held on 26 and 27 December 2017 to approve the report.

8. The report consists of two main parts. The first contains general information on the Niger. The second contains specific information on the implementation of the substantive articles of the Convention (arts. 1–16).

9. Article 3 of the Constitution asserts that: "The Republic of the Niger is a unitary State. It is one and indivisible, democratic and social. It is founded on the principles of government of the people, by the people and for the people, the separation of State and religion, social justice and national solidarity."

10. The recognition of these principles reflects the commitment of the Niger to respecting, protecting and promoting human beings. Article 14 of the Constitution provides: "No one may be subjected to torture, slavery, abuse or cruel, inhuman or degrading treatment. Any individuals or agents of the State who, during the exercise of their functions, commit acts of torture, abuse or cruel, inhuman or degrading treatment, whether on their own initiative or under orders, shall be punished in accordance with the law."

11. The recognition of these principles demonstrates the interest in and importance attached to the human being in the Niger, as reinforced in its laws and regulations. This approach is strengthened by the numerous international and regional instruments for the

protection and promotion of human rights to which the Niger has acceded or which it has ratified, as listed in the paragraphs below.

International instruments

12. The Niger is a party to the following instruments:

- The International Convention on the Elimination of All Forms of Racial Discrimination, which the Niger ratified on 27 April 1967
- The International Covenant on Civil and Political Rights, to which the Niger acceded on 7 March 1986
- The International Covenant on Economic, Social and Cultural Rights, to which the Niger acceded on 7 March 1986
- The Convention on the Elimination of All Forms of Discrimination against Women, to which the Niger acceded on 8 October 1999
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the Niger acceded on 5 October 1998
- The Convention on the Rights of the Child, which the Niger ratified on 30 September 1990
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which the Niger ratified on 27 January 2009
- The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, both ratified on 24 June 2008
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, ratified on 13 March 2012
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which the Niger ratified on 26 October 2004
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which the Niger ratified on 30 September 2004
- The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, to which the Niger acceded on 1 December 1964
- The International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182), which the Niger ratified on 4 August 2000
- The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which the Niger ratified on 10 June 1977
- The Convention for the Suppression of the Traffic in Women of Full Age, to which the Niger acceded on 25 August 1961
- The ILO Equal Remuneration Convention, 1951 (No. 100), which the Niger ratified in 1966
- The Slavery Convention, to which the Niger became a party on 25 August 1961
- The Protocol amending the Slavery Convention, to which the Niger acceded on 7 December 1964
- The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, ratified on 22 July 1963
- The four Geneva Conventions of 1949 on international humanitarian law, to which the Niger became a party on 16 August 1964
- The Convention on the Political Rights of Women, to which the Niger became a party on 7 December 1964

- The ILO Forced Labour Convention, 1930 (No. 29), ratified on 23 March 1962
- The International Convention against the Taking of Hostages, ratified on 17 December 2003
- The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 18 March 2009
- The Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, ratified on 27 January 2009
- The Convention against Discrimination in Education, to which the Niger acceded on 16 July 1968
- The International Convention against Apartheid in Sports, ratified on 2 September 1986
- The International Convention on the Suppression and Punishment of the Crime of Apartheid, which was adopted in November 1973 and ratified by the Niger on 28 June 1978
- The ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified on 23 March 1962
- The ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified on 23 March 1962
- The ILO Minimum Age Convention, 1973 (No. 138), ratified on 4 December 1978
- The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 30 September 2004
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 7 November 2014
- The International Convention for the Protection of All Persons from Enforced Disappearance, ratified on 24 July 2015
- The Convention on the Reduction of Statelessness, to which the Niger acceded on 17 June 1985

Regional instruments

13. The Niger is a party to the following instruments:
- The African Charter on Human and Peoples' Rights, ratified on 21 July 1986
 - The African Charter on the Rights and Welfare of the Child, ratified on 11 December 1999
 - The Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, ratified on 21 September 1971
 - The OAU Convention for the Elimination of Mercenarism in Africa, ratified on 19 June 1980
 - The African Union Convention on Preventing and Combating Corruption, ratified on 3 March 2006
 - The African Charter on Democracy, Elections and Governance, ratified on 4 October 2011
 - The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), ratified on 10 May 2012
 - The Economic Community of West African States (ECOWAS) Protocol on the Free Movement of Persons, Right of Residence and Establishment, adopted in May 1979, ratified on 29 November 1979

- The ECOWAS Protocol on the Fight against Corruption, signed on 15 December 2006

14. In addition to signing these regional and international legal instruments, the Niger has taken legislative and regulatory measures to ensure compliance with the regional and international commitments entered into for the protection and promotion of the human rights of all citizens of the Niger and foreign nationals living in the country.

B. General legal framework under which torture and other cruel, inhuman or degrading treatment or punishment is prohibited

15. The prohibition of torture and other cruel, inhuman or degrading treatment is given expression through:

- Article 14 of the Constitution, which provides: “No one may be subjected to torture, slavery, abuse or cruel, inhuman or degrading treatment. Any individuals or agents of the State who, during the exercise of their functions, commit acts of torture, abuse or cruel, inhuman or degrading treatment, whether on their own initiative or under orders, shall be punished in accordance with the law.”
- The Criminal Code, which, while not defining torture specifically, establishes other offences that cover violations of physical and mental integrity, such as war crimes, genocide, homicide, assault and battery, physical or verbal abuse, ill-treatment, mutilation, slavery, trafficking in persons, threats and extortion
- The Labour Code, which prescribes punishment for violence in the workplace
- Act No. 2017-008 of 31 March 2017 on the basic principles of the prison system, which prohibits the ill-treatment of persons deprived of their liberty
- Monitoring visits to places of deprivation of liberty by the judicial and administrative authorities

16. The Niger has been a party to the Convention against Torture since 5 October 1998. The Niger is also a party to the instruments protecting rights and human dignity listed in paragraph 12 above.

17. The status of the Convention in the domestic legal system is governed by articles 170 and 171 of the Constitution. Article 170 establishes that when “an international undertaking contains a clause that is unconstitutional, authorization to ratify that undertaking may be given only after amending the Constitution”. Article 171 stipulates that “duly ratified international treaties or agreements shall, following their publication, take precedence over national laws, subject, for each agreement or treaty, to its application by the other party”.

18. The prohibition against torture and other cruel, inhuman or degrading treatment is a provision applicable *erga omnes*, from which no derogation is permitted, and it has therefore been enshrined in the Constitution. As a constitutional provision, it may not be contradicted by subsidiary legislation. No circumstances, including a threat of war, internal political instability, a threat to security or any other public emergency, may be invoked as a justification for torture. Although a bill on torture has yet to be adopted, acts that amount to torture are covered under other offences in the Criminal Code. Due obedience, superior orders and immunity connected with official capacity may not be invoked as justifications.

19. The fact that article 171 of the Constitution accords primacy to international treaties does not release the country from the obligation to define torture in national criminal law and establish the appropriate penalty. In accordance with the principle of the legality of offences and penalties, a judge cannot invoke article 1 of the Convention when describing the elements of an unlawful act and determining the applicable penalty.

20. As the Convention has not been incorporated into the domestic legal order, it cannot be invoked before the criminal courts. However, it may serve as a basis for pursuing claims for damages before civil courts at the national or regional level (such as the ECOWAS Court of Justice or the African Court on Human and Peoples’ Rights).

21. The judicial, administrative or other authorities competent to handle matters dealt with in the Convention are listed below.

Judicial institutions

- Both ordinary and specialized courts, namely criminal courts, the military tribunal, the indictments chambers and criminal chambers of appeal courts, assize courts, the criminal division of the Court of Cassation, and the High Court of Justice, have jurisdiction over offences relating to torture and similar offences. The principles governing the administration of justice by the courts include impartiality, the presumption of innocence, equality, legality, fairness, the adversarial principle, the right to a second hearing and the right to humane treatment.
- The Constitutional Court handles matters of interpretation and consistency with respect to national law and the regional and international legal instruments for the protection and promotion of human rights that the Niger has signed and ratified, including the Convention.
- The Council of State is competent, in sole instance, to receive appeals for judicial review of final rulings by administrative courts and applications to quash administrative decisions.

Administrative authorities

- The National Human Rights Commission is an independent constitutional body endowed with legal personality. Its central mission is to ensure the promotion, protection and defence of human rights. It complies with the Paris Principles. In its mission to protect the rights of citizens against arbitrary acts and abuses on the part of the administration, the Commission deals with petitions concerning human rights violations in general and cases of torture and other cruel, inhuman or degrading treatment or punishment in particular. It verifies alleged human rights violations and proposes remedies or penalties.
- The Office of the Ombudsman was established by Act No. 2011-18 of 8 August 2011, as amended and supplemented by Act No. 2013-30 of 17 June 2013, and is responsible for settling disputes between citizens and the administration independently of the courts. It is an independent administrative authority that receives complaints concerning relations between government departments and the people they serve and the functioning of State agencies, local and regional authorities, public establishments and all other public service bodies.
- Disciplinary bodies for civil servants impose penalties on any public official who commits torture. The penalties range in severity from a warning to dismissal.

Defence and security forces

- The police, gendarmerie, National Guard, army, customs, water and forestry authorities ensure order and discipline within their units and, without prejudice to judicial proceedings, can impose penalties on officers involved in the commission of acts of torture.

22. Under article 2 of the Code of Criminal Procedure, victims and their beneficiaries have the right to bring actions before the courts to seek compensation for injury suffered. This article provides: “A civil action to seek compensation for harm caused by a serious, ordinary or minor offence may be brought by anyone who has suffered personally from the harm directly caused by the offence.”

II. Information in relation to each substantive article of the Convention

Article 1

Definition of torture

23. Article 1 of the Convention stipulates that the term “torture” means “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. The term does not include “pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

Situation of the Niger, which has ratified the Convention against Torture

National legal framework

- The Constitution of 25 November 2010

24. Article 14 of the Constitution provides: “No one may be subjected to torture, slavery, abuse or cruel, inhuman or degrading treatment. Any individuals or agents of the State who, during the exercise of their functions, commit acts of torture, abuse or cruel, inhuman or degrading treatment, whether on their own initiative or under orders, shall be punished in accordance with the law.”

- The Criminal Code and the Code of Criminal Procedure

25. The Criminal Code (art. 222 et seq.) prescribes punishment for assault and battery and other intentional ordinary and serious offences against the person. Articles 208.1 to 208.4, concerning genocide, war crimes and crimes against humanity, prohibit practices that violate human dignity and physical integrity, such as biological experiments.

26. In addition, article 71 (5) of the Code of Criminal Procedure stipulates that “whenever a person is brought before a court, a medical certificate must be presented attesting that the individual has not suffered ill-treatment”.

27. These various provisions show that torture does not go unpunished and that, despite the lack of a specific definition, perpetrators are liable to criminal punishment under other offences.

28. Although Act No. 2014-72 of 20 November 2014 determining the jurisdiction, responsibilities and functioning of juvenile courts in the Niger does not include the word “torture”, it does mention cruel, inhuman or degrading treatment. Article 2 stipulates that “the provisions of this Act shall apply to all persons, regardless of their gender, race, ethnicity, religion, colour or nationality”.

29. Children are imprisoned only as a last resort and, in all cases, for as short a time as possible.

30. Children in conflict with the law must be treated with dignity. They must not be subjected to cruel, inhuman or degrading treatment. Violence against children in all its forms is banned.

31. With regard to trafficking in persons, the Niger adopted Ordinance No. 2010-86 on 16 December 2010. Article 79 sets out the grounds on which the State may refuse to extradite a person, namely if the person who is the subject of the extradition request risks being subjected to torture or to treatment or punishment that would be considered inhuman or degrading under international law.

32. Articles 3, 16 and 38 of Act No. 2015-36 of 26 May 2015 on migrant smuggling deal with torture and cruel, inhuman or degrading treatment.

33. Article 3 of the Act, which contains various definitions, defines non-refoulement as “the prohibition on a State to return a person in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion, or where he would be at risk of being subjected to torture, inhuman and degrading treatment or other forms of irreparable harm”.

34. Article 16 of the Act establishes aggravating circumstances for the offence of smuggling of persons, including when “the offence is accompanied by circumstances that entail the inhuman or degrading treatment, including for exploitation, of smuggled migrants, or the offence results in the serious injury or death of the trafficked migrant or a third party, including death by suicide”.

35. Article 38 provides: “The competent authority ensures that any planned or actual return of a trafficked migrant complies with international law, particularly human rights law, refugee law and humanitarian law, including the principle of non-refoulement, the principle of non-discrimination, the right to life, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and, where a child is involved, the best interests of the child.”

36. Article 22 of Act No. 2017-008 of 31 March 2017 on the basic principles of the prison system in the Niger provides: “No prisoner shall be subjected to torture or to abuse or cruel, inhuman or degrading treatment for any reason whatsoever.”

37. However, despite these constitutional and legal prohibitions, which show that lawmakers have stepped up their efforts to align national law with the international legal instruments ratified by the Niger, there is no legal definition of torture.

38. This legislative overview shows that steps are being taken to align domestic law with the international commitments of the Niger. These steps include a bill on torture and other cruel, inhuman or degrading treatment, which is in the process of being adopted.

Article 2

Measures taken to prevent torture

39. With regard to article 2, a number of steps have been taken to ensure that national legislation provides for measures to implement the Convention. Although national legislation has certain shortcomings in this regard, such as the lack of a definition of a torture in accordance with the Convention, there has nevertheless been some progress.

Effectiveness of the measures taken

40. The Constitution prohibits torture and cruel, inhuman or degrading treatment. The Criminal Code provides for the punishment of perpetrators, co-perpetrators and accomplices in acts of torture under other charges. This indicates that there is no impunity in such cases. In proceedings brought by victims or initiated by the public prosecution service, the courts punish perpetrators, co-perpetrators and accomplices regardless of their status. Victims and/or their beneficiaries receive compensation. Several persons have been prosecuted and brought before the courts in implementation of these measures. Others have been given administrative penalties. Specific cases include:

- The prosecution and imprisonment of police officers who tortured a student arrested during a demonstration in Niamey in April 2017; they were sentenced to 2 years’ imprisonment and ordered to pay damages to the victim
- The prosecution and imprisonment of a prison officer who committed acts of violence that caused the death of a prisoner at the N’Guigmi detention facility in September 2016

- The imposition of administrative penalties on officers of the National Guard who subjected a detainee to cruel, inhuman and degrading treatment in 2016 at the detention facility in Keita
- The prosecution and imprisonment of three officers of the National Intervention and Security Forces in 2002 for the kidnap, rape, abuse and use of violence against a young girl arrested during a patrol in Guidan Roumji
- The prosecution and imprisonment of gendarmes who, in 1999, used physical violence against two brothers suspected of stealing a bicycle in the village of Dogona, resulting in the amputation of all four lower and upper limbs of each victim
- The prosecution and imprisonment, in 1999, of a traditional chief for acts of torture and inhuman and degrading treatment against “his people” in Tchintabaraden
- The imposition of criminal and administrative penalties on military personnel who committed acts of physical and mental violence against new army recruits
- The prosecution, in 2006, of midwives at Niamey Regional Hospital for abusing a woman and her attendant, forcing the patient to give birth in the hospital’s courtyard

Non-derogation

41. There is no derogation in such cases. However, prosecutions are sometimes hampered by the period of limitation and amnesty.

Legislation and jurisprudence with regard to the prohibition on invoking superior orders as a justification for torture

42. Pursuant to article 171 of the Constitution, the Convention can be invoked before the courts (the Constitutional Court and the Council of State).

43. The Criminal Code defines and provides for the punishment of violations of physical 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).

44. Article 1 of the Act stipulates that “no one shall be required to carry out a manifestly unlawful order”.

45. 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”.

Cases in which a subordinate can oppose an order to commit acts of torture

46. These cases are listed in Act No. 2002-05. There are several regulatory instruments governing the work of the defence and security forces that detail the cases in which a subordinate may refuse to obey an unlawful order. These include Decree No. 2011-164/PCSRD/MIS/D/AR of 31 March 2011 approving the Professional Code of Ethics of the National Police and Order No. 257/MI/SP/D/ACR/GNN of 3 April 2015 approving the General Disciplinary Regulations. Article 30 of the Regulations, for example, provides that:

Superiors have the right and a duty to demand obedience from subordinates; however, they may not require their subordinates to carry out manifestly unlawful orders where doing so would incur criminal responsibility for themselves or their subordinates. These acts are:

- Acts contrary to the laws and customs of armed conflict;
- Acts that constitute serious or ordinary offences against State security, the Constitution or public order;
- Acts violating a person’s right to life, integrity or freedom, or violating property rights, where not justified by law.

Impact of due obedience on the implementation of the prohibition of torture

47. The position of the public authorities with regard to due obedience has had the following impact on the implementation of the prohibition of torture:

- Law enforcement officials and individuals no longer commit acts of torture.
- The accountability of relevant actors has been strengthened through the regulation of due obedience. For all public servants, the prohibition against carrying out a manifestly unlawful order is set forth in article 26 of Act No. 2007-26 of 23 July 2007 on the General Public Service Regulations. Public servants are required to carry out only superior orders that comply with laws and regulations.
- Article 119 of Act No. 2004-003 of 12 January 2004 on the autonomous status of officers of the National Police requires them to obey only those superior orders that comply with laws and regulations.
- Article 15 of Decree No. 94-101/PRN/MDN of 23 January 1994 establishing the regulations on military service also stipulates that military personnel must follow orders in strict compliance with laws and regulations (first part, on general discipline).
- Article 7 of Act No. 2006-16 of 21 June 2006 on reproductive health in the Niger provides that: “Everyone has the right to freedom from torture and cruel, inhuman or degrading treatment of the body in general and the reproductive organs in particular. All forms of sexual abuse and violence against the human person are prohibited and punished by law.”

Article 3

Domestic legislation with regard to the prohibition of expulsion, return or extradition

48. Article 14 of the Constitution prohibits torture: “No one may be subjected to torture, slavery, abuse or cruel, inhuman or degrading treatment. Any individuals or agents of the State who, during the exercise of their functions, commit acts of torture, abuse or cruel, inhuman or degrading treatment, whether on their own initiative or under orders, shall be punished in accordance with the law.”

49. Article 11 affirms the sanctity of the human person and the State’s absolute obligation to respect and protect the human person. Several laws, including the Criminal Code, strengthen this provision by establishing penalties for those who violate it.

50. The country’s legislation and practices concerning terrorism, emergency situations, national security or other grounds and their impact are based on ratified international legal instruments and the State’s extradition law. The latter requires that the rule of reciprocity be applied in the context of bilateral conventions.

51. The authority responsible for approving extraditions is in practice always designated by the relevant convention. Generally speaking, the Court of Appeal is the court empowered to adjudicate following due referral by the central authority designated by the convention and upon application by the requesting State. Order No. 81-40 of 29 October 1981 on the entry and stay of foreign nationals in the Niger governs the expulsion, return and removal of persons. The Ministry of the Interior exercises discretion in taking administrative decisions on such matters. Following an appeal to a higher administrative authority, proceedings can be brought before the Council of State, as sole instance, to quash these decisions on grounds of illegality.

52. The training for civil servants who deal with these matters generally forms part of their induction training at the beginning of their careers. There are no specialized or standardized training courses on such matters, which make up only a small part of their daily activities.

Article 4

Legislation criminalizing torture in terms that are consistent with the definition in article 1

53. Although torture is not a specific offence in the Niger, acts amounting to torture are covered, and punishment prescribed for them, under other offences, depending on their severity. These offences include assault and battery, female genital mutilation, castration, violations of physical or mental integrity, harm to health and slavery. The penalties include imprisonment, life imprisonment and even death.

54. Article 208.3 of the Criminal Code reads as follows:

The following grave breaches, which, by action or omission, cause harm to persons and property protected under the Geneva Conventions of 12 August 1949 and Additional Protocols I and II thereto of 1977, shall constitute war crimes:

- (1) Wilful killing;
- (2) Torture or inhuman treatment, including biological experiments;
- (3) Wilfully causing great suffering or serious injury to body or health.

55. Acts of torture are covered under the humanitarian law offences set out in Act No. 2003-010 of 11 March 2003 establishing the Military Justice Code, including in its articles on genocide and crimes against humanity. Article 317 of the Act, for example, stipulates that:

Genocide is an act carried out in pursuance of a concerted plan to destroy, wholly or in part, a national, ethnic, racial or religious group or a particular group on the basis of any other arbitrary criterion, or to commit or cause to be committed against members of that group one of the following acts:

- (1) Attempted homicide;
- (2) Causing serious bodily or mental harm;
- (3) Inflicting on the group living conditions conducive to its physical destruction in whole or in part;
- (4) Imposing measures intended to prevent births within the group;
- (5) Forcibly transferring children.

56. Article 319 contains a definition of a crime against humanity identical to that contained in the Criminal Code, mentioned above.

57. Articles 318 and 320 of the Military Justice Code lay down the death penalty for the offences of genocide and crimes against humanity. The Criminal Code also lays down the death penalty for these two offences.

58. Neither the Criminal Code nor the Military Justice Code contains specific provisions defining torture and other cruel, inhuman or degrading treatment or punishment. Both texts stipulate that these offences are not subject to a period of limitation. For information on the number and nature of cases in which the provisions in question have been applied, see article 3.

Article 5

States parties' legal duty to establish jurisdiction over the crimes mentioned in article 4

59. Article 14 of the Constitution stipulates that acts of torture are to be punished in accordance with the law, in this case the Criminal Code, which covers acts amounting to torture without actually defining torture. The question of how effectively article 5 of the Convention is being implemented requires the Criminal Code and the Code of Criminal Procedure to be read together, so as to address the various points raised.

60. Article 14 of the Constitution sets out the principle of the prohibition of torture and other cruel, inhuman or degrading treatment. This prohibition applies to all individuals, whether State officials or ordinary citizens. The shortcoming of the provision is that it leaves the matter of punishment to be determined in accordance with the law. As currently drafted, neither the Criminal Code nor the Code of Criminal Procedure defines and prescribes punishment for the offence of torture as such.

61. Nevertheless, as the Niger has a monistic legal system, judges may prosecute and punish acts of torture *motu proprio* on the basis of international instruments. They may do so by invoking article 171 of the Constitution, which provides that “duly ratified international treaties or agreements shall, following their publication, take precedence over national laws, subject, for each agreement or treaty, to its application by the other party”.

State party’s jurisdiction over offences committed in its territory

62. The territorial principle is one of the principles underpinning law enforcement in the Niger. All persons who commit acts of torture in the country are prosecuted, irrespective of their nationality.

63. As the Criminal Code does not contain an explicit definition of torture, the Code of Criminal Procedure does not provide for a special procedure for punishing torture. However, acts amounting to torture are prosecuted and punished under other offences, such as assault and battery.

When the alleged offender is a national of the country

64. The territorial principle dictates that the law applies to all offenders, irrespective of whether they are nationals of the Niger. The nature of the offence and any foreign component have no bearing on the jurisdiction of the courts of the Niger. The criminal responsibility of the perpetrator is established in accordance with article 41 of the Criminal Code. Once again, perpetrators of acts of torture are punished under domestic law, even though it contains no definition of torture.

When the victim is a national of the country

65. By virtue of their status, victims are entitled to bring criminal proceedings under the conditions set out in articles 1 to 10 of the Code of Criminal Procedure, independently of any criminal proceedings initiated by the prosecutors and public servants empowered to do so. Article 3 is instructive in this regard, as it provides that: “Civil proceedings may be conducted alongside criminal proceedings, unless prohibited by article 6 (3). Such claims are admissible for all types of injury, whether bodily or mental, resulting from the acts that are the subject of the proceedings. The injured party is entitled to claim compensation from the criminal court not only for physical or moral injury but also for material damage caused by the same act, even if the indictment does not mention any related minor offence that has caused material damage.”

66. Article 642-1 of the Code of Criminal Procedure provides for this option even in cases in which the offence was committed abroad, provided that the victim is a national of the Niger.

Cases where the alleged offender is present in the territory of the reporting State and the latter does not extradite him or her

67. As torture is not a specific offence in the Niger, there are no specific measures in national law to grant the courts the power to exercise jurisdiction over it.

68. Although torture is not defined as a specific offence, the courts in the Niger are competent to try any individual who has committed an act of torture under other offences, provided that he or she is located in the country’s territory. In accordance with the general international law principle of *aut dedere aut judicare*, if the Niger fails to prosecute such an individual, it is required to extradite him or her to a State that has made an explicit request to this effect. This request can be based on the following grounds: the nationality of the victim, the nationality of the perpetrator, the territory in which the offence was committed

or the principle of universal jurisdiction. This is enshrined in article 649-14 of the Code of Criminal Procedure, as amended by Act No. 2016-21 of 16 June 2016, as follows: “The courts of the Niger have jurisdiction over any offence if the presumed offender is located in the territory of the State of the Niger and is not being extradited by the Niger to another State that has made a request to this effect. This competence is established independently of the presumed offender’s nationality or status as a stateless person and independently of where the offence was committed.”

Article 6

Exercise of jurisdiction by the State party, particularly the investigation of a person alleged to have committed an act of torture

69. The provisions of domestic law concerning the detention of persons suspected of having committed acts of torture and other measures to ensure their presence are contained in the Code of Criminal Procedure (art. 131 et seq.). These are general provisions that apply to all offences.

70. There is no specific legal provision for a right to consular assistance. However, the public prosecution service is required to transmit the name of the presumed offender and the charges against him or her to the diplomatic mission if a treaty or legal cooperation agreement is in force between the requested State and the requesting State.

71. The public prosecution service is required to notify the States concerned through diplomatic channels.

72. There is no notification requirement under ordinary law when the offence is punishable in the Niger.

73. However, if the offence is committed by a foreign national or a Niger national abroad who is arrested in the Niger, the proceedings are subject to an official approach from the authorities of the State in which the offence was committed (Code of Criminal Procedure, art. 644).

74. As for the authorities responsible for implementing the various aspects of article 6 of the Convention, reference should be made to section VII of the Code of Criminal Procedure, particularly articles 131 to 143, 143-1 to 143-4, and 657 to 661, on pretrial detention. The authorities in question are the prosecution service, the investigating authorities, and diplomatic missions and consulates.

75. There have been no cases in which the measures provided for in article 6 (1) have been applied.

Article 7

Obligation of the State party to initiate prosecutions relating to acts of torture unless it extradites the alleged offender

76. It should be recalled that the criminal law of the Niger has not defined torture as a specific offence. However, its constituent elements are found in certain offences against international humanitarian law included in the Criminal Code. In all cases of torture brought to the attention of the courts, legal proceedings are systematically instituted on other charges set out in the Criminal Code, such as violation of physical or mental integrity.

77. By law, the alleged offender in such prosecutions has the right to legal counsel, the right to be presumed innocent until proven guilty, the right to equality before the courts and the right to put forward evidence at every stage of the proceedings.

Right to legal counsel

78. In the Niger, any person being prosecuted for a criminal offence has the right to retain a lawyer, in accordance with article 71 (3) of the Code of Criminal Procedure, which provides that: “The suspect shall be notified of his or her right to retain a lawyer after 24

hours in custody, failing which the proceedings may be declared null and void.” This provision has been superseded by article 5 of Regulation No. 05/CM/UEMOA on the harmonization of the rules governing the legal profession in the West African Economic and Monetary Union, which stipulates that: “Lawyers assist their clients from the time they are first interrogated, during the preliminary investigation, at police stations or gendarmeries, or before the prosecutor. At this stage, the lawyer is not required to provide any letter of appointment. Lawyers assist and defend their clients from the initial hearing before the investigating judge.”

79. The right to counsel, and more specifically to legal aid and assistance, is regulated in the Niger in order to facilitate access to justice and to uphold the principles of a fair trial, including the principle of “equality of arms”. In order to ensure the proper administration of justice, any defendant who has not retained a lawyer is assigned one by the court. The same applies to defendants who are minors. Article 10 of Act No. 2014-72 of 20 November 2014, on the composition, organization and functioning of juvenile courts, provides that:

Minors in custody have the right to counsel. This counsel may be chosen by the minor’s parents, legal representatives, guardian, or the person or service with responsibility for the minor. Failing that, the public prosecutor refers the case to the juvenile judge, who appoints a lawyer or counsel as appropriate to defend the minor, from the start of the interrogation. Minor victims or witnesses must be assisted by an appointed lawyer or counsel. If a lawyer has not been chosen for a minor victim or witness by the minor’s parents, legal representatives, guardian, or the person or service with responsibility for the minor, the juvenile judge to whom the case is referred by the public prosecutor appoints a lawyer or counsel as appropriate.

80. To give effect to this right, the National Agency for Legal Aid and Assistance was established pursuant to Act No. 2011-42. Articles 4 and 5 of the Act set out the conditions for access to legal aid and assistance, ensuring that it is provided free of charge and without discrimination.

81. The Agency is responsible for ensuring that legal aid and assistance are available to certain categories of vulnerable persons and to those who cannot afford the cost of a trial.

82. The Agency contributes to the development and implementation of national policies on legal aid and assistance and coordinates all related activities. It is also responsible for keeping the dialogue open between the different actors and for organizing financial, material and human resources.

83. The establishment of the National Agency for Legal Aid and Assistance and its 10 local offices in the high courts enabled 1,656 persons to receive legal aid or assistance in 2015; of these, 1,096 received legal assistance and 560 received legal aid.

Presumption of innocence

84. Article 20 of the Constitution provides that:

Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he or she has had all the guarantees necessary for his or her defence. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.

85. The Criminal Code and the Code of Criminal Procedure strengthen the presumption of innocence by setting out the principles that give effect to it, particularly the adversarial principle, the principle of legality, the open court principle and the principle of impartiality.

86. Avenues of appeal are also provided. The legal system of the Niger recognizes the right to a second hearing, generally through an appeal against first-instance decisions. The presumption of innocence applies to all suspects, accused persons and defendants without discrimination.

Right to equality before the courts

87. This derives from the principle of the equality of citizens before the law, as set out in article 8 of the Constitution, which states: “The Republic of the Niger is governed by the rule of law. It guarantees equality before the law for everyone without distinction as to sex or social, racial, ethnic or religious origin.” The justice system, as a public service, is free and open to all without discrimination.

Application of the standards of evidence required for prosecution and conviction even when the alleged offender is a foreign national

88. The rules of evidence for criminal cases are set out in the Code of Criminal Procedure. Under the provisions of the Code (arts. 12, 14, 30, 40 and 44), the burden of proof falls on the prosecution and the accused has the benefit of doubt. The principle of non-discrimination described above applies to all persons resident in the Niger without distinction.

Examples of implementation of these measures

89. For cases of extradition, please refer to the responses given concerning article 3 of the Convention. It should be pointed out that the Niger has signed agreements on judicial cooperation with several countries, including Mali in 1960, France in 1977, Algeria in 1984, China in 2001, Libya in 2008 and Nigeria in 1990. It also signed a tripartite judicial cooperation agreement with Chad and Mali in May 2017 in Niamey.

90. Examples of implementation include:

- The extradition of four Chadian nationals in 2017 for offences under ordinary law committed in their country
- Surrender to the International Criminal Court of the Malian national Ahmad Al Faqi Al Mahdi for war crimes committed in his country in 2016 (destruction of mausoleums in Timbuktu)

Article 8**Recognition by States parties of torture as an extraditable offence, and implementation of the measure**

91. It should be recalled that torture and related crimes are not defined in law as specific offences. However, the Niger considers them to be extraditable since it has ratified the Convention against Torture, which provides in article 8 (2) that it may be used as a basis for extradition.

Existence of a treaty as a precondition for extradition

92. The Niger does not necessarily make extradition conditional on the existence of an extradition treaty, since it is a signatory to the Convention against Torture. However, the Niger is a party to several bilateral and multilateral extradition treaties. These include the United Nations Convention against Transnational Organized Crime (article 16 (13) and (14) concern extradition), the ECOWAS Convention on Extradition and the Convention on Cooperation and Mutual Assistance in Matters relating to Justice between the States Members of the Council of the Entente.

The Convention as the basis for extradition for offences considered to be extraditable under domestic law

93. As well as the Convention against Torture, the Niger can use the bilateral conventions mentioned above as a basis for extradition for torture and related crimes.

Treaties with other States that include torture as an extraditable offence

94. The Niger has no extradition treaty or convention specific to torture and other related offences.

Cases where the State party granted the extradition of persons alleged to have committed any of the offences referred to above

95. There are no known cases.

**Article 9
Mutual judicial assistance**

96. The Niger is a party to several conventions on cooperation in relation to mutual judicial assistance, although they are not specific to torture. For example, it is a party to the United Nations Convention against Transnational Organized Crime and several universal counter-terrorism instruments.

97. On a regional level, the Niger is a party to the relevant ECOWAS instruments (Convention on Mutual Assistance in Criminal Matters, of 1992; Convention on Extradition, of 1994) and African Union instruments (OAU Convention on the Prevention and Combating of Terrorism, of 1999). The Niger has also signed cooperation, mutual judicial assistance and extradition treaties with countries such as Mali, Chad, Switzerland, France, Algeria, Nigeria, China and Libya.

98. No cases of torture in which mutual judicial assistance has been sought have been recorded.

**Article 10
State party's obligation to provide training on matters related to the prohibition of torture and cruel, inhuman or degrading treatment or punishment**

99. Police training makes no specific reference to provisions on the prohibition of torture. In practice, however, an ethics course covers aspects of the prohibition of torture and is taught at the police academy. In criminal procedure classes, particularly during the training on pretrial investigation proceedings, emphasis is placed on the need to respect the dignity of citizens and the obligation to refrain from using any form of violence or physical abuse on persons under interrogation. The aim is to prohibit all forms of abuse and torture. The same training is provided for trainee judges at the National Civil Service and Judiciary Training School (ENAM). In addition, several private higher education institutions have introduced courses on human rights and international humanitarian law which are accessible to all interested persons.

100. Since the academic year 2017/18, judges have no longer been trained at ENAM because an institution has been established that is specifically designed for the initial and continuing training of judges and officers of the court (the Judicial Training Academy of the Niger). The training includes specific modules on human rights.

101. Human rights are also taught in the initial or continuing training programmes at several public and private institutions in the fields of health and education, such as the National School of Public Health and the Training College for Primary-School Teachers.

102. As part of the partnership between the Ministry of Justice and the Danish Human Rights Institute, a human rights training programme has been developed for the defence and security forces and the judiciary. A manual has been produced and is used as a teaching aid for the training provided on the subject to these target groups. Moreover, working with the United Nations Development Programme and the Office of the United Nations High Commissioner for Human Rights, the Ministry of Justice has organized a series of training courses in this area. The International Organization for Migration has also trained defence and security force personnel and judges in the use of investigative techniques in cases of trafficking in persons and smuggling of migrants. Several more training-for-trainers courses have been provided for officers of the National Guard, the police and the gendarmerie, organized both by the Government and by non-governmental organizations.

103. In terms of the promotion and protection of human rights in prison, several training courses were provided in 2015 for the medical personnel of correctional facilities and prison officers, including in Kollo, Tahoua and Zinder. This training is part of a programme to improve and update living conditions for detainees.

104. Furthermore, a human rights manual and training guide were produced by the Ministry of the Interior for the National Guard, with support from the Danish Human Rights Institute and the Faculty of Economics and Law, in 2006 and 2010 respectively. In 2016 and 2017, 176 National Guard members were trained in human rights in general, and the prohibition of torture in particular.

Training of medical personnel

105. In general, the training received by health-care professionals at schools of public health highlights the ethical rules applicable but does not directly mention the prohibition of torture and cruel, inhuman or degrading treatment.

106. During their training, doctors are taught to approach patient care from the viewpoint of both mind and body. For example, the course on forensic medicine for sixth-year students at Abdou Moumouni University covers physical and psychological violence.

107. The training programme provided relates to the human person in general. It therefore helps medical personnel recognize any physical or psychological harm or trauma caused by acts of rape, assault and battery, homicide or any other form of violence.

108. A module highlighting gender-based violence is taught in the third year of the basic social work course at the National School of Public Health, although it does not address the legal aspects of the issue.

109. Regarding complaints, one incident was reported to the health minister in 2006 in an open letter from a trainee lawyer on an internship. The woman she was helping had been forcefully reproached, leaving her feeling frustrated and distressed. The woman had given birth in the Niamey Regional Hospital Centre without receiving care.

110. A complaint had been filed with the competent courts and the midwives responsible had been punished, in accordance with the Criminal Code.

111. A 10-hour course on criminal law is provided in schools of health.

112. The Army School of Health, which offers the same programmes taught in civilian institutions, now offers options such as international humanitarian law and children's rights.

113. These subjects are taught to all year groups and highlight the prohibition of such practices and their punishment.

Effectiveness of the various programmes

114. There is currently no mechanism in place to assess the effectiveness of these programmes.

Article 11 and related article 16

Systematic review of the implementation of rules regarding the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, and preventive measures

115. Article 18 of the Constitution provides that "no one may be arrested or charged except under a law that was in force prior to the commission of the acts imputed to him or her". Similarly, article 131 of the Code of Criminal Procedure provides that:

Pretrial detention is an exceptional measure. It can only be ordered or maintained in the following cases:

- (1) When pretrial detention of the accused person is the only way of preserving material proof or evidence or of preventing either intimidation of the witnesses or victims or collusion between defendants;

(2) When such detention is the only way of protecting the accused person, ensuring the accused person can be brought before a court, putting an end to the offence or preventing its repetition;

(3) When the offence, owing to its serious nature, the circumstances in which it was committed or the extent of the harm it caused, has led to an exceptional and ongoing disturbance of public order, which only detention can bring to an end.

116. In addition to these measures to regulate pretrial detention, there are also provisions to protect persons deprived of their liberty. This protection begins at the preliminary investigation stage, when the investigating officer must immediately notify the person in custody of his or her right to choose a lawyer. The new amendments to the Code of Criminal Procedure (art. 71 (5)) also require the investigating officer to include a medical certificate with the police report, certifying that the person in custody has not been ill-treated.

117. Foreign nationals are subject to the same legislation as nationals of the Niger. Regarding diplomatic or consular notification, cases involving foreign nationals are governed by the reciprocal agreements and mutual judicial assistance conventions signed by the Niger and other countries. For migrant workers, their national authorities must also be informed.

118. Articles 132 to 134 of the Code of Criminal Procedure regulate the maximum duration of pretrial detention, which depends on the gravity of the offence.

119. Regarding the degree to which the minimum rules and principles for the treatment of prisoners are reflected in domestic law, the applicable law in the Niger is Act No. 2017-008 of 31 March 2017 on the basic principles of the prison system. Under this law, detained persons have the right to food, health care, visits, hygienic living conditions, leisure, correspondence, maintenance of family ties, a bed and clothing. In practice, however, the effective exercise of these rights is affected by a lack of resources.

120. No person deprived of liberty may be subjected to cruel, inhuman or degrading treatment. Article 22 of the Act provides that: “No prisoner shall be subjected to torture or to abuse or cruel, inhuman or degrading treatment for any reason whatsoever.”

121. Decree No. 99-368 of 3 September 1999 stipulates the type of disciplinary sanctions that may be imposed. These sanctions range from a reprimand to placement in a punishment cell for up to one month, with the possibility, if necessary, of using handcuffs or shackles.

122. Under article 34 of Act No. 017-009 of 31 March 2017 on specific regulations for prison service personnel, the latter are required to perform their duties fairly, efficiently and impartially, in compliance with laws and regulations. Article 39 of the Act requires that prison personnel enforce laws and regulations without abuse of authority and with complete impartiality.

123. It should be noted that, since the introduction of human rights training for the wardens, head guards and directors of prisons, the prisoners have been better treated. Even in cases of misconduct, they only receive light punishments such as the housekeeping duties stipulated in the prison rules.

124. Doctors and other health-care personnel are subject to a strict code of ethics and an oath that requires them to treat patients with respect, dignity and humanity.

125. A code of ethics for judges has been drafted and is currently in the process of adoption. Prison guards are governed by Ordinance No. 010-020 on establishing an autonomous National Guard corps. The Ordinance is reinforced by Order No. 257/MI/SP/D/ACR/GNN of 3 April 2015 on general disciplinary regulations. Pending the formation of the new prison service established by Act No. 2017-009 of 31 March 2017, the National Guard remains responsible for prisoners.

126. The police have a code of conduct enshrined in Decree No. 2011-164/PCSRD/MIS/D/AR of 31 March 2011, adopting the code of ethics for the national police.

127. There is no independent inspection mechanism for places of deprivation of liberty. However, the Ministry of Justice (through the Inspectorate General of Judicial and Prison Services), the prosecution services of the Courts of Appeal, the indictment chambers and the Ministry of the Interior (through the Inspectorate General of the Security Services) are responsible for inspecting prisons and other places of detention under their respective mandates.

128. Furthermore, as part of its work to protect and defend human rights, the National Human Rights Commission makes regular visits, both announced and unannounced, to places of detention and makes recommendations to the competent authorities (Act No. 2012-44 of 24 August 2012 on the composition, organization, functions and operation of the National Human Rights Commission, art. 19).

129. In the Niger, places of detention are defined by law. They may be prisons, police stations, gendarmeries or offices of the investigative branch of the National Guard.

130. The mechanisms that oversee the conduct of law enforcement personnel in charge of the interrogation and custody of persons held in detention or in prison are described above (inspectorates, the public prosecution service, indictment chambers). The aim of the inspections they carry out is to dissuade and, if necessary, impose sanctions for breaches of the legislation on detention. They also serve an educational purpose, in that they highlight the training needs of officers.

131. Persons deprived of their liberty, especially women, children, persons with a disability and elderly persons, are considered to be particularly at risk of torture.

132. The safeguards for the protection of these at-risk individuals are the same as those discussed in relation to the systematic review of the implementation of rules regarding the custody and treatment of any person subjected to any form of arrest, detention or imprisonment.

133. It should be noted that, in recent years, specific accommodation for women and children has been established in places of deprivation of liberty, in order to comply with relevant international norms and standards. For example, approximately 20 accommodation units for minors were built in 2015, in addition to those that already existed.

Article 12 and related article 16 Implementation of procedures for investigation by the competent authorities of allegations of torture

134. At the criminal level, acts of torture are a matter for ordinary law and are prosecuted under the applicable procedures.

135. Under article 39 of the Code of Criminal Procedure: “The public prosecutor receives complaints and reports of wrongdoing and decides how to deal with them. Where proceedings are discontinued, he or she notifies the complainant. Any duly constituted authority, public official or civil servant who, in the discharge of his or her duties, is made aware of a criminal offence must report it immediately to the public prosecutor and transmit to the latter all relevant information, official records and documentation.”

136. Victims of such acts also have the option of filing a report with the criminal investigation police. If the latter fail to take action, victims can take their case directly to the public prosecution service. If the public prosecutor dismisses their complaint without further action, victims may apply for a review of their case or, under article 80 of the Code of Criminal Procedure, “institute civil proceedings by filing a complaint with the competent investigating judge”. The investigating judge to whom the complaint is submitted is under an obligation to investigate the case by making all necessary inquiries to establish the truth and, if necessary, to refer the case for trial.

137. Lastly, victims may require the perpetrator(s) and accomplice(s) to appear before the competent trial court by issuing a direct summons.

138. Article 45 of Act No. 2017-008 of 31 March 2017 on the basic principles of the prison system provides that: “Prisoners or third parties acting on their behalf may lodge confidential complaints against prison personnel in the event of ill-treatment or inhuman or degrading treatment.”

139. Article 46 of the Act stipulates that: “A prompt, thorough and impartial investigation shall be carried out into all allegations of torture or other ill-treatment and into any suspicious death in custody.”

140. At the disciplinary level, the supervisory authority may take any action necessary to determine the responsibility of officers who commit acts of torture, without prejudice to any criminal penalties incurred.

141. Article 71 (5) of the Code of Criminal Procedure requires investigating officers to present a medical certificate for all persons brought before a court, attesting that the person has not suffered ill-treatment.

142. One example of a prosecution resulting in a conviction would be the case of three gendarmes who had used violence against two brothers suspected of stealing a bicycle, in 1999 in the village of Dogona (department of Torodi). This violence resulted in the amputation of all four limbs of each brother. One of the perpetrators was sentenced to 2 years’ imprisonment and the other two to 18 months’ imprisonment. The victims appealed against the sentence. Other examples are provided in paragraph 40 of this report.

Article 13 and related article 16 Right to a fair trial and protection of victims and witnesses

Remedies available to victims and witnesses

143. Victims and witnesses have a right of recourse to the courts, in particular the right to report crimes of which they are aware or of which they are victims.

144. If the authorities refuse to take the matter further, the victim can take the case directly to the investigating judge, by filing a complaint and instituting civil proceedings, or to the trial court, by issuing a direct summons. Notwithstanding these domestic legal remedies, victims and complainants may also submit their cases to international courts such as the Court of Justice of the Economic Community of West African States or the African Court on Human and Peoples’ Rights, especially if the competent authorities have refused to investigate their case.

Mechanisms for the protection of victims and witnesses

145. The State, as part of its general obligation to guarantee public security, mobilizes the resources required to ensure the safety of victims and witnesses to offences if necessary.

146. Article 217 of the Criminal Code provides that: “Any person, in any circumstance, either during proceedings of any description or prior to acting as a claimant or defendant in court, who uses promises, offers or gifts, pressure, threats, violence, manipulation or deception to persuade another person to make or issue, or not make or issue, a false deposition, statement or affidavit, whether or not the intimidation was effective, shall be liable to a prison term of between 2 months and 3 years and a fine of 50,000 to 500,000 CFA francs, or to only one of the two penalties, without prejudice to the heavier penalties provided for in the previous section if the person is an accomplice to false testimony amounting to a criminal offence.”

147. No statistical data are available.

Access to an independent and impartial judicial remedy

148. Any alleged victim of torture or other cruel, inhuman or degrading treatment can appeal to the competent courts for compensation, without any discrimination.

149. The justice system is a public service that is free and open to all. The cases brought before it are examined in accordance with the Criminal Code and the Code of Criminal

Procedure, which reaffirm the principles of a fair trial, due process, the adversarial principle, the presumption of innocence and the right to appeal.

Offices within the police force or prosecution service that handle cases of alleged torture of members of ethnic, religious or other minorities

150. The police force has a central department responsible for protecting women and children, established pursuant to Order No. 0045MI/S/D/AR/DGPN of 28 January 2011.

151. Several training courses have been provided by civil society organizations and the State for officials in charge of prosecutions relating specifically to acts of torture and other cruel, inhuman or degrading treatment.

Effectiveness of these measures

152. The effectiveness of these measures is shown primarily by the rarity or even non-existence of cases tantamount to torture as a result of the deterrent effect of the measures.

Article 14

Right of victims to redress, compensation and rehabilitation

153. Victims of acts of torture and their families have two options to seek redress. They can either:

- Join criminal proceedings after initiation of a prosecution enabling them to claim damages, or
- Bring an independent civil case before the civil courts, on the basis of article 1382 et seq. of the Civil Code.

154. The State is held responsible, jointly with the official who committed the acts of torture, for compensating victims, and may subsequently sue the offending official to recoup the costs.

155. No statistical data are available.

156. There are no specific rehabilitation programmes for victims of torture. However, a bill on establishing a compensation fund for victims of human trafficking, slavery and torture is in the process of being adopted.

157. Generally speaking, the State ensures, subject to the resources available, protection of the dignity, security and health of victims. It does so through the security forces, whose duties include preventing acts of torture, and the health services, who treat the victims.

158. It should, however, be noted that rehabilitation, recovery and reintegration measures are provided for under certain specific procedures, for example in cases related to human trafficking.

Article 15

Evidence

Prohibition of obtaining evidence under torture

159. The Code of Criminal Procedure does not contain any specific provision on prohibiting the obtaining of evidence under torture.

160. However, a combined reading of certain provisions of the Code of Criminal Procedure leads to the desired result. The rules governing the admission of evidence in criminal cases are set out in articles 414 to 433 of the Code. Article 414 provides that: "Except as otherwise provided for by law, offences may be established by any form of evidence; judges make decisions in accordance with their personal conviction. Judges may base those decisions only on the evidence produced during the trial and discussed in adversarial proceedings before them." Article 415 of the Code of Criminal Procedure provides that: "Confessions, like all other evidence, may be evaluated at the court's

discretion.” Accordingly, the law both permits the use of confessions as evidence and leaves the judge the necessary discretion to determine their merits and admissibility in the course of a trial. For this reason, records of preliminary inquiries conducted by criminal investigation officers are used for information purposes only.

161. According to case law, the use of evidence obtained under torture is a violation of the right to due process, which is itself a general principle of law, and is punished as such.

Examples of cases in which evidence obtained under torture was excluded

162. Comparing the established principle which prohibits the use of confessions obtained under torture as evidence with the actual situation under domestic law, which permits confessions to be admitted as evidence if the judge so decides, raises the question of the limits to the judge’s discretion: that discretion cannot be exercised in isolation, but only with reference to the personal inspections carried out by the judge, who must comply with the legal means provided for in law.

163. The evidence is therefore legal as it is provided for by law. This covers confessions, testimony made under oath and any other elements presented by the parties and discussed in adversarial proceedings before the competent judicial authority.

164. As an example of a case in which the prohibition on obtaining evidence under torture was applied, one can cite the case of an alleged cattle thief caught in flagrante delicto, which was brought before the Maradi criminal court in 2004. The investigation report produced by the gendarmerie stated that the defendant “fully” admitted committing the offence of which he was accused. In open court at his trial, however, he claimed that he had had nothing to do with the theft and told the judge that he had confessed after being beaten. The court therefore acquitted him on the grounds that the confession had been obtained by the gendarmes under duress.

Admissibility of derivative evidence if applicable in domestic law

165. The legislature has left judges the discretion to assess the evidence presented to them, including the way in which it was established, subject to respect for the law and fairness.

Article 16

Prohibition of acts of cruel, inhuman or degrading treatment or punishment

Definition of torture and other cruel, inhuman or degrading treatment, and measures taken to prevent their repetition

166. As indicated in the section of this report concerning article 1, torture is prohibited by article 14 of the Constitution. Despite not having a definition in line with the Convention, the Criminal Code does provide for the prosecution of acts of torture as violations of physical or mental integrity and other forms of violence.

167. For proceedings to be legally valid, article 71 of the Code of Criminal Procedure requires criminal investigation officers to:

- Inform suspects immediately after their arrest of their right to retain a lawyer of their choice, and confirm they have done so in the police report
- Present a medical certificate attesting that the suspect has not been physically harmed

168. The details given in the section concerning article 11 above illustrate the measures taken by the State to prevent the repetition of acts of torture.

Living conditions in centres of deprivation of liberty

169. Detention conditions in prisons were previously regulated by Decree No. 99-368/PCRN/MJ/DH of 3 September 1999 on the internal regulations of prisons, which has

been superseded by Act No. 2017-008 of 31 March 2017 on the basic principles of the prison system.

170. The administration of other places of deprivation of liberty, i.e. police stations, gendarmeries and offices of the investigative branch of the National Guard, is regulated by article 59 et seq. of the Code of Criminal Procedure.

171. The Niger has 38 prisons, which as of September 2017 held 10,017 prisoners, of whom 3,995 had been convicted and 6,022 were on remand. These prisons are characterized by overcrowding, with the resulting lack of privacy and the violence inherent in any prison environment. In addition to the usual measures to prevent such violence, article 22 of Act No. 2017-008 of 31 March 2017 provides that: “No prisoner shall be subjected to torture or to abuse or cruel, inhuman or degrading treatment for any reason whatsoever.” Article 23 of the Act provides that: “In case of a breach of the rules in place to maintain order and discipline, prisoners may be subject to disciplinary sanctions, without prejudice to any criminal prosecution. They may defend themselves or be defended by legal counsel of their choosing.”

172. To solve the problem of prison overcrowding, the Government is engaged in building several prisons that will meet the relevant international norms and standards. Between 2011 and 2017, construction or renovation work was carried out in 22 prisons and rehabilitation centres, 28 juvenile detention sections and the infirmary in Koutoukalé prison, while the most rundown establishments are currently being retrofitted. The process of building the I-n-Gall, Falmey, Bani Bangou and Tassara courthouses has begun. The architectural designs for the new Niamey prison, which meet international standards, have been finalized.

173. At the time of writing (2018), there are plans to build a screening laboratory for tuberculosis and other diseases at the Niamey prison.

174. Independently of the renovation work and construction of new prisons, rehabilitation workshop units are also being built in Daykeyna, Kollo and elsewhere.

175. The Government has provided eight prisons with a minibus to transport prisoners to courts and medical facilities.

176. In addition, three reception centres for children in conflict with the law or at risk have been built; two in Niamey and one in Tahoua. Their purpose is to accommodate children in conflict with the law and improve their prospects for reintegration.

177. Most prisons in the Niger have an infirmary with the resources to provide basic and emergency health care in accordance with the law on the basic principles of the prison system. In prisons without an infirmary, the prisoners are treated in the nearest health centre. Prisoners who are seriously ill are referred for treatment to public hospitals or integrated health centres. All medical costs are paid by the State.

178. Regarding hygiene in the prison environment, the Government makes every effort to ensure proper sanitation and clean buildings, the personal hygiene of each prisoner, and bedding and clothing. Under the internal regulations specific to each prison, time is set aside for physical exercise when security conditions allow.

179. Most prisons have a health and hygiene committee consisting of prisoners and guards. For this purpose, 48 prisoners have been trained as peer educators by the non-governmental organizations Solthis (Therapeutic Solidarity and Initiatives for Health) and the Association Nigérienne de Défense des Droits de l’Homme. Their role is to raise awareness of health and hygiene issues with their fellow prisoners.

180. The most common illnesses reported in prisons are malaria, skin diseases, pulmonary and bone tuberculosis, respiratory infections and gastrointestinal illnesses. First aid and emergency care are provided in prison infirmaries.

181. Act No. 2017-008 stipulates that prisoners have three meals a day. In addition, it provides for the needs of prisoners with special dietary requirements to be accommodated.

182. Article 11 of the Constitution of 25 November 2010 states that the human person is sacred. The State has an absolute obligation to respect and protect individuals. Article 12

provides that: “Everyone has the right to life, health, physical and mental integrity, healthy and sufficient food, safe drinking water, education and training under the conditions defined by law. The State shall guarantee for everyone the provision of basic services to meet their needs and ensure their full personal development. Everyone has the right to liberty and security under the conditions defined by law.” Persons deprived of their liberty also enjoy these rights.

183. Article 222 et seq. of the Criminal Code penalize assault and battery and other intentional offences. These provisions are general in scope, meaning that they apply to all persons, including those deprived of their liberty. A consideration of these articles is sufficient to demonstrate the sacred nature and inviolability of the human person.

184. The separation of remand and convicted prisoners is enshrined in article 6 of Act No. 2017-008 of 31 March 2017.

185. As at 4 September 2017, the general situation of the prison population, disaggregated by sex and occupancy rate, was as follows:

- The 38 prisons in the Niger, with a total capacity of 9,490 prisoners, held 10,017 prisoners, of whom 3,995 (39.88 per cent) had been convicted and 6,022 (60.12 per cent) were on remand
- They held 369 minors, i.e. 3.69 per cent of the total prison population
- They held 293 women, i.e. 2.93 per cent of the total prison population

186. As at 13 October 2017, of the prisoners alleged to be members of Boko Haram:

- A total of 45, including 2 boys and 1 woman, had been convicted
- A total of 745, including 115 boys and 9 women, were on remand

187. There are thus a total of 1,020 Boko Haram prisoners, whose conditions of detention are acceptable. Their pretrial detention has been extended in accordance with the law; their conditions of detention are acceptable in terms of food, sanitation and housing and are identical to the conditions for prisoners held under ordinary law. No cases of torture involving them have been recorded.

188. The Directorate General for Prison Administration and Security and Reintegration and its national directorates have been established with a view to improving detention conditions. Once they become operational, it should be possible to address certain shortcomings in the area of prison administration.

189. The freedom and inviolability of correspondence are guaranteed by article 29 of the Constitution. Accordingly, and in line with the relevant legal provisions, prisoners can communicate every day, at their own expense, with any person of their choice and receive letters from outside. However, the law provides that this freedom may be restricted for convicted prisoners by decision of the courts in certain narrowly defined subject areas.

190. To improve monitoring of detention conditions, oversight commissions have been established for each prison. The members of these commissions conduct regular visits to the prison to ensure that the conditions set out in article 17 of the aforementioned Act are respected by prison staff.
