

**PETITION TO:**

**UNITED NATIONS**

**WORKING GROUP ON ARBITRARY DETENTION**

Chair-Rapporteur: Mr. Seong-Phil Hong (Republic of Korea)  
Vice-Chair on follow-up: Ms. Leigh Toomey (Australia)  
Vice-Chair on communications: Ms. Elina Steinerte (Latvia)  
Mr. José Guevara (Mexico)  
Mr. Sètonджи Adjovi (Benin)

**HUMAN RIGHTS COUNCIL  
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of  
**Diane Shima Rwigara and Adeline Rwigara**  
Citizens of the Republic of Rwanda

v.

Government of the Republic of Rwanda

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Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31  
2006/102, 6/4, and 24/7

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September 21, 2018

**QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION**

**Ms. Diane Shima Rwigara (Sections I through III)**

**I. IDENTITY**

1. *Family Name:* Rwigara
2. *First Name:* Diane Shima
3. *Sex:* Female
4. *Age at the Time of Detention:* 36
5. *Nationality:* Rwandan
6. (a) *Identity document (if any):* Unknown  
(b) *Place of Issue:* N/A  
(c) *On (date):* N/A  
(d) *No.:* N/A
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Diane Shima Rwigara (hereinafter “Diane”) is a businesswoman and the daughter of Adeline Rwigara and the late Assinapol Rwigara, one of the wealthiest businessmen in Rwanda before his death in 2015. Prior to her arrest, Diane helped lead her family’s real estate business. She also ran for President of Rwanda in 2017 before her disqualification and subsequent arrest.
8. *Address of usual residence:*

██████████  
████████████████████

**II. ARREST**

1. *Date of arrest:* August 29, 2017 (house arrest); September 23, 2017 (formal arrest).
2. *Place of arrest (as detailed as possible):* The Rwigaras’ home, located at ██████████  
████████████████████
3. *Did they show a warrant or other decision by a public authority?* No
4. *Authority who issued the warrant or decision:* N/A

5. *Relevant legislation applied (if known)*: On the day of the initial search and house arrest of Diane and Adeline Rwigara, the police publicly announced charges of tax evasion (Article 369 of the Rwandan Penal Code) and forgery (Articles 609 and 610 of the Rwandan Penal Code) against Diane, in addition to charges against Diane's mother, Adeline. At the time of their formal arrest, Diane and Adeline no longer faced tax evasion charges, but Diane was charged with both forgery and inciting insurrection (Article 463 of the Rwandan Penal Code).

### **III. DETENTION**

1. *Date of detention*: Diane and Adeline Rwigara (along with Diane's sister, Anne Rwigara) were initially placed on house arrest on August 29, 2017. After remaining on house arrest for approximately three weeks and facing daily and prolonged interrogation during that period, Diane and Adeline were formally arrested and detained on September 23, 2017.
2. *Duration of detention (if not known, probable duration)*: The house arrest lasted from August 29 to September 23, 2017. The subsequent detention began September 23, 2017, and is continuing as of the date of this communication.
3. *Forces holding the detainee under custody*: Government of the Republic of Rwanda
4. *Places of detention (indicate any transfer and present place of detention)*: Diane and Adeline Rwigara were initially detained at their home in Kigali. After their formal arrest on September 23, 2017, they were brought to Kigali Central Prison. Diane and Adeline have since been transferred to Mageragere Prison outside of Kigali.
5. *Authorities that ordered the detention*: Government of the Republic of Rwanda; Nyarugenge Intermediate Court; Kigali High Court
6. *Reasons for the detention imputed by the authorities*: Diane is currently standing trial for charges of inciting insurrection (Article 463 of the Rwandan Penal Code), and forgery (Articles 609 and 610 of the Rwandan Penal Code).
7. *Relevant legislation applied (if known)*: Articles 463, 609, and 610 of the Rwandan Penal Code

### **Ms. Adeline Rwigara (Sections IV through VI)**

#### **IV. IDENTITY**

1. *Family name*: Rwigara
2. *First name*: Adeline
3. *Sex*: Female

4. *Age at the time of detention:* 58
5. *Nationality:* Rwandan
6. (a) *Identity document (if any):* Unknown  
(b) *Place of issue:* N/A  
(c) *On (date):* N/A  
(d) *Number:* N/A
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Adeline Rwigara (hereinafter “Adeline”) is a businesswoman, the widow of Assinapol Rwigara, and the mother of Diane, Anne, Aristide, and Arioste Rwigara. Prior to her arrest, Adeline helped lead her family’s real estate business.
8. *Address of usual residence:*

██████████  
████████████████████

**V. ARREST**

1. *Date of arrest:* August 29, 2017 (house arrest); September 23, 2017 (formal arrest)
2. *Place of arrest (as detailed as possible):* The Rwigaras’ home, located at ██████████  
████████████████████
3. *Did they show a warrant or other decision by a public authority?* No
4. *Authority who issued the warrant or decision:* N/A
5. *Relevant legislation applied (if known):* On the day of the initial search and house arrest of Diane and Adeline Rwigara, the police publicly announced charges of tax evasion (Article 369 of the Rwandan Penal Code) against Adeline, in addition to charges against her daughter, Diane. At the time of their formal arrest, Diane and Adeline no longer faced tax evasion charges, but Adeline was charged with discrimination and sectarian practices (Article 136 of the Rwandan Penal Code) and inciting insurrection (Article 463 of the Rwandan Penal Code).

**VI. DETENTION**

1. *Date of detention:* Diane and Adeline Rwigara (along with Diane’s sister, Anne Rwigara) were initially placed on house arrest on August 29, 2017. After remaining on house arrest for approximately three weeks and facing daily and prolonged interrogation during that period, Diane and Adeline were formally arrested and detained on September 23, 2017.

2. *Duration of detention (if not known, probable duration):* The house arrest lasted from August 29 to September 23, 2017. The subsequent detention has lasted from September 23, 2017, to the date of this communication.
3. *Forces holding the detainee under custody:* Government of the Republic of Rwanda
4. *Places of detention (indicate any transfer and present place of detention):* Diane and Adeline Rwigara were initially detained at their home in Kigali. After their formal arrest on September 23, 2017, they were brought to Kigali Central Prison. Diane and Adeline have since been transferred to Mageragere Prison outside of Kigali.
5. *Authorities that ordered the detention:* Government of the Republic of Rwanda; Nyarugenge Intermediate Court; Kigali High Court
6. *Reasons for the detention imputed by the authorities:* Adeline is currently standing trial for charges of discrimination and sectarian practices (Article 136 of the Rwandan Penal Code) and inciting insurrection (Article 463 of the Rwandan Penal Code).
7. *Relevant legislation applied (if known):* Articles 136 and 463 of the Rwandan Penal Code

**VII. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY**

A. Statement of Facts

Part 1 of this Statement of Facts details the current political climate in Rwanda to illustrate the Rwandan government's pattern of silencing opposition through the abuse of human rights. Part 2 describes the circumstances surrounding Diane and Adeline's arrests and continuing detention.

1. Rwanda's Pattern of Political Repression and Human Rights Abuses
  - a. Genocide of 1994 and President Kagame's Ascent

The specter of the 1994 genocide still dominates Rwandan politics and public life. The violence of that spring and summer emerged from longstanding tensions between the country's two ethnic groups, the Hutus and the Tutsis. In the preceding years, a Hutu-controlled government implemented discriminatory policies that led many Tutsis to flee to neighboring countries. In the early 1990s, the Rwandan Patriotic Front ("RPF") (a group mostly consisting of Tutsi exiles) invaded Rwanda, and a ceasefire was imposed between the RPF and the Rwandan government in 1993.

On April 6, 1994, the ceasefire ended when a plane carrying then-President Juvenal Habyarimana (a Hutu) was shot down. Varying accounts of the attack assign responsibility to Hutu extremists and, alternatively, to the RPF, though President Kagame strongly contests the latter

narrative. In the 100 days that followed, Hutu militias killed more than 800,000 of their countrymen, the vast majority of whom were Tutsis.<sup>1</sup> The RPF ended the violence by capturing Kigali in July of 1994, marking the beginning of President Kagame’s period of influence at the forefront of a Tutsi-dominated government. He was first elected President in 2003, and since then, he has helped Rwanda to achieve significant socioeconomic gains.

b. Rwandan Government’s Actions to Limit Freedom of Expression and Punish Political Opposition

The Kagame Administration, however, has failed to guarantee civil liberties for the Rwandan public, routinely silencing opposition in the media, politics, and civil society. Human rights monitors have noted and condemned Rwanda’s restrictions of basic liberties and strict control over dissenting voices and specifically noted that dissenters are accused of violence and face legal trouble.<sup>2</sup> Following a visit to Rwanda in early 2014, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association stated:

The Government of Rwanda favours ‘consensus politics’ and discourages public criticism and dissent. I am concerned that there is no genuine pluralistic society. Indeed it appears that every dissenting political leader who rejects this consensus approach gets into legal trouble . . . . And in all such cases, these politicians are accused of violence or having links with violent groups.<sup>3</sup>

In its 2018 country report on Rwanda, Human Rights Watch discussed the Rwandan government’s ongoing effort “to limit the ability of civil society groups, the media, international human rights organizations, and political opponents to function freely and independently or to criticize the government’s policies and practices.”<sup>4</sup> The U.S. Department of State added in its 2017 human rights report on Rwanda, “The government generally did not tolerate criticism of the presidency and government policy on security, human rights, and other matters deemed sensitive.”<sup>5</sup>

The Kagame Administration has long turned to laws barring incitement and terrorism to target political opponents and dissenters. In 2010, Victoire Ingabire, the President of the FDU-Inkingi party, was convicted of conspiracy to harm the country through war and terror, in addition

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<sup>1</sup> See, e.g., BBC News, *Rwanda genocide: 100 days of slaughter* (April 7, 2014), <http://www.bbc.com/news/world-africa-26875506>.

<sup>2</sup> In one recent instance, the UN Working Group on Arbitrary Detention found that two Rwandan journalists were arbitrarily detained based on their exercise of freedom of speech and denied their rights to a fair trial. Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session (Rwanda)*, Communication No. 25/2012, U.N. Doc. A/HRC/WGAD/2012/25 (Aug. 27–31, 2012) [hereinafter “Opinion 25/2012”], <http://hrlibrary.umn.edu/wgad/25-2012.pdf>.

<sup>3</sup> United Nations Human Rights Office of the High Commissioner, *Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the Republic of Rwanda* (Jan. 27, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14201&LangID=E>.

<sup>4</sup> Human Rights Watch, *Country Summary: Rwanda* (Jan. 2018), [https://www.hrw.org/sites/default/files/rwanda\\_2.pdf](https://www.hrw.org/sites/default/files/rwanda_2.pdf).

<sup>5</sup> U.S. Dept. of State, *Rwanda 2017 Human Rights Report* (2018), <https://www.state.gov/documents/organization/277279.pdf>.

to charges of inciting insurrection under Article 463 of the Rwandan Penal Code.<sup>6</sup> FDU-Inkingi Interim Secretary General faced the same charge under Article 463 in 2013,<sup>7</sup> as did Treasurer Leonille Gasengayire in 2016.<sup>8</sup> Also in 2011, Bernard Ntaganda, the founder of the PS-Imberakuri party, was charged with divisionism and endangering national security in response to what many viewed as a “legitimate expression” of opinion.<sup>9</sup> Both Human Rights Watch<sup>10</sup> and Amnesty International<sup>11</sup> have argued that the charges against Mr. Ntaganda and Ms. Ingabire were politically motivated.

The Kagame Administration continued to crack down on political opposition in the lead-up to the 2017 election. In the fall of 2016, numerous high-ranking members of FDU-Inkingi were arrested.<sup>12</sup> As documented by Human Rights Watch, Theophile Ntirutwa, the Kigali representative of the party, was arrested and held incommunicado for 17 days.<sup>13</sup> Ntirutwa was among a group of FDU-Inkingi who were charged in September 2016 with crimes related to state security.<sup>14</sup> By the time of the election, the Rwandan government had disqualified two candidates who had met the requirements to appear on the ballot, including Diane Rwigara, and blocked a third would-be challenger from entering the country.<sup>15</sup> After President Kagame “won” reelection with an alleged 98% of the vote, Amnesty International wrote that “the election took place in a climate of fear created by two decades of attacks on political opposition, independent media and human rights defenders.”<sup>16</sup>

The government’s actions have been repeatedly condemned by the world’s main human rights advocates (including the United Nations), which have criticized Rwanda’s use of overly broad laws to unduly limit freedom of expression. In 2012, after requesting that Rwanda “proceed with the immediate release” of two opposition leaders, the United Nations Working Group on Arbitrary Detention (“Working Group”) urged the Rwandan government to reform its laws to ensure that “safeguards [are] implemented to guarantee that [those laws] are not used to silence

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<sup>6</sup> See N.Y. Times, *Rwanda Opposition Leader Sentenced to 8 Years* (Oct. 30, 2012), <http://www.nytimes.com/2012/10/31/world/africa/rwanda-court-sentences-victoire-ingabire.html>; see also Great Lakes Post, *Rwanda: FDU-Inkingi Calls on the European Commission to Implement the Resolution Passed by the EU Parliament* (Oct. 9, 2016), <http://glpost.com/rwanda-fdu-inkingi-calls-on-the-european-commission-to-implement-the-resolution-passed-by-the-eu-parliament/>.

<sup>7</sup> FDU-Rwanda, *Rwanda: Sylvain Sibomana, FDU-Inkingi interim Secretary General, transferred to Kimironko Prison* (April 11, 2013), <http://www.fdu-rwanda.com/en/english-rwanda-sylvain-sibomana-fdu-inkingi-interim-secretary-general-transferred-to-kimironko-prison-today/>.

<sup>8</sup> RFI, *Rwanda: indignation des FDU après une nouvelle arrestation d’opposante* (Sept. 8, 2016), <http://www.rfi.fr/afrique/20160907-rwanda-indignation-fdu-arrestation-opposante-L%C3%A9onille-Gasengayire>.

<sup>9</sup> See Human Rights Watch, *Rwanda: Opposition Leader’s Sentence Upheld* (April 27, 2012), <https://www.hrw.org/news/2012/04/27/rwanda-opposition-leaders-sentence-upheld>.

<sup>10</sup> *Id.*; Human Rights Watch, *Rwanda: Eight-year Sentence for Opposition Leader* (Oct. 30, 2012), <https://www.hrw.org/news/2012/10/30/rwanda-eight-year-sentence-opposition-leader>.

<sup>11</sup> Amnesty International, *Annual International Report 2014/15* (2015), <https://www.amnesty.org/en/countries/africa/rwanda/report-rwanda/>.

<sup>12</sup> Human Rights Watch, *supra* note 4.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Amnesty International, *Africa 2017/2018* (March 4, 2018), <https://www.amnesty.org/en/countries/africa/report-africa/>.

dissent or restrict the legitimate activities of political opposition,” as was the case with the two opposition leaders unduly imprisoned.<sup>17</sup>

The European Parliament has expressed a similar view. In a 2016 Resolution criticizing the conviction of Victoire Ingabire, the Parliament condemned the “acts of intimidation, arrests, detentions and prosecutions of opposition party leaders, members and activists, as well as journalists and other perceived critics of the Rwandan government, solely for expressing their views.”<sup>18</sup> The Resolution specifically targeted Article 463 of the Rwandan Penal Code, stating that it “constrains freedom of speech.”<sup>19</sup> The European Parliament added that opposition has been silenced in application of vague national laws that shall be “review[ed] and adjust[ed] in order to guarantee freedom of expression.”<sup>20</sup>

c. Rwanda’s Lack of Judicial Independence and Fair Trial Rights

In targeting voices of dissent, the Kagame Administration exercises significant control over the country’s judiciary. As Human Rights Watch has observed, the Rwandan government is particularly influential in high-profile cases involving opposition figures, in which “judges, prosecutors, and witnesses remain vulnerable to pressure from the government . . . .”<sup>21</sup> In a 2008 report, Human Rights Watch described the Rwandan judiciary in terms that remain applicable today:

Judicial authorities operate in a political context where the executive continues to dominate the judiciary and where there is an official antipathy to views diverging from those of the government and the dominant party [the RPF]. A campaign against ‘divisionism’ and ‘genocidal ideology’ imposes the risk of serious consequences on persons who question official interpretations of the past and who would prefer other than the official vision of the future.<sup>22</sup>

This lack of judicial independence is an important tool for the Kagame Administration, which brings charges against dissenters and exercises significant control over the outcome of their trials. As documented by Human Rights Watch, officials in the executive branch have applied pressure directly to members of the judiciary, in addition to pressuring potential witnesses to testify in accordance with the government’s interests.<sup>23</sup>

On top of these overarching issues, the Rwandan criminal justice system exhibits features that violate commonly recognized standards of fair trial rights. For example, there have been numerous reports of the torture of prisoners in recent years. The U.S. State Department has

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<sup>17</sup> Opinion No. 25/2012, *supra* note 2.

<sup>18</sup> European Parliament, *European Parliament resolution of 6 October 2016 on Rwanda, the case of Victoire Ingabire (2016/2910(RSP))* ¶ 5 (Oct. 6, 2016), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0378+0+DOC+XML+V0//EN&language=EN>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at ¶ 5.

<sup>21</sup> Human Rights Watch, *supra* note 9; Human Rights Watch, *supra* note 10.

<sup>22</sup> Human Rights Watch, *Law and Reality: Progress in Judicial Reform in Rwanda* (July 2008), [http://www.hrw.org/sites/default/files/reports/rwanda0708\\_1.pdf](http://www.hrw.org/sites/default/files/reports/rwanda0708_1.pdf).

<sup>23</sup> *Id.*

described allegations of the torture of prisoners in several of its annual reports on human rights in Rwanda,<sup>24</sup> and Amnesty International focused a 2012 report on several instances of extrajudicial detention and the torture of prisoners.<sup>25</sup>

## 2. Rwandan Government's Active Targeting of the Rwigara Family

### a. Ongoing Conflict and the Death of Assinapol Rwigara

Diane Rwigara is the daughter of and Adeline Rwigara is the wife of the late Rwandan businessman Assinapol Rwigara. A Tutsi entrepreneur who built a fortune in industry and real estate, Assinapol was a substantial backer of the RPF during its campaign to end the genocide in 1994. Once an ally of President Kagame, Assinapol became the subject of government scrutiny in 2007 when rumors began to circulate that he and other prominent businessmen had aligned themselves with an opposition group led by President Kagame's former spy chief, Patrick Karegeya. According to Diane, the source of that scrutiny was her father's decision to pursue business ventures without the RPF's backing and involvement.<sup>26</sup>

In February 2015, Assinapol was killed, allegedly in a roadside accident in Kigali according to the government.<sup>27</sup> The police claimed that Assinapol died when his car was struck by a truck, but the evidence on the ground called this police narrative into question.<sup>28</sup> According to the family, the damage to Assinapol's car was minor and did not match the substantial injuries that he experienced, suggesting instead that he was murdered.<sup>29</sup> The Rwigaras' call to Rwandan authorities for an investigation into the circumstances of Assinapol's death was denied.<sup>30</sup>

The Rwandan government's targeting of the Rwigara family continued in August 2015. Assinapol and Adeline's son (and Diane's brother), Aristide Rwigara, wrote an article that month publicizing the Rwandan government's order to demolish the Rwigaras' hotel, the Premier Hotel in Kigali.<sup>31</sup> While the order, from the Mayor of Kigali, cited a lack of proper permitting, Aristide wrote that construction of the hotel had followed the proper channels and that the Rwandan government had similarly targeted several other properties owned by the Rwigara family.<sup>32</sup> The

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<sup>24</sup> See, e.g., U.S. State Dept., *Rwanda 2016 Human Rights Report* (2017), <https://www.state.gov/documents/organization/265502.pdf>; U.S. State Dept., *Rwanda 2012 Human Rights Report* (2013), <https://www.state.gov/documents/organization/204366.pdf>.

<sup>25</sup> Amnesty International, *Rwanda: Shrouded in Secrecy* (2012), <https://www.amnesty.org/download/Documents/16000/afr470042012en.pdf>.

<sup>26</sup> See Tom Gardner, 'Rwanda is like a pretty girl with a lot of makeup, but the inside is dark and dirty', *The Guardian* (Aug. 4, 2017), <https://www.theguardian.com/global-development/2017/aug/04/rwanda-pretty-girl-makeup-inside-dark-and-dirty-diane-rwigara-paul-kagame-election>.

<sup>27</sup> See The East African, *Family of deceased tycoon Assinapol Rwigara petitions President Kagame* (March 14, 2015), <http://www.theeastafrican.co.ke/rwanda/News/Family-of-deceased-tycoon-Rwigara-petitions-President-Kagame/1433218-2653598-myixcwz/index.html>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See Aristide Rwigara, *State conspiracy to ruin our family-Aristide Rwigara*, *Great Lakes Voice* (August 11, 2015), <http://greatlakesvoice.com/state-conspiracy-to-ruin-our-family-aristide-rwigara>.

<sup>32</sup> *Id.*

following month, municipal authorities demolished the hotel.<sup>33</sup> At a subsequent press conference, Diane presented documentation of the Rwigaras' permits for the hotel, showing that the decision was part of an ongoing campaign to target her family and describing the police narrative of her father's death as "blatant lies."<sup>34</sup>

b. Rwanda's Suppression of Diane Rwigara's Political Activities

In late 2016, Diane became more vocal in her critiques of the Kagame Administration, commenting on issues of poverty, lack of due process, and restrictions on freedom of expression.<sup>35</sup> On May 3, 2017, Diane subsequently announced her intention to run against President Kagame in the presidential election to take place that August, vying to become Rwanda's first female president.<sup>36</sup> Diane also made women's rights a focal point of her presidential campaign.<sup>37</sup> Two days after her announcement, digitally altered nude photographs of Diane appeared online, for which Diane and others say the government is responsible.<sup>38</sup> The Rwandan government's pattern of harassment and intimidation intensified shortly after Diane began to speak out against the Kagame Administration; in December 2016, her best friend mysteriously disappeared.<sup>39</sup> In the weeks after Diane announced her presidential campaign, her supporters faced harassment and intimidation while collecting the signatures necessary to qualify Diane for the presidential ballot.<sup>40</sup>

On July 7, 2017, the Rwandan National Electoral Commission ("NEC") announced that Diane was one of three candidates that would be barred from appearing on the ballot.<sup>41</sup> The NEC claimed that Diane had failed to submit enough signatures to qualify, though her petition included nearly twice the number of signatures required.<sup>42</sup> The following week, on July 13, 2017, the Rwanda Revenue Authority ("RRA") and Criminal Investigations Division ("CID") raided the offices of the Rwigaras' company, the Premier Tobacco Co. ("Premier Tobacco"), ordered the

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<sup>33</sup> Great Lakes Voice, *City authorities sending Rwigara's business in drain, family alleges* (September 15, 2015), <http://greatlakesvoice.com/city-authorities-sending-rwigaras-business-in-drain-family-alleges>.

<sup>34</sup> *Id.*

<sup>35</sup> See Amnesty International, *Rwanda: Ensure fair trial for former presidential aspirant* (May 22, 2018), <https://www.amnesty.org/download/Documents/AFR4784642018ENGLISH.pdf>.

<sup>36</sup> See Diane Shima Rwigara, *I wanted to be Rwanda's first female president. Then fake nude photos appeared online.*, The Washington Post (August 2, 2017), <https://www.washingtonpost.com/news/global-opinions/wp/2017/08/02/what-happened-when-i-tried-to-run-to-become-rwandas-first-female-president/>.

<sup>37</sup> Lepapa, Naipanoi *Who is Diane Rwigara, Rwanda's First Female Independent Presidential Candidate?*, The African Exponent (May 14, 2017) <https://www.africanexponent.com/post/8365-we-are-in-the-thick-of-revolution-in-africa>.

<sup>38</sup> See Diane Shima Rwigara, *I wanted to be Rwanda's first female president. Then fake nude photos appeared online.*, The Washington Post (August 2, 2017), <https://www.washingtonpost.com/news/global-opinions/wp/2017/08/02/what-happened-when-i-tried-to-run-to-become-rwandas-first-female-president/>.

<sup>39</sup> See Gardner, *supra* note 26.

<sup>40</sup> See Amnesty International, *Rwanda: Decades of Attacks, Repression, and Killings Set the Scene for Next Month's Election* (July 7, 2017), <https://www.amnesty.org/en/press-releases/2017/07/rwanda-decades-of-attacks-repression-and-killings-set-the-scene-for-next-months-election/>.

<sup>41</sup> See VOA News, *Three Rwandan Presidential Candidates Disqualified Amid Criticism* (July 7, 2017), <https://www.voanews.com/a/three-rwandan-presidential-candidates-disqualified/3933118.html>.

<sup>42</sup> *Id.*

closing of its factory, and demanded payment of more than RWF7 billion (more than \$7 million) in back taxes.<sup>43</sup> The authorities presented no evidence documenting this alleged debt.<sup>44</sup>

After being blocked from launching a presidential campaign, Diane announced the People Salvation Movement on July 14, 2017, seeking to continue her campaign in support of democracy in Rwanda.<sup>45</sup> At the press conference announcing the new activist group, the People Salvation Movement, Diane made comments critical of the Kagame Administration.<sup>46</sup> Again, digitally altered photos of Diane appeared online.<sup>47</sup> Diane described the photos as “one of many tactics that have been used to silence me.”<sup>48</sup> In the ensuing months, Diane remained a vocal critic of the Kagame Administration, claiming that President Kagame had undermined the country’s democratic system through his administration’s disregard for the people’s civil rights.<sup>49</sup>

Shortly thereafter, on August 5, 2017, President Kagame was reelected to a third seven-year term with allegedly more than 98% of the vote, extending his 17 years in power.<sup>50</sup> Having successfully campaigned to revise the Rwandan Constitution’s presidential term limits in 2015 (which would have prevented him from running in 2017), President Kagame will have the opportunity to run twice more, in 2024 and 2029.<sup>51</sup>

### 3. Circumstances of Diane Rwigara’s and Adeline Rwigara’s Unjust Arrest and Detention

#### a. Unjust Arrests

Rwandan police continued to escalate their harassment of the Rwigara family in late August 2017. On August 29, 2017, a troop of CID officers and members of the Presidential Guard (mostly dressed in civilian clothing) arrived at the Rwigaras’ family home.<sup>52</sup> Diane’s brother, Arioste Rwigara, began to drive out of the compound, which includes two houses where the Rwigaras’ extended family lives; the police held him at gunpoint and forced him to allow them to drive his car into the compound.<sup>53</sup> The police were violent, breaking Adeline’s leg and back and

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<sup>43</sup> Document from AB (June 5, 2018).

<sup>44</sup> *Id.*

<sup>45</sup> See Diane Shima Rwigara, *I wanted to be Rwanda’s first female president. Then fake nude photos appeared online*, The Washington Post (August 2, 2017), <https://www.washingtonpost.com/news/global-opinions/wp/2017/08/02/what-happened-when-i-tried-to-run-to-become-rwandas-first-female-president/>.

<sup>46</sup> See Amnesty International, *supra* note 35.

<sup>47</sup> See Diane Shima Rwigara, *I wanted to be Rwanda’s first female president. Then fake nude photos appeared online*, The Washington Post (August 2, 2017), <https://www.washingtonpost.com/news/global-opinions/wp/2017/08/02/what-happened-when-i-tried-to-run-to-become-rwandas-first-female-president/>.

<sup>48</sup> See Stephanie Busari and Torera Idowu, *Fake nude photos were used to ‘silence me’, disqualified Rwandan candidate says*, CNN (August 5, 2017), <https://www.cnn.com/2017/08/04/africa/rwanda-election-nude-photos-candidate/index.html>.

<sup>49</sup> See Gardner, *supra* note 26.

<sup>50</sup> See BBC News, *Rwanda election: President Paul Kagame wins by landslide* (August 5, 2017), <http://www.bbc.co.uk/news/world-africa-40822530>.

<sup>51</sup> See Human Rights Watch, *Rwanda: Politically Closed Elections* (August 18, 2017), <https://www.hrw.org/news/2017/08/18/rwanda-politically-closed-elections>.

<sup>52</sup> Conversation with BC (May 8, 2018).

<sup>53</sup> *Id.*

ransacking the compound.<sup>54</sup> They separated the family members from one another and searched the home for the next 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.<sup>55</sup>

In the following days, police claimed that the Rwigaras were not under arrest but that Diane was under investigation for allegedly forging supporters' signatures in her presidential campaign and she and her family members were under investigation for alleged tax evasion related to Premier Tobacco.<sup>56</sup> The police also told reporters that Diane, Adeline, and Diane's sister, Anne Rwigara, had been summoned on tax evasion charges.<sup>57</sup> Adeline, Diane, and Anne faced police interrogation for the next several weeks, during which they were brought to the CID offices most days for approximately 16 hours per day and deprived of food.<sup>58</sup> Having already suffered injuries during the initial police raid, Adeline developed stomach issues as a result of this food deprivation during the prolonged interrogations.<sup>59</sup> The Rwigaras spent the first three days of their house arrest handcuffed, and they were not allowed to speak with lawyers over the ensuing three weeks—even after Diane demanded that counsel be present during the interrogations<sup>60</sup> pursuant to her right guaranteed by the Rwandan Code of Criminal Procedure.<sup>61</sup> Meanwhile, President Kagame made public statements openly accusing Diane and her family of misconduct, threatening in one speech (translated from Kinyarwanda), “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.”<sup>62</sup>

The police's attention extended to Diane's supporters in the days after the police raided the Rwigaras' home. On September 12, 2017, police arrested a supporter in his home, where they found T-shirts in support of Diane.<sup>63</sup> He was eventually released after being held for five days at

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> See Clement Uwiringiyimana, *Critic of Rwandan president taken from home by police: brother* (August 30, 2017), <https://www.reuters.com/article/us-rwanda-opposition/critic-of-rwandan-president-taken-from-home-by-police-brother-idUSKCN1BA1DM>; see also The East African, *Rwanda: Where is Diane Rwigara and Her Family* (Aug. 31, 2017), <http://allafrica.com/stories/201708310629.html>.

<sup>57</sup> See KT Press, *Police finds Diane Rwigara hiding at her home* (September 2017), <http://ktpress.rw/2017/09/police-finds-diane-rwigara-hiding-at-her-home/>.

<sup>58</sup> See Amnesty International, *supra* note 35.

<sup>59</sup> Conversation with BC (May 8, 2018).

<sup>60</sup> *Id.*

<sup>61</sup> Rwanda, Law No. 30/2013 of 24/05/2013 Relating to the Code of Criminal Procedure Art. 39(May 24, 2013) [hereinafter “Rwandan Code of Criminal Procedure”]: “Any person held in custody by the Judicial Police shall have the right to legal counsel and to communicate with him/her.”

<sup>62</sup> Document from AB (June 5, 2018); see also Igihe, *Perezida Kagame yakomoje ku banyereza umutungo wa leta bakidegembya* (August 31, 2017), <http://igihe.com/amakuru/u-rwanda/article/perezida-kagame-yakomoje-ku-banyereza-umutungo-wa-leta-bakidegembya>.

<sup>63</sup> See Human Rights Watch, *Rwanda: Post-Election Political Crackdown* (September 2017), <https://www.hrw.org/news/2017/09/28/rwanda-post-election-political-crackdown>.

an undisclosed location, and other Rwigara family members were similarly arrested and held at unknown locations.<sup>64</sup>

Several days later, on September 23, 2017, the police formally arrested Adeline, Diane, and Anne.<sup>65</sup> That month, the Rwigaras' family businesses and personal bank accounts were closed and their money confiscated.<sup>66</sup> For the first five days after their arrest, Adeline, Diane, and Anne were each held in solitary confinement, where they were denied visitation, deprived of food and medication, and often kept shackled.<sup>67</sup> Though the authorities ultimately allowed family members to begin delivering food to them, they continued to be held in solitary confinement for 30 days.<sup>68</sup> They were ultimately denied access to legal counsel for the first seven days of their detention in violation of Rwandan law.<sup>69</sup>

When prosecutors announced the charges against them (and four co-defendants in absentia, including Adeline's sister) ten days later, the tax charges had fallen away; Diane was instead charged with forgery, Adeline with discrimination and sectarian practices, and all three with inciting insurrection.<sup>70</sup> The incitement charges against Diane stemmed from the comments she made critiquing President Kagame as she launched the People Salvation Movement; at a press conference, one prosecutor explained, "She said that people are dying of poverty in Rwanda; this is a false claim aimed at insurrection."<sup>71</sup> The charges against Adeline, Anne, and the remaining co-defendants focused on private conversations that had taken place over WhatsApp (and had never been disseminated publicly) and did not include any incitement to violence.<sup>72</sup>

At the family's bail hearing on October 23, 2017—the first time the Rwigaras appeared before a judge, 30 days after their arrest—the court denied bail to Diane and Adeline but dropped the charges against Anne.<sup>73</sup> During that proceeding, the court held Adeline on the basis of certain WhatsApp audio files, concluding that Diane and Adeline were flight risks (despite the government retaining their passports and surveilling their home) and alleging that they might

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<sup>64</sup> See Human Rights Watch, *Rwanda: Post-Election Political Crackdown* (September 2017), <https://www.hrw.org/news/2017/09/28/rwanda-post-election-political-crackdown>.

<sup>65</sup> See Jason Burke, *Rwandan president's challenger charged with inciting insurrection*, *The Guardian* (Oct. 4, 2017), <https://www.theguardian.com/world/2017/oct/04/critic-of-rwandan-president-charged-with-inciting-insurrection>.

<sup>66</sup> Document from AB (June 5, 2018).

<sup>67</sup> Conversation with BC (May 8, 2018).

<sup>68</sup> Document from AB (June 5, 2018); see also Clement Uwiringiyimana, *Mother of Rwandan president's challenger tells court of torture* (Oct. 13, 2017), <https://www.reuters.com/article/us-rwanda-politics/mother-of-rwandan-presidents-challenger-tells-court-of-torture-idUSKBN1CI23P>.

<sup>69</sup> Conversation with BC (May 8, 2018).

<sup>70</sup> See Burke, *supra* note 65; see also Republic of Rwanda, *Indictment of Adeline Rwigara*, RONPJ 00043/PNL KIGA/2017/JBM/FN (Nov. 20, 2017); Republic of Rwanda, *Indictment of Diane Rwigara*, RONPJ 00043/PNL KIGA/2017/JBM/FN (Nov. 20, 2017).

<sup>71</sup> See Amnesty International, *supra* note 35; see also *The Economist*, *A woman who ran against Rwanda's president is on trial* (May 26, 2018), <http://media.economist.com/news/middle-east-and-africa/21743170-diane-rwigara-and-perils-dissent-rwanda-woman-who-ran-against-rwandas>.

<sup>72</sup> See Amnesty International, *supra* note 35.

<sup>73</sup> See *The East African*, *Rwanda: Kigali Court Orders Diane Rwigara and Mother Detained* (Oct. 23, 2017), <http://allafrica.com/stories/201710240198.html>.

tamper with evidence (which the government had already collected).<sup>74</sup> Diane and Adeline, who were transferred from the police station to the Kigali Central Prison, remained in custody after the High Court denied their bail appeal on November 16, 2017, and they were transferred to a maximum security prison.<sup>75</sup>

In the ensuing months, the Rwandan government continued to target the Rwigaras and their companies. At an event commemorating the 30th anniversary of the founding of the RPF, President Kagame again referred explicitly to Diane's case and told the crowd that her imprisonment was deserved.<sup>76</sup> Meanwhile, Premier Tobacco (through Anne) sued the RRA in an effort to have its bank accounts released and its warehouses reopened.<sup>77</sup> During the pendency of that case, the RRA auctioned the company to another Rwandan tobacco company for around half of its fair market value.<sup>78</sup>

#### b. Unjust Proceedings and Detention

Diane and Adeline went to trial alongside four co-defendants—Tabitha Mugenzi (Adeline's sister), Xaverine Mukangarambe, Jean Paul Turayishimiye, and Edmund Mushija—who all live abroad.<sup>79</sup> When they were brought to their first hearing on May 7, 2018, Diane and Adeline were not informed that they would be appearing in court; rather, they believed they were merely completing certain paperwork.<sup>80</sup> When they appeared, then, they were wearing clothing that was inappropriate for a criminal trial.<sup>81</sup> At that hearing, a Rwanda High Court judge requested that the remaining defendants be brought before the tribunal to be tried in person, though the court did not elaborate on how they might be forcibly returned to Rwanda and had already waited months to raise this issue.<sup>82</sup> After an initial adjournment until May 22, 2018, the court reconvened and again adjourned the trial until July 24, 2018 to give the prosecution more time to gather information on the four co-defendants.<sup>83</sup> Subsequent proceedings further delayed the trial until September 24, 2018, the latest development as of the date of this petition.<sup>84</sup>

Throughout the limited pre-trial proceedings thus far, Diane and Adeline have not had any opportunity to review their case files, a departure from common practice in Rwandan criminal cases.<sup>85</sup> The government has also failed to share its evidence with the defense, and although the

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<sup>74</sup> Conversation with BC (May 24, 2018).

<sup>75</sup> See The East African, *Rwanda: Kagame Critic Diane Rwigara Denied Bail Again* (Nov. 21, 2017), <http://allafrica.com/stories/201711220422.html>; Document from AB (June 5, 2018).

<sup>76</sup> Document from AB (June 5, 2018).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> See The East African, *Court Wants Four More in the Rwigara Trial* (May 7, 2018), <http://allafrica.com/stories/201805080392.html>.

<sup>80</sup> Conversation with BC (May 8, 2018).

<sup>81</sup> *Id.*

<sup>82</sup> See The East African, *supra* note 79.

<sup>83</sup> See The East African, *Rwanda court adjourns Rwigara case again, pushed to July* (May 22, 2018), <http://www.theeastafrican.co.ke/news/ea/Rwigara-case-adjourned-again--pushed-to-July/4552908-4575020-jwuxqq/index.html>.

<sup>84</sup> @ShimaRwigara, Twitter (Sept. 9, 2018, 6:26 a.m.), <https://twitter.com/ShimaRwigara/status/1038780592085770240>.

<sup>85</sup> Conversation with BC (May 24, 2018).

trial is public, the court allowed the prosecution to play certain WhatsApp audio files in a closed courtroom, despite the fact that the files' contents were innocuous.<sup>86</sup> Furthermore, the government has allowed viewers to observe the proceedings, but all audience members are required to have their photos taken upon entrance into the courtroom, an unusual step for public trials in Rwanda.<sup>87</sup>

Meanwhile, Diane and Adeline were transferred in June 2018 to Mageragere Prison, where they are housed in small, filthy cells and allowed visitation for only 15 minutes per week. It was only after Diane and Adeline were transferred to the Kigali Central Prison that Adeline was first allowed to see a doctor, despite her earlier requests for medical attention. She has never visited with a doctor outside the presence of guards, reviewed her medical files, or been provided with a diagnosis explaining what is ailing her.<sup>88</sup> The prison also does not provide food to Diane or Adeline, so Arioste must deliver meals to them in the prison three times per week.

## B. Legal Analysis

### 1. Arbitrary Deprivation of Liberty under Category II

A detention is arbitrary under Category II when it results from the exercise of fundamental rights or freedoms protected under international law.<sup>89</sup> These fundamental rights include the right to freedom of opinion and expression, association, and political participation.<sup>90</sup> Diane's and Adeline's detention was and is arbitrary under Category II because it resulted from each woman's exercise of these fundamental freedoms.

#### a. Rwanda Violated Diane and Adeline Rwigara's Right to Freedom of Opinion and Expression

The right to freedom of opinion and expression is expressly protected by both international law and Rwandan law. Article 19(2) of the International Covenant on Civil and Political Rights ("ICCPR"), to which Rwanda is party, provides that "[e]veryone shall have the right to hold opinions without interference" and that "[e]veryone 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 right to freedom of expression is also protected by Article 19 of the Universal Declaration of Human Rights ("UDHR")<sup>91</sup> and Article 9(2) of the African Charter on

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> A detention is arbitrary under Category II "when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13–14 and 18–21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18–19, 21–22 and 25–27 of the International Covenant on Civil and Political Rights." *Methods of Work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/33/66 ("Revised Methods of Work"), at ¶ 8b.

<sup>90</sup> *Id.*

<sup>91</sup> *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810 (1948) [hereinafter "UDHR"] at Art. 19: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Human and Peoples' Rights ("ACHPR"),<sup>92</sup> to which Rwanda is also party.<sup>93</sup> Furthermore, according to Article 38 of the Rwandan Constitution, "[f]reedom . . . of expression [is] recognized and guaranteed by the State."

In its General Comment 34, commenting on the right to freedom of expression under the ICCPR, the United Nations Human Rights Committee ("UNHRC") said that "in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high . . . all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition."<sup>94</sup>

Article 19 of the ICCPR is of special importance for members of political opposition groups. The UNHRC has recognized that the protection of free expression must include the right to express dissenting political opinions. In its Communication No. 1128/2002, the UNHRC added that freedom of expression encompasses "the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment."<sup>95</sup> Thus, expressing views concerning public figures or a government is at the core of the right to freedom of expression.

Despite these protections under international law and Rwandan law, Diane and Adeline have been arbitrarily detained for exercising their rights to freedom of opinion and expression.

In response to Diane's and Adeline's political opposition, the Kagame Administration repeatedly attempted to punish and silence them through intimidation, harassment, and embarrassment—even prior to the detention at issue in this petition. The Kagame Administration responded to potential political opposition by harassing and intimidating Diane's supporters during her presidential ballot campaign, barring Diane from the presidential ballot and likely involvement in the release of digitally altered nude photographs of Diane. The Rwandan government, under Kagame's rule, went so far as to destroy and steal the Rwigara family's personal property—Premier Hotel and Premier Tobacco—to retaliate against Diane and Adeline. When this tactic did not work and Diane continued her political agenda with the People Salvation Movement, the Kagame Administration arrested and detained Diane and Adeline in order to guarantee their silence. Furthermore, the crimes of discrimination and sectarianism (Article 136 of the Rwandan Penal Code) and inciting insurrection (Article 463) with which Diane and Adeline have been charged specifically criminalize their speech. Although some legal restrictions on speech might be permissible in narrowly tailored situations, as discussed in subsection c below, Rwanda's use of such restrictions in this instance does not fall within the bounds of those restrictions permitted under Article 19(3) of the ICCPR.

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<sup>92</sup> Organization of African Unity, *African Charter on Human and Peoples' Rights*, June 27, 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) [hereinafter "ACHPR"] at Art. 9(2): "Every individual shall have the right to express and disseminate his opinions within the law."

<sup>93</sup> *Id.*

<sup>94</sup> See United Nations Human Rights Committee, *General Comment No. 34*, U.N. Doc. CCPR/C/G/34 ¶ 21 (September 12, 2011) [hereinafter "General Comment No. 34"].

<sup>95</sup> Communication No. 1128/2002, *Rafael Marques de Morais v. Angola*, U.N. Doc. CCPR/C/83/D/1128/2002 ¶ 6.7 (2005), <http://www.chr.up.ac.za/index.php/browse-by-country/angola/197-angola-marques-de-morais-v-angola-2005-ahrlr-3-hrc-2005.html>.

Diane's and Adeline's detention is consistent with the Kagame Administration's broader pattern of suppressing all voices critical of President Kagame, and the Rwandan government's actions against Diane and Adeline constitute a violation of each woman's right to freedom of opinion and expression.

b. Rwanda Violated Diane and Adeline Rwigara's Right to Freedom of Association

The right to freedom of association is expressly protected by both international law and Rwandan law. Article 20(1) of the UDHR provides that “[e]veryone has the right to freedom of peaceful assembly and association.” Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others.” The UNHRC has specifically called for states to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views and human rights defenders.<sup>96</sup> In General Comment No. 25 to the ICCPR, the UNHRC 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 rights protected by Article 25 [right to participate in public affairs].”<sup>97</sup> Furthermore, according to Article 39 of the Rwandan Constitution, “the right to freedom of association is guaranteed and does not require prior authorization.”

In defiance of these international and Rwandan standards and guarantees, the Kagame Administration sought to criminalize the association of supporters of Diane's presidential candidacy, as demonstrated through its inexplicable treatment of Diane and Adeline as well as their supporters. The Kagame Administration viewed Diane's political run as a threat to its power. Though Diane and Adeline have the right to associate with the political organization, and political candidate in Adeline's case, of their choice, the Kagame Administration systematically persecuted the women to punish them for involvement with Diane's presidential candidacy and later for the People Salvation Movement. The detention of Adeline was retaliation for her family ties to, and support of, Diane as an outspoken critic of the Rwandan government.

The Rwandan government's actions against Diane and Adeline constitute a violation of each woman's right to freedom of association.

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<sup>96</sup> G.A Res. 15/21, ¶ 1, U.N. Doc. A/HRC/RES/15/21 (Oct. 6, 2010), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement>.

<sup>97</sup> United Nations Human Rights Committee, *General Comment No. 25*, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Aug. 27, 1996) [hereinafter “General Comment No. 25”], [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.7&Lang=en).

c. This Case Does Not Come Within the Narrow Exceptions Under Articles 19 and 22 of the ICCPR

Articles 19<sup>98</sup> and 22<sup>99</sup> of the ICCPR provide limited exceptions to the rights to freedom of opinion and expression and association for national security, public safety and public order, and Article 22 also includes an exception for the protection of the rights and freedoms of others. These exceptions do not apply in this case. According to the three-prong test developed by the UNHRC,<sup>100</sup> in order to be permissible under international law, any limitation to such fundamental freedoms must be (1) “provided by law,” (2) for the protection of an “enumerated purpose” (e.g. national security or public order), and (3) “necessary” to achieve that purpose.<sup>101</sup>

These exceptions should be construed narrowly and, in any case, restrictions to the right to freedom of expression “may not put in jeopardy the right itself.”<sup>102</sup> The government may not merely invoke one of the enumerated exceptions, but must “specify the precise nature of the threat” posed by the protected activity,<sup>103</sup> establish a “direct and immediate connection between the expression and the threat,”<sup>104</sup> and demonstrate why the limitation was necessary. In short, general, unsupported, and pretextual allegations will not suffice as a basis for limiting the right to freedom of expression and association.<sup>105</sup>

The arrests and detention of Diane and Adeline fall outside of the narrow exceptions to the right to freedom of expression and association. Indeed, in spite of the government’s allegations that Diane’s and Adeline’s speech incited insurrection and amounted to discrimination and

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<sup>98</sup> *International Covenant on Civil and Political Rights*, G.A. Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 UNT.S. 171, entered into force on 23 March 1976, at Art. 7 [hereinafter “ICCPR”]. Article 19(3) of the ICCPR states, “The exercise of the [right to freedom of expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health and morals.”

<sup>99</sup> Article 22(2) of the ICCPR provides, “No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.” *Id.*

<sup>100</sup> *Park v. Republic of Korea*, UN Human Rights Committee, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, ¶ 10.3, (Nov. 3, 1998).

<sup>101</sup> *Shin v. Republic of Korea*, UN Human Rights Committee, Communication No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000, ¶ 7.2, (March 16, 2004).

<sup>102</sup> See General Comment No. 34, *supra* note 94.

<sup>103</sup> *Sohn v. Republic of Korea*, UN Human Rights Committee, Communication No. 518/1992, U.N. Doc. CCPR/C/54/518/1992, ¶ 10.4, (July 19, 1995).

<sup>104</sup> See *id.* at ¶ 10.4; see also General Comment No. 34, *supra* note 94, at ¶ 35.

<sup>105</sup> In *Kim v. Republic of Korea*, the UNHRC rejected the argument that punishing the distribution of materials that coincided with the policy statements of the Democratic Peoples’ Republic of Korea, was “necessary” for the protection of national security. The UNHRC noted that “North Korean policies were well known within the territory of the State party and it is not clear how the (undefined) ‘benefit’ that might arise for the DPRK [Democratic Peoples’ Republic of Korea] from the publication of views similar to their own created a risk to national security, nor is it clear what was the nature and extent of any such risk.” *Kim v. Republic of Korea*, Communication No. 574/1994, U.N. Doc. 574/1994 CCPR/C/64/D/574/1994, ¶ 12.4, (Jan. 4, 1999); see also *Sohn v. Republic of Korea*, *supra* note 103 at ¶ 10.4.

sectarianism, they never implicitly or explicitly called for violence or committed any action that would place national security, public order or public health or morals at risk, nor violate the rights or reputations of others. In fact, it is precisely this sort of speech and association which is meant to be protected by Articles 19 and 22 of the ICCPR; as the UNHCR confirmed in General Comment 34, such limitations “may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.”<sup>106</sup> Far from a genuine attempt to protect national security, the charges were a pretextual excuse to punish Diane and Adeline for expressing their critical views on the Kagame Administration’s actions and policies and for their political association intended to challenge President Kagame through peaceful elections.

d. Rwanda Violated Diane Rwigara’s Right to Freedom of Political Participation

The right to freedom of political participation is expressly protected by both international law and Rwandan law. Article 21(1) of the UDHR states that “everyone has the right to take part in the Government of his country, directly or through freely chosen representatives.” Article 25(a) of the ICCPR protects a citizen’s right “to take part in the conduct of public affairs, directly or through freely chosen representatives.” Article 55 of the Rwandan Constitution cites to each Rwandan’s “right to join a political organization of his or her choice.”

The UNHRC has confirmed that a state interferes with this right when it unreasonably restrains and censors opposition politicians from communicating political ideas. In General Comment No. 25, the UNHRC clarified that:

In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.<sup>107</sup>

In addition, Working Group jurisprudence supports this right. The Working Group has held that individuals who have been deprived of liberty “solely for their exercise of the right to freedom of association and the right to take part in the conduct of public affairs fall . . . within category II” violations.<sup>108</sup>

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<sup>106</sup> General Comment No. 34, *supra* note 94, at ¶ 23.

<sup>107</sup> General Comment No. 25, *supra* note 97, at ¶ 26.

<sup>108</sup> See *Thuy v. Gov’t of Viet Nam*, Working Grp. Arbitrary Detention, Opinion No. 46/2011, ¶¶ 21, 22, 26, Human Rights Council, 61st Sess., U.N. Doc. A/HRC/WGAD/2011/46 (Sept. 2, 2011), <http://hrlibrary.umn.edu/wgad/46-2011.html>.

Diane's detention was a direct response to her attempts to participate in the conduct of public affairs as a political candidate and a member and leader of the People Salvation Movement. The NEC's claim that Diane had failed to submit enough signatures to qualify to appear on the presidential ballot was knowingly untrue because her petition included nearly twice the number of signatures required.<sup>109</sup> The later charges against Diane were fabricated and designed to justify the end of the People Salvation Movement. Diane was vocal in her criticism of President Kagame and the Rwandan government and publicly criticized both. Additionally, Diane's arrest and detention are part and parcel of the Kagame Administration's documented pattern and practice of suppressing opposition politicians and activists. Finally, the effect of the detention of Diane is not only to punish her because of her past political participation, but also to hinder directly her further ability to exercise her right to political participation. President Kagame used Diane's detention to send a loud and clear message to the people of Rwanda that any opposition to his presidency will not be tolerated.

The Rwandan government's actions against Diane constitute a violation of her right to freedom of political participation.

## 2. Arbitrary Deprivation of Liberty under Category III

According to Category III of the Working Group's Revised Methods of Work, a deprivation of liberty is arbitrary "[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out 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."<sup>110</sup>

Due process is one of the tenets of the right to a fair trial. The minimum international standards of due process are established in the UDHR, the ICCPR, the Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment ("Body of Principles"),<sup>111</sup> the United Nations Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules")<sup>112</sup> and the ACHPR.<sup>113</sup> The Rwandan Constitution also guarantees that "[e]veryone has the right to due process of law."<sup>114</sup>

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<sup>109</sup> See VOA News, *supra* note 41. In addition, the UNHRC has confirmed that "If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy." General Comment No. 25, *supra* note 97, at ¶ 17.

<sup>110</sup> Revised Methods of Work, *supra* note 89, at Category III, paragraph c.

<sup>111</sup> *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [hereinafter "Body of Principles"].

<sup>112</sup> *Id.*, at ¶¶ 7(a) and (b).

<sup>113</sup> ACHPR, at Art. 6 ("Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained") and Art. 7 ("Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.").

<sup>114</sup> Rwandan Constitution, at Art. 29.

a. Rwanda Violated Diane and Adeline Rwigara’s Right to Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

The right to freedom from torture is well protected by international and Rwandan law. Article 7 of the ICCPR guarantees, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>115</sup> Article 10(1) of the ICCPR further provides that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>116</sup> This right is reiterated by Articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), to which Rwanda is party, Article 5 of the UDHR, Article 5 of the ACHPR, Principle 6 of the Body of Principles,<sup>117</sup> and Rule 43 of the Mandela Rules.<sup>118</sup> Article 14 of the Rwandan Constitution also prohibits “torture, physical abuse or cruel, inhuman or degrading treatment.”<sup>119</sup> Any imposition of suffering that is not severe enough to qualify as torture still constitutes cruel, inhuman or degrading treatment,<sup>120</sup> which term “should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.”<sup>121</sup> The UNHRC has stated that certain prison conditions such as the poor quality of basic necessities and services, including food, clothing and medical care, are incompatible with the right to be treated with humanity and with respect for the inherent dignity of the human person to which all persons are entitled.<sup>122</sup>

Article 14(3)(g) of the ICCPR specifically prohibits the infliction of physical or mental pain or suffering by a public official with the intention to coerce a confession.<sup>123</sup> General Comment No. 20 to Article 7 of the ICCPR provides that the prohibition in Article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.<sup>124</sup> International law’s particular concern with torture as an interrogatory tool is further reflected in the definition of torture in the CAT, which defines the term as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession,”<sup>125</sup> as well as in Principle 21(2) the Body of Principles, which guarantees that “no detained person while being interrogated shall be subject

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<sup>115</sup> ICCPR, *supra* note 98, at Art. 7.

<sup>116</sup> *Id.* at Art. 10(1).

<sup>117</sup> UDHR, *supra* note 91, at Art. 5; ACHPR, at Art. 5; Body of Principles, *supra* note 111, at Principle 2.

<sup>118</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, G.A. Res. 70/175, at 21, U.N. Doc. A/RES/70/175, Rule 43 (May 13, 1977) [hereinafter “Mandela Rules”].

<sup>119</sup> Rwandan Constitution, at Art. 14.

<sup>120</sup> M. Nowak, *UN Covenants on Civil and Political Rights: CCPR Commentary* 445, 2nd ed., Kehl am Rhein: Engel, 163 (2005).

<sup>121</sup> Body of Principles, *supra* note 111, at Principle 6(1).

<sup>122</sup> *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Argentina*, ¶ 11, Human Rights Comm., 70th Sess., U.N. Doc. CCPR/CO/70/ARG (Nov. 15, 2000), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fCO%2f70%2fARG&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fCO%2f70%2fARG&Lang=en).

<sup>123</sup> ICCPR, *supra* note 98, at Art. 14(3)(g).

<sup>124</sup> U.N. Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)* at ¶ 5 (Mar. 10, 1992).

<sup>125</sup> *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1465 U.N.T.S. 83, Art. 1(1) (Dec. 10, 1984).

to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.”<sup>126</sup>

As detailed in Part VII.A.3.a., while detained, Diane and Adeline were forced to stay inside their house for three weeks. During and after this time, the Rwandan police tortured them both physically and mentally. In the course of the initial search of the Rwigara house, policemen broke Adeline’s back and arm. During the interrogations that followed, the police threatened Diane and Adeline and forced them to sit in detention for 16 hours a day without food. When Diane and Adeline were first taken to jail, the Rwandan police denied them food for approximately five days and locked each woman up in individual, small cells under unsanitary conditions, and they were not allowed out of their cells for a month after their arrests.

Furthermore, the Rwandan authorities denied medical care to Adeline. As a result of the prolonged interrogations without food during the weeks after the police raided the Rwigaras’ home, Adeline developed stomach issues that required medical attention. But she was not permitted to see a doctor until weeks later, when she was moved to the main prison. Rwandan authorities never permitted Adeline to see her own medical files or to meet with the doctor alone. The Committee against Torture and various U.N. Special Rapporteurs have concluded that failure to provide medical care to detainees can amount to cruel and degrading treatment,<sup>127</sup> and the Rwandan government failed to provide adequate care in this instance.

By torturing Diane and Adeline, Rwanda violated Articles 7, 10(1), and 14(3)(g) of the ICCPR; Article 5 of the UDHR; Article 5 of the ACHPR; Articles 1 and 4 of the CAT; Principles 6 and 21(2) of the Body of Principles; and Article 14 of the Rwandan Constitution.

b. Rwanda Violated Diane and Adeline Rwigara’s Right Not to Be Subjected to Arbitrary Arrest and to Be Promptly Informed of the Charges Against Them

Article 9(1) of the ICCPR, which confirms the right to liberty and freedom from arbitrary detention, guarantees, “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”<sup>128</sup> This right is reiterated by Article 9 of the UDHR, Article 6 of the ACHPR and Principles 2 and 36(2) of the Body of Principles.<sup>129</sup> The UNHRC has interpreted this right to mean that “procedures for carrying out legally authorized deprivation of liberty should also be established by law and State parties should ensure compliance

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<sup>126</sup> Body of Principles, *supra* note 111, at Principle 21(2). Also, “it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess...” *Id.* at Principle 21(1).

<sup>127</sup> *Report of Committee against Torture*, U.N. GAOR, 53rd Sess., Supp. No. 44, U.N. Doc. A/53/44, at ¶ 156 (Sept. 16, 1998), <http://www.freedom-now.org/wp-content/uploads/2015/10/CAT-Report-Supp.-No.-44-A5344.pdf>.

<sup>128</sup> ICCPR, *supra* note 98, at art 9(1).

<sup>129</sup> UDHR, *supra* note 91, at art 9; ACHPR, at Art. 6; Body of Principles, *supra* note 111, at Principles 2 and 36(2).

with their legally prescribed procedures.”<sup>130</sup> Under Rwandan law, an arrest warrant is a mandatory pre-condition to any arrest.<sup>131</sup>

Article 9(2) of the ICCPR requires that a detainee “be informed, at the time of arrest, of the reasons for his arrest and [] be promptly informed of any charges against him.” This right is reiterated by Principle 10 of the Body of Principles.<sup>132</sup> Rwandan law similarly states, “Any person held in custody by the Judicial Police shall be informed of the charges against him/her and his/her rights including the right to inform his/her legal counsel.”<sup>133</sup> The UNHCR has not confirmed precisely what time frame would be considered “prompt,” however, it has indicated that where a detainee is arrested on pre-existing charges, “the authorities may explain the legal basis of the detention some hours later.”<sup>134</sup> Considering this approved time frame of “some hours later,” and that in context of a detainee’s *habeas corpus* rights the UNHCR has interpreted “prompt” to mean about 48 hours,<sup>135</sup> it seems clear that the UNHCR would not consider withholding information about the charges against a detainee for several days to be “prompt.”

As explained in Part VII.A.3.a., the arrests of Diane and Adeline were not performed in compliance with Rwandan law, as they were not shown arrest warrants at the time of their detention and did not have access to their attorneys for approximately the first month of detention. Rwandan authorities did not announce charges until after they had detained the family for several days and, since the time of the arrest to the start of the trial, have added and dropped charges seemingly at random.<sup>136</sup> As of the date of this Petition, the primary charges against Diane and Adeline are for inciting insurrection and sectarianism; Diane additionally faces a charge of forgery.<sup>137</sup> As discussed in Part VII.A.1.b., these are charges the governing party in Rwanda regularly manufactures against its political opponents. The lack of an arrest warrant; the delay in charging Diane and Adeline and the altering of the charges; and Rwanda’s history of politically motivated charges all highlight the arbitrary nature of the arrests in this case.

Through the arbitrary arrest of Diane and Adeline and its delayed notification of the charges against them, Rwanda violated Articles 9(1) and (2) of the ICCPR, Article 9 of the UDHR, Article 6 of the ACHPR, Principles 2, 10, and 36(2) of the Body of Principles, and Article 51 of the Rwandan Code of Criminal Procedure.

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<sup>130</sup> UN Human Rights Committee, *General Comment No. 35*, U.N. Doc. CCPR/C/GC/35, ¶ 23 (16 Dec. 2014) [hereinafter “General Comment No. 35”].

<sup>131</sup> Rwandan Code of Criminal Procedure, *supra* note 61, at Art. 51: “A warrant to bring by force and arrest warrant shall be enforced by any law enforcement officer and *must be shown to the persons against whom they are issued and such persons shall be given a copy of the warrant*. In case of emergency, such warrants may be sent by any means available. The original or copy of a warrant to bring by force or an arrest warrant shall be immediately sent to the person responsible for its enforcement” (emphasis added).

<sup>132</sup> Body of Principles, *supra* note 111, at Principle 10.

<sup>133</sup> Rwandan Code of Criminal Procedure, *supra* note 61, at Art. 38.

<sup>134</sup> General Comment No. 35, *supra* note 130, at ¶ 30.

<sup>135</sup> *Id.*, at ¶ 33.

<sup>136</sup> See Uwiringiyimana, *supra* note 56; see also Burke, *supra* note 65.

<sup>137</sup> See Burke, *supra* note 65.

c. Rwanda Violated Diane and Adeline Rwigara’s Right to *Habeas Corpus*

According to Article 9(3) of the ICCPR, a detainee shall “be brought promptly before a judge or other officer authorized by law to exercise judicial power” to challenge the legality of his continued detention (right to *habeas corpus*). The UNHRC has interpreted the term “promptly” to be within about 48 hours, except in exceptional circumstances,<sup>138</sup> and has noted that this right shall be observed “even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”<sup>139</sup> The right to *habeas corpus* is reiterated in Principles 4, 11, 32(1), and 37 of the Body of Principles.<sup>140</sup> These provisions do not only act as a check on arbitrary detention, they stand as safeguards for other related rights such as freedom from torture.<sup>141</sup>

As explained in Part VII.A.3.a., Diane and Adeline were not brought “promptly” before a judge after their initial detention on August 28, 2017, or their formal arrest on September 23, 2017, to enable them to challenge the legality of their detention. This deliberate delay by Rwanda ensured that Diane and Adeline would be punished, harassed, and silenced before setting foot in court. The first time Diane and Adeline appeared before a judge was on October 23, 2017—30 days after their arrest and nearly two months after their initial detention.<sup>142</sup>

By denying Diane and Adeline prompt access to a judge to challenge the legality of their detention, Rwanda violated Article 9(3) of the ICCPR and Principles 4, 11, 32, and 37 of the Body of Principles.

d. Rwanda Violated Diane and Adeline Rwigara’s Right to Release Pending Trial

Article 9(3) of the ICCPR also enshrines the right to an individual’s release pending trial, providing that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody.”<sup>143</sup> The UNHRC has found that “[d]etention pending trial must be based on an individualized determination that [such detention] is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime . . . . Pretrial detention should not be mandatory for all defendants charged

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<sup>138</sup> General Comment No. 35, *supra* note 130, at ¶ 33.

<sup>139</sup> *Id.* at ¶ 32.

<sup>140</sup> Body of Principles, *supra* note 111, at Principle 4 (“Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.”), Principle 11 (“A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.”), Principle 32(1) (“A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful”), and Principle 37 (“A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention.”).

<sup>141</sup> General Comment No. 35, *supra* note 130, at ¶ 34. Other rights that may be at risk are those guaranteed by articles 6, 7, 10, and 14 of the ICCPR. *Id.*, at ¶ 35.

<sup>142</sup> See Part VII A. 3. a.

<sup>143</sup> ICCPR, *supra* note 98, at art 9(3).

with a particular crime, without regard to individual circumstances.”<sup>144</sup> Principles 38 and 39 of the Body of Principles further confirm that, except in special cases, a criminal detainee is entitled to release pending trial.<sup>145</sup>

As detailed in Part VII.A.3.a., Diane’s and Adeline’s first appearance before a bail judge was nearly a month after their arrest, in October 2017, at which time bail was denied for both women. In maintaining the detention of the defendants, the Court failed to provide a full explanation, only stating that the Rwandan government was concerned 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). The court also regurgitated the government’s argument that Diane and Adeline might tamper with evidence, which consisted of audio files that were already in police custody. Considering that, without their passports and under round-the-clock surveillance and without access to prosecution’s evidence, Diane and Adeline did not have the ability to flee the country or tamper with evidence, the Court’s justification for their continuing pre-trial detention rings false.

By not releasing Diane and Adeline pending trial, Rwanda violated Article 9(3) of the ICCPR and Principles 38 and 39 of the Body of Principles.

e. Rwanda Violated Diane and Adeline Rwigara’s Right to be Tried Without Undue Delay

Article 14(3)(c) of the ICCPR guarantees that every defendant shall have the right to “be tried without undue delay.”<sup>146</sup> As stated by the UNHRC, “[a]n important aspect of the fairness of a hearing is its expeditiousness,”<sup>147</sup> and “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”<sup>148</sup> In addition, this right “relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal.”<sup>149</sup> The right to be tried without undue delay is reiterated by Principle 38 of the Body of Principles.<sup>150</sup> The UNHRC has confirmed that right to be tried without undue delay takes on a particular importance when the defendant is being held in pre-trial detention pending trial.<sup>151</sup>

As explained in Part VII.A.3.a., Diane and Adeline were initially detained on August 29, 2017, but their trial still has not begun as of the date of this Petition. The government’s basis for requesting the delay—seeking more information on international co-defendants—is unreasonable

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<sup>144</sup> General Comment No. 35, *supra* note 130, at ¶ 38.

<sup>145</sup> Body of Principles, *supra* note 111, at Principle 38 (“A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.”) and Principle 39 (“Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.”).

<sup>146</sup> ICCPR, *supra* note 98, at art 14(3)(c).

<sup>147</sup> General Comment No. 32, *supra* note **Error! Bookmark not defined.**, at ¶ 27.

<sup>148</sup> *Id.* at ¶ 35.

<sup>149</sup> *Id.*

<sup>150</sup> Body of Principles, *supra* note 111, at Principle 38.

<sup>151</sup> General Comment No. 32, *supra* note **Error! Bookmark not defined.**, at ¶ 35.

in the context of these proceedings, particularly given the obligation to avoid undue delay when defendants are held in pre-trial detention (as is true for Diane and Adeline). As such, Rwanda violated Article 14(3)(c) of the ICCPR and Principle 38 of the Body of Principles.

f. Rwanda Violated Diane and Adeline Rwigara's Right to Defense and to Communicate with Counsel

Article 14(3)(d) of the ICCPR guarantees the right to defense, by stating that a criminal defendant has the right to “be tried in his presence, and to defend himself in person or through legal assistance of his own choosing.” In addition, Article 14(3)(b) of the ICCPR guarantees a criminal accused the right “to communicate with counsel of his own choosing.”<sup>152</sup> The UNHRC has clarified that such guarantee “requires that the accused is granted prompt access to counsel,”<sup>153</sup> and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”<sup>154</sup> Principles 18(1) and (3) of the Body of Principles further provide for the right of a detainee to “communicate and consult with his legal counsel,” and that such right “may not be suspended or restricted save in exceptional circumstances.”<sup>155</sup> Likewise, Article 7 of the ACHPR provides that “[e]very individual shall have the right to have his cause heard. This comprises . . . the right to defense, including the right to be defended by counsel of his choice.”<sup>156</sup> Rule 119 of the Mandela Rules also provides for the right to access legal advice,<sup>157</sup> and the Rwandan Constitution states that “[e]veryone has the right to due process of law, which includes the right . . . to defence and legal representation.”<sup>158</sup>

As explained in Part VII.A.3., the Rwigaras have been detained since August 2017 and still have not begun their trial. Moreover, they have consistently been denied their right to be represented by counsel, as evidenced by the Rwandan government’s refusal to allow their attorneys to be present during interrogations and the fact that the Rwigaras were unable to communicate with their lawyers at all for their first week in detention. Since then, despite the repeated delays in the Rwigaras’ case, the Rwandan government has denied the Rwigaras’ counsel an adequate opportunity to review relevant evidence and prepare a defense.

As such, Rwanda has violated (and continues to violate) Articles 14(3)(b) and 14(3)(d) of the ICCPR, Principles 18(1) and 18(3) of the Body of Principles, Article 7 of the ACHPR, Rule 119 of the Mandela Rules, and Article 29(1) of the Rwandan Constitution.

g. Rwanda Violated Diane and Adeline Rwigara's Right Not to Be Subjected to Unlawful Searches of Their Domiciles

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<sup>152</sup> ICCPR, *supra* note 98, at Art. 14(3)(b).

<sup>153</sup> General Comment No. 32, *supra* note **Error! Bookmark not defined.**, at ¶ 34.

<sup>154</sup> General Comment No. 35, *supra* note 130, at ¶ 35.

<sup>155</sup> Body of Principles, *supra* note 111, at Principles 18(1) and 18(3).

<sup>156</sup> ACHPR, at Art. 7.

<sup>157</sup> Mandela Rules, at Rule 119: “If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay.”

<sup>158</sup> Rwandan Constitution, at Art. 29.

Article 17 of the ICCPR prohibits unlawful interference with home privacy, stating, “No one shall be subjected to arbitrary or unlawful interference with his privacy, home or correspondence.” An identical guarantee is provided by Article 12 of the UDHR.<sup>159</sup> Rwandan law recognizes the right to privacy, providing that any domicile search shall be accompanied by the exhibition of a search warrant.<sup>160</sup>

The search of the Rwigaras’ home was performed in breach of these laws. During the search, the police briefly flashed documents that were not clearly a search warrant, and they provided no opportunity for the Rwigaras to review these documents to make even this elementary determination. Without showing them any warrant, the police conducted an aggressive and intrusive search of the Rwigara home, confiscating several personal items, including money, phones, and computers.

Through the arbitrary searches of Diane’s and Adeline’s domicile, Rwanda violated Article 17 of the ICCPR, Article 12 of the UDHR, and Articles 68 and 69 of the Rwandan Code of Criminal Procedure.

### 3. Arbitrary Deprivation of Liberty under Category V

According to Category V of the Working Group’s Revised Methods of Work, a deprivation of liberty is arbitrary “[w]hen the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings.”<sup>161</sup> In targeting and detaining Diane Rwigara, the Rwandan government is discriminating against her on the basis of her gender.

#### a. Rwanda Discriminated Against Diane Because of Her Gender

The Rwandan authorities discriminated against Diane because of her gender in violation of Articles 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.<sup>162</sup> Article 2 of the ICCPR ensures that rights recognized in the ICCPR will be respected and be available to everyone within the territory of those states that have ratified the ICCPR.<sup>163</sup>

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<sup>159</sup> UDHR, *supra* note 91, at Art. 12.

<sup>160</sup> Rwandan Code of Criminal Procedure, *supra* note 61, at Art. 67: “A Prosecutor or Judicial Police Officer vested with powers to conduct a search and visit any place where evidence can be found *must show* a valid service card and a search warrant signed by the competent authority. A copy of the search warrant shall be given to the suspect, if present and the owner of the premises to be searched” (emphasis added).

<sup>161</sup> Revised Methods of Work, *supra* note 89, at Category III, paragraph e.

<sup>162</sup> ICCPR, *supra* note 98, at Art. 3: “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”

<sup>163</sup> *Id.* at Art. 2: “Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity . . . .”

As discussed, a primary component of Diane’s presidential campaign and political work was her support of women’s rights in Rwanda and her quest to become the first female president of Rwanda. In response to her announcement that she would run for president, digitally altered nude photos of Diane appeared on the internet, likely posted by government actors seeking to threaten, harass, and retaliate against Diane. A common shaming technique used to discriminate against women, this smear campaign has never been used by the Kagame Administration against male political opponents.

While Rwanda has made many strides in women’s rights, some sources argue that these strides are limited in scope and have led to few actual improvements in the day to day life of women in Rwanda.<sup>164</sup> Rwanda has the highest representation of women in any legislature in the world; however, these same women who have the privilege of serving their country recount a lack of progress in their life outside of the public sphere.<sup>165</sup> There are numerous stories recounting the complex double nature that exists in Rwandan society when it comes to women’s rights.<sup>166</sup> The effects of gender discrimination in the home have also been noted by the UN Committee on the Elimination of Discrimination against Women.<sup>167</sup> Diane has tried, through her involvement in politics and various campaigns, to address these gender disparity issues, and was punished for her political involvement, in part, through a gender-driven smear campaign.

By targeting Diane for her women’s rights work and for releasing doctored photographs of Diane in an attempt to publicly shame her and tarnish her quest to become Rwanda’s first female president, Rwanda violated Articles 2 and 3 of the ICCPR.

### 3. Conclusion

For all of these reasons, the detentions of Diane and Adeline Rwigara violated both Rwandan and international law and were and are illegal. Furthermore, the prison sentences that Diane and Adeline face—22 years each for Diane and Adeline—are disproportionate for the crimes for which they are charged. The mere possibility of such lengthy sentences for dissent and political involvement present further evidence that the Rwandan government is seeking to stifle free expression, association and participation in public affairs through these pretextual charges.

## **VIII. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH**

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<sup>164</sup> Gregory Warner, *It’s the No. 1 Country for Women in Politics — But Not in Daily Life*, NPR (July 29, 2016), <https://www.npr.org/sections/goatsandsoda/2016/07/29/487360094/invisibilia-no-one-thought-this-all-womans-debate-team-could-crush-it>.

<sup>165</sup> *Id.*

<sup>166</sup> Kari Lindberg, *Equal Rights for Women: Lessons from Rwanda*, Women’s eNews (Aug 1, 2017), <https://womensenews.org/2017/08/equal-rights-for-women-lessons-from-rwanda/>.

<sup>167</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding observations on the combined seventh to ninth periodic reports of Rwanda*, (March 9, 2017), <http://www.refworld.org/docid/596f4b0a4.html>.

**STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.**

Diane and Adeline have appealed the denial of bail to the Rwandan High Court, as permitted under Article 113 of the Rwandan Code of Criminal Procedure. On November 16, 2017, the High Court denied their appeal.<sup>168</sup> As the rules of the Rwandan Supreme Court preclude second review of an appeal of provisional detention,<sup>169</sup> the Rwigaras have exhausted their domestic remedies with respect to the denial of bail.

**IX. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).**

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<sup>168</sup> See The East African, *supra* note 75.

<sup>169</sup> See Rwanda, Law No. 03/2012/OL of 13/06/2012 Organic Law determining the organization, functioning and jurisdiction of the Supreme Court Art. 34(4) (June 13, 2012), [http://www.nppa.gov.rw/fileadmin/Archive/LAWS\\_FILES/UBUBASHA\\_BWA\\_SUPREME\\_COURT.pdf](http://www.nppa.gov.rw/fileadmin/Archive/LAWS_FILES/UBUBASHA_BWA_SUPREME_COURT.pdf).