**Questionnaire for International Organizations and Civil Society by the**

**UN Special Rapporteur on the situation of human rights defenders**

**Mary Lawlor, 9 February 2021**

**Brussels, March 2021**

Protection International’s submission to the Special Rapporteur for Human Rights Defenders Mary Lawlor’s 2021 report on the long-term detention of human rights defenders.

Protection International (PI) is an International NGO, with offices in Latin America, Africa, South East Asia and Europe. As a diverse and multi-lingual organisation, we aim to improve the protection of Human Rights Defenders (HRDs) throughout the world. PI supports HRDs in challenging settings to develop their own protection plans, by campaigning for the Right to Defend Human Rights, by advocating for an enabling environment for the protection of fundamental rights, and by growing and adapting to the needs of HRDs wherever their safety is at risk

*1) Do you know of any human rights defender(s) currently detained by States, who have been imprisoned on charges that carry a prison sentences of at least 10 years or more? Please provide a list of cases.*

**Germain Rukuki** (age 42) is a Burundian citizen, father to three children, and a human rights defender (HRD) who is currently serving a 32-year prison sentence for his activism. His story is emblematic of the unjust threats and retaliation that many outspoken Burundian human rights defenders face, and with the harshest sentence ever handed down to a HRD in the country, the previous and current Government have commandeered Germain’s case as an example to dissuade others from carrying out human rights work.

Germain was arrested by the Service National du Renseignement (SNR, the National Intelligence Service) in Bujumbura on 13th July 2017 on charges of “rebellion”, “breach of State security”, and "attack on the Head of State". Germain was interrogated at the SNR facility and kept for 14 days without access to a lawyer or his family.

Germain is the founder of a community-based association that fights poverty, famine and improves access to health called Njabutsa Tujane. At the time of his arrest he was an employee of Burundian Catholic Lawyers Association (Association des Juristes Catholiques du Burundi - AJCB), and for many years he worked for ACAT-Burundi, an organization that campaigns against torture. The circumstances of the case point in the direction of intimidation of civil society at large and possibly to ACAT-Burundi in particular.

After a 6-month wait, Germain’s first trial was held, where the prosecution added 3 further charges of “assassination”, “destruction of public and private buildings” and “participation in an insurrectionist movement”. The charges of assassination and destruction of property were later dropped. A few months later, he was sentenced to 32-years in prison although no conclusive evidence was ever presented to back the prosecution’s counts. The Appeals Court upheld this sentence in 2019. However, in July of 2020, Burundi’s Constitutional Court rejected his 32-year sentence, and called for his appeal trial to be re-held. This decision came as a surprise to all advocating for his release, considering his case has come up against numerous flaws, delays, strategically malicious moves and unjust sentences. This was the first positive outcome in the near 4 years since Germain’s arrest and sends a message that, at least in some instances, the judicial process is being respected. At the time of this submission, the second appeal hearing is due to take place on March 24th, in Ngozi prison where Germain is detained.

Prior to his arrest, Germain knowingly put himself at risk of attack and retaliation at the hands of Nkurunziza’s government by continuing to work for the promotion and protection of human rights in Burundi. While many of his friends and peers fled the country to seek asylum, Germain stayed in Burundi to continue his work defending rights and building a better society for Burundians, a poignant ambition in the fifth poorest country in the world[[1]](#footnote-1). Germain also chose to stay in his home country to raise his two children, and await the birth of his third son. Sadly, his arrest came before the arrival of his son, whom to date he has never seen. At the time of his arrest his wife, who is also an activist and was 6 months pregnant, was left with no option but to flee the country.

Ultimately, Germain’s arrest is politically motivated, stemming from the 2015 peaceful civil unrest that came from then-president Nkurunziza’s decision to run as president for a third term, violating the Burundian constitution and Arusha Accords in turn. Under Nkurunziza’s presidency, the government took an uncompromising position towards HRDs who had opposed his third mandate—and in particular against ACAT-Burundi. The arrest of Mr. Rukuki was part of a deliberate attempt by the government of Burundi to silence the network of HRDs monitoring human rights in the country and halt the feeding of information to international mechanisms. The UN Commission of Inquiry on Burundi, in its [report released in September 2018](https://www.ohchr.org/EN/HRBodies/HRC/CoIBurundi/Pages/CoIBurundiReportHRC39.aspx), stressed that Mr. Rukuki’s conviction is not only unjust, but is part of a pattern of systematic attacks against HRDs.

At the time of this submission, Germain Rukuki awaits his renewed appeal hearing on March 24th, 2021.

*5) What actions do you suggest the Special Rapporteur can take to:*

1. **Prevent defenders from being detained for long terms in connection to their human rights work?**

Long-term detention of human rights defenders is intrinsically linked to the criminalisation of HRDs. We could argue that long-term detention can be the latest and harshest result of a criminalisation process, when all preventive actions have failed. Therefore, actions to prevent long term detention of HRDs should include strategies to counter the criminalisation of HRDs.

This response is based upon Protection International’s 2015 publication ´Criminalisation of Human Rights Defenders: categorization of the problem and measures in response.´[[2]](#footnote-2) Criminalisation, and in turn long-term detention, is a multifaceted phenomenon that makes use of criminal laws and provisions in other types of laws to attack human rights defenders with the aim to hamper their work in the defence and promotion of human rights. Interventions to counter the criminalisation of HRDs, especially in cases of long-term detentions, must take a multipronged approach for impact to be felt, including both preventive and reactive actions:

**A) Preventive** actions should aim to counter criminalisation in a comprehensive way, identifying and tackling: first, the factors that lead to the stigmatisation of HRDs; second, the laws that criminalise human rights defence actions; and third, the arbitrary use of the law to impose imprisonment sentences to human rights defenders whose only “crime” is exercising their right to defend human rights.

Here, the work that the Special Rapporteur can do is of a political and diplomatic nature:

* Identifying countries where the criminal justice system is systematically used for imposing imprisonment sentences to HRDs;
* In line with Human Rights Council Resolution 22/6, call on States to repeal or modify criminal or procedural rules that, by failing to comply with international standards, permit or facilitate criminalisation and imprisonment of HRDs;
* Pay particular attention to the effects of international agreements to combat terrorism and other international criminal enterprises on the criminalisation of HRDs, and implement procedures to ensure that the measures that are planned to combat these phenomena comply with international standards;
* Call on States to expedite mechanisms, such as instructions, circulars and training to judicial authorities, to ensure that laws are interpreted according to international standards and that imprisonment sentences are not foreseen for offences related to the exercise of the right to defend human rights;
* Supporting initiatives for greater accountability of judicial system operators (e.g. prosecutors or judges) who are instrumental in criminalising HRDs, including training and awareness raising about the individual and collective impact of criminalisation of HRDs;
* Promoting “positive” laws and public policies for the right to defend human rights, which recognise the role of HRDs and provide a framework for state action when at risk;
* Undertaking public actions that help legitimise the work of HRDs, activating and fostering networks of support at the local, national, and international levels;
* Engage with other international bodies and donors to promote funding for CSOs and HRDs that risk being criminalized.

**B) Reactive** actions are necessary when a human rights defender is already criminalised and risks being sentenced with imprisonment. Actions should include:

* Take action to express concern when a HRD is criminalised, reacting not only when the long term imprisonment has been sentenced, but rather at an earlier stage of the criminalization process, paying particular attention to individuals who are detained and accused due to their human rights defense actions;
* Support to national and regional approaches: In the case of **Germain Rukuki**, it has been observed that Germain’s legal defence fear backlash from Burundian authorities due to involvement of key international stakeholders, such as diplomats and UN special procedural mandate holders. This reality reinforces the need for national and regional approaches, in this case the African Union and the African Commission on Human and People’s Rights. Their observation missions should have more support to engage in cases of HRDs at risk of long-term detention;
* Emergency funding: HRDs at risk of long-term prison sentences are frequently faced with significant financial strain. This is seen in financing of legal defence and ensuring financial security for family members. In numerous cases, the imprisoned HRD is the primary source of income in a household. Financial support should not be limited to assist criminalised individual HRDs – including expenses incurred for their legal defence, but should also cover their families and even the civil society organisations (CSOs) defenders collaborate with. Additionally, it should also include psychosocial support in order to counter the insidious effects that come with stigmatisation false criminal accusations;
* Monitor cases of criminalisation by taking actions that might include: observing trials where HRDs are accused of crimes; visiting the places of detention where victims of criminalisation have been sent following arrest or for preventive or definitive detention; visiting the areas in which HRDs are being criminalised, or run the risk of being so, in particular far-flung rural areas;
* Support strategic litigation efforts that help to draw lessons about the structural problems that have led to criminalisation in that particular case, with the aim to call for structural changes, both in the criminal law and in the judicial practice of the justice system operators;
* Support initiatives that contribute to sensitise both the authorities and the general public about the serious impact of criminalisation and imprisonment of HRDs, also with the aim to re-dignify and re-legitimise the social contribution that such HRDs did.
1. ***Have those human rights defenders arbitrarily detained under long sentences released?***

In the case of Germain Rukuki, at the time of this submission he remains in prison, therefore the following recommendations are not based on experiences that led to a successful liberation. More generally, taking into consideration the varying settings and complexities of judicial systems within countries, the Special Rapporteur should engage in both external and behind-the-scenes advocacy efforts to aid in the release of HRDs under long-term sentences.

1. Recommendations to influence the release of **Germain Rukuki:**
* Support to national and regional approaches: In the case of Germain Rukuki, it has been observed that Germain’s legal defence fear backlash from Burundian authorities due to involvement of key international stakeholders, such as diplomats and UN special procedural mandate holders. This reality reinforces the need for national and regional approaches, in this case the African Union and the African Commission on Human and People’s Rights. Their observation missions should have more support to observe and engage in cases of HRDs under long-term detention;
* Mobilise the international community in Burundi, especially diplomatic missions and UN delegates, to visit Germain Rukuki in prison, in particular after court hearings;
* Engage with and mobilise emergency funds for the continued financial support needed for Germain’s family, as well as for the families of other imprisoned Burundian HRDs.

Hereafter, the general recommendations to release long-term imprisoned HRDs can be applied in efforts by the Special Rapporteur to aid in the release of Germain Rukuki.

1. General recommendations to influence the release of long-term imprisoned HRDs:
* Monitor cases of criminalisation by taking actions that might include: observing trials where HRDs are accused of crimes; visiting the places of detention where victims of criminalisation have been sent following arrest or for preventive or definitive detention; visting the areas in which HRDs are being criminalised, or run the risk of being so, in particular far-flung rural areas;
* Releasing statements on the situation for the imprisoned HRD/s in question and calling for their release, particularly during moments of legal developments for the HRD/s case, or when there is a significant political moment that can affect the chances of the HRD/s being released;
* Bringing attention to the case/s of long-term imprisoned HRDs in international fora and/or regional and national fora, in particular in regions where there are cases of long-term imprisoned HRDs;
* Collaboration between the Special Rapporteur with other UN mandate holders (for example, the UN working group on arbitrary detention; the UN Committee against torture) such as through joint letters to the authorities of the government in question;
* Bring any political/economic/change to the attention of key decision makers and actors where it is deemed favourable for the respect of human rights and ultimately the release of the imprisoned HRD/s. Frame these changes in a positive light so that the key actors/decision-makers are encouraged to work towards the HRD’s release, especially where the external image of the state in question can be improved;
* The Special Rapporteur should be a champion in advocating for the release of the imprisoned HRD/s in question, in turn encouraging key actors who can influence the likelihood of the HRD being released; for example diplomats, politicians, ministers, national human rights institutions, regional/national civil society, the ombudsman, legal experts, academics, prominent HRDs, the church, etc.;
* Where considered strategic, the Special Rapporteur should utilize online channels to share updates on advocacy actions in favour of the imprisoned HRD/s in question, targeting key actors who are implicated in the detention of the HRD/s and/or those who can influence their release.
1. Burundi is one of the poorest countries in the world, ranking 185th out of 189 countries in the 2019 Human Development Index. <http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/BDI.pdf> [↑](#footnote-ref-1)
2. Ángel. A, (2015). [Criminalisation of Human Rights Defenders: categorization of the problem and measures in response](https://protectioninternational.org/en/policy-maker-tools/criminalisation-human-rights-defenders-categorisation-problem-and-measures). Brussels, Protection International. [↑](#footnote-ref-2)