

# NIGER

## AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 24<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, JANUARY-FEBRUARY 2016

### FOLLOW UP TO THE PREVIOUS REVIEW

Of the 112 recommendations made by member states during its first Universal Periodic Review (UPR) in 2011, Niger accepted 106 recommendations and rejected 6.<sup>1</sup>

#### International human rights instruments

In October 2014, Niger approved a bill authorizing accession to the second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.<sup>2</sup> One month later, Niger took another positive step and voted in favour of the UN General Assembly resolution to establish a moratorium on executions with a view to abolishing the death penalty globally. Nonetheless, the death penalty continues to exist in the Nigerien Penal Code, although it has not been applied since 1976. Niger also acceded to the Optional Protocol on the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment in November 2014, in line with the recommendation made during its 2011 UPR.<sup>3</sup>

#### Cooperation with the UN Treaty Bodies

Niger has submitted overdue reports to the Committee on the Elimination of Racial Discrimination and the Committee on Migrant Workers. However, the government has yet to submit overdue reports to the Committee against Torture, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social, and Cultural Rights, and the Committee on the Rights of the Child. The Special Rapporteur on contemporary forms of slavery visited Niger in November 2014.<sup>4</sup>

### THE NATIONAL HUMAN RIGHTS FRAMEWORK

While the Nigerien Constitution prohibits the crime of torture,<sup>5</sup> this is not formally set out in legislation, contrary to what is required by Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Niger adhered to in 1998.<sup>6</sup> Moreover, some of the articles in the Law against Terrorism, adopted in 2011, do not adhere to international

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<sup>1</sup> Human Rights Council, *Report of the Human Rights Council on its seventeenth session*, 24 May 2012, A/HRC/17/2.

<sup>2</sup> Niger accepted recommendations to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights. Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Niger*, 25 March 2011, A/HRC/17/15, recommendations 78.2 (Argentina), 78.3 (Ecuador), 78.5 (Australia), 78.6 (Sweden), 78.12 (Slovenia), 78.21 (Switzerland), 78.22 (Belgium), 78.23 (Belgium), 78.24 (France), 78.25 (Spain), 78.26 (United Kingdom).

<sup>3</sup> A/HRC/17/15, recommendation 76.1 (Denmark).

<sup>4</sup> A/HRC/17/15, recommendations 76.37 (Switzerland), 76.38 (Sweden), 76.39 (Norway), 76.40 (Poland), 76.41 (Spain), 76.42 (Luxembourg), 76.43 (United Kingdom), 76.44 (Switzerland) 76.45 (Slovakia), 76.46 (Sweden), 76.48 (United States of America).

<sup>5</sup> Article 12 of the Nigerien Constitution.

<sup>6</sup> A/HRC/17/15, recommendation 76.24 (Denmark).

human rights law and standards.<sup>7</sup> On 5 June 2015, Niger was the first country to sign the International Working Group's (Organisation Internationale du Travail, OIT) Protocol, a legally binding instrument, against modern slavery.

## THE HUMAN RIGHTS SITUATION ON THE GROUND

### **Armed conflict and crimes under international law by armed groups**

Over the last four years, armed groups, including Al-Qaida in the Islamic Maghreb (AQIM) and Boko Haram, have perpetrated attacks, including against civilians, in different locations throughout the country.

In January 2011, two French citizens were abducted in Niamey. They were killed the following day during a failed rescue operation on the border with Mali, involving forces from France and Niger. Three gendarmes, as well as a number of alleged members of AQIM, were reportedly also killed during the attack. AQIM claimed responsibility for the abductions.

In October 2012, five aid workers – four Nigerien nationals and a Chadian national – and their driver, a Nigerien citizen, were kidnapped by armed men in Dakoro, in the Maradi region of northern Niger, and held for three weeks. The Chadian hostage was shot and wounded during his capture and died shortly afterwards.

In October 2014, armed groups launched simultaneous attacks on a security post at the Mangaizé camp for Malian refugees, Ouallam prison, and a military patrol at Bani Bangou, all in the Tillabéry region near the border with Mali. At least nine members of the security forces were killed.

In February 2015, Boko Haram members carried out attacks against the village of Bosso, in southeast Niger on the border with Chad, and the city of Diffa, in the extreme east of Niger on the Nigerian border. On 25 April 2015, Boko Haram members attacked the Isle of Karamga, killing 46 soldiers and 28 civilians, and injuring a further nine soldiers. On 19 June, the government reported that 38 people, including 14 women and 10 children, were killed in Boko Haram attacks in the villages of Lamana and Ngounao, in the region of Diffa.

### **Security and human rights**

In January 2011, Niger adopted a new law against terrorism; however, certain articles of this law do not adhere to international standards.

The offences are quite broadly framed, and the definition of terrorist acts could be applied to restrict rights to freedom of thought, conscience and religion, freedom of opinion and expression, freedom of association or freedom of assembly in a manner that is not justified in order to protect against terrorist acts.<sup>8</sup>

The law also imposes the death penalty in a number of articles if the offence results in the death of

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<sup>7</sup> In particular, in the Ordonnance No 2011-12 of 27 January 2011, « modifiant et complétant la loi no. 61-27 du 15 juillet 1961 portant institution du Code pénal » in its definition of « terrorist act » is too broad and refers quite generally to « disrupting the normal functioning of public services », the definition should be clearer to that it cannot be used to apply to advocacy, protest or dissent. A number of articles (article 399.1.12, 399.1.14, 399.1.15, also provide for the death penalty if the offence results in the death of one or more persons, which Amnesty International opposes under all circumstances. Finally, Ordonnance n° 2011-13 du 27 janvier 2011, article 605.8 allows for four years of pre-trial detention (please see the security and human rights section for more details).

<sup>8</sup> ICCPR articles 18, 19, 21 and 22; ECHR, articles 9, 10 and 11; African Charter, articles 8, 9 10 and 11; UDHR, articles 18, 19, and 20.

one or more persons.<sup>9</sup> The death penalty is the ultimate cruel, inhuman and degrading punishment and violates the right to life, as proclaimed in Article 3 the Universal Declaration of Human Rights. It is also in violation of Articles 10 and 11 of the Nigerien Constitution, which protect the right to life and the integrity of the person.<sup>10</sup>

In response to attacks carried out by Boko Haram members against the village of Bosso and the city of Diffa, the Nigerien government decreed a state of emergency on 10 February 2015 covering the whole of the Diffa region.<sup>11</sup> On 26 February, the state of emergency was extended by three months by Parliament. It was then extended a second time for three months on 26 May 2015. The state of emergency prohibits the circulation of two-wheeled vehicles day and night in the region and prohibits any circulation of vehicles registered in Nigeria, thus restricting the free movement of local populations; in certain circumstances this could potentially lead to a violation of Article 12 of the International Covenant on Civil and Political Rights. Moreover, it forbids farmers from exporting their products (pepper and fish) to markets within the country, as this is believed to be a source of food and revenue for Boko Haram members,<sup>12</sup> in violation of Article 11 of the International Covenant on Economic, Social and Cultural Rights. The decree also gives administrative officers the authority to do house searches at any time day or night.

### **Torture and ill-treatment**

Several people, including nationals of Nigeria, accused of being members of AQIM, Boko Haram and a Nigerian Islamist armed group suspected of terrorist activities, were ill-treated during arrest or shortly afterwards in an attempt to extract confessions. During a mission to Niger in 2012 Amnesty International collected the testimonies of prisoners who were tortured in order to extract a confession:

In January 2012, a man was arrested in Diffa and taken to the anti-terrorist cell headquarters in Niamey. He was not informed of the reasons for his arrest and was beaten, slapped and punched in the neck by the officers when he said he did not recognise someone shown to him in a photo.

In April 2012, another man was arrested in Diffa, near the border with Nigeria, and punched and kicked. He was accused of being a member of Boko Haram and charged with terrorism offences.

### **Prison conditions**

Prisons remain overcrowded. Civil society groups have reported that at the end of 2014, the Niamey civil prison held three times its capacity of prisoners;<sup>13</sup> normally this prison can hold 350 prisoners but in 2014 it held 1000,<sup>14</sup> resulting in very harsh conditions.

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<sup>9</sup> Articles 399.1.2, 399.1.3, 399.1.6, 399.1.8, 399.1.9, 399.1.12 and 399.1.14 of this law.

<sup>10</sup> Article 10 of the Nigerien constitution, "The human person is sacred, the state has an absolute obligation to respect and protect it. It must guarantee the full fulfilment of the person," and article 11, "Everyone has the right to life, health, safety, physical and mental integrity, education and education in the conditions defined by law."

<sup>11</sup> Almost all of the people met by the AEC's (Alternative Espaces Citoyens, AEC) mission in March 2015, representatives of trade unions of transporters and traders of pepper and fish, say they have never seen a written copy of the State of emergency; they all said that they had only learned the details of these measures by radio broadcasts made by regional authorities, particularly the Governor of the region. The main measures cited by local actors concern: (i) motorcycles - prohibition day and night traffic on the entire territory of the Diffa region; (ii) formal prohibition on exporting local pepper and fish products to Nigerian markets; (iii) - the rationing or even ban of sales of hydrocarbons in cans and in other makeshift containers; (iv) prohibition of circulation of all vehicles and trucks with Nigerian registration plates, Alternative Espaces Citoyens, « *Etat d'urgence dans la région de Diffa : Rapport de mission d'observation de la situation humanitaire et des droits de l'homme* », April 2015, p. 6.

<sup>12</sup> Alternative Espaces Citoyens, p. 7.

<sup>13</sup> Collectif des Organisations de Défense des Droits de l'Homme et de la Démocratie, « *Rapport sur la situation des droits de l'homme en milieu carcéral au Niger* », décembre 2014, p. 24.

<sup>14</sup> Collectif des Organisations de Défense des Droits de l'Homme et de la Démocratie.

A collective of civil society groups reported that in 2013 and 2014 at least five people died in detention in different prisons in the country due to a lack of access to medical care.<sup>15</sup> It was also reported that in the Koutoukalé high security prison, acts of violence are frequently perpetrated against prisoners; in September 2013 this led to the death of a prisoner.<sup>16</sup>

### **Freedom of expression**

In January 2014, two journalists, including Soumana Idrissa Maïga, director of the private daily *L'Enquêteur*, were held in police custody in Niamey for 96 hours. They were charged with plotting against state security after publishing an article reporting that certain persons were saying that the days of the administration were numbered. A date for their trial has not yet been set.

In June 2015, two newspapers, *L'Actualité* and *L'Opinion*, were banned by the authorities from publishing for one month for "violating the journalists' charter". The Superior Council for Communication (Conseil supérieur de la communication, CSC) did not explain its decision nor did it specify which articles in these publications had motivated its decision to ban it from publishing.

### **Human rights defenders**

In July 2014, Ali Idrissa, the co-ordinator of the civil society network "*Publish What You Pay*", was taken into police custody twice following a press conference during which he called on the French mining company *AREVA* to respect Niger's mining laws and denounced aspects of the France-Niger relationship as neo-colonial. A further 10 civil society leaders were also arrested in Niamey on 18 July 2014 but released the same evening.

Moussa Tchangari, Secretary General of the Alternative Citizen Spaces (*Alternatives Espaces Citoyens*, AEC) was arrested on 18 May while bringing food to eight village chiefs in the Diffa region who had been arrested on 15 May for "failure to cooperate with the authorities in the fight against Boko Haram". His own arrest was also linked to reports published by his organisation, criticising the government for failing to take appropriate measures to protect human rights in view of recent Boko Haram attacks in the Diffa region. He was allowed access to a lawyer, but denied family visits while in detention at the anti-terrorist brigade's station. He staged a hunger strike after anti-terrorist brigade officers refused to give him food brought by his wife. He was provisionally released ten days after his arrest.

Nouhou Azirka, President of the Movement for the Promotion of Responsible Citizenship (*Mouvement Pour la Promotion de la Citoyenneté Responsable*, MPCR) was arrested on 24 May and detained in police custody for "offences against national defence". His arrest came after a television interview in which he stated that soldiers in the Diffa region had complained of poor working conditions. He had been questioned twice before by the police over the interview. Nouhou Azirka was provisionally released on the same day as Moussa Tchangari.

### **Displaced persons**

In June 2015, Niger was hosting over 64,000 refugees fleeing the crisis following the 2012/13 conflict in Mali and ongoing violence in north-eastern Nigeria.

Following the Boko Haram attack on the Isle of Karamga in April 2015, the Nigerien authorities ordered a forced evacuation of islands in Lake Chad for security reasons. There were at least 14 deaths among those fleeing due to hunger, thirst and heat during the long march towards the camp of N'guigmi. Defence and security forces were reported to have prohibited local

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<sup>15</sup> Collectif des Organisations de Défense des Droits de l'Homme et de la Démocratie, p. 18.

<sup>16</sup> Collectif des Organisations de Défense des Droits de l'Homme et de la Démocratie.

transporters from taking the people fleeing to the camp.<sup>17</sup> Furthermore, the authorities made no arrangements for the reception and resettlement of the displaced people; notably there was a lack of essential resources such as water and food upon arrival.<sup>18</sup>

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

### Amnesty International calls on the government of Niger to:

#### *Armed conflict and crimes under international law by armed groups*

- Open prompt, thorough, impartial and effective investigations by civilian authorities into all allegations of crimes under international law and human rights violations, in order to identify those suspected of criminal responsibility. If sufficient admissible evidence is found, prosecutions must take place and those found guilty in fair trials without recourse to death penalty should be punished by appropriate penalties which take into account the grave nature of the crimes committed;
- Armed groups must bring an end to the abduction and wilful killings of civilians, as well as hostage-taking.

#### *Security and human rights*

- Define in precise terms what can constitute a “terrorist act” in anti-terrorist legislation so that such legislation cannot be used to restrict rights such as freedom of thought, conscience and religion, freedom of opinion and expression, freedom of association or freedom of assembly;
- Abolish the death penalty for all crimes, including terrorist acts, and ensure that all those arrested or detained on suspicion of terrorist acts have immediate and unrestricted access to legal counsel;
- Ensure that the state of emergency imposed in the region of Diffa does not violate the fundamental human rights of local populations and displaced persons. In particular, that the authorities must ensure an equitable distribution of food supplies in response to need, in accordance with Article 11 of the International Covenant on Economic, Social and Cultural Rights by removing the ban on trading pepper and fish.

#### *Freedom of expression and religion*

- As committed to by Niger in its previous UPR<sup>19</sup>, ensure that the rights to freedom of expression and assembly are fully respected and protected and not unnecessarily and arbitrarily restricted by the State’s response to terrorism or the actions of armed groups, such as Boko Haram;
- Seek the advice of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression and cooperate fully with his recommendations.<sup>20</sup>

#### *Human rights defenders*

- Guarantee the protection of human rights defenders and ensure that they are able to carry out their work free from all harassment and intimidation;<sup>21</sup>

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<sup>17</sup> Alternative Espaces Citoyens, “Déplacement forcé des populations des îles du lac Tchad au Niger: Rapport de la mission d’observation de la situation humanitaire et des droits de l’homme à Diffa et N’Guigmi », May 2015, p. 5.

<sup>18</sup> Alternative Espaces Citoyens, p. 6.

<sup>19</sup> A/HRC/17/15, recommendations 76.59 (Slovakia) and 76.60 (Sweden).

<sup>20</sup> A/HRC/17/15, recommendation 76.18 (Italy).

<sup>21</sup> A/HRC/17/15, recommendation 76.61 (Slovakia).

- Immediately and unconditionally release Nouhou Azirka, and drop all charges against Moussa Tchangari, both of whom have been arrested and detained solely for exercising their rights to freedom of expression and association.

#### *Torture and other ill-treatment*

- End torture and other ill-treatment, including by promptly carrying out investigations into all such allegations, ensuring that confessions obtained through torture are not admitted in court, by holding those suspected of criminal responsibility to account in fair trial procedures without recourse to death penalty, and providing all victims with full reparation;<sup>22</sup>
- Include a definition of torture in the Penal Code as required by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and criminalize torture in law and practise;
- Adopt a national action plan against torture and other ill-treatment.<sup>23</sup>

#### *Prison conditions*

- Establish a national independent mechanism to inspect detention centres;<sup>24</sup>
- Enforce a comprehensive plan to reduce and eventually end overcrowding in prisons, which also focuses on eradicating conditions and practices that violate the human rights of prisoners;
- Ensure that all prisons have access to adequate food and that a nutritionist or health worker oversees the preparation and distribution of food, as well as access to sanitation and medical assistance and that there is at least one qualified doctor on staff to conduct regular clinical work in all prisons.

#### *Displaced persons*

- Provide for the immediate needs, including shelter, food, water, and health care, for those displaced in the context of the armed conflict with groups such as Boko Haram.

#### *The death penalty*

- Abolish the death penalty and repeal the provisions of the 1961 Criminal Code, which provides for the application of the death penalty,<sup>25</sup> and pending abolition, to maintain a *de facto* moratorium on executions;
- Commute without delay all death sentences to terms of imprisonment and ensure that the death penalty is not under any circumstances imposed in violation of Article 6 of the International Covenant on Civil and Political Rights.

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<sup>22</sup> A/HRC/17/15, recommendations 76.56 (France) and 78.30 (Switzerland)

<sup>23</sup> A/HRC/17/15, recommendation 78.29 (Spain).

<sup>24</sup> A/HRC/17/15, recommendation 78.1 (France)

<sup>25</sup> A/HRC/17/15, recommendations 76.22 (Norway) and 78.24 (France)

*International justice*

- Promptly ratify the International Convention for the Protection of All Persons from Enforced Disappearance, signed by Niger in 2007, without making any reservation or declaration amounting to a reservation, and implement it into national law. Niger should also recognise the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims and other states parties;
- Accede to the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity without making any reservation or declaration amounting to a reservation, and implement it into national law.