



## **Republic of Niger Submission to the UN Universal Periodic Review Maat for Peace, Development and Human Rights**

### **Introduction**

During the Second Universal Periodic Review (UPR) in 2015, Niger received 168 recommendations,<sup>1</sup> among which include: to remove reservations to core human rights instruments including the Convention against Torture; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Women; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; to abolish the death penalty, through the accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights; to ensure full respect for the right to freedom of expression (both online and offline) and media freedom by preventing all harassment and undue detention of journalists and civil society activists.<sup>2</sup>

In this document Maat outlines several concerns relating to the violations of human rights in Niger since 2015. More importantly, we underscore the failure of the government to uphold and implement some of the recommendations accepted during its examination under the Universal Periodic Review (UPR) with examples which are illustrative of forms of discrimination, evidence of torture and the government's attempts to curb the freedoms of expression and assembly.

### **Current State of Security and Human Rights in Niger**

In 2019, Niger saw a significant resurgence of extremist violence spread across its communities.<sup>3</sup> The response to this resurgence has been increased military operations by the Nigerien security forces. However, while these military operations may have neutralized members of the terrorist groups, it has also resulted in summary executions and extrajudicial killings and other human rights violations. In addition, the counter terrorism schemes are disproportionately resulting in societal stigmatization and violence against marginalized communities.<sup>4</sup> As a result, over 150 persons of whom are predominantly Fulani men, have either disappeared or been victims of extrajudicial killings by Nigerien security forces since the beginning of 2020.<sup>5</sup>

Although the Government of Niger has strived to meet its human rights obligations in the fight against terrorism, the systems required to monitor violations of human rights have been weakened by this military based approach. It is therefore important for the State party to reconcile security and criminal justice approaches to terrorism.

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<sup>1</sup> [https://www.upr-info.org/sites/default/files/document/niger/session\\_24\\_-\\_janvier\\_2016/recommendations\\_and\\_pledges\\_niger\\_2016.pdf](https://www.upr-info.org/sites/default/files/document/niger/session_24_-_janvier_2016/recommendations_and_pledges_niger_2016.pdf)

<sup>2</sup> Ibid.

<sup>3</sup> <https://allafrica.com/stories/202008060001.html>

<sup>4</sup> <https://cipesa.org/2020/08/niger-passes-new-law-on-interception-of-communications/>

<sup>5</sup> Ibid.



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### **Torture and Ill Treatment**

Even though Niger has ratified the Convention against Torture and its Protocol, its legislative and institutional framework remains somewhat incomplete in terms of combating the use of torture. This is mainly because the penal code does not clearly define or criminalize torture and the Constitution does not specify that torture is prohibited under any circumstances.

The absence of judicial control has allowed for the use of torture and inhumane treatments in detention centers. National and international organizations continue to report that in its fight against terrorism the Nigerien State has authorized circumstances that have facilitated the use of torture against suspected Boko Haram terrorists.<sup>6</sup> Extra-judicial killings and enforced disappearances have been widely reported in cases where no legal aid was provided to detainees, and rather they are held incommunicado in military premises beyond the remit of the criminal procedure legislation.<sup>7</sup> Extended states of emergency have weakened protection of the rights of terror suspects.<sup>8</sup> Moreover, the law does not prohibit the admissibility of confessions obtained under torture<sup>9</sup> as judgments are made on the basis of a confession rather than evidence presented to the court.

In addition, the problematic interpretation and lack of coordination of Niger's migration policies (2010 law against the trafficking of persons and 2015 anti-smuggling law); have resulted in its ineffectiveness, thereby exposing migrants to torture on dangerous migration routes.<sup>10</sup> In October 2019, it was reported that the criminalization of irregular migration, without putting in place alternative legal solutions, forces migrants underground and exposes 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 were exposed to serious abuses, particularly rape, unlawful detention under difficult conditions, ill-treatment, extortion and even death."<sup>11</sup>

### **Extrajudicial killings and disappearances**

Between January 28, 2020 and April 12, 2020, local citizens and human rights activists reported that, at least 52 people were killed or died after being tortured by members of Niger's security forces in the Banibangou, Ayarou, Torodi and Inates rural communes of the Tillabéri region Tillabéri region, which borders both Burkina Faso and Mali. It was further reported that while some people died from torture or beatings, others were shot and crushed by military vehicles.<sup>12</sup> Some of those killed were left dead by the side of the road, while others were buried in several

<sup>6</sup> [https://www.omct.org/files/2019/11/25597/executivesummary\\_alternativereport\\_niger\\_2019\\_en.pdf](https://www.omct.org/files/2019/11/25597/executivesummary_alternativereport_niger_2019_en.pdf)

<sup>7</sup> <https://issafrika.org/iss-today/niger-and-mali-should-reconcile-justice-and-military-responses-to-terrorism>

<sup>8</sup> Ibid.

<sup>9</sup> [https://www.omct.org/files/2019/11/25597/executivesummary\\_alternativereport\\_niger\\_2019\\_en.pdf](https://www.omct.org/files/2019/11/25597/executivesummary_alternativereport_niger_2019_en.pdf)

<sup>10</sup> Ibid.

<sup>11</sup> 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

<sup>12</sup> <https://www.telegraph.co.uk/global-health/terror-and-security/key-western-ally-accused-dozens-killings-100-men-go-missing/>



### **Freedom of expression**

Freedom of expression has deteriorated in Niger since 2015. A combination of political tensions and the fight against terrorism has resulted in an increasing number of arrests of journalists and human rights defenders and closing of private media that criticize the government. Despite the national legal framework to protect the enjoyment of civil and political rights, the legal provisions are often bypassed under the pretext of disturbance to public order or public safety.

Among the counterterrorism schemes is the introduction of the cybercrime legislation.<sup>14</sup> The law on cybercrime adopted in June 2019 comes into force within the context of a regulatory framework that already infringes upon the free speech of Nigerien citizens. It criminalizes the “dissemination, production and making available to others of data that may disturb public order or threaten human dignity through an information system” (Article 31).<sup>15</sup> Although in 2016, an activist was convicted of “conspiracy to overthrow a constitutional order” after he used Facebook to criticize Nigerien president Mahamadou Issoufou’s counterterrorism approach,<sup>16</sup> the cybercrime law has strengthened the basis of the clampdown on freedom of expression online, and led to more arrests of several human rights activists after their social media communications criticizing the government were intercepted by the State.<sup>17</sup>

### **Judicial persecution, harassment and intimidation of members of civil society organizations**

Article 12 of the United Nations Declaration on Human Rights Defenders mandates member states to take necessary measures to protect human rights defenders. The ICCPR also guarantees the freedoms of expression, association and assembly. Therefore, it is a matter of deep concern that civil society members are continually being subjected to harassment and judicial persecution for undertaking their legitimate activities and for attempting to hold the government accountable.

On 10 June 2020 under Article 29 of Niger’s cyber-crime law, journalist and blogger Samira Sabou was arrested in Niamey and charged with defamation in connection to a social media post on 26 May 2020, in which she referred to an audit of the Ministry of Defence regarding overcharging and embezzlement during the purchase of military equipment for the army. One of the comments below the post criticized the President’s son in relation to the audit, even though Sabou did not mention the president’s son in her post. On 28 July, she was discharged by the High Court of Niamey on the grounds of ‘unconstituted offences’ and released the same day.<sup>18</sup>

<sup>13</sup> <https://www.telegraph.co.uk/global-health/terror-and-security/key-western-ally-accused-dozens-killings-100-men-go-missing/>

<sup>14</sup> <https://cipesa.org/2020/08/niger-passes-new-law-on-interception-of-communications/>

<sup>15</sup> <https://cipesa.org/2020/08/niger-passes-new-law-on-interception-of-communications/>

<sup>16</sup> [https://www.marketwatch.com/press-release/niger-passes-new-law-on-interception-of-communications-press-release-2020-09-01?mod=mw\\_more\\_headlines&tesla=y](https://www.marketwatch.com/press-release/niger-passes-new-law-on-interception-of-communications-press-release-2020-09-01?mod=mw_more_headlines&tesla=y)

<sup>17</sup> Ibid.

<sup>18</sup> <https://www.article19.org/resources/niger-release-journalist-samira-sabo/>



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Similarly, on 12 July, journalist Ali Soumana was summoned by the police, interrogated, and accused of false information for comments made about alleged corruption. More recently, journalists have also been arrested and detained for reporting on the authorities' response to COVID-19. In March 2020, Mamane Kaka Touda, was arrested and detained for three weeks for social media posts about a suspected case of COVID-19 in a Nigerien hospital.<sup>19</sup>

Moudi Moussa, Halidou Mounkaila and Maikoul Zodi were arrested on March 15 after participating in a protest in which they urged the Nigerien authorities to investigate allegations of the misuse of funds for contracts at the Ministry of Defence.<sup>20</sup>

### **Death Penalty**

Niger has observed a de facto moratorium on the death penalty since 1976, when the last execution took place. In October 2014, the Government of Niger approved a draft law authorizing Niger to sign up to the Second Optional Protocol International Covenant on Civil and Political Rights to the United Nations, aiming at the abolition of the death penalty. Finally, in December 2018, Niger voted in favor of the United Nations General Assembly resolution calling for a universal moratorium on the death penalty.

However, on March 19, 2019, the Assize Court of Zinder, holding its first sitting of the year, pronounced a death sentence on Mr. Gazally Badamassi for 'associating with criminals, conspiracy to commit theft at night, and murder.'<sup>21</sup>

### **Elimination of all forms of discrimination**

Discriminatory practices persist in Niger, particularly in regard to the rights of women and children. Slavery and other similar practices, such as human trafficking, also continue to be reported. In addition, to the constitutional provisions and international law, the promotion and protection of women's rights remain a great concern. The caste-based slavery practices where people are born into slavery because their ancestors belonged to slave owning families among communities in Niger, has continued significantly among Arab, Djerma, Peulh, Tuareg, and Toubou ethnic minorities, as well as other western and northern regions along the Nigerian border.<sup>22</sup> Young boys and girls are reportedly exploited as slaves and endure slave-like practices. These children grow up under the direct or indirect control of slave-owners, who make them herd animals, control their nomadic migrations, and force them into marriages without their consent<sup>23</sup>.

<sup>19</sup>[https://www.marketwatch.com/press-release/niger-passes-new-law-on-interception-of-communications-press-release-2020-09-01?mod=mw\\_more\\_headlines&tesla=y](https://www.marketwatch.com/press-release/niger-passes-new-law-on-interception-of-communications-press-release-2020-09-01?mod=mw_more_headlines&tesla=y)

<sup>20</sup><https://www.business-humanrights.org/en/latest-news/niger-human-rights-defenders-moudi-moussa-halidou-mounkaila-maikoul-zodi-featured-in-civicus-standasmywitness-campaign/>

<sup>21</sup> <https://www.fiacat.org/en/media-press/press-releases/2734-press-release-death-sentence-in-niger-a-violation-of-the-constitution>

<sup>22</sup> US Bureau of International Labor Affairs, available at <https://www.justice.gov/eoir/page/file/1105226/download>

<sup>23</sup>The Economist, "Slavery in Niger: A first Conviction", June 2, 2014, available at <https://www.economist.com/baobab/2014/06/02/a-first-conviction>



A form of slavery known as the wahaya is still practiced mostly in the Tahoua region, where young black women purportedly of slave descent, are sold between ages 9 and 11 to wealthy men as fifth wives. The women are sexually abused and used for free labor.<sup>24</sup> The children of the wahaya wives are considered slaves as well and can be passed from one owner to another as gifts or as part of dowries<sup>25</sup>. Maat wishes to point out the case of Tabak Aborak,<sup>26</sup> born into slavery and sold as a wahaya three times to three different masters, she describes her childhood as a troubled time of disregard, chores, abuse, submission and orders to be carried out immediately. Eventually escaping her master,<sup>27</sup> Aborak's account sums up the ordeal of slavery as well as the need for complete eradication of such inhumane acts of human right deprivation.

### **Recommendations**

Maat is concerned by the failure of the Government of Niger to meaningfully implement the recommendations it accepted relating to the aforementioned issues during its previous review in 2015. In light of this, the following specific recommendations are made

### **Regarding instruments and policies**

The government of Niger should

- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims at the abolition of the death penalty, the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
- Adopt a comprehensive national migration management strategy that is child-sensitive, gender responsive and fully respects the human rights of migrants;
- Reform the Law on the Illicit Smuggling of Migrants to clarify its purpose and provisions, and ensure that it is fully in line with international human rights standards and does not criminalize or victimize migrant persons, as well as strengthen provisions on prevention ensure the protection of migrants, including victims of illicit smuggling by prohibiting the detention of migrants and victims of illicit smuggling, and establishing accessible complaint mechanism;

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<sup>24</sup>Galy Kadir Abdelkader and Moussa Zangaou, "WAHAYA: Domestic and sexual slavery in Niger", Amnesty International, 2010, available at <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=3945&context=globaldocs>

<sup>25</sup>US Department of Labour, "2018 Findings on the Worst forms of Child Labor", September 2019, available at [https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2018/ChildLaborReportBook.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2018/ChildLaborReportBook.pdf)

<sup>26</sup> Farida Dawkins, Wahaya: Niger's banned yet thriving 'marriage' in which women are turned into sexual slaves", Face Africa, October 01, 2018, available at <https://face2faceafrica.com/article/wahaya-nigers-banned-yet-thriving-marriage-in-which-women-are-turned-into-sexual-slaves>

<sup>27</sup> Farida Dawkins, Wahaya: Niger's banned yet thriving 'marriage' in which women are turned into sexual slaves", Face Africa, October 01, 2018, available at <https://face2faceafrica.com/article/wahaya-nigers-banned-yet-thriving-marriage-in-which-women-are-turned-into-sexual-slaves>



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- Reconcile the security and criminal justice approaches to terrorism by strengthening its structures and capacities for investigation, monitoring and protection of human rights in the field.

**Regarding Freedom of expression, judicial persecution, harassment and intimidation of members of the media civil society organizations**

The government of Niger should

- Create an enabling environment for journalists and civil society to operate in accordance with the rights enshrined in the Constitution of Niger, and other international treaties;
- Investigate all cases of intimidation and harassment of representatives of civil society and human rights defenders and bring the perpetrators to justice;
- Guarantee at all times the physical and psychological integrity of the media, civil society activists and human rights defenders.

**Regarding the Elimination of all forms of discrimination**

The government of Niger should

- Intensify efforts to rescue victims of caste based and modern slavery through the increase of investigations, prosecution and conviction of those who engage in the traditional practices of slavery, trafficking and forced labor;
- Raise public awareness on antitrafficking and antislavery laws by training additional law enforcement and judicial officials, vulnerable populations, particularly those born into the traditional slave castes, traditional leaders as well as religious leaders.