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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021

Opinion No. 73/2021 concerning Julienne Sebagabo (Rwanda)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work,[1] on 17 August 2021 the Working Group transmitted to the Government of Rwanda a communication concerning Julienne Sebagabo. The Government replied to the communication on 18 October 2021. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

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

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

(e) When the deprivation of liberty constitutes a violation of international law 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 (category V).

[1] A/HRC/36/38.

Submissions

Communication from the source

4. Julienne Sebagabo was born in 1973 in Butare, Rwanda. In 1999, she moved to Norway, where she obtained citizenship and where she lived with her three sons and worked as a translator. She would frequently travel to Rwanda, for years, without any problem.

5. According to the information received, prior to her arrest, Ms. Sebagabo was visiting Rwanda to attend the national dialogue conference, to which she had been invited by the President. As with her previous visits to Rwanda, she had completed all her papers and the online form listing all the places that she would visit.

6. The source explains that Ms. Sebagabo was arrested at Kigali International Airport in December 2017. She was seized by airport police at passport control, without being shown an arrest warrant, and taken to an unofficial holding cell. Allegedly, she was interrogated, beaten frequently and not given food there. Reportedly, the following day, the Ministry of Foreign Affairs of Norway enquired about the disappearance of Ms. Sebagabo with the Rwandan authorities, but they allegedly denied that she was being held in detention at the airport. After approximately two weeks, Ms. Sebagabo was relocated to Kigali central prison. Only at this point was the Government of Norway notified of her detention. However, during that initial period of approximately two weeks, Ms. Sebagabo was not permitted to contact anyone – including a lawyer – despite the fact that she was interrogated frequently. After being relocated to the central prison, Ms. Sebagabo was transferred to Nyamagabe Prison and then to Nyarugenge Prison.

7. According to the source, following Ms. Sebagabo's arrest, the authorities called in witnesses and interrogated them about her alleged involvement in the genocide. Ms. Sebagabo was informed that a *gacaca* court had allegedly convicted her in 2008, in absentia, for incitement to genocide. Ms. Sebagabo's defence lawyers believe that the judgment is fabricated, because she had frequently travelled back and forth from Rwanda in the years following the alleged judgment. She was never notified of the proceedings or made aware of the judgment. The request for a copy of the judgment from the archives has never been processed.

8. Ms. Sebagabo was allegedly only given access to a lawyer eight months after her transfer to Kigali central prison. The defence lawyers have been permitted to speak to her only with the supervision of a prison officer, and Ms. Sebagabo has to speak to them in Kinyarwanda. Her defence lawyers have frequently been denied visitation permits, even when they have travelled from Norway.

9. Ms. Sebagabo's case was first heard by the Primary Court of Ndora, a community court that is based in the area where she used to live. This court concluded that it did not have jurisdiction over her case, and it was therefore moved to the Intermediate Court of Huye. On 2 November 2018, this court convicted Ms. Sebagabo of the offences of inciting people to commit genocide, complicity in genocide attacks and dehumanizing treatment of human bodies, under articles 114, 115 and 132 (3) of Organic Law No. 1/2012 Instituting the Penal Code, and sentenced her to life imprisonment.

10. This verdict was appealed to the Appellate Court of Nyanza, where the charges were changed to a single charge of incitement to genocide and her sentence was reduced to 20 years.

11. The defence reportedly appealed the conviction for incitement to genocide on the basis of double jeopardy, as both the alleged judgment of the *gacaca* court and the judgment of the Intermediate Court of Huye, as well as the upholding of that judgment by the Appellate Court of Nyanza, were based on the same facts.

12. The source claims that the media have not been allowed access to any of the court proceedings for Ms. Sebagabo. Journalists managed to attend her hearing at the Intermediate Court of Huye by denying that they were associated with the press.

13. The source claims that Ms. Sebagabo's detention is purportedly in response to her involvement in genocide-related offences. However, it is believed that her detention is a

response by the authorities to personal grievances, which individuals from the former Butare Province, where Ms. Sebagabo used to live, have raised through the criminal justice system.

14. It is suspected that the attendance of Ms. Sebagabo at the national dialogue conference, which was a leadership forum, would have angered those from the province where Ms. Sebagabo used to live. As a result, it is believed that individuals from her village claimed that she might have been involved in the genocide. The authorities used this to arrest her without a warrant and subsequently to gather witness testimonies once Ms. Sebagabo was in detention.

15. The source alleges that the only evidence presented during Ms. Sebagabo's trial was witness testimonies from those who lived in the same village as she did during the genocide. They provided no explanation as to why they waited about 20 years to make these allegations. In addition, Ms. Sebagabo's name did not appear on either the 2004 or the 2010 lists that Rwandan authorities had created when looking for suspects overseas. Moreover, the witness testimonies reportedly contradicted each other as to the degree of criminal involvement of Ms. Sebagabo.

16. According to the source, throughout her detention, Ms. Sebagabo has been neglected by prison staff. She has never received any medical treatment despite her declining health or appropriate food to regulate her diabetes. Furthermore, in 2018 at Nyamagabe Prison, Ms. Sebagabo was informed by prison officers that she had hepatitis, which explained why she was feeling unwell. However, she was never told which kind of hepatitis it was and she never received any medical examination or treatment. She was later informed that she did not have hepatitis.

17. Reportedly, Ms. Sebagabo has been subjected to significantly harsher treatment in prison, along with others who have foreign citizenship. She has been subjected to solitary confinement as a form of punishment and beaten by prison officers. Shortly after the judgment had been handed down by the Appellate Court of Nyanza, a riot broke out in the prison and Ms. Sebagabo was wrongly accused of participating in it. She was punished with solitary confinement and beaten.

18. The source claims that Ms. Sebagabo's ability to contact her family or legal counsel is significantly impeded. She is permitted to make only one phone call per month for five minutes and must speak in Kinyarwanda or French. Her sons cannot speak Kinyarwanda or French and therefore her contact with them is minimal. When she has tried to communicate in English or Norwegian with her defence lawyers, she has been stopped by prison officials. She is rarely permitted visitation and, when she is, it is closely supervised by prison guards. At Nyamagabe Prison, she was permitted visitation only with her lawyer, with supervision of the prison director.

19. Nyarugenge Prison has reportedly been described as a coronavirus disease (COVID-19) hotspot. Following an outbreak in the prison, Ms. Sebagabo was not permitted visitation at all. While at Nyamagabe Prison, she was crammed in a cell with over 200 people, and she experiences similar conditions at Nyarugenge Prison. Ms. Sebagabo is at risk of developing a fatal case of COVID-19 due to the lack of social distancing and her diabetes and deteriorating health.

20. The source reports that, although Rwanda has made important strides in relation to the problem of arbitrary detention, substantial concerns remain regarding excessive pretrial detention, arrests without legal basis and detaining persons without a court order. The Human Rights Committee has noted with concern that individuals are frequently held by the military and the police in unofficial detention centres, often incommunicado, before being transferred to official places of detention. The Committee has also noted that torture and ill-treatment have been practiced in these unofficial locations.[2]

21. According to the source, the *gacaca* courts and courts prosecuting genocide offences have been used as a means of resolving personal grievances, including disputes between neighbours and relatives. Dozens of such cases have been documented, where individuals used the courts to file false accusations. In most instances, both the accuser and the accused

[2] See CCPR/C/RWA/CO/4.

have resided in or visited Rwanda multiple times and the accuser offered no reason for having failed to make the allegations sooner. Such cases have increased since 2007, in part because people saw how the process worked and felt increasingly confident that they could use it to address disputes over land, inheritance and local economic inequalities.

22. Allegedly, hundreds of individuals have been convicted in absentia by the *gacaca* courts, often based on ill-founded evidence, for political or personal reasons. In a number of cases, individuals reportedly learned after the trial that a *gacaca* court had convicted them in absentia.

23. The source reports that, while article 145 of the Constitution guarantees judicial independence, this has not materialized in practice. In 2016, the Human Rights Committee expressed concern that unlawful interference of government officials in the judiciary persisted and that the procedure for the appointment of judges to the Supreme Court and main courts left those judges vulnerable to political pressure.[3]

24. The Human Rights Committee, in 2016, stressed its concern that individuals were regularly held in unofficial detention centres, where they would be subjected to torture and degrading treatment to extract a confession, before being moved to an official prison. Once in an official detention centre, individuals are imprisoned for excessive periods of pretrial detention, without judicial oversight.[4] The source explains that most prisoners in Rwanda are not sentenced.

Category I

25. For an arrest and detention to have a legal basis, a warrant applying the law to the circumstances of the case and informing the individual of the reasons for the arrest is required. Individuals arrested must then be promptly informed of the charges. Furthermore, the detained person must be brought promptly before a judge; judicial oversight is essential in ensuring that the detention has a legal basis and is critical to guaranteeing the right to challenge the lawfulness of the detention before a court.

26. According to the information received, an arrest warrant was not read out to Ms. Sebagabo when she was arrested at Kigali International Airport. For approximately two weeks, she was held incommunicado and interrogated frequently without being informed of the charges. It was only when she was relocated to Kigali central prison that the Government of Norway was notified of her detention; however, neither the Government of Norway nor Ms. Sebagabo were informed of the charges.

27. Ms. Sebagabo has allegedly never been presented with an arrest warrant. However, her lawyers eventually received a "backdated" copy in November 2018, shortly before her trial. The arrest warrant had been date-stamped to appear as if it had been presented to Ms. Sebagabo during her arrest. It lists genocide charges, for which the authorities gathered evidence only after she had been arrested. Every witness, whose testimonies were the only evidence used by the prosecution, was interrogated after her arrest. Therefore, the authorities allegedly did not have a legal basis to arrest her.

28. Furthermore, between her arrest and her trial before the Intermediate Court of Huye, Ms. Sebagabo reportedly had no opportunity to challenge the lawfulness of her detention. While she was brought before the Primary Court, this was only to assess whether that court had the jurisdiction. There was no opportunity during this hearing for Ms. Sebagabo to challenge the legal basis of her detention. When she was brought before the Intermediate Court, it was to begin the criminal trial, and she could not challenge the lawfulness of her detention.

Category III

29. Article 14 (1) of the Covenant guarantees that those facing criminal charges have the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. To qualify as "public", a trial must be open to everyone, including all

[3] CCPR/C/RWA/CO/4, para. 33.
[4] See CCPR/C/RWA/CO/4.

media. Exceptions to this rule are permitted only on the basis of national security, public order, public morals, privacy or where publicity would prejudice the interest of justice. The source claims that the information provided during Ms. Sebagabo's trial proceedings was not confidential, nor did it pose a risk. The Rwandan genocide and the nature of the attacks that Ms. Sebagabo had allegedly engaged in had already been widely discussed by courts and media. There was no justification to restrict media access to the trial.

30. The right to be heard by an impartial tribunal requires judges not to act in ways that improperly promote the interests of one of the parties to the detriment of the other. This requires that each party to the trial have the same procedural rights. Ms. Sebagabo did not benefit from the same rights as the prosecution, as the court refused to allow her lawyers to cross-examine the prosecution witnesses, whose testimonies form the basis of the conviction. Allegedly, as a result, the Intermediate Court of Huye could not have appeared to be impartial to a reasonable observer.

31. Moreover, article 14 (2) of the Covenant guarantees that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

32. The source reports that the Intermediate Court of Huye held against Ms. Sebagabo that she did not prove whether she had visited the place where she had lived during the genocide and met the community. The Intermediate Court also held it against her that she had not proved whether or not she was still in Rwanda shortly after the genocide. This approach was affirmed by the Appellate Court of Nyanza. For the source, these proceedings shifted the burden of proof from the prosecution to the accused.

33. The presumption of innocence requires that the prosecution prove its case against a defendant beyond reasonable doubt. Where this standard of proof has not been met, a defendant is entitled to be acquitted, provided that the acquittal has a rational link to the evidence, lack of evidence or inconsistencies in the evidence.

34. In the present case, the source argues that the charges against Ms. Sebagabo were not proved beyond a reasonable doubt and there was a lack of evidence and inconsistencies with that evidence. The only evidence that the Intermediate Court of Huye relied upon to convict Ms. Sebagabo was witness testimonies. These witnesses waited over 10 years to make these statements, which casts doubt on their reliability. The testimonies also conflicted with one another.

35. Moreover, article 14 (3) (b) of the Covenant guarantees the right to adequate time and facilities for the preparation of the defence and to communicate with counsel. The Human Rights Committee has interpreted "adequate time" as requiring the accused to be granted prompt access to counsel. What is considered "prompt" depends on the circumstances of the case. Principle 15 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment stipulates that communication with counsel is not to be denied for more than a matter of days. The accused must also be able to meet with counsel in private conditions that fully respect the confidentiality of their communications. The right to communicate with counsel requires that lawyers are able to represent their clients without restrictions, influence, pressure or under interference from any quarter.[5]

36. According to the source, following her arrest, Ms. Sebagabo was held incommunicado for approximately two weeks before being relocated to Kigali central prison. She was detained there for eight months before being granted initial access to legal counsel. Therefore, she was not granted "prompt" access to counsel.

37. The source alleges that, even when Ms. Sebagabo was granted access to legal counsel in July 2018, her ability to communicate with counsel and assist in the preparation for her trial was significantly impeded. Her lawyers were denied visitation permits. When the defence was permitted entry to the prison, which was rare, the visits were always supervised by an officer, who ensured that she spoke to them only in Kinyarwanda, a language that most of her legal team did not speak. On the day of the court proceedings, Ms. Sebagabo's counsel was not allowed to speak to her.

[5] Human Rights Committee, general comment No. 32 (2007), para. 34.

38. The source reaffirms that article 14 (3) (c) of the Covenant states that any individual has the right to be tried without undue delay. This provision complements article 9 (3), which requires an individual to be brought promptly before a judge and tried within a reasonable time frame. What is considered a reasonable time depends on the individual circumstances of the case, including its complexity and the conduct of those involved.

39. Article 9 (3) states that it is not to be the general rule that persons awaiting trial are to be detained in custody. If such detention is imposed, it must be based on an individualized determination that is reasonable and necessary taking into account all the circumstances.[6] The Human Rights Committee has explained that pretrial detention must be ordered for as short a time as possible.[7] Thus, when pretrial detention is imposed, an individual must be tried as quickly as possible.

40. The source alleges that Ms. Sebagabo was held in pretrial detention until her trial in November 2018. Prior to these proceedings, she had been brought before the Primary Court, which concluded that it did not have the jurisdiction to hear her case. However, during neither of those proceedings did she have the opportunity to challenge her pretrial detention and, thus, there was no individualized determination made by a judicial authority to justify this lengthy period of pretrial detention. Owing to her lengthy pretrial detention without justification, Ms. Sebagabo was not tried within a reasonable amount of time, contrary to article 9 (3) of the Covenant.

41. Furthermore, article 14 (7) of the Covenant states that an individual is not to be tried or punished again for an offence for which that person has already been finally convicted. Even where an individual is being tried for a different offence, the right not to be subjected to double jeopardy is still to be engaged where the prosecution is relying upon the same facts.

42. In Ms. Sebagabo's case, the source reports that she was convicted on three charges before the Intermediate Court of Huye; however, the Appellate Court of Nyanza reduced this to a sentence for the single charge of inciting people to commit genocide. At each of these proceedings, the only evidence used to substantiate the convictions was witness testimonies that Ms. Sebagabo had been involved in genocide-related activities at her village roadblock.

43. According to the information received, Ms. Sebagabo was allegedly convicted in absentia, in 2008, by a *gacaca* court, of setting up roadblocks and killing her uncle during the genocide. For the source, those convictions are directly linked to Ms. Sebagabo's alleged conduct at the village roadblock, which is the same conduct that the Intermediate Court of Huye relied upon to convict her. Therefore, while the charges in the two cases had different names, they relied on the same facts. Thus, Ms. Sebagabo has been tried and punished twice for the same conduct.

44. The source claims that, in the present case, the detention of Ms. Sebagabo is arbitrary under category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it, in view of the violation of her rights to a fair and public hearing by a competent, independent and impartial tribunal; to be presumed innocent; to legal counsel; to adequate facilities for the preparation of a defence; to a trial without undue delays; and to not be subjected to double jeopardy, under articles 9 and 14 of the Covenant.

Category V

45. Furthermore, under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant, every individual has the right to freedom from discrimination, including based on "other status", which includes nationality or citizenship. States parties must ensure that non-citizens enjoy equal protection and recognition before the law. Any differentiation must be reasonable and objective and the aim must be to achieve a purpose that is legitimate under the Covenant.[8]

46. The source claims that Ms. Sebagabo and others who have obtained foreign citizenship have been singled out by the authorities and subjected to differential treatment in

[6] Human Rights Committee, general comment No. 35 (2014), para. 38.
[7] Human Rights Committee, general comment No. 8 (1982), para. 3.
[8] Human Rights Committee, general comment No. 18 (1989), para. 13.

detention. This is allegedly evidenced by their subjection to torture and excessive and prolonged solitary confinement, compared to those with exclusively Rwandan citizenship, in the detention centres in which Ms. Sebagabo has been held. Such differential treatment on the ground of nationality can never be considered objective and reasonable or in pursuit of any legitimate aim. For these reasons, the source claims that the arrest and detention of Ms. Sebagabo is arbitrary under category V, as it violates her right to freedom from discrimination.

Response from the Government

47. On 17 August 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 18 October 2021, detailed information about the case of Ms. Sebagabo and to clarify the legal provisions justifying her detention, as well as its compatibility with the obligations of Rwanda under international law. The Working Group called upon the Government to ensure her physical and mental integrity.

48. On 18 October 2021, the Government submitted a reply in which it informs the Working Group that, after a thorough review of the allegations, it concluded that the allegations brought before the Working Group by the source are unfounded, fabricated and unsubstantiated by facts, and it requests their rejection.

49. Turning to the substance of the response, the Government informs the Working Group that Ms. Sebagabo was arrested in accordance with Rwandan law. She was arrested on 21 January 2017, as it is shown by the arrest warrant that she reportedly signed on that date. The arrest was based on Law No. 30/2013 relating to the Code of Criminal Procedure in its article 37. Ms. Sebagabo was informed of the charges against her on the day of her arrest. Her provisional detention was based on a provisional detention court order of the Primary Court of Nyarugung and the provisional detention court order of 3 April 2017 of the Intermediate Court of Nyarugenge, which Ms. Sebagabo had the right to challenge.

50. Based on these provisional detention court orders, the Government notes that the claim that Ms. Sebagabo's arrest was illegal is false and baseless. It also clarifies that Ms. Sebagabo was arrested on 21 January 2017 and not in December 2017, as stated by the source. These inconsistencies call into question the credibility of the allegations.

51. Turning to the allegations concerning access to legal counsel, the Government submits that Rwandan law recognizes the right to due process of law, which includes the right to be informed of the nature and cause of charges and the right to a defence and legal representation (art. 29 (1) of the Constitution).

52. To implement these constitutional rights, and based on article 38 of Law No. 30/2013 relating to the Code of Criminal Procedure, "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 or any other person of his/her choice thereof. Such prerogative shall be indicated in the statement signed by both the Judicial Police Officer and the suspect". Articles 39 and 61 of the same law provide for the right to legal counsel and the rights of the suspect during interrogation by the prosecution.

53. In the case of Ms. Sebagabo, these prerogatives were fully observed. During the first interrogation following her arrest on 21 January 2017, she was informed of her right to be interrogated in the presence of her legal counsel. She declined this right, informing the investigator that she would respond to the questions by herself. The statement was recorded and duly signed by Ms. Sebagabo. Before the prosecution, on 26 January 2017, Ms. Sebagabo was again informed by the prosecutor of her right to be interrogated in the presence of her legal counsel. She again declined this right. However, Ms. Sebagabo was represented by legal counsel in other proceedings.

54. Considering that Ms. Sebagabo declined her right to be represented by legal counsel at the preliminary interrogation phase, the Government of Rwanda considers that there has not been a violation of the relevant rights of the person concerned.

55. The Government proceeds to address the allegations of detention in an unofficial holding cell and submits that, according to article 40 of Law No. 30/2013 relating to the Code

of Criminal Procedure, custody facilities in Rwanda are known and gazetted. There are no unofficial holding cells. Upon her arrest, Ms. Sebagabo was detained at Remera Police Station in Kigali. Then, after the provisional detention court order had been issued, she was transferred to Nyamagabe Prison and then to Nyarugenge Prison, where she is currently detained.

56. Addressing the allegations of torture, beatings and denial of food, the Government submits that acts of torture and ill-treatment are prohibited and punishable under the Law Determining Offences and Penalties in General. The Law allows the person alleging the acts of torture and ill-treatment to seek remedy through courts. No such claim was brought to the attention of the responsible administrative authorities throughout the court proceedings, nor was a case filed in court. Ms. Sebagabo has never indicated in court that such acts have been perpetrated against her. The Government states that these claims are mere allegations with no evidence to substantiate them.

57. Concerning the allegation that the *gacaca* court judgment against Ms. Sebagabo in 2008 was fabricated, the Government explains that the traditional *gacaca* courts were revived in Rwanda in 2002 to establish the truth about how the genocide had been planned and executed, to speed up delivery of justice, to eradicate the culture of impunity, to strengthen unity and reconciliation, and to strengthen the capacity of the society to solve its own problems. The courts are credited with laying the foundation for peace, reconciliation and unity in Rwanda. The *gacaca* courts officially finished their work in June 2012 after having tried a total of 1,958,634 genocide-related cases.

58. The *gacaca* courts were established by a law that guided their implementation throughout the 10 years of their existence. They were not established or used as a means of resolving personal grievances and/or disputes between neighbours and relatives. The Government claims these are allegations fabricated by the source aimed at undermining the credibility of the *gacaca* courts and the initiatives of Rwanda to solve its own problems. The Government strongly rejects these allegations.

59. Particularly with regard to the allegation that the charges on which Ms. Sebagabo was convicted were fabricated, the Government states that the case against Ms. Sebagabo regarding her role in the genocide in 1994 against the Tutsi was duly conducted and the judgment rendered in accordance with the law. The case against Ms. Sebagabo was heard by the *gacaca* court of Nyange Sector in Gisagara District, Southern Province. The original file is in the archives of the *gacaca* courts, which are in the custody of the National Commission for the Fight against Genocide. The file was part of the court dossier produced by the Intermediate Court of Huye and the High Court; thus, Ms. Sebagabo and the prosecution referred to it during the hearing and the former did not attempt to challenge its authenticity before the court during any stage of the proceedings.

60. In response to the allegations concerning Ms. Sebagabo's health, the Government contends that prisons in Rwanda are under the management of the Rwanda Correctional Service. All facilities are operated in line with international human rights standards, and prison management is trained to handle inmates accordingly.

61. According to the Government, in relation to the claim of neglect by prison staff, Ms. Sebagabo has been treated the same as other inmates and has not been neglected in any way. She has been satisfied with all basic requirements provided for by the law, including shelter, food, and access to water and electricity, recreational facilities, communication facilities, and medical and legal services.

62. According to the Government, in relation to the claim of not receiving any medical treatment despite her declining health, Ms. Sebagabo has been given access to medical and health services as provided to all inmates. The prisons possess fully equipped health centres. Medical cases that need special attention beyond the capacity of the health centres are referred to appropriate hospitals. Ms. Sebagabo has been afforded access to medical checks and treatment whenever the need has arisen, as is the case for all inmates.

63. According to the Government, in relation to the claim of a lack of appropriate food to regulate her diabetes, prison authorities provide all inmates with meals that meet basic nutritional requirements. In addition, inmates are able to order food from a private restaurant

that operates within the prison facilities in case they have special dietary needs. Inmates are allowed to buy food from the restaurant using money deposited in their individual accounts. Ms. Sebagabo regularly uses her funds to order food that she desires or prefers. She also uses the same account to buy other provisions that she needs beyond what is provided to all inmates. Her account is regularly replenished by her family or friends.

64. In relation to the claim that Ms. Sebagabo was informed by prison staff that she had hepatitis but never received any medical inspection or treatment for it and later was informed that she did not have hepatitis, the Government states that she has been checked for communicable and non-communicable diseases as is regularly done for all inmates. All medical records and communications regarding her health have been given to her. She has no upsetting health conditions, as claimed by the source. All health communications in prisons are handled by health professionals and no contradicting or confusing messages have been given to Ms. Sebagabo concerning her health. Any health issues relating to Ms. Sebagabo have been handled in line with the best health practices and ethics.

65. The Government thus submits that these allegations have been investigated and established to be unfounded and they therefore should be rejected.

66. Turning to the claims of Ms. Sebagabo's harsh treatment in prison, the Government argues that none of these claims has ever been brought to the attention of any relevant Rwandan authorities, either by Ms. Sebagabo herself or by other independent actors who conduct regular prison visits to monitor compliance with human rights standards.

67. In relation to the claim that Ms. Sebagabo has been subjected to significantly harsher treatment in prison, along with others who have foreign citizenship, the Government claims that she has been treated with respect for her human rights in all correctional facilities. All inmates, whether foreigners or nationals, are treated the same in line with the law. Neither Ms. Sebagabo nor any other inmates have been treated harshly. Therefore, her right to be free from discrimination has not been violated.

68. The Government claims that Ms. Sebagabo has not been subjected to solitary confinement at any time in any prison. She lives with other inmates in a shared facility. She interacts with other inmates and engages in social activities. She also freely practices her religion and attends church services in the prison. Rwandan law does not provide or recognize solitary confinement as a form of punishment.

69. According to the Government, Ms. Sebagabo has not been subjected to any beatings during her time in detention facilities.

70. Turning to the allegation relating to the rights to visitation, contact with family and legal counsel, the Governments explains that Ms. Sebagabo received communication from the Embassy of Norway regarding her family in Norway, and the prison authorities facilitated the signature of some papers. All claims in this regard are unfounded and untrue.

71. According to the Government, from the time Ms. Sebagabo was handed over to the prison authorities, she has been allowed to be visited by her family and friends, like any other inmates, in accordance with the law, which is aligned to international human rights standards. However, after the outbreak of COVID-19, the Government put containment measures in place that limited visitations for all inmates to only their legal counsel. These measures were put in place to reduce the risk of exposing inmates to COVID-19. Visiting legal counsel also have to ensure they have been tested for COVID-19 and have a negative result. Ms. Sebagabo has been granted access to legal counsel like all other inmates. Her lawyers frequently visit her whenever they want, within the limits imposed by guidelines on COVID-19. She meets with her legal counsel in full confidentiality and privacy, as required by the law.

72. According to the Government, Ms. Sebagabo is granted the same amount of time as other inmates for calling her family and friends. She makes these calls without interference. She is allowed to communicate in any of the official languages of Rwanda, including English, during telephone calls.

73. In relation to the allegations concerning Ms. Sebagabo's risk of contracting COVID-19, the Government submits that these claims are all false. It is not true that Nyarugenge Prison is a COVID-19 hotspot, as it has had a limited number of cases. Containment measures

have been put in place, such as wearing masks, regularly washing hands or using hand sanitizers. There have been zero new infections over the last couple of months.

74. In relation to the claim that, while at Nyamagabe Prison, Ms. Sebagabo was crammed in a cell with over 200 people, and currently experiences similar conditions at Nyarugenge Prison despite the risks of COVID-19, the Government asserts that this is not true. Inmates have shared facilities, but each inmate has a designated space to ensure sufficient privacy and adequate healthy living conditions.

75. According to the Government, the prison authorities have been implementing COVID-19 containment measures and guidelines issued nationally since the outbreak of the virus. These guidelines include social distancing. As such, the claim that Ms. Sebagabo is at a potentially fatal risk of contracting COVID-19 is not true.

76. Turning to the allegations of excessive pretrial detention and arresting persons without a legal basis and without a court order, the Government rejects all claims as unfounded and false. It submits that any inmate brought to prison facilities can only be admitted with a valid court order. These standards were respected in the case of Ms. Sebagabo. The procedure for an arrest and the conditions under which a person can be put in pretrial detention are determined by Law No. 027/2019 relating to the criminal procedure, under articles 35, 36, 37, 74, 75, 76, 77, 78 and 79.

77. Addressing the allegations of the targeting of inmates with foreign citizenship, the Government submits that the claim that Ms. Sebagabo and others who have obtained foreign citizenship have been singled out by the authorities and subjected to differential treatment in detention is untrue. All prisoners have equal rights as provided for by the law and are treated in the same way.

78. In relation to the claims of torture and excessive and prolonged solitary confinement, the Government affirms that Rwandan laws do not allow torture of any kind in any detention facility. No acts of torture or degrading treatment have been inflicted on Ms. Sebagabo or any other inmate in any detention facility. All claims made in relation to this are unsubstantiated. The claims are aimed at portraying Ms. Sebagabo as a different person with a different status, which does not hold any truth. She is an inmate like any other and receives the same treatment as other inmates, in accordance with the law.

79. Turning to the allegation of double jeopardy, the Government submits that Ms. Sebagabo has filed a case with the appellate court, where she is challenging the ruling of the High Court on the ground of double jeopardy and the judgment of the *gacaca* court in 2008. The Government therefore finds that it would be inappropriate to discuss the matter, which is still sub judice.

80. The Government states that it is committed to its obligations under the Covenant and other relevant international treaties and to the principles enshrined in its Constitution and national laws. This is because Rwanda firmly believes these obligations to be in the primary interest of Rwandans and that, as a Government, it is accountable first and foremost to the citizens. The judiciary in Rwanda is independent and the Government of Rwanda makes sure that due process and fair trial principles are respected.

Further comments from the source

81. On 19 October 2021, the Government's reply was transmitted to the source for further comments, which the source submitted on 2 November 2021, accepting that Ms. Sebagabo had been arrested in January 2017 instead of December 2017. However, the source argues that the error in the initial communication emphasizes that Ms. Sebagabo's legal team faced difficulties in obtaining information about her situation, including when and where she was initially arrested, and in sourcing evidence to carry out her defence effectively. They have faced significant hurdles in communicating with her, such as language restrictions and supervision, which were directly imposed by the prison authorities.

82. The source argues that Ms. Sebagabo was held incommunicado in an unknown detention centre before being transferred to Kigali central prison, that she was detained without legal counsel until July 2018 and that her trial still took place in November 2018.

83. While the Government of Rwanda seeks to undermine the credibility of the claims by pointing to a lack of evidence, the source highlights the documented restrictions on the right to counsel and incommunicado detention. As a result, Ms. Sebagabo's legal team have had great difficulties in communicating with her. This should be taken as evidence of arbitrary detention, due to the unlawful restrictions placed on access to legal counsel.

84. While the Government alleges that Ms. Sebagabo was informed of the charges against her and presented with an arrest warrant on the date of her arrest, the source rejects the claim. Ms. Sebagabo was not presented with an arrest warrant when she was first arrested, in violation of article 9 of the Covenant. The only arrest warrant that has ever been presented to the legal team was not provided until November 2018, despite efforts to obtain the document earlier. For the source, the warrant was produced after Ms. Sebagabo had been arrested.

85. The source rejects the Government's claim that Ms. Sebagabo had the right to challenge her pretrial detention, arguing that it was impossible, as her access to legal counsel has been extremely restricted throughout, and she was only brought before a court for the beginning of her trial proceedings.

86. The source maintains that the Government has failed to submit any evidence proving that Ms. Sebagabo signed a waiver allowing her to be interrogated without a lawyer. Furthermore, the source submits that, even if a signed waiver exists, Ms. Sebagabo's denial would not have been voluntary, nor would it have been informed. Considering the circumstances of Ms. Sebagabo's arrest – she was in an unofficial holding cell, denied any communication with the outside world and tortured – any denial to speak to counsel was made out of fear and without the knowledge that the interrogation would be used against her.

87. The source also states that Ms. Sebagabo was held in an unknown detention facility close to Kigali International Airport following her arrest, for approximately two weeks, prior to being transferred to Kigali central prison. During these initial weeks of incommunicado detention, when the Ministry of Foreign Affairs of Norway attempted to locate her, the authorities denied that she was detained in Rwanda.

88. With regard to the *gacaca* court's judgment of 2008, the source emphasizes that, in spite of an alleged conviction in 2008 for genocide-related offences, Ms. Sebagabo travelled to Rwanda on several occasions with a granted visa, including from 22 November to 21 December 2012, without being inconvenienced by the authorities while in the country.

89. Ms. Sebagabo has not received any medical treatment despite her declining mental and physical health. The source emphasizes that Ms. Sebagabo was informed by prison officials that she was suffering from hepatitis. Despite feeling lethargic and seriously unwell, she was not provided with any further information about her diagnosis, nor was she able to speak to a doctor or receive any medication.

90. The source emphasizes that Ms. Sebagabo and others with foreign citizenship have been singled out by the authorities and subjected to differential treatment in detention. This is evidenced by her subjection to torture and excessive and prolonged solitary confinement, compared to those with only Rwandan citizenship. Such differential treatment can never be considered objective and reasonable nor in pursuit of any legitimate aim.

91. The source reiterates that Ms. Sebagabo's conviction constitutes a violation of her right not to be subject to double jeopardy under article 14 (7) of the Covenant.

Discussion

92. The Working Group thanks the source and the Government for their submissions.

93. In determining whether Ms. Sebagabo's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government,

if it wishes to refute the allegations. Mere assertions that lawful procedures have been followed are not sufficient to rebut the source's allegations.[9]

Category I

94. The source asserts that no warrant was shown to Ms. Sebagabo when she was initially arrested at the airport. She was held incommunicado for over two weeks, during which time she was interrogated frequently without being informed of the charges. The Government of Norway was reportedly notified of her detention after she had been relocated to Kigali central prison, in January 2017. Even then, she was not informed of the charges against her.

95. To date, Ms. Sebagabo has allegedly never been presented with a warrant, although her lawyers eventually received a "backdated" copy in November 2018, shortly before her trial. It lists genocide charges, for which the authorities gathered evidence only after she had been arrested. The source further states that every witness, whose testimonies were the only evidence used by the prosecution, was interrogated after her arrest. Therefore, the authorities allegedly did not have a legal basis to arrest her in January 2017. The arrest warrant cannot be considered evidence that the arresting authorities complied with Ms. Sebagabo's right, under article 9 (2) of the Covenant, to be informed of the charges against her.

96. In its response, the Government dismisses the allegations as unfounded, fabricated and unsubstantiated. It maintains that Ms. Sebagabo was arrested in accordance with the Rwandan law in force during the time of her arrest. She was informed of the charges against her on the day of her arrest. According to the Government, that is confirmed by the arrest warrant that Ms. Sebagabo herself signed on the same date. Her provisional detention was based on a court order, which she had the right to challenge.

97. For a deprivation of liberty to have a legal basis, the authorities must invoke it and apply it to the circumstances of the case through an arrest warrant. Guarantees protecting against arbitrary detention under international law include the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority. That is procedurally inherent in the right to liberty and security and the prohibition of arbitrary detention, under articles 3 and 9 of the Universal Declaration of Human Rights and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[10]

98. The United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court affirms that the right to challenge the lawfulness of detention before a court is a self-standing human right, essential to the preservation of legality in a democratic society. That right applies to all forms and situations of deprivation of liberty. Judicial oversight is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.

99. The information supplied to the Working Group by the source and the response by the Government substantially contradict each other as to whether or not a warrant was exhibited to Ms. Sebagabo at the time of her arrest or whether she was otherwise notified of the reasons for her detention.

100. The Government maintains a consistent position of referring only to the official detention, which was effected in January 2017. However, there are verifiable facts that the Government could have refuted and clarified to counter the source's version of the events, for example, by providing supporting court documents. More importantly, the Government could, in its response, have explained where Ms. Sebagabo was first arrested and where she was relocated. Those gaps in the Government's narrative do, in the Working Group's view, give credence to the source's explanation. It is on this basis that the Working Group is inclined to accept the source's narrative regarding the absence of the arrest warrant during the initial arrest and the incommunicado detention itself.

[9] A/HRC/19/57, para. 68.

[10] See opinions No. 11/2020, para. 38; No. 13/2020, para. 47; No. 14/2020, para. 50; No. 31/2020, para. 41; No. 32/2020, para. 33; No. 33/2020, para. 54; and No. 34/2020, para. 46.

101. The Working Group observes that, during the initial stage of her detention, Ms. Sebagabo was not afforded the right to be brought before a court so that it could decide without delay on the lawfulness of her detention, in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights and principles 11, 32, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group finds a violation of those articles and principles.

102. The Working Group has also repeatedly asserted that holding persons at secret, undisclosed locations and in circumstances unrevealed to the person's family violates their right to contest the legality of their detention before a court or tribunal under article 9 (4) of the Covenant. Judicial oversight of any detention is a central safeguard for personal liberty and is critical in ensuring that the detention has a legitimate basis. In the circumstances attending the incarceration of Ms. Sebagabo at the secret location, she was unable to challenge her detention before a court. Consequently, her rights to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant were violated.

103. Ms. Sebagabo was kept at a location unknown to her family, lawyers and the Norwegian National Criminal Investigation Service. The deprivation of liberty that entails a wilful refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention lacks any valid legal basis under any circumstance. It is also inherently arbitrary, as it places such person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights. Moreover, enforced disappearances constitute a particularly aggravated form of arbitrary detention, while violating numerous substantive and procedural provisions of the Covenant.[11] The Government's failure to provide notification of the arrest and location of detention to Ms. Sebagabo also violated principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

104. In addition, the Working Group has reiterated that, according to article 9 (3) of the Covenant, pretrial detention should be the exception rather than the norm and should be ordered for the shortest time possible. Put differently, liberty is recognized under article 9 (3) of the Covenant as the core consideration, with detention merely as an exception. Detention pending trial must thus be based on an individualized determination that it is reasonable and necessary for such purposes as to prevent flight, interference with evidence or the recurrence of crime.

105. Consequently, the Working Group finds that the Government failed to establish a legal basis for Ms. Sebagabo's detention. Her detention was thus arbitrary under category I.

Category III

106. The source claims that the deprivation of liberty of Ms. Sebagabo, as well as her trial, falls within category III, as there was total or partial non-observance of the international norms relating to the right to a fair trial, which is alleged to be of such gravity as to give the deprivation of liberty an arbitrary character. More precisely, the source alludes to the denial of Ms. Sebagabo's right to a fair and public hearing by a competent, independent and impartial tribunal established by law; the right to the presumption of innocence; the right to adequate time and facilities for the preparation of the defence and to communicate with counsel; and the right to be tried without undue delay, among others.

107. With regard to the right to a fair and public hearing, the source submitted that there was unjustified restriction to media access to the proceedings for Ms. Sebagabo's case at both the Intermediate Court of Huye and the Appellate Court of Nyanza. The courts did not provide adequate facilities for the attendance of the media, who are critical to the documentation of trial proceedings and disseminating this information to the public. This was despite the fact that Ms. Sebagabo's trial proceedings were never of a confidential nature, nor did they pose a risk to any exceptional ground to a public trial. Notably, the Government does not address this issue in its reply.

[11] Human Rights Committee, general comment No. 35 (2014), para. 17.

108. The Working Group is mindful that article 14 (1) of the Covenant guarantees that those facing criminal charges have the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. It also recognizes the right to equality before courts and tribunals. A "public" trial is one open to the public and all media. There are exceptions to this general rule permitted only on the basis of national security, public order, public morals, privacy or where publicity would prejudice the interest of justice.

109. There was no information to suggest that any of the exceptions to the right to a public hearing under article 14 (1) of the Covenant applied in the present case. Ms. Sebagabo's trial proceedings were never of a confidential nature because the information relating to the Rwandan genocide and Ms. Sebagabo had already been widely discussed in courts and the media. There was no justification to restrict media access to the trial.

110. The source alleges that the court before which Ms. Sebagabo was tried was not impartial and independent as, during her trial before the Intermediate Court of Huye, the Court refused to permit her lawyers to cross-examine the prosecution witnesses, whose testimonies formed the basis of her convictions, and were used during the appeal. This approach seems to contradict the Covenant with regard to the right to be heard by an impartial tribunal, which demands that judges act in ways that properly promote the interests of all the parties in justice.

111. Furthermore, the source reports that the Intermediate Court of Huye proceeded on the premise that it was incumbent upon Ms. Sebagabo to prove whether she had visited the place where she had lived during the genocide and met the community, when she introduced the fact that she had visited Rwanda several times prior to her arrest as exculpatory evidence of her innocence. The Court also held it against her when determining her guilt that she had not proved whether or not she had still been in Rwanda shortly after the genocide so that she could refute any allegation made back then. This was confirmed on appeal. This shifting of the burden of proof undermined the presumption of innocence. The Government has not addressed these issues.

112. The Working Group notes that article 14 (2) of the Covenant guarantees that everyone charged with a criminal offence is to have the right to be presumed innocent until proven guilty according to law. This was not the case in Ms. Sebagabo's trial. It thus considers that the source has established that Ms. Sebagabo's trial did not meet the standards of a fair and public hearing by a competent, independent and impartial tribunal, in violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) and (2) of the Covenant. The Working Group refers this case to the Special Rapporteur on the independence of judges and lawyers.

113. The source says that Ms. Sebagabo was detained at Kigali central prison for eight months before being granted initial access to legal counsel, arranged by the Ministry of Foreign Affairs of Norway. Therefore, Ms. Sebagabo was not granted "prompt" access to counsel. Besides denying the incommunicado detention of Ms. Sebagabo, the Government has not specifically responded to those claims.

114. The source alleges that Ms. Sebagabo was held in pretrial detention from her arrest in January 2017 until her trial at the Intermediate Court of Huye in November 2018. Prior to those proceedings, she was brought before the Primary Court, which concluded that it did not have the jurisdiction to hear her case. However, at neither of the proceedings did Ms. Sebagabo have the opportunity to challenge her pretrial detention and, thus, there was no individualized determination made by a judicial authority to justify the lengthy period of pretrial detention. Having spent more than 20 months in pretrial detention without justification, Ms. Sebagabo was not tried within a reasonable amount of time, contrary to the requirement under article 9 (3) of the Covenant.

115. The source alleges that, even when Ms. Sebagabo was granted access to legal counsel, in July 2018, her ability to communicate with her lawyers and assist in their preparation for trial was significantly impeded. Her lawyers were frequently denied visitation permits. When Ms. Sebagabo's defence was permitted entry to the prison, which was rare, the visits were always supervised by a prison officer, who ensured that she spoke to them only in Kinyarwanda – a language that most of her legal team did not speak. On the day of court proceedings, Ms. Sebagabo's counsel was not allowed to speak to her.

116. The response of the Government with respect to access to legal counsel is that Rwandan law recognizes the rights to due process of the law, which includes the right to legal representation (art. 29 (1) of the Constitution). According to Law No. 30/2013 relating to the Code of Criminal Procedure, in its article 38, any person held in custody by the Judicial Police is to be informed of his or her rights, including the right to legal counsel or any other person of his or her choice.

117. The Government states that the right to counsel was explained to Ms. Sebagabo during what the Government calls the first interrogation following her arrest on 21 January 2017. Ms. Sebagabo, however, declined that right, informing the investigator that she would respond to the questions by herself. The statement was recorded and duly signed by Ms. Sebagabo. On 26 January 2017, she was again informed by the prosecutor of her right to be interrogated in the presence of her legal counsel. Ms. Sebagabo, however, declined to avail herself of that right. She was represented by legal counsel in subsequent proceedings.

118. Article 14 (3) (b) of the Covenant guarantees the right to adequate time and facilities for the preparation of the defence and to communicate with counsel. The Human Rights Committee has interpreted "adequate time" as requiring the accused to be granted prompt access to counsel, while what is considered "prompt" depends on the circumstances of the case. Principle 15 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment stipulates that communication with counsel is not to be denied for more than a matter of days. The accused must also be able to meet with counsel in private conditions that fully respect the confidentiality of their communication. The right to communicate with counsel also requires that lawyers are able to represent their clients without restrictions, influences, pressure or under interference from any quarter. In addition, the gravity of the alleged offence, which in this case was genocide, is important in determining if counsel should be mandatory in the interest of justice.[12]

119. Article 14 (3) (c) of the Covenant states that any individual has the right to be tried without undue delay. This provision complements article 9 (3), which requires an individual to be brought promptly before a judge and tried within a reasonable time frame. What is considered a reasonable time depends on the individual circumstances of the case, including its complexity and the conduct of the accused, the prosecutor and the court.

120. Article 9 (3) states that it is not to be the general rule that persons awaiting trial are to be detained in custody. If such detention is imposed, it must be based on an individualized determination that is reasonable and necessary taking into account all the circumstances. The Human Rights Committee has explained that pretrial detention must be ordered for as short a time as possible. Thus, according to articles 9 (3) and 14 (3) (c), where pretrial detention is imposed, an individual must be tried as quickly as possible; this was not the case for Ms. Sebagabo.

121. In view of these considerations, the Working Group is of the view that the detention of Ms. Sebagabo is arbitrary under category III, due to the non-observance of the international norms relating to the right to a fair trial.

Category V

122. Regarding the deprivation of Ms. Sebagabo's liberty being a violation of international law on the grounds of discrimination, the source claims that Ms. Sebagabo and others who have obtained foreign citizenship have been singled out by the authorities and subjected to differential treatment in detention. This is allegedly evidenced by their subjection to torture and excessive and prolonged solitary confinement, compared to those with exclusively Rwandan citizenship. The source claims that the arrest and detention of Ms. Sebagabo is arbitrary under category V.

123. The Government's response is that the source's claim is untrue, as all prisoners have equal rights as provided for by Rwandan laws and are treated in the same way.

124. The Working Group notes that, under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant, every individual has the right to freedom from

[12] Human Rights Committee, general comment No. 32 (2007), para. 38.

discrimination, including based on "other status", which includes nationality and citizenship. Any detention based on discriminatory treatment would thus be arbitrary.

125. In the present situation, however, there is not sufficient information provided by the source to establish that the nationality of Ms. Sebagabo was a primary reason for the detention.

Disposition

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

> The deprivation of liberty of Julienne Sebagabo, being in contravention of articles 3, 6, 8 and 9 of the Universal Declaration of Human Rights and articles 2, 4, 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

127. The Working Group requests the Government of Rwanda to take the steps necessary to remedy the situation of Ms. Sebagabo without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

128. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Sebagabo immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate unconditional release of Ms. Sebagabo.

129. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Sebagabo and to take appropriate measures against those responsible for the violation of her rights.

130. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers.

131. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

132. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Ms. Sebagabo has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Ms. Sebagabo;

(c) Whether an investigation has been conducted into the violation of Ms. Sebagabo's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Rwanda with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

133. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

134. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would

enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

135. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[13]

[*Adopted on 18 November 2021*]

[13] Human Rights Council resolution 42/22, paras. 3 and 7.