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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fifth session, 12–16 August 2019****Opinion No. 37/2019 concerning Germain Rukuki (Burundi)**

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 33/30.
2. In accordance with its methods of work (A/HRC/36/38), on 19 March 2019 the Working Group transmitted to the Government of Burundi a communication concerning Germain Rukuki. 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, 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. Germain Rukuki is an employee of l'Association des juristes catholiques du Burundi (Burundi Association of Catholic Jurists) and the president of Njabutsa Tujane, a community association with the aims of combating poverty and hunger through agrosilvopastoral production and improvements to public health. He is also a former employee of Action by Christians for the Abolition of Torture in Burundi (ACAT-Burundi), which documents acts of torture and other crimes committed in the country, particularly those committed by the authorities.
5. According to the source, on 13 July 2017 at approximately 6 a.m., members of the Bujumbura municipal police force came to Mr. Rukuki's home and conducted a search, during which they seized his wife's computer. They then arrested Mr. Rukuki without having shown a warrant. Mr. Rukuki was subsequently escorted by four police vehicles to the premises of l'Association des juristes catholiques du Burundi, where his computer and various documents were confiscated.
6. The source explains that the operation was led by a police detective, in cooperation with the National Intelligence Service.
7. On the same day, the National Intelligence Service apparently confirmed to the Independent National Human Rights Commission that Mr. Rukuki had been arrested.
8. The source reports that, on 26 July 2017, after 13 days' detention in a National Intelligence Service facility, Mr. Rukuki was transferred to Ngozi prison without having been interviewed by the prosecutor who had issued the warrant for his arrest, in violation of article 111 of the Code of Criminal Procedure. During his detention, Mr. Rukuki was not allowed any visits by his family and could not contact his lawyer, although he was questioned several times.
9. The source indicates that Mr. Rukuki's first hearing took place on 1 August 2017. On that date, he testified before the deputy public prosecutor, who represents the public prosecution service in cases related to the attempted coup d'état of 13 May 2015. At the hearing, Mr. Rukuki was charged with threatening the internal security of the State and with rebellion, for having worked with ACAT-Burundi, a human rights organization that the Government had deregistered in October 2016. According to the authorities, ACAT-Burundi had organized demonstrations in April 2015 to protest against the current President's bid for a third term in office and had taken part in the attempted coup d'état of May 2015 and contributed to reports that were critical of Burundian institutions. It had also reportedly repudiated the decision by the Ministry of the Interior to deregister it.
10. According to the source, a chambers hearing was held at Ngozi prison on 14 August 2017 to determine the legality of Mr. Rukuki's pretrial detention. At the hearing, the public prosecution service accused Mr. Rukuki of representing ACAT in Burundi, without presenting any significant evidence of guilt, in breach of article 110 of the Code of Criminal Procedure. Moreover, the public prosecution service allegedly based its accusations on evidence found among the belongings of Mr. Rukuki's wife, which constitutes a violation of article 18 of the Criminal Code on the personal nature of criminal responsibility.
11. On 17 August 2017, in a chambers hearing, the Ntahangwa Tribunal de Grande Instance (court of major jurisdiction) upheld the decision to place Mr. Rukuki in pretrial detention. On 25 August 2017, the clerk of the Ntahangwa court notified Mr. Rukuki of the order issued on 17 August 2017 by the court in chambers to maintain his detention. On the same day, Mr. Rukuki's defence counsel lodged an appeal against the order with the Bujumbura Court of Appeal. On 27 October 2017, the Bujumbura Court of Appeal heard the parties in a hearing at Ngozi prison, following which it reserved its judgment.
12. The source explains that Mr. Rukuki and his lawyers were given the opportunity to speak at the hearing, at which they explained that the appeal was based on the lack of significant evidence of guilt, given that the email exchange on which the public prosecution service was basing its charges dated from a period in which ACAT-Burundi was operating

legally in Burundi. They therefore requested that Mr. Rukuki be released. The defence lawyers also highlighted several blatant breaches of criminal procedure which had been committed, from the arbitrary arrest of Mr. Rukuki, with no warrant shown, to his interrogation at the National Intelligence Service facility without his lawyers being present and the issuance of his arrest warrant with no preliminary examination, again in the absence of his lawyers. The public prosecution service opposed Mr. Rukuki's release, arguing that he "might go and join the other persons exiled abroad who were involved in the case". On 31 October 2017, the Bujumbura Court of Appeal upheld the continued detention of Mr. Rukuki.

13. The source also reports that on 13 February 2018 Ntakangwa court introduced new charges against Mr. Rukuki, for the murder of military personnel, police officers and civilians, damage to public and private buildings and the attempted overthrow of the democratically elected Government. The defence reiterated the procedural irregularities in Mr. Rukuki's case and asked the court to rule first on the irregularities before considering the merits. At that point, Mr. Rukuki's counsel had only had access to 3 of the 174 items in his case file. Moreover, Mr. Rukuki had been summoned to appear at the hearing on the same day it was held, in contravention of the eight-day period required by law between the date of the summons and the date of the hearing. Finally, the three new charges were added without a prior period of investigation. The defence therefore asserted that the summons served to Mr. Rukuki for the hearing was irregular. The court did not rule on the merits but authorized the defence to acquire a copy of the full prosecution file and adjourned the case until 27 February 2018. The hearings scheduled for 27 February and 27 March 2018 were postponed.

14. On 26 April 2018, the Ntakangwa court sentenced Mr. Rukuki to 32 years' imprisonment for participation in an insurrectional movement, threatening the internal security of the State and rebellion. Neither Mr. Rukuki nor his lawyers were present when the sentence was handed down. Mr. Rukuki filed an appeal against the judgment on 29 May 2018.

15. The source further reports that Mr. Rukuki underwent surgery in Ngozi hospital on 11 June 2018, after fracturing his ankle and injuring his shoulder in prison on 7 June 2018. On 18 June 2018, Mr. Rukuki was transferred back to Ngozi prison, despite the fact that his condition was still critical and that he had requested to stay in hospital to continue receiving treatment.

#### *Response from the Government*

16. The Working Group sent the relevant communication to the Government on 19 March 2019, informing it that it had until 20 May 2019 to respond.

17. As at the present date, the Government has not replied to the communication and has not requested an extension of the deadline.

18. However, on 7 June 2019, the Government sent a note verbale informing the Working Group that ACAT-Burundi had been removed from the register of civil society organizations and asking it to give no credence to the information provided by that organization. The Government did not specify whether or not this correspondence was related to the present case.

#### *Further comments from the source*

19. On 22 July 2019, the source informed the Working Group that the court of appeal had upheld Mr. Rukuki's sentence of 32 years' imprisonment.

#### **Discussion**

20. 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.

21. 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 disprove 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. The Working Group considers the source's allegations to be credible, given the detailed and consistent information that was provided.

22. With regard to the Government's note verbale of 7 June 2019, the Working Group points out that, contrary to the argument put forward by the Government, there is no rule stipulating that only an organization recognized by the State can be regarded as credible in proceedings before the Working Group. This is especially relevant as in principle the State does not know the identity of the source who contacted the Working Group, owing to the preservation of the anonymity of sources under the rules approved by the Human Rights Council, especially article 8 (b) of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council.<sup>1</sup> Finally, the Working Group notes that although Mr. Rukuki did once work for ACAT-Burundi, that in no way means that the organization is the source in the present case. The Working Group therefore considers the Government's note verbale to be irrelevant.

23. In terms of the merits, the Working Group notes that Mr. Rukuki was arrested without a warrant and without being duly informed, at the time of his arrest, of the reasons for the deprivation of his liberty. As the Working Group has consistently found in its jurisprudence, that constitutes a violation of his rights under article 9 (1) of the International Covenant on Civil and Political Rights.<sup>2</sup>

24. The Working Group also notes that Mr. Rukuki was arrested on 13 July 2017 but was not brought before a judge until 14 August 2017. The Working Group considers that such a delay constitutes a breach of the State party's obligations under article 9 (3) and (4) of the International Covenant on Civil and Political Rights, which provide that anyone who is arrested must be brought promptly before a judge and is entitled to take proceedings before a court to have the lawfulness of his or her detention reviewed. Thus, the continued detention of Mr. Rukuki during this period had no legal basis.

25. Consequently, Mr. Rukuki's arrest and detention under these circumstances are arbitrary under category I.

26. In addition, the Working Group has no doubt that Mr. Rukuki is a human rights defender. According to the facts related by the source and not refuted by the Government, Mr. Rukuki had worked and was working at the time of his arrest for organizations promoting human rights in various areas of activity. The source states that this was the main reason for his arrest and detention. The generic character of the charges and their nature confirm this point of view. Mr. Rukuki is accused of insurrection and rebellion, charges which are not clearly defined, especially since no specific detail is given to confirm that such crimes, which would threaten the very existence of the State, have actually been committed.

27. As a human rights defender, Mr. Rukuki is entitled to protection and his activity should not be subject to criminal prosecution.

28. Furthermore, the Working Group considers that the Government's note verbale of the Government of 7 June 2019 substantially supports the source's allegation that Mr. Rukuki's association with ACAT-Burundi and his human rights work more generally, in the current situation in Burundi as described in previous opinions,<sup>3</sup> are the cause of the arrest, detention and prosecution he is facing.

29. In the opinion of the Working Group, the only basis for Mr. Rukuki's arrest and continued detention are his enjoyment of his right to freedom of association (article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights) and freedom of expression and opinion (article 19 of the

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<sup>1</sup> See Human Rights Council resolution 5/2, annex.

<sup>2</sup> See, for example, opinions No. 36/2018, No. 75/2017 and No. 46/2017.

<sup>3</sup> Opinions No. 7/2018, No. 8/2016, No. 30/2015 and No. 33/2014.

Declaration and article 19 of the Covenant), exercised in his capacity as a human rights defender. This renders the detention arbitrary under category II.

30. Under these circumstances, Mr. Rukuki should not have been tried. However, a trial did take place and Mr. Rukuki was sentenced by the court of first instance to 32 years' imprisonment, in a judgment upheld on appeal. The Working Group will therefore also consider alleged violations of his right to a fair trial.

31. The source reports that Mr. Rukuki did not have access to legal assistance from the outset of his detention or during questioning by National Intelligence Service officers. The right to legal assistance and representation provided for by article 14 (3) (d) of the International Covenant on Civil and Political Rights is inseparable from criminal procedure and any violation of that right is especially serious. The source also reports that Mr. Rukuki was not able to communicate with either his family or his lawyers during the first days of his detention, which prevented him from preparing his defence. It must be added that, in accordance with article 14 (3) (g) of the Covenant, no one may be compelled to testify against him or herself. Detained persons who do not have assistance from a lawyer during detention are at risk of making involuntary confessions. Lastly, the Working Group is surprised by the sentence imposed at the end of proceedings since, based on the facts presented, it is not justifiable in principle and also seems disproportionate given the lack of material facts to support the charges.

32. The severity of these multiple violations of Mr. Rukuki's right to a fair trial renders his continued detention arbitrary under category III.

33. Furthermore, the Working Group is of the opinion that Mr. Rukuki's status makes it necessary to refer the case to the Special Rapporteur on the situation of human rights defenders for appropriate action.

34. The Working Group is also concerned about the health of Mr. Rukuki in the prison environment. For monitoring of this critical situation, and in consideration of Mr. Rukuki's right to health, the Working Group has decided to refer the case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

### **Disposition**

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

The deprivation of liberty of Germain Rukuki, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

36. The Working Group requests the Government of Burundi to take the steps necessary to remedy the situation of Mr. Rukuki 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.

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

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

39. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health for appropriate action.

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

**Follow-up procedure**

41. 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. Rukuki has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Rukuki;
- (c) Whether an investigation has been conducted into the violation of Mr. Rukuki'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.

42. 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.

43. The Working Group requests the source and the Government to provide the above 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.

44. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.<sup>4</sup>

*[Adopted on 13 August 2019]*

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<sup>4</sup> Human Rights Council resolution 33/30, paras. 3 and 7.