



International Covenant on Civil and Political Rights

Distr.: General
16 May 2019
English
Original: French

Human Rights Committee

Concluding observations on the second periodic report of the Niger*

1. The Human Rights Committee considered the second periodic report of the Niger (CCPR/C/NER/2) at its 3574th and 3575th meetings (see CCPR/C/SR.3574 and 3575), held on 6 and 7 March 2019. At its 3597th meeting, held on 22 March 2019, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission, albeit considerably late, of the State party's second periodic report. It expresses appreciation for the opportunity to engage in constructive dialogue with the State party's high-level delegation on the measures taken to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/NER/Q/2/Add.1) to the list of issues (CCPR/C/NER/Q/2) and for the supplemental information provided to it in writing after the dialogue.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional measures taken by the State party:

(a) The adoption of Act No. 2000-008 of 7 June 2000, as amended by Act No. 2014-64 of 5 November 2014, establishing a quota system to promote the representation of women in elective office in the Government and the State administration;

(b) The adoption of Act No. 2003-25 of 13 June 2003, amending Act No. 61-27 of 15 July 1961 establishing the Criminal Code, which criminalizes female genital mutilation;

(c) The adoption of Ordinance No. 2010-86 of 16 December 2010 on combating trafficking in persons;

(d) The adoption of Act No. 2014-60 of 5 November 2014 establishing the Nationality Code, which gives women of the Niger the right to pass on their nationality to their foreign spouses;

(e) The adoption of Act No. 2018-74 of 10 December 2018 on protection and assistance for internally displaced persons;

(f) The establishment of an interministerial committee responsible for drafting periodic reports for submission to treaty bodies.

* Adopted by the Committee at its 125th session (4–29 March 2019).



4. The Committee also welcomes the establishment by the State party of the National Human Rights Commission pursuant to Act No. 2012-44 of 24 August 2012.

5. In addition, the Committee welcomes the State party's ratification of or accession to the following international instruments since the consideration of its initial report (CCPR/C/45/Add.4):

- (a) The Convention on the Rights of Persons with Disabilities, in 2008;
- (b) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2009;
- (c) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2012;
- (d) The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, in 2012;
- (e) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2014;
- (f) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, in 2014;
- (g) The International Convention for the Protection of All Persons from Enforced Disappearance, in 2015.

C. Principal subjects of concern and recommendations

Applicability of the Covenant in the domestic legal system and implementation of the Committee's Views

6. The Committee takes due note of article 171 of the Constitution of the Niger, which establishes the primacy of international treaties over domestic law, and welcomes the recent adoption of Act No. 2018-37 of 1 June 2018, article 72 of which permits judges to set aside a custom at variance with the State party's international obligations. However, it regrets the lack of information on specific cases in which a custom that was inconsistent with the Covenant was overridden and, more generally, of examples of the application of the Covenant by domestic courts (art. 2).

7. **The State party should: (a) guarantee, in practice, the primacy of the Covenant over national law and an effective remedy for individuals seeking justice in the event of a violation of the Covenant; (b) raise awareness of the Covenant among judges, lawyers and prosecutors to ensure that its provisions are taken into account before and by the national courts; and (c) ratify the Optional Protocol to the Covenant, which establishes an individual communications procedure.**

National Commission on Human Rights

8. While welcoming the establishment of the National Human Rights Commission, which has been granted category A status in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and the opening of regional branches of the Commission in Diffa, Agadez and Tillabéri in order to address, in particular, the challenges posed by internal and cross-border displacements, the Committee underlines its concern about the fact that the Commission is far from achieving gender parity. In addition, noting that the Commission's overall annual budget for 2019 is approximately 300 million CFA francs (or €457,000), the Committee expresses its concern about the insufficient financial resources allocated to it (art. 2).

9. **The State party should: (a) take measures to increase the representation of women in the National Human Rights Commission; and (b) provide the Commission with sufficient resources so that it may discharge its mandate in full, in accordance with the Paris Principles.**

Fight against corruption

10. While welcoming the legislative and institutional measures taken by the State party to combat corruption, including the establishment of the Supreme Authority for the Fight against Corruption and Related Offences and the setting up of a toll-free helpline to facilitate the reporting of cases of corruption, the Committee is concerned about the reported persistence of corruption in public administrative services, including in the police and judicial sectors. It is also concerned about reports of a lack of transparency in natural resource management, including large exemptions granted to international mining companies to the detriment of the State budget (arts. 1, 2, 14, 25 and 26).

11. The State party should: (a) step up its efforts to combat corruption and to ensure that it does not go unpunished; (b) ensure that all cases of corruption are independently and impartially investigated and, where applicable, that appropriate judicial penalties are imposed on perpetrators; and (c) take the necessary steps to ensure transparent management of contracts with international mining companies and of the revenues derived from such contracts.

Fight against impunity and past human rights violations

12. Taking note of the difficult political and security phases that the Niger went through in the 1990s and the State party's explanations of its preference for political settlements and amnesty laws, the Committee reiterates, however, its concern over the lack of investigations to shed light on a number of cases of human rights violations, including: (a) the events in Tchintabaraden, during which a large number of members of the Tuareg opposition reportedly lost their lives in 1990; and (b) numerous human rights violations committed between 1996 and 1999, as evidenced by the discovery of a mass grave in Bouloungoure in 1999, in a case that remains unresolved (art. 2).

13. The State party should adopt the necessary legislative and judicial measures to ensure that the perpetrators of past human rights violations are brought to justice and that no one responsible for serious human rights violations escapes public prosecution.

Counter-terrorism and state of emergency

14. While acknowledging the difficulties associated with the State party's armed struggle against non-State groups that regularly carry out attacks in its territory, the Committee is concerned about the definition of terrorism provided in Ordinance No. 2011-12 of 27 January 2011 amending the Criminal Code. By referring to an act committed with the intention of disrupting the normal functioning of public services, this provision could, by its vague and ambiguous nature, result in the penalization of peaceful activities linked to the right to freedom of expression, association or assembly. The Committee is also concerned that the legislative amendments relating to terrorism may lead to departures from ordinary law as regards due process. The Committee is further concerned by allegations concerning several arrests and convictions of human rights defenders under counter-terrorism legislation (arts. 2, 9, 14, 18, 19, 21 and 22).

15. The State party should take the necessary steps to review its legislation on terrorism in order to bring it into line with the Covenant. It should also ensure that any unjustified or disproportionate infringement of the freedom of expression of the media and human rights defenders under counter-terrorism legislation is prevented.

16. The Committee is concerned over the state of emergency in force in the Diffa region since 2015, which has subsequently been extended to the Tillabéri and Tahoua regions. In particular, the Committee notes that, owing to the militarization of numerous fishing and agricultural areas in the Lake Chad Basin region, the state of emergency appears to have a disproportionate effect on freedom of movement and to place considerable restrictions on the livelihood activities of the civilian population (arts. 4, 6 and 12).

17. The State party should ensure that measures adopted to combat terrorism are fully compatible with article 4 of the Covenant and, in particular, that measures derogating from the provisions of the Covenant are limited to the extent strictly

required by the exigencies of the situation and meet the requirements of the principle of proportionality.

Non-discrimination

18. While taking note of the legislative framework, including constitutional provisions that prohibit discrimination, the Committee nevertheless regrets the absence of legislation that would thoroughly define and criminalize direct and indirect discrimination and would cover, inter alia, discrimination on the basis of sexual orientation, gender identity and disability. The Committee further regrets the characterization of consensual sexual activities between adults of the same sex as “unnatural” acts under article 282 of the Criminal Code (arts. 2, 17 and 26).

19. The State party should take appropriate steps to: (a) enact comprehensive legislation providing full and effective protection against discrimination in all spheres and containing an exhaustive list of prohibited grounds of discrimination, including sexual orientation and gender identity; and (b) amend article 282 of the Criminal Code in order to decriminalize consensual sexual relations between adults of the same sex.

Gender equality and discrimination against women

20. The Committee welcomes article 8 of the Constitution, which establishes equality before the law regardless of gender, and Act No. 2000-008 of 7 June 2000, as amended by Act No. 2014-64 of 5 November 2014, which sets the representation of women at 15 per cent in elected office and at 25 per cent in public administration, although those objectives have yet to be achieved. The Committee also welcomes the State party’s efforts to amend its national legislation but notes that Act No. 2018-37 of 1 June 2018 continues to uphold customary law, which parties may invoke instead of civil law in most civil or personal status cases. Furthermore, it is concerned about the extension of the procedure for adopting the draft Family Code prepared in 2010, which is designed to abolish discriminatory provisions against women (arts. 2, 3, 25 and 26).

21. The State party should continue its efforts and, in particular: (a) promptly adopt the Family Code, which will clearly establish the primacy of civil law over customary law; (b) harmonize national laws with the provisions of the Covenant, including by repealing discriminatory provisions of its statutory and customary law relating, inter alia, to marriage, polygamy, repudiation, divorce, succession and landownership; and (c) make an effort to increase, in practice and within a reasonable time, the number of women in public affairs.

Violence against women and practices harmful to women

22. While welcoming the measures adopted by the State party to end violence against women, including the National Strategy to Prevent and Address Gender-based Violence and its action plan (2017), and noting with appreciation the implementation of the 2008 decision issued by the Court of Justice of the Economic Community of West African States against the Niger in *Hadijatou Mani Koraou v. the Republic of Niger*, a case involving the practice of *wahaya*, the Committee remains concerned at reports that few complaints have been lodged by victims and that the number of investigations and convictions has been small. It regrets the lack of legislation that specifically defines and criminalizes sexual violence, including marital rape. It is concerned at the persistence of the practice of female genital mutilation in some regions and by some ethnic groups despite its criminalization under article 232.2 of the Criminal Code, as well as of early marriage and of *wahaya*, which persists in some parts of the country even though it is punishable under article 270.2 of the Criminal Code and Ordinance No. 2010-86 of 16 December 2010 on combating trafficking in persons (arts. 2, 3, 7, 8, 24 and 26).

23. The State party should: (a) collect and provide disaggregated statistics on the extent of violence against women, step up its awareness-raising campaigns on this issue, increase and improve shelter services and care arrangements for victims and make the special compensation fund for victims of trafficking operational; (b) ensure

that cases of violence against women are reported and thoroughly investigated and that perpetrators are prosecuted and sentenced; (c) review its legislation in order to criminalize marital rape and include penalties commensurate with the gravity of the offence; and (d) ensure that all persons involved in the practice of female genital mutilation are prosecuted and sentenced.

Voluntary termination of pregnancy and child and maternal mortality

24. The Committee is concerned about article 295 of the Criminal Code, which punishes the use of abortion except in the limited circumstances provided for under Act No. 2006-16 of 21 June 2006 on reproductive health. It is concerned that such restrictions drive women to turn to unsafe back-street abortions under conditions that put their lives and health in danger. The Committee is further concerned that, despite significant improvements, child and maternal mortality remain very high, particularly in rural areas, and that the health sector remains underfunded (arts. 3, 6, 7, 17 and 26).

25. **The State party should amend its legislation to provide safe access to abortion to protect the lives and health of pregnant women and girls, particularly in situations in which carrying a pregnancy to term would cause the woman substantial suffering or in which the pregnancy is the result of rape or incest or is not viable. Furthermore, it should ensure that women and girls who have abortions, and the physicians assisting them, are not subject to criminal penalties. The State party should also ensure access to adequate sexual and reproductive health-care services, contraception and education for all men, women and adolescents in the country. Lastly, it should continue its efforts to promote reproductive health, particularly the implementation of the Health Development Plan for 2017–2021, including in rural and remote areas, through the mobilization of adequate resources for that purpose.**

Death penalty

26. While noting the absence of executions since 1976, welcoming the commencement of a process that is to lead to the abolition in law of the death penalty and welcoming the oral information provided to the Committee by the State party to the effect that the Presidential Decree of December 2018 granted remissions of sentences, including the commutation of death sentences to life imprisonment, the Committee regrets that certain crimes continue to carry the death penalty, that death sentences continue to be pronounced by the courts and that the non-execution of death sentences is dependent on pardons granted on a case-by-case basis (art. 6).

27. **The State party should: (a) formally abolish in law the death penalty and repeal the provisions of the Criminal Code that provide for the application of this punishment; and (b) swiftly adopt the draft law of 23 October 2014 authorizing the accession of the Niger to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and accede to this instrument.**

Protection of civilians

28. The Committee is concerned about the protection of the civilian population in the context of the armed conflict between the defence and security forces of the Niger and non-State armed groups in the regions of Diffa, in the south-east of the country, and of Tillabéri, near the border with Mali, which are resulting in population displacements (arts. 2, 3, 6 and 7).

29. **The State party should: (a) ensure, in the context of military operations, that the principles of distinction and proportionality in attacks are observed; (b) continue its efforts to raise awareness and provide training to the security forces of the Niger on respect for human rights in the context of military operations; (c) conduct transparent and effective investigations to establish the facts and the circumstances in which violations of human rights and international humanitarian law have allegedly been perpetrated by members of its armed forces or by non-State armed groups against civilian populations; (d) bring the perpetrators of such violations to justice and impose**

appropriate penalties on them if they are found guilty; and (e) take all necessary measures to provide full reparation to the victims' families.

Torture and cruel, inhuman or degrading treatment

30. The Committee notes the absence of information that would suggest a systematic pattern of torture or ill-treatment by the State party's security forces. It remains concerned, however, at the lack of a definition of torture in the Criminal Code and specific criminalization of the offence of torture, and it notes that a bill to criminalize torture drafted by the Ministry of Justice in 2014 has not yet been adopted. The Committee also expresses its concern over the allegations of police violence during demonstrations, such as the student demonstrations in April 2017. The Committee also notes that the State party has still not established a mechanism for the prevention of torture despite its ratification in 2014 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (arts. 2 and 7).

31. The State party should: (a) accelerate the process of adopting legislation criminalizing torture, while ensuring its compliance with the Covenant and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (b) ensure that alleged acts of torture and ill-treatment committed by State party officials are thoroughly investigated, that suspected perpetrators are prosecuted and, if found guilty, duly punished and that victims are compensated and offered rehabilitation services; and (c) establish a national mechanism for the prevention of torture.

Conditions of detention

32. The Committee welcomes the statistical information, disaggregated by prison facility, provided by the State party. It also welcomes the adoption of Act No. 2017-005 of 31 March 2017, establishing community service as a substitute for custodial sentences, and of Act No. 2017-08 of 31 March 2017 on the prison system, which provides for an increase in prisoners' food rations from two meals a day to three. However, the Committee expresses its concern at the inadequate conditions of detention that appear to prevail in almost all of the State party's prisons. It is also concerned by: (a) the high occupancy level of the prison in Niamey; (b) reports of substandard conditions in terms of health care, sanitation and food in the majority of the prisons; (c) the insufficient resources allocated to the prison system; and (d) the failure to keep detainees who are awaiting trial separate from convicted prisoners (arts. 6, 7 and 10).

33. The State party should take the necessary measures to: (a) continue its efforts to improve living conditions and the treatment of prisoners, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners; (b) address the problem of prison overcrowding in the Niamey civil prison, in particular by transferring prisoners to institutions that are not overcrowded and continuing efforts to favour alternatives to deprivation of liberty; (c) renovate all existing detention centres; and (d) continue to guarantee the right of the National Human Rights Commission to have unrestricted access to all places of deprivation of liberty.

Trafficking in persons and slavery

34. While noting the State party's efforts to combat trafficking in persons and slavery, in particular under articles 270.1 to 270.5 of the Criminal Code and Ordinance No. 2010-86 of 16 December 2010, the Committee notes with concern the persistence of the practice of slavery. It is also concerned at the low rate of application of the above-mentioned legal provisions, with only five prosecutions reported, two of which are said to have led to convictions. The Committee is further concerned that the penalties imposed in both cases were not commensurate with the seriousness of the crime of slavery. The Committee regrets the lack of available information on the extent of slavery based on descent, including child slavery, forced labour, forced begging and trafficking in persons. The Committee also regrets the limited resources allocated to combating these practices and rehabilitating victims (arts. 8 and 24).

35. The State party should continue its efforts, in particular to: (a) ensure the collection of statistical data disaggregated by age, sex and origin of victims; (b) ensure that the legislation criminalizing slavery and trafficking in persons is disseminated and that individuals seeking justice, as well as the police, prosecutors and judges, are made aware of it; (c) strengthen its institutional mechanisms in terms of financial and human resources, in particular the National Agency to Combat Trafficking in Persons; (d) ensure that all cases of slavery and trafficking in persons, including those involving children, are systematically investigated and that suspected perpetrators are prosecuted under the relevant criminal legislation and, if found guilty, given sentences commensurate with the seriousness of the crimes; and (e) take all measures to ensure that victims are provided with medical, psychological, social and legal assistance for their full rehabilitation.

Liberty and security of person

36. The Committee remains concerned at reports of numerous arrests made without a warrant of journalists, human rights defenders and members of the opposition, who are said to have been detained without trial under counter-terrorism legislation. The Committee is concerned about allegations of the failure to respect legal time limits for police custody, disregard for due process of law and the excessive use of pretrial detention (arts. 9, 14, 19, 21 and 22).

37. The State party should take steps to ensure that: (a) no one is arbitrarily arrested or detained and that detained persons enjoy all legal guarantees, in accordance with articles 9 and 14 of the Covenant; (b) all cases of arbitrary arrest are investigated and those responsible are subjected to disciplinary action or judicial proceedings and, where appropriate, compensation is provided; and (c) the provisions of the Code of Criminal Procedure on the length of police custody and pretrial detention are observed.

Treatment of refugees and displaced persons

38. While welcoming the efforts of the State party and the hospitality it extends to refugees, asylum seekers and migrants crossing its territory on their way to the Mediterranean Sea, the Committee expresses its concern about Act No. 2015-36 of 26 May 2015 on trafficking in migrants, which reportedly resulted in a de facto ban on travel north of Agadez, thus forcing migrants to go underground and face conditions that expose them to many forms of abuse and human rights violations. Recognizing the State party's efforts, in cooperation with international organizations, to ensure the voluntary return of migrants from West Africa, the Committee is nevertheless concerned that many victims of torture and other cruel, inhuman or degrading treatment or punishment who are suffering from physical and psychological trauma could be returned to countries where they would be at risk of ill-treatment, in violation of the principle of non-refoulement (arts. 7, 9, 12 and 13).

39. The State party should: (a) ensure that its refugee status determination procedures are consistent with international standards and that border patrol officers and other relevant officials receive proper training; (b) strictly enforce the absolute prohibition of refoulement under articles 6 and 7 of the Covenant; and (c) ensure impartial investigations and effective remedies for migrants whose rights have allegedly been violated.

Independence of the judiciary and administration of justice

40. The Committee welcomes the State party's efforts to reform and modernize the justice system, including the organization of national consultations on the justice system in November 2012, and the adoption of Act No. 2018-36 of 24 May 2018 establishing regulations governing the judiciary. It notes with concern, however, that the independence of the judiciary is not sufficiently guaranteed and that the executive plays a significant role in the organization of the judicial branch. The Committee is also concerned about allegations of interference by the executive branch in judicial decisions (art. 14).

41. The State party should uphold the principle of the independence of the judiciary, as guaranteed under article 16 of the Constitution, and ensure that judges and public prosecutors are appointed on the basis of objective and transparent criteria that allow for candidates' qualifications to be assessed in terms of the required skills, competence and integrity. It should also guarantee the tenure and independence of judges and the impartiality of public prosecutors by protecting the work of the judiciary from any interference.

Freedoms of expression and assembly and protection of journalists and human rights defenders

42. While noting the State party's explanations, and welcoming the adoption of Ordinance No. 2010-35 of 4 June 2010 establishing regulations on freedom of the press, the Committee expresses its concern at reports of the suspension, in March 2018, of the private radio and television station Labari for refusing to provide the police with a copy of its news footage relating to a demonstration held in Niamey. The Committee is also concerned about allegations of arbitrary arrests of journalists, human rights defenders, members of the political opposition and teachers and students in 2017 and 2018 and reports of excessive use of force by police officers to disperse demonstrations. It also expresses its concern about the prohibition by municipal authorities of demonstrations for which prior authorization had been given by the courts (arts. 2, 6, 7, 14, 19 and 21).

43. In the light of the Committee's general comment No. 34 on freedoms of opinion and expression, the State party should: (a) ensure that any restrictions on press and media activities are fully compatible with the provisions of article 19 (3) of the Covenant; (b) ensure that agents of the State avoid any unnecessary or disproportionate interference with the freedom of expression of the media, protect journalists from any form of ill-treatment, and investigate, prosecute and sentence the perpetrators of such acts; (c) take all necessary measures for the protection of human rights defenders from threats and intimidation and investigate, prosecute and sentence the perpetrators of such acts; (d) expedite the adoption of the bill on the protection of human rights defenders; (e) lift any unnecessary restrictions on freedom of assembly and demonstration; (f) carry out prompt, impartial and effective investigations of all cases involving the excessive use of force for the dispersal of demonstrations and bring the perpetrators to justice; and (g) clarify and, where appropriate, revise the regulatory and legislative framework for authorization of demonstrations and the role and remit of the High Council for Communications to ensure that the provisions of article 19 of the Covenant are respected.

Protection of children

44. While noting the information provided by the State party on the regulatory framework on child labour, the Committee remains concerned about: (a) the large number of children employed as domestic workers who are at risk of abuse; (b) the number of children in street situations, who are also at risk of all forms of violence; (c) the specific situation of *talibé* children handed over to *marabouts* in Qur'anic schools and forced to beg; and (d) the persistence of the practice of child slavery based on descent. Lastly, the Committee notes with concern that corporal punishment is still permitted at home and in schools, including Qur'anic schools (arts. 6, 7, 8, 16 and 24).

45. The State party should take the necessary measures to: (a) protect minors against all forms of abuse, including through the care and rehabilitation of children in street situations or involved in begging; (b) publicly condemn the practice of forced begging and raise awareness of the issue among religious and traditional leaders and parents with a view to eradicating this practice; (c) continue its efforts to strictly control and regulate child labour; (d) enforce the criminalization of slavery by systematically prosecuting all perpetrators of the crime of child slavery based on descent; and (e) take practical steps, including through legislative measures, to put an end to corporal punishment in all settings.

D. Dissemination and follow-up

46. The State party should widely disseminate the Covenant, its second periodic report and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country and the general public with a view to raising their awareness of the rights enshrined in the Covenant. The State party should ensure that the report and the present concluding observations are translated into the official languages of the State party.

47. In accordance with rule 75 (1) of the Committee's rules of procedure, the State party is requested to provide, by 29 March 2021, information on the implementation of the recommendations made by the Committee hereinabove in paragraphs 11 (fight against corruption), 33 (conditions of detention) and 43 (freedoms of expression and assembly and protection of journalists and human rights defenders).

48. The Committee requests the State party to submit its next periodic report by 29 March 2023 and to include in it specific and up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to consult widely with civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the report must not exceed 21,200 words. The Committee encourages all States to make use of the simplified reporting procedure. The Committee invites the State party to indicate, within one year of receipt of the present concluding observations, whether it wishes to accept that procedure for the preparation of its next periodic report. The State party's replies to the list of issues prepared by the Committee under the simplified reporting procedure would constitute its next periodic report due under article 40 of the Covenant.
