



Anti-migration policies and laws in Niger:

A gateway to torture and ill-treatment?

Alternative report submitted pursuant to Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

EXECUTIVE SUMMARY

**68th session of the Committee against Torture
Consideration of the initial report of the Republic of Niger**

November 2019

The organizations that wrote the report

- **Collectif des Organisations de Défense des Droits de l'Homme et de la démocratie (CODDHD)**
- **Comité de Réflexion et d'Orientation pour la Sauvegarde des Acquis Démocratiques (CROISADE)**
- **Alternative Espaces Citoyens Niger**
- **World Organization Against Torture (OMCT)**

Introduction

1. Niger is at a crossroads of migration routes in Africa. It is a major point of passage for thousands of migrants travelling from sub-Saharan Africa towards the Maghreb and Europe. It also hosts hundreds of thousands of refugees and displaced persons, particularly from Sudan, Chad, Mali and Nigeria.

2. In August 2019, UNHCR placed the number of displaced persons in Diffa Region in the south-east of the country at 250,000¹; meanwhile, in 2019, the International Organization for Migration (IOM) estimated the number of returnees from Libya and Algeria at 17,000 and the number of migrants in transit in Agadez Region in the north of the country at 20,000².

3. Niger has adopted migration laws and policies that criminalize illegal cross-border movements, thus forcing thousands of migrants to resort to irregular channels where torture and other forms of ill-treatment are common.

¹ UNHCR 2019, *UNHCR Niger, Nigeria Situation Overview*, August 2019.
<http://reporting.unhcr.org/sites/default/files/UNHCR%20Niger%20Nigeria%20Situation%20Overview%20-%20August%202019.pdf>

² OCHA, *Niger Humanitarian Needs Overview 2019*,
https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ner_hno_2019.pdf, 11 Jan 2019, p. 5

I. Legal and institutional framework for combating torture and protecting migrants against torture in Niger (Articles 2 and 4)

4. Niger's legislative and institutional framework is incomplete in terms of combating torture. The penal code does not clearly define or criminalize torture and the Constitution does not specify that torture is prohibited under any circumstances. Therefore, even though it has ratified the Convention against Torture and its Protocol, Niger must take urgent measures to implement its commitments. Although Article 171 of the Constitution implies automatic implementation of international instruments ratified by Niger, the prohibition of torture is not operational since there is a legal vacuum with regard to the penalties applicable to cases of torture, and the imprescriptibility and prohibition of torture under all circumstances. Moreover, there is legal silence regarding the inadmissibility of confessions obtained under torture.
5. The absence of a specific legal framework limits Niger's effectiveness in the fight against terrorism and irregular immigration. Numerous reports by national and international organizations show that in the fight against terrorism the Nigerien State has authorized circumstances that facilitate the use of torture against suspected Boko Haram terrorists.

II. Niger's migration policy: between refoulement and negligence

2010 law against the trafficking of persons and 2015 anti-smuggling law: interpretation, lack of coordination and ineffectiveness

6. Niger has passed two laws that directly regulate these phenomena: in 2010, Ordinance 2012-86 on combating the trafficking of persons and, in 2015, law 2015-36 of 26 May on preventing and combating the smuggling of migrants.
7. Exposing migrants to torture on dangerous migration routes has been one undesirable effect of the policies and laws against irregular migration adopted by Niger

and supported by international actors, particularly the European Union. These arrangements have led to an increase in acts of torture and ill-treatment outside of the territory and jurisdiction of Niger, in spaces controlled by non-State actors. In 2017, the fight against migrant smuggling achieved a result of “10,574 people turned back at the borders; 2,373 people detained and returned to the borders; 2,208 people referred to the IOM for voluntary return”³.

8. Enforcement of law 2015-36 also poses difficulties. It aims to combat migrant trafficking which, in practice, is often conflated with migrant smuggling. In fact, the activity of smugglers is increasingly associated with the exploitation of migrants, in addition to their use as labour and/or their sale.⁴

9. During the visit of OMCT to Agadez in October 2019, it emerged that the criminalization of irregular migration, without putting in place alternative legal solutions, is forcing migrants underground and exposing them to numerous abuses and violations of human rights. In 2017 “More than 60,000 refugees and migrants passed through Niger en route to Libya and Algeria. They are exposed to serious abuses, particularly rape, unlawful detention under difficult conditions, ill-treatment, extortion and even death.”⁵

III. Torture and non-refoulement of migrants by the State of Niger (Article 3)

10. In March 2014, the Nigerien Government extradited Saadi Kadhafi, the son of the former Libyan head of State Mouammar Kadhafi, who had taken refuge in Niger in

³ Abdoulaye Hamadou, “La gestion des flux migratoires au Niger entre engagements et contraintes”, *La Revue des droits de l’homme* [online], 14 | 2018, uploaded on 27 June 2018, consulted on 30 April 2019 <http://journals.openedition.org/revdh/4378>, p. 12.

⁴ Delphine Perrin, Niger : Quelles relations entre dynamiques d’acteurs et dynamiques juridiques et politiques concernant les migrations ? Retour de terrain à Niamey (Niger), 2 au 10 décembre 2017, <https://movida.hypotheses.org/2032>, 16/02/2018

⁵ LET4CAP, Law Enforcement Training for Capacity Building NIGER Downloadable Country Booklet, <https://www.let4cap.eu/wp-content/uploads/2018/11/NIGER-CB.pdf>, p. 37

September 2011, despite the significant risk that he would be tortured in Libya. In May 2018, between 130 and 140 Sudanese refugees and asylum-seekers were sent back to Libya where they had previously been detained. This expulsion did not comply with the arrangements in place and was justified by the fact that the people concerned were alleged members of an armed group⁶.

Assisted voluntary returns: a genuine choice?

11. The assisted voluntary return (AVR) programme implemented by the International Organization for Migration (IOM) gives migrants the option of being voluntarily returned to and reintegrated into their places of origin when that does not constitute a breach of international law, particularly the risk of being tortured. The others are either steered toward UNHCR to apply for asylum or are left at the borders or in the border towns of Dirkou or Assamaka.

12. Migrants from Senegal and Guinea met by OMCT in Agadez in October 2019 said that for those who return to their country of origin, access to reintegration assistance is slow and difficult⁷. This situation has often prompted returnees to embark upon the path of exile once again, via even more dangerous routes. Indeed, IOM acknowledges having assisted migrants who had already been part of the return programme. Niger should, therefore, ensure that migrants are not returned to countries where they might be subjected to torture or ill-treatment.

IV. The role of State actors in acts of torture and ill-treatment against migrants in Niger (Articles 6 and 16)

a) Arbitrary detention and poor detention conditions of migrants, refugees and asylum-seekers at police stations and in prisons

⁶Amnesty International 2018. *More than a hundred Sudanese nationals deported to Libya in critical situation and at risk of serious abuses including torture*, 11 May. <https://www.amnesty.org/en/latest/news/2018/05/niger-more-than-a-hundred-sudanese-nationals-deported-to-libya/>

⁷Accounts gathered during OMCT's visit to Agadez from 16 to 18 October 2019.

13. Since the 2015 law prohibits any travel towards the north of the country in the direction of Libya, migrants passing through that region are arrested arbitrarily. Arrests linked to irregular immigration add to ongoing opposition to the implementation of the ECOWAS Protocol on Free Movement of Persons, the Right of Residence and Establishment. Indeed, even ECOWAS nationals who arrive in Niger in possession of a passport are stopped by the police, while other migrants are accused of facilitating trafficking by letting irregular migrants stay in their homes.

b) Living conditions of migrants in 'ghettos'

14. Migrants also end up confined to ghettos where they are kept locked up by smugglers who subject them to various forms of physical and psychological violence. The ghetto that the OMCT representative visited in Agadez consisted of a handful of partially built, derelict houses where the migrants are living in tough and precarious conditions.

As the people running the ghettos fear being found out by the authorities, according to International Rescue Committee, access to these ghettos by humanitarian operators has become even more difficult⁸.

c) Ill-treatment by security forces at the borders

15. The strengthening of controls at Niger's borders, supported and maintained by international actors, has also led to an increase in abuses and ill-treatment of migrants by officers of the defence and security forces. In Niger, more than one in three migrants have been subjected to threats and psychological violence, one in five migrants have been victims of physical violence and one in ten migrants have been detained and had their money confiscated at the borders⁹. Yet, to date, our organizations are not aware

⁸ International Rescue Committee 2018. *Pushing the boundaries: Insights into the EU's response to mixed migration on the Central Mediterranean Route*, July 2018, <https://www.rescue.org/sites/default/files/document/2933/ircpushingtheboundariesfinaljuly2018.pdf>

⁹ Jonas Bergmann, Julian Lehmann, Thomas Munsch & William Powell, Protection Fallout. How Increasing Capacity for Border Management Affects Migrants' Vulnerabilities in Niger and Mali, RESEARCH PAPER, Global Public Policy Institute, West Africa Regional Mixed Migration Secretariat, Danish Refugee Council, https://www.gppi.net/media/GPPI_DRC_RMMS_2017_Protection_Fallout.pdf, November 2017, p. 43

of any criminal or disciplinary sanctions having been taken against the security forces for ill-treatment or abuse of migrants.

V. Sexual and gender-based violence against migrant women

16. The extreme precariousness and vulnerability of migrant women in transit in Niger is particularly linked to sexual exploitation. The porosity of the borders, abuses by Nigerien security forces and the law on the smuggling of migrants have favoured the recurrence of sexual violence against migrant women, particularly at the borders.

17. State agents take advantage of the vulnerability of women to have paid sexual relations with them. According to a report by the Clingendael Institute, migrant women attributed between 8% and 14% of sexual assault-related incidents to the Nigerien security forces¹⁰. Private and non-State actors such as people smugglers, drivers and migrants are most involved in violence against migrant women and organizing their sexual exploitation.

18. Over the years, Agadez has become a major platform for organized prostitution where young women wishing to migrate to Europe are exploited. Even if women have enough money at the start of their journey, by the time they reach Agadez they have often run out of financial resources and have to engage in prostitution in order to be able to either continue the journey or turn back.

VI. The situation of migrant children: the most vulnerable of the vulnerable

a) Detention conditions for minors

¹⁰ Fransje Molenaar, Jérôme Tubiana & Clotilde Warin, Op. Cit., p. 30

19. Many children are being detained in the country's prisons without being offered a rehabilitation or social reintegration process. Minors are generally detained separately from adults, although this is not always the case. Furthermore, prison staff do not appear to be trained in the specific requirements associated with caring for minors.

b) Children accompanying their migrant parents

20. Niger is a country of departure for children who mainly emigrate in the company of adults. Child trafficking is common as children are used to generate income through begging in the street, often recruited after an agreed sum of money has been paid to the family¹¹. This has a high cost for the children who are deprived of schooling and are beaten if they do not collect enough money.

c) Child trafficking and slavery: migration in harmful traditional practices

21. Child slavery for traditional marriage purposes through the practice *wahaya*, also called *sadaka*, occupies an important place in Niger. This practice, which is considered by the ECOWAS Court of Justice to constitute a form of slavery, involves the trafficking of one or more girls as a fifth spouse. *Wahayas* must not only endure regular rape and physical abuse by their masters but are constantly mistreated by the legitimate spouses.¹² Many girls who have been subjected to this practice come from Nigeria. The State of Niger's approach to this practice has been rather lax and it has failed to deploy sufficient resources to stop it.

VII. Impunity and access to justice for migrant victims of torture

¹¹ Antonia Carrion, Manuela De Gaspari & Serena Zanella, Young and on the move in West Africa, Report by Save the Children and Mixed Migration Centre, <https://data2.unhcr.org/en/documents/download/70634>, February 2018, p.17

¹² Anti-Slavery International and Timidria, Alternative report on Niger's implementation of the Convention on the Rights of the Child (3rd, 4th and 5th combined periodic reports). Children in slavery: Stigma and discrimination against children of slave descent; Access to education by children of slave descent; Forced child begging of *talibés*; Child domestic work; The *wahaya* (5th wife) practice. The Committee on the Rights of the Child 79th Pre-Sessional Working Group (February 2018), https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NER/INT_CRC_NGO_NER_29854_E.pdf, p. 17, October 2017

22. The Nigerien State has prioritized combating the smuggling of migrants and seems to have neglected the other abuses to which they are subjected within its territory. The main people responsible for human trafficking go unpunished, particularly when it is linked to harmful traditional and religious practices.

23. As migrants do not often file complaints against the perpetrators of these acts, there is a large discrepancy between the actual scale of the phenomenon and the number of convictions¹³. The efforts of the Nigerien Government are limited to tracking down the non-State actors involved in migrant trafficking. There has been no investigation, prosecution or conviction of government officials for complicity in trafficking or criminal activities linked to trafficking¹⁴. Corruption and complicity between the law enforcement agencies and smuggler network are subsequent sources of concern.

Conclusions and priority recommendations

24. For several decades, Niger has been the epicentre of transnational crime, which manifests through terrorism, human trafficking and migrant smuggling. The Nigerien Government has adopted a repressive legislative and institutional approach to fight crime linked to irregular movements of people, which poses a number of problems, particularly increased exposure of migrants to torture and ill-treatment at the hands of defense and security forces and non-State actors. Unfortunately, the State of Niger has not taken repressive measures to punish those responsible for or complicit in acts of torture and ill-treatment against migrants, particularly at its borders.

25. The following recommendations should therefore be made to the authorities:

- Urgently adopt and enact the 2014 Bill against torture, ensuring that it is in line with the Convention against Torture

¹³ End of mission statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales, on his visit to Niger (1-8 October 2018)

<https://www.ohchr.org/ENewsEvents/Pages/DisplayNews.aspx?NewsID=23698&LangID=E>

¹⁴ US Department of State, Trafficking in Persons Report, Niger, June 2019, p. 350,

<https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>

- Push through adoption of the Bill to amend Law 2012-44 of 24 August 2012 on the composition, organization, remit and functioning of the National Human Rights Commission, which takes into account the establishment of a National Prevention Mechanism (NPM)
- Create within the Nigerien police force a specialized mixed unit to investigate abuses against migrants, including acts of torture and ill-treatment by security forces
- Establish disciplinary and criminal sanctions against members of the security forces found guilty of acts of torture and ill-treatment
- Develop training programmes for the security forces on migrants' rights and the prohibition of torture and ill-treatment