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Human Rights Committee

Concluding observations on the fourth periodic report of Rwanda*

1. The Committee considered the fourth periodic report of Rwanda (CCPR/C/RWA/4) at its 3250th and 3251st meetings (CCPR/C/SR.3250 and 3251), held on 17 and 18 March 2016. At its 3260th meeting, held on 24 March 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Rwanda, albeit somewhat late, and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/RWA/Q/4/Add.1) to the list of issues (CCPR/C/RWA/Q/4), which were supplemented by the oral responses provided by the delegation, and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional measures taken by the State party:

(a) The adoption of Law No. 54/2011 relating to the rights and protection of the child, on 14 December 2011;

(b) The adoption of Law No. 4/2013 on access to information, on 8 February 2013;

(c) The establishment, since July 2009, of *Isange* one-stop centres for victims of gender-based violence and the adoption of a national policy to fight gender-based violence, in July 2011;

* Adopted by the Committee at its 116th session (7-31 March 2016).



(d) The adoption of the Legal Aid Policy and the Justice for Children Policy, in October 2014, and the placement of access to justice officers in all the districts of the State party.

4. The Committee welcomes the accession by the State party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 30 June 2015.

C. Principal matters of concern and recommendations

Status and applicability of the Covenant

5. The Committee notes with regret that the status of the Covenant in the domestic legal order has changed following the 2015 amendments to the State party's Constitution, which establishes the supremacy of the Constitution and organic laws over international treaty law. However, it notes the examples provided by the State party of cases in which the provisions of the Covenant have been invoked in national courts and that the State party is considering ratifying the First Optional Protocol to the Covenant (art. 2).

6. **Recalling its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, the Committee reminds the State party of its obligation to ensure that domestic law, in particular organic laws, is consistent with the provisions of the Covenant. The State party should also make vigorous efforts to raise awareness about the Covenant and its direct applicability in domestic law among judges, lawyers and prosecutors. The Committee also recommends that the State party ratify the First Optional Protocol to the Covenant, which establishes an individual complaint mechanism.**

Withdrawal of the declaration accepting the competence of the African Court on Human and Peoples' Rights to receive cases

7. The Committee notes with concern the State party's withdrawal for review of the declaration recognizing the competence of the African Court on Human and Peoples' Rights to receive cases from individuals and from non-governmental organizations (NGOs) that have observer status.

8. **The Committee invites the State party to consider making the declaration recognizing the competence of the African Court on Human and Peoples' Rights to receive cases from individuals and NGOs once again, with a view to providing supplementary protection for the rights enshrined in the Covenant at the regional level.**

National human rights institution

9. While noting that the new Law No. 19/2013 on the National Commission for Human Rights reaffirms the independence and financial autonomy of the Commission, the Committee remains concerned that members are selected by a committee appointed by the President, which could compromise their independence. The Committee is also concerned about information that the Commission is not perceived as an independent body (art. 2).

10. **The State party should ensure that the process to select and appoint the members of the National Commission for Human Rights enjoys full transparency and independence, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The Commission should also fully comply with its mandate and enhance its role in the protection of human rights.**

Non-discrimination and equality between men and women

11. The Committee welcomes the fact that the new Family Code, which will remove the remaining legal provisions that discriminate against women, will soon be transmitted by Parliament for promulgation. However, it is concerned about information received that women's legal rights to land and inheritance are undermined by the continuation of discriminatory traditional practices in rural areas and about reports on the high proportion of unregistered marriages (art. 3).

12. The State party should:

(a) **Expedite the review of its domestic legislation and repeal or amend provisions that are inconsistent with the Covenant;**

(b) **Step up its efforts to combat stereotypes on the role of women in the family and in society, including by increasing awareness-raising measures in rural areas;**

(c) **Take appropriate measures to ensure that marriages are registered.**

13. While welcoming the high representation of women in decision-making positions in the public sector, the Committee is concerned about the lack of information on the representation of women in the private sector (art. 3).

14. The State party should take the necessary measures to encourage the participation of women in decision-making positions in the private sector. It should also redouble its efforts to close the wage gap between men and women and combat vertical and horizontal segregation in employment.

Violence against women and children

15. While welcoming the various efforts made to combat gender-based violence, the Committee notes with concern that Law No. 59/2008 on prevention and punishment of gender-based violence criminalizes victims' refusal to testify with regard to the violence they suffered and that national legislation applies more lenient penalties to conjugal rape than to general rape. It is also concerned about the lack of statistical data that could be used to assess the prevalence of sexual and physical violence against women and children (arts. 3 and 6-7).

16. The State party should:

(a) **Make the necessary legislative amendments in order to apply the same penalties to all types of rape and repeal the provision that criminalizes the victim's refusal to testify;**

(b) **Ensure that cases of domestic and sexual violence are thoroughly investigated, that the perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are adequately compensated;**

(c) **Guarantee the issuance of protection orders in order to ensure the safety of victims;**

(d) **Step up its efforts to guarantee the availability of a sufficient number of *Isange* one-stop centres and support services in all parts of the country.**

Termination of pregnancy

17. The Committee notes that the 2012 amendment to the Penal Code expanded the exceptions for legal abortion. Nevertheless, the Committee remains concerned at the burdensome requirements for seeking permission to undergo abortion, namely, a court

order recognizing rape, forced marriage or incest and the authorization of two doctors in the case of jeopardy to the health of the pregnant woman or the fetus. The Committee is concerned that pregnant women are therefore led to seek clandestine abortion services that put their lives and health at risk. In this regard, the Committee regrets the lack of data on the number of legal abortions actually authorized. It also regrets the lack of information regarding the content of the draft bill on reproductive health, which reportedly would further limit legal abortion to cases in which the pregnancy may seriously threaten the mother's life, as certified by three doctors (arts. 3, 6, 7 and 17).

18. The State party should:

(a) Ensure that women are not denied medical services necessary to protect their lives and health;

(b) Review its legislation to ensure that women are not prompted by legal obstacles to resort to clandestine abortions that put their lives and health at risk and guarantee that the provisions on voluntary termination of pregnancy in the draft bill on reproductive health are in full compliance with the Covenant;

(c) Ensure access for women and adolescent girls to reproductive health services throughout the country, particularly in rural areas, and increase education and awareness-raising programmes on the importance of using contraceptives and on sexual and reproductive rights and choices.

Unlawful detention and allegations of torture and ill-treatment

19. While noting the State party's denial of unlawful detention practices, the Committee remains concerned about several reports that individuals have been held unlawfully by the military and the police in unofficial detention centres, sometimes incommunicado and, in some cases, before being transferred to official places of detention. It is also concerned at allegations that torture and ill-treatment have been practised in these places as a means of eliciting confessions. The Committee regrets the lack of information on measures taken to investigate these allegations and the absence of statistical data on investigations, prosecutions and convictions relating to cases of torture and ill-treatment. It is further concerned about the maximum period of time that a person may be in police custody before being presented to the judge, which may not be in compliance with the Covenant (arts. 7, 9 and 14).

20. The State party should:

(a) Make the legislative amendments necessary to ensure that the normal maximum period of detention before a suspect is brought before a judge is 48 hours;

(b) Ensure that all persons deprived of their liberty are only detained in official places of detention and are provided in practice with all legal safeguards;

(c) Ensure that allegations of unlawful detention, torture and ill-treatment are promptly investigated and that the perpetrators are brought to justice;

(d) Guarantee that persons who have been victims of unlawful detention, torture and ill-treatment have an effective right to remedy and redress.

Right to life

21. While noting the State party's statement that all cases of alleged disappearances or killings reported to the police are duly investigated, the Committee remains concerned that

the disappearance of political figures referred to in the previous concluding observations (see CCPR/C/RWA/CO/3, para. 12) are still unresolved and that other political dissidents have since disappeared or been killed in Rwanda and abroad (arts. 6 and 9).

22. The State party should systematically undertake prompt, impartial and effective investigations into reported cases of extrajudicial executions, enforced disappearances and murders, including any possible complicity in those acts by members of the police and security forces, and identify the perpetrators with a view to bringing them to justice. The State party should also take all measures necessary to prevent cases of disappearances and executions, establish the truth of the circumstances and the fate of the victims and provide full reparation to victims' families.

Past human rights violations

23. Recalling its previous concluding observations (see CCPR/C/RWA/CO/3, para. 13), the Committee regrets not having received information on accountability for past human rights violations reportedly committed by the Rwandan Patriotic Front in 1994. While noting that the State party opposes the findings of the 2010 United Nations report of the mapping exercise documenting the most serious violations of human rights and international law committed within the territory of the Democratic Republic of the Congo, which concluded that, in 1996, the Rwandan army carried out systematic and widespread attacks against Hutus in the Democratic Republic of the Congo, the Committee is concerned at the lack of information on measures taken to investigate those allegations (arts. 2 and 6-7).

24. The State party should investigate all allegations of human rights violations reportedly committed within its territory or abroad by its State officials and ensure that no serious human rights violation perpetrated in the past goes unpunished and that all victims or members of their families receive full reparation.

Cooperation with armed groups

25. The Committee notes the State party's position (see S/2014/42, annex 109) contesting the findings of the Group of Experts on the Democratic Republic of the Congo, which established that the disbanded armed group Mouvement du 23 mars (M23), which was responsible for various human rights abuses in the Democratic Republic of the Congo in 2013 received support from the Rwanda Defence Force and from individuals who recruited men and children in the State party for M23. The Committee is concerned, however, at the lack of information on measures taken to open an official investigation into the findings of the Group of Experts and its response to the State party's position (see S/2014/42, annex 110) (arts. 2 and 6-7).

26. The State party should undertake prompt, impartial and effective investigations into the reported cooperation with M23 by members of the Rwanda Defence Force and other persons within its jurisdiction with a view to bringing those responsible to justice or extraditing them to the Democratic Republic of the Congo. It should also ensure that children who have been recruited in the State party to be used by M23 in hostilities receive adequate assistance and reintegration.

Criminalization and detention of persons on the grounds of vagrancy

27. Recalling its previous concluding observations (see CCPR/C/RWA/CO/3, para. 16), the Committee remains concerned that the Penal Code still stipulates penalties for vagrancy and begging, even if they are not applied in practice. The Committee is also concerned that homeless people and beggars continue to be detained without charge and without judicial

oversight in Gikondo Rehabilitation Transit Centre, allegedly in extremely harsh conditions, and children in street situations are transferred to other rehabilitation centres (arts. 2, 7, 9-10, 14 and 24).

28. The State party should take the legislative and other measures necessary to abolish the crimes of vagrancy and begging and to put an end to the involuntary detention of homeless people, beggars and other members of vulnerable groups in transit or in rehabilitation centres. The State party should take the measures necessary to provide alternatives to the institutionalization of children in street situations, including their placement in family-based settings.

Asylum seekers and immigration detention

29. The Committee notes that the State party has granted prima facie refugee status to over 70,000 people from Burundi and that it is committed to upholding its international obligations with regard to the protection of refugees. The Committee is concerned, however, about the final status of these refugees. It also notes with concern that, under the 2014 Refugee Law, an appeal against a rejected refugee claim is not brought before an independent authority and asylum seekers are not granted free legal aid. The Committee is also concerned that foreigners awaiting deportation are detained in prisons (arts. 7, 9-10 and 13).

30. The State party should honour its commitment and respect the principle of non-refoulement by ensuring that refugees and asylum seekers, including from Burundi, are not deported to a country where there are substantial grounds for believing there is a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant. It should also consider amending the Refugee Law with a view to establishing an independent appeal mechanism and providing for free legal aid for asylum seekers, where the interests of justice so require. The State party should ensure that detention pending deportation is only applied if reasonably necessary and proportionate, after due consideration of less invasive means and for the shortest possible period of time, and that individuals detained for immigration-related reasons are held in facilities specifically designed for that purpose.

Prison conditions

31. While noting the efforts made by the State party to reduce overcrowding in prisons, the Committee reiterates its concern regarding the persistence of poor conditions in detention facilities. It is also concerned at the excessive use of pretrial detention for prolonged periods of time (art. 10).

32. The State party should continue its efforts to address overcrowding in police and military detention facilities and prisons, including through increased resort to alternative forms of detention. It should also improve detention conditions in all premises and continue its efforts to guarantee the separation of pretrial detainees from convicted prisoners.

Independence of the judiciary, fair trial and military courts

33. The Committee is concerned at reports about the unlawful interference of government officials in the judiciary and notes that the procedure for appointing judges of the Supreme Court and the presidents of the main courts could expose them to political pressure. While noting the closure of the *gacaca* courts in 2012, the Committee remains concerned at reports about the inability to reopen cases that were decided by *gacaca* courts and that may have involved a miscarriage of justice. The Committee also notes with concern that military courts are competent to try civilians in certain circumstances (art. 14).

34. The State party should take the legislative and other measures necessary to ensure that:

(a) Judges are not subjected to any form of political influence in their decision-making and that the process of judicial administration respects at all times the principles of presumption of innocence and equality of arms;

(b) Judicial appointments are made according to the objective criteria of competence and independence and that the High Council of the Judiciary participates effectively in such decisions;

(c) Cases of miscarriage of justice in *gacaca* courts can be challenged through a procedure that meets the requirements of article 14 of the Covenant;

(d) Military courts are prevented from exercising jurisdiction over civilians.

Interception of communications

35. The Committee is concerned that Law No. 60/2013 permits the interception of communications without prior authorization of a judge (art. 17).

36. The State party should take legislative and other measures necessary to ensure that any interference with the right to privacy complies with the principles of legality, proportionality and necessity. It should also ensure that communications are intercepted and data are used to achieve specific and legitimate objectives and that the categories of circumstances in which such interference may be authorized and the categories of persons whose communications are likely to be intercepted are set out in detail. It should also ensure the effectiveness and independence of a monitoring system for such interception, in particular by providing for the judiciary to take part in the authorization and monitoring of the interception.

Freedom of thought, conscience and religion

37. The Committee is concerned about the restrictions placed on the enjoyment of freedom of conscience and religion of Jehovah's Witnesses with regard to refusing to sing the national anthem, to attend religious ceremonies of another faith in schools or to take an oath holding the national flag (arts. 2, 18, 23-24 and 26-27).

38. The State party should guarantee, in practice, freedom of thought, conscience and religion and refrain from actions that may limit this right beyond the narrow restrictions permitted in article 18 of the Covenant.

Freedom of expression

39. While noting that the 2013 amended version of the law on genocide ideology introduced a more precise definition of the offence, the Committee remains concerned at the vague definition of other related crimes, such as the crime of separatism, which makes them susceptible to abuse, and the chilling effect they may have on freedom of expression. The Committee notes with concern that opposition politicians, journalists and human rights defenders have been prosecuted on the basis of such charges and have been subjected to other acts of intimidation. While noting the ongoing process to decriminalize defamation, the Committee expresses concern at the crime of insult as well (arts. 9, 14 and 19).

40. The State party should undertake the legislative measures necessary to ensure that any restrictions on the exercise of freedom of expression comply with the strict requirements set out in the Covenant. It should also refrain from prosecuting politicians, journalists and human rights defenders as a means of discouraging them

from freely expressing their opinions and take immediate action to investigate attacks against them and to provide them with effective protection. The State party should also consider decriminalizing defamation and the crime of insult and ensure that hate crimes and crimes against State security are defined in a precise and narrow manner.

Freedom of peaceful assembly and association

41. The Committee notes with concern that assemblies in public places and demonstrations of political parties are subject to prior authorization in domestic law. It is further concerned at information received that congress meetings of political parties and spontaneous peaceful demonstrations have not been authorized or allowed for reasons that appear to be unrelated to the justifications listed in article 21 of the Covenant. The Committee is also concerned that Law No. 04/2012 and Law No. 05/2012 contain onerous obligations for the registration of national and international NGOs, respectively, and international NGOs are requested to provide evidence of funding for the entire period for which they seek registration, leading many of them to seek registration for short periods only. The Committee also notes with concern the invasive role that the Rwanda Governance Board has played in the determination of the leadership of certain NGOs (arts. 19 and 21-22).

42. The State party should amend the legislation and take other measures necessary to ensure that all individuals and political parties fully enjoy, in practice, their rights to freedom of expression, peaceful assembly and association, including by guaranteeing that any restrictions on the exercise of such rights comply with the strict requirements set out in the Covenant. The State party should also refrain from interfering with the internal functioning of NGOs and political parties.

Child registration

43. The Committee is concerned about the proportion of children who are not registered, particularly among immigrants, refugees and asylum seekers. It is also concerned at reports indicating that the penalties and fees for late registration could have a deterrent effect on registration (arts. 16 and 24).

44. The State party should take the measures necessary to identify children whose birth was not registered, particularly among immigrants, asylum seekers and in refugee camps, ensure their retroactive birth registration and waive court fees for late registration. It should continue to conduct awareness-raising campaigns concerning birth registration.

2015 referendum process

45. The Committee is concerned at the procedural defects reported during the December 2015 referendum process, which led to the Constitutional amendment protecting the President from prosecution in relation to treason and serious and deliberate violations of the Constitution if legal proceedings were not initiated while he or she was in office (arts. 2, 14 and 25).

46. The State party should take the legislative and other measures necessary to ensure that referendums and elections are held as a result of a transparent, inclusive, informed and accountable process, in line with article 25 of the Covenant. It should also guarantee that the Head of State is fully accountable for crimes constituting violations of the Covenant. The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it stated that failure to bring to justice perpetrators of such

violations could, in and of itself, give rise to a separate breach of the Covenant (para. 18).

Rights of indigenous peoples

47. While noting the State party's policy of recognizing some vulnerable populations, such as the Batwa, under the category of "historically marginalized groups", the Committee is concerned that this classification is insufficient to ensure that such groups are recognized as indigenous and benefit from the protection of their right to enjoy their culture in their communities. With reference to its previous concluding observations (see CCPR/C/RWA/CO/3, para. 22), the Committee remains concerned at the continuing discrimination of the Batwa in all areas and their limited participation in public affairs (arts. 26-27).

48. **The State party should take the steps necessary to guarantee the recognition of minorities and indigenous peoples and ensure the effective legal protection of indigenous peoples' rights to their ancestral lands and natural resources. It should also ensure access to effective remedies for members of indigenous groups for any violations of their rights. The State party should strengthen its programmes to promote equal opportunity and access to services for the Batwa community and increase its members' participation in decision-making processes and decisions that affect them.**

D. Dissemination of information relating to the Covenant

49. The State party should widely disseminate the Covenant, its fourth periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and NGOs operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the official languages of the State party.

50. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations made by the Committee in paragraphs 16 (violence against women and children), 20 (unlawful detention and allegations of torture and ill-treatment), 32 (prison conditions) and 40 (freedom of expression) above.

51. The Committee requests the State party to submit its next periodic report by 31 March 2019 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and NGOs operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.