



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 386th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 30 March 2022, at 10 a.m.

Chair: Ms. Villa Quintana

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The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention *(continued)*

Initial report of the Niger (continued) (CED/C/NER/1; CED/C/NER/Q/1; CED/C/NER/RQ/1)

1. *At the invitation of the Chair, the delegation of the Niger joined the meeting.*
2. **Mr. López Ortega** (Country Rapporteur) said that he would like to know what action had been taken in response to recommendations issued in 2019 by the Committee against Torture regarding unofficial places of detention (CAT/C/NER/CO/1). In particular, he would appreciate information on any investigations conducted and legal proceedings instituted in respect of instances of incommunicado detention and on the measures taken to completely rule out the possibility of detention in locations not provided for by law. He wondered whether the General Directorate for Documentation and External Security was an official place of detention.
3. He would like to hear about any steps taken since 2019 to ensure that all detained persons had access to a lawyer from the outset of their deprivation of liberty. He wished to know whether the Committee was correct in its understanding that article 71 of the Code of Criminal Procedure provided only for the right to be informed of the possibility of having access to a lawyer within 24 hours, or 48 hours in terrorism-related cases, and so did not guarantee prompt access. He would like to know what measures had been taken to address the lack of a guarantee of confidentiality in meetings between detained persons and their lawyers, in law and in practice, and to incorporate a provision into the Code of Criminal Procedure on the right of persons deprived of liberty to inform a family member. He wondered what had been done to overcome the geographical and financial barriers limiting access to legal assistance and to ensure that foreign detainees were informed of their right to notify the consular authorities of their detention.
4. He invited the delegation to comment on reports of arbitrary arrests of journalists and human rights defenders, as no information on that subject had been provided in the State party's replies to the list of issues. He would appreciate confirmation that the normal maximum period of police custody was 48 hours and an explanation of the reasons behind the establishment of a maximum period of 30 days in terrorism-related cases.
5. He would like to know what steps had been taken to resolve issues with the proper maintenance of registers of persons deprived of their liberty and whether such deficiencies had resulted in any investigations or sanctions in accordance with article 22 (b) of the Convention. He wished to know whether he was correct in understanding that article 134 of the Code of Criminal Procedure provided only for the right to apply for release during a criminal investigation but not for a remedy equivalent to habeas corpus. He would appreciate clarification as to whether public prosecutors rather than judges were responsible for exercising oversight in cases of deprivation of liberty. Lastly, he wished to point out that the need to preserve the confidentiality of a criminal investigation should not be a barrier to providing the Committee with general information on such matters as the current stage of proceedings or whether the perpetrators of an offence were public officials or private individuals.
6. **Mr. de Frouville** (Country Rapporteur), speaking via video link, said that he would like to know what measures had been taken in response to recommendations made by the Committee against Torture to amend Act No. 2015-36 of 26 May 2015 on migrant smuggling in order to address the current precarious situation of migrants and thus reduce their risk of becoming victims of traffickers and other criminals. He would be interested to hear about any cases in which article 649-177 of the Code of Criminal Procedure had been applied in order to prevent the removal of a foreign national from the country on the grounds that he or she would be at risk of enforced disappearance. He also wished to know whether any action had been taken in response to recommendations made by the Committee against Torture regarding allegations that foreign nationals had been returned to countries where they were in danger of being subjected to torture or ill-treatment and specifically on its recommendation that appeals against removal decisions should have a suspensive effect.

7. He would be interested to hear about any measures adopted in accordance with article 12 of the Convention to protect victims and witnesses from reprisals, particularly in the context of the specific cases raised during the dialogue, and about any plans to introduce a formal programme to provide such protection. He wished to note that, notwithstanding the need to preserve confidentiality in criminal investigations, victims of enforced disappearance had the right under article 24 of the Convention to know the truth, including the truth regarding the progress and results of an investigation. He would like to know how the State party intended to uphold the right to information about ongoing investigations into enforced disappearance of the general public, international bodies such as the Committee and victims.

8. He wondered what steps would be taken to continue the work begun by the National Human Rights Commission to locate and identify the remains of disappeared persons through the exhumation of mass graves. He would like to know about any measures taken or envisaged to introduce specific protocols for handling the mortal remains of disappeared persons and returning them to their families and establish mechanisms to systematically collect ante-mortem data related to disappeared persons and their relatives, set up DNA databases to identify victims of enforced disappearance and store the genetic material of disappeared persons and their relatives.

9. He wished to know whether the planned amendment of the Criminal Code to define enforced disappearance as a separate criminal offence would be followed by the establishment of a specific system to ensure reparation for victims. He wondered why the special funds for victims of terrorism and trafficking were not yet operational, what remained to be done and whether a time frame for their launch had been established.

10. He would like to know whether the State party planned to follow the recommendations made by the National Human Rights Commission in its report on the enforced disappearances that had occurred in Tillabéri, which included recommendations to send a high-level government delegation to meet the families of the victims, establish a budget allocation for compensation of the families and institute a national day and memorial dedicated to the victims.

11. He would appreciate information on any plans to amend the social security system to allow the families of disappeared workers to receive a pension on the basis of a certificate of absence rather than requiring a death certificate. He would also welcome clarification on the legal situation of female relatives of disappeared persons, given the existence of discrimination against married women with respect to inheritance, access to social services and legal capacity.

12. He would like to know whether there were any organizations or associations formed by victims of enforced disappearance in the Niger and whether the State facilitated or promoted their activities. In view of concerns expressed by other human rights mechanisms regarding excessive restrictions on freedom of association in the State party, he wondered whether associations of victims of enforced disappearance were subject to such restrictions. He would like to know whether, with a view to meeting the State party's obligations under article 24 of the Convention, the State party was considering reviewing the system under which the establishment of new associations was subject to prior authorization by the Ministry of the Interior.

The meeting was suspended at 10.40 a.m. and resumed at 10.55 a.m.

13. **Mr. Ikta Abdoulaye Mohamed** (Niger) said that the Niger was a vast country and was plagued by ongoing armed conflicts on three fronts. Sixty per cent of the western border with Mali was occupied by terrorist members of Al-Qaida and the Islamic State in Iraq and the Levant (ISIL), 50 per cent of the southern border with Burkina Faso was occupied by ISIL terrorists, and Boko Haram terrorists from Nigeria were also regularly launching attacks on the Niger. Furthermore, Libya, on its north-eastern border, was a failed State in which weapons freely circulated. The Niger nonetheless retained control over its territory, and the fact that it continued to respect people's basic rights, despite the enormous number of victims, was a genuine accomplishment. All families throughout the country had been affected by the dire situation. Many of their members had disappeared and many others had been abducted.

14. **Mr. Maman Sani** (Niger) said that article 605.1 and subsequent articles of the Code of Criminal Procedure provided for extraterritorial jurisdiction for acts of terrorism or transnational organized crime committed abroad when neither the perpetrator nor the victim was a national of the Niger. Such jurisdiction was justified when an offence committed abroad had a major impact on the national territory or on property of the Niger located abroad.

15. According to article 68 of the Constitution, states of emergency were to be proclaimed by the President following a meeting of the Council of Ministers. The rules governing states of emergency were laid down by Act No. 98/24 of 1998 as amended in 2015. The maximum initial duration of a state of emergency was 15 days, but it could be extended by a decision of the National Assembly for a maximum period of three months. States of emergency did not accord unreasonable powers to the defence and security forces, whose primary aim was to ensure the maintenance of peace and order.

16. With regard to the recommendations of the Committee against Torture regarding undisclosed places of detention, attention was frequently drawn to the General Directorate for State Security although it was unrelated to the gendarmerie. It undertook basic investigations, but all suspects were promptly referred to the proper investigative authorities. The National Human Rights Commission had admittedly criticized certain aspects of the General Directorate's conduct, but there were no custody cells in its headquarters. The Committee against Torture had recommended the establishment of a national mechanism for the prevention of torture, and Act No. 2020/05 had established that mechanism, which enabled the National Human Rights Commission to visit any and all detention centres and to inform the Government of the existence of any illegal sites or any instance of ill-treatment of detainees.

17. All persons were entitled to a lawyer as soon as they were summoned for questioning. However, there were currently only 140 lawyers in the country and they were all based in Niamey. The Government had therefore established the National Agency for Legal Aid and Assistance, which provided access to lawyers free of charge. The Agency received support from the State and from financial and technical partners. The Bar Association frequently organized caravan trips to remote areas of the country to provide free assistance to defendants and victims. Volunteers were trained to provide such assistance in criminal proceedings.

18. When a foreign national was prosecuted and a judgment was handed down, the investigating authorities and judges were required to inform the relevant embassy or consulate. Foreign detainees also received regular visits from embassy or consulate officials.

19. His country had responded orally and in writing to allegations made during the universal periodic review regarding arbitrary detention of journalists and human rights defenders. The detention of persons on the basis of a legal warrant could not be described as arbitrary. Most of the journalists and human rights defenders who had been arrested had been arrested for organizing unauthorized demonstrations. Some had been convicted, others had been immediately released, and none of them were currently in detention. The Council of Ministers had recently approved a bill on the protection of human rights defenders sponsored by the Ministry of Justice, and that bill would be submitted to the National Assembly at its next session. In addition, the President of the Republic was in the process of submitting an amendment to the 2019 law on cybercrime under which journalists convicted of slander or libel could be fined but could not be jailed.

20. The allowable 48-hour period of police custody could be extended for a similar period by the public prosecutor or the investigating judge. However, a 10-day custody period was permissible for the crime of drug trafficking and a 15-day custody period for the crime of terrorism. There was only one court in Niamey that dealt with terrorist crimes, most of which were committed in Diffa, a city that was nearly 1,500 kilometres from the capital city. As it took a long time to transfer the suspects, the Ministry of Justice planned to extend jurisdiction for terrorist crimes to all regional courts.

21. Under article 134 of the Code of Criminal Procedure, persons deprived of their liberty could apply for provisional release to the investigating judge; the public prosecutor did not make that decision. If the public prosecutor lodged an appeal in such cases, the final decision would be taken by the appeal court. With regard to the question about the confidentiality of investigations, the contents of an investigating judge's files could not be disclosed until the

investigation was completed. Defendants and victims were, however, kept abreast of all measures taken and decisions adopted in the course of criminal investigations and were informed of their right to lodge an appeal against decisions taken as that process moved along.

22. Family members were entitled to visit detainees at any time provided that the visits were authorized by the judge and the visitors respected the applicable regulations. Lawyers, on the other hand, did not require authorization and could never be prohibited from visiting their clients.

23. The funds for victims of terrorism and trafficking were still not operational because the State had had to redirect the requisite financial resources to the security sector to help the country withstand the attacks being launched against it since 2015. The funds for such victims would be rendered operational as soon as practicable.

24. The report of the National Human Rights Commission containing recommendations regarding disappeared persons had been submitted to the President of the Republic and was currently being discussed by the Council of Ministers. He was unaware of the existence in the Niger of any organizations or associations of victims of enforced disappearances.

25. **Mr. Abani Ahmed Mohamed** (Niger) said that there was no direct link between the oversight of police custody exercised by the public prosecutor and articles 134 and 135 of the Code of Criminal Procedure, since there was a time limit of 48 hours for the preliminary questioning of suspects, which was done in the presence of a lawyer. Article 134 of the Code of Criminal Procedure permitted all persons deprived of their liberty to apply for provisional release, with the decision on such applications being taken by the competent investigating or trial judge.

26. A specific law and its implementing regulations required the State to ensure access to an infirmary in all detention centres. If the infirmary was unable to provide detainees with the necessary medical care, they were transferred to a hospital. The transfer and return of detainees were monitored by prison wardens.

27. With regard to women's right of access to a death or other certificate if their husbands had disappeared, the Civil Code authorized judges to order the delivery of a certificate of absence following an assessment conducted after a reasonable amount of time had passed based on the established facts and two witness statements.

28. **Mr. Djibrilou** (Niger) said that article 109 of the Criminal Code permitted any victim of an offence to file a claim for damages in criminal or civil proceedings. In addition, article 80 of the Code of Criminal Procedure permitted victims to file a claim for criminal indemnification with the competent investigating judge.

29. **Mr. Yacouba** (Niger) said that police holding facilities frequently lacked the necessary capacity, especially when a large number of suspects were arrested. The police then requested the assistance of other police stations or police training schools that had the capacity to accommodate detainees. Those persons were nonetheless questioned in accordance with the usual procedures.

30. **Mr. Soumaila** (Niger) said that the law required the police to inform persons taken into custody of all their rights and to reflect that procedure in the records. Detainees' lawyers were aware of the requirement and objected to any procedural irregularities should they arise.

31. **Mr. Dioffo** (Niger) said that the General Directorate for State Security was staffed by criminal investigation officers from different services, including the gendarmerie, the police force and the judiciary. Given the gravity of the threats to national security, suspects were held in custody while investigations were carried out, and any material evidence was then handed over to a judge, who would then decide whether to pursue the case or not. The General Directorate undertook only preliminary investigations.

32. Migrants were sometimes deported or subjected to refoulement from the Niger, but only on specific grounds and by order of the Minister for the Interior. The reasons for deportation or refoulement were always clearly explained in the ministerial order. The fact that nationals of member countries of the Economic Community of West African States could freely enter the Niger was sometimes a factor that contributed to trafficking in persons. The Government was working to prevent that crime and had introduced strict laws to that end.

33. **Mr. Saadou** (Niger) said that there were no victims' associations in the country, but such associations were not prohibited. Associations were prohibited only if they were racist, regionalist or ethnic in nature and could therefore give rise to conflict or violence.

34. **Mr. Ikta Abdoulaye Mohamed** (Niger) said that journalists and human rights defenders were not persecuted for carrying out their work. However, if they acted outside the scope of their professional duties and threatened public order, they could of course be prosecuted.

35. He wished to note that the Niger was a transit country for migrants travelling from Africa to Europe. The Government was working to address the issues that that situation posed with organizations such as the International Organization for Migration.

36. **Mr. López Ortega** said that he would like to invite the delegation to send the Committee copies of the legislation cited in its replies, including the law on the protection of human rights defenders.

37. With regard to the question of pretrial detention, which could last for up to 30 days in the case of charges of terrorism or drug trafficking, he would like to know whether remedies were available to detainees to have their pretrial detention order reviewed before their case was brought before a judge and, if so, with which authority such a petition could be lodged.

38. He would like to know whether the issues raised by the Committee against Torture regarding registers and records of persons deprived of their liberty had been resolved. Under Article 18 of the Convention, the relatives, representatives or counsel of a detainee had the right to be informed of that person's whereabouts. He would like to learn how it was ensured that relatives received that information and whether detainees could receive visits. It would also be useful to know how and when relatives were informed that a detainee had been transferred.

39. The delegation had indicated that information on a detainee was not shared in complicated or sensitive cases. Under article 20 of the Convention, the right to information guaranteed under article 18 could be restricted only in exceptional circumstances. He would therefore like to know what constituted a complicated or sensitive case and how it was ensured that relatives received information on detainees in the case of serious crimes, such as terrorism.

40. He wished to learn whether detainees, including detained migrants awaiting deportation, convicted prisoners and persons in pretrial detention, were allowed to communicate with the outside world and, if so, by what means. Were there any limitations on such communication?

41. **Mr. de Frouville** said that he would like to know whether the Government planned to revise the legislation on migrant smuggling, as had been recommended by the Committee against Torture in its concluding observations (CAT/C/NER/CO/1). That legislation, as it stood, risked further marginalizing migrants, thus putting them at greater risk of enforced disappearance. He wished to join the Committee against Torture in its recommendation that appeals against deportation decisions should have a suspensive effect to avoid putting those individuals at risk of enforced disappearance in another country.

42. He would appreciate receiving further information on the efforts being made to locate disappeared persons and to exhume and identify human remains. More information on the civil status of victims and relatives of disappeared persons would be useful. He would also like to know whether the Government planned to modify the mechanism and legislation that were currently in place regarding access for wives of disappeared persons to those persons' social security benefits and pensions.

43. He would welcome information about any plans on the part of the Government to introduce specific legislation criminalizing the abduction and enforced disappearance of children and the falsification or destruction of their identity papers. It would be appreciated if the delegation could specify the conditions under which the technical committee responsible for examining adoption cases might be called upon to verify compliance with the basic conditions for intercountry adoption, in particular the principle of subsidiarity, the prohibition of undue gain and the consideration of the best interests of the child throughout

the procedure. He would like to know whether the Government had ratified the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption.

44. In the light of reports that babies were being “imported” from Nigeria for the purposes of adoption, it would be useful to know what steps the Government was taking, on its own and in cooperation with the Nigerian Government, to prevent the adoption of children who had been trafficked or abducted and to identify and return them to their families. He had noted that one factor contributing to the problem could be the fact that childless widows were only entitled to one eighth of their deceased husband’s estate, with the rest going to the husband’s family. He would also appreciate further information regarding the specific measures taken to ensure that all children were registered at birth, which could help to protect children from enforced disappearance in the context of migration or trafficking in persons.

45. **Mr. Diop** said that he would like to clarify his question on retroactivity. He wished to know whether people who were arrested for crimes committed before the introduction of the new legislation on enforced disappearance would be prosecuted under that legislation or under the legislation on kidnapping and abduction that had been in force when they committed their crimes.

46. He wished to know whether the Government was considering some kind of amnesty in the context of ongoing negotiations with certain armed groups. Those groups could not be prosecuted for enforced disappearance because they were non-State actors, but, under article 3 of the Convention, the Government had the obligation to investigate any abductions or kidnappings.

47. **Mr. Ravenna** said that, given the relatively small number of lawyers in the country, he would like to know whether there was a plan in place to train more lawyers.

48. In the light of the fact that suspects of terrorism could be held in isolation for almost a month, he would like to know whether their families were informed of their whereabouts. The delegation had explained that some investigations were secret. He would like to know why an investigation might be kept secret, whether such secrecy undermined a suspect’s right to counsel and if such suspects could receive visits.

49. Were any measures in place to guarantee that the few civil society organizations that were operating in the country could undertake their work in safety?

50. **Ms. Janina** said that she was looking forward to future developments in the State party with regard to protection of the rights of women family members of victims of enforced disappearance. Her particular interest would be in seeing whether women would have the right to become parties to legal proceedings, to be kept abreast of the progress made at all stages of investigations and prosecutions, and to know the truth and receive compensation. Women’s particular vulnerability in situations where husbands fell victim to enforced disappearance, leaving them to fend for themselves, and their even greater vulnerability when they themselves were abducted by non-State actors, which subsequently exposed them to the risk of exploitation and stigmatization, needed to be recognized and addressed in State policy.

51. **The Chair** said that she wished to know whether reparations could be obtained only through civil proceedings or whether a judgment handed down by a criminal court could include provisions on reparations.

52. **Mr. Ikta Abdoulaye Mohamed** (Niger) said that the situation of the so-called “imported babies” was one that the Niger had never been faced with before. Traffickers had brought the children from Nigeria as merchandise and had treated them as such. His country was at somewhat of an impasse because the parents’ country of origin, Nigeria, was not cooperating with his own country’s authorities, who were doing their best to find a solution.

53. As to the question of locating and identifying disappeared persons or their remains, it was important to understand that the situation in his country was extremely complex. When terrorists abducted people, they often took large numbers of them at one time. There were thousands of disappearances in the Niger, and the Government had no way of knowing where they were. It was important to remember that his country was currently fighting a war for its very survival.

54. With regard to the duration of police custody, in situations of mass arrest following demonstrations, for example, a charge sheet needed to be drawn up for every detainee, which was a lengthy process that consequently entailed a longer amount of time being spent in police custody.

55. Detainees had the right to receive visitors during prison visiting hours. Visiting rights at the high-security prison of Koutoukalé had, it was true, been suspended for a period, although they had now been reinstated. The reason for the suspension had been that terrorist attacks had been launched against the prison using vehicles full of explosives. In one case, army vehicles had been used for that purpose; in another, vehicles of the International Committee of the Red Cross (ICRC) had been driven up so close to the prison gates that they could have blown up the entire prison.

56. **Mr. Sani** (Niger) said that public prosecutors and investigating judges were responsible for oversight of police custody. Under the Criminal Code, anyone detained illegally had the right to bring a complaint against the responsible party. Such cases had been brought against police officers, in some cases, and, in others, against local officials, which demonstrated the effectiveness of that remedy.

57. With regard to the matter of informing families of a person's detention, he wished to point out that there were hundreds of persons being held on terrorism charges, either in rehabilitation centres or in Koutoukalé Prison. The Ministry of Justice was partnering with ICRC, which had *carte blanche* to enter prisons and interview detainees, in order to help restore communication with their families. A number of non-governmental organizations (NGOs) also assisted in such tasks.

58. The main reason for suspending visiting rights for a time in sensitive or complex cases was to avoid compromising the investigation and the search for the truth. In addition, visits could in some cases pose a threat to prisoners, victims or witnesses. The evaluation of the complexity or sensitivity of the case was a matter for the relevant judge's discretion. The use of telephones had been banned following an incident where a prisoner in communication with accomplices had broken out of the prison, causing some loss of life in the process. If necessary, prisoners could apply to the prison director for permission to use a phone to contact family members in the presence of prison guards.

59. The Ministry of Justice had recently taken steps to secure the amendment of Act No. 2015-36, on migrant smuggling, which, it was true, had been severely criticized, in part for criminalizing migrants themselves. The text of every article of that Act had now been revised with the help of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Office on Drugs and Crime (UNODC). Under the proposed amendment, traffickers, rather than migrants, would be penalized, and a remedy with suspensive effect was provided for. A validation workshop was shortly to be held, after which the new draft would be submitted to the Council of Ministers.

60. The Niger had ratified the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption in 2018.

61. In the matter of widows' inheritance, the vast majority of the population tended to refer to customary law, whose provisions were strongly influenced by the tenets of Islam. In such cases, the one-eighth share awarded to the widow applied if the deceased had also left children; where that was not the case, the widow was entitled to one sixth. The parties could also request application of the Civil Code, whose provisions were more egalitarian.

62. With regard to the principle of non-retroactivity of legislation, in the example given by Mr. Diop, where the perpetrator of a crime had been convicted under existing legislation and new legislation had subsequently been adopted that took due account of the provisions and definitions set out in the Convention, any co-perpetrators of the same crime who were brought to justice after the new law had been passed would be charged under that new law.

63. It was true that the number of lawyers in his country as a proportion of the population was minimal. A new legal training school had, however, recently been established, with admission decisions being based on the results of an annual competitive examination. There were currently 22 students.

64. Judicial investigations were confidential, as in other countries, in order to ensure that the truth could be established and findings were not compromised. In addition, their confidentiality guarded against witness tampering and helped to avoid alerting perpetrators, who might then abscond. However, all formally recognized parties to a case had full access to information about developments in an investigation.

65. There were numerous civil society organizations and NGOs that helped defend the interests of prisoners and migrants. Authorization was freely given to create such associations provided the relevant criteria were met.

66. **Mr. Bani Ahmed Mohamed** (Niger) said that the use of police custody was supervised by the public prosecutor during the initial stages of the investigation and subsequently by independent judges. Extensions of custody could be granted only by judicial officers. Prisoner records were meticulously kept at every stage of the proceedings. They were periodically sent to the supervisory authority for verification and were the authoritative records in cases at all levels.

67. Any search for a disappeared person could be resumed if new information came to light, even if the case had previously been closed. Civil or customary courts were the bodies authorized to issue a declaration of absence.

68. Reparations could be obtained in two ways. Victims could seek reparation directly in the course of criminal court proceedings or, if they were not in a position to do so before the proceedings concluded, they could apply later on for criminal indemnification in the civil courts. Any person, regardless of sex, had the right to bring such a claim.

69. **Mr. Ikta Abdoulaye Mohamed** (Niger) said that he was grateful to the Committee for its recognition of the progress that had been made in the Niger. His country was making every effort to protect and promote human rights despite the enormous difficulties it faced as a result of terrorist activity in the Sahel region.

70. **The Chair** thanked the delegation of the Niger for its contribution to the dialogue with the Committee. The State party could be assured of the Committee's support in implementing its concluding observations, which would be sent as soon as they had been adopted.

The meeting rose at 1 p.m.