



INTERNATIONAL LABOR RIGHTS FORUM

1634 I St NW, Suite 1001, Washington, DC 20006

From: Brian Campbell, Director of Policy and Legal Programs
Phone: (202) 701-3021/ office (202) 347-4100 ext. 102
Fax: (202) 347-4885
Email: brian.campbell@ilrf.org

Post-Hearing Brief
Case # 003-CP-08
In re: Niger

February 24, 2012

ATTN:
William Jackson, Deputy Assistant U.S. Trade Representative for GSP
GSP Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th St., NW
Room 514
Washington, DC 20508

Pursuant to [76 FR 238] (December 12, 2011), the International Labor Rights Forum (ILRF) files this post-hearing brief in support of the on-going review of forced labor violations by the Government of the Niger, Case # 003-CP-08.

The situation in Niger remains unchanged: the practice of slavery has continued for far too long.

On July 20, 2006, the International Labor Rights Forum (ILRF) presented a petition pursuant to 15 C.F.R. §2007(b) to request a review of the Republic of Niger's designation as a least-developed beneficiary developing country under the Trade Act of 1974, Generalized System of Preferences (GSP), 19 U.S.C. §2461 et seq., as amended. The Government of Niger failed to take steps to afford workers "internationally recognized worker rights" as required under 19 U.S.C. §2462(b)(2)(G) & (c)(7) and defined in 19 U.S.C. § 2467(4), most notably, failure to protect workers' freedom from compulsory labor. The situation in Niger has, for several years, remained largely unchanged since the ILRF filed its petition.

The newly-elected democratic government of Niger has provided some reason for optimism. The government has acknowledged forced labor as a serious problem, and in December 2010, passed a law to combat human trafficking.¹ We spoke with members of the government in January, and while we believe they are looking in the right direction, without real action they cannot bring forced labor in Niger to an end. While the situation in Niger is difficult, and working with Touareg groups presents real challenges, work must not only proceed but become a real priority for the government. Slavery has continued in Niger for far too long. Niger passed a law outlawing slavery in December 2003, but due to poor enforcement and a lack of political

¹ U.S. Dep't of State, Trafficking in Persons Report: Niger (June 2011) ("TIP Report 2011") p. 277, available at: <http://www.state.gov/documents/organization/164457.pdf>

will, the practice has persisted and shown no signs of waning.² Unless Niger begins to take concrete measures to fight forced labor, these recent developments will amount to no more than rhetoric.

The Government of Niger's actions to address slavery and forced labor have so far been insufficient.

According to the most recent estimates, as many as 43,000 Nigeriens live in slavery.³ We are concerned by the way the government pointedly avoided referring to the conditions in Niger as slavery in their testimony and attempted to recharacterize the problem. In the government's testimony, they appeared to back away from their earlier admissions of the problem of forced labor, saying that "women and some groups are considered second zone citizens... I don't want to use the word slavery because slavery send to [sic] another image."⁴ The conditions in Niger are slavery by any legal definition, even the 1925 League of Nations Convention on Slavery, which defines slavery as "the status of a person over whom any or all of the powers attaching to the right of ownership are exercised." *Wahayu* are bought and sold in Niger like property, and forced to perform labor for their owners.⁵ Niger has failed to live up to its obligations under ILO Convention 29 to suppress the use of forced labor: "work or service which is extracted from any person under the menace of penalty and for which the said person has not offered himself voluntarily."⁶ The most recent report by the Committee of Experts on the Application of Conventions and Recommendations (CEARC) found that not only do conditions of forced labor persist in Niger, but that penal sanctions for violations of the 2003 law prohibiting slavery are rarely and inconsistently enforced. CEARC could find almost no information regarding prosecutions or other enforcement mechanisms under Niger's 2003 slavery laws.⁷ Niger remains on the State Department Trafficking in Persons Report's Tier 2 Watch List.⁸

This appears to mirror the government's past position, in which it attempted to defend the *wahaya* practice when a victim of forced labor sued for her freedom. The ECOWAS Community Court of Justice for the case of Mrs. Khadjiatou Mani Koraou, held that Mrs. Koraou was a victim of slavery and that the Republic of Niger was responsible for its judicial authorities' inaction.⁹ Mrs. Koraou's conditions were typical of *wahaya*, and the court's decision was clear that even in better conditions, their ruling would not have changed: "Involuntary servitude, even if tempered by humane treatment, is still slavery."¹⁰ There is no ambiguity in the court's decision: the practice of *wahaya* is the practice of slavery.

² Zangaou, Moussa and Abdelkader, Galy. *Wahaya: Slaves and Concubines in Niger*, Anti-Slavery International (February 2012) ("ASI Report 2012") p. 4-5.

³ U.S. Dep't of State, Trafficking in Persons Report: Niger (June 2008) 195, available at: <http://www.state.gov/documents/organization/105501.pdf>

⁴ Executive Office of the President: Office of the U.S. Trade Representative. *U.S. Generalized System of Preferences (GSP) 2011 Annual Review of Country Practices. Hearing* (25 Jan. 2012) p. 294.

⁵ See ASI Report 2012 at 8-9.

⁶ ILO Convention 29 available at: <http://www.ilo.org/ilolex/english/convdisp1.htm>

⁷ International Labour Congress, 97th Session, 2008, "Report of the Committee of Experts on the Application of Conventions and Recommendations," Report III Part 1A ("CEACR Report"), International Labour Office, Geneva 235-236.

⁸ TIP Report 2011 at 277.

at: <http://www.state.gov/j/tip/rls/tiprpt/2011/164233.htm>

⁹ Hadijatou Mani Koraou v. The Republic of Niger. ECOWAS Community Court of Justice, at 15, Oct. 27, 2008 at 15.

¹⁰ *Id.*

Although we are cautiously optimistic about the progress the new government has made, the United States must remain vigilant in watching Niger to ensure this progress continues. “Taking steps” demands more than simply saying the right things and passing the right law. Slavery cannot be abolished without both the political will and courage to perform the actions necessary to do so. The Government of Niger must demonstrate a firm commitment ending slavery through steps such as developing nationwide campaigns to educate its citizens and local authorities, enforcing anti-slavery laws through prosecutions and training programs, and providing assistance to victims through a compensation fund, legal clinics and support groups. It is still too early to say if the Government of Niger will do so, and the U.S. Government should endeavor to see that it does.

Recommendations

It is critical that the Government of Niger act quickly and decisively to end the practice of slavery. Emphasis should be placed on first, ending the pervasive *wahaya* practice that has subjected women to forced labor and sexual abuse, and second, working to end the discriminatory beliefs inherent in the racial caste-based slavery system rooted in Touareg culture. The government must take a targeted approach and attack these issues separately, in addition to looking for ways in which solutions can target their overlap. Most importantly, actions must be taken to ensure that both the 2003 laws criminalizing forced labor and the 2010 Trafficking in Persons law are active and effective. The Government of Niger must demonstrate that it has 1) implemented the 2003 anti-slavery laws by creating a track record successful prosecutions and police training, and operationalize the 2010 anti-trafficking law with concrete deadlines and a national action plan; 2) created comprehensive, targeted awareness campaigns to change the ways of the thinking justifying the practice of forced labor; and 3) provided relief for victims through a compensation fund, clinics, and support groups.

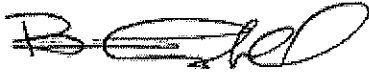
1. The Government of Niger must begin implementing its laws against forced labor immediately. The 2003 laws criminalizing forced labor must be enforced, and this enforcement be accounted for, by the government undertaking and providing data for prosecutions. The government must back their promises with a track record of successful prosecutions that are made easily accessible. Police and other authorities must be trained to be aware of and equipped to carry out anti-slavery laws. In addition, steps must be taken to implement the 2010 anti-trafficking law as quickly as possible. A deadline should be set for the government to draft the regulations necessary to “operationalize” the law. Information on the status of the National Committee and National Commission provided for in the law needs to be made available, and a national action plan should be developed. Police training for enforcement and investigations of high-risk areas such as Tahoua should follow.

2. These actions must be backed by a comprehensive and concerted effort through targeted awareness campaigns to end the ways of the thinking justifying the practice of forced labor. We recommend that the same public awareness programs the government has promised to implement to suppress child labor, with the cooperation of community leaders, be adapted and used to spread awareness of the 2003 law. First, campaigns should seek to stop forced labor under the *wahaya* practice. This practice is accepted in part because of the eminent persons who are part of it. Women who are sold as *wahaya* are not “fifth wives,” they are women who never consent

to marriage, are forced into slavery, regularly sexually abused and made to do hard labor.¹¹ Second, these campaigns should seek to put an end to caste-based slavery. People in Niger continue to be forced into slavery at birth, working for their masters with no form of compensation, because of race.¹² Campaigns should focus on eliminating racial discrimination, showing leaders of all races speaking out against the practice and taking a stand against the injustice done to those born into slavery. Comprehensive awareness campaigns should seek to empower victims of all forms of slavery and provide information as to how they can effectively seek help. These people need to know that they have rights and are equal persons under the law.

3. Finally, the government must provide assistance to the victims of these crimes to ensure they do not fall back into slavery. The government needs to establish a compensation fund for victims. Legal clinics must continue to be developed, and support groups with other victims should be created to help re-integrate those who have suffered from this practice into society. Women who have been forced to work as *wahaya* should be able to meet with other women who have overcome the injustice, and those forced into caste-based slavery should be able to meet with others who have learned they are not inferior because of their race. All victims of slavery need to know that they are equal members of society and born with equal rights. The practice of forced labor is a violation of those rights that none of them should have to endure.

Respectfully submitted,



Brian Campbell
Director, Policy and Legal Programs
International Labor Rights Forum

¹¹ See ASI Report at 7-9.

¹² See CEACR Report at 235.