

CONSTITUTION OF THE FIFTH REPUBLIC OF NIGER

Adopted on 18 July 1999, promulgated on 9 August 1999

PREAMBLE

Determined to consolidate the achievements of the Republic and of our national independence proclaimed respectively on 18 December 1958 and on 3 August 1960, as well as those of the National Sovereign Conference that brought together all the *forces vives* of the nation from 29 July to 3 November 1991;

Resolved to build a legally constituted state, a united, dignified, peaceful, industrious and prosperous nation;

Anxious to safeguard our cultural identity;

We, the Sovereign People of Niger:

- Affirm our unwavering aspiration to build a state based on law and a united and prosperous nation;
- Proclaim our allegiance to the principles of pluralistic democracy and to human rights as they are defined in the Universal Declaration of Human Rights of 1948, the African Charter on Human and Peoples' Rights of 1981, and as they are guaranteed by this Constitution;
- Affirm our allegiance to African unity and our commitment to do everything within our power to realise regional and sub-regional integration;
- Express our desire to cooperate in a spirit of friendship and equality with all peoples with a passion for peace, justice and freedom;
- Solemnly adopt the present Constitution as supreme law of the state, to which we swear loyalty, faithfulness and respect.

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TITLE I: THE STATE AND SOVEREIGNTY

Article 1

The state of Niger shall be an independent and sovereign Republic. Any attack on the republican form of the state shall be considered a crime of high treason, punishable by law.

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Article 3

All communities comprising the nation of Niger shall enjoy the freedom of using their own languages in respect to each other. These languages shall have equal status as national languages. The law shall determine methods of promoting and of formalising the national language. The official language shall be French.

Article 4

The Republic of Niger shall be one and indivisible, democratic and social. Its fundamental principles shall be:

- "Government of the people, by the people and for the people";
- Separation of the state and religion.

Article 5

National sovereignty shall belong to the people. National sovereignty shall not be exercised by any fraction of the people nor by any individual. In the exercise of national sovereignty, all efforts which foster personal power, regionalism, ethnocentricity, clannishness, nepotism, feudalism, illegal aggrandisement, favouritism, corruption and the trading of influence shall be forbidden and punishable by law.

Article 6

The people shall exercise their sovereignty through elected representatives and through referendum.

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Article 7

Suffrage is direct or indirect. It is universal, free, equal, and secret.

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Article 8

The Republic of Niger shall be a state founded on law. Equality shall be assured to everyone under the law without distinctions as to sex or social, ethnic or religious background. All beliefs shall be respected and protected. No religion or belief shall claim political power or interfere in affairs of the state. The dispensation of any divisive propaganda of a regional, racist or ethnic character, and any display of racial, ethnic, political or religious discrimination shall be punishable by law. While within the territory of the Republic, foreigners shall benefit from the same rights and liberties as citizens of Niger, according to conditions determined by law.

Article 9

Within the framework of freedom of association recognised and guaranteed by the present Constitution, political parties, alliances of political parties, unions and other associations may be formed and may participate in activities freely as long as they act in accordance with the principles of national sovereignty and of democracy, and according to the laws of the Republic. Parties and alliances of political parties shall have the right of expression through voting. The same prerogatives shall be accorded every citizen of Niger enjoying full civil and political rights and fulfilling the conditions of eligibility as provided for by the law. Political parties of an ethnic, regional, or religious character shall be forbidden. The creation of any party with the purpose of promoting an ethnic group, a region or a religion shall be at the risk of judicial proceedings.

TITLE II: RIGHTS AND DUTIES OF THE INDIVIDUAL**Article 10**

Each human being is sacred. The state shall have an absolute obligation to respect and to protect the individual. The full nurturing of each individual shall be guaranteed.

Article 11

Each person shall have the right to life, health, security, physical well-being, education, and instruction according to conditions established by law.

Article 12

No person shall be subjected to torture, slavery, cruelty or to cruel, inhuman or degrading treatment.

Article 13

No person shall be required to carry out an obviously illegal order. The law shall determine what constitutes an obviously illegal order. Each individual and each agent of the state who is found guilty of acts of torture, cruelty, or cruel, inhuman or degrading treatment in the exercise of or in any way related to the exercise of his or her duties, whether under his or her own initiative or under instructions, shall be punished according to the law.

Article 14

Each person shall have the right to full economic, intellectual, spiritual, cultural and religious development, as long as such development does not violate the rights of others or infringe on the constitutional or legal order or on good morality.

Article 15

No one shall be arrested or incarcerated except under a law adopted previously in relation to the facts with which he or she is charged. No citizen shall be confined in exile or deported.

Confinement in exile or deportation of any citizen shall be considered a crime against the nation and punishable by law.

Article 16

No law or regulation shall be retroactive except where it concerns rights and benefits that can be conferred on the citizen.

Article 17

Any persons accused of a felonious act shall be presumed innocent until his or her guilt is established legally, through a public process during which all necessary guarantees for his or her defence shall be assured. No person shall be condemned for the commission or omission of any act which, at the time when it was committed, did not constitute an infraction under national law. Likewise, no person shall be inflicted with any penalty stronger than that applicable at the time the infraction was committed.

Article 18

Marriage and the family shall constitute the natural and moral basis of the human community. Both shall be under the protection of the state. The state and public entities shall have the power to oversee the physical, mental and moral well-being of the family, particularly mothers and infants.

Article 19

Parents shall have the right and the duty to raise and educate their children. They shall be supported in this duty by the state and by public entities. Minors shall be protected by the state and public entities against exploitation and abandonment. The state shall safeguard aged persons. The state shall safeguard the equal opportunity of handicapped persons as far as their advancement and/or social reintegration is concerned. Moreover, the state shall safeguard the material and intellectual development of the youth. It shall safeguard the well-being of the people.

Article 20

Every person's home shall be inviolable. Searches of residences, arrest or questioning can only be ordered under forms and conditions specified by law.

Article 21

Each person shall have the right to own property. No person shall be deprived of his or her property except when needed for public use, and then only when compensated fairly in advance.

Article 22

Secrecy of correspondence and communication shall be guaranteed under conditions defined by law.

Article 23

Each person shall have the right to freedom of thought, opinion, expression, conscience, religion, and worship. The state shall guarantee the free exercise of worship and expression of beliefs. These rights shall be applicable in regard to public order, social tranquillity, and national unity.

Article 24

The state shall recognise and guarantee freedom of movement, and freedoms of association, of assembly, of procession, and of demonstration, under conditions specified by law.

Article 25

The state shall recognise the right of all citizens to work and to strive to create conditions which promote the enjoyment of this right and which guarantee to each worker fair compensation for his goods or services.

Article 26

The state shall recognise and guarantee the right of labour to organise and to strike, according to conditions provided for by laws and regulations.

Article 27

Each person shall have the right to a healthy environment. The state shall be charged with protecting the environment. Everyone shall be required to contribute to the protection and improvement of the environment in which he or she lives. The stockpiling, moving and evacuation of toxic wastes, whether pollutants from factories or from other industrial or crafts organisations situated on national property, shall be regulated by law. The transit, importation, stockpiling, burial, dumping of toxic wastes or foreign pollutants on national property, as well as any agreement relative thereto, shall constitute a crime against the nation, punishable by law.

Article 28

The defence of the nation and of the integrity of the territory of the Republic shall be a sacred duty of all citizens of Niger. Military service is obligatory. Conditions for fulfilling this duty shall be determined by law.

Article 29

Each citizen of Niger, whether civilian or in the military, shall have the sacred duty to respect the Constitution and the legal order of the Republic under all circumstances.

Article 30

Each citizen shall have the duty to work for the common good, to fulfil civic and professional obligations, and to fulfil responsibilities involving fiscal contributions to the state.

Article 31

Public assets shall be considered sacred and inviolable. Each person shall respect and protect them scrupulously. Any act of sabotage, vandalism, corruption, misappropriation, waste or illegal enrichment shall be restrained by law.

Article 32

The state shall protect the rights and legitimate interests of citizens of Niger beyond its borders.

Article 33

The state shall have the duty to ensure the translation into national languages, the spreading and teaching of the Constitution, as well as individual rights and fundamental liberties. A National Commission shall watch over the promotion and the effectiveness of the rights and liberties proclaimed above, and if need be, in accordance with international agreements signed by Niger. A law shall determine the organisation and functioning of the Commission.

TITLE III: EXECUTIVE POWER

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Article 34

All rights and liberties shall be exercised in regard to laws and regulations in force.

Article 35

The President of the Republic is the head of state. He incarnates national unity. The President of the Republic is above political parties. He is the guardian of national independence, national unity, territorial integrity, respect for the Constitution, treaties and international agreements. He ensures the regular running of public powers and the continuity of the state.

Article 36

The President of the Republic shall be elected for five years by free, direct, equal and secret universal suffrage. He shall be eligible for re-election only once.

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Article 53

After consulting with the Prime Minister, the President of the National Assembly, the President of the Constitutional Court and the President of the Supreme Court, the President of the Republic shall take exceptional measures when the institutions of the Republic, the nation's independence, its territorial integrity or the execution of international obligations are threatened by a grave and immediate danger and when the normal functioning of Constitutional public powers has been interrupted. He shall report to the nation regarding any such exceptional measures. If the National Assembly is not in session, it shall reconvene without need of sanction. Such exceptional measures must be inspired by the desire to assure to constitutionally granted public authorities those means of accomplishing their mission within the shortest period of time. In no case shall the National Assembly be dissolved during the exercise of exceptional powers. The National Assembly shall assess by an absolute majority of its members the duration of the exercise of exceptional powers and shall terminate it in case of abuse.

Article 54

The President of the Republic shall have the authority to proclaim a state of emergency under conditions determined by law.

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TITLE V: RELATIONSHIP BETWEEN EXECUTIVE AND LEGISLATIVE POWERS

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Article 86

A state of siege shall be decreed in the Council of Ministers on the recommendation of the National Assembly. The National Assembly shall reconvene without need of sanction if it is not in session. The extension of the state of siege beyond fifteen days may only be authorised by the National Assembly.

Article 87

For the execution of its programme the government shall be able to request authorisation from the National Assembly to take by rulings, and for a limited period, measures that normally fall within the domain of the law. Such authorisation shall take the form of an enabling law. Rulings shall be taken by the Council of Ministers on the recommendation of the Constitutional Court.

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TITLE VI: JUDICIAL POWER

Article 98

Judicial power shall be independent of legislative power and of executive power. It shall be carried out by the Constitutional Court, the Supreme Court, courts and tribunals created in accordance with the present Constitution.

Article 99

Justice shall be rendered on the national territory in the name of the people and in strict accordance with the rule of law as well as with the rights and liberties of each citizen. Decisions taken by the courts shall apply to all, to those in authority as well as to ordinary citizens. They shall be criticised only through official legal channels.

Article 100

In the exercise of their functions judges are independent ...

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SECTION I: Constitutional Court

Article 103

The Constitutional Court is the competent court for constitutional and electoral matters. It has the responsibility to rule on the constitutionality of laws and ordinances and to decide whether international treaties and agreements are in accordance with the Constitution. The Constitutional Court interprets the provisions of the Constitution. It controls the legality, transparency and honesty of referendums and presidential, legislative and local elections. It is the judge of any electoral litigation and announces the final results of elections.

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Article 112

Organic laws, before being promulgated, and by-laws of the National Assembly, before being applied, shall be submitted to the Constitutional Court, which shall determine whether or not they conform to the Constitution. To the same end, laws may be deferred to the Constitutional Court prior to their promulgation by the President of the Republic, by the President of the National Assembly, or by a vote of one-tenth of the Deputies. In cases covered by the preceding paragraphs, the Constitutional Court shall announce its ruling within fifteen days. In case of an emergency, the ruling shall be forthcoming within five days, if the government so requests. ... By way of plea at bar, any person who is party to a legal proceeding shall be able to raise the question of unconstitutionality of a law before any jurisdiction. Any law, or any provision of a law, which shall be declared unconstitutional through application of the preceding line shall be immediately considered null and void. In the same cases submissions before the Constitutional Court shall suspend the delay for promulgation.

Article 113

Any person involved in a court case may query the constitutionality of a law before any court of law by exceptional remedy. The latter must defer its ruling until the decision of the Constitutional Court, a decision that must be reached within thirty days. A clause declared unconstitutional on the basis of the above paragraph is null and void by right. The ruling of the Constitutional Court instituting this unconstitutionality is published in the *Government Gazette* in accordance with the emergency procedure.

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Article 115

No appeal can be made against the decrees of the Constitutional Court. They are binding on the government and all administrative, civil, military and legal authorities.

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SECTION III: The High Court of Justice

Article 118

The President of the Republic is not responsible for acts carried out while exercising his functions except in the case of high treason. He is judged by the High Court of Justice. High treason occurs when the President of the Republic has violated his oath, is recognised as author, co-author or accomplice of grave violations concerning human rights, the fraudulent cession of a part of the national territory, or the introduction of toxic waste into the national territory. When the President of the Republic is judged guilty of the crime of high treason, he is stripped of his functions. The deposition is established by the Constitutional Court at the conclusion of the procedure before the High Court of Justice in accordance with the terms of the present Constitution. The High Court of Justice is competent to judge members of the government with regard to acts regarded as crimes or offences committed while exercising or in the event of exercising their functions.

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Article 120

The High Court of Justice is bound by the definitions of crimes and offences and by the determination of sentences stemming from the penal laws in force at the time of the events included in the legal proceedings.

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TITLE XI: TREATIES AND INTERNATIONAL AGREEMENTS

Article 129

The President of the Republic shall have the authority to negotiate and to ratify treaties and international agreements.

Article 130

Defence and peace treaties and treaties and agreements relating to international organisations which modify internal laws of state and which bring a financial responsibility to the state, shall be ratified only according to law.

Article 131

If the Constitutional Court, upon instigation by the President of the Republic, the President of the National Assembly, or one tenth of the Deputies, finds that an international commitment contains

a clause contrary to the Constitution, said commitment cannot be ratified unless and until the Constitution has been revised.

Article 132

Upon their publication, treaties and agreements which are properly ratified shall have an authority superior to that of laws, subject to their application by the other party.

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TITLE XIII: REVISIONS

Article 134

Authority for revising the Constitution shall belong jointly to the President of the Republic and members of the National Assembly.

Article 135

Any revision shall only go into effect after it has been approved by a four-fifths majority of the members composing the National Assembly. Failing this, the draft or bill shall be submitted to a Referendum.

Article 136

No procedure for revising the Constitution shall be activated or evoked if it incorporates a threat to the nation's territorial integrity. The republican form of state, the principle of separation of church and state, and the recognition of the possibility for a multitude of parties, and the clauses of articles 36 and 141 of the present Constitution shall not be subject to any revision.

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Article 141

Amnesty is granted to the perpetrators of the *coups d'état* of 27 January 1996 and 9 April 1999.