

Summary of Petition to the United Nations Working Group on Arbitrary Detention

In the Matter of

Diane Shima Rwigara and Adeline Rwigara,

Citizens of the Republic of Rwanda

v.

Government of the Republic of Rwanda

September 21, 2018

Diane Shima Rwigara (hereinafter “Diane”) and Adeline Rwigara (hereinafter “Adeline”) are being arbitrarily detained by the Government of the Republic of Rwanda (hereinafter “Rwanda” or the “Government”). Diane’s and Adeline’s detention is in violation of each woman’s fundamental rights under Articles 7, 9, 10, 14, 17, 19, and 22 of the International Covenant on Civil and Political Rights (“ICCPR”); Articles 5, 9, 10, 12, 19, and 20 of the Universal Declaration of Human Rights (“UDHR”); Principles 2, 4, 6, 10, 11, 18, 21, 32, 36, 37, 38, and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the “Body of Principles”); and Rules 43 and 119 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”), and, additionally, in violation of Diane’s fundamental rights under Articles 2, 3, and 25 of the ICCPR; and Article 21 of the UDHR.

Background

Since Paul Kagame was elected as Rwanda’s President in 2003, his administration has achieved socioeconomic gains but has failed to guarantee civil liberties for the Rwandan public, routinely silencing opposition in the media, politics, and civil society. Rwanda regularly turns to dubious criminal charges and uses overly broad laws to unduly limit political opposition, freedom of expression, and basic human rights. President Kagame has particularly targeted those who have mounted the most serious political campaigns against him, including jailing multiple former presidential candidates. In targeting voices of dissent, the Kagame Administration exercises significant control over Rwanda’s judiciary, stacking the deck against those who oppose the Administration and depriving them of basic liberties and fairness.

Statement of Facts

Diane is one such former presidential candidate, though her family’s relationship with President Kagame dates to the early 1990s. Diane is the daughter of and Adeline is the wife of the late Rwandan businessman Assinapol Rwigara (hereinafter “Assinapol”), a Tutsi entrepreneur who built a fortune in industry and real estate and who backed the Rwandan Patriotic Front (“RPF”) during its campaign to end the genocide of 1994. Once an ally of President Kagame, Assinapol became the subject to government scrutiny in 2007 when reports linked him with certain opponents of the Kagame Administration. Subsequently, in February 2015, Assinapol was killed in a roadside accident in Kigali. Police claim that Assinapol was

killed when his car was hit by a truck and refused to conduct an investigation, though the evidence instead suggested he was murdered, likely for political reasons.

In late 2016, Diane emerged as one of the most prominent critics of the Kagame Administration, commenting on issues of poverty, lack of due process, and restrictions on freedom of expression. In May 2017, Diane announced her intention to run against President Kagame in the presidential election to take place in August 2017, vying to become Rwanda's first female president.

Diane was immediately met with a campaign of harassment and intimidation. Two days after she announced her campaign, digitally altered nude photographs of Diane appeared online, for which Diane and others believe the Government is responsible. In the ensuing weeks, Diane's supporters faced harassment and intimidation while collecting the signatures necessary to qualify Diane for the presidential ballot. In July 2017, the Government announced that Diane was barred from appearing on the ballot because she had allegedly failed to submit sufficient signatures to qualify despite the fact that she had submitted nearly twice the requisite number. The following week, the Government raided the offices of the Rwigaras' company, the Premier Tobacco Co., ordered the closing of its factory, and demanded payment of more than RWF7 billion (\$7 million) in back taxes, despite presenting no evidence of the alleged debt. After eliminating his opponents from the race, on August 5, 2017, President Kagame was reelected to a third term in office (after having successfully campaigned in 2015 to lift the Rwandan Constitution's term limits, which, if not lifted, would have prevented Kagame from running for a third term), allegedly with more than 98% of the vote.

The Government's harassment of the Rwigara family continued, and on August 29, 2017, a troop of police officers and members of the Presidential Guard raided the Rwigara compound in Kigali. The police were violent, breaking Adeline's leg and back and ransacking the compound. They searched the home for several hours, ultimately confiscating money, jewelry, phones, computers, and documents without either announcing charges against the family or presenting official charging documents for them to review. Over the following weeks, having announced that Diane was being investigated for allegedly forging voter signatures and the Rwigaras were facing tax evasion charges for their businesses, the police held Diane and Adeline (and Diane's sister, Anne) on house arrest. The three faced prolonged interrogation, as the police brought them in most days for approximately 16 hours per day without food. The Rwigaras spent the first three days of their house arrest handcuffed, and they were not allowed to speak with their lawyers over the ensuing three weeks, even after Diane demanded that counsel be present during the interrogations (a right guaranteed by the Rwandan Code of Criminal Procedure). Meanwhile, President Kagame publicly accused Diane and her family of misconduct and threatened in one speech, "Even if you have been or wanted to become president of the country, you are not immune from prosecution. Those who are listening had better be hearing me."

On September 23, 2017, the police formally arrested Adeline, Diane, and Anne. That month, the Rwigaras' family businesses and personal bank accounts were closed and their money confiscated. Adeline, Diane, and Anne spent the first five days after their arrest in solitary confinement, where they were denied visitation, deprived of food or medicine, and often held in handcuffs. They were also denied access to legal counsel for the first seven days of their detention, in violation of Rwandan law. When prosecutors finally announced the charges against

them, they did not include tax evasion; rather, Diane was charged with forgery and Adeline with discrimination and sectarian practices, and all three with inciting insurrection. The incitement charges against Diane apparently stemmed from her criticism of the Kagame Administration, while Adeline and Anne were charged on the basis of private conversations that had taken place over WhatsApp (without public dissemination) and did not include any incitement to violence.

When the Rwigaras appeared before a judge at their bail hearing on October 23, 2017, the court denied bail to Diane and Adeline but dropped the charges against Anne. The court concluded that Diane and Adeline were a flight risk (despite the government keeping their passports and surveilling their home) and alleged that they might tamper with evidence (which the government had already collected). Diane's and Adeline's bail appeal was denied by the High Court on November 16, 2017, and they have remained in maximum security prison since then. In the following months, President Kagame continued to tell the public that Diane deserved to be in prison, and the Government auctioned off the family tobacco company for approximately half of its fair market value.

After more than one year of detention, Diane's and Adeline's cases have still not gone to trial. On May 7, 2018, the date of the first hearing for Diane, Adeline, and four co-defendants who live abroad, the High Court demanded that the co-defendants be tried in person, offering no indication of how they might be forcibly returned to Rwanda—despite the fact that the case had already sat dormant for months. Two subsequent hearings were adjourned, with the prosecution asking for time to gather more information on the co-defendants, and as of the date of this petition, the trial has been delayed until at least September 24, 2018. Despite these continual and prolonged delays, Diane and Adeline still have not had an opportunity to review their case file or the evidence against them, and they continue to be held in maximum security prison. There, they are housed in small, filthy cells and allowed visitation for only 15 minutes per week, and they continue to rely on family members to provide their food.

Legal Analysis

Diane's and Adeline's detention constitutes an arbitrary deprivation of liberty under Categories II and III as defined by the Working Group on Arbitrary Detention (the "Working Group"), and, additionally, Diane's detention constitutes an arbitrary deprivation of liberty under Category V as defined by the Working Group.

Deprivation of Liberty under Category II

Diane's and Adeline's detention is arbitrary under Category II because they were arrested and detained for exercising their freedom of opinion and expression and freedom of association, and, additionally, Diane was arrested and detained for exercising her freedom of political participation.

Rwanda violated Diane's and Adeline's freedom of opinion and expression, guaranteed by Article 19 of the ICCPR and Article 19 of the UDHR. Under Article 19(2) of the ICCPR, "Everyone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." The U.N.

Human Rights Committee (“UNHRC”) has recognized this right to grant people the ability “to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.” A government may restrict this freedom only when both provided by law and necessary for the respect of the rights or reputations of others, protection of national security, or public order, health, or morals. None of these exceptions is applicable in this matter. Instead, Rwanda violated Diane’s and Adeline’s rights by arresting and detaining them on the basis of their criticism of the Government, including in private conversations.

Rwanda also violated Diane’s and Adeline’s right to freedom of association. Article 22(1) of the ICCPR states, “Everyone shall have the right to freedom of association of others.” Article 20 of the UDHR provides a similar guarantee. The UNHRC has noted that “the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to” the right to participate in public affairs. In this case, the Kagame Administration has sought to criminalize association with and support of Diane and her political campaign. Targeting the Rwigara family and Diane’s other supporters constitutes a violation of the right to freedom of association.

Rwanda also violated Diane’s right to freedom of political participation in violation of Article 25(a) of the ICCPR and Article 21(1) of the UDHR. Article 25(a) of the ICCPR guarantees each citizen’s right “to take part in the conduct of public affairs, directly or through freely chosen representatives.” Article 55 of the Rwandan Constitution further recognizes each Rwandan’s “right to join a political organization of his or her choice.” The UNHRC has further emphasized the right of each person to engage in political activity by debating public affairs, advertising political ideas, publishing political material, and campaigning for election. Diane’s detention was a direct response to her attempts to run for office and to lead a human rights campaign. The Government crafted false claims against Diane to end her political campaign and, after she initiated the People Salvation Movement, to remove her from civic life entirely. These charges send a loud and clear message that any opposition to President Kagame’s presidency will not be tolerated.

Deprivation of Liberty under Category III

Diane’s and Adeline’s detention is arbitrary under Category III of the Working Group’s methods because Rwanda denied Diane and Adeline their due process rights under Articles 7, 9, 10, 14, and 17 of the ICCPR; Articles 5, 9, 10, and 12 of the UDHR; Rules 43 and 119 of the Mandela Rules; and Principles 2, 4, 6, 10, 11, 18, 21, 32, 36, 37, 38, and 39 of the Body of Principles.

Rwanda violated Diane’s and Adeline’s right to freedom from torture. Article 7 of the ICCPR guarantees, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment,” and Article 10(1) emphasizes the need for “respect for the inherent dignity of the human person.” These rights are reiterated in Article 5 of the UDHR, Principle 6 of the Body of Principles, and Rule 43 of the Mandela Rules, along with other international covenants and Article 14 of the Rwandan Constitution. Article 14(3)(g) of the ICCPR further prohibits public officials from inflicting physical or mental pain or suffering to coerce a confession, and Principle 21(2) of the Body of Principles includes a similar prohibition. Rwanda tortured Diane and Adeline both physically and mentally. They broke Adeline’s back and leg during their initial

search of the Rwigara home, made threats of violence toward both Diane and Adeline, and forced them to sit in detention for 16 hours a day without food. After taking Diane and Adeline to jail, the Rwandan police denied them food and locked each woman up in small cells under unsanitary conditions. Furthermore, they denied medical care to Adeline despite her repeated requests for care.

In violation of Articles 9(1) and 9(2) of the ICCPR, Article 9 of the UDHR, and Principles 2 and 36(2) of the Body of Principles, Rwanda also denied Diane and Adeline their right not to be subjected to arbitrary arrest. Diane and Adeline were never presented with an arrest warrant, and they were not informed of the charges against them for several days after their arrest. Then, at the time of their bail hearing, the government changed those charges without previously notifying Diane and Adeline.

Rwanda further violated Article 9(3) and 9(4) of the ICCPR and Principles 4, 11, 32(a), and 37 of the Body of Principles by denying Diane and Adeline their right to *habeas corpus*. Those provisions require that detainees “be brought promptly before a judge.” The UNHRC has interpreted “promptly” to mean within 48 hours, other than in exceptional circumstances. Here, Diane and Adeline were initially detained on August 28, 2017, and formally arrested on September 23, 2017. This deliberate delay by Rwanda ensured that Diane and Adeline would be punished, harassed, and silenced before setting foot in court. They were not allowed before a judge until October 23, 2017—30 days after their arrest and nearly two months after their initial detention.

In violation of Article 9(3) of the ICCPR and Principles 38 and 39 of the Body of Principles, Rwanda also violated Diane’s and Adeline’s right to release pending trial. In this case, the Government waited a full month after Diane’s and Adeline’s formal arrest to bring them before a judge. At that hearing, the Court maintained their detention, regurgitating the Government’s claims that Diane and Adeline would leave the country (despite the fact that the government had confiscated their passports and their home was under round-the-clock surveillance) and would tamper with evidence (which the Government had already collected). In light of such an insufficient justification, the denial of bail in this case amounted to a violation of Diane’s and Adeline’s rights under international law.

Rwanda further violated Diane’s and Adeline’s right to be tried without undue delay in violation of Article 14(3)(c) of the ICCPR and Principle 38 of the Body of Principles. The UNHRC has emphasized that “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.” Diane and Adeline, meanwhile, did not receive even an initial hearing for nearly six months after their bail hearing, and since May 2018, the Court has repeatedly agreed to postpone the trial at the prosecution’s request. As of the filing of this petition—more than one year after Diane and Adeline were initially detained—they still have not had a trial.

In violation of Article 14(3)(b) and (d) of the ICCPR, Principles 18(1) and (3) of the Body of Principles, and Rule 119 of the Mandela Rules, Rwanda denied Diane and Adeline their right to defense and to communicate with counsel. Since being detained in August 2017, the Rwigaras still have not had an opportunity to present a defense. The Government has also refused to allow their attorneys to be present during interrogations, and the Diane and Adeline

have been denied any access to counsel for portions of their detention. Despite the repeated trial delays, the Government continues to deny Diane's and Adeline's counsel an adequate opportunity to review evidence and mount a defense.

Rwanda has also denied Diane's and Adeline's right not to be subjected to unlawful searches of their home, in violation of Article 17 of the ICCPR and Article 12 of the UDHR. The Rwandan police never presented a search warrant for the Rwigaras to review, instead ransacking their house and confiscating personal items without justification.

Deprivation of Liberty under Category V

Diane's detention is also arbitrary under Category V of the Working Group's methods because Rwanda discriminated against Diane because of her gender in violation of Article 2 and 3 of the ICCPR. Article 3 of the ICCPR guarantees the right to equality between men and women in the enjoyment of their civil and political rights, while Article 2 ensures that rights recognized in the ICCPR will be respected and will be available to all people in the states that have ratified the ICCPR. A significant component of Diane's political work was her support of women's rights in Rwanda, and she sought to become the first woman elected President of Rwanda. Immediately after she announced her campaign, digitally altered photos of Diane appeared on the internet, likely posted by Government actors seeking to threaten, harass, and retaliate against Diane. This smear campaign has never been used by the Kagame Administration against male opponents, and it suggests that the Government targeted Diane in part because she is a woman who campaign on behalf of women's rights.

Conclusion

For the foregoing reasons, we ask the Working Group to find that Diane's and Adeline's detention constitutes an arbitrary deprivation of liberty.