

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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(Please use this reference in your reply)

3 April 2024

Excellency,

We have the honour to address you in our capacities as 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 51/8, 52/9, 51/21, 52/4 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding **the criminal prosecution and detention of journalists and human rights defenders Mr. Théoneste Nsengimana and Mr. Dieudonné Niyonsenga and opposition politician Mr. Théophile Ntirutwa.**

Mr. Théoneste Nsengimana is a journalist and human rights defender who runs the YouTube Channel Umubavu TV. Umubavu Online TV publishes reporting and commentary on Rwandan politics, including interviews with opposition figures.

Mr. Dieudonné Niyonsenga, also known as "Cyuma Hassan", is a human rights defender and owner of Ishema TV, a YouTube channel that critically covers a wide range of topics, including local politics, culture, and human rights. Ishema TV is since November 2022 no longer available online.

Mr. Théophile Ntirutwa is an opposition politician and former member of the unregistered Dalfa-Umurinzi opposition party. He is also a vocal critic of the current Rwandan Government.

According to information received:

The case of Mr. Théoneste Nsengimana

In April 2020, Mr. Nsengimana was reportedly arrested and detained for several weeks on allegations of fraud, in a broader context of arrests of various journalists reporting critically on the impact of COVID-19 guidelines on vulnerable populations. In May 2020, the Kicukiro District Court in Kigali ordered Mr. Nsengimana's release from pretrial detention due to the prosecution's lack of evidence against him, and the charges were eventually dropped. After his release, Mr. Nsengimana's YouTube channel hosted critical discussions on public affairs.

On 13 October 2021, Mr. Nsengimana was allegedly arrested as part of what sources describe to have been a crackdown on opponents and critics connected to an event called “Ingabire Day”, which was due to take place on 14 October 2021. The event was organised by the unregistered opposition party Dalfa-Umurinzi to discuss alleged restrictions to political expressions in Rwanda. Mr. Nsengimana intended to cover the event and host a discussion on his YouTube channel with the Dalfa-Umurinzi party leader.

Mr. Nsengimana was reportedly charged with “membership in a criminal group”, which carries a maximum prison term of 10 years under Rwanda’s Penal Code; “dissemination of false information or propaganda with intent to cause a hostile international opinion against Rwanda’s Government”, also punishable by up to 10 years; “inciting unrest”, which carries up to 15 years; and “spreading rumours”, which carries up to five years in prison and a fine of up to 3 million Rwandan francs (US\$3,000) under Rwanda’s cybercrimes law. The journalist currently remains in pre-trial detention in Mageragere prison in Kigali (officially Nyarugenge Correctional Facility).

In a hearing on 9 November 2021, the Kicukiro District Court denied Mr. Nsengimana and seven of his co-defendants bail and ordered them to remain in pre-trial detention in Mageragere prison. On 16 March 2022, the prosecution requested that Mr. Nsengimana be sentenced to 10 years in prison upon conviction.

The case of Mr. Dieudonné Niyonsenga

On 15 April 2020, Mr. Niyonsenga and one of his colleagues at Ishema TV were reportedly arrested by the Rwandan Investigation Bureau (RBI) after reporting on the impact of COVID-19 guidelines on vulnerable populations, and were accused of forgery, impersonating journalists and hindering public works. In information published on social media, the RBI claims that Mr. Niyonsenga resisted orders to go home, after he had argued that he was a journalist and allowed to move during the lockdown and accused him of forging press cards.

During the trial, prosecutors claimed that Mr. Niyonsenga had forged press cards for himself and his colleague, saying that only the Rwanda Media Commission (RMC), a statutory regulator, could issue such cards. Prosecutors also claimed that because he did not have an accreditation from the RMC and the proper journalistic qualifications, Mr. Niyonsenga was impersonating a journalist.

On 12 March 2021, the Gasabo Intermediate Court in Kigali acquitted Mr. Niyonsenga and his colleague after they had spent almost a year in pre-trial detention. After his release, Mr. Niyonsenga gave several interviews on YouTube describing his treatment in detention and continued to report on issues such as alleged abuses by the military. In one interview, the journalist said he was held in multiple locations and told to confess to working with the Rwanda National Congress (RNC).

On 11 November 2021, the prosecution appealed the verdict and Mr. Niyonsenga was re-arrested. The High Court in Kigali reportedly reversed

his acquittal, fined him 5 million Rwandan francs (US\$4,900) and sentenced him to seven years in prison, the maximum prison term for forgery.

Mr. Niyonsenga challenged his conviction while he continued to be held in detention in Mageragere prison. On 10 January 2022, Mr. Niyonsenga reportedly told the court that he was being mistreated and held in a small dark cell and asked for medical attention and for the court to investigate his conditions. Both requests were reportedly ignored.

On 18 March 2022, the appeals court found Mr. Niyonsenga guilty of forgery, impersonation, hindering public works, and “humiliation of national authorities and persons in charge of public service.” The last charge, which was added during the appeal, is no longer a criminal offense in Rwanda. It was struck from the 2018 Penal Code by the Supreme Court in 2019. A second appeal’s verdict maintained his seven-year sentence but overturned his conviction for humiliation of national authorities.

In April 2022, it was reported that Mr. Niyonsenga was not being given sufficient or adequate food, access to medication, or money sent by friends and relatives.

On 10 August 2023, it was reported that Mr. Niyonsenga was being held in a basement without access to natural light, and that he was in very poor health. As of 10 November 2023, reports indicated that Mr. Niyonsenga was no longer being subjected to beatings but remained in ill health and was only allowed out of his cell for 30 minutes per day.

On 10 January 2024, Mr. Niyonsenga appeared in a hearing as part of the review of his trial. The journalist and human rights defender reportedly appeared weak and visibly wounded. During the trial, he denounced the alleged torture he was subjected to while in detention, including being allegedly held in solitary confinement in a damp cell and subjected to daily beatings, which are impairing his hearing and eyesight. Due to the journalist’s state, the trial was postponed until 6 February 2024. At this hearing, Mr. Niyonsenga’s lawyer reportedly requested that his client’s trial be presided over by three judges, instead of one, and the court adjourned to review this request. Reportedly, no investigation has been ordered into the allegations of torture of Mr. Niyonsenga in detention.

The case of Mr. Théophile Ntirutwa

In September 2017, Mr. Ntirutwa was reportedly arrested without charge and forcibly disappeared for 17 days before being transferred to prison. On 23 January 2020, after two years of pre-trial detention, Mr. Ntirutwa was put on trial alongside seven other members of the Dalfa-Umurinzi party on charges including complicity in forming or joining an irregular armed force. Mr. Ntirutwa was subsequently acquitted and released. Upon his release, he spoke out of his alleged ill-treatment and torture while in pretrial detention in interviews to local YouTube channels.

On 11 May 2020, Mr. Ntirutwa was reportedly arrested following a violent incident at his shop in Rwamagana District in which one man was stabbed to

death. On 18 May 2020, the politician was charged with offenses including formation of a criminal association, murder, theft, and inciting uprising and “spreading false information or harmful propaganda with intent to cause a hostile international opinion against [the] Rwanda Government”.

On 16 December 2022, after over two and a half years in pre-trial detention, Mr. Ntirutwa was acquitted of all charges except “spreading false information with the intent of creating a hostile opinion of Rwanda abroad”. Mr. Ntirutwa was reportedly convicted of this charge on the basis of phone calls he made to his party’s leader, and a journalist, in which he said that the incident was an assassination attempt by armed police and military against him. The High Court’s Rwamagana chamber sentenced Mr. Ntirutwa to seven years’ imprisonment. He is serving this sentence in Rubavu prison.

Without prejudging the accuracy of these allegations, we wish to stress our concern at the criminal prosecution and detention of Mr. Nsengimana and Mr. Niyonsenga which appear to be directly related to their work as independent journalists and human rights defenders, and Mr. Ntirutwa as an opposition politician, who are outspoken and critical of the security forces and the Government and who express views on sensitive issues such as allegations of human rights abuses. Targeting the media creates a hostile environment for journalists, who risk prosecution and imprisonment for their critical, independent reporting, thus contributes to self-censorship. With respect to the arrest of opposition actors, we remind your Excellency’s Government that freedom of expression is essential to democracy and to creating a conducive environment for free and fair elections. In this context, we are concerned that as the 2024 election campaign season is approaching, we receive reports indicating that the authorities are cracking down and prosecuting opposition members, journalists, and commentators on the basis of their speech and opinions.

Further, we are deeply concerned at the alleged ill-treatment of Mr. Niyonsenga while in detention at Mageragere prison. We express profound concern about the reported absence of official investigations into the allegations of torture, physical abuse and ill-treatment specifically against Mr. Niyonsenga. Finally, since prison authorities have been accused of intercepting privileged communications between him and his lawyer, we remind your Excellency’s Government that under international law, all communications and consultations between lawyers and their clients within their professional relationship are confidential and this right must be protected.

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.

We are issuing this appeal in order to safeguard the rights of the above-mentioned individuals from irreparable harm and without prejudging any eventual legal determination.

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/or comment(s) you may have on the above-mentioned allegations, including information you may have on when the trial of Mr. Nsengimana will take place.
2. Please provide detailed information on the factual and legal basis for the arrest and detention of Mr. Nsengimana and Mr. Niyonsenga and how these comply with the limits to legitimate restrictions on the right to freedom of expression under articles 19 of the International Covenant on Civil and Political Rights. Likewise, please provide detailed information on the factual and legal basis for the arrest and detention of Mr. Ntirutwa and how these comply with the right to freedom of expression and the right to freedom of association under articles 19 and 22 of the International Covenant on Civil and Political Rights.
3. Please provide detailed information on the measures which have been taken, or which are foreseen, to ensure full and impartial, effective, thorough and independent investigations, independent medical examinations, and judicial or other inquiries in relation to the allegations ill-treatment and other cruel, inhuman or degrading treatment or punishment of Mr. Niyonsenga. If measures have been undertaken, please make available the results of the investigations. If no such measure has been taken, please explain why.
4. Please provide an update on Mr. Niyosenga's current medical condition and outline the measures your Excellency's Government is taking to ensure that he is receiving adequate medical treatment and has access to medication.
5. Please also provide information on any additional measures and safeguards in force to prevent torture or other ill-treatment pursuant to articles 2 and 16 of the CAT.
6. Please explain the steps your Excellency's Government has taken to guarantee the right of human rights defender, civil society organizations, journalists and political parties to operate freely, including to express views and to publish information on sensitive subjects, including allegations of human rights abuses.

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

We would like to inform your Excellency's Government that having transmitted a communication to the Government, the Working Group on Arbitrary

Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to this letter and the regular procedure.

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.

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

Matthew Gillett
Vice-Chair on communications 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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the following provisions of international human rights law.

We wish to refer to article 9 of the International Covenant on Civil and Political Rights (ICCPR), which provides that no one shall be subjected to arbitrary arrest or detention or deprived of their liberty except on such grounds and in accordance with such procedure as are established by law. We would like to recall that in accordance with the jurisprudence of the Working Group on Arbitrary Detention, and General Comment no. 35 of the Human Rights Committee, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, is arbitrary. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it 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. In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

Article 19 of the Universal Declaration of Human Rights and article 19 of the ICCPR, adhered to by Rwanda on 16 April 1975, enshrine the right to freedom of expression, including the right to impart information and ideas through any media and regardless of frontiers. As interpreted by the Human Rights Committee in its General Comment no.34, article 19 of the ICCPR protects the expression of every form of idea and opinion capable of transmission to others, including, *inter alia*, political discourse, commentary on public affairs, discussion of human rights and journalism (para. 11).

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3) of the ICCPR. This means that they must 1) be "provided by law"; 2) be necessary for respect of the rights or reputations of others or for the protection of national security or of public order (*ordre public*), or of public health or morals; and 3) conform to the strict tests of necessity and proportionality (Ibid., para. 22). The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. An attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, torture, threats to life and killing, cannot be compatible with article 19. (Ibid., para. 23).

Attacks on journalism are fundamentally at odds with protection of freedom of expression and access to information. Governments have a responsibility not only to respect journalism but also to ensure that journalists and their sources have protection through strong laws, prosecutions of perpetrators and ample security where necessary (A/HRC/71/373 para. 35). With respect to charges related to the spreading of false news, we refer to the report of the Special Rapporteur on freedom of opinion and expression on disinformation (A/HRC/47/25). In this report, the Special Rapporteur

notably highlighted that the right to freedom of expression applies “to all kinds of information and ideas, including those that may shock, offend or disturb”, and “irrespective of the truth or falsehood of the content” (See also Human Rights Committee, general comment no. 34 (2011), paras. 47 and 49).

The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is an *erga omnes* and *jus cogens* norm. Torture and other cruel, inhumane or degrading treatment or punishment are prohibited under at least article 5 of the Universal Declaration of Human Rights, article 7 of the ICCPR alone and in conjunction with article 2(3) ICCPR, and articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment acceded by Rwanda on 15 December 2008. Under article 10 of the ICCPR, all persons deprived of their liberty shall be treated humanely and with respect for the inherent dignity of the human person. Articles 7 and 10 of the ICCPR require that “persons deprived of their liberty must not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty”, such as lack of access to appropriate and timely medical care, overcrowded cells and lack of access to facilities for basic hygiene.

Under article 7 of the ICCPR, States must recognize in their domestic law the right to lodge complaints against maltreatment prohibited by article 7 of the ICCPR and must be investigated promptly and impartially all the complaints lodged (Human Rights Committee, General Comment no. 20, para. 14).

As per article 12 and 2.2 of the International Covenant on Economic Social and Cultural Rights, ratified by Rwanda on 16 April 1975, States parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health without discrimination and take steps to achieve the full realization of this right, including those necessary for the creation of conditions which would assure to all medical service and medical attention in the event of sickness. These articles enshrine the right of everyone, including people prisoners and detainees, to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on the part of all States parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. Accordingly, States have the obligation to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to health preventive, curative and palliative services (Committee on Economic, Social and Cultural Rights (Committee), General Comment No. 14, para. 34). In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights (CESCR) stresses that the right to health is defined not only as the right to timely and appropriate health care, but also to “the underlying determinants of health, such as access to [...] an adequate supply of safe food, nutrition and housing” (para. 11). In this regard, WHO defines social determinants of health, as the non-medical factors that influence health outcomes, that is “the conditions in which people are born, grow, work, live, and age¹”. The Committee also stressed that “the right to health is closely related to and dependent upon the realization of other human rights [...] including the right to food, housing, [...] human dignity, life, non-discrimination, equality [and] the prohibition against torture” (para. 3).

¹ World Health Organization, “Social determinants of health”, available at: www.who.int/health-topics/social-determinants-of-health#tab=tab_1.

The Basic Principles for the Treatment of Prisoners, adopted without vote by the General Assembly Resolution 45/111 on 14 December 1990, provide that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings (principle 1). Prisoners shall have access to health services available in the country without discrimination on the grounds of their legal situation (principle 9).

Additionally, we would like to refer to the Mandela Rules, adopted unanimously by the UN General Assembly (A/RES/70/175). The Mandela Rules are based on an obligation to treat all prisoners with respect for their inherent dignity and value as human beings, and to prevent torture and other forms of ill-treatment in detention. According to rule 13 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), all accommodation provided for the use of prisoners, in particular all sleeping accommodation, shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. Under rule 21, every prisoner shall, in accordance with local or national standards, be provided with a separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Under rule 24 (f), the provision of health care for prisoners is a State responsibility, free of charge, without discrimination and at the same level as the health care services provided in the community. Rule 27 provides that prisoners requiring specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Under rule 42, general living conditions addressed in the Nelson Mandela Rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to all prisoners without exception.

Regarding solitary confinement, rule 43 establishes that in no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: (a) Indefinite solitary confinement; (b) Prolonged solitary confinement [...]. Under rule 44, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days. Solitary confinement shall only be used in exceptional cases (rule 45).

The use of prolonged or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering. Prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment (A/66/268).

Furthermore, we bring to your attention 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.

We would like to draw particular attention to the following provisions of the Declaration:

- Article 6 (a), which provides for the right to know, seek, obtain, receive, and hold information about all human rights and fundamental freedoms;
- Article 6 (b) and (c), which provides for the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- Article 9 (1), which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights; and
- Article 12 (2) and (3), which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure, or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Both the General Assembly and the Human Rights Council have repeatedly urged States to create and maintain a safe and enabling environment in which human rights defenders can operate free from hindrance, reprisals, and insecurity, as per General Assembly resolutions 74/146 and 70/161, and the Human Rights Council resolutions 22/6 and 13/13.