

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
AL RWA 1/2021

5 July 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the independence of judges and lawyers; pursuant to Human Rights Council resolutions 43/16, 42/22, 43/4 and 44/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the continued detention of Mr. **François-Xavier Byuma**. Mr. François-Xavier Byuma is a human rights defender, who heads an organization for the defense of children's rights known as *Turengere Abana*, which fights against the sexual exploitation and forced labour of children, based in Kigali. He was also the coordinator of the *Network of Central African Human Rights Defenders*. Previously he worked for the *Rwandan League for the Promotion and Defense of Human Rights (LIPRODHOR)* for many years.

Concerns about the charges against and sentencing of Mr. Byuma were raised in a communication sent by several Special Procedures' mandate holders on 2 July 2007 (RWA 4/2007). We thank your Excellency's Government for the replies dated 22 and 30 August 2007.

According to the information received:

In early 2007, Mr. Byuma undertook some research into an allegation of rape of a 17-year-old girl by a local Gacaca judge. After his research commenced, that same judge issued a summons to Mr. Byuma, in an apparent conflict of interest. Knowing that this judge would preside over his own case, Mr. Byuma immediately wrote to the National Service of Gacaca Jurisdictions (SNJG) expressing concern that he may not receive a fair trial. The SNJG replied that it had found his letter to be "baseless and unfounded."

Mr. Byuma's trial began in Kigali on 13 May 2007. He was accused of allegedly having been present at a roadblock erected to prevent Tutsi fleeing the genocide, having a firearm, and participating in weapons training. At the outset of the trial, Mr. Byuma asked to have the judges dismissed on the grounds of conflict of interest, but the court declined his request. In protest, Mr. Byuma refused to testify. The judge threatened to charge him for his refusal to testify. Mr. Byuma eventually decided to subject himself to the jurisdiction. On 14 May 2007, Mr. Byuma was arrested and transferred to the central prison in Kigali.

On 20 May 2007, Mr. Byuma pleaded not guilty in front of the Gacaca tribunal and was released on the same day, awaiting the final verdict. On 27 May 2007, the Gacaca tribunal found Mr. Byuma guilty of participating in weapons training and several other counts (including an alleged participation in an attack and abduction and assault of a Tutsi woman) which were not mentioned when the charges were first read to Mr. Byuma before trial. He was sentenced to 19 years in prison.

On 18 August 2007, an appeals court upheld the 19-year prison sentence despite numerous irregularities. Mr. Byuma had presented court records revealing that one prosecution witness who accused him of assault had previously testified that a different person committed the crime, but whose name the witness never mentioned in the Gacaca proceedings. Mr. Byuma pointed out that the trial court declined to hear some of the witnesses whom he sought to call in his defense and failed to reconcile contradictions in the evidence. The appeals court gave no justification for its decision affirming the conviction and offered no explanation for its failure to deal with the fact that the presiding judge of the lower court had an ostensible conflict of interest with Mr. Byuma.

In 2009, following a public outcry from local and international organizations, the SNJG accepted Mr. Byuma's request for revision and brought a bench of judges from the eastern part of the country to decide the case. During the hearing, however, one of the lawyers of Mr. Byuma was not permitted to sit next to his client and was repeatedly denied the opportunity to question witnesses.

The Court, deciding his request for revision, reportedly gave little consideration to additional defense witnesses who testified but concluded that new evidence had been offered by accusing witnesses, even though some of this information was inconsistent with earlier testimony given at trial and on appeal. The court also found Mr. Byuma guilty of possessing a firearm, in violation of a 2006 SNJG directive which stated that having a firearm or being at a roadblock did not in itself constitute a crime. The court upheld Mr. Byuma's conviction but reduced his sentence to 17 years' imprisonment.

Mr. Byuma is currently held at Nyarugenge Prison, Mageragere Sector in Kigali. Reportedly no visits have been possible since March 2020, therefore his current conditions of detention are not known.

Without prejudging the accuracy of the above-mentioned allegations, we express grave concerns at the trial and sentencing of Mr. François-Xavier Byuma to 17 years of imprisonment, which is alleged to have been a punishment to his peaceful activities in defence of human rights, in particular his work against the sexual exploitation and forced labour of children. Additional serious concerns are expressed about the alleged violations of his rights to a due process and fair trial, in light of the allegations that the judge refused to recuse himself despite past conflict with the accused, and that the appeals court did not take into account the testimonies of additional witnesses. Finally, serious concerns are expressed about the reports of incommunicado detention of Mr. Byuma since March 2020.

We are issuing this appeal in order to safeguard the rights of Mr. François-Xavier Byuma from irreparable harm and without prejudicing any eventual legal determination.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on the factual and legal grounds of the charges against and sentencing of Mr. Byuma. Please explain how the process in front of the Gacaca tribunal met the standards of a fair trial under Rwanda's obligations under international human rights law.
3. Please provide detailed information about the alleged incommunicado detention of Mr. Byuma and why no family visits have been allowed since March 2020.
4. Please also provide information about the physical and psychological integrity of Mr. François-Xavier Byuma.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted this communication to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. This letter in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to this communication and the regular procedure.

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Please accept, Excellency, the assurances of our highest consideration.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights standards:

We would like to draw your Excellency's Government's attention to articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights, ratified by Rwanda on 16 April 1975, which provides for the right to liberty and security of the person, to a trial by an independent and impartial tribunal which respects due guarantees of due process, to freedom of expression and to the right of freedom of association and assembly.

In this context, article 9 of the Covenant establishes that no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. It further requires that anyone detained under criminal charges shall be promptly informed of all charges against him. In addition, arrest and detention as a punishment for the peaceful exercise of human rights, including freedom of opinion, expression, assembly and association, is considered arbitrary.¹

We would also like to highlight that, under article 14 of the Covenant, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal the determination of any criminal charge. Moreover, individuals facing criminal trials must be informed of the nature and cause of the charges. The State must guarantee that the accused has adequate time and facilities for the preparation of his defense, that he has access to legal assistance and has the effective possibility of examining the witnesses against him and to obtain the attendance and examination of witnesses on his behalf.

We reiterate the principle enunciated in Human Rights Council Resolution 12/16, underlining that restrictions on the expression of opinion on government policies and political debate and reporting on human rights are not consistent with article 19 (3) of the ICCPR. Moreover, we would like to bring to Your Excellency's Government's attention article 26 of the International Covenant on Civil and Political Rights, stating that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

¹ CCPR/C/GC/35, para. 17.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (b), which provides for the right to form, join and participate in nongovernmental organizations, associations or groups
- article 6 (a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms; and
- article 6 (b) and (c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.