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**Human Rights Council
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary
Detention at its seventy-third session,
31 August-4 September 2015****No. 30/2015 (Burundi)****Concerning Frédéric Bamvuginyumvira**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 9 June 2015, the Working Group sent a communication to the Government of Burundi concerning Frédéric Bamvuginyumvira. The Government has not replied to the communication. 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 the detainee) (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 International Covenant on Civil and Political Rights (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 rights (category V).

Submissions

Communication from the source

4. Frédéric Bamvuginyumvira is a Burundian politician and a member of the Front for Democracy in Burundi. He was Vice-President of the Republic of Burundi from 11 June 1998 to 1 November 2001 and, in the 1993 elections, won a seat in the National Assembly of Burundi as a representative of Kirundo province. Owing to the support that he enjoys within his party, he is seen as a potential candidate in the 2015 presidential election. Mr. Bamvuginyumvira, like other leaders of political opposition parties, has accused the Government of unilaterally lobbying for amendments to the Constitution that would strengthen the executive branch and threaten the balance of power between the country's Hutu majority and its Tutsi minority, a balance enshrined in the Arusha Peace and Reconciliation Agreement for Burundi, which was signed in 2000.

5. The source reports that at around 9 p.m. on Thursday, 5 December 2013, a car blocked Mr. Bamvuginyumvira's path on the "avenue of death", at the intersection between the University of Burundi and the entrance to the Nyakabiga III district in the city of Bujumbura. Two people got out of the vehicle and, without disclosing their identity or showing their credentials, ordered Mr. Bamvuginyumvira to present his identity and vehicle documents. Fearing that he was being kidnapped, Mr. Bamvuginyumvira produced his papers, among which was an envelope containing 200,000 Burundi francs (roughly US\$ 127). The two people, who were later identified as an adviser to the mayor of Bujumbura and a demobilized former soldier, forced Mr. Bamvuginyumvira out of his vehicle and into theirs at gunpoint. Believing that he was being kidnapped, Mr. Bamvuginyumvira asked the demobilized former soldier what they wanted, to which the reply was that they wanted 10 million Burundi francs (around US\$ 6,366).

6. According to the source, Mr. Bamvuginyumvira was taken to Bujumbura town hall, where a criminal police officer, a town hall official and the mayor's adviser presented him with a statement. The three individuals told Mr. Bamvuginyumvira to sign the statement, arguing that they had caught him in the act of adultery. Mr. Bamvuginyumvira refused to sign the document.

7. The demobilized former soldier then asked Mr. Bamvuginyumvira to retrieve the envelope from the car and give it to his superior, the mayor's adviser, who, once that had been done, made a telephone call to inform his interlocutor that Mr. Bamvuginyumvira had just tried to bribe him. The demobilized former soldier filmed the whole scene. A few minutes later, the local police chief, accompanied by the criminal police officer, ordered Mr. Bamvuginyumvira to be handed over to the Special Investigation Brigade.

8. The source claims that, starting at around 11 p.m., Mr. Bamvuginyumvira was interrogated for two hours by a criminal police officer. During the interrogation, which was conducted in the absence of a lawyer, Mr. Bamvuginyumvira was not informed of his rights. He was questioned about the envelope containing 200,000 Burundi francs, the circumstances of his arrest and the fact that he had visited a "brothel", a hotel called After Beach. Mr. Bamvuginyumvira denied all the allegations. At the end of the interrogation, he was placed in detention for refusing to comply with administrative measures, trying to commit bribery, being caught in the act of adultery and offending

public morals, which are acts punishable under articles 372, 426, 526 and 540, respectively, of the Criminal Code.

9. The source reports that Mr. Bamvuginyumvira was detained for four days by the Special Investigation Brigade in a fenced roofless cell alongside four other prisoners. He did not have access to a shower.

10. At around 10 a.m. on 6 December 2013 Mr. Bamvuginyumvira was interrogated for a second time by a criminal police officer about being caught in the act of adultery. At around 2 p.m., while under interrogation, two witnesses who worked at the After Beach hotel denied having met or seen Mr. Bamvuginyumvira at the hotel.

11. The source reports that on 9 December 2013 Mr. Bamvuginyumvira was questioned in the presence of his lawyers by an officer of the public prosecutor's office at the *tribunal de grande instance* (court of major jurisdiction). He was accused of incitement to immoral behaviour and to prostitution, which is an offence under article 540, paragraph 2, of the Criminal Code. After the hearing, no charges were filed against him by the investigating judge, who decided that he should be brought before the Anti-Corruption Court that same day to be questioned about the offence of attempted bribery. There he was accused of trying to bribe the mayor's adviser, who was in charge of security, by offering the latter 200,000 Burundi francs in exchange for not reporting Mr. Bamvuginyumvira to the judicial authorities for having visited the brothel known as the After Beach hotel. After the interrogation, Mr. Bamvuginyumvira was placed in Mpimba central prison in Bujumbura. The charges against him related only to the offence of bribery, which is punishable under article 48 of Act No. 1/12 of 18 April 2006 on measures to prevent and punish corruption and related offences.

12. The source claims that Mr. Bamvuginyumvira was subjected to deplorable detention conditions. He was held with two other inmates in a small cell measuring 4 square metres. His family had to provide the mattress on which he slept. Despite suffering from high blood pressure, he had great difficulty obtaining medical care. His condition deteriorated during his imprisonment. Doctors were present only every other day to examine inmates who required treatment. On the remaining days, inmates had access only to a small infirmary with almost no medical equipment.

13. The source reports that on 9 December 2013 Mr. Bamvuginyumvira's lawyers applied for bail, arguing that the case file contained no evidence of an offence and that the detention was arbitrary and humiliating.

14. On 17 December 2013 Mr. Bamvuginyumvira was heard in the judge's chambers in the presence of his lawyers for the purpose of verifying the legality of his detention. His lawyers submitted another request for provisional release and branded his detention as illegal given that no offence had been committed.

15. On 19 December 2013 the Anti-Corruption Court judges ruled that Mr. Bamvuginyumvira should be released on bail, which was set at 1 million Burundi francs (roughly US\$ 637), and imposed measures to restrict his movement, prohibiting him from leaving the country without the prior authorization of the investigating judge and requiring him to remain at the disposal of the court.

16. That same day, however, the investigating judge issued an order for recall, pursuant to which Mr. Bamvuginyumvira was kept in detention.

17. The source states that on 20 December 2013 the public prosecutor's office appealed the Anti-Corruption Court's decision to release Mr. Bamvuginyumvira on bail.

18. Mr. Bamvuginyumvira's lawyers appealed the prosecutor-general's refusal to enforce the order to release Mr. Bamvuginyumvira on bail. They also contested the appeal of the public prosecutor's office in a submission dated 23 December 2013.

19. The source reports that on 26 December 2013 the judicial chamber of the Supreme Court found that the order for recall was unlawful. The Supreme Court judges nevertheless ruled that Mr. Bamvuginyumvira should remain in detention on the grounds that there was a video providing solid evidence of culpability under article 110 of the Code of Criminal Procedure. They deemed that the disagreement over the place of arrest and the motives cited warranted a more detailed investigation by the prosecutor.

20. On 3 January 2014 Mr. Bamvuginyumvira's lawyers publicly opposed the decision and lodged an appeal in cassation. On 22 January 2014 the cassation chamber declared the appeal inadmissible, contending that the detention orders were not final decisions on the merits and that, therefore, there was no possibility of appeal in cassation.

21. On 24 January 2014 the legal case against Mr. Bamvuginyumvira was heard publicly for the first time. His lawyers again applied for bail, citing procedural errors and his health status. Their request was not considered, however, and the Anti-Corruption Court judges decided to proceed directly to an examination of the merits of the case. The hearing was adjourned until 10 March 2014 to give Mr. Bamvuginyumvira's lawyers time to consult the case file.

22. However, the source states that on 10 March 2014 Mr. Bamvuginyumvira was unable to attend the public hearing for health reasons. The hearing was postponed until 18 March 2014 to enable the defendant to be present.

23. On 18 March 2014 Mr. Bamvuginyumvira's lawyers again requested his release on bail for health reasons, as his high blood pressure had worsened since his imprisonment. They also asserted that the conditions for keeping a person in pretrial detention, as provided for under article 110 of the Code of Criminal Procedure, were no longer being met.

24. On 20 March 2014 the Anti-Corruption Court granted Mr. Bamvuginyumvira release on bail because of his health problems. The bribery charges against him were upheld. Since that time his freedom of movement has been restricted; he cannot go to ports or airports or leave the country.

25. The source states that on 15 January 2015 the Anti-Corruption Court sentenced the author to 5 years' imprisonment and ordered him to pay a fine of 200,000 Burundi francs (roughly US\$ 127) for bribery on the sole basis of the video recorded by police officers when Mr. Bamvuginyumvira allegedly tried to bribe them. The Court dismissed all the arguments put forward by Mr. Bamvuginyumvira's lawyers concerning procedural errors.

26. On 16 February 2015 Mr. Bamvuginyumvira's lawyers filed an appeal.

27. The author's continued detention has serious consequences that go beyond his legal status, as it prevents him from participating actively in the various elections that are scheduled to take place in the country and, in particular, from standing in the presidential elections.

28. The source claims that the proceedings against Mr. Bamvuginyumvira are marred by grave irregularities that constitute violations of Burundian law and of international norms relating to the rights to liberty and security of person and to a fair trial. These irregularities include the lack of legal justification for the detention and for the measures restricting Mr. Bamvuginyumvira's freedom of movement; procedural

irregularities at the time of arrest; non-compliance with the order for release; the failure to verify the legality of the detention within the time frame specified by law; and the refusal to consider the request for release on bail. When considered together, these irregularities suggest that Mr. Bamvuginyumvira enjoys no protection from the law and render the violations so serious as to give the detention and the measures restricting Mr. Bamvuginyumvira's freedom of movement an arbitrary character.

29. The source claims that the proceedings against Mr. Bamvuginyumvira have no legal basis. Firstly, the reasons given for his detention have changed during the course of proceedings. Only the bribery charges have been upheld; all other charges have been dropped. The offence was committed between the author's arrest and his handing over to the Special Investigation Brigade. Thus, the charges that had initially justified the arrest were dropped completely and the detention is now based solely on events that occurred after the arrest.

30. The source adds that the legal bases cited by the officer of the public prosecutor's office in the arrest warrant of 9 December 2013 are no longer valid, as Act No. 1/015 of 20 July 1999 was repealed by the new Code of Criminal Procedure of 3 April 2013.

31. The source further states that Mr. Bamvuginyumvira's lawyers argued on several occasions that no offence had been committed. The source maintains that keeping Mr. Bamvuginyumvira in pretrial detention is in violation of article 110 of the Code of Criminal Procedure, on the conditions for ordering or prolonging pretrial detention. These conditions have not been met and, contrary to the requirement under article 110 of the Code, no evidence of guilt has been provided, with the exception of the video recorded after Mr. Bamvuginyumvira had refused to sign a statement that he had been prevented from reading.

32. The source adds that Mr. Bamvuginyumvira was kept in detention in breach of the order for provisional release issued by the Anti-Corruption Court on 19 December 2013 and of article 127 of the Code of Criminal Procedure, while the order for recall had been deemed unlawful by the Supreme Court.

33. With regard to the procedural errors and to safeguards during arrest, the source claims that Mr. Bamvuginyumvira was arrested by town hall officials who did not have the authority to act as criminal police officers and therefore lacked the legal capacity to make arrests. As a result, they violated article 5, paragraph 2, of the Code of Criminal Procedure, which establishes that "[a]ll steps taken by a criminal police officer without authority shall be considered null and void". Article 30 of the Code, which, in cases of flagrante delicto, empowers all persons to apprehend the alleged perpetrator of a crime or offence that represents a serious threat to the security of property or persons, has also been violated, as adultery is treated as a breach of article 527 of the Criminal Code and not as a crime or offence.

34. The source further claims that, during the interrogation conducted by the criminal police officer on the premises of the Special Investigation Brigade, Mr. Bamvuginyumvira was not informed of his rights as required by article 10, paragraph 5, of the Code of Criminal Procedure, in particular his right to remain silent in the absence of his lawyer.

35. As to the non-compliance with the order for release, the source states that the Anti-Corruption Court decided in the judge's chambers that Mr. Bamvuginyumvira should be released on condition that he posted bail of 1 million Burundi francs, did not leave Burundi without the authorization of the investigating judge or his delegate, and appeared before the investigating judge once a week and whenever necessary. This decision was not implemented, however, because that same day the investigating judge issued an order for recall, pursuant to which Mr. Bamvuginyumvira was kept in

detention. The investigating judge thereby circumvented a judicial decision without providing any legal justification for doing so. The public prosecutor's office also appealed the Anti-Corruption Court's decision the next day. In accordance with article 127 of the Code of Criminal Procedure, Mr. Bamvuginyumvira should have been released on bail pursuant to the judge's order, regardless of the appeal by the public prosecutor's office. Consequently, the source notes, Mr. Bamvuginyumvira was kept in detention in violation of the order for provisional release and of article 127 of the Code of Criminal Procedure, while the order for recall had been deemed unlawful by the Supreme Court.

36. Regarding the failure to verify the legality of the detention within the time frame specified by law, the source asserts that, from when the last order was issued on 26 December 2013 to when he was released on bail, Mr. Bamvuginyumvira did not appear in the judge's chambers in order for the legality of his continued detention to be verified. However, article 115 of the Code of Criminal Procedure stipulates that pretrial detention orders are valid for 30 days. On expiry of this period, pretrial detention may be extended by a reasoned decision on a month-by-month basis, for as long as the public interest requires.

37. The source adds that the prosecutor decided to hear the case on 24 January 2014, two days after the appeal in cassation had been rejected. However, article 112 of the Code of Criminal Procedure stipulates that no case may be heard until the process of verifying the legality of detention has been completed. A violation of article 112, paragraph 1, should lead to the automatic withdrawal of the case by the judge, but this did not happen.

38. The source claims that the Anti-Corruption Court's refusal to consider the request for provisional release submitted by Mr. Bamvuginyumvira's lawyers, who cited procedural errors and his health status, was in violation of article 121 of the Code of Criminal Procedure.

39. Lastly, the source is of the opinion that Mr. Bamvuginyumvira was arrested and placed in detention because of his political opinions and activities, and because of his membership in a political opposition party. His current legal situation precludes him from aspiring to political office or, in particular, from standing in the presidential or legislative elections. From a practical standpoint, his imprisonment and the ongoing proceedings against him constitute major obstacles to campaigning and preparing for the 2015 elections.

40. In the light of the foregoing, the source maintains that Mr. Bamvuginyumvira's deprivation of liberty is arbitrary and falls under categories I, II and III of the categories applicable to the consideration of cases submitted to the Working Group, in that it lacks any legal basis and runs counter to articles 7, 9, 10, 13, 19, 20 and 21 of the Universal Declaration of Human Rights and to articles 9, 10, paragraph 1, 12, 14, 19, 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights, to which Burundi acceded on 9 May 1990.

Response from the Government

41. The Working Group finds it regrettable that the Government of Burundi has not replied to the communication addressed to it on 9 June 2015. As the 60-day deadline for replying has passed, the Working Group is now in a position to render its opinion, in accordance with its methods of work.

Discussion

42. In the absence of a reply from the Government to deny the allegations, the Working Group will limit itself to assessing the credibility and reliability of the source

solely on the basis of the information currently at its disposal. The source's statements are detailed and supported by many procedural documents, and the Working Group has not noted any contradictions or inconsistencies. Moreover, the reputation of the source itself strengthens the Working Group's belief that the facts as reported are accurate.

43. Firstly, it is clear that the law enforcement officials arrested Mr. Bamvuginyumvira without a warrant. Moreover, the circumstances did not appear to justify the arrest, nor did they meet the conditions for *flagrante delicto* since, if they had, the author would have been arrested when he was still in the brothel. This conclusion is supported by the fact that the brothel charges were dropped fairly early on in the proceedings. There is therefore a lack of legal justification for the arrest, in violation of article 9, paragraph 1, of the International Covenant on Civil and Political Rights.

44. The Working Group is also surprised that the prosecutor usurped the right not to implement an order for provisional release by keeping the defendant in detention in order to file an appeal. It is all the more surprising given that the courts hesitated in their assessment of the situation and adopted contradictory approaches, which can only raise questions about the suitability of the proceedings as a whole; it would appear that Mr. Bamvuginyumvira's role as leader of the political opposition is the real reason for this obvious move to falsely incriminate him. Consequently, the abuse suffered by Mr. Bamvuginyumvira results from the exercise of his political rights as enshrined in international instruments, including the International Covenant on Civil and Political Rights, to which Burundi is a party.

45. Lastly, the only criminal charge against Mr. Bamvuginyumvira, for bribery, is based solely on an implausible incident that occurred after the arrest, while the author was in detention; as a result, the whole case is flawed.

46. In addition, Mr. Bamvuginyumvira did not have the assistance of a lawyer during the first few days of his detention or during the hearing conducted by the criminal police officer.

47. The Working Group is therefore of the view that Mr. Bamvuginyumvira was targeted because of his status as a member of the political opposition, and that there is no legal basis for his arrest, detention and prosecution.

Disposition

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

The deprivation of liberty of Mr. Bamvuginyumvira is arbitrary and falls under categories I, II and V of the categories applicable to the consideration of cases submitted to the Working Group.

49. The Working Group requests the Government of Burundi to release Mr. Bamvuginyumvira immediately and to take all necessary steps to remedy the serious material and non-material harm that he has suffered, by providing for full reparation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights. The Government should also ensure that an investigation is carried out to ascertain the facts and determine responsibility, and should ensure that any misconduct is punished.

[Adopted on 3 September 2015]