



FREEDOM NOW

**FREEDOM NOW – INDIVIDUAL SUBMISSION TO
THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS**

**UNIVERSAL PERIODIC REVIEW (“UPR”): RWANDA
37th SESSION
HUMAN RIGHTS COUNCIL – UPR WORKING GROUP**

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Introduction

1. Freedom Now submits this report to assist the UN Human Rights Council in its review of the policies and practices of the Government of Rwanda (“Rwanda”). Freedom Now is an international non-governmental organization dedicated to protecting human rights and rule of law by working to eliminate the politically motivated harassment and imprisonment of those who peacefully exercise their fundamental rights.¹

2. This report documents the Rwandan government’s use of arbitrary detention and politically-motivated prosecutions in violation of international law, as well as related human rights violations. Rwanda continues to silence government critics through abuse and malicious criminal detention. Such practice violates the government’s obligations under the International Covenant on Civil and Political Rights (“ICCPR”), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), and the Universal Declaration of Human Rights (“UDHR”).

Previous Review and Actions Taken on Recommendations

3. Concern for prisoners of conscience was highlighted during Rwanda’s second Universal Periodic Review in 2015.² Rwanda did not accept recommendations to release persons detained for their political views and/or for the peaceful and legitimate expression of their views.³

4. In the time since, Rwanda has taken positive actions regarding this recommendation. President Kagame pardoned more than 2,000 prisoners in September 2018, including Victoire Ingabire, leader of the unregistered opposition FDU-Inkingi party. Ingabire was arrested in April 2010 and sentenced to 15 years in prison on charges of threatening state security and belittling the 1994 genocide.⁴ In December 2018, a court acquitted former presidential candidate Diane Rwigara of several charges, including charges for inciting insurrection and forging documents. Rwigara was arrested in September 2017 and held in pre-trial detention for over a year.⁵

¹ Freedom Now is currently serving as international *pro bono* counsel to Rwandan prisoners of conscience Tom Byabagamba, Frank Rusagara, and Jacqueline Umuhoza.

² Prisoners of conscience are persons detained for their political, religious, or other beliefs or because of their ethnic origin, sex, sexual orientation, color, language, national or social origin, economic status, birth or other status—who have not used or advocated violence.

³ *3 RPR: Responses to Recommendations & Voluntary Pledges, Rwanda, Second Review*, UPR Info, ¶¶ 135.58 and 135.61, https://www.upr-info.org/sites/default/files/document/rwanda/session_23_-_november_2015/recommendations_and_pledges_rwanda_2016.pdf.

⁴ *Victoire Ingabire: Rwanda frees 2,000 people including opposition figure*, BBC News (18 Sept. 2018), <https://www.bbc.com/news/world-africa-45532922>.

⁵ *Rwandan government critic acquitted of 'baseless' insurrection charges*, The Guardian (6 Dec. 2018), <https://www.theguardian.com/world/2018/dec/06/critic-of-rwandan-president-cleared-of-insurrection-and-forgery>.

5. Rwanda revised its Penal Code in 2018, despite rejecting previous recommendations to reform the Code to comply with international standards.⁶ However, the new version raises several areas of concern regarding the right to freedom of expression and national security. For example, the Code includes extra-territorial application, applying to any Rwandan national who commits an offence under the law outside of the country. Also of concern are legal provisions regarding “genocide ideology” and incitement. The revised Code addressed concerns about the broad concept of “genocide ideology” and narrows the definition of the term. However, provisions in the Code criminalize expression “that may show discriminatory ideologies, and includes the intent to advocate for genocide.” This is much broader than the international crime of “direct and public incitement to genocide” and could be used to prosecute opposition members exercising legitimate freedom of expression rights.⁷

Arbitrary Detention and Associated Rights Violation

6. Despite the releases noted above, Rwanda continues to detain its citizens for exercising their fundamental human rights, including the rights to freedom of expression, association, and assembly. In the context of such politically-motivated detentions, the government has failed to meet minimum international due process standards and violated detainees’ rights to be free from torture and other forms of mistreatment. During the reporting period, the UN Working Group on Arbitrary Detention issued two opinions regarding the detention of five individuals in Rwanda.⁸ The Working Group found that by detaining these individuals Rwanda committed serious violations of human rights enshrined in the ICCPR and UDHR, including the rights to freedom of expression and freedom of association. Two of the named individuals remained detained⁹ and compensation has not been awarded to any of the formerly detained individuals.

7. The government detained and convicted numerous political opposition members, government critics, and family members of the aforementioned to lengthy prison sentences during this reporting period. Although there is no definitive catalog of prisoners of conscience in Rwanda, a survey conducted by Human Rights Watch found that at least 104 individuals were arbitrarily detained by the military between 2010 and 2017.¹⁰

8. Trials of government critics are replete with due process violations. For example, during the trial of former military officers Frank Rusagara and Tom Byabagamba, one of the prosecution’s witnesses also served as a judge in a pre-trial hearing. Another witness later admitted he was forced to give testimony against the two men.¹¹ In the case of Diane and Adeline Rwigara, the two women were unable to review their own case file and the government failed to share its evidence with the defense.¹²

9. The Government’s use of torture to elicit confessions is a common practice. Former military officer François Kabayiza alleged he was tortured to compel testimony against his co-defendants. No investigation was launched into these allegations despite apparent physical signs of torture. Kabayiza struggled to walk into the courtroom on his own during the trial. He displayed bruises and had lost some of his ability to speak,

⁶ UPR Info, *supra* note 3, ¶¶ 135.46, 135.17.

⁷ *Rwanda: Penal Code*, Article 19 (June 2018), pgs. 9-10, <https://www.article19.org/wp-content/uploads/2018/09/Rwanda-Penal-Code-Analysis-Final.pdf>.

⁸ *Franck Kanyambo Rusagara, Tom Byabagamba, and François Kabayiza (Rwanda)*, UN Working Group on Arbitrary Detention (23 Nov. 2017), A/HRC/WGAD/2017/85 and *Diane Shima Rwigara and Adeline Rwigara (Rwanda)*, UN Working Group on Arbitrary Detention (2 May 2019), A/HRC/WGAD/2019/24.

⁹ Tom Byabagamba and Frank Rusagara.

¹⁰ “*We Will Force You to Confess*”: *Torture and Unlawful Military Detention in Rwanda*, Human Rights Watch (Oct. 2017), https://www.hrw.org/sites/default/files/report_pdf/rwanda1017_web_0.pdf

¹¹ *Petition on behalf of Frank Rusagara, Tom Byabagamba, and François Kabayiza to the UN Working Group on Arbitrary Detention*, Freedom Now (14 July 2017), pgs. 16-18, <http://www.freedom-now.org/wp-content/uploads/2017/07/WGAD-PETITION-Rusagara-Byabagamba-Kabayiza-Rwanda-FINAL-July-14-2017-redacted.pdf>.

¹² *Petition on behalf of Diane and Adeline Rwigara to the UN Working Group on Arbitrary Detention*, Freedom Now (21 Sept. 2018), pg. 13, <http://www.freedom-now.org/wp-content/uploads/2018/10/WGAD-Petition-Diane-and-Adeline-Rwigara-Redacted.pdf>.

despite being in good health prior to his arrest.¹³ The Committee Against Torture noted serious concern during its second periodic review of Rwanda over consistent reports that judges routinely ignored scars or medical documents as evidence of torture and did not order investigations.¹⁴ Rwanda denies that torture is used in prisons, but in October 2017 the government obstructed a visit by a UN delegation investigating the practice. The the concern over reprisals against prisoners was so great, the delegation ended its trip early.¹⁵

10. The Human Rights Committee has highlighted Rwanda's apparent failure to protect its citizens' right to life. The Committee noted in the context of Rwanda's fourth periodic review, that the government investigated alleged disappearances or killings, although several disappearances or killings of political figures and dissidents remain unsolved.¹⁶ A troubling pattern of extrajudicial killings or deaths in custody emerged during the reporting period, as detailed below.

Examples of Politically Motivated Imprisonment

Frank Rusagara and Tom Byabagamba

11. Frank Rusagara is a retired brigadier general and held several senior positions in the Rwandan Defense Forces before retiring in October 2013. Tom Byabagamba is a former colonel and was head of the presidential guard. Both men on occasion made private comments to colleagues in person via email and text that were critical of the government.

12. In August 2014, Rusagara and Byabagamba were arrested. On March 31, 2016, the two men were convicted by the Kanombe Military High Court of "inciting insurrection among the population," and "tarnishing the image of the country and government." Byabagamba was also convicted of "concealing evidence" and "contempt of the national flag," and Rusagara was convicted of "illegal possession of a firearm."

13. Byabagamba and Rusagara were sentenced to 21 years and 20 years in prison, respectively. François Kabayiza, a co-defendant, was sentenced to five years in prison. He was released in August 2019 at the expiration of his sentence. In December 2019, an appeals court upheld the conviction of Rusagara and Byabagamba, reducing their sentences to 15 years. The UN Working Group on Arbitrary Detention issued an opinion in November 2017 finding that Rwanda committed numerous violations of international law by detaining Rusagara and Byabagamba.¹⁷

Jackie Umuhoza

14. Jackie Umuhoza is the daughter of the prominent pastor Bishop Deo Nyirigira, a dissident who was exiled from Rwanda in 2001 and currently resides in Uganda. Umuhoza grew up in Uganda living with her father, but after finishing university, she and her two older sisters moved to Rwanda. In late 2017, the Rwandan government began harassing and intimidating the three sisters for their connection to their father. Over the course of the next two years, the police repeatedly called the sisters to municipal police stations for questioning about their father's alleged political activities. During these interrogations, police officers threatened the women with physical harm. After government pressure continued to increase, the women

¹³ *Petition on behalf of Frank Rusagara, Tom Byabagamba, and François Kabayiza to the UN Working Group on Arbitrary Detention*, Freedom Now (14 July 2017), pg. 16.

¹⁴ *Concluding observations on the second periodic report of Rwanda*, Committee Against Torture (21 Dec. 2017), CAT/C/RWA/CO/2, ¶ 20.

¹⁵ *U.N. torture watchdog ends trip to Rwanda, citing obstruction*, Reuters (21 Oct. 2017), <https://www.reuters.com/article/us-rwanda-rights/u-n-torture-watchdog-ends-trip-to-rwanda-citing-obstruction-idUSKBN1CQ0EI>.

¹⁶ *Concluding observations on the fourth periodic report of Rwanda*, UN Human Rights Committee (2 May 2016), CCPR/C/RWA/CO/4, ¶ 21.

¹⁷ *Franck Kanyambo Rusagara, Tom Byabagamba, and François Kabayiza (Rwanda)*, UN Working Group on Arbitrary Detention (23 Nov. 2017), A/HRC/WGAD/2017/85.

attempted to flee the country using their Ugandan passports in March 2019. However, they were stopped at the border, arrested, and held *incommunicado* for a week before being released. The authorities did not return their passports.

15. On November 27, 2019, Umuhoza was abducted in Kigali by men in civilian clothes. There was no official recognition of the arrest until the following day when news of her abduction began to circulate online. The Rwandan Investigation Bureau tweeted that Umuhoza was arrested on suspicion of treason and espionage on behalf of Uganda. She was held *incommunicado* until December 8, 2019, despite repeated written and unwritten requests to see her from both her sisters and lawyer.¹⁸ There has been no formal indictment released against Umuhoza or description of the charges other than the tweet from the Rwandan Investigation Bureau and state news agencies claiming that she was a spy. Although she was released from custody in March 2020, charges are still pending against her and she is banned from leaving Kigali.

Examples of Enforced Disappearances and Summary or Arbitrary Executions

Boniface Twagirimana

16. Boniface Twagirimana is the deputy leader of the FDU-Inkingi. He was arrested in September 2017 with eight other FDU-Inkingi members and charged with state security-related crimes. In October 2018, Twagirimana was transferred alone from Mageragere prison in Kigali to Mpanga prison in southern Rwanda. Four days later, Twagirimana was missing from his cell during a routine headcount.¹⁹ Rwandan authorities claimed he escaped, despite other detainees claiming he was driven away in a state prison vehicle.²⁰ Although his whereabouts still remain unknown, in January 2020 he was sentenced *in absentia* to 10 years in prison.²¹

Anselme Mutuyimana

17. Anselme Mutuyimana was an assistant to opposition leader Victorie Ingabire. He was arrested in 2012, convicted of inciting insurrection, and released in August 2018. In March 2019 his body was found in a forest in northwestern Rwanda showing signs of strangulation.²² The Rwanda Investigation Bureau claimed it is investigating the death, but have not publicly disclosed information about its progress.

Eugene Ndereyimana

18. Eugene Ndereyimana, an FDU-Inkingi member, disappeared on July 15, 2019 as he was on his way to an FDU-Inkingi meeting in the northeastern town of Nyagatare.²³

Syldio Dusabumuremyi

19. Syldio Dusabumuremyi was the national coordinator for FDU-Inkingi. He was stabbed to death on September 23, 2019 by two unidentified men.²⁴ At the time, the Rwanda Investigation Bureau claimed it had two men in custody regarding the crime. No further information has been released about these men. Nine days

¹⁸ *Rwanda accuses a pastor's daughter of treason and espionage. Her family says the charges are fabricated*, CNN (24 Dec. 2019), <https://www.cnn.com/2019/12/24/africa/rwanda-pastor-daughter-treason-charges/index.html>.

¹⁹ *Rwandan opposition party leader feared dead amid reports he escaped from prison*, CNN (8 Oct. 2018), <https://www.cnn.com/2018/10/08/africa/rwanda-opposition-leader-escaped-jail-feared-dead-intl/index.html>.

²⁰ *Disappearance of Boniface Twagirimana: "We are asking for EU assistance"*, Radio France Internationale (28 Oct. 2018), <http://www.rfi.fr/fr/afrique/20181028-disparition-boniface-twagirimana-opposants-rwandais-manifestent-bruxelles>.

²¹ *Missing Rwandan opposition politician sentenced to 10 years*, Associated Press (24 Jan. 2020), <https://apnews.com/c4c60992afdd0661987cde442da78fd0>.

²² *Spokesman of leading Rwandan opposition politician found dead*, Reuters (10 March 2019), <https://www.reuters.com/article/us-rwanda-politics/spokesman-of-leading-rwandan-opposition-politician-found-dead-idUSKBN1QR0U5>.

²³ *Opposition members keep going 'missing' in Rwanda. Few expect them to return*, CNN (27 July 2019), <https://www.cnn.com/2019/07/27/africa/rwanda-opposition-disappearances-intl/index.html>.

²⁴ *Rwandan regime opponent killed in motorbike ambush*, The Australian (1 Oct. 2019), <https://www.theaustralian.com.au/world/the-times/rwandan-regime-opponent-killed-in-motorbike-ambush/news-story/cab7529c7bdad1b316f02faf65bd750f>.

before the attack President Kagame gave a speech at the party congress for the ruling Rwanda Patriotic Front. Speaking in Kinyarwanda, he said: “These people I graced who were in prison, now they shout out . . . Leave them, they can go die elsewhere . . . They shouldn’t slow down our development . . .”²⁵

Conclusion and Recommendations

20. Freedom Now recommends that Rwanda:

a) Immediately and unconditionally release and reconstitute the civil and political rights of Frank Rusagara, Tom Byabagamba, and all other individuals detained under criminal or administrative charges for exercising their fundamental human rights.

b) Conduct thorough and transparent investigations of all cases of deaths in custody, arbitrary detention, torture, fair trial abuse, and other rights abuses directed against François Kabayiza, Frank Rusagara, Tom Byabagamba, and Jackie Umuhoza. Ensure that perpetrators of such abuses are held accountable and that victims of such abuses are appropriately rehabilitated and compensated.

c) Conduct thorough and transparent investigations of all cases of disappearances and murders of journalists, government critics, and opposition party members, including Boniface Twagirimana, Anselme Mutuyimana, Eugene Ndereyimana, Sylodio Dusabumuremyi, Constantin Tuyishimire, and Kizito Mihigo.

d) Ensure that all detainees have immediate and confidential access to legal counsel of their own choosing, that trials are open to the public, that confessions are not obtained via use of torture or other undue pressure, that the presumption of innocence is respected, and that all other procedural rights are fully respected.

e) Provide training to the judiciary, police, and security forces to ensure that human rights protections in domestic and international law are scrupulously protected throughout the entire legal process.

f) Invite, without obstruction, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions; the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the UN Special Rapporteur on the situation of human rights defenders; the UN Special Rapporteur on freedom of assembly and association; and the UN Working Group on Arbitrary Detention for country visits, fully cooperate with their mandate, and implement their recommendations.

²⁵ *Rwanda: Killing Is Latest Attack on Opponents*, Human Rights Watch (24 Sept. 2019), <https://www.hrw.org/news/2019/09/24/rwanda-killing-latest-attack-opponents>.