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No. 25/2012 (Rwanda)

Communication addressed to the Government on 13 March 2012

Concerning Agnès Uwimana Nkusi and Saïdati Mukakibibi

The Government did not reply to the communication within the 60-day deadline.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (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 International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Agnès Uwimana Nkusi, a national of Rwanda, usually residing in Kivugiza, Nyamirambo sector, Nyarugenge district, Rwanda, is a newspaper journalist and editor. Ms. Uwimana has practiced journalism for over 10 years, first with *Umuseso*, then as editor with *Umurabyo*, an independent Kinyarwanda-language newspaper published bi-weekly and having a circulation of approximately 100 readers. Prior to the ongoing period of detention, Ms. Uwimana had been arrested on 12 January 2007 for publishing in *Umurabyo* an anonymous letter allegedly written by a former member of President Paul Kagame's party, the Rwandan Patriotic Front (RPF). Ms. Uwimana, who lacked access to a lawyer, pleaded guilty to charges of divisionism and defamation in exchange for a sentence reduction from five years to one year. She had been released on 19 January 2008.

4. Ms. Saïdati Mukakibibi, a national of Rwanda, usually residing in Kabagesera, Runda sector, Kamonyi district, Rwanda, is a newspaper journalist for *Umurabyo*.

Arrests and pretrial detention between July 2010 and February 2011

5. It is reported that on 9 July 2010, Ms. Uwimana was arrested by members of the Kigali police at Cyangugu, Rwanda at the home of her in-laws. Ms. Uwimana was not presented with an arrest warrant. She was only informed of the charges against her one week following her arrest. Ms. Uwimana was allegedly deprived of access to a lawyer for two days.

6. It is reported that on 10 July 2010, Ms. Mukakibibi was arrested by members of the Kigali police at the Kigali police station while visiting Ms. Uwimana after having learned about her arrest the previous day. Ms. Mukakibibi was only informed of the charges against her one week after her arrest. She did not have access to a lawyer for two days.

7. According to the information received, both women were placed at Kigali Central Prison, where they reportedly remain. During the first weeks after their arrests, their whereabouts were unknown to family members and they were not allowed visits. Only after one week in detention were they formally informed of the charges. Until then they were reportedly told that their arrest was based on newspaper articles that had appeared in *Umurabyo*, and the Rwanda genocide law was cited.

8. During their pretrial detention, Mmes. Uwimana and Mukakibibi requested bail twice and were denied such requests by the Nyarugenge Intermediate Court because of the alleged seriousness of the charges against them. During this period, the pretrial detention of Mmes. Uwimana and Mukakibibi was based on articles 93 and 94 of the Penal Code, which allow pretrial detention of suspects for whom "there are concrete grounds" for prosecution. When a person is charged with crimes punishable with at least two years of imprisonment, there are no additional requirements to justify pretrial detention.

The charges and sentencing of Ms. Uwimana

9. On 4 February 2011, the High Court convicted and sentenced Ms. Uwimana to a total of 17 years of imprisonment and a fine of 250,000 Rwanda francs (approximately US$ 420) for four offences: (a) endangering national security under article 166 of the Penal Code (five years' imprisonment); (b) denying the genocide under article 4 of the genocide law (10 years'

imprisonment); (c) defaming the President under article 391 of the Penal Code (one year's imprisonment), and (d) creating divisions under article 1 of the divisionism law (one year's imprisonment).[1]

10. *Offence of endangering national security*. Article 166 of the Penal Code punishes by a prison term of 2 to 10 years "any person who, by holding any kind of speech in a meeting or in a public place, or by any kind of writing, print, pictures or any symbols, which are posted, distributed, sold, put for sale, or exposed to the public, or by knowingly spreading rumours, incites or attempts to incite the population against the authorities, or incites or attempts to incite citizens against each other, or alarms the population so as to seek to create civil unrest in the Republic". This charge against Ms. Uwimana was based on a series of articles that appeared in issues No. 15 and No. 21 of *Umurabyo*.

11. The first story, appearing in issue No. 15, was entitled "Rwandans have spent 15 years in a coma", and criticized the President Kagame regime for favouring the Abega clan, to which he belongs. According to the information received, the Prosecution claimed that the article incited the population to resist the Government's programmes and incite hate towards the authorities. The same issue of *Umurabyo* contained an article entitled "The war between Kagame's regime and the population". This article alleged that the Rwandan Army returned from the war in the Congo having enriched themselves with gold; and that rich people, including those in the military, had occupied an entire region and taken over farms by force, preventing people from cultivating and thereby contributing to starvation. The article further criticized a government agricultural programme that prohibited farmers from planting the crops of their choice, forcing them to plant crops to feed the livestock of the wealthy, and alleged that the authorities had uprooted a farmer's banana plantation. The Prosecution characterized this article as factually unfounded, and as inciting the population against the authorities.[2]

12. In its judgement, the High Court made a series of findings generally confirming that Ms. Uwimana had written the above statements. The Court further found that none of the facts alleged in the articles could be proven or supported, and that through the articles, Ms. Uwimana had incited the population against the authorities. The Court cited only the articles as proof of Ms. Uwimana's intent to incite the population against the authorities.

13. In issue No. 21 of *Umurabyo*, an article entitled "Kagame in difficult times" criticized the *gacaca* system of traditional community courts, which try individuals suspected of participating in the 1994 genocide.[3] In this article, Ms. Uwimana also suggested that Rwandans had only four choices in 2010 (to be imprisoned, to go into exile, to die or to survive). The article also alleged that jobs were being given to some groups, and not others.[4] Finally, the article suggested that military chiefs were suspected of being responsible for the growing insecurity in the country by supplying the hand grenades that were used in attacks in Kigali.[5]

14. The Prosecution argued that the article attempted to show that the Government oppresses and imprisons citizens, caused citizens to lose confidence in the authorities, and incited the population to flee the country and turn against the Government.[6]

[1] The source refers to the High Court judgement against Ms. Uwimana and Ms. Mukakibibi, RP 0082/10/HC/KIG, 4 February 2011, para. 85.3 (hereinafter the High Court judgement).
[2] Ibid., paras. 14-16.
[3] Ibid., para. 27.
[4] Ibid, para. 34.
[5] Ibid., paras. 38-39.
[6] Ibid., paras. 28 and 34.

15. The High Court ruled that Ms. Uwimana breached article 166 of the Penal Code, emphasizing the fact that the assertions made in the articles were unfounded rumours and these were spread to call the population to act against the Government, thus threatening national security. The Court rejected Ms. Uwimana's defence that her articles caused no actual insecurity in the country, stating that achieving actual insecurity is not a requirement for finding a violation of article 166 of the Penal Code.

16. *Offence of denying the genocide*. Article 4 of the genocide law prohibits anyone from "publicly show[ing], by his or her words, writings, images, or by any other means, that he or she has negated the genocide committed, rudely minimized it or attempted to justify or approve its grounds or any person who will have hidden or destroyed its evidence". The charge was based on the following statement made by Ms. Uwimana in issue No. 21 of *Umurabyo*: "Rwandans lived for a long time with this hatred until they ended up killing each other after [former President] Kinani [Habyarimana]'s death."[7]

17. Ms. Uwimana argued that the article did not deny the genocide. On its face, the cited passage appears to acknowledge the genocide, rather than deny it. The High Court held that the single sentence in issue No. 21 amounted to genocide denial, thereby contravening article 4 of the genocide law.[8]

18. *Offence of defaming the President*. Article 391 of the Penal Code prohibits anyone from "maliciously and publicly imputing to a person a specific fact which is likely to harm the honour or reputation of such person, or subject him to public contempt" under the penalty of imprisonment up to a year and a fine up to 10,000 RF (approximately US$ 16).[9] The statements must "manifestly affect" the targeted individual.[10] This charge brought against Ms. Uwimana was based on two articles published in *Umurabyo*.

19. The first article on which the defamation charge was based was published in issue No. 23 of *Umurabyo*. In this article, Ms. Uwimana claimed that President Kagame encouraged and covered up the misconduct of a government official (Colonel Dodo), and that another government official (James Kabarebe) helped a military chief (General Kayumba) critical of the government flee the country.[11] Ms. Uwimana countered that the charges of corruption and a cover-up were widely and publicly discussed.[12]

20. The High Court ruled that Ms. Uwimana's article amounted to defamation of the President and that proof of the malicious intent resulted from the offensive nature of the terms used and because the imputed facts affected the President's reputation. The Court further noted that Ms. Uwimana knew that the article would reach many citizens, as *Umurabyo* was a bi-weekly publication "distributed everywhere".[13]

21. The second article appeared in issue No. 29 of *Umurabyo*. In that article, Ms. Uwimana included a photograph of President Kagame with a Nazi swastika symbol in the background. The Prosecution argued that Ms. Uwimana had superimposed the symbol in the background and that this was a defamatory image. Ms. Uwimana contended in her defence that the photograph had not been faked, but rather was taken when the President visited a German Holocaust memorial site and, in fact, that same picture had been published

[7] Ibid., para. 42.
[8] Ibid., paras. 44–46.
[9] Ibid., para. 56.
[10] Ibid.
[11] Ibid., paras. 51 and 57.
[12] Ibid., paras. 53-54.
[13] Ibid., paras. 55-56.

on the President's official Internet website.[14] The High Court agreed that there was no evidence that Ms. Uwimana had doctored the picture and acquitted her of this defamation charge.[15]

22. *Offence of divisionism*. Article 1 of the divisionism law of 2001 prohibits "the use of any speech, written statement or action that divides people, that is likely to spark conflicts among people, or that causes an uprising which might degenerate into strife among people based on discrimination". Discrimination in the law is defined as "any speech, writing, or actions based on ethnicity, region or country of origin, the colour of the skin, physical features, sex, language, religion or ideas aimed at depriving a person or group of persons of their rights as provided by Rwandan law and by International Conventions to which Rwanda is party".

23. The charge of divisionism was based on an article that appeared in issue No. 21 of *Umurabyo*, which claimed that jobs were reserved for specific groups of people.[16] The charge against Ms. Uwimana was also based on an article that appeared in issue No. 15 of *Umurabyo*, in which it was stated that members of the Abega clan, to which President Kagame belongs, were more favoured than members of the Abanyiginya clan. The article also addressed more generally the conflicts between these two clans.[17]

24. Ms. Uwimana claimed that her statements were true and that none of the subjects about whom she wrote commented upon or denied her statements.[18]

25. The High Court held that the lack of any denial of the articles' statements by any concerned party did not absolve Ms. Uwimana of guilt under the divisionism law. The Court ruled that Ms. Uwimana's statements regarding President Kagame's favouritism of one clan over another, as well as her statements regarding the conflict between the two clans, were intended to create conflicts and thus violated the divisionism law.[19]

The charges and sentencing of Ms. Mukakibibi

26. On 4 February 2011, the High Court convicted and sentenced Ms. Mukakibibi to a total of seven years for endangering national security under article 166 of the Penal Code.[20] The charge was based on an article published by Ms. Mukakibibi entitled "King Kigeli is the solution to national unity and reconciliation", which appeared in issue No. 29 of *Umurabyo*. The article stated, inter alia, that:

- President Kagame's governance did not please a majority of the Rwandese population;
- The goal of fighting injustice that had been used to defeat the Habyarimana regime had been abandoned;
- On the one hand, a majority of Rwandese agreed that the overthrow of the Habyarimana regime had been justified because of its abuse of power, but that on the other hand, Habyarimana should not have been replaced with Kagame;
- Since President Kagame had taken power, assassinations had increased and security had deteriorated, discrimination had continued to divide the Rwandan people, the

[14] Ibid., paras. 47-48.
[15] Ibid., para. 50.
[16] Ibid., para. 58.
[17] Ibid., para. 59.
[18] Ibid., para. 60.
[19] Ibid., paras. 61–64.
[20] Ibid., para. 90.

economy had worsened, the quality of education had fallen, economic welfare had worsened, and there were allegations of killings, imprisonments and other human rights violations.[21]

27. The High Court held that the article was not duly researched or supported, consisted of rumours that were spread with the intention of inciting the population against the Government, and brought conflict with the intention of creating insecurity. The Court noted that Ms. Mukakibibi knew that her article, published in *Umurabyo*, would be widely read by many Rwandans.

28. The Court acquitted Ms. Mukakibibi on the charge of divisionism under article 1 of the Divisionism Law of 2001.[22]

29. The source contends that the deprivation of liberty of Mmes. Uwimana and Mukakibibi is arbitrary, being a result of their peaceful exercise of the rights and freedoms under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights

30. The source argues that the detention of Mmes. Uwimana and Mukakibibi is the result of their fundamental right to freedom of expression as embodied in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. The source points out that none of the limitations to this right as contained in paragraph 3 of article 19 are present in this case. The source refers to the three-tier test elaborated by the Human Rights Committee, namely that (a) the restriction must be clearly provided by law; (b) it must pursue one of the legitimate aims articulated in article 19, paragraph 3, and (c) it must be proportional to, and necessary for, the accomplishment of that objective.[23] The source also points to the statement of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in which he noted that article 19, paragraph 3, of the International Covenant on Civil and Political Rights establishes a very high threshold: "imprisoning individuals for seeking, receiving and imparting information and ideas can rarely be justified as a proportionate measure to achieve one of the legitimate aims under article 19, paragraph 3" (A/HRC/17/27, para. 36).

31. The source reports that the Government of Rwanda has promulgated several laws over the past decade aimed at prohibiting the types of hate speech that led to the 1994 genocide. These laws include two under which Ms. Uwimana was convicted: the divisionism law of 2001 and the genocide law of 2003. The Government has also introduced prohibitions into the Penal Code, including the provisions prohibiting endangering State security and defamation, to limit expression. The source submits that these laws, which served as a basis for the convictions of Mmes. Uwimana and Mukakibibi, are in alleged violation of the State's obligations under the International Covenant on Civil and Political Rights. The source presents four arguments to sustain its contention.

32. First, criminal defamation laws, such as article 391 in the Rwandan Penal Code, are allegedly inconsistent with international human rights standards, given that defamation is, by definition, a non-violent act and civil remedies are considered more adequate than penal ones. The source points out that the Human Rights Committee[24] and special procedures[25] have called for a complete abolition of criminal sanctions for defamation. In any event, according to the source, the Government has allegedly failed to provide any evidence showing that the

[21] Ibid., paras. 67–70.
[22] Ibid, para. 76.
[23] General comment No. 10 (1983) on freedom of expression, paras. 3-4.
[24] See, for example, concluding observations on Mexico (CCPR/C/79/Add.109), para. 14.
[25] See, for example, A/HRC/17/27, paras. 36 and 73.

statements "manifestly affect[ed]" the reputation of the President, as required by article 391 of the Penal Code.

33. Second, in the source's view, the application by Rwanda of article 166 ("endangering State security") to Ms. Uwimana's and Ms. Mukakibibi's expression clearly fails to meet the stringent proportionality and necessity test required by article 19, paragraph 3, of the International Covenant on Civil and Political Rights. As pointed out in the report of the Special Rapporteur on the right to freedom of opinion and expression, "protection of national security… cannot be used to justify restricting the right to expression unless the Government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence" (A/HRC/17/27, para. 36). The source reports that the Rwandan authorities gave no evidence regarding the intention and likelihood of inciting imminent violence, nor did it identify any direct connection between the speech of Ms. Uwimana and Ms. Mukakibibi and any threat of or actual violence. The authorities solely relied on the articles themselves and the assertion of the alleged wide distribution of the newspaper as sufficient proof that the articles threatened national security. The source points out that the actual readership of the newspaper is 100 copies bi-weekly. Despite lacking evidence, 5 years of Ms. Uwimana's 17-year sentence and all 7 years of Ms. Mukakibibi's sentence stemmed from their alleged violations of article 166 of the Penal Code.

34. Third, although the Rwandan authorities may lawfully restrict genocide denial under international law, Ms. Uwimana's expression ("Rwandans lived for a long time with this hatred until they ended up killing each other after [former President] Kinani [Habyarimana]'s death") does not constitute genocide denial. The source conveys that this statement can be interpreted as an acknowledgement rather than denial of genocide. Moreover, the statement clearly does not amount to genocide denial when considered in the context of the article as a whole, in which Ms. Uwimana criticized ethnic divisions in the country, and in the context of her other articles, including an article in issue No. 23 of *Umurabyo*. In the latter, she expressly acknowledged both the existence of the genocide and the Government's achievement in bringing the genocide to an end. This being said, 10 years of her 17-year sentence were attributed to this charge. The source submits that regardless of whether her expression could be construed as genocide denial, such a severe prison sentence fails to meet the proportionality test as established under article 19, paragraph 3, of the International Covenant on Civil and Political Rights.

35. Finally, the source points out that the divisionism law under which Ms. Uwimana was convicted and sentenced to one 17-year term is in breach of the State's obligations under the International Covenant on Civil and Political Rights on its face and as applied to Ms. Uwimana's freedom of expression. In support of its contention, the source refers to the concern expressed by the Human Rights Committee that the use of the divisionism law against journalists could be incompatible with the obligations of the Government of Rwanda under article 19, paragraph 3, of the Covenant.[26] The source submits that the provisions of the divisionism law are unclear and do not give sufficient predictability for individuals as to the limits of his or her conduct prohibited by law. In any event, the source contends that Ms. Uwimana's conviction under the divisionism law for alleging discrimination in the Government's employment policy is a violation of article 19, paragraph 3, of the International Covenant on Civil and Political Rights. This conviction was based on Ms. Uwimana's statements regarding President Kagame's favouritism of one clan over another, as well as her statements regarding the conflict between the Abanyiginya and Abega clans. The source states that not only is it unclear how her expression meets the test set forth in the law itself but

[26] Concluding observations on Rwanda (CCPR/C/RWA/CO/3), para. 20.

also how it would be justifiable under the Covenant's article 20 requirement that "advocacy of national, racial or religious hatred that constitutes incitement to discrimination" be prohibited.

36. The source submits that the deprivation of liberty of Mmes. Uwimana and Mukakibibi is arbitrary as a result of grave breaches of their right to a fair trial. The source presents six arguments to support its contention.

37. First, the failure of the arresting and detaining officers to inform Ms. Uwimana and Ms. Mukakibibi of the charges against them for approximately one week violated their right under article 9, paragraph 2, and article 14, paragraph 3 (a), of the International Covenant on Civil and Political Rights to be informed immediately of the charges against them.

38. Second, the repeated denial of bail without adequate justification by the Nyarugenge Intermediate Court violates, according to the source, the general prohibition against pretrial detention where not required by administration of justice or maintenance of security contained in article 9, paragraph 3, of the International Covenant on Civil and Political Rights and principle 36, paragraph 2, of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

39. Third, the source maintains that the approximately six-month period between the time of arrest and the time of the High Court hearing and the approximately one-year period between the time of the issuance of the High Court judgement and the Supreme Court appeal hearing is in breach of Ms. Uwimana's and Ms. Mukakibibi's right to be tried "without undue delay" pursuant to article 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights and principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

40. Fourth, the High Court allegedly violated the right of Ms. Uwimana and Ms. Mukakibibi to be presumed innocent until proven guilty, a right contained in article 11, paragraph 1, of the Universal Declaration of Human Rights, article 14, paragraph 2, of the International Covenant on Civil and Political Rights and article 19 of the Rwandan Constitution. The source maintains that the High Court treated the statements in the articles that the Government alleged were rumours as false and instead required Mmes. Uwimana and Mukakibibi to prove their veracity.[27] In doing so the Court reversed the burden of proof in violation of the general principle of the presumption of innocence.

41. Fifth, by failing to consider mitigating circumstances and by imposing disproportionate and unjust sentences – 7 and 17 years – the High Court has allegedly violated the prohibition on cruel and inhuman punishment under article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights and article 15 of the Constitution of Rwanda. In the source's view, the High Court failed to consider three compelling mitigating circumstances – the health status of Mmes. Uwimana and Mukakibibi, the fact that their dependents have been left without proper care, and the lack of actual damage caused – despite the discretion of the Court to do so under article 82 of the Rwandan Penal Code. Specifically, pursuant to article 83 of the Penal Code, the High Court could have reduced the sentences of both Mmes. Uwimana and Mukakibibi to one year, which they have already served.

42. Finally, the source submits that the High Court failed to act as a competent and independent judiciary in alleged breach of article 10 of the Universal Declaration of Human Rights, article 14 of the International Covenant on Civil and Political Rights and Rwandan domestic law.

[27] High Court judgement, paras. 21, 25, 31 and 36.

Current status of detention

43. Ms. Uwimana is HIV-positive. Although she receives anti-retroviral medication from a local hospital, her medical care in the prison is inadequate. She has recently developed rashes, and her blood count has been low.

44. Ms. Mukakibibi is diabetic and has blood pressure problems, which require regular medication. During her ongoing detention, she has also developed an ulcer. Currently, Ms. Mukakibibi receives the necessary medicine, on an irregular basis, solely from her daughter during the latter's prison visits.

45. Mmes. Uwimana and Mukakibibi are currently being detained in Kigali Central Prison, where they have been held since their arrests in July 2010.

46. It is reported that the Supreme Court of Rwanda heard the appeal of their convictions on 30 and 31 January 2012, and a judgment will tentatively be issued on 16 March 2012.

Response from the Government

47. By letter dated 13 March 2012, the Working Group transmitted to the Government the allegations contained in the source's submission in order to obtain its response thereto.

48. Upon expiry of the 60-day deadline without a request for extension being filed by the Government, the Working Group decided to adopt an opinion in accordance with paragraph 16 of its methods of work.

Further comments from the source

49. By letter dated 28 August 2012, the source informed the Working Group that on 5 April 2012, the Supreme Court had cleared Ms. Uwimana on the charges of genocide denial and divisionism. However, it had upheld her convictions for defamation and endangering national security. Ms. Uwimana's sentence was reduced from 17 years to 4 years in prison.

50. The source further informed the Working Group that on 5 April 2012, the Supreme Court had upheld Ms. Mukakibibi's conviction for endangering national security. Her sentence was reduced from seven years to three years in prison.

Discussion

51. Mmes. Uwimana and Mukakibibi, journalists in Rwanda, were arrested on 9 and 10 July 2010, respectively, for having published newspaper articles. They were charged with crimes against national security, genocide denial, defamation of the President and divisionism. They were tried by the High Court on 4 February 2011 and condemned to 17 and 7 years of imprisonment, respectively, with accompanying fines. According to the further comments received from the source, the Supreme Court reduced Ms. Uwimana's sentence to four years in prison for defamation and endangering national security. Ms. Mukakibibi's sentence was reduced to three years in prison for endangering national security.

52. The Working Group recalls that its mandate does not consist in acting as an appeal or cassation procedure to national jurisdictions, but rather to verify in accordance with its methods of work whether the detention complies with the relevant international norms and standards. Similarly, the examination of the conformity of the national law with the applicable international human rights law instruments and standards falls within the Working Group's mandate.

53. From the outset, it is important to recall the events of the 1994 genocide in Rwanda, the climate of instability that followed and the long process of reconstruction and reconciliation, all having negatively impacted the right to freedom of expression, which is at stake in the present case before the Working Group.

54. Article 19 of the International Covenant on Civil and Political Rights guarantees this right, providing in its paragraph 3 situations under which the exercise of the right may be limited. However, any such restriction must be provided by law and proportional to and necessary for the respect of the rights or reputations of others, and the protection of national security or of public health or morals.

Concerning the charges brought against Ms. Uwimana and Ms. Mukakibibi and their conformity with the international human rights law

55. Although Mmes. Uwimana and Mukakibibi had their charges of divisionism cleared by the Supreme Court, the Working Group deems it appropriate to recall the finding of the Human Rights Committee in its concluding observations on the third periodic report of Rwanda, according to which the State party should "make sure that any restriction on the exercise of their activities is compatible with the provisions of article 19, paragraph 3, of the Covenant and cease to punish acts of so-called 'divisionism'. The State party should also conduct investigations into the above-mentioned acts of intimidation or aggression and punish their perpetrators" (CCPR/C/RWA/CO/3, para. 20). Similarly, the Independent Expert on minority issues noted that:

> The current wording of Rwandan laws relating to genocide ideology, divisionism and sectarianism is problematic and ill-defined. Equally, implementation of the laws has gone considerably beyond the limits to freedom of expression envisaged in article 20, paragraph 2, of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. These laws must be revised as a matter of urgency and safeguards should be implemented to guarantee that they are not used to silence dissent or restrict the legitimate activities of political opposition (A/HRC/19/56/Add.1, para. 89).

56. The Working Group also notes that the charge of genocide denial was cleared by the Supreme Court as far as Ms. Uwimana's case is concerned. The Working Group emphasizes nonetheless its concern regarding the application of such charge in practice, often brought without adequate demonstration of intentionality of the accused.

57. Regarding the charge of endangering national security, which was upheld by the Supreme Court for both Ms. Uwimana and Ms. Mukakibibi, the Working Group stresses that the restrictions pursuant to article 19, paragraph 3, of the International Covenant on Civil and Political Rights must not be overbroad.[28] Indeed, "when a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat".[29] Having examined the specific content of expression in different articles that were published in *Umurabyo*, the Working Group considers that these merely reflect an opinion and, in no way, incite to undermining the national security of Rwanda. Nor do they pose any actual, imminent or hypothetical threat to national security of Rwanda as is required under article 166 of the Penal Code. In the Working Group's view, statements such as "Rwandans have spent 15 years in a coma", "the war between Kagame's regime and the population" or "Kagame in difficult times" cannot be regarded as establishing a sufficient causal link to endangering national security. Nor do paragraphs 14 to 42 of the decision of the Supreme Court of Rwanda establish beyond a reasonable doubt that

[28] For a similar rationale, see Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 34.

[29] Ibid., para. 35; see also Human Rights Committee, communication No. 926/2000, *Shin* v. *Republic of Korea*, Views adopted on 16 March 2004.

Mmes. Uwimana and Mukakibibi intended to incite any conduct that would undermine national security.

58. Concerning the charge of defamation pursuant to article 391 of the Penal Code, which was upheld by the Supreme Court in the case of Ms. Uwimana, the Working Group recalls that the ability to criticize public officials and, in particular, Heads of State or representatives of the Government, is an inherent component of the right to freedom of expression and opinion. The principle of proportionality underlying article 19, paragraph 3, of the International Covenant on Civil and Political Rights, "must also take account of the form of expression at issue as well as the means of its dissemination. For instance, the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public or political domain".[30]

59. In paragraph 47 of its general comment No. 34, the Human Rights Committee underscored that:

> Defamation laws must be crafted with care to ensure that they comply with [Article 19], paragraph 3, and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties. Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party. States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.

60. The Working Group subscribes to the aforementioned view of the Human Rights Committee, according to which States parties should decriminalize defamation and imprisonment is never an appropriate penalty for defamation.

61. Moreover, in the present case, the Working Group has examined paragraphs 68 through 75 of the judgment rendered by the Supreme Court of Rwanda in April 2012, where it considered the defamation conviction based on Ms. Uwimana's statement in the article published in issue No. 23 of *Umurabyo*. In that article, Ms. Uwimana claimed that President Kagame encouraged and covered up the misconduct of government official Colonel Dodo, namely that of stealing money from workers in Nyabugogo. She stated in court that she had produced the aforementioned statement on the basis of an interview transmitted by Radio Rwanda but she could not bring any supporting evidence.

62. Without going into the merits of the case before the Supreme Court, the Working Group notes the following. Firstly, the analysis made by the Supreme Court does not establish beyond a reasonable doubt any bad faith or malicious intention on behalf of Ms. Uwimana's statement. Secondly, the Court based its reasoning on the fact that Ms. Uwimana knew that her article would be read by a broad audience and would harm the honour or reputation of the President. Thirdly, the Court did not demonstrate specifically how the statements "manifestly

[30] Human Rights Committee, general comment No. 34, para. 34.

affect[ed]" the reputation of the President, which is one of the constituent elements of the offence, prescribed under article 391 of the Penal Code.

63. In the light of the foregoing observations, the Working Group reaches the conclusion that the charges on the basis of which Mmes. Uwimana and Mukakibibi have been convicted, as well as the resulting periods of detention, flow directly from their peaceful exercise of the right to freedom of opinion and expression as guaranteed under article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. Thus, their detention falls under category II of the methods of work of the Working Group.

Concerning Ms. Uwimana's and Ms. Mukakibibi's right to a fair trial

64. As far as the procedural violations of the right to a fair trial are concerned, the source invokes six counts in its submission. To recall, Mmes. Uwimana and Mukakibibi were arrested on 9 and 10 July 2010, and tried by the High Court on 4 February 2011. The Supreme Court rendered its judgment in April 2012.

65. The Working Group agrees with the source's contention that the failure to inform the petitioners of the charges and their rights after almost one week in detention amounts to a violation of article 9 of the Universal Declaration of Human Rights and article 9, paragraph 2, and article 14, paragraph 3 (a), of the International Covenant on Civil and Political Rights. Similarly, the Working Group finds that by placing the burden on the defendants to make a prima facie case of the veracity of their newspaper statements in court, their right to be presumed innocent until proven guilty pursuant to articles 10 and 11, paragraph 1, of the Universal Declaration of Human Rights, article 14, paragraph 2, of the International Covenant on Civil and Political Rights and article 19 of the Constitution of Rwanda was violated. These two elements alone support the finding of the Working Group that the partial non-observance of Ms. Uwimana's and Ms. Mukakibibi's right to a fair trial has been of sufficient gravity so as to render their detention arbitrary. Having established the arbitrary character of detention under category III, the Working Group does not need to delve into the additional counts of procedural violations as put forward by the source.

Disposition

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

> The detention of Ms. Uwimana and Ms. Mukakibibi is arbitrary, being in violation of the provisions contained in articles 9, 10, 11, paragraph 1, and 19 of the Universal Declaration of Human Rights and article 9, paragraphs 1 and 2, article 14, paragraphs 2 and 3 (a), and article 19, paragraph 2, of the International Covenant on Civil and Political Rights. The detention falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

67. The Working Group requests the Government of Rwanda to proceed with the immediate release of Ms. Uwimana and Ms. Mukakibibi, to ensure that they are in good health and to promptly provide them with adequate reparation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights. The Working Group recommends that the Government of Rwanda bring into conformity the provisions of its Penal Code that may jeopardize the exercise of the right to freedom of opinion and expression. Finally, the Working Group invites the Government to better cooperate with its procedures in the future pursuant to the relevant resolutions of the Human Rights Council.

[Adopted on 29 August 2012]