NIGER
The right to justice

Exactly one year ago, on 9 April 1999, the President of the Republic of Niger, **General Ibrahim Baré Maïnassara** was killed by the Presidential Guard at the military airport at Niamey. Three others, including **Malam Souley**, the President's chauffeur, and former Prefect, **Ali Saad**, were also killed.

One year later, in spite of promises made by the new authorities installed in Niger as a result of this military coup, the truth is still not known about these killings. Before the truth could even begin to emerge, it was concealed by an amnesty which formed part of Niger's new Constitution, adopted by referendum on 18 July 1999. An amnesty law passed by the National Assembly of Niger in January 2000, completed the wall of impunity.

The amnesty was, however, unable to prevent an inquiry being launched, thanks to pressure from the European Union and human rights organizations. However, the inquiry, which was opened in August 1999 and entrusted to the gendarmerie, lasted barely three days and omitted to hear the evidence of a number of key eye-witnesses. The affair was then dropped by the Public Prosecutor, who used the constitutional amnesty to justify his decision.

The victims' families and the people of Niger in general are entitled to know the truth about the human rights abuses committed during the coup of 9 April 1999. The relatives of those killed and wounded need to know who is responsible for these killings so that, finally, justice can be done. Impunity must cease, in order to prevent further abuses of human rights in the future.

This need to know the truth was publicly recognised by **President Mamadou Tandja**, Niger's new Head of State, democratically elected in November 1999, who, on 2 March 2000, declared himself ready to "seek out and establish the truth" concerning the circumstances surrounding the killing of President Baré Maïnassara. Amnesty International has noted this undertaking and calls on the Niger authorities to act accordingly to investigate fully these events.

In order that those responsible for these political killings can be brought to justice, Amnesty International urges the National Assembly of Niger to reconsider the amnesty law of January 2000 and amend the Constitution of July 1999.

The organization also calls upon the new President of Niger to take immediate steps to put an end to the impunity which has been undermining Niger for years. In a report published in September 1999, entitled *Niger: Impunity enshrined in the constitution* (AI Index: AFR 43/02/99), Amnesty International drew up a non-exhaustive list of human rights violations committed since the early 1990s and which remain unpunished. These violations include, in particular, the killings of 9 February 1990 on the Kennedy Bridge, the massacre of Tuaregs at Tchintabaraden in May 1990 and the numerous violations committed under the government of President Baré Maïnassara between 1996 and 1999. Amnesty International is, in particular, calling for a full investigation into the 150 bodies discovered in a mass grave at Boultoungoure, in the east of the country, in January 1999. The families of the victims, all members of the

Toubou ethnic group, need to know the circumstances surrounding the killing of their loved ones and are entitled to material and moral redress.

During the last decade, none of those responsible for these violations have been brought to justice. This impunity has been denounced on numerous occasions by Amnesty International. It must stop. The cycle of human rights abuses must be broken by bringing those responsible to justice and demonstrating that the Niger authorities will no longer tolerate such violations, so that the country's future can be built on a basis of truth and justice.

A flawed inquiry

Immediately after the killing of President Baré Maïnassara on 9 April 1999, the then Prime Minister of Niger, **Ibrahim Assane Mayaki**, presented the death as an "unfortunate accident". The new authorities, installed as a result of the military coup, did not provide any further details of the circumstances surrounding the death of the Head of State. Two days after the killing, the spokesman for the *Conseil de Réconciliation Nationale* (CRN), National Reconciliation Council, formed by officers who had just taken power, declared that the *Forces Armées Nigériennes* (FAN), Niger Armed Forces, had "decided to bring to an end the constitutional vacuum caused by the sudden death" of the President. No official explanation was given for the cause of his death.

Despite requests from numerous national and international human rights organizations, the Niger authorities reiterated their decision, over a period of months, that there would be no investigation on the grounds that this was an "accidental death".

In June 1999, after two months of refusals, the military government finally agreed for an investigation to be carried out into the death of President Baré Maïnassara by the national gendarmerie. This decision was taken following two events: on 24 May 1999, the family of the deceased president lodged a complaint against a person or persons unknown with the Niamey Public Prosecutor's Office.[1] In addition, a European Union delegation visiting Niamey in June made the opening of such an investigation one of the pre-conditions to the continuation of its aid to Niger.

Amnesty International has obtained a copy of the report of this investigation carried out by the Niamey gendarmerie. The report is very revealing. It demonstrates that there are alarming deficiencies in the gendarmerie's inquiry, which was not conducted in accordance with the rules of impartiality, independence and rigour required in such cases by the international texts by which Niger is legally bound.

First of all, the inquiry was entrusted to elements of the Niamey gendarmerie, who were

[1] A complaint against a person or persons unknown is a complaint lodged by a victim in respect of damage, the perpetrator of which is unknown. The Prosecutor's Office is responsible for conducting an inquiry and seeking out those responsible for the crime or offence.

required to establish the truth about events allegedly perpetrated by the military who, like them, are answerable to the Ministry of Defence. This cannot therefore be seen to be independent. Furthermore, the inquiry lasted only three days, which seems an inadequate amount of time in which to conduct an investigation of this importance. Even greater cause for concern is the fact that the investigators did not see fit to hear the evidence of a number of key eye-witnesses.

In relation to the circumstances surrounding the death of President Baré Maïnassara, the inquiry states that, on 7 April 1999, a group of Niger military officers called on the President of the Republic to resign. When he refused, a plan was drawn up to arrest him at Inatès, in the north of the country, where the President was due to travel by helicopter on 9 April. However, the President allegedly discovered this plan, and the conspirators decided to arrest him at Niamey's military airport. The report pieced together the facts as follows:

- On Friday, 9 April, "after taking the salute at 10.30am, the President was making his way towards the aircraft when two shots from an automatic pistol were fired in the air to signal the start of the operation by the leader of the unit charged with the operation, who also ordered that nobody should move".

- The report states that, following the two shots fired in the air, "the President's bodyguards started to shoot a barrage of shots in all directions".

- Regarding the President's death, the report states:

  "The reaction of the bodyguards provoked a response from the unit charged with arresting the President who, initially, fired at the President's legs and those of some of the bodyguards to immobilise them. However, against all expectations, the President's armoured vehicle made a movement in his direction. At this point, the unit charged with his arrest used a heavy weapon to immobilise the vehicle, without realising that in doing so, it would injure all those who were at his side, trying to move him so that he was protected by the car from the shooting. The exchange of fire lasted approximately three (3) minutes. It ended when some of the bodyguards became aware that the President had been fatally wounded."

Consequently, according to this report, the President was killed following an exchange of fire between his bodyguards and the unit charged with the coup d'état. The President was allegedly fatally wounded as his armoured vehicle tried to evacuate him.

However, the report of the inquiry does not take account of the testimonies of a number of other eye-witnesses which give a different version of events. The gendarmes failed to call one key eye-witness, **Hamani Amadou**, the murdered President's personal servant, who was present on the day of the coup. Amnesty International obtained his testimony from him and published it, in September 1999, in a report entitled *Niger: Impunity enshrined in the constitution.* According to this witness' statement:

"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 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[2]: 'He's still alive'. The President's body was then riddled with bullets fired from a machine gun mounted on a car."

So according to this account, President Baré Maïnassara was first shot in the back, then killed with a machine gun while attempts were being made to evacuate him in his vehicle. Amnesty International has received similar accounts from other eye-witnesses, including members of the military, who were anxious to remain anonymous, which confirm this version of events.

This important eye-witness account, which formed part of the complaint lodged by the murdered President's family, was ignored by the gendarmes responsible for the inquiry. No explanation has been given for this strange omission. The report simply states: "Nor were we able to hear the evidence of the person called Hamani Amadou cited in the complaint which was forwarded to us by the Public Prosecutor." It seems that Hamani Amadou, who has always declared his readiness to give evidence, was never contacted by those responsible for conducting the inquiry. This serious omission is clear evidence of the gendarmes' reluctance to genuinely seek out the truth about these killings.

Mr Hamani's account takes on special significance in that it was not formally refuted by the Niger authorities when Amnesty International published it in September 1999. In a general reference to the impunity denounced by Amnesty International, the then Prime Minister, Mr Mayaki, stated on Radio France Internationale on 8 September 1999, that the authorities of Niger would "regard this report as a source of inspiration to avoid making the same mistakes in the future".

The then Head of State of Niger, **Colonel Daouda Mallam Wanké**, who had taken power after the military coup of 9 April 1999 and who was directly implicated by this testimony, declared in a broadcast from the same radio station the following day: "We spoke of an unfortunate accident because we did not intend to kill him. President Baré was supposed to have been arrested, but unfortunately all military action has its risks. When he was about to be arrested, he realised what was about to happen and he got into his armoured car and it was in this vehicle that he was riddled with bullets as he tried to escape".

This version is, however, contradicted by the August 1999 gendarmerie investigation, which refers to an exchange of fire between members of the Presidential Guard and the mutineers. So, was President Baré Maïnassara killed as he tried to flee in his vehicle as Colonel

[2] Djerma is one of Niger's national languages, it is spoken mostly in the west of the country, particularly in Niamey.

Wanké says? Was he killed during an exchange of fire between the Presidential Guard and members of the plot to overthrow him, as the gendarmes' report concludes? Or was President Baré Maïnassara shot in the back as he finished saluting his troops and prepared to make his way to his helicopter, as a number of witnesses and victims of the killing have, from the very beginning, been claiming to the press and to Amnesty International?

This latter hypothesis has been supported by a new written account, recently received by Amnesty International. It comes from a member of the military who was present on the day of the coup d'état and who wishes to remain anonymous. This eye-witness account confirms key points of Hamani Amadou's account: the shot giving the signal to attack and the fact that the president was shot in the back as he finished saluting his troops. The soldier confirms a number of points:

- While the President was saluting the troops, this witness clearly heard "a shot from an automatic pistol".

- Once he had saluted the troops, the President "turned to make his way to the helicopter. Three (3) steps, that's when shots started coming from all directions lasting for about 15 minutes." A number of men, including the President, were hit and fell to the ground.

- The witness then noted that "everything went quiet for a moment, then it all started again when the President of the Republic's chauffeur thought that the vehicle's armourplating could stop the bullets."

This text confirms the very first accounts, taken from eye-witnesses a few days after the event by the weekly *"Jeune Afrique"*. The edition of this publication dated 20-25 April 1999 states:

> *"Baré got out of his car, nodded to a number of people and started to inspect the guard of honour. Two shots rang out. "It was like a warning signal", one witness recalled. Baré did not stop (…) [He] was opposite the lieutenant who was commanding the detachment. Military salute. A blast of machine gun fire rattled out. The lieutenant was killed outright, and Baré collapsed to the ground."*

This version of events, supported by a number of corroborating accounts, does not appear anywhere in the report written by the Niamey gendarmerie following the inquiry opened on 6 August 1999 and closed three days later. The gendarmes did not see fit to call and hear the evidence of the eye-witnesses or the forensic medical officer who examined the president's body. The omissions in this inquiry mean that it cannot be regarded as independent, impartial and exhaustive.

One month later, the Public Prosecutor dropped the affair. The official reason for this decision was "irrelevance of the proceedings in view of the amnesty in relation to the events

following Decree No 99-320 of 9.8.1999."

An unacceptable amnesty

In its September 1999 document, *Niger: Impunity enshrined in the constitution*, Amnesty International condemned the culture of impunity which had characterised Niger for years, as well as the decision to grant an amnesty to the perpetrators of human rights violations which occurred during the two coups of January 1996 [during which Ibrahim Baré Maïnassara took power] and April 1999 which had just consolidated this impunity. This constitutional amnesty was confirmed by a law passed in January 2000 by the new National Assembly of Niger, installed after the legislative elections of November 1999. This time, it was no longer those responsible for the military coup but the democratically elected representatives of the people who refused to bring the perpetrators of these events to justice.

Amnesty International does not favour any particular type of government, but it does insist that the authorities respect human rights. Throughout the rule of President Ibrahim Baré Maïnassara, on numerous occasions Amnesty International denounced the human rights abuses committed by the Niger authorities.[3] In these documents, the organization emphasized the serious step backwards taken by Niger in the respect of human rights with a successsion of arbitrary arrests, torture and ill-treatment. These violations have brutally challenged the freedom of expression and association which were recognised and guaranteed with the advent of a multi-party state in November 1990. Furthermore, Amnesty International has consistently called for impartial and exhaustive investigations into all violations committed by the government of President Baré Maïnassara and for those responsible to be brought to justice.

It is therefore with complete impartiality that, having condemned the human rights abuses committed by the government of President Baré Maïnassara, Amnesty International is now calling for a full investigation into the killing of the four people killed on 9 April 1999 and for the perpetrators to be brought to justice, as required by international standards on human rights, including the principles of the United Nations, in such circumstances. The deaths of President Baré Maïnassara and the three others killed with him appear to be deliberate and arbitrary political killings. They constitute a violation of the right to life laid down in Article 6 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 is therefore calling on the Niger authorities to ensure, at last, that an independent inquiry which offers full guarantees of impartiality and exhaustiveness be opened into these killings and that the suspected perpetrators of these acts be brought before the courts, in accordance with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Principle 19 of this text states that "in no

[3] See the following three 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.

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. The organization believes that only an impartial inquiry and judicial proceedings against those held responsible for these acts would be conducive to establishing the rule of law in Niger.

With this in mind, Amnesty International calls upon the authorities and the recently elected National Assembly of Niger to reconsider the amnesty law passed in January this year and, if necessary, to modify the Constitution so that those responsible for the political killings of 9 April 1999 can be brought to justice. By this gesture of strength, the representatives of the people of Niger would demonstrate their will to put an end to impunity not only for the events associated with the April 1999 coup, but for all violations of human rights committed during the course of the decade.

To build its future, Niger needs truth and justice, and clarification of the abuses committed over the last ten years is a test of the country's ability to overcome the assaults of the past. This need for truth has been expressed on numerous occasions both nationally and in the sub-region. From 10 April 1999, the day after the death of President Baré Maïnassara, Niger's principal organization for the defence of human rights *l'Association nigérienne pour la défense des droits de l'homme* (ANDDH), Niger Association for the Defence of Human Rights, called for an inquiry to be set up. This request 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 request for an inquiry was also made, in May 1999, by the 16 countries of the Economic Community of West African States (ECOWAS).

Time has not erased this thirst for truth, either in Niger or outside the country. On 12 February 2000 in the country's capital, Niamey, several hundred people – mainly women – demonstrated for the opening of an international inquiry into the circumstances surrounding the killing of President Baré Maïnassara. More recently, on 27 March 2000, members of the European Parliament who visited the country recalled that Niger had to respect the Lomé Convention and, in particular, the principal of good governance according to which "impunity neither wins nor rules".

This refusal to investigate these events is particularly clear since this case had been brought before the Courts of Niger on two separate occasions. First, in May 1999, a complaint was lodged by President Baré Maïnassara's family with the Niamey regional court against a person or persons unknown and was subsequently dropped on the grounds of the amnesty. In November 1999, the deceased president's family lodged a second complaint of "murder", this time against Colonel Daouda Mallam Wanké. To date, this complaint has not given rise to any investigation.

Niger is bound, by the international instruments it has ratified, to investigate on abuses of rights and freedoms committed by its security forces. The victims are entitled to this, as are their families. This is very clearly stated in Article 2.3 of the International Covenant on Civil and Political Rights:

"Each State Party to the present Covenant undertakes:

g) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
h) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
i) To ensure that the competent authorities shall enforce such remedies when granted.

The truth concerning the 9 April 1999 political killings, and all human rights abuses committed in Niger since the beginning of the 1990s, is essential to enable Niger to remove the threat of future abuses.

This quest for truth clearly is not welcomed by certain circles in Niger. For instance, in September 1999, the Niger newspaper *"La Tribune du peuple"*, described Amnesty International's battle against impunity in Niger as "rearguard action"

What is of greater concern, intimidation has been used to silence the demands of memory and justice. On 20 December 1999, the Niger journalist **Bory Seyni**, director of the independent weekly *"le Démocrate"*, was held for several hours for having published an interview with President Baré Maïnassara's widow.

The responsibility of the entire political class in Niger is engaged. Some leaders do not attempt to hide their desire to wipe the slate clean. This wish was clearly expressed in December 1999 by **Hama Amadou**, one of the leaders of the party *Mouvement national pour la société de développement* (MNSD), National Movement for a development-orientated society, and President Mamadou Tandja's future prime minister. Asked about the need for a fact-finding committee, Hama Amadou told the weekly *"L'Autre Afrique"* :

"Quite honestly, there is nothing to prove. It was a coup d'état. We know who was responsible for it, and we know, more or less, the circumstances in which it took place. What can it [the fact-finding committee] prove? That they really did kill Baré? Everyone knows that and they have never denied it! Nobody was opposed to it. In any case, nobody has condemned it. The overwhelming majority of the people of Niger have accepted it."

President Mamadou Tandja took another position, stating publicly on 2 March 2000 that he was determined to "seek out and establish the truth" about the circumstances surrounding the killing of President Baré Maïnassara. Amnesty International welcomes this declaration from the new Head of State and calls on the members of the National Assembly to follow this path by reconsidering the amnesty law and permitting an impartial inquiry to be conducted to fully investigate these events.

More generally, the Niger authorities owe it to themselves to fully investigate all violations of human rights committed since the beginning of the 1990s. These include, in particular:

- The killings of 9 February 1990 on the Kennedy Bridge in Niamey, when the police fired on students who were holding a peaceful demonstration, killing at least three students and wounding dozens of others.

- The Tchintabaraden massacre of May 1990, when a considerable number of Tuareg were arrested, tortured and killed by the Niger military.

- Human rights abuses committed under the regime of President Baré Maïnassara (1996-1999). During these three years, many human rights violations were committed by the security forces, including the arrest and torture of political opponents.

- The discovery of 150 bodies in a mass grave at Boultoungoure in January 1999. This could be the most serious violation committed under the government of President Baré Maïnassara. This mass grave in the east of the country could be the grave of people expelled from Nigeria in September 1998, where they allegedly fled to escape from the fighting associated with the Toubou rebellion.

In spite of the fact that inquiries have been launched, none of those responsible for these human rights abuses have ever been brought to justice. In this way, each new violation adds another stone to the wall of impunity which supports those who refuse to accept the rule of law in Niger. Past victims, who have been denied the consolation of justice, are joined by new victims, loudly voicing their need for the truth.

After two military coups which have meant a major step backwards in establishing the rule of law in Niger the country must, if it is to move forward, obtain the truth from the authorities about past violations: so that the perpetrators can be brought to trial, so that the victims' families can mourn their murdered or wounded loved ones and so that the people of Niger no longer have to assume responsibility for crimes they have not committed.

Recommendations to the Government of Niger

Amnesty International calls on the Government of Niger:

- to open an inquiry, at the earliest opportunity, into the killings committed during the April 1999 coup; this inquiry should offer full guarantees of independence and impartiality and its conclusions should be made public;
- to bring to justice those believed to be responsible for these acts;
- to conduct independent and impartial inquiries into violations of human rights during this decade and bring those responsible for such violations to justice.

Recommendations to the National Assembly of Niger

Amnesty International calls on the National Assembly of Niger:

- to reconsider the amnesty law passed in January 2000 and, if necessary, modify the Constitution of July 1999, as a means of demonstrating its rejection of impunity and its desire to allow the courts to determine responsibility for all violations committed during the last decade.