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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020

Opinion No. 55/2020, concerning Ernest Nyabenda and Patrick Nsengiyumva (Burundi)*

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42. 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 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 10 January 2020 the Working Group transmitted to the Government of Burundi a communication concerning Ernest Nyabenda and Patrick Nsengiyumva. The Government has not replied to the communication. 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,

* Seong-Phil Hong did not participate in the discussion of the present case.



disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Ernest Nyabenda is a Burundian citizen born in 1982. He was a member of the Burundi National Defence Force at the time of his arrest and was previously a liaison officer for the former Minister of National Defence. He resided at the military camp in Musaga, Bujumbura.

5. Patrick Nsengiyumva is a Burundian citizen born in 1980. He was a member of the Burundi National Defence Force at the time of his arrest, assigned to the Ngaragara camp.

(a) Arrest and detention

6. The source explains that, on the morning of 2 August 2015, a general, the President's right-hand man, was killed by a group of armed individuals on the outskirts of Kamenge. A police operation was carried out near the scene of the attack in an attempt to find those responsible.

7. According to the source, in the afternoon of 2 August 2015, while resting in his room, Mr. Nsengiyumva was summoned by his superiors, who asked him to report to the General Staff's military intelligence service. He was then taken in a camp vehicle and under the escort of military police command liaison officers to the military police lock-up, before being brought to the headquarters of the National Intelligence Service, near Regina Mundi Cathedral in the commune of Mukaza.

8. With regard to Mr. Nyabenda, the source states that on 8 August 2015, while Mr. Nyabenda was on his way to his place of residence, he was arrested by about 10 police officers, thrown into a police van and brought to the headquarters of the National Intelligence Service in Mukaza.

9. The source explains that, on 15 August 2015, a member of the Public Prosecutor's Office in Bujumbura Mairie separately questioned Mr. Nsengiyumva and Mr. Nyabenda on the basis of reports from the National Intelligence Service. During the questioning, neither had access to counsel. They were then brought back to the National Intelligence Service lock-up.

10. The source reports that, at the time of arrest, no warrants were served on either Mr. Nsengiyumva or Mr. Nyabenda. An arrest warrant was issued against them by the Public Prosecutor's Office of the Republic in Bujumbura only on 4 September 2015.

11. The source reports that on 4 September 2015, Mr. Nsengiyumva and Mr. Nyabenda were transferred from the premises of the National Intelligence Service to the prison in Gitega, where they are still being held.

12. According to the source, in November 2015, Mr. Nsengiyumva and Mr. Nyabenda were brought before the judges' council chamber of the Bujumbura Mairie Tribunal de Grande Instance (court of major jurisdiction) for verification that their detention was lawful. The court confirmed that they should remain in detention, along with four other defendants.

13. The source states that six months later, on 6 May 2016, Mr. Nsengiyumva and Mr. Nyabenda were brought before the trial judge at the Bujumbura Tribunal de Grande Instance with the same four others. However, the source reports that they were not assisted by counsel and that the prosecution presented no witnesses. Additionally, no legal basis was mentioned in their summonses.

14. The source adds that further hearings were held on 1 August and 11 October 2016 and that then too the public prosecutor failed to present witnesses for the prosecution. One month later, Mr. Nsengiyumva and Mr. Nyabenda were summoned and then learned that the court had reopened the proceedings to allow the prosecution to conduct a further investigation. At a hearing on 27 December 2016, the prosecution disclosed that its witnesses had not appeared because they were not protected, and the case was adjourned sine die.

15. The source thus explains that, for more than four years now, a trial has yet to be scheduled in open court, thus preventing Mr. Nsengiyumva and Mr. Nyabenda, and the other defendants, from presenting arguments in their defence.

(b) Legal analysis

(i) Category I

16. According to the source, the arbitrary nature of Mr. Nsengiyumva's and Mr. Nyabenda's detention stems primarily from the lack of a legal basis to justify their detention.

17. The source underscores that article 9 (1) of the International Covenant on Civil and Political Rights, to which Burundi is a party, stipulates that "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."

18. In the present case, the source first asserts that no arrest procedure was followed. Mr. Nsengiyumva and Mr. Nyabenda were not presented with an arrest warrant or any other document justifying their detention at the time of their arrest, nor were they informed of their rights.

19. The source submits that at the time of their arrest, Mr. Nsengiyumva and Mr. Nyabenda were not informed of the real reason for their arrest or of their rights, contrary to article 10 of the Code of Criminal Procedure. Furthermore, their families received no notice about their arrest or place of detention, in violation of article 36 of the Code of Criminal Procedure. Lastly, their detention for prolonged periods at the headquarters of the National Intelligence Service exceeded the time limit established in article 34 of the Code of Criminal Procedure, which was not extended by the Public Prosecutor's Office.

20. In particular, the source explains that it was only on 4 September 2015, 26 days after his arrest for Mr. Nyabenda and 32 days after his arrest for Mr. Nsengiyumva, that they learned that they were the subjects of arrest warrants and that they were being charged with murder. The source concludes that from the date of their arrest, on 8 August and 2 August 2015, respectively, until 4 September 2015, Mr. Nyabenda's and Mr. Nsengiyumva's pretrial detention was without a legal basis.

21. Secondly, the source alleges that Mr. Nsengiyumva and Mr. Nyabenda did not have access to mechanisms for judicial review of their detention for a period of three months. Indeed, the first appearance in the council chamber for the review of detention was held in November 2015, three months after their arrest, and the State provided no legal basis to justify their pretrial detention.

22. Given that the lawfulness of their detention was never confirmed within the time prescribed by law, as stipulated in article 111 of the Code of Criminal Procedure, which provides that "the appearance before the judge must take place no later than 15 days after the issue of the arrest warrant", the source concludes that the detention of Mr. Nsengiyumva and Mr. Nyabenda has no legal basis.

23. The source further reports that, according to article 110 of the Code of Criminal Procedure, "freedom being the rule and detention the exception, the accused may be remanded in custody only if there is sufficient evidence of guilt and the acts of which he or she is accused appear to constitute an offence punishable by law with a penalty of imprisonment for at least 1 year". In the present case, however, the source alleges that Mr. Nsengiyumva and Mr. Nyabenda were arrested without any evidence of guilt that could justify allegations of their involvement in the general's murder. Mr. Nyabenda was, like other citizens, very close to the scene of the murder. He was in civilian clothes and had no weapon on him. According to the source, it was only because of his identification as a member of the Burundi National Defence Force from the former regular army, prior to the integration of elements of the rebel movement currently in power, that he was arrested.

24. According to the source, the reason for the slow progress in handling these cases is the lack of evidence of guilt.

25. In the light of the above considerations, the Working Group considers the detention of Mr. Nsengiyumva and Mr. Nyabenda to be arbitrary under category I.

(ii) Category III

26. The source argues that, in accordance with articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant, no one may be deprived of his or her liberty except in accordance with the procedure established by law; and that everyone has the right to an effective remedy before the competent national tribunals for acts violating the fundamental rights granted to him or her, must be brought promptly before the competent judicial authority and must be entitled to a trial within a reasonable time. Lastly, pretrial detention should not be the rule and can only be allowed to ensure the appearance of the person concerned at the trial and the execution of the judgment. Deprivation of liberty is considered arbitrary in particular 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 enter into the framework of category III.

27. The source asserts that there were many irregularities in the proceedings against Mr. Nsengiyumva and Mr. Nyabenda that constitute violations of Burundian law and of international standards relating to the rights to liberty and security of person and to a fair trial. When considered together, these irregularities suggest that Mr. Nsengiyumva and Mr. Nyabenda do not enjoy the protection of the law and render the violations so serious as to give the detention an arbitrary character.

28. The source, as explained above, submits that the arrests of Mr. Nsengiyumva and Mr. Nyabenda did not take place in accordance with procedure. Neither Mr. Nsengiyumva nor Mr. Nyabenda was presented with any documentation to justify their arrest. Mr. Nyabenda was also subjected to inhuman treatment at the time of his arrest: the police, after asking him for proof of identity and finding out that he had served in the former regular army, wasted no time apprehending him, accusing him of having killed the general. They also hit him and insulted him. For his part, Mr. Nsengiyumva was misled by his superiors, who had him taken to the headquarters of the National Intelligence Service, and told him that he would later return.

29. Moreover, the source alleges that the length of detention of Mr. Nsengiyumva and Mr. Nyabenda at the premises of the National Intelligence Service far exceeded the legal limits, which were not extended by the Public Prosecutor's Office, in violation of article 34 of the Code of Criminal Procedure. The State also allegedly failed to fulfil its obligation to bring Mr. Nsengiyumva and Mr. Nyabenda before a competent court within the statutory time limit, which is within 15 days of the issue of the arrest warrant, in accordance with article 111 of the Code of Criminal Procedure. In fact, a warrant for the arrest of Mr. Nsengiyumva and Mr. Nyabenda was issued only on 4 September 2015, or respectively 32 and 26 days after their arrests, and they were brought before the court for a detention order review in November 2015, three months after they were placed in detention and two months after their arrest warrants were issued.

30. The source also recalls that article 112 of the Code of Criminal Procedure provides in this case that the "release from pretrial detention shall be ordered by the court on its own motion in the event of wrongful detention". However, the irregularities of detention, including the exceeding of time limits, were not penalized by either a procedural or trial judge, in violation of article 158 of the Code of Criminal Procedure.

31. Furthermore, the source alleges that the detention order, which was valid for 30 days under article 115 of the Code of Criminal Procedure, expired before Mr. Nsengiyumva's and Mr. Nyabenda's cases were scheduled for court proceedings. Thus, after the expiry of that order, there was no document justifying their detention.

32. The source also indicates that Mr. Nsengiyumva and Mr. Nyabenda were deprived of the right to legal assistance during the judicial proceedings. Indeed, the source claims that at the time of their questioning at the premises of the National Intelligence Service, during which acts of torture were committed, Mr. Nsengiyumva and Mr. Nyabenda did not have access to counsel, despite the obligation under article 95 of the Code of Criminal

Procedure to provide such access. This violation persisted during the questioning before the investigating judge and during the judges' council chamber hearing.

33. The source further points out that, since the arrests of Mr. Nsengiyumva and Mr. Nyabenda in August 2015, no progress has been made in the case. According to article 38 of the Constitution, "every person has the right in legal or administrative proceedings to have their case treated fairly and settled within a reasonable time". The source argues that the case has been dragging on before a court of first instance for four years. The last public hearing was held on 27 December 2016, when the prosecution requested a postponement of the case to allow it to summon witnesses for the prosecution once they could be afforded protection. The court then dismissed both cases *sine die*.

34. For these reasons, the source claims that the procedural irregularities of which Mr. Nsengiyumva and Mr. Nyabenda were victims violated their right to a fair trial and are of such gravity that their detention must be considered arbitrary under category III.

(iii) Category V

35. The source recalls that Mr. Nsengiyumva and Mr. Nyabenda were arrested following a police operation in the vicinity of the scene of the attack on and murder of the general, the President's right-hand man and former head of the National Intelligence Service.

36. After Mr. Nyabenda was identified as a member of the former regular army that was opposed to the rebel movements currently in power, and as a liaison officer for a former Minister of National Defence, who is accused by the regime of having played a role in the attempted coup of 13 May 2015, Mr. Nyabenda was wrongly accused of being part of the group that made an attempt on the general's life.

37. The source also recalls that, since the 1960s, Burundi has repeatedly experienced crises based on ethnic conflicts. Ten years of civil war between the regular army – mostly Tutsi – and the rebel movements – mostly Hutu – ended with the implementation of the Arusha Peace and Reconciliation Agreement for Burundi, concluded in 2000. Despite this agreement and the integration of the rebel movements into the army, there is, according to the source, a spirit of revenge in both ethnic groups, including the one in power. The source states that Mr. Nsengiyumva and Mr. Nyabenda are members of the Tutsi ethnic group. Their ethnicity reportedly places them in a state of extreme vulnerability.

38. The source has argued that the detention of Mr. Nsengiyumva and Mr. Nyabenda is arbitrary under categories I, III and V.

Government reply

39. On 10 January 2020, the Working Group transmitted to the Government a communication concerning Mr. Nsengiyumva and Mr. Nyabenda. The Working Group requested it to provide detailed information about Mr. Nsengiyumva and Mr. Nyabenda by 10 March 2020 at the latest. More specifically, it requested the Government to clarify the legal provisions justifying their continued detention, as well as their compatibility with the obligations of Burundi under international human rights law, and specifically with the treaties that the State had ratified. Moreover, the Working Group called upon the Government to safeguard Mr. Nsengiyumva's and Mr. Nyabenda's physical and mental integrity.

40. The Working Group regrets that it did not receive a response from the Government, nor did the Government request an extension of the time limit for its reply, as provided for in the Working Group's methods of work. The Working Group notes with concern that the Government has not taken the opportunity to respond to the allegations made in the present case and in other communications transmitted under the regular procedure in recent years.¹ In fact, the Government has not responded to the Working Group under its regular communications procedure since 2012. The Working Group invites the Government to engage constructively with it on all allegations relating to the arbitrary deprivation of liberty.

¹ See opinions No. 14/2013, No. 33/2014, No. 30/2015, No. 8/2016, No. 54/2017, No. 7/2018, No. 37/2019, No. 25/2020 and No. 40/2020.

Hearing

41. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

42. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

43. The source argues that the arrest and detention of Mr. Nsengiyumva and Mr. Nyabenda are arbitrary under categories I, III and V. The Working Group will consider the source's allegations one by one.

(i) Category I

44. The source reports that Mr. Nsengiyumva was arrested after being summoned by his superiors on 2 August 2015, while he was resting in his room. Mr. Nyabenda, for his part, was arrested on 8 August 2015 by about 10 police officers as he was on his way to his residence. Both were taken to the National Intelligence Service. At the time of their arrest, no arrest warrants or other documents justifying arrest were reportedly presented to Mr. Nsengiyumva or Mr. Nyabenda; they were only presented on 4 September 2015. Mr. Nsengiyumva was not informed of the reasons for the arrest, and Mr. Nyabenda was only told that he was accused of murdering the general. The Government has chosen not to refute those allegations.

45. In accordance with article 9 (1) of the Covenant, no one must be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. In order for a deprivation of liberty to have a legal basis, it is not sufficient that there be a law that authorizes the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.² In the absence of any justification for this arrest, the Working Group concludes that the arrest without warrant of Mr. Nsengiyumva and Mr. Nyabenda constitutes a violation of their rights under article 9 (1) of the Covenant. The Working Group also notes with concern the lack of proportionality in the circumstances of Mr. Nyabenda's arrest, which was carried out by 10 officers who brutally apprehended him and threw him into a vehicle.

46. Furthermore, the Working Group recalls that article 9 (2) of the Covenant requires that a person who is arrested be informed, at the time of arrest, of the reasons for the arrest, and it notes that in this case the authorities failed to inform Mr. Nsengiyumva.³ The Working Group also notes that the two individuals were not informed of the charges against them until 4 September 2015. In view of this delay, for which the Government has provided no justification, the Working Group concludes that there has been an additional violation of article 9 (2) of the Covenant, as Mr. Nsengiyumva and Mr. Nyabenda were not promptly informed of the charges against them.

47. The source also reports that neither Mr. Nsengiyumva nor Mr. Nyabenda were promptly brought before a judge, as they were brought before a procurator on 15 August 2015 and before the council chamber in November 2015. This allegation too has not been contested by the Government.

48. As the Working Group has previously noted, a prosecuting body cannot be considered to be a judicial authority for the purposes of article 9 (3) of the Covenant.⁴ In this connection, the Working Group recalls that, in accordance with article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge must be brought promptly before a judge or other officer authorized by law to exercise judicial power and must be

² Opinions No. 25/2020, para. 34; No. 46/2018, para. 48; No. 36/2018, para. 40; No. 10/2018, para. 45; and No. 38/2013, para. 23.

³ Opinion No. 46/2019, para. 51 and opinion No. 10/2015, para. 34.

⁴ Opinions No. 5/2020, para. 72; No. 45/2019, para. 52; and No. 14/2015, para. 28. See also Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 32.

entitled to trial within a reasonable time or to release. The Human Rights Committee, in its general comment No. 35 (2014) on liberty and security of the person, stated in paragraph 33 that, while the exact meaning of “promptly” may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.

49. The source also points out that article 111 of the Code of Criminal Procedure stipulates that presentation before a judge must take place within 15 days of the issuance of the arrest warrant. For an arrest that takes place on the day the warrant is issued, this is incompatible with article 9 (3) of the Covenant, as 15 days is excessive. The Working Group therefore invites the Government to bring this provision into conformity with international standards.

50. In this regard, the Working Group considers that the authorities have failed to fulfil their obligation under article 9 (3) of the Covenant.

51. The Working Group also notes that the two persons in question were not brought before a judge before November 2015 and therefore did not have the opportunity to challenge the lawfulness of their detention before then, as stipulated in article 9 (4) of the Covenant.

52. The Working Group thus finds that the arrest and detention of Mr. Nsengiyumva and Mr. Nyabenda have no legal basis, in violation of article 9 of the Universal Declaration of Human Rights and article 9 (1–4) of the Covenant, and are arbitrary under category I.

(ii) Category III

53. The source explains that Mr. Nsengiyumva and Mr. Nyabenda were deprived of the right to legal assistance during the judicial proceedings. The source asserts that Mr. Nsengiyumva and Mr. Nyabenda had no legal assistance during their questioning at the National Intelligence Service facilities, their interviews by the investigating judge or the hearing before the judges’ council chamber. In the absence of any rebuttal from the Government, the Working Group considers that the facts presented by the source have been established.

54. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and that such assistance shall be provided without delay.⁵

55. In the light of the facts, the Working Group concludes that the right of Mr. Nsengiyumva and Mr. Nyabenda to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their choice, as provided for in article 14 (3) (b) of the Covenant, has been violated, as has their right to conduct an adequate defence through counsel of their choice, as provided for in article 14 (3) (d) of the Covenant.

56. Furthermore, the source explains that the trial of Mr. Nsengiyumva and Mr. Nyabenda has been unduly and excessively slow and that their case is still pending, the last public hearing having taken place on 27 December 2016. At that hearing, the prosecution requested a postponement of the case to allow prosecution witnesses to appear once they were covered by appropriate protective measures. In response, the court ordered a postponement sine die. The Government has not provided any explanation for this postponement.

57. The Working Group recalls that the reasonableness of any delay in bringing a case to trial must be assessed on a case-by-case basis, taking into account its complexity, the

⁵ Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 32 and 34; and United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, annex), principle 9 and guideline 8.

conduct of the defendant and the manner in which the authorities have handled the case.⁶ In the present case, the Working Group considers, taking into account that the last hearing took place in December 2016 and that the case was adjourned sine die, that the right to be tried without undue delay, as provided for under article 14 (3) (c) of the Covenant, was violated.

58. For these reasons, the Working Group concludes that the violations of the right to a fair trial under article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant are of such gravity as to confer on Mr. Nsengiyumva's and Mr. Nyabenda's deprivation of liberty an arbitrary character under category III.

(iii) Category V

59. The source claims that Mr. Nsengiyumva and Mr. Nyabenda were arrested and detained because of their ethnic identity. The source points out that both men were members of the former regular army, which was opposed to the rebel movements currently in power. Furthermore, the source indicates that Mr. Nyabenda in particular was identified as having been a liaison officer for a former Minister of National Defence accused by the regime of playing a role in the attempted coup of 13 May 2015. It is thus on this basis that Mr. Nsengiyumva and Mr. Nyabenda were accused of being part of the group that attempted to kill the general.

60. The Working Group recalls that, 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, the detention is arbitrary.

61. Recalling its opinions No. 7/2018 and No. 25/2020, in which it concluded that there was discrimination against members of the former regular army who were of Tutsi ethnicity, and in the absence of a rebuttal by the Government, the Working Group considers the allegations of the source to be credible.⁷ The Working Group therefore concludes that the arrest and detention of Mr. Nsengiyumva and Mr. Nyabenda are the result of ethnic and political discrimination, as they were arrested and detained solely because they were members of the army and one of them worked for a former Minister of National Defence. This is a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. The Working Group therefore considers Mr. Nsengiyumva's and Mr. Nyabenda's arrest and detention to be arbitrary under category V.

62. Furthermore, and in view of this last conclusion, the Working Group refers the case to the Special Rapporteur on minority issues.

Disposition

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

The deprivation of liberty of Patrick Nsengiyumva and Ernest Nyabenda, being in contravention of articles 2, 7, 9 and 10 of the Universal Declaration of Human Rights and articles 2, 9, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

64. The Working Group requests the Government of Burundi to take the steps necessary to remedy the situation of Mr. Nsengiyumva and Mr. Nyabenda 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 International Covenant on Civil and Political Rights.

65. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Nsengiyumva and Mr. Nyabenda immediately and accord them an enforceable right to compensation and other reparations,

⁶ Opinions No. 83/2019, para. 70; and No. 45/2016, para. 51. See also Human Rights Committee, general comment No. 32, para. 35.

⁷ See also concluding observations on the second periodic report of Burundi (CAT/C/BDI/CO/2/Add.1), paras. 12, 13, 18 and 19.

in accordance with international law. In the current context of the global coronavirus (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Nsengiyumva and Mr. Nyabenda.

66. The Working Group urges the Government to undertake a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Nsengiyumva and Mr. Nyabenda and to take appropriate measures in respect of the persons responsible for the violation of their rights.

67. The Working Group requests the Government to bring its laws into conformity with the recommendations made in the present opinion and with the commitments made by Burundi under international human rights law.

68. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on minority issues, for appropriate action.

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

Follow-up procedure

70. 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. Nsengiyumva and Mr. Nyabenda have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Nsengiyumva and Mr. Nyabenda;

(c) Whether an investigation has been conducted into the violation of Mr. Nsengiyumva's and Mr. Nyabenda'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 Burundi with its international obligations, in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

71. The Government is invited to inform the Working Group of any difficulties it may encounter 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.

72. 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 any failure to take action.

73. 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.⁸

[Adopted on 28 August 2020]

⁸ Human Rights Council resolution 42/22, paras. 3 and 7.