



20 FEB 2018

Recipients : WGAD
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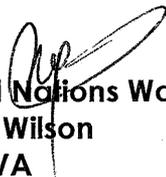
*Permanent Mission of the Republic of Rwanda
Geneva*

GE/OIO/16/2018

Geneva, 19 February 2018

The Permanent Mission of the Republic of Rwanda to the United Nations Office and other International Organizations in Geneva presents its compliments to the UN Working Group on Arbitrary Detention and has the honour to transmit a letter from the Ministry of Justice regarding Rwanda's response to the Opinion 85/2017 of the UN Working Group on Arbitrary Detention.

The Permanent Mission of the Republic of Rwanda to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the UN Working Group on Arbitrary Detention the assurances of its highest consideration.


**United Nations Working Group on Arbitrary Detention
Palais Wilson
GENEVA**



REPUBLIC OF RWANDA

Kigali... 19 FEB 2018
N° 368/08/P/IIJCD



MINISTRY OF JUSTICE
P.O BOX 160 KIGALI

Excellency Ambassador Francois Xavier Ngarambe
Permanent Mission of Rwanda to UN-Geneva
SWITZERLAND

Excellency Ambassador,

RE: Rwanda's response to the Opinion 85/2017 of the UN Working Group on Arbitrary Detention

Reference is made to the Opinion No 85/2017 of the UN Working Group on Arbitrary Detention rendered on 21st December 2017, I have the honour to forward to your office, the Government of Rwanda's response for onward transmission to the Working Group.

Please accept, Excellency Ambassador, the assurances of my highest consideration.

A handwritten signature in black ink is written over a circular official seal. The seal features the same emblem as the Ministry of Justice seal, with a sun, a tree, and a scale of justice, surrounded by text.

BUSINGYE Johnston
Minister of Justice/ Attorney General

Cc:

- H.E. The President of the Republic
- Hon. Minister of Foreign Affairs, Cooperation and East African Community

KIGALI

OBSERVATION OF THE GOVERNEMENT OF RWANDA ON THE OPINION N° 85/2017 ADOPTED BY THE WORKING GROUP ON ARBITRARY DETENTION, CONCERNING FRANK RUSAGARA, TOM BYABAGAMBA AND FRANCOIS KABAYIZA

INTRODUCTION

1. The Government of Rwanda did not become aware of the communication outlining the substance of the complaint and asking for a Governments response, until after the Opinion had been adopted. Therefore, as the Government of Rwanda has not commented on the substance of the communication, it will focus on the Opinion of the Working Group on Arbitrary Detention in responding to allegations on arbitrary detention of Frank Rusagara, Tom Byabagamba and François Kabayiza.
2. The Government requests that this response be referenced in all discussions by the Working Group on the Opinion, and included in the Working Group's Annual Report.

COMMENTS ON THE OPINION

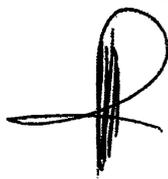
3. The Working Group rendered its opinion N° 85/2017 that the deprivation of liberty of Mr. Frank Rusagara, and Tom Byabagamba is arbitrary and in contravention of Article 95,9,10,12 and 19 of the Universal Declaration of Human Rights and Articles 7, 9,10,14, 15,17 and 19 of the International Covenant on Civil and Political Rights, Category I, II and III, and that the deprivation of liberty of Mr. François Kabayiza is arbitrary and in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and Articles 9 and 14 of the International Covenant on Civil and Political Rights, category III
4. The Government of Rwanda respectfully submits that Frank Rusagara was detained in accordance with Rwandan Law. As provided by article 105 paragraph.5 of the Criminal Procedure of Rwanda, the judge found that there were serious grounds to suspect that Mr. Rusagara had committed offenses, and was permitted by law to order the continuation of his detention.



5. Tom Byabagamba and François Kabayiza were not subject to arbitrary detention. They were lawfully detained under a provisional detention imposed by the Military High Court, a decision which was taken in accordance with the Rwandan Criminal Procedure and the Rwandan Penal Code. Mr. Kabayiza alleged that he had been tortured. Mr. Kabayiza had access to medical assistance and care, and had the right to interact with a **doctor**, but no medical proof was produced to confirm his allegations.
6. With regard to the allegations on failure of due process in their case, the Government wishes to submit that this case is currently before the Supreme Court, as Case N° RPA0035/16/CS Col Tom et Consorts. As most allegations in the communication/opinion are the same as those in their grounds of appeal with the Supreme Court, the Government will not comment in detail on a case which is subjudice.
7. The Government however wishes to assure the Working Group that all processes of the trial were conducted in accordance with national law and relevant international standards. It is the view of the Government that the Working Group **should not** have pronounced itself on a matter that is before the Supreme Court.

The Government of Rwanda wishes to highlight the following factual errors in the report of the Working Group on Arbitrary Detention.

8. With regard to the fact that Mr. Rusagara was a member of the Forces Armées Rwandaises (FAR) and that he headed the Military High Court and that he was forced to retire ahead of time, the Government wishes to inform the Working Group that Mr. Rusagara has never been a member of the FAR, rather he was a member of the Rwanda Defense Force (RDF) staff, and that he served as the President of the Military tribunal and not President of the Military High Court.
9. Regarding the allegations that he was forced to retire, the Government of Rwanda wishes to inform the WGDA that Presidential Order N° 32/01 of 03 September 2012 establishing the RDF Special Statutes, in article 85, provides that the age of retirement for a career

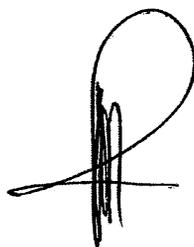


officer at the rank of General officer is 55 years. In 2013, Mr. Rusagara was 58 years old. Therefore Mr. Rusagara was not forced into retirement.

10. In paragraph 41 of the opinion, the Working Group states that by the fact of not responding to the Communication, the Government of Rwanda deliberately refused to respond, therefore the Working Group considers credible the allegations from the source which was not contested. The WGAD goes further to refer to its previous opinion of 2012 and **notes that considering that there is coincidence between allegations of the source with what is known in the public domain, it concludes that what was reported by the source is true.** The Government considers the position taken by the Working Group on this matter as factually incorrect. No information “known in the public domain” has been substantiated by a competent legal body or authority and all information in the alleged public domain is from sources the WGAD knew or ought to have known are partial, biased and politically motivated. False or biased information does not become factual by corroboration.

CONCLUSION

11. The Government of Rwanda wishes to assure the Working Group that it is committed to its obligations under the ICCPR and other relevant international treaties to which she is a party and to the principles enshrined in its national laws. This is because Rwanda firmly believes these obligations are in the primary interest of Rwandans to whom the Government is accountable first and foremost.
12. The Government of Rwanda submits that all allegations submitted by the source are false and therefore the premise based on by the Working Group to arrive at its opinion is fundamentally flawed. The suspects were arrested, detained and tried in accordance with Rwandan law. The case is now pending before the Supreme Court.

A handwritten signature in black ink, consisting of a large, stylized loop at the top and several vertical strokes below it.