



International Federation of Action by  
Christians for the Abolition of Torture  
**FIACAT**

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Action by Christians for the Abolish  
of Torture of Niger  
**ACAT Niger**



**Concerns of FIACAT and ACAT Niger presented to the Human  
Rights Council as part of the review of Niger under the Universal  
Periodic Review framework  
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## I. The Death Penalty

The Nigerien Constitution of the 7<sup>th</sup> Republic of 25 November 2010 guarantees the right to life in Article 12 which states, "Everyone has the right to life, to health, to physical and moral integrity, healthy and sufficient food, drinking water, education and training according to the conditions defined by law." Article 11 states that "The human person is sacred." Nevertheless, this Constitution does not make any specific statements on the abolition of the death penalty. As such the death penalty has not been abolished in Niger and the Penal Code still contains provisions relating to it. In 2010 - 2011 the number of detainees sentenced to death reached 32, 30 in 2011 - 2012, 18 in 2012 - 2013 and 30 in 2013 - 2014. During the periodic review of Niger by the African Commission for Human and Peoples' Rights (ACHPR) during its 56<sup>th</sup> Ordinary Session, the President of the Republic of Niger passed a Decree, on 21 April 2015, commuting all death sentences passed since 8 April 2014 to life imprisonment.

The last execution in Niger took place in 1976, since which time Niger has applied an effective moratorium on executions. In 2010 the Nigerien transitional government began a process to abolish the death penalty. However, the draft law presented to the Nigerien National Advisory Council (CNN) was rejected on 16 December 2010 by 40 votes to 27 and 4 abstentions. The Councillors decided that the death penalty remained a dissuasive provision and an effective tool against criminal activity.

The current government has begun a process of ratifying the second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). On 23 October 2014 it approved a draft law which authorises Niger's accession to the second Optional Protocol to the ICCPR. This draft should now be submitted to the National Assembly in 2015.

Furthermore, for the first time, Niger has voted in favour of Resolution 69/186 of the United Nations General Assembly of 18 December 2014 calling for a universal moratorium on executions when it had always abstained for previous resolutions.

Accession to the second Optional Protocol to the ICCPR would require Niger to amend its Penal Code to abolish the provisions on the death penalty. The Penal Code still provides for the death penalty for certain crimes and offenses which are not categorised as "the most serious crimes" under Article 6 of the ICCPR. In fact, Articles 62 to 65, 87, 243, 267, 270, 310, 312, 324, 399.4, 399.15 and 399.16 of the Penal Code provide for the death penalty for crimes that don't necessarily have fatal or extremely serious consequences. For some of these offenses the death penalty is applicable in cases of considerable economic losses, looting, and theft if the victim suffers injury or harm. As such, the death penalty is applicable for the following crimes: in Articles 62 to 65 for treachery and espionage whether or not they have intentionally or unintentionally caused death, in Article 87 for crimes that disrupt the state whether or not they have intentionally or unintentionally caused death, in Article 243 for murder, parricide and also imprisonment, in Article 267 for arbitrary arrest or imprisonment not resulting in death if the victim has been physically tortured, in Article 270 for the prevention of freedom not resulting in the death of the victim, in Articles 310, 312 and 324 for theft or livestock theft with aggravating circumstances but not resulting in death and in Articles 399.4, 399.15 and 399.16 for acts of terrorism whether or not they have intentionally or unintentionally caused death.

*It is therefore necessary that Niger proceed without delay with the abolition of the provisions permitting the death penalty for infractions are not categorised as "the most serious crimes" and that it speed up the process of the abolition in law of the death penalty and the ratification of the second Optional Protocol to the ICCPR.*

## II. Criminalisation and Repression of Torture

The prohibition of torture is established in Article 14 of the Constitution which states, "No one will be submitted to torture, slavery or cruel, inhuman or degrading treatment. Every individual, every state official, who is found guilty of acts of torture, mistreatment or cruel, inhuman or degrading treatment in the exercise or during the exercise of their duties, whether on their own initiative, or under order, will be punished in accordance with the law."

Nevertheless, the Penal Code does not define torture and does not include torture as an independent offense in accordance with Article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment to which Niger acceded on 5 October 1998. In fact Articles 208.2 to 208.4 only criminalise acts of torture when they constitute crimes against humanity or war crimes.

Moreover, the Penal Code also takes into account acts of torture in Articles 244, 267 and 399.12 but only as aggravating circumstances for the offences of murder, arbitrary arrest or abduction and hostage-taking. In other cases, acts of torture are only criminalised on the basis of the offense of assault and battery defined in Articles 222 to 229 of the Penal Code.

Complicity in torture is criminalised by virtue of Articles 48 and 49 of the Penal Code<sup>1</sup> but only in terms of complicity in the abovementioned offenses, since torture has not been criminalised as an independent offense. The same applies for attempted torture which is criminalised in a general way by Article 2 of the Penal Code<sup>2</sup> and specifically in Article 208.5 of the Penal Code<sup>3</sup> for acts of torture constituting crimes against humanity or war crimes.

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<sup>1</sup> Art. 48 PC: "Accomplices to a crime or an offense will be punished in the same way as the perpetrators of the crime or offense themselves, unless the law provides otherwise."

Art. 49 PC: "Those who, by gift, promises, threats, abuse of authority or power, conspiracy or culpable behaviour have caused an action categorised as a crime or offense or given instructions for it, will be sentenced as accomplices to this action.

- those who have, knowingly, aided or abetted the perpetrator or perpetrators of the action, by way of preparation or facilitation, or by way of perpetrating it.

- those who have procured arms, tools or any other means which have served the actions, knowing that they are intended to serve it."

<sup>2</sup> Art. 2 PC: "All attempts to commit a crime which has been shown by its commencement, if it was only suspended or if only concluded due to circumstances outside the will of its perpetrators, it is treated as the crime itself.

*The attempted crime is punishable therefore even if the intended outcome could not be achieved due to a circumstance of which the perpetrator was not aware."*

<sup>3</sup> Art. 208.5 PC: "Participation in an association formed or in an agreement established with a view to the preparation, characterised by one or more material actions, of one of the crimes defined by Articles 208.1 and 208.2 are punishable by the death penalty.

*The attempt is punishable by the sentences foreseen for the completed crime."*

*Niger should amend its Penal Code to introduce a definition of torture and to criminalise it in accordance with its international commitments. It should also ensure that complicity with and attempted torture are also criminalised.*

### **III. Enforced Disappearances**

By virtue of Article 208.2 of the Penal Code, enforced disappearances are criminalised when they constitute a crime against humanity. Article 148 criminalises child abduction.<sup>4</sup> These provisions are however insufficient to criminalise all cases of enforced disappearance.

The Nigerien government should therefore amend its penal legislation to include the provisions necessary to criminalise all forms of enforced disappearances.

Furthermore, Niger signed the International Convention for the Protection of All Persons from Enforced Disappearance in 2007 but has not yet ratified it.

*FIACAT and ACAT Niger therefore invite Niger to ratify the International Convention for the Protection of All Persons from Enforced Disappearance as soon as possible.*

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<sup>4</sup> Art. 248 PC: "Those guilty of abducting, harbouring or concealing a child, of substituting one child for another or attributing a child to a woman who did not give birth to it, will be punishable by two to eight years imprisonment."

#### IV. Main Recommendations

FIACAT and ACAT Niger recommend that Niger:

- *Abolish without delay the provisions allowing the death penalty for offenses not categorised as "the most serious crimes";*
- *Ratify the second Optional Protocol to the ICCPR;*
- *Amend its Penal Code to include a definition and the criminalisation of torture in accordance with its international commitments;*
- *Ensure that complicity with and attempted torture are also criminalised;*
- *Ratify the International Convention for the Protection of All Persons from Enforced Disappearance as soon as possible.*