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Working Group on Arbitrary Detention

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Opinion No. 56/2024, concerning Mohamed Bazoum and Hadiza Bazoum (Niger)*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,¹ on 26 July 2024, the Working Group transmitted to the Government of the Niger a communication concerning Mohamed Bazoum and Hadiza Bazoum. The Government replied to the communication on 5 September 2024. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

* Mumba Malila did not participate in the discussion of the case.

¹ [A/HRC/36/38](#).



1. Submissions**(a) Communication from the source**

4. Mohamed Bazoum is a citizen of the Niger born on 1 January 1960. In 2021, Mr. Bazoum was elected President of the Republic of the Niger. He is habitually resident at the presidential palace of the Niger, in Niamey.

5. Hadiza Bazoum is a citizen of the Niger born on 2 December 1968. She is Mr. Bazoum's wife and is habitually resident at the presidential palace in Niamey.

(i) Context

6. The source explains that, on 21 March 2021, Mr. Bazoum was elected President of the Republic of the Niger for a five-year term following democratic, inclusive and transparent national elections. When the results were announced, by decree dated 21 March 2021 the Constitutional Council declared Mr. Bazoum to have been elected. He took office on 2 April 2021.

7. According to the source, a general appointed by presidential decree of 11 April 2011 as commander of the Presidential Guard and tasked with ensuring the President's security, apparently plotted and, on 26 July 2023, executed a military coup. On the same day, in a televised address, a colonel-major announced that the military had deposed President Bazoum, suspended the country's constitution and created a body named the National Council for the Safeguard of the Homeland that would be led by the aforementioned general.

(ii) Arrest and detention

8. The Presidential Guard is reported to have arrested Mr. and Mrs. Bazoum, along with another member of their family, at the presidential palace in Niamey on 26 July 2023. The source notes that neither Mrs. Bazoum nor the other family member arrested carried out official functions. No arrest warrant or order issued by a public authority was shown to them.

9. According to the source, Mr. and Mrs. Bazoum's arrest had no legal basis and they were not charged with any offence at the time of their detention. Furthermore, they are apparently being held without judicial charge or court order under the sole control of those responsible for the coup d'état. The source explains that the detention order came from the President of the National Council for the Safeguard of the Homeland; on 3 October 2023, during proceedings before the Court of Justice of the Economic Community of West African States (ECOWAS), the de facto authorities apparently produced a sworn statement in which a battalion commander stated that the President of the National Council for the Safeguard of the Homeland had refused Mr. Bazoum's request to be released together with his family.

10. According to the source, on 28 July 2023, the President of the National Council for the Safeguard of the Homeland proclaimed himself Head of State. The source explains that, since 30 July 2023, the Niger has been subject to economic sanctions imposed by ECOWAS that range from the suspension of financial and commercial transactions with the country to the imposition of a travel ban on the military officers responsible for the coup and the freezing of their assets. The source adds that all commercial and financial transactions between ECOWAS member States and the Niger have been suspended and that assets of the Niger held in ECOWAS central banks have been frozen. ECOWAS is also reported to have announced that land and air borders with the Niger would be closed.

11. The source reports that, at an emergency meeting held in Abuja on 30 July 2024, ECOWAS demanded the immediate release and reinstatement of the elected President of the Niger. At the same meeting, ECOWAS also warned the de facto authorities that it would take all necessary measures, including use of force, to restore the constitutional order. The European Union has also expressed concern about the deteriorating conditions in which Mr. Bazoum is being held and has called for his immediate unconditional release. The source notes that several non-governmental organizations have also called for his release and for his rights to be respected. However, since Mr. and Mrs. Bazoum's arrest, the de facto authorities have apparently refused several attempts at mediation and ignored the threat of military intervention in the Niger by ECOWAS.

12. On 9 August 2023, the Secretary-General of the United Nations is also reported to have denounced the deplorable living conditions that Mr. Bazoum and his family were enduring and to have called for their release. The source notes that, on 11 August 2023, at a second extraordinary summit dedicated to the situation in the Niger, the Heads of State and Government of ECOWAS member States reiterated their condemnation of the continuing detention of Mr. Bazoum and his family, denouncing their conditions of detention and holding the National Council for the Safeguard of the Homeland “fully responsible for the safety and physical integrity of President Bazoum and the members of his family and his Government”. In a press release dated the same day, the Chairperson of the African Union Commission expressed his firm support for the decisions taken by ECOWAS. The source notes that the African Union has announced the suspension of the Niger and its institutions.

13. The source regrets that the members of the National Council for the Safeguard of the Homeland have remained indifferent to the calls for Mr. Bazoum and his family to be released and for the country’s Constitution and international commitments to be respected. On 23 October 2023, the Minister of the Interior appointed by the de facto authorities is reported to have warned ECOWAS against resorting to force.

14. On 16 November 2023, the Court of Justice of the West African Economic and Monetary Union dismissed Niger’s request for a stay on the imposition of sanctions. The Court reportedly stated that the military authorities were “the source of the situation thus created” and that it was their responsibility to return “to the constitutional order”. Similarly, on 7 December 2023, the ECOWAS Court of Justice apparently ruled inadmissible the de facto Government’s request for the sanctions imposed by ECOWAS to be lifted. In justification of its refusal, the Court stated that the Government had gained power by force and was not recognized by ECOWAS.

15. On 10 December 2023, the Authority of Heads of State and Government of ECOWAS member States condemned the continuing detention of Mr. Bazoum and his family and called for their immediate and unconditional release.

16. On 15 December 2023, the ECOWAS Court of Justice is reported to have ordered the immediate and unconditional release of Mr. Bazoum and his family and Mr. Bazoum’s reinstatement in office, affirming that his rights had been violated by the unlawful interruption of his presidential term. On the basis that official ECOWAS and African Union texts formally prohibit changes not provided for in the Constitution, the Court ruled that the military authorities had denied Mr. Bazoum the possibility of fully exercising the presidential mandate conferred upon him.

17. On 8 January 2024, the member of Mr. and Mrs. Bazoum’s family who had been visiting them and had thus been arrested at the same time is reported to have been conditionally released by the examining judge of Niamey Military Court. He has apparently been transferred to a third country but remains accused of “conspiracy to undermine the authority and security of the State”. As of the present date, Mr. Bazoum and his wife remain in detention.

18. The source reports that proceedings were instituted against Mr. Bazoum on the initiative of the Government Commissioner to the Military Court with a view to having his immunity waived and charging and prosecuting him for “conspiracy and attacks aimed at undermining the security and authority of the State”, “treason”, “apology for and incitement of terrorism” and “terrorism financing”. The source explains that these proceedings took place before the Court of State, a court created by the National Council for the Safeguard of the Homeland on 5 October 2023 to replace the Court of Cassation and the Council of State. The judges attached to this new court were apparently appointed by decree of the President of the National Council for the Safeguard of the Homeland, on the proposal of the Minister of Justice, in accordance with articles 2 et seq. of Ordinance No. 2023–11 of 5 October 2023, determining the organization, duties and operation of the Court of State.

19. According to the source, Mr. and Mrs. Bazoum’s lawyers were not notified of the institution of these proceedings and were informed of them only through unofficial channels.

20. At a first hearing held on 5 April 2024, the defence team attempted to raise preliminary questions concerning, in particular, the fact that it had been impossible for the defence

lawyers to communicate with Mr. and Mrs. Bazoum but the presiding judge of the Court of State apparently refused to allow the defence team to present its case. Accordingly, on 23 April 2004, the defence lawyers sent a letter to the President of the Court of State requesting a stay of proceedings and highlighting that they had not had access to the documents in the case file, that they had not been able to communicate with their client, and that the Court had a duty to take the defence's arguments into consideration.

21. On 10 May 2024, the Court of State is reported to have adjourned the hearing until 7 June. On 3 June 2024, the defence lawyers filed a petition with the Court calling, among other things, for it to declare itself incompetent to rule on whether Mr. Bazoum's immunity should be waived and to refrain from lifting his immunity, given that Mr. Bazoum's status was not that of former President. On the same day, the defence filed a motion for Mr. Bazoum's ex officio release.

22. The source reports that, at the hearing on 7 June, the reporting judge of the Court of State failed to take the defence's observations into account in his report and ignored the lawyers' requests for communication with their client and for the latter's immediate release.

23. The source explains that the defence lawyers argued that, under Act No. 94-003 of 3 February 1994, establishing the regime applicable to the pension benefits of former presidents, a waiver of immunity is possible only for a former president. The source points out that, under the Constitution of the Niger, the term of office of the President of the Republic comes to an end only when his mandate expires or in the event of his resignation, death or absolute incapacity to govern, as determined by the Supreme Court.

24. On 14 June 2024, the Court of State reportedly waived Mr. Bazoum's immunity on the charges of "conspiracy and attacks aimed at undermining the security and authority of the State" and "treason".

25. The source reports that Mr. and Mrs. Bazoum were not present at any of the hearings before the Court of State and that neither of them has been brought before a judge since their arrest.

26. The source highlights that Mr. Bazoum is likely to be tried by the examining judge of the military court, specifying that, pursuant to the Code of Military Justice (Act No. 2003-010 of 11 March 2023), the military court is composed of five judges, four of whom are military officers with no legal training. The source adds that, under articles 207, 259 et seq. of the Code of Military Justice, Mr. Bazoum faces the death penalty (execution by firing squad).

27. According to the source, Mr. and Mrs. Bazoum have not been able to meet with their lawyers since their arrest on 26 July 2023. They had been able to communicate with their lawyers by telephone until 19 October 2023, on which date their phones had been confiscated. Since then, they have been unable to communicate with the outside world, including their lawyers. Their only contact with outside has been with their doctor.

28. After the proceedings were initiated before the Court of State, Mr. and Mrs. Bazoum's lawyers apparently submitted numerous requests for communications as well as reminders: on 3 April 2024, when they were sworn in before the Court of State; on 8 April 2024, in submissions to the Government Commissioner before the Military Court and the Examining Judge at the Military Court, followed by reminders on 27 May 2024; on 23 April 2024, in a letter to the presiding judge of the Court of State; and on 5 June 2024, in a letter addressed to the presiding judge of the Court of State, with copy to the Attorney General. On 5 May 2024, the President of the Bar Association of the Niger also sent a letter to the presiding judge of the Court of State, requesting that Mr. and Mrs. Bazoum's right to communicate freely with their lawyers be respected.

29. The source reports that all these requests have been to no avail, not one of the authorities having acknowledged the detention of Mr. and Mrs. Bazoum. Accordingly, in its preliminary ruling, the Court of State is reported to have indicated that "as Mr. Bazoum Mohamed has not been detained by order of any court, there is no other court to the benefit of which the Court of State might be required to stay its proceedings". The Government Commissioner to the Military Court, meanwhile, apparently responded that Mr. Bazoum "is not, as at this date, under the responsibility of the Military Court".

(iii) Conditions of detention

30. The source reports that Mr. and Mrs. Bazoum have been held by the Presidential Guard since 26 July 2023, in the rear wing of the Head of State's residence located in the heart of the Presidential Guard's military camp, without being able to leave. The source specifies that they are being held in precarious, undignified and degrading conditions.

31. Soldiers are reported to have been posted inside the residence and to have removed keys from the doors of the residence, denying Mr. and Mrs. Bazoum the possibility of locking internal doors in order to maintain some privacy.

32. Mr. and Mrs. Bazoum were apparently receiving visits from their personal physician twice a week. The doctor, who was reportedly searched upon arrival, brought them medicines, books and food supplies. Mr. and Mrs. Bazoum have apparently been refused a telephone and, during the first months of their detention, had no access to electricity. The temperatures, which were reaching 40°C outside the palace, are said to have caused health problems for both of them, and Mrs. Bazoum apparently also suffered a severe bout of malaria.

(iv) Legal analysis

33. The source argues that Mr. and Mrs. Bazoum's detention is arbitrary under categories I, II and III.

a. Category I

34. According to the source, Mr. and Mrs. Bazoum were arrested and are being held without any legal basis. The source affirms that, since 26 July 2023, they have been detained without any legal grounds having been brought to their attention, without having been notified of any charge brought by an administrative or judicial authority, and without any judicial decision ordering their detention having been taken. The source notes that the de facto authorities provided no legal basis to justify the deprivation of liberty of Mr. and Mrs. Bazoum in the hearing before the ECOWAS Court of Justice.

35. In addition, the source claims that Mr. and Mrs. Bazoum were detained without being shown an arrest warrant. In this connection, the source submits that, according to the jurisprudence of the Working Group, the absence of an arrest warrant justifying a person's detention renders his or her detention arbitrary.² The source therefore finds violations of articles 3 and 9 of the Universal Declaration of Human Rights, article 9 of the Covenant, and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

36. The source further claims that the authorities have violated article 9 (2) of the Covenant since the members of the National Council for the Safeguard of the Homeland failed to inform Mr. and Mrs. Bazoum of the reason for their arrest.

37. Moreover, Mr. and Mrs. Bazoum apparently have not been brought before a judge since their arrest. The source highlights the 48-hour deadline for bringing a detainee before a judicial authority prescribed by the Human Rights Committee and, on this basis, concludes that the authorities have violated articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (3) of the Covenant and principles 11 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

38. The source also maintains that Mr. and Mrs. Bazoum are deprived of all contact with the outside world, other than visits from their doctor. They therefore have no possibility of access to their lawyer. The source underscores in this connection that the possibility of communicating with a lawyer from the outset of detention is a safeguard essential to ensuring that detainees are able to challenge the legal basis for their detention, in accordance with the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of

² Decisions No. 1/1993, paras. 6 and 7; No. 5/1993, paras. 6, 8 and 9; and No. 27/1993, para. 6; and Opinions No. 38/2013, para. 23; No. 83/2017, para. 65; No. 38/2018, para. 63; and No. 13/2020, para. 47.

Anyone Deprived of Their Liberty to Bring Proceedings Before a Court,³ in particular Principle 9 and Guideline 8.⁴ The source recalls that, according to the jurisprudence of the Working Group, holding persons incommunicado constitutes a violation of the right to challenge the lawfulness of their detention before a court enshrined under article 9 (3) and (4) of the Covenant.⁵ The source therefore concludes that the provisions of article 9 (3) and (4) of the Covenant have been violated.

39. Lastly, the source notes that national legislation authorizes detention in three cases only. Under article 71 of the Code of Criminal Procedure, a person may be held in police custody for a maximum of 48 hours, unless extended by the Public Prosecutor for a further 48 hours. Under article 131 of the Code, a person may be placed in pretrial detention. Lastly, under articles 5 and 6 of the Criminal Code, a person may be detained after having received a prison sentence. The source highlights that the system of house arrest does not exist in the domestic legislation of the Niger. Consequently, the source submits that no legal basis can be invoked to justify the detention of Mr. and Mrs. Bazoum.

40. The source further recounts that, after receiving a petition against the State of the Niger from Mr. Bazoum and his family, on 15 December 2023 the ECOWAS Court of Justice ruled that the arrest and detention of Mr. and Mrs. Bazoum were arbitrary.

b. Category II

41. The source recalls that the Niger ratified the Covenant on 7 March 1986 and notes that, under article 25 of the Covenant, “every citizen has the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives, and the right to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot”. Similarly, article 21 (1) of the Universal Declaration of Human Rights provides that “everyone has the right to take part in the government of his country, directly or through freely chosen representatives”.

42. In the case in point, the source reports that Mr. Bazoum was elected President in transparent and genuine elections and entered office for a five-year term on 2 April 2021. However, on 26 July 2023, the military authorities carried out a coup d’état and arrested Mr. Bazoum so as to prevent him from carrying out his duties as President of the Republic.

43. Consequently, the source asserts that Mr. Bazoum’s deprivation of liberty is a direct result of his status as Head of State and thus of the exercise of his rights under article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant, namely the right to take part in the conduct of the public affairs of his country and the right to be elected.

44. The source also notes that, on 15 December 2023, the ECOWAS Court of Justice ruled that Mr. Bazoum’s political rights had been violated.

45. Additionally, the source recalls that article 13 of the Universal Declaration of Human Rights and article 12 of the Covenant safeguard the right of all persons to move freely within their own country.

46. In the case in point, the source highlights that Mrs. Bazoum was arrested and is currently being detained because she decided to remain in the Niger, with her husband, despite the political unrest and the threats to which he is reported to have been subjected. The source maintains that, had Mrs. Bazoum not been present in the Niger at the time of the events, she would not have been arrested by the leaders of the National Council for the Safeguard of the Homeland. Thus, the source concludes that Mrs. Bazoum’s deprivation of liberty results from the exercise of her right to freedom of movement within her country.

47. Furthermore, the source submits that the deprivation of liberty and the violation of Mrs. Bazoum’s rights result from her status as wife of the Head of State. The source notes in this connection that article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant guarantee the equal protection of the law for all persons, without discrimination

³ A/HRC/30/37, annex.

⁴ Opinion No. 19/2021, para. 46.

⁵ Ibid.

on any ground “such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

48. The source affirms that Mrs. Bazoum would not have been arrested had she not been Mr. Bazoum’s wife. The source notes that Mrs. Bazoum has been detained together with her husband, without any accusation having been made against her or any proceedings having been initiated in her respect, and without any mention of her detention having been made in the public statements concerning Mr. Bazoum issued by the authorities.

49. Accordingly, the source submits that the authorities have violated Mrs. Bazoum’s rights under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.

c. Category III

50. The source affirms that, since Mr. and Mrs. Bazoum are not benefiting from any of the fundamental guarantees of fair trial, their detention is arbitrary under category III.

51. According to the source, Mr. and Mrs. Bazoum were not informed of the reasons for their detention at the time of their arrest. On 13 August 2023, in a televised address, the country’s de facto authorities are reported to have announced that Mr. Bazoum was suspected of “high treason and undermining the internal and external security of the Niger”, without further clarification. In this connection, the source highlights an opinion concerning the Niger in which the Working Group found that “the charge and its amended version, which are based on the notion of ‘complicity in infringing upon the authority of the State’, do not offer a clear description of any precise facts” and that this “lack of specific details in the charges brought does not allow the accused to defend himself appropriately and therefore constitutes a violation of the right to a fair trial”.⁶ The source affirms that, in circumstances similar to those addressed in the aforementioned opinion, the National Council for the Safeguard of the Homeland did not at any time inform Mr. and Mrs. Bazoum of the precise facts of which they were charged, in violation of articles 9 (2) and 14 (3) of the Covenant.

52. The source further maintains that Mr. and Mrs. Bazoum were denied the assistance of a lawyer from the outset of their detention and had no possibility of consulting a lawyer subsequently and until the present time – a situation that undermined their ability to mount a defence. The source notes that the Working Group has previously found violations of articles 10 and 11 of the Universal Declaration of Human Rights, when the detainee has not had the assistance of counsel, which assistance is a guarantee of respect for the principle of equality of arms in a fair trial, and of article 14 (3) (b) and (d) of the Covenant, when the detainee has not had adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.⁷ The source thus asserts that the authorities violated articles 10 and 11 of the Universal Declaration of Human Rights and article 14 (3) (b) and (d) of the Covenant.

53. Lastly, the source claims that Mr. and Mrs. Bazoum’s right to be tried within a reasonable time has been violated. The source notes that they have been detained since 26 July 2023, which is more than a year, and points out that the reasonableness of any delay in bringing a case to trial must be assessed according to the circumstances of each case, taking into account its complexity, the conduct of the accused and the manner in which the matter was dealt with by the authorities.⁸ The source adds that, in a previous case, the Working Group concluded that a year’s delay in bringing the case to trial was unreasonable and all the more deplorable in view of the court’s failure to allow the detainee a bail hearing.⁹

54. In the present case, the source notes that Mr. and Mrs. Bazoum have been deprived of their liberty for more than a year without the courts having considered the possibility of releasing them on bail or under some other non-custodial regime pending their possible trial. The source considers this delay all the more incomprehensible given that, on 13 August 2023, the spokesman for the de facto authorities is reported to have publicly announced that the

⁶ Opinion No. 7/2009, paras. 26 and 27.

⁷ Opinion No. 19/2021, para. 58 and No. 85/2021, para. 80.

⁸ Opinion No. 40/2021, para. 85.

⁹ Ibid.

authorities had “already gathered the evidence necessary to prosecute the deposed President and his local and foreign accomplices before the competent national and international bodies for high treason and undermining the internal and external security of the Niger”.¹⁰ Thus, the source asserts that the de facto authorities violated article 14 (3) (c) of the Covenant.

55. In view of the foregoing, the source submits that the violations of Mr. and Mrs. Bazoum’s right to a fair trial are of such gravity as to render their detention arbitrary under category III.

(b) Response from the Government

56. On 26 January 2024, the Working Group transmitted to the Government a communication concerning Mr. and Mrs. Bazoum in which it was asked to provide detailed information on their situation. Specifically, the Working Group asked the Government to clarify the legal provisions justifying their continued detention and the compatibility of those provisions with the obligations of the Niger under international human rights law, and particularly the treaties that the State has ratified. Moreover, the Working Group called upon the Government to ensure the physical and mental integrity of Mr. and Mrs. Bazoum.

57. The Government provided its response on 5 September 2024. It explains that, since 26 July 2023, the date on which he was deposed, Mr. Bazoum has been at the presidential palace with his wife and, from there, has been in telephone contact with obscurantist forces hostile to the Niger in a bid to prompt an attack with the help of foreign powers acting under the cover of ECOWAS. According to the Government, the aim of such aggression would be to destabilize the country’s security system by perpetrating acts akin to conspiracy and attacks on State security and conspiring with foreign powers to harm the country’s strategic interests with regard to domestic criminal legislation.

58. In view of the seriousness of the acts attributed to Mr. Bazoum, the Court of State, in ruling No. 025–002/CREANCIER of 14 June 2024, lifted his immunity so that he could be held accountable for his actions before the courts of the Niger. Since his immunity was lifted, Mr. Bazoum has been subject to legal proceedings authorizing his detention, which cannot therefore be arbitrary.

59. The Government further explains that it has been urging Mrs. Bazoum to leave the presidential palace since 28 July 2023, without success. The request has been repeated many times but has always been refused, as is evidenced by the order to leave delivered to Mrs. Bazoum by a bailiff on 16 August 2024.

60. In the Government’s view, a situation desired and maintained by Mrs. Bazoum herself cannot in any way be assimilated in a judicial context to arbitrary detention. The Government states that, in any case, since her presence at the palace is now the subject of a complaint against the State of the Niger by the Working Group, the authorities of the Niger will apply to the competent courts for an order for her removal.

(c) Further submissions from the source

61. The response of the Government was submitted to the source for further comments, which were provided on 20 September 2024.

62. In these further submissions, the source reiterates its initial arguments and deplores the lack of information provided by the authorities. The source notes that the authorities have not rebutted the majority of the allegations made and informs the Working Group of the intimidation orchestrated by the Government against one of Mr. Bazoum’s lawyers, who is a former President of the Bar Association. The source affirms that the Government’s response lacks clarity since it puts forward the notion that Mr. Bazoum’s detention has become legal because of “legal proceedings” under way but does not explain what the supposed proceedings consist of or how they render his detention non-arbitrary. The source recounts that Mr. Bazoum met his lawyer on 28 August 2024 for the first time since the start of his detention, for an interview lasting around twenty minutes. This interview is said to have

¹⁰ France 24, “La junte nigérienne veut ‘poursuivre’ le président Bazoum pour ‘haute trahison’”, video, 14 August 2023, available at <https://www.youtube.com/watch?v=32dHHQFcfWc>.

preceded a hearing apparently conducted as part of a preliminary investigation initiated by the Government Commissioner to the Military Court during which Mr. Bazoum was questioned in the presence of his lawyer by a gendarmerie commander, a captain and a chief warrant officer, in the presence of a court clerk. The source specifies, however, that at no time during this interrogation was Mr. Bazoum's status discussed. He was also not informed of the legal grounds for his detention.

63. As for the claim that Mrs. Bazoum refused to leave her husband in response to the order to leave the presidential palace that had been issued against her, the source highlights that Mrs. Bazoum would not have consented without her lawyer being present.

2. Discussion

64. The Working Group thanks the source and the Government for their submissions.

65. In determining whether the deprivation of liberty of Mr. and Mrs. Bazoum is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.¹¹ Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.¹²

(a) Category I

66. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without a legal basis.

67. The source claims that Mr. and Mrs. Bazoum were detained without any legal basis, without an order issued by a judicial authority and without being informed of the reasons for their arrest. It adds that no arrest warrant or order issued by a public authority was shown to them.

68. The Working Group recalls that the authorities must invoke a legal basis and apply it to the circumstances of the case. This is typically done through an arrest warrant, an arrest order or equivalent document.¹³ Furthermore, article 9 (2) of the Covenant states that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Respect for these rights is essential for the other rights set out in article 9 of the Covenant, since all individuals must know the reasons for their arrest in order to challenge it effectively and must be brought before a court or magistrate in order to lodge an appeal.

69. The Working Group notes that the Government does not specify whether an arrest warrant or an order issued by a public authority was shown to Mr. and Mrs. Bazoum. The Working Group further notes that the Government does not specify when and how Mr. Bazoum would have been informed of the reasons for his arrest and the offences of which he was accused. The Working Group recalls that the reason that individuals have the right to be informed of the reasons for their arrest, as enshrined under article 9 of the Covenant, is so that they have the opportunity to understand the allegations on the basis of which they were arrested. In view of the Government's response, the Working Group considers credible the source's allegations that, at the time of their arrest, Mr. and Mrs. Bazoum were neither informed of the reasons for their arrest nor promptly informed of any charges against them. In certain specific cases, such as situations of *flagrante delicto*, the nature of the act may justify the lack of an arrest warrant *ex ante*. However, this is not the case here. The Working Group therefore concludes that the arrest of Mr. and Mrs. Bazoum had no legal basis and

¹¹ [A/HRC/19/57](#), para. 68.

¹² *Ibid.*

¹³ Human Rights Committee, general comment No. 35 (2014), para. 23; see also opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39. See also Arab Charter on Human Rights, art. 14 (1).

thus constitutes a violation of article 9 (2) of the Covenant and article 9 of the Universal Declaration of Human Rights.

70. According to the source, following their arrest without any legal basis, Mr. and Mrs. Bazoum were denied any possibility of recourse to a judicial authority in the days following their arrest. This allegation has not been challenged directly.

71. Article 9 (3) of the Covenant states that anyone arrested or detained on a criminal charge shall be brought promptly before a judge. The Human Rights Committee has observed that 48 hours is ordinarily sufficient to satisfy this obligation, and any longer delay must remain absolutely exceptional and be justified under the circumstances.¹⁴

72. The facts reported by the source indicate that Mr. and Mrs. Bazoum have not had recourse to a judge since their arrest. The Government has provided no explanation to justify either the length of their detention or the absence of proceedings before the competent courts of the Niger. The Working Group therefore concludes that the Government has violated the provisions of article 9 (3) of the Covenant.

73. According to the source, Mr. and Mrs. Bazoum have also been cut off from all contact with the outside world, including communication with a lawyer, contrary to the basic rule of due process stipulating that detainees should be able to challenge the legal basis for their detention. In fact, Mr. Bazoum was not able to meet his lawyer for the first time until 28 August 2024, more than a year after the outset of his detention.

74. The Working Group recalls that holding individuals incommunicado or in secret, and particularly without contact with their family and lawyer, constitutes a violation of their right under article 9 (4) of Covenant to challenge the lawfulness of their detention before a court. The Working Group has found that the secret or incommunicado detention of individuals is in itself a violation of international human rights law and gives the deprivation of liberty an arbitrary character.¹⁵ In the absence of a detailed and reasoned response from the Government, the Working Group considers that the source has demonstrated a violation of article 9 (4) of the Covenant in this regard.

75. In view of the foregoing conclusions, the Working Group considers the detention of Mr. and Mrs. Bazoum to be without legal basis, in violation of article 9 of the Covenant and articles 3 and 9 of the Universal Declaration of Human Rights. Their detention is therefore arbitrary under category I.

(b) Category II

76. According to the source, Mr. Bazoum's deprivation of liberty is arbitrary under category II since he is being detained for having exercised his right to take part in the conduct of the public affairs of his country and his right to be elected, both of which are protected under article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant. The source considers that Mr. Bazoum has been deprived of his liberty as a result of having exercised his functions as President of the Republic. In its response, the Government submits that Mr. Bazoum has been arrested and detained for having committed unlawful acts criminalized and punishable by law.

77. The Working Group recalls that arrest or detention is arbitrary if used to punish an individual for the legitimate exercise of rights protected under the Covenant, including the right to take part in the conduct of the public affairs of his country and the right to be elected, as enshrined in article 25 of the Covenant.

78. The Working Group observes that the Government justifies Mr. Bazoum's detention on the basis of events occurring after his arrest, for which Mr. Bazoum was given no reason. His arrest following the military coup appears to be the result of his status as President of the Republic, which was an obstacle to the exercise of power by the new Government. The

¹⁴ Human Rights Committee, general comment No. 35 (2014), para. 33. See also opinion No. 67/2019, para. 64.

¹⁵ [A/HRC/51/29](#), para. 47. See also, for example, opinions No. 25/2021, No. 30/2021, No. 32/2021, No. 42/2021, No. 45/2021, No. 47/2021, No. 48/2021, No. 51/2021, No. 53/2021, No. 59/2021, No. 70/2021, No. 80/2021 and No. 81/2021.

Working Group notes lastly that there is no reason to believe that the authorized restrictions on the aforementioned rights would be applicable in this case.

79. Given these circumstances, the Working Group considers that Mr. Bazoum's arrest and detention are a result of his status as President of the Republic, that is, of the exercise of his rights to take part in the conduct of the public affairs of his country and to be elected, as enshrined in article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant. His detention is therefore arbitrary under category II.

80. The source further submits that Mrs. Bazoum's detention is arbitrary under category II. The Working Group believes, however, that this claim should be considered under category V below.

(c) Category III

81. According to the source, the detention of Mr. and Mrs. Bazoum is arbitrary under category III owing to the serious violations of their right to a fair trial and due process of law.

82. The source further claims that Mr. and Mrs. Bazoum did not have the assistance of a lawyer from the outset of their detention and were subsequently denied any possibility of consulting a lawyer until 28 August 2024 – a situation that had undermined their ability to mount a defence. The source also highlights that the failure to present evidence before a competent court and the prohibition on communication with a lawyer attest to negligence on the part of the competent authority and are a direct violation of laws regulating detention. In its response, the Government does not contest these allegations.

83. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice, as guaranteed under article 10 and 11 of the Universal Declaration of Human Rights and article 14 of the Covenant. This right applies at all times during their detention, including immediately after the moment of apprehension, and access to counsel must be granted promptly.¹⁶ Any legislation that purports to remove the right to counsel without due justification is inherently contrary to international human rights standards.¹⁷

84. The Working Group considers that the allegations made by the source are detailed and consistent and that the Government's response omits to address this point. In these circumstances, the Working Group considers that the authorities violated Mr. and Mrs. Bazoum's right to legal assistance by counsel of their choice, as guaranteed under article 14 of the Covenant.

85. Lastly, the source claims that Mr. and Mrs. Bazoum's right to be tried within a reasonable time, as guaranteed under article 14 of the Covenant, has been violated.

86. According to the jurisprudence of the Working Group, the right to be tried within a reasonable time and without undue delay, as enshrined in article 14 (3) (c) of the Covenant, is intended not only to prevent persons being left in a situation of uncertainty as to their fate for too long a period and ensure that, if they are detained during trial, their deprivation of liberty lasts no longer than strictly necessary to the circumstances of the case but also to serve the interests of justice. What is reasonable has to be assessed on a case-by-case basis, taking into account primarily the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the administrative and judicial authorities.¹⁸

87. In this case, the failure to initiate trial proceedings for such a prolonged period reinforces the assertion that the Government has no legal basis for detaining Mr. and Mrs. Bazoum. Limiting itself to describing the general nature of the allegations made against Mr. Bazoum, the Government has failed to provide any detailed, reasoned explanation for the delays in the conduct of proceedings. As a result, the Working Group considers that there

¹⁶ A/HRC/30/37, annex, principle 9 and guideline 8; A/HRC/45/16, para. 51; and Human Rights Committee, general comment No. 36 (2018), para. 35.

¹⁷ Opinion No. 40/2021, para. 84.

¹⁸ Opinion No. 76/2018, para. 58; Opinion No. 8/2020, para. 42; and No. 12/2024, para. 80, see also Human Rights Committee, general comment No. 32 (2007), para. 35.

has been a violation of the right to be tried without undue delay under article 14 of the Covenant.

88. The Working Group concludes that the violations of Mr. and Mrs. Bazoum's right to a fair trial are of such gravity as to render their deprivation of liberty arbitrary under category III.

(d) Category V

89. As noted above, the source maintains that Mrs. Bazoum's detention is arbitrary under category II. The Working Group considers, however, that it is more appropriate to consider Mrs. Bazoum's detention as falling under category V, since it is a question of her status as Mr. Bazoum's wife rather than any act in which she might have engaged.

90. On this point, the Working Group takes note of the source's argument that Mrs. Bazoum was deprived of her liberty because she decided to remain in the Niger with her husband despite the political instability and the threats to which he was allegedly subjected, and that she would not have been arrested had she not been Mr. Bazoum's wife. This, according to the source, constitutes a violation of her right to non-discrimination under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant. In its response, the Government argues that Mrs. Bazoum cannot be considered to have been detained arbitrarily since she stayed with her husband of her own free will.

91. The Working Group notes that the Government gives no reason for the arrest and detention of Mrs. Bazoum, and that she has not been charged or convicted. The Working Group reaffirms that, in a free and democratic society, no one should be deprived of their liberty for crimes, whether real or otherwise, committed by a member of his or her family by birth or marriage.¹⁹ Consequently, it considers that the arrest and detention of Mrs. Bazoum are a result of her status as Mr. Bazoum's wife. Her detention is therefore arbitrary under category V. As for the source's argument that the arbitrary nature of her arrest and detention are also a result of her exercise of the right to freedom of movement, the Working Group does not have sufficient information on this point to be able to express an opinion.

(e) Concluding remarks

92. The Working Group is concerned about the allegations concerning the conditions in which Mr. and Mrs. Bazoum are being held. It appears that they are being detained in precarious conditions, have been deprived of electricity for several months and have had serious health problems. Additionally, the source maintains that the form of forced detention to which Mr. and Mrs. Bazoum are being subjected does not exist in the criminal legislation of the Niger and that there is consequently no valid applicable legal source justifying it.

93. The Working Group recalls that a detainee's poor state of health and poor detention conditions may compromise his or her ability to participate in legal proceedings and prepare his or her defence, in violation of article 14 of the Covenant and article 10 of the Universal Declaration of Human Rights.²⁰

94. The Working Group takes this opportunity to remind the Government of its obligation under article 10 (1) of the Covenant to ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person. It also recalls that, under rules 24 and 118 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), all persons deprived of their liberty must be allowed to receive the same standards of care as that available in the community and must be allowed to be visited and treated by their own doctor if their request is reasonably justified and they are able to pay any expenses incurred. The Working Group urges the Government to ensure that the conditions in all places of deprivation of liberty in the Niger meet international standards.

¹⁹ Opinion No. 65/2019, para. 83.

²⁰ Opinions No. 46/2014, para. 37; No. 29/2017, para. 63; No. 59/2019, para. 69; and No. 31/2022, para. 99.

3. Disposition

95. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mohamed Bazoum and Hadiza Bazoum, being in contravention of articles 3, 7, 9, 10, 11 and 21 of the Universal Declaration of Human Rights and articles 9, 14, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

96. The Working Group requests the Government of the Niger to take the steps necessary to remedy the situation of Mr. and Mrs. Bazoum without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

97. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. and Mrs. Bazoum immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

98. The Working Group requests access to a lawyer for Mr. and Mrs. Bazoum in the event that charges are brought against them and that Mrs. Bazoum is accorded the right to remain in the territory of the Niger.

99. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. and Mrs. Bazoum and to take appropriate measures against those responsible for the violation of their rights.

100. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

4. Follow-up procedure

101. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. and Mrs. Bazoum have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. and Mrs. Bazoum;
- (c) Whether an investigation has been conducted into the violation of Mr. and Mrs. Bazoum's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Niger with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

102. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

103. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as of any failure to take action.

104. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.²¹

[Adopted on 12 November 2024]

²¹ Human Rights Council resolution 51/8, paras. 6 and 9.