

# NIGER

## Impunity enshrined in the constitution

The culture of impunity which has characterised Niger for years has just been consecrated with a decision, before any trial has been held, to grant amnesty to the perpetrators of human rights violations which occurred during the two coups of January 1996 and April 1999. This amnesty has acquired an even greater significance by being incorporated into the country's new constitution, which was adopted by referendum on 18 July 1999. In this way, impunity, far from being an implicit practice, takes on a constitutional quality by forming part of the country's new basic text.

The decision to grant amnesty to those responsible for human rights violations during the coup of April 1999, which led to the assassination of the Niger President, **Ibrahim Baré MAÏNASSARA** by members of his presidential guard, comes at a time when demands for an independent inquiry into his death are multiplying both at the national and international level. Having refused for months to set up an inquiry on the pretext that President Maïnassara's death was caused by an "unfortunate accident", the new Niger authorities were obliged to take the decision to entrust the task of shedding light on these events to the national gendarmerie. The constitutional amnesty, which came into force even before the results of this inquiry were published, shows the refusal of the Niger authorities to bring to justice those responsible for these acts.

The new Niger authorities have also sought to intimidate those who have been demanding an inquiry into the facts. Thus certain supporters of former President Baré Maïnassara, who were opposed to an amnesty, have found themselves under house arrest or forbidden to leave the capital, Niamey. The military government has also threatened leaders of Niger's political parties with "disqualification" from the forthcoming presidential and legislative elections planned for the end of the year if they call into question the process of national reconciliation extolled by the new Niger authorities. This threat can be seen as an attempt to dampen down any inclination to demand the truth about the circumstances of the death of the former President of Niger.

For years, impunity has undermined the foundations for the rule of law in Niger. At the beginning of the 1990s, during the transition period leading from one-party rule to pluralism, attempts were made to bring to justice those responsible for human rights violations (in particular cases of arbitrary arrest, torture and extrajudicial executions). But those military and police who were suspected of committing these abuses and who were arrested, were later released, in particular as a result of pressure from their colleagues who mutinied.

So a succession of silences has covered up human rights violations in Niger for years. These silences, now surpassed by the incorporation of an amnesty into the constitution in July 1999, have formed the basis of all human rights violations in Niger for the last ten years. As long as this silence persists there can be no serious hope of establishing the rule of law in Niger.

### **The assassination of President Baré Maïnassara**

On 9 April 1999, the President of the Republic of Niger, General Ibrahim Baré Maïnassara and four other individuals, including the driver of the President, **Malam Souley** and a former Prefect, **Ali Saad**, were killed by the presidential guard at the military airport in Niamey. Amnesty International believes these five individuals were the victims of political killings.

President Baré Maïnassara had seized power, following a coup, in January 1996, which ousted the elected President, Mahamane Ousmane. During this coup, several people were killed in shooting between the mutineers and members of the presidential guard loyal to the Head of State, Mahamane Ousmane. The government of General Baré Maïnassara has subsequently been responsible for human rights violations which Amnesty International has denounced on several occasions during the last three years.<sup>1</sup> In these documents, the organisation has emphasised the serious retrograde step taken by Niger in respect of human rights with its succession of arbitrary arrests, torture and ill-treatment. These violations have brutally challenged the freedom of expression and of association which were recognised and guaranteed on the advent of a multi-party state in November 1990.

Amnesty International does not favour any particular type of government but it insists that the authorities respect human rights. The two coups in 1996 and 1999 led to deaths. In April 1999, five individuals, including President Baré Maïnassara were victims of political killings and two individuals were seriously injured.

According to the eye-witness account of the murdered President's personal servant, Hamani Amadou, obtained by Amnesty International, "After having saluted the soldiers on sentry-duty, President Baré Maïnassara set off towards the helicopter. I saw Major Daouda Mallam Wanké [who commanded the presidential guard] raise his arm in the air. I heard a

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<sup>1</sup> See the following documents: *Niger: A major step backwards*, AI Index: AFR 43/02/96, *Niger: Harassment of government opponents has become systematic*, AI Index: AFR 43/03/97 and *Niger: attacks on journalists threaten freedom of expression*, AI Index: AFR 43/01/98.

shot. Several seconds later, firing began. The President was hit in the back. His driver brought the presidential car and a lieutenant tried to bundle the President into it. Some soldiers said in Djerma<sup>2</sup>: "He's still alive". The President's body was then riddled with bullets fired from an armoured car." Amnesty International has received similar reports from other eye-witnesses, in particular military personnel who wanted to remain anonymous.

In such circumstances, international human rights instruments, including United Nations standards, require that an independent and exhaustive inquiry be set up with the least possible delay.

Immediately after President Baré Maïnassara's death, the Prime Minister presented his demise as the result of an "unfortunate accident". A mourning period of one month was decreed throughout the country and 14 military officers took power, setting up the *Conseil de Réconciliation Nationale*, (CRN) National Reconciliation Council. Major Daouda Mallam Wanké, commander of the presidential guard of the former President, was named as the head of the CRN.

From the day after the death of President Baré Maïnassara, on 10 April 1999, the main human rights organisation of Niger, *l'Association nigérienne pour la défense des droits de l'homme*, (ANDDH) Niger Association for the Defence of Human Rights, demanded an inquiry to be set up. This demand was taken up several days later by *l'Union interafricaine des droits de l'homme*, the Interafrican Union for Human Rights, which condemned the coup and expressed "hope that the crimes committed on that occasion will not remain unpunished." This demand for an inquiry was also endorsed, in May 1999, by the 16 countries of the Economic Community of West African States (ECOWAS).

On 30 April 1999, Amnesty International wrote to the new Head of State of Niger to ask for an independent impartial inquiry and to emphasise that the conclusions of such an inquiry should be made public. The organisation drew attention to the need to bring to trial those responsible for the assassination of the five individuals killed at the airport at Niamey. The Niger authorities never replied to this correspondence.

Confronted with all these demands for an inquiry, the Niger authorities, through their spokesperson, Captain Djibrila Hima Hamidou, confirmed on 13 April 1999 that there would

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<sup>2</sup> Djerma is one of Niger's national languages, it is spoken mostly in the west of the country, particularly in Niamey.

be no investigation because it was a matter of an "accidental disappearance". It would seem that this decision was not unanimous within the army. The chief of staff, Colonel Moussa Moumouni Djermakoye who had been proposed as head of the CRN, demanded as a precondition the arrest of those members of the presidential guard responsible for the assassination of President Baré Maïnassara and that legal proceedings be brought against them. Dismissed from his post the same day, apparently as a result of this demand, several days later he accepted the portfolio of Minister of Defence.

In June 1999, after refusing for two months, the CRN finally agreed to entrust an inquiry into the death of President Baré Maïnassara to the national gendarmerie. This decision followed two events: on 24 May 1999, the family of the deceased President lodged a charge of murder in the Niamey court against person or persons unknown. In addition, a European Union mission, which visited Niger during the month of June, made the opening of an inquiry one of the preconditions for its continued assistance to Niger.

Beyond the fact that an inquiry entrusted to the gendarmerie, who depend directly on the Minister of Defence, is not conducive to an independent investigation, the amnesty enshrined in Article 141 of the new Niger Constitution, adopted by referendum on 18 July 1999 makes this announcement of an inquiry a purely formal gesture, aimed at appeasing national and international pressure. Article 141 specifies:

"An amnesty is granted to the coup-makers of 27 January 1996 and 9 April 1999."

This text is clearly intended to guarantee impunity to the perpetrators of human rights violations which took place during the two coups, including the assassination of President Baré Maïnassara.

The death of President Baré Maïnassara and that of the four other individuals killed with him appear to be deliberate and arbitrary political killings. They constitute a violation of the right to life laid down in Article 5 of the International Covenant on Civil and Political Rights and Article 4 of the African Charter of Human and Peoples' Rights of 1981, both ratified by Niger in 1986.

Amnesty International therefore calls on the Niger authorities to ensure that the inquiry into these assassinations which has been set up offers full guarantees of impartiality and exhaustiveness and brings to trial those believed to be responsible for these acts, in conformity with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and

Summary Executions. Principle 19 of this text specifies that "in no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions." In this context, the amnesty written into the constitution of 18 July 1999 is contrary to those principles because it is tantamount to providing protection against legal proceedings for those responsible for the deliberate and arbitrary killings which took place during the coup of April 1999. In the organisation's opinion, only an impartial inquiry and judicial proceedings against those held responsible for these acts would be conducive to establishing of the rule of law in Niger.

### **Intimidation of political parties**

At the time when it violently seized power in April 1999, the military announced the dissolution of all state institutions, including Parliament and the Supreme Court, along with the abrogation of the Constitution adopted by referendum in 1996. The Prime Minister, Ibrahim Mayaki, indicated on the day of the assassination that the activities of political parties were temporarily suspended. This ban was lifted several days later, on 12 April 1999, after the political parties indicated that they were not challenging the new military power. Members of political parties were thereafter harassed and had their movements restricted. This repression was particularly aimed at political leaders who demanded an inquiry into the death of President Baré Maïnassara.

The violent death of President Baré Maïnassara isolated Niger in the international arena. On the day after, 10 April 1999, the Secretary General of the Organisation of African Unity, Salim Ahmed Salim, condemned "the brutal assassination" of the President of Niger. Numerous countries of the sub-region, including Mali, Nigeria, Côte d'Ivoire, Gabon and Senegal condemned the act, and France, the country's principal economic support, decided to suspend immediately its civil and military co-operation.

In order to respond to these condemnations, the National Reconciliation Council promised to hand over power to legally elected civilian authorities at the end of a transition period of nine months. An electoral timetable was drawn up with the new constitution to be adopted in July 1999 and Presidential and legislative elections scheduled for next October and November. The new president-elect of Niger was due to be sworn in on 31 December 1999. As a token of good faith and to show that the military would not hold on to power as had been the case in the coup led by Ibrahim Baré Maïnassara in January 1996, the junta has forbidden military personnel from standing in the forthcoming elections.

These promises led the 11 opposition parties united within the *Front pour la restauration et la défense de la démocratie*, (FRDD) Front for the restoration and defence of democracy, to ask the international community to support Niger during this transition so that it would lead to "free and fair" elections. For three years, the FRDD had been demanding the resignation of President Baré Maïnassara, elected in July 1996, following massive fraud.

In spite of this declaration of faith in democracy, the CRN has nonetheless on several occasions threatened the opposition parties with "disqualification" from the forthcoming elections. This was particularly so at the time the draft constitution was being adopted. Two systems of government were envisaged: a semi-Presidential system where power would be shared between the Head of State and the Prime Minister who would come from the parliamentary majority, and a Presidential system bestowing wide prerogatives on the Head of State. The political parties of Niger were divided on which to adopt. Those opposed to a semi-Presidential system, which had operated in Niger from 1993 to 1996, pointed out that this had led to a paralysis of power, which General Baré Maïnassara used as a pretext to seize power in January 1996. The critics of the Presidential system emphasised the authoritarian character of this system which was introduced by the murdered President.

Urged by the military to reach an agreement about a draft constitution, the political parties opted for a third way which provided for a government of national union during at least the first term of government. This proposal aroused anger in large sectors of civil society and in certain newspapers which denounced the greed of political leaders, eager to share the crumbs of power among themselves. This joint proposal by the political parties of Niger incited the wrath of one of the strong personalities in the CRN, Colonel Boureima Moumouni, Minister of the Interior who threatened the political parties on television on 23 June 1999, that they would be disqualified from the Presidential election if they did not give up their "squabbling".

In June 1999 the military leader, Major Daouda Mallam Wanké also threatened "any political party or individual" who tried taking stands which might "challenge" the process of national reconciliation proclaimed by the CRN with "disqualification from the forthcoming elections". This threat appears to be an attempt to dissuade anyone from demanding an inquiry into the assassination of President Baré Maïnassara.

Similarly, in spite of the fact that the new authorities promised not to censor the media, in May 1999 the directors of several private radio stations, "R and M", "T.F.M" and "Anfani"

were summoned by the CRN which called on them not to broadcast speeches opposed to national reconciliation.

Only one of Niger's political parties demanded an inquiry into the death of the murdered President and this led to some of its leaders being briefly detained or held under house arrest. They are leaders of the main party which supported the previous Presidential platform of General Baré Maïnassara, the *Rassemblement pour la démocratie et le progrès*, (RDP) Assembly for democracy and progress. The supporters of the former President also rejected any idea of an amnesty which, according to them, "would open the way to legalising political murder".

Some leaders of this party have had their freedom of movement restricted. At the beginning of May 1999, several ministers of the former government which was dissolved after the 9 April 1999 coup were forbidden to leave the capital, Niamey. This decision which was not taken by the courts, appears to have been communicated verbally to them by the police on the orders of the Ministry of the Interior and Territorial Administration. This measure was explained by the new authorities in Niger as arising from the need to begin "assessing the management" of the previous administration. Other sources indicate that the CRN feared certain former ministers would take refuge abroad.

At the beginning of June 1999, the leader of the RDP, who was most closely identified with demands for an inquiry, Yahaya Tounkara, the former Minister of Defence, was kept under house arrest for several days, after having tried to defy the order forbidding him to leave the capital. This use of house arrest seems to have been provoked by words the former minister used at a meeting organised on 30 May 1999, in the Aréwa region, the home region of the murdered President, during which Yahaya Tounkara had threatened the CRN with "resistance" if an inquiry into the death of General Baré Maïnassara was not opened. Although no longer under house arrest, the former Minister of Defence, along with several other officials of the former government, is still unable to leave Niamey.

Amnesty International is opposed to all arbitrary arrests made outside of judicial control. The organisation also objects to all house arrest, a measure which arises from a political decision, without any foundation in law. The organisation recalls that principle 2 of the "Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment" specifies that "arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose."

## **A culture of impunity**

The amnesty enshrined in the constitution of July 1999 comes on top of years of impunity for those responsible for human rights violations. In some cases, an inquiry has been instituted, suspects have even been detained following judicial decisions but they have been released in reaction to military pressure. All these serious allegations, which are not covered by the constitutional amnesty of July 1999 and for which those responsible remain unpunished, have created, throughout the years, a culture of impunity in Niger.

The refusal to investigate these facts is contrary to Niger's international treaty obligations and in particular to Article 2 Paragraph 3 of the International Covenant on Civil and Political Rights.

There follows a non-exhaustive list of some of the principal human rights abuses which remain unpunished in Niger, in the course of the last ten years:

### The 9 February 1990 killings

On that day, on the Kennedy Bridge which links the University with the centre of Niamey, the police fired on students who were demonstrating peacefully, killing at least three and wounding dozens of others. Some months later, the National Conference of Niger set up a commission with responsibility for investigating political crimes and abuses committed in the past. This commission submitted a report on the killings. A commander and two police officers were detained by the judiciary pending investigation but were released two years later without trial.

### The Tchintabaraden massacre of May 1990

In May 1990, a very large number of Tuareg people were arrested, tortured and killed by the Niger military at Tchintabaraden, Gharo and In-Gall. This massacre took place at a time of conflict between the Niger armed forces and several armed Tuareg opposition groups. The commission responsible for investigating political crimes and abuses, set up by the National Conference, undertook an inquiry and produced a report. An army officer, Maliki Boureima, was arrested after admitting, before the National Conference, that he had killed some Tuaregs. Two other non-commissioned officers were also arrested but the three men were released after lower-ranking officers took hostage, in February 1992, a Minister of the Government and the President of the High Council of the Republic. The authorities have never followed up this matter.

### Human rights violations committed under the rule of President Baré Maïnassara (1996-1999)

During these last three years, a very large number of human rights violations, committed by security forces, have remained unpunished. In March 1997, army personnel ransacked the premises of an independent radio station, "Radio Anfani". In the same year uniformed members of the security forces, acting either on orders or on their own initiative, arrested and tortured political opponents, notably **Elhadj Oumarou Oubandawaki**, an activist in the FRDD and **Souley Adji**, a Niger academic. Although these events were drawn to the attention of the authorities, in particular by Amnesty International, no inquiry was undertaken into these serious violations.

Amnesty International is also concerned by the lack of any inquiry into the 150 bodies discovered in a mass grave in Bouloungoure. In January 1999, in the east of the country, the *Front démocratique révolutionnaire*, (FDR) Democratic Revolutionary Front, a Toubou movement which led an armed rebellion in the region until a peace accord was signed in August 1998, confirmed the discovery of a mass grave containing 150 bodies on the island of Bouloungoure, on Lake Chad, in the Diffa region. The grave appears to have contained the bodies of individuals expelled in September 1998 from Nigeria, where they had apparently fled to escape from fighting linked to the Toubou rebellion. The Niger government, in the person of its then Defence Minister, Yahaya Tounkara, formally denied that there had been killings in this region. After several months' silence, an information-gathering mission carried out by the High Commissioner for the Restoration of Peace confirmed, in April 1999, the existence of a grave containing 150 men whose names were published by the press, but no inquiry was ever instituted into the facts.

In this way, each new violation which does not lead to an inquiry and result in the bringing to justice of those responsible, contributes to building up a wall of impunity which supports all those who refuse to accept the rule of law in Niger. Added to former victims for whom the consolation of recourse to justice has been refused, are new victims who proclaim their need for the truth. The constitutional amnesty of July 1999 is the most recent sign of the current willingness to refuse to confront the truth about past human rights violations so as better to ensure impunity for future crimes. If Niger does not break out of this vicious circle, the whole future for the respect for human rights and for the establishment of the rule of law in the country may be compromised.

### **Recommendations to the Government of Niger**

Amnesty International calls on the Government of Niger:

- to ensure that the inquiry opened by the Niger gendarmerie into the assassinations committed at the time of the April 1999 coup affords full guarantees of independence and impartiality, and to demand that the conclusions of the inquiry be made public;
- to bring to justice those believed to be responsible for these acts;
- to change the law to ensure that those responsible for human rights violations committed at the time of the coups in January 1996 and April 1999 are brought to justice;
- to put a stop to the harassment of certain political activists, close to former President Baré Maïnassara, and to lift the ban which is preventing them from leaving the capital, Niamey;
- \$ to open independent and impartial inquiries into human rights violations which have been committed during this decade and to bring those responsible for these violations to justice.