

TREATY BODY MONITOR

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COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 38TH SESSION (NEW YORK 14 MAY – 1 JUNE 2007) NIGER (1ST & 2ND PERIODIC REPORTS)

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Information Submitted to the Committee

On 29 May 2007, the Republic of the Niger submitted its combined initial and 2nd periodic reports¹ under the *Convention on the Elimination of All Forms of Discrimination against Women* (the Convention), as well as written responses² to the list of issues and questions³ raised by the Committee on the Elimination of Discrimination against Women (the Committee). The delegation from Niger was headed by Ms. Zeinabou Moulaye, Minister of Women's Affairs and Child Protection, and comprised 16 other high-level dignitaries, including Niger's Ambassador to the United Nations, his Excellency Aboucar Ibrahim.

Niger is a large, land-locked country with 63 per cent of its 10 million inhabitants living in extreme poverty, of which 73 per cent are women. Niger signed and ratified the Convention in 1999 and the Optional Protocol in 2004. Niger^[MSOffice1] noted that its reservations are to provisions of the Convention that are contrary to

¹ <http://daccessdds.un.org/doc/UNDOC/GEN/N05/517/77/PDF/N0551777.pdf?OpenElement>.

² <http://daccessdds.un.org/doc/UNDOC/GEN/N07/254/96/PDF/N0725496.pdf?OpenElement>.

³ <http://daccessdds.un.org/doc/UNDOC/GEN/N06/555/53/PDF/N0655553.pdf?OpenElement>.

existing customs and practices that require 'the passage of time' before they can be modified.⁴ Niger's reservations⁵ pertain to several core requirements of the Convention, specifically: abolishing discriminatory customs and practices of inheritance (Article 2), social and cultural conduct of men and women (Article 5), married women powerless to choose domicile (Article 15), and rights during and after marriage (Article 16). The delegation reported that Niger is in the process of preparing to withdraw its reservations. Although encouraged by this statement, the Committee tried to gain an understanding of why the reservations were entered initially because Niger ratified very similar language on women's rights in the *International Covenant on Civil and Political Rights* over twenty years earlier without reservation. The delegates did not provide a clear explanation.

A shadow report⁶ was jointly submitted by a coalition of ten NGO's. The shadow report emphasises that there no conflict exists between Islam and the provisions of the Convention, and that religion should not be used in Niger as a shield to perpetuate discriminatory laws or traditional practices harmful to women.

The Committee was encouraged by the inclusive manner in which the State report was prepared, and the extensive list of UN agencies and NGOs whose input had been sought, as well as the candour of the report and written responses.

Niger is a party to a number of other international instruments including the *International Covenant on Civil and Political Rights*, the *International Convention on the Elimination of all Forms of Racial Discrimination*, the *International Covenant on Economic, Social and Cultural Rights*, and the *Convention on the Rights of the Child*. Additionally, in 2004, Niger ratified the Optional Protocol to the Convention.⁷

Themes and Issues⁸

Legal Framework/Definition of Discrimination

Niger's internal legal system is a three-pronged system based on the French Napoleonic Code, Islamic law, and customary law. Niger demonstrated progress in undertaking a number of legal reforms^[MSOffice2] affecting women, albeit on a piecemeal basis. The delegation relayed Niger's^[MSOffice3] hopes of creating a holistic system that meets its obligations under international law. The Committee expressed concern that there is no legal definition of discrimination, reiterating the main concerns in the shadow report. The delegation argued that the Constitution of Niger already guarantees equality without distinction as to sex, social, racial or religious origin. The Committee did not appear persuaded and said that they were disconcerted by the obvious inconsistencies resulting from the continuing precedence given to customary law while claiming equality. The Convention cannot be invoked directly in court proceedings in Niger. The delegation explained that Niger's reservations to the Convention prevent this. Accordingly, the Committee was not surprised that there has been no recorded court case applying the Convention and deplored that women continue to suffer discrimination. The Committee made clear that continued reliance "on the passage of time" to resolve the issue of enforcing the Convention is unacceptable, and requested specific information as to progress in that regard.

The delegation explained that customary law can be avoided because the parties to a legal proceeding are free to "opt out" of having custom applied, but that there must be mutual agreement. However, mutual agreement is not easily obtained when customary law clearly favours men. The delegation's responses to questions about

⁴ The[0] Convention's reporting guidelines require that a country's initial report discuss the status of its implementation efforts regarding each article as well as any reservations or declarations.

⁵ <http://www.ohchr.org/english/law/index.htm>.

⁶ Rapport Alternatif des ONGs du Niger sur la mise en œuvre de la Convention sur l'Élimination de Toutes les Formes de Discrimination à l'égard des Femmes (CEDEF/CEDAW), http://www.wildaf-ao.org/fr/article.php3?id_article=1175.

⁷ <http://www.ohchr.org/english/law/>.

⁸ For further detail on the discussion, see <http://www.un.org/News/Press/docs/2007/wom1632.doc.htm>.

what specific remedies are available to women who have suffered from discriminatory treatment were also indicative that despite theoretical access to international courts, women face discriminatory customary law.

National Institutional Machinery

The delegation reported that the Ministry for the Advancement of Women and Protection of the Child, (MAW), led by Ms. Mousaye, acquired its present format in 2005. The delegation described a capacity-building program for women established in 2004 that is being implemented.

The dialogue with the Committee focused on Niger's 1996 National Policy for the Protection of Women and Children, which revolves around five basic principles and thirteen defined targets.⁹ Although the delegation described numerous successes, the Committee reiterated many of its written questions about a specific, identifiable framework. The Committee also questioned the relationship between the 1996 policy and the more recent National Gender Policy which was adopted in 2007. The delegation did not clearly answer whether the former was evaluated, or how it relates to the new policy, or whether both are simultaneously effective, nor did it clearly explain the links between the National Institute for Monitoring the Advancement of Women (ONPF) and MAW, and whether they utilise the same tools, criteria, and targets.

Committee members requested additional information on what resources are provided to MAW and the ONP. Regarding Niger's plan to sign the African Charter on Human and People's Rights and on the Rights of Women,¹⁰ the Committee requested a progress report and expressed the hope that the Charter will serve to buttress CEDAW implementation as well.

Using Temporary Special Measures

The Committee commended proactive measures reported by the delegation, such as quotas for women in the political process. However^[MSOffice4], the Committee was emphatic in pointing out that these policies fail to take advantage of temporary special measures as outlined in the Convention, and elaborated by the Committee in its General Recommendation No. 25,¹¹ which should be applied in other areas where equality is clearly lacking and needs special attention. The delegation noted that quotas had been applied to military school admissions. The delegation also cited various initiatives undertaken to foster awareness of the importance of advancing women in society, and agreed to review Recommendation No. 25, and explore its application.

Stereotyping and Awareness-Raising

The^[MSOffice5] delegation described a successful initiative of distributing free, solar-powered radios in the rural areas as part of an awareness-raising campaign^[MSOffice6] concerning stereotyping. While recognising the breadth and sincerity of Niger's efforts, the Committee expressed its frustration with Niger's reservation to Art. 5. The Committee emphasised the dire need for a comprehensive strategy to tackle stereotypes in school curricula, and textbooks, and the sensitisation of educators. They also requested detailed information as to the context of the brochures, 'awareness caravans' and theatrical skits listed as examples of outreach activities^[MSOffice8]. Questioning whether any studies had been performed on the effectiveness of these tools, the Committee was emphatic that the reservation needs to be withdrawn.

Violence against Women and Slavery

The State report acknowledged that 'society continues to countenance'¹² violent practices against women, including female genital mutilation (FGM) and 'other forms' of sexual abuse, and physical and psychological violence. The delegation reported that in 2003 there were reforms criminalizing both FGM and sexual

⁹ Niger, Written Responses, page 6.

¹⁰ http://www.achpr.org/english/info/charter_en.html.

¹¹ [http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf).

¹² Niger Initial Report, page 22.

harassment. The Committee deplored the lack of a more comprehensive plan to combat violence against women, because although FGM is now punishable in Niger, there have been no prosecutions against practitioners or family member accomplices. Committee members probed as to the implementation of the concrete actions described by Niger.

The continued existence of slavery in Niger generated heated discussions between the delegation and the Committee. The State report acknowledged that women continue to be sometimes sold “indirectly” as slaves, and its written responses did not dispute a 2002 NGO estimate of approximately 870,000.¹³ One delegate was adamant, however, that no slavery persists today because it was criminalized in the Penal Code in 2003. The delegate was surprised that co-delegates were discussing slavery as a continuing phenomenon and insisted that while some “slavery-like” practices exist, such as keeping certain people in a position of inferiority, or incidents of persons being sold, there is no slavery in Niger today. He explained that slavery as it is defined in international texts simply does not exist in Niger. Focusing on the glaring inconsistencies between certain delegates and the written reports, the Committee was extremely sceptical that slavery had disappeared entirely since 2003. To defuse the discussion, the Committee Chairperson explained^[MSOffice9] that the Committee experts were following up on the written materials that Niger had submitted.

Trafficking in Women, and Prostitution

Recognising that Niger has ratified the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* without reservation, and has entered into local agreements with neighbouring countries, the Committee was concerned with information it had received that trafficking is prevalent in Niger, often disguised as 'forced temporary marriages'. The Committee requested details as to specific plans for preventive action, in particular if there was any draft legislation on trafficking, and which ministry would have responsibility for it, and whether the plan included reintegration and rehabilitation of trafficked victims. The delegation stated that Niger is mostly a transit point. The government is actively combating trafficking and has implemented training of its border guards. Two committees have been established to ensure further measures are taken.

Although its criminal law painstakingly defines what conduct constitutes prostitution, the delegation detailed the ongoing efforts of various NGOs to provide rehabilitation and reintegration for prostitutes. Niger appears to be relying largely on such NGOs activities rather than government measures.^[MSOffice10]

Participation in Political and Public Life

The delegation explained that a quota of at least 10 per cent women in elected office and 25 per cent in government and administration positions has been implemented, and that the number of women elected actually exceeded the quota. The shadow report, however, claimed that the quota on appointments to state jobs had not been fully met. The Committee asked for actual numbers of women given jobs in government and urged that the next periodic report provide greater detail^[MSOffice11].

Citizenship

With neither the report nor the delegation denying that the law continues to be discriminatory because women cannot pass on their citizenship to family in the same manner as men (this issue being one of Niger’s reservations to the Convention), the Committee urged the withdrawal of the reservation along with legislative reforms to end the discrimination. Committee^[MSOffice12] Members also questioned any restrictions on women’s rights to hold passports in their own names and whether children can be added to the mother’s documents. The delegation explained that women have full capacity to hold passports without having to obtain their husbands’ permission and that children may be included on either parent’s passport documents.

Education

¹³ Niger, Written Responses, page 13.

The delegation reported that in 1998, Niger adopted a plan of equal access to education that is specifically directed at increasing girls' school attendance as part of the ten year plan. Attendance increased from less than 30 per cent in 2000 to 44 per cent in 2006. Measures were enacted to punish parents who fail to send girls to school and to reimburse the government for schooling costs if they withdraw the daughter for getting married. Nonetheless, the rates of girls' attendance has been rising more slowly than that of boys, and gave rise to numerous questions on the part of the Committee, especially as regards the State report's acknowledgement that girls' schooling situation is "alarming".

Employment

Niger's Labour Code of 1996 mandates equal pay to both men and women. The delegation reported that the Convention's requirements are met by the legislation that required this. The Committee forcefully disagreed, pointing to the rampant disparities in practice, and stressed that laws restricting night work and other work conditions, while according to the Government are supposed to be protective of women, are actually openly discriminatory.

Health, Social and Economic Benefits, Rural Women

The delegation reported that the Reproductive Health Law of 2006 has started making significant inroads and that in rural areas some 2000 health centres have been built and 2000 community health care specialists have been trained over the last four years. Extensive vaccination and HIV prevention initiatives have been re-launched. The Committee commended these efforts, but expressed concern with the delegation's optimism that FGM practitioners would simply 'surrender' their knives when deprived of their livelihood.

Personal and Family Status

Niger automatically provides social benefits^[MSOffice13] to male heads of household, but requires women to initiate a court procedure to prove that they qualify as heads of household. Currently pending legislation would revise that discriminatory impact as it applies to women in the civil service. Nationwide applicability, although mentioned in Niger's written responses as being in the works, has not yet been implemented despite efforts dating back to 1975. Niger has also been unsuccessful in revising the Family Code which reflects a multitude of socio-cultural impediments. The shadow report reflected particular frustration with this long delay which continues to condone underage marriage, forced marriage, and husbands' power to unilaterally repudiate their spouses under Islamic law. The delegation was optimistic, perhaps overly so, about the likelihood of a new Personal Status law for 2008.

Conclusions and Next Steps

The large size of the Niger delegation proved somewhat unwieldy in the pace of the dialogue. Responses tended to turn into mini-lectures. Despite the Committee Chair's frequent requests for concise answers, delegates were knowledgeable in their respective areas and sought to convey it. The high-level delegation and their efforts to be well-prepared served to convey the weight and importance attached by Niger to the process.

The spectrum of delegates was broad enough to reveal a marked range of responsiveness on the part of the delegates themselves to a number of the more forceful suggestions from the Committee. Delegates in well established professions such as law reacted less enthusiastically than those from newer sectors focusing on women's advancement. Overall, the delegation stood firm on several topics regarding Niger's reservations to the Convention. The presence of a representative from Niger filming each of the Committee members and NGO members as they spoke potentially may also have had a chilling effect on persons critical of the government.

The Committee made clear its expectation that Niger tackle the tasks involved in eradicating customary practices and continue the process of legal and cultural reforms to ensure conformity with the Convention, and stressed the availability of its General Recommendations on relevant topics.

The Committee's Concluding Comments commended Niger's demonstrable achievements such as reforms to the Penal Code, the Reproductive Health Act, and earmarking decision-making positions to be filled by women, urging further expansion of the latter. The Committee urged Niger to establish a concrete time frame for withdrawing its reservations, in particular to Articles 2 and 16, because they are contrary to the very object and purpose of the Convention. The Committee reiterated the need to promptly incorporate an adequate definition of discrimination in the national legislation to combat both direct and indirect discrimination. The Committee called upon Niger to implement formal training programs for the judiciary and law enforcement sectors disseminating the Convention in order to establish a legal culture upon which further awareness and sensitisation programs and campaigns can be built.

The Committee particularly underscored the need to round out these efforts by combating illiteracy and poverty and discriminatory cultural practices. The need was reiterated for harmonizing all currently conflicting national legislation with the Convention as well as the speedy adoption of a family code to ensure equality in practice as well as in theory. The Committee suggested the establishment of clear goals and timetables to implement compliance with the Convention along with effective data collection and monitoring systems to assess all measures taken, as well as adopting impact assessment mechanisms. The Committee reiterated that Niger should make use of the Committee Recommendation No. 19 to address violence against women and Recommendation No. 25 to impose temporary special measures in identified areas. The Committee specifically requested that Niger provide in its next periodic report comprehensive data on efforts to eradicate trafficking, prostitution, and slavery.

Lastly, the Committee recalled the importance of implementing the Beijing Platform and Declaration and achieving the Millennium Development Goals, and encouraged Niger to ratify the International Convention on International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

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