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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its ninety-ninth session, 18–27 March 2024****Opinion No. 25/2024 concerning Hamad Hagenimana, Emmanuel Masengesho, Alphonse Mutabazi, Marcel Nahimana, Jean Claude Ndayishimiye, Theoneste Nsengimana, Alexis Rucubanganya, Sylvain Sibomana and Claudine Uwimana (Rwanda)***

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,¹ on 13 November 2023 the Working Group transmitted to the Government of Rwanda a communication concerning Hamad Hagenimana, Emmanuel Masengesho, Alphonse Mutabazi, Marcel Nahimana, Jean Claude Ndayishimiye, Theoneste Nsengimana, Alexis Rucubanganya, Sylvain Sibomana and Claudine Uwimana. The Government replied to the communication on 9 February 2024. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and

* Miriam Estrada Castillo did not participate in the discussion of the case.

¹ A/HRC/36/38.

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).

1. Submissions

(a) Communication from the source

4. Hamad Hagenimana, a Rwandan citizen born 1 on January 1982, is a security guard and belongs to the Development and Liberty for All Party (hereinafter referred to as the DALFA-Umurinzi Party). He usually resides in Byimana, Kigali.

5. Emmanuel Masengesho, a Rwandan citizen born on 12 December 1988, works at the SOSEREGI company and belongs to the DALFA-Umurinzi Party. He usually resides in Shusho, Western Province.

6. Alphonse Mutabazi, a Rwandan citizen born on 10 May 1992, works at the SOSEREGI company and is the representative of the DALFA-Umurinzi Party in Western Province. He usually resides in Remera, Western Province.

7. Marcel Nahimana, a Rwandan citizen born on 2 April 1987, is a teacher and temporary Secretary General of DALFA-Umurinzi Party. He usually resides in Hanika, Western Province.

8. Jean Claude Ndayishimiye, a Rwandan citizen born on 1 January 1985, is a trader and belongs to the DALFA-Umurinzi Party. He usually resides in Kabeza, Southern Province.

9. Theoneste Nsengimana, a Rwandan citizen born on 1 January 1987, is a journalist and runs an online television and social media channel which broadcasts discussions critical of the Government of Rwanda. He usually resides in Nyirabwana, Kigali City.

10. Alexis Rucubanganya, a Rwandan citizen born on 17 July 1974, is a teacher and a member of the DALFA-Umurinzi Party. He usually resides in Rubimba, Eastern Province.

11. Sylvain Sibomana, a Rwandan citizen born on 1 January 1970, is the national coordinator of the DALFA-Umurinzi Party. He was also the Secretary-General of the United Democratic Forces of Rwanda (FDU-Inkingi), an opposition party. He usually resides in Mataba Cell, Kigali.

12. Claudine Uwimana, a Rwandan citizen born on 15 February 1990, is a teacher and belongs to the DALFA-Umurinzi Party. She usually resides in Bweramana, Western Province.

(i) Context

13. The Rwandan Patriotic Front has ruled Rwanda since 1994, and since 2000, a pattern of targeting any form of opposition and dissent has emerged, with the authorities intimidating, detaining and prosecuting opposition candidates.

14. Reportedly, constitutional amendments in 2015 extended the President's eligibility for office until 2034, and the Rwandan Patriotic Front dominated the legislative

process. The Rwandan Patriotic Front controls the electoral process and has denied the registration of opposition and political parties. Establishing a political party in Rwanda has been described as long, laborious and arbitrary. Registration of the DALFA-Umurinzi Party has been denied, and members were convicted for offences against the Government in 2020.

15. The authorities have prosecuted political opponents and journalists, under broadly defined crimes enabling arbitrary interpretation, such as “negations of the genocide”, “divisionism” and “spreading rumors”.² Moreover, assemblies in public places and political demonstrations require prior authorization under the law, under which authorities can deny authorizations on broad grounds,³ making public demonstrations and protests rare and subject to police repression.

(ii) *Arrest and detention*

16. In August 2021, Mr. Sibomana invited the members of the DALFA-Umurinzi Party to an online training session on non-violent resistance for human rights and democracy, organized by the Centre for Applied Non-Violent Action and Strategies. He invited them to an instant communication group, and shared training materials. Mr. Sibomana sent money to members for Internet bundles and advised them to download an encrypted application and use pseudonyms during the training.

17. The training sessions were held on 13, 16, 20 and 24 September 2021, and involved discussions and presentations on tactics to combat the mistreatment, social injustice, lack of consultation in decision-making, excessive land taxes and detentions in Rwanda. Messrs. Hagenimana, Masengesho, Nahimana, Ndayishimiye, Rucubanganya and Sibomana and Ms. Uwimana took part in the training sessions, while Messrs. Nsengimana and Mutabazi did not.

18. These sessions occurred ahead of Ingabire Day, scheduled for 14 October 2021 to commemorate political prisoners on the day an individual was arrested 11 years earlier. Mr. Sibomana sent attendees messages regarding Ingabire Day and videos concerning political repression, killings, disappearances and abusive prosecutions in Rwanda. Messrs. Hagenimana, Mutabazi and Nahimana and Ms. Uwimana sent Mr. Sibomana photos of themselves holding a sign with the theme of “Ingabire Day 2021”. On 12 October 2021, Mr. Nsengimana shared on social media a video of an activist discussing the suspicious death of another activist in 2020, the disappearance of a journalist and the detention of a dissenter, stating that the Government arbitrarily detained and disappeared people and announcing his intention to cover Ingabire Day. He joined Mr. Sibomana’s telecommunication channels.

19. Reportedly, on 13 October 2021, the eve of Ingabire Day, agents of the Rwanda Investigation Bureau entered and searched the houses of Messrs. Hagenimana, Nahimana, Ndayishimiye, Rucubanganya and Sibomana, arrested them and seized their belongings. That same day, an unknown individual invited Mr. Nsengimana for a meeting, and Rwanda Investigation Bureau agents arrested him upon his arrival, searched his house and seized his property.

20. On 14 October 2021, while Mr. Masengesho was on his way to work and Mr. Mutabazi was at work, agents of the Rwanda Investigation Bureau arrested them.

21. The agents of the Rwanda Investigation Bureau presented neither arrest nor search warrants and did not inform the individuals of the reasons for their arrests at the moment of arrest. The agents took the individuals into police custody in Remera, Kigali, locked

² See <https://www.ohchr.org/en/statements/2014/01/statement-United-nations-special-rapporteur-rights-freedom-peaceful-assembly-and>.

³ See CCPR/C/RWA/CO/4.

them in the same cell without mattresses or blankets, and denied them basic hygiene items for three weeks.

22. Each of the individuals was reportedly presented with a National Public Prosecution Authority arrest and search warrant on 14 October 2021, except for Mr. Sibomana, to whom this was presented on 17 October 2021.

23. Their families learned about the arrests on 15 October 2021, when the Rwanda Investigation Bureau shared information about the arrest on social media.

24. Mr. Sibomana was allowed to correspond with his family members from 17 October 2021, and the others from 20 October 2021.

25. Rwanda Investigation Bureau agents interrogated the individuals without granting them access to an attorney. On 28 October 2021, they were brought before Kicukiro First Instance Court in Kigali, which detained them for 30 days. This was the first time they had appeared before a court. The Court has repeatedly renewed the detention order upon request by the prosecutor.

26. During the detention hearings, the prosecution presented Mr. Nsengimana's journalistic materials, recordings, and transcripts of the individuals' telecommunications, acquired without the permission of the Prosecutor General.

27. The individuals' appeals have not been successful, and on 9 November 2021 they were transferred to Nyarugenge Prison in Mageragere Sector, Kigali City. After this, Kicukiro First Instance Court ordered another renewal of the detention order. However, the presiding judge was not near the individuals' place of detention, contrary to the requirements of Rwandan law.

28. Since 10 November 2021, Messrs. Sibomana and Nsengimana have been held in solitary confinement in cold, dark cells, and have not been allowed to meet other detainees unless there is a special event, such as a visit from officials. The source adds that while Messrs. Sibomana and Nsengimana are allowed to meet their lawyers, they could not correspond with their families from 10 November 2021 until March 2022. Since March 2022, they have been allowed to talk with their family periodically and are currently allowed to meet them once a week for 10 minutes. Since June 2022, they have been allowed to go outside for fresh air, sunlight and physical exercise. Except for family visits and outside exercise, they are still held in isolated cells. Reportedly, a prison guard exercised such violence against Mr. Sibomana that he lost an artificial tooth.

29. On 16 December 2021, Rwanda Investigation Bureau agents entered the house of Ms. Uwimana, searched it, arrested her without providing a reason, and took her into police custody in Remera, Kigali. They interrogated her without granting her access to an attorney and explained the reason for her arrest a few hours after the arrest. On 21 December 2021 she was presented with an arrest warrant, issued by the National Public Prosecution Office after the arrest, and was allowed to contact her family and an attorney. On 3 January 2022, she was brought for the first time before Kicukiro First Instance Court, which kept her in detention.

30. Reportedly, guards at Nyarugenge Prison listened to the conversations between the nine individuals and their attorneys and read their confidential case documents. The attorneys raised this issue in the detention hearings before the Rwandan Bar Association, without success.

31. The nine individuals share cells and dining rooms with convicted prisoners.

32. On 16 March 2022, the nine individuals were charged on the basis of their attendance at the Centre for Applied Non-Violent Action and Strategies training session, their preparation for Ingabire Day, and their statements on human rights violations in Rwanda.

33. Mr. Sibomana was charged with: formation of or joining a criminal association, under article 224 of Law No. 68/2018; conspiracy to commit an offence against the ruling power or the President of the Republic, to cause uprising or unrest among the population, to commit an offence to attack the forces of the law, and to organize an illegal demonstration or public meeting, under articles 20, 202, 204, 205 and 225 of the same law; spreading false information or harmful propaganda with intent to cause a hostile international opinion against the Government, under article 194 of the same law; and the publication of rumours, under article 39 of Law No. 60/2018.

34. Mr. Nsengimana was charged with formation of or joining a criminal association, and the publication of rumours; Mr. Mutabazi was charged with formation of or joining a criminal association, and conspiracy to cause uprising or unrest among the population. The others were charged with formation of or joining a criminal association; and conspiracy to commit an offence against the ruling power or the President, to cause uprising or unrest among the population, to commit an offence to attack the forces of the law, and to organize an illegal demonstration or public meeting.

35. The prosecutor seeks a 20-year sentence for Mr. Mutabazi, a 10-year sentence for Mr. Ngensimana and a life sentence for the others.

36. The nine individuals are currently detained in Nyarugenge Prison.

(iii) *Legal analysis*

37. The source argues that the arrest and detention of the nine individuals is arbitrary under categories I, II, III and V.

a. Category I

38. The source argues that no legal basis can justify the detention of the nine individuals.

39. Allegedly, Rwanda Investigation Bureau agents did not invoke any legal basis at the time of the nine individuals' arrest on 13 and 14 October 2021 and 16 December 2021, failing to present arrest warrants or to inform them of the reasons for their arrests.

40. The source argues that by arresting the nine individuals without presenting an arrest warrant or informing them of the reasons for their arrest at the time of the arrest and by not promptly informing Mr. Sibomana of the charges against him, the Government violated articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) and (2) of the Covenant.

41. The source submits that enforced disappearance and incommunicado detention lack any valid legal basis and are inherently arbitrary, as they place the victim outside the protection of the law and deprive them of any legal safeguards.⁴

42. Reportedly, the nine individuals were forcibly disappeared after their arrests on 13 and 14 October 2021, and on 16 December 2021 for Ms. Uwimana, as their fate and whereabouts remained unknown until 15 October 2021 for eight of them and until 21 December 2021 for Ms. Uwimana.

43. The source adds that the nine individuals were allowed to correspond with their families and attorneys only from 17 October 2021 (with regard to Mr. Sibomana), 20 October 2021 (with regard to the others, except Ms. Uwimana) and 21 December 2021 (with regard to Ms. Uwimana). The nine individuals were held incommunicado and without any legal safeguards from the moment of their arrest.

⁴ Human Rights Committee, general comment No. 35 (2014); and opinion No. 86/2020.

44. From 10 November 2021 until March 2022, Messrs. Sibomana and Nsengimana were again denied their right to correspond with their family members.

45. The individuals, except Ms. Uwimana, were first brought before a court on 28 October 2021, two weeks after their arrests on 13 and 14 October 2021, while Ms. Uwimana was first brought before a court on 3 January 2022, 19 days after her arrest on 16 December 2021. The source argues that these delays violate the 48-hour rule and article 9 (3) and (4) of the Covenant.⁵

46. Detention pending trial must be based on an individualized determination that it is reasonable and necessary, considering all the circumstances.⁶

47. The decision of Kicukiro First Instance Court on 9 November 2021 on the renewal of the individuals' detention does not include an individualized determination of whether less restrictive measures than detention were available to ensure the individuals' appearance at trial. Instead, the decision was based only on the fact that they had been charged with serious crimes, in violation of article 8 of the Universal Declaration of Human Rights and articles 2 (3) and 9 (3) and (4) of the Covenant.

48. The source notes that the principle of legality, enshrined in article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant, requires laws to be formulated with sufficient precision so that the individual can access and understand the law and regulate their conduct accordingly.⁷

49. Allegedly, the Government applied vague and overly broad provisions in the case of the nine individuals, and has not provided any legal basis to justify their deprivation of liberty. For instance, article 202 of the Law Determining Offences and Penalties in General orders a life sentence for "any act to harm the established Government or overthrowing it by use of military force or any other means" and "any act against the President of the Republic with intent to harm the established Government or overthrowing it". Article 204 of the same law punishes anyone who publicly, either by a speech, writings of any kind, images or any symbols, incites the population to reject the established Government. The source argues that these vague and overly broad provisions allow officials to punish any acts encouraging people to reject the Government, ranging from legitimate challenges, to democratically changing the Government, to violent coups.⁸

50. Similarly, the source submits that it is unclear what is considered a rumour, whether it requires falsity, and how severe the potential fear and loss of credibility needs to be under article 39 of the Law on Prevention and Punishment of Cybercrimes.

51. The source concludes that the Government violated article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant.

b. Category II

52. The source recalls that the right to freedom of opinion and expression covers political discourse, commentary on public affairs, and discussion of human rights, among other things.⁹ It includes the right to criticize and openly and publicly evaluate governments without fear of interference or punishment, enabling members of the political opposition and human rights activists to criticize and expose illegal practices, to assemble peacefully and to protest against the Government.¹⁰

⁵ Human Rights Committee, general comment No. 35 (2014).

⁶ Ibid.

⁷ See opinion No. 37/2020.

⁸ See opinion No. 27/2012.

⁹ Human Rights Committee, general comment No. 34 (2011), para. 11.

¹⁰ See opinion No. 22/2013.

53. It contends that the detention of the nine individuals resulted from their exercise of the rights to freedom of opinion and expression, peaceful assembly and association. The restrictions set by Rwandan law broadly criminalize the exercise of these rights altogether, and where they do not, their vagueness renders it impossible to invoke any legal basis to justify the restrictions.

c. Category III

54. The source submits that the individuals' deprivation of liberty is arbitrary under category III.

55. The nine individuals were not given timely access to an attorney and were interrogated without one, from the time of their arrests on 13 and 14 October 2021 until: 17 October 2021 in the case of Mr. Sibomana; 20 October 2021 for Messrs. Hagenimana, Masengesho, Mutabazi, Nahimana, Ndayishimiye, Nsengimana and Rucubanganya; and 21 December 2021 for Ms. Uwimana. Furthermore, authorities reportedly listened in to conversations with their attorneys and read confidential documents.

56. Allegedly, these failures deprived the nine individuals of adequate facilities to prepare for their defence. By not granting them timely access to an attorney and by violating the confidentiality of their conversations, the authorities violated article 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (b) of the Covenant.

57. By not allowing the nine individuals to notify their family members about their arrest and to correspond with them, the nine individuals' right to a fair trial was allegedly violated, contrary to principles 15, 16 (1) and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

58. The individuals (except for Ms. Uwimana) were transferred to Nyarugenge Prison on 9 November 2021. According to the source, Kicukiro First Instance Court, which ordered the renewal of detention, lacked territorial competence, as the one that had competence was the Court of First Instance of Nyarugenge. Thus, article 10 of the Universal Declaration of Human Rights and articles 9 (1) and 14 (1) of the Covenant were violated.

59. During the detention hearings, the nine individuals' telecommunication messages were presented as evidence against them, without proof of prior permission by the Prosecutor General to record them. Also, Mr. Nsengimana's work-related journalistic materials, seized during the house search, were presented as evidence against him.

60. The source argues that by presenting illegally obtained evidence at the pretrial hearings, the authorities violated article 10 of the Universal Declaration of Human Rights and articles 9 (1) and 14 (1) of the Covenant.

61. The source asserts that the nine individuals' poor detention conditions at the beginning of detention, and Messrs. Sibomana and Nsengimana's prolonged solitary confinement, impaired their ability to prepare for their defence and potentially reached the level of cruel, inhuman or degrading treatment.

62. The source recalls that eight of the individuals were arrested on 13 and 14 October 2021, and Ms. Uwimana on 16 December 2021, and that they were charged on 16 March 2022. Thus, their pretrial detention exceeded what would be a reasonable time, as their case is not especially complex, and the delay was not attributable to them. It concludes that the authorities violated their right to a fair trial under articles 9 (3) and 14 (3) (c) of the Covenant.

63. Allegedly, these violations may indicate that the individuals have not been presumed innocent, in violation of article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.

d. Category V

64. The source asserts that the nine individuals' political opinion is central to the present case, as they were targeted by the authorities for belonging to the DALFA-Umurinzi Party (with the exception of Mr. Nsengimana) – Mr. Nahimana, Mr. Sibomana and Mr. Mutabazi holding leadership positions – and for criticizing the Government on human rights issues.

65. The view that there has been discrimination against members of the DALFA-Umurinzi Party and the opposition is supported by the earlier detentions of Mr. Sibomana and several other opposition members.

66. The source concludes that the Government violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, giving the nine individuals' deprivation of liberty an arbitrary character under category V.

(b) Response from the Government

67. On 13 November 2023, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure, requesting a reply by 12 January 2024.

68. On 12 December 2023, the Government requested an extension to file its reply. On 9 February 2024, the Government submitted its reply denying the allegations and offering its explanation with regard to the arrest and detention of the nine individuals.

69. The Government explains that the nine individuals are members of the DALFA-Umurinzi Party and are currently under arrest and on trial on the following charges: formation of or joining a criminal association, under article 224 of Law No. 68/2018; conspiracy to commit an offence against the ruling power or the President of the Republic, to cause uprising or unrest among the population, to commit an offence to attack the forces of the law, and to organize an illegal demonstration or public meeting, under articles 20, 202, 204, 205 and 225 of the same law; spreading false information or harmful propaganda with intent to cause a hostile international opinion against the Government of Rwanda, under article 194 of the same law; and the publication of rumours, under article 39 of Law No. 60/2018. The arrest and pretrial detention of these individuals was conducted in full compliance with national and international law.

70. On 13 and 14 October 2021 and 7 December 2021, pursuant to article 31 of Law No. 027/2019, warrants ordering the apprehension of the nine individuals were issued by national prosecutors, following which the individuals were arrested on 13 and 14 October 2021, with the exception of Ms. Uwimana who was arrested on 14 December 2021. On the day of their arrest, each individual was informed of the grounds for their arrest, the charges against them and their "Miranda" rights. The arrested individuals signed their arrest statements to indicate their awareness of such rights, including access to a lawyer, in accordance with Rwandan law. In addition to the arrest statements, the individuals were interrogated by the Rwanda Investigation Bureau and were informed again of the charges against them and their right to a lawyer. These arrest statements and interrogation records, as signed by the individuals in acknowledgment, on the day of their arrests, meet the requirement of promptly providing the reasons for the arrest, in accordance with national and international laws.

71. The Government refutes the source's claim that the nine individuals were not informed of the charges against them. This claim is made on the basis that provisional arrest warrants were issued on 18 October 2021 for eight individuals and on 21 December 2021 for Ms. Uwimana, several days after their arrests. Warrants issued on the day of arrest are warrants for individuals to be brought by force pursuant to article 31 of the Criminal Procedure Code, under which a prosecutor issues a warrant to bring suspects by force to the Rwanda Investigation Bureau. Upon arrest, the individuals were presented with arrest statements in accordance with article 66 of the same law, informing them of

the charges against them and ordering five days of detention pending investigation. The arrest warrants issued days after the arrests are pursuant to article 35 of the same law and are provisional warrants issued by the prosecutor during case preparation.

72. The individuals were represented by a lawyer of their choosing at all times during the proceedings and continue to be represented. During the investigative stage of the proceedings, some of the individuals availed themselves to their right to a lawyer and some temporarily waived this right, as follows:

- Mr. Nsengimana: Arrested on 13 October 2021, during his interrogation by the Rwanda Investigation Bureau on the same day, he asked to be represented by a specific lawyer. This lawyer was not available to represent him, so he consented on 18 October 2021 to be represented by a pro bono lawyer who was present in all the subsequent interrogations by the Rwanda Investigation Bureau and the National Prosecution.
- Mr. Hagenimana: Arrested on 14 October 2021, he waived his right to have a lawyer present during his interrogations by the Rwanda Investigation Bureau on 14 and 15 October 2021. On 18 October, he availed himself of his right to a lawyer, and for all the subsequent interrogations he was interrogated in the presence of his lawyer.
- Mr. Masengesho: Arrested on 14 October 2021, during his interrogation by the Rwanda Investigation Bureau on the same day, he asked for a lawyer and indicated that his lawyer of choice would be available on 19 October 2021. On 15 October 2021, he waived his right to a lawyer in an interrogation by the Rwanda Investigation Bureau. From the time when his lawyer became available, on 19 October 2021, he had his lawyer present in all subsequent interrogations.
- Mr. Mutabazi: Arrested on 14 October 2021, during his first interrogation by the Rwanda Investigation Bureau on the same day, he asked for a lawyer and indicated that the lawyer would be available on 18 October 2021. For his second interview, on 15 October 2021, he waived his right to a lawyer. When his lawyer became available on 18 October 2021, he had his lawyer present in all subsequent interrogations.
- Mr. Nahimana: Arrested on 15 October 2021, he waived his right to a lawyer in all his interrogations by the Rwanda Investigation Bureau and the National Prosecution.
- Mr. Ndayishimiye: Arrested on 13 October 2021, during his interrogation by the Rwanda Investigation Bureau, he asked for a lawyer. On 15 October 2021, he waived his right to a lawyer and was interrogated by the Rwanda Investigation Bureau. From 18 October 2021, he requested the presence of his lawyer, and all subsequent interrogations were conducted in the presence of his lawyer.
- Mr. Rucubanganya: Arrested on 14 October 2021, during his first interrogation by the Rwanda Investigation Bureau on the same day, he asked for a lawyer and indicated that his lawyer of choice would be available on 19 October 2021. On 15 October 2021, he waived his right to a lawyer in an interrogation by the Rwanda Investigation Bureau. From the time when his lawyer became available, on 19 October 2021, he had his lawyer present in all subsequent interrogations.
- Mr. Sibomana: Arrested on 14 October 2021, during his first interrogation by the Rwanda Investigation Bureau on the same day, he

asked for a lawyer. On 15 October 2021, he waived his right to a lawyer in an interrogation by the Rwanda Investigation Bureau. In all subsequent interrogations, he asked for and was represented by a lawyer of his choice.

- Ms. Uwimana: Arrested on 16 December 2021, she waived her right to a lawyer in both of her interrogations at the Rwanda Investigation Bureau, on 16 December and 20 December 2021. On 21 December 2021, during her interrogation by the prosecution, she had her lawyer present and retained his services in all subsequent interrogations.

73. In addition, search warrants were issued against all the individuals (except Ms. Uwimana) in accordance with article 55 of the Criminal Procedure Code. The searches and the seizure of evidence collected were conducted in accordance with articles 55, 57, 60 and 61 of that law. The individuals concerned signed statements of seizure, acknowledging the items seized in accordance with the law. This evidence was presented to the court by prosecutors.

74. Upon arrest, the individuals were registered as detainees and were detained at the Remera and Kicukiro police stations. Their names and places of detention, and the names of the authorities responsible for their detention, were recorded in registers available to all persons concerned upon request. Records of the time and place of all interrogations and the transcripts of the interrogations were made available for judicial and administrative purposes. Upon arrest, they were permitted to contact their families, who assisted them in procuring a lawyer. Their arrest (except in the case of Ms. Uwimana) was communicated publicly to the media on 15 October 2021. As such, any claim that the detention of these individuals amounted to enforced disappearance or incommunicado detention has no basis in fact.

75. The Government also submits that the post-arrest and pretrial detention periods of the individuals were conducted in accordance with the law. The individuals were detained for a period in accordance with articles 31 and 35 of the Criminal Procedure Code. They appeared before the judge within the time prescribed by the law. The determination of whether detention pending investigation was warranted was conducted in an individualized manner, considering the circumstances of each detained individual, in accordance with articles 66 and 76 of the Criminal Procedure Code. The fact that the request for provisional detention of eight individuals is assessed in the same hearing does not preclude the judge from undertaking an individual determination based on the specific circumstances of each detainee.

76. The competence of courts in the determination of their jurisdiction over any particular case is subject to the determination of the given court when challenged on that basis. The nine individuals challenged the jurisdiction of Kicukiro Primary Court on the basis that it was not the nearest court, as is required under article 79 of the Criminal Procedure Code. This preliminary objection was dismissed by the Court.

77. Regarding the source's claim that the detainees were charged with offences on the basis of laws that are too vague and broad, the Government submits that all national laws are clearly drafted and are defined in a manner that can be understood by a reasonable person. In accordance with article 4 of the Law Determining Offences and Penalties in General, criminal laws cannot be interpreted broadly and must be construed strictly, with the courts prohibited from making judgments by analogies. Any perceived vagueness and overbreadth of a law can be challenged in court, with the court having the authority to declare such a law unconstitutional and thus prevent prosecution on the basis of that law. The individuals concerned have not raised this objection in court.

78. The Government submits that it has a duty to respect and protect the fundamental civil and political rights of all persons, as enshrined in the Constitution of Rwanda and as contained in the Covenant. The rights to freedom of opinion and expression and the right

to freedom of peaceful assembly and association are protected without interference to the extent that the exercise of these rights does not breach the bounds of national security or public order, in accordance with the restrictions permitted by articles 19 (3) and 22 (2) of the Covenant. The restrictions on these freedoms are provided by law, as contained in the Law Determining Offences and Penalties in General and the Law on the Prevention and Punishment of Cybercrimes, and are necessary for the protection of national security and public order. The principles of necessity and proportionality are strictly applied to these restrictions in order to ensure that they are only used for the stated purpose of protection of national security and public order.

79. The individuals' arrests and detention were conducted in accordance with the law and with due regard to their physical and mental well-being. Upon detention, access to adequate food, drinks and sanitation was provided, in accordance with the standards of detention. The detainees were allowed to be sent food parcels by family and friends. None of them were detained in solitary confinement, as attested by prison records. In fact, the source itself provides conflicting accounts, alleging that the individuals were simultaneously in solitary confinement and forced to share cells and dining rooms with convicted inmates. None of the detainees have raised any allegation of impropriety or violence by prison guards, and there is no record of any of them requiring medical care. Thus, the Government cannot independently verify these claims, as they were not raised by the individuals concerned and there is no evidence that the alleged acts occurred.

80. Rwandan laws guarantee fair and public trials for all accused persons before a competent and independent court. The individuals were given adequate time and facilities to prepare their defence with the lawyers of their choosing. Their right to communicate with the lawyers in private, with the required confidentiality, was respected throughout. The trial on the merits of the case was referred to Kigali High Court on 16 March 2022 within the legal time limit stipulated under article 79 (2) of the Criminal Procedure Code. This pretrial detention period is justified in the law due to the specific circumstances of the present case, which is complex due to the severity of the charges and the substantial number of accused persons. The case file was registered by the Court on 12 April 2022, which has not yet set a date for the public hearing.

81. With regard to claims of discrimination on the basis of political opinion, the Government rejects these baseless claims and strongly reaffirms its commitment to equality as enshrined in the Constitution. It thus rejects the assertions that the individuals were discriminated against on the basis of their differing political opinion or their membership of an unregistered political party.

82. Therefore, the Government submits that the arrest and detention of the nine individuals was not in contravention of the Covenant or the Universal Declaration of Human Rights. Rwanda is demonstrably committed to the protection and promotion of the human rights of Rwandans and all who fall under the jurisdiction of Rwanda.

(c) Further comments from the source

83. The Working Group submitted the Government's reply to the source for its reaction. On 8 March 2024, the source submitted its further comments.

84. The source notes that the dates of arrest stated in the Government's response differ from those in its submission, as follows: with regard to Mr. Hagenimana – 14 October 2021 instead of 13 October 2021; with regard to Mr. Nahimana – 15 October 2021 instead of 13 October 2021; with regard to Mr. Rucubanganya – 14 October 2021 instead of 13 October 2021; and with regard to Mr. Sibomana – 14 October 2021 instead of 13 October 2021. The source accepts 14 October 2021 as Messrs. Hagenimana and Nahimana's date of arrest.

85. Due to the inconsistent dates in the Government's documents, the source maintains that Mr. Rucubanganya was arrested on 13 October 2021. Regarding Mr. Sibomana's

arrest, and based on its own information, the source submits that the arrest date was 13 October 2021, which is likely, given the time at which the “arrest statements” and “statements of seizure” were signed. The source notes that these documents were signed only 15 minutes after midnight, which is the reason why it argues that Mr. Sibomana was arrested the day before (13 October 2021).

86. Concerning the Government’s assertions that the individuals were arrested following the issuance of arrest warrants, the source argues that informing the individuals about the legal basis of their arrest (not the factual basis) at the police station after their arrest does not meet the requirements as regards the right of the detainee to be informed of the reason for the arrest at the time of the arrest.

87. Although the Government claims that the individuals’ names and places of detention, and the names of the officials responsible, were recorded in registers available to all persons concerned upon request, and that the arrested individuals could contact their families and were assisted in procuring attorneys, the Government has not provided evidence of the alleged registers, nor stated when the individuals were first allowed to communicate with their attorneys. It is unclear who the “persons concerned” who could request information from the registers are or how they were meant to know how to request this information. This does not meet the requirement of principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The source argues that the alleged availability of information upon request is different from actively notifying family members, and maintains the dates provided in its submission when the families learned about the individuals’ arrest.

88. The source maintains that the Government has not provided any justification for the delay in bringing the individuals before a judge.

2. Discussion

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

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

(a) Category I

91. The source argues that no legal basis can justify the detention of the nine individuals, rendering their deprivation of liberty arbitrary under category I.

92. The Working Group recalls that detention is considered arbitrary under category I if it lacks a legal basis. Under article 9 (1) of the Covenant, no one is to be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. Article 9 (2) of the Covenant provides that anyone who is arrested is to be informed, at the time of arrest, of the reasons for their arrest and is to be promptly informed of any charges against them. The Working Group has consistently stated that, for a deprivation of liberty to be justified, it must have a legal basis. It is not sufficient for there to be a law or a practice authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.¹³ This is typically done through an

¹¹ A/HRC/19/57, para. 68.

¹² Ibid.

¹³ Opinion No. 9/2019, para. 29.

arrest warrant or arrest order, or equivalent document.¹⁴ The reasons for the arrest must be provided immediately upon arrest and must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.¹⁵

93. The source argues that the nine individuals were arrested without an arrest warrant and were not informed of the reasons for their arrest. The Government denies these allegations and affirms that on 13 and 14 October 2021 and 7 December 2021 warrants ordering the apprehension of the nine individuals were issued by national prosecutors pursuant to article 31 of the Criminal Procedure Code, and on the day of their arrest, everyone was informed of the grounds for their arrest, the charges against them and their “Miranda” rights. Furthermore, the Government noted that the nine individuals signed their arrest statements to indicate their awareness of such rights. In its further comments, while the source does not challenge the Government’s assertion that warrants were issued and statements were signed by the nine individuals, it claims that the Government only informed the individuals about the legal basis of their arrest, and not the factual basis.

94. The Working Group notes that the warrants ordering the apprehension of the nine individuals were issued by national prosecutors, in accordance with article 31 of the Criminal Procedure Code. The Working Group recalls that any form of detention or imprisonment should be ordered by a judicial or other authority under the law or be subjected to the effective control of that authority, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Any deprivation of liberty without a valid arrest warrant issued by a competent, independent and impartial authority with oversight exercised by the judicial authority is arbitrary and lacks legal basis. In the present case, the Government has failed to demonstrate that the arrest warrants issued by the national prosecutors were subjected to the effective control of a judicial or other authority under the law, in violation of articles 3 and 9 of the Universal Declaration of Human Rights and contrary to principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

95. The source asserts that the nine individuals were forcibly disappeared after their arrests on 13 and 14 October 2021, and 16 December 2021 for Ms. Uwimana, as their fate and whereabouts remained unknown until 15 October 2021 for eight of them and until 21 December 2021 for Ms. Uwimana. It adds that the nine individuals were allowed to correspond with their families and attorneys only from 17 October 2021 (Mr. Sibomana), 20 October 2021 (the others, with the exception of Ms. Uwimana) and 21 December 2021 (Ms. Uwimana) onwards. Therefore, the source asserts that the nine individuals were held incommunicado. The Government explains that following their arrest, the individuals were all duly registered as detainees and detained at Remera and Kicukiro police stations, and registers were available to all persons concerned upon request. Moreover, the individuals were permitted to contact their families, who assisted them in procuring a lawyer, and their arrest was communicated publicly to the media on 15 October 2021.

96. In its further comments, the source argues that the alleged availability of information upon request is different from actively notifying family members.

97. The Working Group recalls that an enforced disappearance occurs when the arrest, detention, abduction or any other form of deprivation of liberty by State agents or by persons or groups of persons acting with the authorization, support or acquiescence of the

¹⁴ Opinion 88/2017, para. 27. In cases of arrests made in flagrante delicto, the opportunity to obtain a warrant will typically not be available.

¹⁵ Human Rights Committee, general comment No. 35 (2014), para. 25; and opinion No. 85/2021, para. 69.

State, is followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law. The Working Group is unable to make a finding in this regard, as the source has not furnished it with sufficient and relevant information relating to the individuals' alleged enforced disappearance and incommunicado detention, nor has the source demonstrated that the Government refused to acknowledge their deprivation of liberty or concealed their fate and whereabouts.

98. Furthermore, the Working Group notes that more than two weeks elapsed between the nine individuals' respective arrests and their first appearance before a judge. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to be brought promptly before a judge to exercise judicial power. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee "promptly" before a judge or other officer authorized by law following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.¹⁶

99. The source submits that the individuals, except Ms. Uwimana, were first brought before a court on 28 October 2021, two weeks after their arrest on 13 and 14 October 2021, whereas Ms. Uwimana was first brought before a court on 3 January 2022, that is, 19 days after her arrest on 16 December 2021. The Government submits that the post-arrest and pretrial detention periods of the individuals were conducted fully in accordance with the law. Having considered the source's and the Government's submissions, the Working Group finds that the nine individuals were not brought promptly before a judge, in violation of article 9 (3) of the Covenant.

100. In addition, the Working Group recalls that it is a well-established norm of international law that pretrial detention is to be the exception and not the rule, and that it should be ordered for as short a time as possible.¹⁷ Article 9 (3) of the Covenant provides that it is not to be the general rule that persons awaiting trial are detained, but release may be subject to guarantees to appear for trial and at any other stage of the judicial proceedings. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice.¹⁸ In order to give effect to this principle, pretrial detention must be based on an individualized determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.¹⁹ The courts must examine whether alternatives to detention would render custodial measures unnecessary.²⁰ In the present case, the source claims that the court has repeatedly renewed the nine individuals' detention orders upon the prosecutor's request, while the Government has limited itself to asserting that the court based its decision on strong reasons to suspect the individuals of the crimes they were charged with, in accordance with domestic law. The Working Group is not convinced that the individuals' pretrial detention was based on an individualized determination that it was reasonable and necessary, and thus it cannot accept that their pretrial detention was properly constituted in accordance with article 9 (3) of the Covenant.

101. For the reasons above, the Working Group finds that the Government failed to establish a legal basis for the nine individuals' arrests and detention. Their detention is thus arbitrary under category I.

¹⁶ Human Rights Committee, general comment No. 35 (2014), paras. 32 and 33.

¹⁷ Opinion No. 8/2020, para. 14; Human Rights Committee, general comment No. 35 (2014), para. 38; and A/HRC/19/57, paras. 48–58.

¹⁸ A/HRC/19/57, para. 54.

¹⁹ Human Rights Committee, general comment No. 35 (2014), para. 38.

²⁰ *Ibid.*; and opinion No. 83/2019, para. 68.

(b) Category II

102. According to the source, the nine individuals' detention clearly resulted from their exercise of the rights to freedom of opinion and expression and freedom of peaceful assembly and association.

103. The Working Group notes that freedoms of opinion and expression as expressed in article 19 of the Covenant are indispensable conditions for the full development of the person. They are essential for any society and in fact constitute the foundation stone of every free and democratic society.²¹ Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions. Moreover, article 19 (2) of the Covenant protects all forms of expression and the means of their dissemination, including all forms of audiovisual as well as electronic and Internet-based modes of expression. The Working Group further recalls that the Human Rights Committee has clarified that the protection under article 21 of the Covenant extends to participating in an "assembly" by organizing or taking part in a gathering of persons for a purpose such as expressing oneself, conveying a position on a particular issue or exchanging ideas.²²

104. The Working Group notes the source's submissions that the nine individuals' deprivation of liberty stems from the exercise of their right to freedom of expression and assembly, for their criticism of the Government and their participation in the DALFA-Umurinzi Party. Moreover, Mr. Nsengimana is a journalist who broadcasts discussions critical of the Government. The Government claims that respect and protection of the fundamental civil and political rights of all persons is enshrined in the Constitution. The rights to freedom of opinion and expression and freedom of peaceful assembly and association are protected without interference to the extent that the exercise of these rights does not breach the bounds of national security or public order, in accordance with the restrictions permitted by articles 19 (3) and 22 (2) of the Covenant and contained in Rwandan domestic law. The Government submits that the principles of necessity and proportionality are strictly applied to these restrictions in order to ensure that they are only used for the stated purpose of protection of national security and public order.

105. The Working Group recalls that the permissible restrictions on the above-mentioned rights set out in articles 19 (3) and 21 of the Covenant are necessary to protect a legitimate interest. It would appear from the response of the Government that it considers that the arrests and detention of the nine individuals were necessary for the protection of national security and public order.

106. The Working Group notes that the nine individuals had arranged a training session which involved discussions and presentations on tactics to combat the alleged mistreatment, social injustice, lack of consultation in decision-making, excessive land taxes and detentions in Rwanda. There is nothing to suggest that the permissible restrictions on the rights set out in articles 19 (3) and 21 of the Covenant would apply in the present case. The Working Group is not convinced that arresting, detaining and prosecuting the nine individuals was necessary to protect a legitimate interest under these provisions. Importantly, the nine individuals' criticism of the Government did not call for violence and could not reasonably be considered as a threat to national security, public order, public health or morals, or the rights or reputations of others.

107. Thus, the Working Group considers that the conduct of the nine individuals fell within the exercise of the rights to freedom of opinion and expression, and to peaceful assembly, protected under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the Covenant, and that they were detained for exercising

²¹ Human Rights Committee, general comment No. 34 (2011).

²² See the Committee's general comment No. 37 (2020).

these rights. Their opposition to or criticism of government policies and actions through their statements concerns matters of public interest.

108. In its submission, the source asserts that the provisions under which the nine individuals were charged, namely articles 202 and 204 of the Law Determining Offences and Penalties in General, are vague and overly broad. The Government submits that the laws are clearly drafted, and notes that in accordance with article 4 of the Law Determining Offences and Penalties in General, criminal laws cannot be interpreted broadly and must be construed strictly, with the courts prohibited from making judgments by analogies. The Government notes that the perceived vagueness and overbreadth of a law can be challenged in court, however the individuals concerned did not raise this objection in court.

109. The Working Group recalls that laws that are vaguely and broadly worded may have a deterrent effect on the exercise of the rights to freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association, participation in political and public affairs, equality and non-discrimination, and protection of persons belonging to ethnic, religious or linguistic minorities, as they have the potential for abuse, including the arbitrary deprivation of liberty.²³ Moreover, the Working Group recalls its jurisprudence concerning Rwanda, in which it found that journalists and former members of the Rwandan armed forces had been arbitrarily detained for having peacefully exercised their right to freedom of opinion and expression. The Working Group also notes that the Human Rights Committee, in its concluding observations on the fourth periodic report of Rwanda, highlighted the vague nature of the definitions of certain offences, which makes them susceptible to abuse, and expressed concern about the chilling effect they may have on freedom of expression. It noted that opposition politicians, journalists and human rights defenders had been prosecuted on the basis of such vague charges to prevent them from expressing their opinions.²⁴ Furthermore, the Special Rapporteur on the rights to freedom of peaceful assembly and of association stressed his concern over the fate of unregistered opposition parties whose leaders had been imprisoned.²⁵

110. The Working Group concludes that the detention of the nine individuals resulted from the peaceful exercise of their rights to freedom of opinion and expression and assembly, as well as their right to take part in the conduct of public affairs, and was contrary to articles 19 and 21 (1) of the Universal Declaration of Human Rights and articles 19, 21 and 25 (a) of the Covenant. Their detention is thus arbitrary under category II. The Working Group refers the case to the Special Rapporteur on the right to freedom of opinion and expression.

(c) Category III

111. The source argues that the nine individuals' arrest and detention was characterized by total or partial non-observance of the international norms relating to the right to a fair trial and due process.

112. The Working Group takes note of the source's allegations that the nine individuals were not given timely access to a lawyer and were interrogated without legal counsel, from the time of their arrests, until: 17 October 2021 in the case of Mr. Sibomana; 20 October 2021 for Messrs. Hagenimana, Masengesho, Mutabazi, Nahimana, Ndayishimiye, Nsengimana and Rucubanganya; and 21 December 2021 for Ms. Uwimana. Furthermore, officials in Nyarugenge Prison reportedly listened in to the nine individuals' conversations with their attorneys and read confidential documents.

²³ Opinion No. 10/2018, para. 55.

²⁴ CCPR/C/RWA/CO/4, para. 39.

²⁵ A/HRC/26/29/Add.2, para. 39.

113. The Government contends that all individuals detained were informed of their right to be interrogated in the presence of their lawyers and were permitted access to means to contact them. At the investigative stage, some of the individuals availed themselves of their right to a lawyer and some temporarily waived this right. Moreover, the individuals' right to private and confidential communication with their lawyers has been respected. In its additional comments, the source claims that although the Government listed the dates when the individuals' requested attorneys became available, it has not stated when they were first allowed to communicate with them, the nature and frequency of their contact, or the conditions of confidentiality applicable. Moreover, even though the judges were informed of the lack of confidentiality between the individuals and their lawyers, the complaints were not considered.

114. 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 such access must be provided without delay.²⁶ Legal consultations may be within sight but not within hearing of the authorities, and all communications with counsel must remain confidential.²⁷ The Working Group is not convinced that sufficient information has been presented to show that the nine individuals benefited from confidential legal assistance, and thus considers that the Government violated the nine individuals' right to have adequate time and facilities for the preparation of their defence and to communicate with a lawyer pursuant to article 14 (3) (b) of the Covenant.

115. The Working Group takes note of the source's allegations that after the individuals, with the exception of Ms. Uwimana, were transferred to Nyarugenge Prison on 9 November 2021, Kicukiro First Instance Court ordered another renewal of their detention although the presiding judge was not the nearest to their place of detention. According to the source, the court with territorial competence would have been Nyarugenge First Instance Court. The Government, in response, submits that the nine individuals in fact challenged the jurisdiction of the Court and that this was dismissed by the Court on the basis that the Kicukiro and Nyarugenge courts are in the same city and the intentions of lawmakers in requiring that detention be ordered by the nearest court were to ensure that the accused did not encounter undue challenges in reaching the court; it is not a matter of the territory where the accused is detained. In its additional comments, the source reiterated its submission. The Working Group is thus inclined to accept the position of the Government, because the Working Group is not intended to assume the role of an appellate body for decisions of domestic courts and tribunals.

116. Furthermore, the Working Group notes the source's allegations that the nine individuals' telecommunication messages were presented as evidence against them without proof of prior permission by the Prosecutor General to record them. Moreover, Mr. Nsengimana's work-related journalistic materials were seized during the search of his house and presented as evidence against him. The Government contends that the search and seizure of evidence collected was conducted in accordance with the Criminal Procedure Code, and that any claim that evidence was illegally seized from the individuals' houses is demonstrably false.

117. The Working Group notes that it is accepted in international human rights jurisprudence that the question of whether the use as evidence of information obtained in violation of privacy rights renders a trial as a whole unfair has to be determined with

²⁶ A/HRC/30/37, principle 9 and guideline 8; and Human Rights Committee, general comment No. 35 (2014), para. 35.

²⁷ Rule 61 (1) of the Nelson Mandela Rules; principle 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and A/HRC/30/37, guideline 8.

regard to all the circumstances of the case.²⁸ The Working Group lacks sufficient information to make a conclusion in this respect.

118. The Working Group notes the source's allegations that the nine individuals' poor detention conditions at the beginning of their detention, Mr. Sibomana and Mr. Nsengimana's prolonged solitary confinement, and the violence exerted against Mr. Sibomana impaired all nine individuals' abilities to prepare for their defence and potentially reached the level of cruel, inhuman or degrading treatment. The Government denies the source's allegations and maintains that the nine individuals have been treated humanely, in accordance with domestic law and international standards.

119. The source has not explained how the detention conditions have negatively affected the ability of the nine individuals to prepare their defence, or their chances of receiving a fair trial. However, the Working Group wishes to remind the Government that, in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person.

120. Moreover, the Working Group notes that it has been more than two years since the nine individuals were detained in October and December 2021. While the case is complex due to the severity of the charges and the large number of accused persons, the Government has offered no explanation as to why this process has taken over two years. Given the extensive delay, the courts must reconsider alternatives to detention.²⁹ The right to be tried within a reasonable time and without undue delay is one of the fair trial guarantees embodied in articles 10 and 11 (1) of the Universal Declaration of Human Rights and articles 9 (3) and 14 (3) (c) of the Covenant, and it has been violated in the present case. If the nine individuals cannot be tried within a reasonable time, they are entitled to release under article 9 (3) of the Covenant.³⁰

121. Lastly, the Working Group notes that the Government has not addressed the submission made by the source that the nine individuals were held with convicted persons during their pretrial detention. Article 10 (2) (a) of the Covenant requires that those in pretrial detention be held separately from convicted persons, a provision that was ignored in the present case.

122. Accordingly, the Working Group finds that the violations of the nine individuals' right to a fair trial were of such gravity as to give their detention an arbitrary character. Their deprivation of liberty thus falls under category III.

(d) Category V

123. The source argues that the nine individuals' political opinion is central to the present case, as they were targeted by the authorities for belonging to the DALFA-Umurinzi Party – Messrs. Nahimana, Sibomana and Mutabazi holding leadership positions, and Mr. Nsengimana being a journalist critical of the Government – and for criticizing the Government on human rights issues.

124. The Government denies these claims and states that it is committed to equality, as enshrined in the Constitution and treaties ratified by Rwanda. It contends that the individuals were not prosecuted for their membership of the DALFA-Umurinzi Party but for criminal offences.

125. The Working Group recalls that detention is arbitrary under category V when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, religion, or political or other opinion, among other

²⁸ European Court of Human Rights, *Bykov v. Russia* (application No. 4378/02), judgment of 10 March 2009, paras. 94–98.

²⁹ Human Rights Council, general comment No. 35 (2014), para. 37.

³⁰ A/HRC/19/57, paras. 48–58; and opinion No. 18/2018, para. 50.

grounds. Furthermore, it notes that when detention has resulted from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.

126. As concluded in the analysis under category II, the deprivation of liberty of the nine individuals was the result of the peaceful exercise of their fundamental rights under international law. The Working Group is convinced that the nine individuals were targeted because of their political opinion against government policies.

127. The Working Group thus finds that the nine individuals were deprived of their liberty on discriminatory grounds based on their political opinion in seeking to hold the authorities to account. Their deprivation of liberty violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and is arbitrary according to category V.

3. Disposition

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

The deprivation of liberty of Hamad Hagenimana, Emmanuel Masengesho, Alphonse Mutabazi, Marcel Nahimana, Jean Claude Ndayishimiye, Theoneste Nsengimana, Alexis Rucubanganya, Sylvain Sibomana and Claudine Uwimana, being in contravention of articles 2, 3, 7, 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 2, 9, 10, 14, 19, 21, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

129. The Working Group requests the Government of Rwanda to take the steps necessary to remedy the situation of Mr. Hagenimana, Mr. Masengesho, Mr. Mutabazi, Mr. Nahimana, Mr. Ndayishimiye, Mr. Nsengimana, Mr. Rucubanganya, Mr. Sibomana and Ms. Uwimana 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.

130. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Hagenimana, Mr. Masengesho, Mr. Mutabazi, Mr. Nahimana, Mr. Ndayishimiye, Mr. Nsengimana, Mr. Rucubanganya, Mr. Sibomana and Ms. Uwimana immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

131. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Hagenimana, Mr. Masengesho, Mr. Mutabazi, Mr. Nahimana, Mr. Ndayishimiye, Mr. Nsengimana, Mr. Rucubanganya, Mr. Sibomana and Ms. Uwimana and to take appropriate measures against those responsible for the violation of their rights.

132. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on freedom of opinion and expression, for appropriate action.

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

4. Follow-up procedure

134. 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. Hagenimana, Mr. Masengesho, Mr. Mutabazi, Mr. Nahimana, Mr. Ndayishimiye, Mr. Nsengimana, Mr. Rucubanganya, Mr. Sibomana and Ms. Uwimana have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Hagenimana, Mr. Masengesho, Mr. Mutabazi, Mr. Nahimana, Mr. Ndayishimiye, Mr. Nsengimana, Mr. Rucubanganya, Mr. Sibomana and Ms. Uwimana;

(c) Whether an investigation has been conducted into the violation of the nine individuals' 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 Rwanda with its international obligations in line with the present opinion;

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

135. 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.

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

137. 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.³¹

[Adopted on 26 March 2024]

³¹ Human Rights Council resolution 51/8, paras. 6 and 9.