

COMMUNICATION

URGENT

REQUEST FOR INTERVENTION AND INTERIM MEASURES OF PROTECTION TO PREVENT IRREPARABLE HARM OF DEPORTATION TO RWANDA, TORTURE AND/OR DEATH

Optional Protocol to the International Covenant on Civil and Political Rights

on behalf of

Anatole Nsengiyumva and André Ntagerura

Dear Madam, Sir,

We have the honour of introducing herewith, on behalf of our clients, Mr. Anatole Nsengiyumva and Mr André Ntagerura (hereinafter jointly: the “Acquitted and Released Persons” or “authors”), a complaint under the Optional Protocol to the International Covenant on Civil and Political Rights against the Republic of Niger (Niger).

The Acquitted and Released Persons are currently detained in Niamey, Niger. For the purpose of this procedure, they choose residence at the office of their Counsel, i.e. the Representatives whose contact details are provided below.

Power of Attorney (**Annex 1**)

I. Information on the Complainants

Author:

Name: Nsengiyumva
First name: Anatole
Nationality: Born in Rwanda (currently stateless)
Date and place of birth: 4 September 1950, Satisnyi, Gisenyi, Rwanda
Address/whereabouts: Quartier Dar es Salaam, Niamey, Niger

Representative:

Name: Turner
First name: Allison
Nationality: Canadian
Date and place of birth: 18 January 1966, Montreal, Quebec, Canada
Address/correspondence: Delegatus, 438 rue McGill, Suite 500, Montreal, Quebec, Canada H2Y 2G1
aturner@delegatus.ca (TEL: 1-514-932-4430)

Author:

Name: Ntagerura
First name: André
Nationality: Born in Rwanda (currently stateless)
Date and place of birth: 2 January 1950, Karengera, Cyangugu, Rwanda
Address/whereabouts: Quartier Dar es Salaam, Niamey, Niger

Representative

Name: Van Straaten
First name: Barbara
Nationality: Dutch
Date and place of birth: 28 May 1989, Rijswijk (ZH), The Netherlands
Address/correspondence: Linnaeusstraat 2-A, 1092 CK, Amsterdam, The Netherlands
bvanstraaten@prakkendoliveira.nl (Tel: +31 20 3446200)

II. State concerned / articles violated

State concerned: Niger

International Covenant on Civil and Political Rights articles violated:

- Article 9 Right to liberty and security of person and right not to be subjected to arbitrary arrest or detention
- Article 10 Right to be treated with humanity and respect for inherent dignity of the human person if deprived of liberty
- Article 12 Right to liberty of movement, freedom to choose residence, and leave
- Article 13 Right not to be expelled without compelling reasons of national security – where Niger's allegations are unfounded
- Article 17 Right not to be subjected to arbitrary or unlawful interference with privacy, family, home or correspondence, nor to unlawful attacks on honour and reputation
Right to the protection of the law against such interference or attacks
- Article 23 Right to family
- Article 25 Right to participate in and have access to public service

III. Exhaustion of Domestic Remedies

The authors have raised the complaints raised herein on several occasions with the domestic authorities, as demonstrated below. There are no effective remedies available. Therefore, there is no “reasonable prospect in redress”¹ or prospect for success.²

In the interests of efficiency and ease of reference the present communication contains English summaries of claims, some of which were originally drafted in French. The original French documents are attached as Annexes.

Facts Communicated

The Acquitted and Released Persons, all aged between 60 and 83 years old, were prosecuted before the United Nations International Criminal Tribunal for Rwanda (“ICTR”). On their release from prison in Tanzania, they were unable to obtain immigration or residency status that would allow them to reunite with their families in the diaspora or, earn a living. To avoid *refoulement* to Rwanda, the ICTR remained responsible for their security, well-being and maintenance, providing them with accommodation in Arusha under UN control, surveillance and protection. In the mid-2010s the International Residual Mechanism for Criminal Tribunals (“Mechanism”) took over this responsibility.

In Resolution 2529 of 25 June 2020 the UN Security Council reaffirmed the need to find an expeditious and durable solution to relocate the Acquitted and Released Persons.

On 15 November 2021 Niger signed an agreement with the UN to grant them permanent residency and to issue them national identification cards (“Relocation Agreement”, **Annex 2**).

The Mechanism organized the transfer of Acquitted and Released Persons to Niger on 5-6 December 2021 and they received identification cards (“IDs”) three or four days later.

On 23 December 2021, Nigerien authorities asked the Acquitted and Released Persons to hand return the IDs alleging an error had been made and promising they would be promptly replaced. After the authors handed their IDs to the authorities, armed police officers were immediately dispatched to surround the house where they reside.

On 27 December 2021, Nigerien authorities served the Acquitted and Released Persons with *arrêté 1258/MI/D/DGPN/DST* (“Expulsion Order”, **Annex 3**) a permanent expulsion order to be executed on 3 January 2022 even though they had no travel documents. The Expulsion Order alleges the expulsion is due to “diplomatic reasons”.

The Acquitted and Released Persons did not break any law of Niger nor did they pose a danger or threat to public order.

¹ Communications No. 437 1990, *Benjamin Colamarco Patiño v. Panama*, views adopted on 21 October 1994, para. 52.

² Communications Nos. 210/1986 and 225/1987, *Earl Pratt and Ivan Morgan v. Jamaica*, views adopted on 6 April 1989, para. 12.3; see also M. Nowak, ‘U.N. Covenant on Civil and Political Rights: CCPR Commentary’ (Second revised edition, N.P. Engel, 2005), p.887.

Remedies, Outcomes and Claims

1. Urgent motion *Conseil d'état* to suspend Expulsion Order 29 December 2021 (Annex 4).

Outcome: **None.** The motion was dismissed on 29 December 2021 on the basis that one instead of three paper copies of the complaint, as required, had been filed.

Claim: Limiting freedom of movement must be justified and until the Relocation Agreement is declared null and void, Niger cannot renege on its obligations without incurring liability.

Niger's actions violate article 25 of Niger's Constitution, 25 November 2010, requiring the State to ensure the welfare of the elderly.

Niger's actions violate African Charter of Human and Peoples Rights article 12.4: "A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law" and article 18.4: "The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs."

Niger's actions violate the United Nations Principles for Older Persons adopted by General Assembly resolution 46/91 of 16 December 1991.

Niger's actions expose the Acquitted and Released Persons to being transferred to Rwanda where there is a real risk they will be subjected to torture and other inhuman and degrading treatment, and assassination. All measures exposing them to expulsion to Rwanda must be immediately lifted and their liberty restored, and the *Conseil d'état* is requested to suspend the execution of the Order.

2. Revised and Re-filed Urgent motion to *Conseil d'état* to suspend Expulsion Order 3 January 1022 (Annex 5).

Outcome: **None.** The motion dismissed on 4 January 2022 on the basis that it repeated the conclusions sought by first motion that had already been dismissed for the technical reasons outlined above.

Claim: The Expulsion Order risks rendering the men stateless that would allow Niger authorities to hand them over to Rwanda, a regime that abuses human rights.

Niger's actions violate the United Nations Principles for Older Persons adopted by General Assembly resolution 46/91 of 16 December 1991.

A 29 December 2021 motion to suspend the Expulsion Order and a 31 December 2021 Mechanism order to Niger to suspend execution of the Expulsion Order were filed at the Mechanism.

Executing the Expulsion Order would irreversibly prejudice the Acquitted and Released Persons gravely violating their most fundamental rights and it is absolutely necessary that Niger comply with the 31 December 2021 order.

The hierarchical superiority of international treaties and agreements over domestic law require Niger's courts to enforce them.

The principle of *Pacta Sunt Servanda* requires Niger to fulfil its international obligations in good faith. By violating the Relocation Agreement Niger failed to respect its international obligations, and Niger's courts must ensure and enforce international decisions.

The two conditions required to suspend execution have been met: urgency and a serious claim challenging the legality of the impugned Government decision.

The regime in Rwanda is world renown for multiple violations of fundamental rights and freedoms; the US State Department 2020 human rights report includes multiple extrajudicial executions of political prisoners, arbitrary arrests, illegal detentions and other reprisals. Furthermore, Amnesty International, the FIDH, Human Rights Watch and the UN Human Rights Commission regularly publish detailed reports of the waves of terror, mass killings, arbitrary arrests and the inhuman and degrading treatment by the Rwandan regime.

Niger is being subjected to strong diplomatic pressure by Rwanda to go back on its word and violate its international undertakings. Despite public statements to the contrary, it is beyond a shadow of a doubt that the Rwandan Government is behind the movement to have Niger expel the Acquitted and Released Persons.

3. Letter to Interior Minister to suspend execution 6 January 2022 (Annex 6).

Outcome: **None.**

Claim: The letter confirmed Niger renounced the 3 January 2022 execution of the Expulsion Order and requested the remainder of the Mechanism order of 31 December 2021 to be respected, including lifting the house arrest and returning the IDs.

4. Tribunal de Grande Instance Motion for Urgent Measures 6 January 2022 (Annex 7).

Outcome: **None.** The motion was dismissed on 25 January 2022 as being "moot" as a result of the 14 January 2022 Mechanism order that purportedly resolved the dispute.

Claim: The motion seeks a court order to lift house arrest and return ID cards. On 31 December 2021 the Mechanism ordered Niger to "stay the Expulsion Order" to allow the Acquitted and Released Persons to remain on its territory, in accordance with the terms of the Relocation Agreement pending final adjudication. Niger, however, neither ended the house arrest nor returned the ID cards.

The illegal occupation of the Acquitted and Released Persons' residence by police violates their fundamental right to liberty and freedom of movement. The urgency of the situation requires that the house arrest be lifted, and the Acquitted and Released Persons' ID cards be returned.

5. Request for Asylum 1 February 2022

Outcome: **None**. Certain Acquitted and Released Persons filed requests for asylum directly with Niger's Interior Ministry but these were dismissed the same day (**Annex 8**)

Conclusion on domestic remedies

To the extent that domestic remedies were made available to the authors, under these extremely trying circumstances, all have been exhausted and wholly ineffective.

IV. Applications to International Procedures

Legal Recourse Before the Mechanism

Since December 2021 eight UN-appointed international Counsel representing the interests of the eight Acquitted and Released Persons have filed more than forty (40) motions for relief, including joinders and appeals, at the Mechanism (all public Motions available at <https://ucr.irmct.org>.)

The motions explain, *inter alia*, how the Registrar met the Men in January 2021 to discuss relocation: his "Plan A" was to relocate them to the countries they identified, failing which "Plan B" was to try to relocate them to the countries he identified, failing which "Plan C" was to return the Acquitted and Released Persons to Rwanda. The authors rejected outright Plan C both stating that, for them, Plan C meant certain death.

The motions before the Mechanism sought:

- suspension of the execution of the Expulsion Order
- immediate evacuation out of Niger and relocation to a to a seat of the Mechanism or another safe country
- *non-refoulement*
- *habeas corpus*
- return of ID cards
- lifting of the house arrest
- UN Security Council members' assistance for immediate safe relocation
- reporting Niger to the UN Security Council for non-compliance
- sending the Mechanism Registrar to Niamey, and
- sharing the Mechanism's emergency security protocol in the event of a full-blown emergency

On 31 December 2021 the Mechanism ordered Niger to “Stay the Expulsion Order and to allow the Acquitted and Released Persons to remain on its territory in accordance with the terms of the Relocation Agreement pending final adjudication of the matter.” **(Annex 9)**

Even though Niger remained in violation of the Relocation Agreement and refused to return the Acquitted and Released Persons’ ID cards, on 14 January 2022, the Mechanism ordered Niger to “continue” to execute and apply all dispositions of the Relocation Agreement in full compliance, to ensure the safety and welfare of the Acquitted and Released Persons, to ensure they have their identification documents returned and “enjoy freedom of movement on its territory” pending final adjudication of the matter. **(Annex 10)**

The Acquitted and Released Persons continued to live under house arrest.

On 7 February 2022 the Mechanism reiterated that Niger “should adhere to the rule of law” and ensure the Acquitted and Released Persons’ safety and welfare until a resolution was found and ordered the Registrar to “immediately take all necessary measures and make the appropriate arrangement” for the Acquitted and Released Persons to be returned to the Mechanism’s Arusha, Tanzania branch on a temporary basis, until relocation.” **(Annex 11)**

The Acquitted and Released Persons were not transferred back to Tanzania and continued to live under house arrest.

On 8 March 2022 the Mechanism ordered the Registrar to actively engage with Niger and other possible relocation States until an acceptable resolution of this matter was found. **(Annex 12)**

Today, the situation remains unchanged. The Acquitted and Released Persons continue to live under house arrest in Niamey while Niger’s violation of their rights under the Covenant, detailed below, is ongoing.

Administrative Requests to the Mechanism

Since December 2021, Counsel – the Representatives - have repeatedly requested information from the Mechanism Registrar and Registry and sought their cooperation and collaboration to prevent *refoulement* to Rwanda and ensure their clients’ safe resettlement (examples under **Annex 13**). These requests for assistance have been unsuccessful, and last May the Mechanism Registrar rejected the authors’ request for funds for food, water and medical care **(Annex 14)**.

These facts are very disturbing. The non-cooperation of the UN and Mechanism with Counsel compounds the psychological pressure on the authors, who are already in a situation of extreme vulnerability living continuously under house arrest, and places them under duress. The authors sincerely hope that the filing of the information contained in this complaint will ensure their welfare, prevent *refoulement* to Rwanda and they respectfully request your Committee to instruct Niger to refrain from any actions that would expose the authors to *refoulement* or further gross human rights violations.

Administrative Requests to Other United Nations Bodies

1. Submission of Information to Special Procedures report (UN Special Rapporteur on Torture) 7 February 2022 (Annex 15).

Outcome: **None.**

After an application with the *Special Rapporteur on Torture* (“SRT”) was filed on behalf of the authors, on 13 April 2022 an SRT-assigned Associate Human Rights Officer, Special Procedures Branch, Mandate of the Special Rapporteur on Torture, UNOHCHR (“SRT Officer”) indicated that action had been sought, the Mechanism had not taken a position on the potential expulsion, the Mechanism contacted Nigerien authorities, and the expulsion had not taken place “as expected”.

The SRT Officer stated that a *non-refoulement* letter to Niger had been prepared but never sent due to the SRT’s unexpected 31 March 2022 resignation. Apparently, the SRT is the only official authorized to sign letters to States and there is no “acting” SRT who can fulfill this task during the SRT’s absence. The new SRT began her duties on 1 August 2022, however, a *non-refoulement* letter still has not been sent to Niger.

Claim: Niger is in violation of the Convention Against Torture for failing to ensure the Acquitted and Released Persons will not be sent to a country where there is a real risk of torture, and for failing to offer them legal recourse to stay their expulsion. Niger has a duty to ensure their physical and mental security against systematic human rights violations.

For decades Rwanda perpetrates massive, systematic and grave human rights violations toward persons accused and/or acquitted of genocide. Rwanda is also pressuring Niger to repatriate the Acquitted and Released Persons for their political views, the genocide convictions of some, and for their ethnicity and, in all likelihood, Rwanda will prosecute and subject them to torture and/or disappearance.

The Acquitted and Released Persons fear they will be transferred to Rwanda. Since the house arrest they are under surveillance with no freedom of movement and forbidden from leaving the house. On 7 February 2022 the Mechanism ordered the return of the Acquitted and Released Persons to Tanzania, however, there was no indication that Niger or Tanzania would comply. This decision confirmed Niger’s violation of their right to freedom of movement and its refusal to execute its international obligations.

2. Asylum Request UNHCR-Niger 21 March 2022 (Annex 16).

Outcome: **None.** Niger’s Interior Ministry received the UNHCR request (on behalf of the 8 Acquitted and Released Persons) on 5 April 2022 and the matter is said to be following its due course.

Claim: The Acquitted and Released Persons filed individual requests for asylum at UNHCR (Niger) to avoid *refoulement* to Rwanda confirming that the ICTR and Mechanism had provided the means to meet their basic needs, however, after Niger welcomed them on its territory, authorities served them with an expulsion order to leave by 3 January 2022.

The Acquitted and Released Persons have a well-founded fear of persecution, inhuman and degrading treatment, torture and death if sent to Rwanda given their status as former ICTR accused persons and for their political opinions. The Acquitted and Released Persons meet the criteria of the (Niger ratified) 1951 Convention on the Status of Refugees and the 1967 Protocol.

Article 3(1) of the UN Convention Against Torture, also ratified by Niger, provides that “[n]o country shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

3. Request for UNHCR Refugee Protection 3 June 2022 (Annex 17).

Outcome: **None.**

Claim: An urgent request for UNHCR refugee protection was sent to UNHCR-Niger supported by a table of credible reports on Rwanda’s human rights violations.

Two months later, on 5 August, UNHCR Niger acknowledged receipt of the urgent request stating that “it is the responsibility of competent authorities in Niger to determine eligibility for refugee status” and that UNHCR Niger advocates for the principle of non-refoulement.

V. Conclusion on Admissibility

Based on the abovementioned, the authors submit that, in accordance with Articles 1 to 5 of the First Optional Protocol to the ICCPR, the complaint is admissible for consideration by the Human Rights Committee:

- Niger is a State party to the First Optional Protocol to the ICCPR (See Chapter II ‘State concerned / Articles Violated’)
- The authors are victims of violations of the ICCPR (See Chapter II ‘State concerned / Articles Violated’ and Chapter VII ‘Violations of the ICCPR as alleged by the authors herebelow);
- The authors have exhausted all available and accessible remedies, all of which have proven to be wholly ineffective (See Chapter III ‘Exhaustion of domestic remedies’ above);
- The complaint is written, not anonymous and not an abuse of the right of submission or incompatible with the provisions of the Covenant; and,
- The same matter is not (currently being examined under another procedure of international investigation of settlement or such investigation has not resulted in an effective remedy (see Chapter IV ‘Application to other international procedure’ above).

In conclusion, the authors request the Human Rights Committee to decide that the complaint is admissible under the First Optional Protocol to the ICCPR.

VI. Facts of the Complaint

Regarding the authors' history prior to their arrival in Niger, we refer the Human Rights Committee to *Facts Communicated* under *Chapter III Exhaustion of domestic remedies*.

On 15 November 2021 the Government of Niger signed the Relocation Agreement to, *inter alia*, to grant the Acquitted and Released Persons permanent residency and issue national identification cards. The Mechanism scheduled the transfer to Niger on 5-6 December 2021 and 3 or 4 days after their arrival in Niamey they received their IDs.

The Acquitted and Released Persons accepted the precipitous offer to relocate to Niger because, they were informed, had they refused and remained in Arusha they would no longer have the benefit of UN protection and the means to provide for basic needs. Soon after their arrival in Niamey, they received their ID cards and opened bank accounts for the US\$10,000.00 budget that was supposed to cover expenses for the first year of resettlement.

Niger violated the Relocation Agreement two days before Christmas on 23 December 2021 by employing false pretences to confiscate the Acquitted and Released Persons' ID cards and surrounding the house where they were living with armed police officers.

The Acquitted and Released Persons spent Christmas 2021 under house arrest.

Four days later, on 27 December, Niger violated the Relocation Agreement a second time by serving the Acquitted and Released Persons with an Expulsion Order to be executed on 3 January 2022 even though they had no travel documents and no place to go.

Since then, and despite the numerous efforts undertaken (see 'Exhaustion of domestic remedies' and 'Application to international procedures' above) the situation remains unchanged.

The Acquitted and Released Persons have been prisoners under the authority of Niger since 23 December and Niger has not provided and today it is still not providing for their basic needs.

On 4 September 2022, Canada's national newspaper *The Globe and Mail* ran a detailed article exposing the authors' plight. (**Annex 18**)

The situation of the Acquitted and Released Persons is alarming and critical: the funds the Mechanism provided them for "resettlement" have run out, Niger is not providing them with food, water, or medical care, and they have no independent means to survive this ordeal. Until the International Committee of the Red Cross intervened in March 2022, any request for medical assistance was complicated; the authors had to address

the request to an armed police officer outside the residence, who in turn contacted the police chief, who in turn sought authorization from authorities before providing a response to the request.

Under no circumstances do or will the authors consent to be sent to Rwanda and they roundly denounce all efforts by anyone to that end. Their well-founded fears of persecution, torture and/or death are based, *inter alia*, on Rwanda's decades-long persecution of the authors, the well reported increase in human rights violations and the recent escalating war on the DRC.

VII. Violations of the ICCPR as alleged by the authors

The authors complain of violations of the following ICCPR articles.

Violation of Article 9(1)

The authors submit that their continued detention under house arrest is a flagrant violation of Article 9 under the Covenant which provides as follows:

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

The detention of the authors is arbitrary. The house arrest was not imposed as a consequence of any conduct of any of the Acquitted and Released Persons but solely as a result of an arbitrary decision attributed to “diplomatic reasons” heretofore unspecified. Not a single ground or reason have been advanced to justify the house arrest.

According to General Comment No. 35 (10), the deprivation of liberty is unlawful if an individual is arrested or detained “on grounds which are not clearly established in domestic legislation” which, the authors submit, aptly describes their situation.

If detention “lacks any legal basis” both the requirements of lawfulness and that the arrest or detention not be “arbitrary” are breached. See *Mika Miha v. Equatorial Guinea* where the author was not provided with an explanation or reason for his arrest and detention except that the president of the Republic ordered it.³ Thus, in the absence of any grounds or fault on the part of the authors their detention must be considered arbitrary.

Moreover, authorities failed to provide any reason or justification as to why detention was the only option available to Niger. In *C . v. Australia*, the Committee found that immigration detention for over two years was arbitrary because the State failed to justify continued detention with the passage of time and intervening circumstances by showing

³ *Mika Miha v. Equatorial Guinea.*, CCPR/C/51/D/414/1990, 8 July, para. 6.5.

there did not exist any less invasive means of achieving compliance with its immigration policies, such as reporting obligations, sureties or other conditions which would take into account the author's deteriorating physical condition.⁴

Violation of Article 9(2)

Article 9(2) of the ICCPR provides as follows:

Article 9

(...)

2. 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.

The authors were not immediately informed of the reasons of their detention and indeed the reasons for their continued deprivation of liberty remain unknown to this day. Thus, having not been promptly informed of the reasons for the house arrest or any charges, their rights under Article 9(2) of the Covenant have been violated.

Violation of Article 9(4)

Article 9(4) of the ICCPR provides as follows:

Article 9

(...)

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

None of the proceedings the authors initiated resulted in a court in a Nigerien court ruling on the lawfulness of the house arrest. No court in Niger has ever confirmed the lawfulness, or unlawfulness, of the house arrest.

Violation of Article 9(5)

Article 9(5) of the ICCPR provides as follows:

Article 9

(...)

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

⁴ *C . v. Australia*, CCPR/C/76/D/900/1999, 28 October 2002, para. 8.2.

As no court in Niger ever ruled on the lawfulness or unlawfulness of the detention, despite a number of opportunities, Niger has prevented the authors from enforcing their Article 9(5) right to compensation.

Violation of Article 10(1)

The authors complain of violations of Article 10(1) of the ICCPR which provides as follows:

Article 10

(...)

1. *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

Niger has unlawfully detained the authors and it has failed to treat them with humanity and respect. In particular, since this crisis began, Niger has been withholding vital information concerning their status including basic information such as whether it will execute the Expulsion Order or whether it has agreed that they can remain in Niger until they are safely resettled. As a result, every day the authors live under the immediate threat of *refoulement* to Rwanda where they will be tortured and killed which constitutes psychological torture.

In addition to the psychological torture, since the unlawful detention began, Niger has not provided the authors with any food and water. Only since March 2022 have they finally been able to receive required medical care through the International Committee of the Red Cross. Niger has also failed to ensure that the building where the authors are under house arrest has a generator; temperatures in Niger reach 35-45 C and they also need to communicate with their family and counsel. The authors also submit that these circumstances violate their Article 7 right which provides, *inter alia*, that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

In 1998 Niger adhered to the Convention Against Torture (“CAT”) of which Article 3 provides:

1. *No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*
2. *For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.*

On 7 November 2014 Niger ratified CAT Optional Protocol. Since 23 December 2021, however, Niger has not confirmed its adherence to the principle of *non-refoulement* and its judicial system has provided the authors with no relief. UNHCR-Niger has also not responded to the authors’ 22 March 2022 request for asylum to avoid *refoulement* to Rwanda.

That Niger is not ensuring their basic needs are being met places the authors in a situation of extreme danger. The funds intended for their basic needs under normal everyday circumstances are virtually, if not already depleted because they had to rely on prepared food; they did not have sufficient time to hire a cook when the house arrest was imposed. Niger is not providing them with any means to access food, water and any medical care they receive is through the International Committee for the Red Cross (ICRC). The ICRC recently reached an agreement with Niger relating to how those who are sick can be transported to and from hospital.

On 20 July 2022 the U.S. Senate Foreign Relations Committee denounced Rwanda's bleak human rights record (**Annex 19**). The attached chart reinforces this letter and illustrates the credible reports of the escalation of Rwanda's assassinations, disappearances, and torture of dissidents inside and outside Rwanda since 2009 (**Annex 20**).

The risk that the authors will be tortured and murdered in Rwanda is not only real and personal, but highly foreseeable.

To avoid the irreparable harm the authors will suffer if sent to Rwanda, they seek an interim order for measures including an order to Niger to immediately adhere to the principle of *non-refoulement* and to confirm that Niger will not directly or indirectly send the Acquitted and Released Persons to Rwanda.

Violation of Article 12(1)

The authors complain of violations of Article 12(1) which provides:

Article 12

(...)

1. *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

Your Committee has previously held that Article 12 equally applies to cases of house arrest.⁵ Consequently, the authors' house arrest in Niger violates their rights under this Article of the Covenant.

Niger invited the authors to enter its territory and offered them protection after they signed an Undertaking agreeing to abide by Niger's laws. At no time have the authors violated any law of Niger, a reality that is reinforced by the fact that no Niger court has ever ruled that any of the authors violated any laws or posed a threat to public order or safety.

Until the time of the house arrest, the authors' right to liberty of movement was respected and they were lawfully and peacefully residing, in full respect of Niger's laws, on Niger's territory. The house arrest is a violation of their liberty of movement and freedom to choose their own residence. This case also bears similarities to your

⁵ *Gorji-Dinka v. Cameroon*, CCPR/C/83/D/1134/2002, 17 March 2005, para. 5.4; *Yklymova v. Turkmenistan*, CCPR/C/96/1460/2006, 20 July 2009, para 2.3, 7.5.

Committee's findings in the *Yklymova v. Turkmenistan*, where Yklymova was subjected to house arrest for nearly four years with no legal basis.⁶

Violation of Article 12(3)

The authors further complain of violations of Article 12(3) which provides:

Article 12

(...)

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. (...)"

Since the start of the house arrest, Niger has not demonstrated that its violations of the authors' rights are consistent with any rights recognized by the Covenant, or that they are required to protect national security, public order, public health or morals or the rights and freedoms of others. The indefinite house arrest therefore also violates the authors' rights under Article 12(3) of the Covenant.

Violation of Article 13

The authors complain of violations of Article 13 of the ICCPR, which provides as follows:

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purposes before, the competent authority or a person or persons especially designated by the competent authority.

As demonstrated under *Violations of Article 9* above, the Expulsion Order issued against the authors is not well-founded under the laws of Niger, nor has it been established in a court of law that it is legally justified in any of the legal proceedings initiated by the authors. Thus, the Expulsion Order was issued contrary to the law of Niger and the courts of Niger committed an error when they dismissed the authors' motions to have the Expulsion Order declared unlawful.

Moreover, as Niger has not advanced any reason of national security, let alone any compelling reason of national security, that requires their expulsion, it is equally in violation of the author's rights under Article 13 of the Covenant.

⁶ *Yklymova v. Turkmenistan*, CCPR/C/96/1460/2006, 20 July 2009, para 2.3, 7.5.

Violation of Article 17

The authors complain of violations of Article 17 of the ICCPR, which provides as follows:

Article 17

1. *No one shall be subjected to arbitrary or unlawful interferences with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
2. *Everyone has the right to the protection of the law against such interference or attacks.*

Since 23 December 2021, the authors have been deprived of any form of privacy as they have been living under the constant police surveillance and prohibited from leaving the house where they reside. The authors allege that their house arrest, including the continued presence of armed guards on the premises, constitutes a violation of Article 17 of the Covenant.

Violation of Article 23

Article 23

1. *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

Under the Relocation Agreement, the authors were entitled to have their family visit them in Niger and – provided the receiving country would allow them on its territory – visit their family abroad. This was one of the main reasons why the authors accepted the relocation to Niger. The house arrest renders the circumstances in which the authors are compelled to live so dangerous, they are preventing family reunifications.

The failure of Niger to comply with the provisions of the Relocation Agreement and Undertaking therefore violate the authors' rights under Article 23 of the Covenant.

Violation of Article 25

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

(...);

- (c) To have access, on general terms, to public service in his country.*

Since their house arrest, the authors have been deprived of all public services Niger provides to its residents to the point where even their IDs were confiscated and never replaced, as authorities had promised.

Thus, the authors' rights under Article 25 of the Covenant have been violated.

As further support and argument that their rights have been violated, the authors refer generally to the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power Adopted by General Assembly resolution 40/34 of 29 November 1985, and the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Adopted by General Assembly resolution 43/173 of 9 December 1988.

VIII. Conclusion

Admissibility

On becoming a party to the Optional Protocol, Niger recognized the jurisdiction of the Committee to determine whether there has been a violation of the Covenant on its territory, and all other requirements for submission of individual complaints under the First Optional Protocol to the ICCPR have been met. The present complaint, therefore, is admissible under the Optional Protocol.

Violations of the ICCPR

As set out in Chapter VII 'Violations of the ICCPR as alleged by the authors' the authors have been the victims of violations of the ICCPR.

1. The authors submit that their rights under Articles 9, 10, 12, 13, 17, 23 and 25 of the Covenant have been violated.
2. The authors request that this Committee conclude that Niger has violated Articles 9, 10, 12, 13, 17, 23 and 25 of the Covenant.

Remedies Requested

As the authors' paramount concern is the daily threat of *refoulement* to Rwanda, they seek the Human Rights Committee's immediate intervention and interim measures of protection to prevent their highly foreseeable irreparable harm, torture and death.

The authors also request that Niger lift the house arrest, return their IDs and release them from their detention to allow for their liberty of movement.

The authors further request the Human Rights Committee to urge Niger to take measures to give effect to its obligations arising out of the Covenant and the First Optional Protocol and to take measures to prevent similar violations in the future:

the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant. Accordingly, it has been a frequent practice of the Committee in cases under the Optional Protocol to include in its Views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question. Such measures may require changes in the State Party's laws or practices.⁷

The whole respectfully submitted this 22nd day of September 2022.

Representatives' signatures:

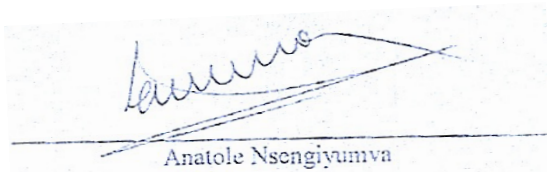


Allison Turner

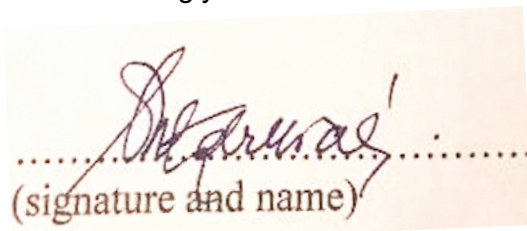


Barbara van Straaten

Authors' signatures:



Anatole Nsengiyumva



André Ntagerura

⁷ Human Rights Committee General Comment No.. 31 [80], para. 15.

IX. Supporting documentation

- Annex 1 Power of Attorney (Authorizations to Represent)
- Annex 2 Relocation Agreement
- Annex 3 Expulsion Order
- Annex 4 Urgent motion *Conseil d'état*
- Annex 5 Revised and Re-filed Urgent motion *Conseil d'état*
- Annex 6 6 January 2022 Letter to Interior Minister
- Annex 7 6 January 2022 Motion Tribunal de Grande Instance
- Annex 8 1 February 2022 Request for Asylum to Niger
- Annex 9 31 December 2021 Mechanism Order
- Annex 10 14 January 2022, Mechanism Order
- Annex 11 7 February 2022 Mechanism Decision
- Annex 12 8 March 2022 Mechanism Further Decision
- Annex 13 Administrative Requests to Mechanism
- Annex 14 May 2022 Welfare Request to and Rejection by Mechanism
- Annex 15 7 February 2022 Submission to Special Procedures
- Annex 16 21 March 2022 Asylum Request UNHCR-Niger
- Annex 17 3 June 2022 Urgent Request for Refugee Protection to UNHCR
- Annex 18 4 September 2022 article by *The Globe and Mail*
- Annex 19 20 July 2022 Letter U.S. Senate Foreign Relations Committee
- Annex 20 2009-2022 Table Rwandan Human Rights Violations