

SETBACK FOR DEMOCRACY IN NIGER. "CIVILIAN COUP" GIVES PRESIDENT TANDJA ABSOLUTE POWER

David Robert / Anja Caspers

The fears of many people in Niger have been realized: the democratic structures of the Fifth Republic have been dismantled and a regime headed by President Mamadou Tandja installed. Behind the democratic facade of this new Sixth Republic, President Tandja governs as an absolute ruler. After the constitutional court ruled that the president's request for a referendum on extending his term ran counter to the constitution of the Fifth Republic, the president dissolved the constitutional court and the legislature. On his orders, the referendum went ahead on August 4, 2009, and a new constitution was put in place, granting the president an additional three years in office. In this new republic,¹ President Tandja is not only able to remain in office for a further three years but has acquired almost absolute power. The constitutional court consists almost entirely of presidential nominees, as do the senate and other important institutions of the republic. All those elected as deputies in the Fifth Republic were placed under general suspicion of corruption. Through these measures, President Tandja managed to exclude almost all members of Niger's political class.

What distinguishes the case of Niger is the fact that the democratic institutions worked even in a time of crisis yet proved powerless to stop the dismantling of Niger's democracy. The president did not establish his Tazartché movement until he had finished arming the police, committed the army to the Tuareg conflict, and created the conditions for dismantling democracy by arresting the former prime minister, Hama Amadou. From January 2000, the Tazartché movement attempted to sway public opinion in favor of extending President Tandja's term. In the spring of 2009, when the president began preparing for a referendum, a number of deputies asked the constitutional court to examine whether the referendum bid was constitutional.²

On May 25, 2009, the constitutional court ruled that the president's plans were unconstitutional.³ In its ruling, the court cited the indivisibility of Niger's people, dismissing the arguments of the Tazartché movement as in no way sufficient to justify a referendum. The judges went on to remind the president that he had been elected for a five-year term and was re-electable

¹ Known as the Sixth Republic since the constitutional amendment of August 18, 2009.

² The court was asked to interpret articles 1, 5, 6, 36, 37, 49, and 136 of the constitution dated July 18, 1999, and to provide an opinion as to how a change in the constitution could be regarded as constitutional.

³ See Decision No. 2/CC of the Niger constitutional court dated May 25, 2009.

only once. An extension of his term would thus be unconstitutional and could only be accomplished in the way specified in the constitution: through the legislature. The judges also reminded the president of his oath under Article 39, which commits the president to uphold the constitution.⁴

In this way, Niger's constitutional court fulfilled its role as guardian of the constitution. The judges reached an independent decision and refused to be influenced by the executive branch. However, President Tandja did not accept the verdict and dissolved the legislature the very next day, giving the public no time to reflect on the constitutional court's decision. Dissolution of the legislature eliminated any political sounding board for the court's decision, enabling the president to prepare further steps. Moreover, dissolution neutralized another key pillar of Niger's democratic system. The constitutional court was not involved in this regard, since dissolution of the legislature was permissible in principle under Article 48 of the constitution. This gives rise to the question whether the instrument of dissolving the legislature, as is possible in semi-presidential systems, is advisable for young democracies.

The president dealt a second blow to Niger's democratic system on June 26, 2009, when he declared a state of political emergency. Citing Article 53 of the 1999 constitution, he granted himself "pouvoirs exceptionnels", the emergency powers that the constitution provides for in the event of an institutional blockade or a threat to the continued existence of the state. However, such a situation was not apparent, since all the democratic institutions were working, so it was not politically necessary to declare a state of emergency. Article 53 calls for a council of state to be convened in such a situation, comprising the president and representatives of the republic's institutions. This twelve-member committee decides whether or not to declare a state of emergency. The president circumvented this council of state, suspecting that his plan would not win majority support in such a forum.⁵ To ensure the constitutional court had no time to consider the plan, it was dissolved by presidential decree on June 29, 2009. The president's behavior can be described as alternating between openly flouting the constitution and appearing to observe the constitutional proprieties. In the public spotlight, Tandja attempted to maintain the semblance of a democratic process, in the hope that the international community would soon forget these "minor" inconsistencies.

⁴ To quote verbatim: "Ne saurait engager ou poursuivre le changement de la Constitution sans violer son serment."

⁵ Composition of the council of state under Article 56: president of the legislature, prime minister, president of the constitutional court, president of the court of justice, president of the national human rights commission, president of the board of communications, president of the economic and social council, president of the supreme court, president of the council of municipalities, leader of the opposition, president of the union of traditional chiefs.

Tandja's actions were accompanied by repression of journalists, demonstrators, and opposition groups. Most of the 113 deputies were arrested for a time and charged en masse with corruption. This represented an attempt by Tandja to intimidate civil society and suppress political protest. Meanwhile, the referendum on August 4, 2009, was treated not only as a vote to extend the presidential term but also as a vote for a new constitution.

In Niger's Sixth Republic, all political power is concentrated in the hands of the president, who is elected for life. The president chooses the majority of the constitutional court judges and appoints one third of the senators (the remaining two thirds are appointed by institutions under presidential control). In the Sixth Republic, President Tandja has created a type of state in which opportunities for political change are restricted and political repression is part of daily life. Political activities are now permitted only if they do not disturb public order. Police and tear gas are deployed to prevent or disperse undesirable demonstrations. This even applies to meetings of political parties, whose activities are extremely restricted. With many deputies having been stripped of their mandates, a large part of the parties' internal funding base is absent. Many of the parties are preparing to go underground if necessary. Groups of exiles are being assembled in West Africa and France to ensure survival under the dictatorship. Despite the repression, demonstrations repeatedly take place. The opposition parties, seven labor unions, and various civic groups have formed an alliance for action.⁶ Meanwhile, the former prime minister, Amadou, now lives abroad but has nonetheless succeeded, with the aid of frontmen, in founding a new party in Niger called MODEN/FA.⁷ Many dissidents from the ruling MNSD-Nassara party have since joined the new party. MODEN/FA is currently engaged in establishing itself in Niger and other countries in the region with a view to building up opposition to the dictatorship. Consequently, Hama Amadou, the former prime minister, is seen more than ever as Niger's great hope. Even his erstwhile opponents such as Mahamadou Issoufou, leader of the PNDS socialist party, have let it be known in conversation that they are convinced Amadou is the only man who can succeed in mobilizing the masses. Amadou not only has many supporters in the country and in the ruling MNSD party but also enjoys the confidence of the military. Moreover, his good connections are perhaps one of the reasons why ECOWAS, the Economic Community of West African States, has taken a clear and tough line with Niger and condemned the civilian coup d'état.⁸

⁶ The CFDR (Coordination des Forces pour la démocratie et la République) is an alliance of 20 parties, seven unions, and a few NGOs.

⁷ The full name is: Mouvement Démocratique Nigérien pour une Fédération Africaine, MODEN/FA. For more about the party's founding, see the newspaper *Le Temoïn*, July 9, 2009, No. 303, p. 5.

⁸ ECOWAS/CEDEAO (Communauté Economique des Etats de l'Afrique de l'Ouest) is a regional organization representing 16 West African countries, founded 1975. See *Pipers Wörterbuch zur Politik [Piper's Dictionary of Politics]*, Band 5, Internationale Beziehungen [Vol. 5, International Relations] (Munich/Zürich: Piper, 1984), p. 114 et seq.

The parliamentary elections on October 20, 2009, were the first elections held in the Sixth Republic. With many significant political forces boycotting the elections, there was no sign of a campaign in Niamey, Niger's capital. The majority of the population viewed the elections as a farce, but the government repeatedly reported a high turnout. The president's party won the elections by a clear margin and in the future will provide 76 of the 113 deputies. The other parties that did not join the election boycott won 47 seats.

Along with ECOWAS, the regional economic organization, both the EU and the UN exerted diplomatic pressure on Niger early on. EU countries have suspended direct cooperation with and fiscal support for Niger. Only projects directly benefiting the population will continue. It remains to be seen whether the international community will resort to sanctions in the case of Niger, since these would directly impact the living conditions of the population. Presidential circles in Niamey are relying on this argument. However, should the international community fail to stand firm on Niger, the country's example could set a precedent in Africa, leading to further "civilian coups".

Thanks to President Tandja's civilian coup, Niger finds itself once again in a serious political crisis after a decade of stability. President Tandja could have retired December 22, 2009, as the great man who brought democracy to Niger. After several military coups and various political disturbances, the country finally settled down under Tandja, and a democratic society began to develop. Instead, Tandja was afflicted by the same condition as many other African heads of state: reluctance to leave office.⁹ A newspaper in Niger called the president's behavior "Mugabization," alluding to the president of Zimbabwe, who also transformed himself over the years from a respected head of state to a tyrant.¹⁰ From the very beginning of his term, President Tandja worked to raise democratic awareness in the military. Thanks in no small part to these many years of schooling, the army leadership publicly declared itself unwilling to become a political instrument. Against this background, it rates as tragic that this president should be the one to dig the grave of democracy in Niger.

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⁹ Niger is the eighth African country in which a president has amended the constitution to extend his term of office.

¹⁰ See the newspaper *L'evenement*, August 11, 2009, No. 39, p. 3 et seq.