

**PETITION TO:**  
**UNITED NATIONS**  
**WORKING GROUP ON ARBITRARY DETENTION**

Chair Rapporteur: Ms. Leigh Toomey (Australia)  
Ms. Elina Steinerte (Latvia)  
Mr. José Guevara Bermúdez (Mexico)  
Mr. Seong-Phil Hong (Republic of Korea)  
Mr. Sètonджи Adjovi (Benin)

**HUMAN RIGHTS COUNCIL**  
**UNITED NATIONS GENERAL ASSEMBLY**

In the matter of  
**Paul RUSESABAGINA**  
Citizen of the Kingdom of Belgium and  
Legal Permanent Resident of the United States of America  
v.  
The Government of the Republic of Rwanda

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Pursuant to General Assembly Resolutions 1997/50, 2000/36, 2003/31, 2006/102, 6/4, 15/18, 20/16, 24/7, 33/30,  
and 42/22

Submitted by:

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16 March 2021

## Questionnaire To Be Completed<sup>1</sup>

### I. IDENTITY

1. **Family name:** Rusesabagina
2. **First name:** Paul
3. **Sex:** Male
4. **Birth date or age (at the time of detention):** 15 June 1954
5. **Nationality/Nationalities:** Belgian  
**Legal Permanent Resident:** United States
6. (a) **Identity document (if any):** Belgian Passport  
(b) **Issued by:** Kingdom of Belgium  
(c) **On (date):** ---  
(d) **No.:** ---
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):**  
Humanitarian and political activist
8. **Address of usual residence:**  
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### II. ARREST

1. **Date of arrest:** 27 August 2020
2. **Place of arrest (as detailed as possible):**

On 26 August 2020, Mr. Rusesabagina left Chicago, USA for Dubai, United Arab Emirates (“UAE”) on Emirates Flight 236. He arrived in Dubai at approximately 7:00 pm local time on the evening of 27 August 2020, and contacted his wife, Taciana Mukangamije, and his daughter at approximately 11:00 pm that same evening to inform them of his safe arrival. Mr. Rusesabagina spent the next 5-6 hours in Dubai before he boarded a private jet he believed would take him to Bujumbura, Burundi. The plane, operated by GainJet, a Greek charter company often hired by Rwandan President Paul Kagame and the Rwandan government, flew to Kigali, Rwanda instead. Rwanda Justice Minister Busingye has since admitted the Rwandan government paid for the flight.<sup>2</sup> The plane landed in the early morning of 28 August 2020. Upon his arrival, Rwandan authorities took Mr. Rusesabagina into custody. He was bound in restraints for three days and has been kept in solitary confinement since then. After the call on the evening of 27 August 2020, Mr. Rusesabagina had no direct contact with his family until 8 September 2020.

In the days immediately after 27 August, the family continued to attempt to call and send messages to Mr. Rusesabagina’s phone, but he did not answer, and no responses to messages were received. Three days later, on 30 August 2020, the Rwandan authorities informed the Belgian authorities that a Belgian citizen had been detained. No further details were provided. The following day, on 31 August 2020, Mr. Rusesabagina was brought to the Remera Metropolitan Police Station in Kigali, Rwanda, where he was identified as a prisoner of the Rwandan government. Mr. Rusesabagina’s family was not informed of the arrest by either the Rwandan or Belgian authorities.

3. **Forces who carried out the arrest or are believed to have carried it out:** Agents, employees, police, security, or military forces of the Rwandan Government.
4. **Did they show a warrant or other decision by a public authority?** No.
5. **Authority who issued the warrant or decision:** The Rwandan government has claimed that it had issued an international arrest warrant for Mr. Rusesabagina in 2018, but no arrest warrant or decision has been produced

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<sup>1</sup> *Model Questionnaire To Be Completed By Persons Alleging Arbitrary Arrest or Detention*, UN WORKING GROUP ON ARBITRARY DETENTION, <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>. **NOTE:** Since his disappearance from Dubai, United Arab Emirates on 27 August 2020 (detailed below), communication between Mr. Rusesabagina and his family has been limited to brief telephone calls that are monitored by the government. After several requests and a lengthy delay, the Rwandan Court finally allowed Mr. Rusesabagina to retain local legal counsel of his own choice. However, his local counsel has only had a small number of exchanges with Mr. Rusesabagina. Furthermore, contrary to its own precedents and Mr. Rusesabagina’s rights, the Rwandan authorities have denied Mr. Rusesabagina’s motion to have international lawyers represent him in the Rwandan proceedings. Accordingly, the following account and information provided below derives largely from public sources, and the few discussions with his counsel and his family.

<sup>2</sup> Mudge, Lewis. “Rwandan Judiciary Under Scrutiny.” Human Rights Watch. 02 March, 2021. *available at* <https://www.hrw.org/news/2021/03/02/rwandan-judiciary-under-scrutiny>.

to date. The UAE has denied any involvement in the arrest<sup>3</sup> and no international arrest warrant has been provided to Mr. Rusesabagina's legal counsel.

6. **Reasons for the arrest imputed by the authorities:** On 31 August 2020, four days after his arrest, the Rwandan Investigative Bureau ("RIB") alleged via a tweet that Mr. Rusesabagina had been arrested "through international cooperation" on the basis of an "international arrest warrant" and taken into custody by Rwandan authorities.<sup>4</sup> The United Arab Emirates denied this, with an official confirming that there is no agreement between the UAE and Rwanda to extradite criminals or wanted people.<sup>5</sup> According to the Emirati official, Mr. Rusesabagina was only present in Dubai for five hours before he departed "legally" in a private jet from Al Maktoum airport just after midnight on 28 August 2020.<sup>6</sup> On 30 November 2020, the Rwandan authorities finally introduced the following written charges against Mr. Rusesabagina<sup>7</sup>:

1. The creation of an illegal army unit, a crime provided for and punishable by Article 200 of Law No 68/2018 of 30/08/2018 provides for offenses and penalties in general;
2. Being a member of a terrorist organization, the offense is provided for and punishable under Article 18 of Law No 46/2018 of 13/08/2018 on the fight against terrorism;
3. Promoting terrorism, an offense provided for and punishable under Article 24 of Law N 69/2018 of 30/08/2018 preventing and punishing infringement and assault terrorist support;
4. Murder as an act of terrorism, a felony punishable by imprisonment 2 and 37 of Law No 46/2018 of 13/08/2018 on the fight against terrorism;
5. Illegal conduct of a person as an act of terrorism, crime provided for and punishable by Articles 2 and 19 of Law No. 46/2018 of 13/08/2018 on Combating Terrorism;
6. Armed robbery as an act of terrorism, a premeditated crime subject to Articles 2 and 19 of Law No 46/2018 of 13/08/2018 concerning counter-terrorism;
7. Destruction of a building, intended for transportation of people or goods as an act of terrorism the offense is provided for and punishable by Articles 2 and 19 of Law No 46/2018 of 13/08/2018 on the fight against terrorism;
8. Intimidation of murder as an act of terrorism, a premeditated crime and punishable by Articles 2 and 19 of Law No 46/2018 of 13/08/2018 concerning counter-terrorism;
9. Voluntary beatings and injuries as an act of terrorism, a felony and punishable by Articles 2 and 19 of Law No 46/2018 of 13/08/2018 on counter-terrorism.

7. **Legal basis for the arrest including relevant legislation applied (if known):**

Mr. Rusesabagina is charged under the following laws, according to his indictment of November 2020: 46/2018 of 13/08/2018; 68/2018 of 13/08/2018; 69/2018 of 30/08/2018

### III. DETENTION

1. **Date of detention:** 27 August 2020 – Ongoing
2. **Duration of detention (if not known, probable duration):** 201 days as of this filing; ongoing
3. **Forces holding the detainee under custody:** Government of the Republic of Rwanda
4. **Places of detention (indicate any transfer and present place of detention):**
  - 27 August – 30 August 2020: Unknown
  - 31 August – 17 September 2020: Remera Police Station, Kigali, Rwanda
  - 17 September – Present: Mageragere Prison, Rwanda
5. **Authorities that ordered the detention:** Government of the Republic of Rwanda; Kicukiro Primary Court; Nyarugenge Intermediate Court.
6. **Reasons for the detention imputed by the authorities:** Between 27 and 31 August, no reason was given by the authorities for Mr. Rusesabagina's detention. On 31 August 2020, the RIB announced via a tweet that he

<sup>3</sup> Permanent Mission of the United Arab Emirates in Geneva, Ref: 2/3/32 – 362, 21 December 2020 <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35816>.

<sup>4</sup> Rwanda Investigation Bureau (@RIB\_Rw), Twitter, 31 August 2020, available at [https://twitter.com/RIB\\_Rw/status/1300350300377710594](https://twitter.com/RIB_Rw/status/1300350300377710594) (last accessed 6 October 2020).

<sup>5</sup> C. Faraj et al., "UAE Denies Knowledge of Hotel Rwanda Film Hero's Arrest as Family Raise 'Kidnap' Fears", CNN, 2 September 2020 [hereinafter "2 September CNN Article"], available at <https://www.cnn.com/2020/09/02/africa/paul-rusesabagina-rwanda-arrest-intl/index.html> (last accessed 6 October 2020).

<sup>6</sup> 2 September CNN Article.

<sup>7</sup> This is taken from the English translation roughly done, found via googledocs here.

had been arrested pursuant to an “international arrest warrant” that has never been produced.<sup>8</sup> Mr. Rusesabagina was not brought in front of a Judge until 14 September 2020, eighteen days after his arrest. He was initially charged with thirteen counts, mostly linked to terrorism.<sup>9</sup> On 17 September 2020, the court denied Mr. Rusesabagina’s state-appointed lawyers’ request for provisional release.<sup>10</sup> On 2 October 2020, the Nyarugenge intermediate court denied Mr. Rusesabagina’s appeal of this decision, and he remains in Mageragere Prison. He was again denied a request for provisional release on 2 December 2020, and on 3 December 2020 a trial date was set for 26 January 2021. On 21 January 2021, the trial was postponed without a new date. It recommenced on 17 February 2021 and is ongoing.

7. **Legal basis for the detention including relevant legislation applied (if known):** Unknown.

#### **IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND THE REASONS WHY YOU CONSIDER THE ARREST AND/OR DETENTION TO BE ARBITRARY**

##### **A. Statement of Facts**

Mr. Rusesabagina is an award-winning humanitarian and political activist who has been systematically targeted by the Rwandan government, of which he is an active critic, for years. In August 2020, the Rwandan government kidnapped him, forcibly disappeared him, and held him incommunicado. After his custodial whereabouts became known, President Kagame publicly proclaimed his guilt. Mr. Rusesabagina was denied requisite access to his chosen counsel and confidential mechanism to prepare for trial, all while his health in jail has steadily declined. The persecution and treatment of Mr. Rusesabagina is part of a [broader and well-documented practice](#) of the Rwandan government of jailing political opponents, depriving them of fair trial rights and using torture to obtain false testimony and confessions.

##### **1. Mr. Rusesabagina is an award-winning humanitarian and political activist.**

Since 1994, Paul Rusesabagina has supported survivors and victims of genocide and oppression.<sup>11</sup> Memorialized in the 2004 film “*Hotel Rwanda*,” Mr. Rusesabagina saved the lives of more than 1,200 people during the 1994 Rwandan genocide. Serving as the manager of the Hotel des Mille Collines in Kigali, he bravely risked his life to shelter Hutus and Tutsis, seeking refuge from the genocide that killed more than 800,000 people. Afterwards, Mr. Rusesabagina dedicated his life to speaking about social justice, and the lessons learned from the Rwandan genocide. He has addressed journalists, educators, students, policymakers, business leaders, and human rights advocates throughout Europe and the United States.

He founded the *Hotel Rwanda Rusesabagina Foundation* to generate support for an internationally administered Truth and Reconciliation Commission for Rwanda and the Great Lakes Region of Africa. The Foundation also worked on issues related to the ongoing conflict in the Democratic Republic of Congo, where more than 5 million have died. The Foundation campaigned for an end to Rwandan military intervention in the Congo and against the deadly exploitation of conflict minerals in the region. Mr. Rusesabagina has received many awards, including the U.S. Presidential Medal of Freedom in 2005.<sup>12</sup>

<sup>8</sup> Rwanda Investigation Bureau (@RIB\_Rw), Twitter, 31 August 2020, available at [https://twitter.com/RIB\\_Rw/status/1300350300377710594](https://twitter.com/RIB_Rw/status/1300350300377710594) (last accessed 6 October 2020).

<sup>9</sup> “Rusesabagina Charged with 13 Counts, Seeks Bail,” The New Times, 14 September 2020, available at <https://www.newtimes.co.rw/news/rusesabagina-charged-13-counts-seeks-bail>.

<sup>10</sup> “Paul Rusesabagina of Hotel Rwanda film denied bail”, AL JAZEERA, 17 September 2020 [hereinafter “17 September Al Jazeera Article”], available at <https://www.aljazeera.com/news/2020/09/paul-rusesabagina-hotel-rwanda-film-denied-bail-200917150653834.html> (last accessed 6 October 2020).

<sup>11</sup> Information in this section taken from the Hotel Rwanda Rusesabagina Foundation website, found at <https://hrrfoundation.com/about/>.

<sup>12</sup> Immortal Chaplains Prize for Humanity, 3 February 2000; Enduring Spirit award from Amnesty International, 9 December 2004; The Peace Abbey Courage of Conscience Award, 25 February 2005; The Marcus Jewish Community Center of Atlanta token of Appreciation, 18 April 2005; The Golden Plate Award by the International Academy of Achievement, 3 June 2005; Raoul Wallenberg Medal of the University of Michigan & Certificate of Merit from the Center for Afroamerican & African Studies at the University of Michigan, 11 October 2005; National Civil Rights Museum Freedom Award, 3 November 2005; International Crisis Group President’s Award, 28 November 2005; Citation from Governor John Lynch of the State of New Hampshire, 23 August 2005; Conrad N. Hilton Humanitarian Prize, 25 August 2005; The AmeriCare Giving Award, 1 October 2005; Freedom Award – State of Tennessee, 28 October 2005; Presidential Medal of Freedom, 9 November 2005; First Annual World Refugee Day Humanitarian Award, 2005; Commissioned a Kentucky Colonel by Governor Ernie Fletcher from the Commonwealth of Kentucky, 18 January 2006; Regione Abruzzo Presidenza Consiglio Regionale a Paul Rusesabagina, 28 January 2006; Massachusetts General Court Resolutions Honoring the Accomplishments of Paul Rusesabagina – House of Representative, 6 February 2006; Flag Flown over New Mexico Military Institute Presented to Paul Rusesabagina, 15 February 2006; Visionary Leadership Award Twenty-First Century Democrats, 14 June 2006; Vanderbilt Hillel – Tree of Life dedication, 25 September 2006; Union County Board of Chosen Freeholders Resolution – New Jersey, 16 February 2007; Elijah Award B-NAI ISRAEL, 23 February 2007; Ralph J Bunche Centenary Award, 22 February 2007; Honorary Doctorate of Law from the University of Guelph, 12 June 2007; Friends of Linebaugh Library, Tennessee – Awarded by President Bill Patterson, 25 August 2007; Rescuer of Humanity Award, 6 December 2007; “Fidelis Causae” A.D.A Per la lunga militanza associative”, 2007; Honorary Degree, Doctor of Humane Letters from Gustavus Adolphus College, 2008; Honorary Degree from Loyola University Chicago, at the Bachelor of Arts Commencement, 2009; Appointed as Martin Luther King Jr. Fellow, Boston University, 10 November 2009; Black Heritage International Humanitarian & Hero Award, 6 December 2009; Sustaining Presence Award Interfaith Care Partners, 27 February 2011; The Tom Lantos Human Rights Prize, 17 November 2011;

Mr. Rusesabagina publicly acknowledges the genocide against the Tutsi, but also speaks openly about the crimes committed by the Rwandan Patriotic Front (“RPF”) between 1990 to 1994, as well as after taking control of the country following the genocide. Mr. Rusesabagina talks about the fact that the victims include members from both ethnic groups, and that while genocide was committed by the Hutu government, military and militias, war crimes and crimes against humanity also were committed by the RPF as they invaded the country.<sup>13</sup> Mr. Rusesabagina is also an outspoken critic of the policies of the current Rwandan government. In his autobiography, *An Ordinary Man*, Mr. Rusesabagina concluded with a critique of President Kagame’s government and its abuses against the Rwandan people.<sup>14</sup> Mr. Rusesabagina has also openly discussed the UN’s Mapping Report, which states that President Kagame and his government are responsible for war crimes, crimes against humanity, and possibly even genocide against Hutu refugees in the eastern Congo.<sup>15</sup>

## 2. Mr. Rusesabagina has been systematically targeted by the Rwandan government.

In the aftermath of the genocide, Mr. Rusesabagina became the target of public criticism by the Rwandan government because of his opinions and beliefs.<sup>16</sup> After being the target of a failed assassination attempt in 1996, he left Rwanda to seek political asylum in Belgium.<sup>17</sup> Mr. Rusesabagina was recognized as a refugee in Belgium in 1996, and became a Belgian citizen in 1999.

Despite having left Rwanda, Mr. Rusesabagina continued to voice criticism of the Rwandan government’s policies and has advocated on behalf of democratic change and for truth, justice and reconciliation in order to have sustainable peace in Rwanda. He also has endured continuing public attacks from the government.<sup>18</sup> After the release of the movie *Hotel Rwanda* in 2004, the government painted him as a “false hero,”<sup>19</sup> followed by attempts to label him a “terrorist” and “funder of terrorists.” Mr. Rusesabagina, who was at that time living in Belgium, did not attend the screening of the film in Rwanda for his own safety.<sup>20</sup> In 2009, “out of fear for his safety,” he was forced to relocate to the US.<sup>21</sup>

In 2010, the Rwandan government began accusing Mr. Rusesabagina of funding the Democratic Forces for the Liberation of Rwanda (“FDLR”), a rebel group based in the Democratic Republic of Congo. The Rwandan and Congolese governments consider the FDLR to be a terrorist organisation.<sup>22</sup> The Rwandan government did not produce credible evidence to corroborate terrorism-funding allegations, nor were any charges brought.<sup>23</sup>

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USANATO AFNorth BN – Supreme Headquarters – Allied Powers Europe, Belgium, 13 July 2016; Lideres del Manana, 2018; Dejando Huella- Otorga el Presente Reconocimiento a Paul Rusesabagina, 5 March 2019.

<sup>13</sup> In publicly discussing the genocide, Mr. Rusesabagina has often talked about the civil war that raged from 1990-1994, with the rebel group led by Paul Kagame and his Rwandan Patriotic Front (RPF). Additionally, he has discussed the fact that the genocide victims comprised both Tutsis and Hutus, and that while genocide was committed by the Hutu government, military and militias, war crimes and crimes against humanity also were committed by the RPF as they invaded the country. See e.g. Communication from Perseus Strategies to UN Special Rapporteur on Torture, “Re: Paul Rusesabagina/Rwanda – Imminent Risk of Torture or Cruel, Inhuman, or Degrading Treatment or Punishment”, 7 September 2020 [hereinafter “Urgent Complaint to OHCHR and SRT”], p. 3, available at [https://www.perseus-strategies.com/wp-content/uploads/2020/09/Complaint-to-UNSRTPaul-Rusesabagina\\_FINAL-1.pdf](https://www.perseus-strategies.com/wp-content/uploads/2020/09/Complaint-to-UNSRTPaul-Rusesabagina_FINAL-1.pdf) (last accessed 6 October 2020).

<sup>14</sup> Terry George, “Smearing a Hero: Sad Revisionism Over ‘Hotel Rwanda,’” THE WASHINGTON POST, 10 March 2006 [hereinafter “10 March Wash. Post Opinion”] available at <https://www.washingtonpost.com/archive/opinions/2006/05/10/smearing-a-hero-span-class=bankhead/sad-revisionism-over-hotel-rwanda/2006/05/10/> (last accessed on 6 October 2020).

<sup>15</sup> Paul Rusesabagina, *An Ordinary Man: The True Story Behind Hotel Rwanda* (Bloomsbury, 2006) discussing Office of the High Commissioner of Human Rights, “Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed Within the Territory of the Democratic Republic of the Congo Between March 1993 and June 2003”, August 2010 [hereinafter “UN Mapping Report”], available at [https://www.ohchr.org/Documents/Countries/CD/DRMAPPINGREPORT\\_FINAL\\_EN.pdf](https://www.ohchr.org/Documents/Countries/CD/DRMAPPINGREPORT_FINAL_EN.pdf) (last accessed 16 September 2020), fn. 885.

<sup>16</sup> Urgent Complaint to OHCHR and SRT, pp. 2-3.

<sup>17</sup> Busari, Stephanie, Sharon Braithwaite, and David McKenzie. ‘Hotel Rwanda’ film hero Paul Rusesabagina arrested. CNN. 01 September 2020, available at <https://www.cnn.com/2020/08/31/africa/rwanda-genocide-paul-rusesabagina-arrest/index.html>; Constable, Pamela, “Hotel Rwanda hero decries oppression two decades after genocide,” THE WASHINGTON POST, 28 January 2016, available at [https://www.washingtonpost.com/local/social-issues/hotel-rwanda-hero-decries-oppression-two-decades-after-genocide/2016/01/28/4dc33e20-c5f7-11e5-a4aa-f25866ba0dc6\\_story.html](https://www.washingtonpost.com/local/social-issues/hotel-rwanda-hero-decries-oppression-two-decades-after-genocide/2016/01/28/4dc33e20-c5f7-11e5-a4aa-f25866ba0dc6_story.html) (“he sought political asylum in Belgium in 1996”).

<sup>18</sup> A. Ndiriro and P. Rutazibwa, *Hotel Rwanda or the Tutsi Genocide As Seen by Hollywood* (L’Harmattan, 2012).

<sup>19</sup> Times Reporter, “False narratives cannot stand the test of time,” THE NEW TIMES, 17 November 2011, available at <https://www.newtimes.co.rw/section/read/36904> (last accessed 6 October 2020); P. Butamire, “Rusesabagina as guilty as the terrorist and fugitives he pleads for,” THE NEW TIMES, 01 April 2011, available at <https://www.newtimes.co.rw/section/read/29827> (last accessed 6 October 2020); Times Reporter, “Paul Rusesabagina admits intimacy with genocidaires,” THE NEW TIMES, 18 June 2008, available at <https://www.newtimes.co.rw/section/read/4205> (last accessed 6 October 2020); Times Reporter, “Rusesabagina: The self-paraded ‘hero’ riding another doomed horse,” THE NEW TIMES, 18 June 2010, available at <https://www.newtimes.co.rw/section/read/21026> (last accessed 6 October 2020); Times Reporter, “Genocide negationist Paul Rusesabagina tries to drown the fish whenever his lies are exposed,” THE NEW TIMES, 27 April 2008, available at <https://www.newtimes.co.rw/section/read/3450> (last accessed 6 October 2020); Times Reporter, “Rusesabagina despairing as his delusion gets exposed in a book,” THE NEW TIMES, 4 March 2008, available at <https://www.newtimes.co.rw/section/read/2883> (last accessed 6 October 2020).

<sup>20</sup> 10 March Wash. Post Opinion.

<sup>21</sup> Nate Schenkkan and Isabel Linzer, “Not Out of Reach: The Global Scale and Scope of Transnational Repression,” FREEDOM HOUSE at 24 (February 2021), available at [https://freedomhouse.org/sites/default/files/2021-02/Complete\\_FH\\_TransnationalRepressionReport2021\\_rev020221.pdf](https://freedomhouse.org/sites/default/files/2021-02/Complete_FH_TransnationalRepressionReport2021_rev020221.pdf).

<sup>22</sup> Times Reporter, “Rusesabagina to be charged: Ngoga,” THE NEW TIMES, 28 October 2010, available at <https://www.newtimes.co.rw/section/read/25412> (last accessed 6 October 2020).

<sup>23</sup> A. L. Dahir, “How the Hero of ‘Hotel Rwanda’ Fell into a Vengeful Strongman’s Trap,” THE NEW YORK TIMES, 18 September 2020 (“In 2010, a Rwandan prosecutor repeated the claim that Mr. Rusesabagina had wired funds to Congo-based rebels. The F.B.I. and Belgian authorities questioned him but took no action, his family said”), available at <https://www.nytimes.com/2020/09/18/world/africa/rwanda-paul-rusesabagina.html> (last updated 18 February 2021).

Mr. Rusesabagina has continued to face threats and attempts on his life as well as the ransacking of his home in Belgium on two occasions. During one of these searches in 2010, only Kinyarwanda-language documents were taken.<sup>24</sup> Rwandan government agents also regularly attend public events at which Mr. Rusesabagina speaks, frequently attempting to interrupt and disrupt these speeches, most recently in 2018, when Rwanda's Ambassador to Israel joined with the hecklers, and Mr. Rusesabagina had to be evacuated.<sup>25</sup>

In recent years, Mr. Rusesabagina has become one of the foremost political opponents of President Kagame in the diaspora, serving for a time as the first head of the Rwandan Movement for Democratic Change ("MRCD") coalition of political parties when it was founded in 2018 and regularly criticizing the government for its repression of political dissent and freedom.<sup>26</sup> The Times recently noted that he is "one of the most prominent critics of Rwanda's autocratic regime."<sup>27</sup>

### 3. The circumstances of Mr. Rusesabagina's disappearance and re-appearance.

In 2020, a Burundian pastor convinced Mr. Rusesabagina to travel from the United States to Burundi to speak at churches and public gatherings in favor of reconciliation. Mr. Rusesabagina was familiar with and trusted the pastor and had no reason to suspect any foul play. On 26 August 2020, Mr. Rusesabagina left Chicago, USA, for Dubai, UAE on Emirates Flight 236. There, he planned to meet the pastor and fly on to Burundi. Instead, he arrived in Dubai at approximately 7:00 pm local time on the evening of 27 August 2020. He confirmed his safe arrival to his family. The Rwandan government, with the connivance of the pastor, arranged for a private jet operated by GainJet International, the company that transports President Kagame, to take Mr. Rusesabagina to Kigali without his knowledge and against his will, arriving in the early morning of 28 August 2020. Rwanda Justice Minister Busingye later admitted that the Rwandan government paid for the flight.<sup>28</sup> No application for Mr. Rusesabagina's arrest, extradition, or deportation is known to have been made to the UAE.

Three days later, on 31 August 2020, the Rwandan authorities informed the Belgian authorities that a Belgian citizen had been detained.<sup>29</sup> No further details were provided. On 31 August 2020, Mr. Rusesabagina was brought to the Remera Metropolitan Police Station in Kigali, Rwanda, where he was identified as a prisoner of the Rwandan government and detained.

Mr. Rusesabagina was in a state of *incommunicado* detention from 27 and 31 August 2020. It is not known where Mr. Rusesabagina was held during this three-day period, or in what conditions. Despite inquiries, he has not been able to explain what took place during this period to his family or lawyers, who have not been able to raise the issue in public interviews or in proceedings before the Rwandan courts.

Since his call on the evening of 27 August 2020, Mr. Rusesabagina had no direct contact with his family until 8 September 2020. In the days immediately after 27 August, the family continued to attempt to call and send messages to Mr. Rusesabagina's phone, but he did not answer his phone, and no responses to messages were received. Mr. Rusesabagina gave an interview with *The New York Times* on 17 September 2020, in the presence of his State-appointed lawyers, in which "he appeared to be speaking under duress."<sup>30</sup> In this interview, in which his "account was at times muddled," he could not say what had happened to him for the three days between his flight from Dubai and his reappearance in Kigali, but said: "I do not know where I was. I was tied – the leg, the hands,

<sup>24</sup> European Union: European Parliament, *Motion for a Resolution, European Parliament resolution on Rwanda, the case of Paul Rusesabagina*, 9 February 2021, 2021/2543(RSP), ("whereas [the Rwandanese Government and its officials] have been suspected of break-ins into his house in Belgium where only documents in Kinyarwanda language were taken."), available at [https://www.europarl.europa.eu/doceo/document/B-9-2021-0134\\_EN.html](https://www.europarl.europa.eu/doceo/document/B-9-2021-0134_EN.html); A. L. Dahir, "'Hotel Rwanda' Hero, in Jailhouse Interview, Says He Was Duped Into Arrest," THE NEW YORK TIMES, 17 September 2020 [Hereinafter "17 September NYT Article", available at <https://www.nytimes.com/2020/09/17/world/africa/paul-rusesabagina-rwanda-interview.html> (last accessed 6 October 2020)]; Xan Rice, "Hotel Rwanda Manager Accused of Funding Terrorism," THE GUARDIAN, 28 October 2010, available at <https://www.theguardian.com/world/2010/oct/28/hotel-rwanda-manager-terror-funding-charges>. Press Release, "Rusesabagina Combats Fiction with Facts," HOTEL RWANDA RUSESABAGINA FOUNDATION, 18 October 2010 available at <https://hotelrwandarusesabaginafoundation.files.wordpress.com/2020/09/falseaccusationresponse-copy.pdf> ("While I was in the hospital in Belgium last week, on Thursday, someone broke in to my house and stole all my documents, written in Kinyarwanda. I am asking myself what a Belgium thief might want with documents with documents only a Rwandan could read.").

<sup>25</sup> Information provided by Paul Rusesabagina's family per a 2018 newspaper article in Hebrew, available upon request.

<sup>26</sup> American Bar Association Center for Human Rights, "Rwanda: Background Briefing on Proceedings Against Paul Rusesabagina", January 2021 [Hereinafter "January 2021 ABA Briefing"] at 2, available at [https://www.americanbar.org/content/dam/aba/administrative/human\\_rights/trialwatch/background\\_briefing\\_rwanda\\_paul\\_rusesabagina.pdf](https://www.americanbar.org/content/dam/aba/administrative/human_rights/trialwatch/background_briefing_rwanda_paul_rusesabagina.pdf).

<sup>27</sup> Flanagan, Jane. "Paul Rusesabagina: Hero of Rwanda genocide seized from exile to face terror charges," THE TIMES. (31 August 2020), available at <https://www.thetimes.co.uk/article/paul-rusesabagina-hero-of-rwanda-genocide-seized-from-exile-to-face-terror-charges-k5g7pflj0>.

<sup>28</sup> Mudge, Lewis. "Rwandan Judiciary Under Scrutiny," HUMAN RIGHTS WATCH, 02 March, 2021. available at <https://www.hrw.org/news/2021/03/02/rwandan-judiciary-under-scrutiny>; "Rwanda's Minister of Justice, Johnston Busingye, tells UpFront Rwanda paid for plane that transported Paul Rusesabagina to Kigali," AL JAZEERA, 26 February 2021 [Hereinafter "26 February Al Jazeera Interview"], available at <https://network.aljazeera.net/pressroom/rwanda-s-minister-justice-johnston-busingye-tells-upfront-rwanda-paid-plane-transported>;

<sup>29</sup> Busari, Stephanie, Sharon Braithwaite, and David McKenzie, "'Hotel Rwanda' film hero Paul Rusesabagina arrested," CNN (01 September 2020), available at <https://www.cnn.com/2020/08/31/africa/rwanda-genocide-paul-rusesabagina-arrest/index.html>.

<sup>30</sup> 17 September NYT Article.

the face. I could not see anything.” When the journalist asked whether he was interrogated, his answers were inconsistent and unclear.

On the same day as his re-appearance at the Remera Police Station, 31 August 2020, the Rwanda Investigation Bureau (“RIB”) announced its first version of Mr. Rusesabagina’s arrest in a tweet that Rwandan authorities had, “through international cooperation,” arrested Mr. Rusesabagina and taken him into custody.<sup>31</sup> (“First Version”). The specifics of the “international cooperation” were not provided. The RIB tweet was re-tweeted on the same day by Mr. Busingye Johnson, Minister of Justice and Attorney General for Rwanda, who lauded arrests taking place “thanks to international cooperation.”<sup>32</sup> The RIB also announced via a tweet that Mr. Rusesabagina “is suspected to be the founder, leader, sponsor and member of violent, armed, extremist terror outfits including MRCD and PDR-Ihumure, operating out of various places in the region and abroad”<sup>33</sup> and that he was the subject of an “International Arrest Warrant.”<sup>34</sup> The specifics of this “International Arrest Warrant” were not provided.

The First Version was denied by the UAE, with an official confirming that, there is no agreement between the UAE and Rwanda to extradite criminals or wanted people.<sup>35</sup> According to the official, Mr. Rusesabagina was only present in Dubai for five hours before he departed “legally” in a private jet from Al Maktoum airport just after midnight on 28 August 2020.<sup>36</sup>

Later, on 21 December 2020, the UAE further explained that Mr. Rusesabagina “was not detained and no legal measures were taken in his regard . . . he was not the subject of any notices from the International Criminal Police Organization (INTERPOL) or from any other organization. He was not obstructed in any way . . . . Moreover, there are no memorandums of security cooperation between the United Arab Emirates and the Government of Rwanda and, in any case, no security notice existed against this person.”<sup>37</sup>

In Rwanda’s Second Version of his arrest, on 6 September 2020, Rwandan President Paul Kagame appeared on national television and suggested that Mr. Rusesabagina had been “lured” to Rwanda.<sup>38</sup> President Kagame suggested that Mr. Rusesabagina had been tricked into boarding the flight for Rwanda: “It’s like if you fed somebody with a false story that, you know, fits well in his narrative of what he wants to be and he follows it and then finds himself in a place like that. . . . There was no kidnap. There was not any wrongdoing in the process of his getting here. He got here on the basis of what he believed and wanted to do. It is like dialing, you are calling a number. You want to get in touch with somebody, and you find you have called a wrong number. That is how it happened. So, there was no kidnap. It was actually flawless.”<sup>39</sup>

The head of Rwanda’s National intelligence and Security Services (NISS), Brig. Gen. Joseph Nzabamwita commented that: “Well it was quite flawless, and I should say one of the best operations that any country can ever conduct. . . . That’s why I told you that this was one of the best intelligence operations. . . . actually executed it right from the planning to the full execution, when he landed in Kigali. . . . He went for his COVID test, bought his [air ticket].”<sup>40</sup>

Later, in February 2021, President Kagame again confirmed the Rwandan conspiracy to kidnap Mr. Rusesabagina from the U.S. when speaking with a CNN reporter, Richard Quest:

KAGAME: It was very proper and legal. In fact, he more or less brought himself, you see, whether he was acting on wrong signals, but he went by those signals to continue the journey of doing the wrong things he had been doing in the past. So, I don't see --

QUEST: He got on a plane intending to go to one destination.

KAGAME: You know which one that is?

QUEST: He was bound and gagged and brought to this destination.

<sup>31</sup> Rwanda Investigation Bureau (@RIB\_Rw), Twitter, 31 August 2020, available at [https://twitter.com/RIB\\_Rw/status/1300350300377710594](https://twitter.com/RIB_Rw/status/1300350300377710594) (last accessed 6 October 2020).

<sup>32</sup> Busingye Johnston, Minister of Justice and Attorney General, Republic of Rwanda (@BusingyeJohns), Twitter, 31 August 2020, available at <https://twitter.com/BusingyeJohns/status/1300409898967199744> (last accessed 6 October 2020).

<sup>33</sup> Rwanda Investigation Bureau (@RIB\_Rw), Twitter, 31 August 2020, available at [https://twitter.com/RIB\\_Rw/status/1300350302248464384](https://twitter.com/RIB_Rw/status/1300350302248464384) (last accessed 6 October 2020).

<sup>34</sup> *Id.*

<sup>35</sup> 2 September CNN Article.

<sup>36</sup> *Ibid.*

<sup>37</sup> Permanent Mission of the United Arab Emirates in Geneva, Ref: 2/3/32 – 362, 21 December 2020 <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35816>.

<sup>38</sup> A. L. Dahir, “Rwanda Hints It Tricked ‘Hotel Rwanda’ Dissident Into Coming Home,” THE NEW YORK TIMES, 6 September 2020, available at <https://www.nytimes.com/2020/09/06/world/africa/paul-rusesabagina-hotel-rwanda-arrest.html> (last accessed 6 October 2020).

<sup>39</sup> Rwanda TV, “President Kagame discusses Rusesabagina’s arrest, crimes and how he arrived in Kigali”, 06 September 2020, available at <https://www.youtube.com/watch?v=LvG-cqnknKg?t=365>

<sup>40</sup> The Daily Podcast, “A Battle for the Soul of Rwanda,” NEW YORK TIMES, 18 February 2020, available at <https://www.nytimes.com/2021/02/18/podcasts/the-daily/hotel-rwanda-paul-rusesabagina-trial.html?showTranscript=1>.

KAGAME: You know which destination --

QUEST: Tell me.

KAGAME: He was going to Burundi.

QUEST: Exactly.

KAGAME: He wasn't going to Dubai as some of the people have said. Dubai was just a transit like Chicago was a transit. He came all the way from the United States.

QUEST: But he didn't expect to end up in Kigali.

KAGAME: Well, I don't mind what he expected. If he expected to go to Burundi to connect with the people he has been working with or leading into the destabilization of our country, what sympathies do I owe him or anybody?

QUEST: Did the government of Rwanda have a hand in bringing him to Kigali? Did you--was the government responsible for renditioning him to Kigali?

KAGAME: No, no, no. Bringing him or guiding him to come to Kigali and rendition means like that--that seem to be illegal. Totally different things. Absolutely. Now, if somebody, for him, he was working with somebody in Burundi, right, in the same plot of destabilizing our country and the same person, for example, decided to drive him to Kigali, the person he was working with and he had trusted and the government was working with that person he trusted. How does the government become culpable for that cooperation?<sup>41</sup>

In an interview with Al Jazeera on 26 February 2021, Johnston Busingye, the Minister of Justice, affirmed that the Rwandan government paid for the flight that transported Mr. Rusesabagina to Kigali.<sup>42</sup> He claimed that “the payment was to facilitate the plan of [a person operating with Rusesabagina] to transport Rusesabagina to Rwanda.”<sup>43</sup>

Thus, the Rwandan government admits to deceiving Mr. Rusesabagina into leaving his home in the United States and going against his will to Rwanda—a country he left after a failed assassination attempt in 1996 and a country to which he would never voluntarily return for fear of his life.<sup>44</sup> (In a 22 December 2020 response to a letter from U.S. Congresspersons, Busingye admits that Mr. Rusesabagina was “lured” into their jurisdiction.<sup>45</sup>)

This Second Version of Mr. Rusesabagina’s kidnapping and disappearance contradicts the First Version published by the RIB on 31 August 2020<sup>46</sup> and confirmed by the Minister of Justice and Attorney General that Mr. Rusesabagina had been arrested through “international cooperation” on the basis of an “international arrest warrant.”<sup>47</sup>

But then, following significant international criticism and the filing of complaints in front of the UN Special Rapporteur against Torture, and the UN Working Group on Enforced Disappearance, the Rwandan government issued a Third Version of Mr. Rusesabagina’s arrest, stating to the press that Mr. Rusesabagina boarded a private jet voluntarily, which then made a “stopover” in Kigali, and the Rwandans “took advantage of the situation” to arrest him.<sup>48</sup> This Third Version contradicts the First Version issued by RIB and the Minister of Justice and Attorney General and the Second Version put forward by President Kagame and his Secretary General of National Intelligence and Security Services. Mr. Rusesabagina’s family insists that he would never have voluntarily gone back to Rwanda, particularly without consulting his family.

#### 4. The treatment of Mr. Rusesabagina since his re-appearance in Rwanda

<sup>41</sup> Interview with Richard Quest, CNN Business Anchor, February 2021, Reported on 17 February 2021. CNN.com - Transcripts; <http://www.cnn.com/TRANSCRIPTS/2102/17/qmb.01.html>.

<sup>42</sup> 26 February Al Jazeera Interview; Rwanda Ministry of Justice (@Rwanda\_Justice), Twitter, 26 February, 2021 (The Ministry of Justice tweeted a clarification to the Al Jazeera interview, in which it confirmed the Minister’s statement that the government paid for the flight that transported Mr. Rusesabagina to Kigali), [https://twitter.com/Rwanda\\_Justice/status/1365375804423561216](https://twitter.com/Rwanda_Justice/status/1365375804423561216).

<sup>43</sup> 26 February Al Jazeera Interview, (underline added).

<sup>44</sup> Busari, Stephanie, Sharon Braithwaite, and David McKenzie. “Hotel Rwanda’ film hero Paul Rusesabagina arrested,” CNN, 01 September 2020, *available at* <https://www.cnn.com/2020/08/31/africa/rwanda-genocide-paul-rusesabagina-arrest/index.html>; 10 March Wash. Post Opinion (Rusesabagina did not attend the Rwandan Screening of ‘Hotel Rwanda’ after being advised it would not be safe for him).

<sup>45</sup> Letter from Johnston Busingye, Rwandan Minister of Justice, to Congressman Hurd, 22 December 2020, *available upon request*. (“There was nothing extrajudicial about Mr. Rusesabagina’s apprehension according to the Rwandan Investigation Bureau. He was lured to a jurisdiction where he could lawfully be arrested...”).

<sup>46</sup> Rwanda Investigation Bureau (@RIB\_Rw), Twitter, 31 August 2020, *available at* [https://twitter.com/RIB\\_Rw/status/1300350300377710594](https://twitter.com/RIB_Rw/status/1300350300377710594) (last accessed 6 October 2020).

<sup>47</sup> *Id.*

<sup>48</sup> M. Ba, “Rwanda: the mystery surrounding Paul Rusesabagina’s arrest,” THE AFRICA REPORT, 4 September 2020, *available at* <https://www.theafricareport.com/40555/rwanda-the-mystery-surrounding-paul-rusesabaginas-arrest/> (last accessed 6 October 2020).

On 1 September 2020, Thierry Murangira, a spokesperson for the RIB, indicated that Mr. Rusesabagina “has the right to a lawyer, and the right to speak to his family.”<sup>49</sup> A Kenyan newspaper published an exclusive interview with Mr. Rusesabagina, which purportedly took place from his cell at Remera Metropolitan Police Station.<sup>50</sup> As reported by Amnesty International, the journalist was given access to Mr. Rusesabagina before he had even had contact with legal counsel, consular officials or his family.<sup>51</sup> During the interview, Mr. Rusesabagina allegedly claimed that he was being “treated with kindness” and had been “offered an option to choose [his] defence team;” that he expects to receive justice and a fair trial in Rwanda; and that “he was choosing his defence team to prove his innocence.”<sup>52</sup> He confirmed, however, that he was not able to speak freely while in custody.<sup>53</sup> It is unknown whether Mr. Rusesabagina willingly participated in the interview, or if it was supervised by the RIB, or the conditions under which he agreed to talk.

### *Request for Chosen Counsel Denied; State-Sponsored Lawyers Appointed*

Mr. Rusesabagina’s family then engaged the services of the former President of the Rwandan Bar Association, Maitre Gatera Gashabana. Maitre Gashabana has defended the last two political opponents of President Kagame who were jailed in Rwanda—Victoire Ingabire and Diane Rwigara. He brought a letter to RIB confirming that the family had asked him to represent Mr. Rusesabagina, and he received a confirmation of receipt but not a response.

On 2 September, after hearing of his detention at Remera Metropolitan Police Station, Mr. Rusesabagina’s wife called the police station and asked to speak to him. She was informed that her request would be passed on, but never received a response. On the same day, Maitre Gashabana, twice visited the police station, but was denied access each time. Maitre Gashabana reached out to the Rwandan Bar Association regarding the fact that he had not yet been allowed to see his client, and scheduled a meeting for 7 September.

However, on 5 September 2020, a Rwandan lawyer by the name of David Rugaza gave a press conference during which he claimed to have been selected by Mr. Rusesabagina from a list of lawyers provided to him.<sup>54</sup> The following day, Mr. Rusesabagina’s daughter, Carine Kanimba, stated that Mr. Rugaza had *not* been appointed by either her father or his family, but had been selected by the Rwandan government as a state-appointed lawyer to interfere with her father’s defense.<sup>55</sup> Ms. Kanimba said that her father would never have engaged a lawyer who would hold a public press conference without first speaking with or consulting the family. She also stated that Mr. Rugaza’s choice to speak in Kinyarwanda as opposed to English, and his refusal to address Mr. Rusesabagina’s unlawful arrest, kidnapping and extraordinary rendition from the United States to Rwanda, was evidence of Mr. Rugaza’s lack of independence.<sup>56</sup>

Mr. Rugaza also announced that he had been appointed after Mr. Rusesabagina declared indigence and requested legal aid. Legal aid lawyers in Rwanda are paid for by the Rwandan government, further undermining allegations of independence. The 2013 Rwandan Bar Association Law<sup>57</sup> provides that an indigent person must demonstrate their indigence through “a certificate ascertaining that he/she cannot afford to pay an Advocate.”<sup>58</sup> Mr.

<sup>49</sup> 2 September CNN Article.

<sup>50</sup> I. Mugisha and B. Namata, “I’m Ready to Face Terror Charges Against Me, says ‘Hotel Rwanda’ Hero,” THE EAST AFRICAN, 3 September 2020, *available at* <https://www.theafrican.co.ke/tea/news/east-africa/hotel-rwanda-hero-ready-to-face-terror-charges--1931064> (last accessed 12 September 2020).

<sup>51</sup> “Rwanda: Paul Rusesabagina must be guaranteed a fair trial,” AMNESTY INTERNATIONAL, 14 September 2020 [Hereinafter “Amnesty International Report”], *available at* <https://www.amnesty.org/en/latest/news/2020/09/rwanda-paul-rusesabagina-must-be-guaranteed-a-fair-trial/> (last accessed 16 September 2020) (“[w]hile Rusesabagina has told a journalist – who was given access in an unusual move by the RIB and before Rusesabagina had contact with legal counsel, consular officials or his family – that he had been treated with kindness and that he had been granted access to doctors and his medication, he is not in a position to speak freely while in custody.”).

<sup>52</sup> Amnesty International Report.

<sup>53</sup> Amnesty International Report (“Rusesabagina has told a journalist [...] he is not in a position to speak freely while in custody.”).

<sup>54</sup> “Paul Rusesabagina *ameze neza* | *Ni we wahisemo ko mwunganira* | *Me* Rugaza David,” RWANDATV on Youtube, 5 September 2020 [Hereinafter “Rwanda TV”], *available at*

<https://www.youtube.com/watch?v=ddDgF2PXRPe> (last accessed 13 September 2020). *See also* Agence France Presse, “‘Hotel Rwanda’ Hero Returned To Country Of Own Accord: Kagame,” BARRON’S, 6 September 2020 [Hereinafter “AFP Article”], *available at* <https://www.barrons.com/news/hotel-rwanda-hero-returned-to-country-of-own-accord-kagame-01599411304> (last accessed 6 October 2020).

<sup>55</sup> Urgent Complaint to OHCHR and SRT, p. 7.

<sup>56</sup> Urgent Complaint to OHCHR and SRT, p. 7 (“[a]lso reaffirming that this lawyer was acting against Mr. Rusesabagina’s interest is the fact that the lawyer appeared to welcome the legal process in Rwanda beginning, rather than insisting any process of any kind would be illegal because of an extraordinary rendition. And Mr. Rugaza held a press conference only in Kinyarwanda, Rwanda’s national language, and only for the state-run Rwanda TV, run by the Rwanda Broadcasting Agency, which posted it on YouTube. As a result, no foreign journalists who spoke English knew about or reported on the press conference, which was strongly against Mr. Rusesabagina’s best interests in publicizing he was a victim of an extraordinary rendition.”) *See also* AFP Article.

<sup>57</sup> Rwanda, Law No. 83/2013 of 11/09/2013 Establishing the Bar Association in Rwanda and Determining its Organization and Functioning (pub. in Official Gazette No. 44 of 04/11/2013) [hereinafter “Rwanda Bar Association Law”], *available at* [https://minijust.gov.rw/fileadmin/Law\\_and\\_Regulations/Rwanda-Bar-Association-Law-Official\\_Gazette\\_no\\_44\\_of\\_04.11.2013-1.pdf](https://minijust.gov.rw/fileadmin/Law_and_Regulations/Rwanda-Bar-Association-Law-Official_Gazette_no_44_of_04.11.2013-1.pdf) (last accessed 6 October 2020).

<sup>58</sup> Rwanda Bar Association Law, Art. 58.

Rusesabagina has, and is aware that he has, the resources to pay for independent lawyers. Had any legitimate assessment been done of Mr. Rusesabagina's assets, he would not have been declared indigent.

Mr. Rugaza represented Mr. Rusesabagina in a manner contrary to his interests, including by:

- a. Failing to challenge the jurisdiction of the Rwandan courts based on his unlawful rendition to Rwanda in order to spare the Rwandan government embarrassment and the Rwandan courts from having to rule on it;
- b. Failing to argue in support of a provisional release pending trial that Mr. Rusesabagina's age (66) and medical conditions (hypertension and being a cancer survivor) make him particularly susceptible to serious illness because of COVID-19—despite hundreds of thousands of prisoners being released worldwide during the pandemic on similar grounds;
- c. Holding a Press Conference on 17 September in Kinyarwanda to undermine the family's claim that Mr. Rusesabagina's Rwandan lawyer was Maitre Gashabana;<sup>59</sup> and
- d. Failing to contact Maitre Gashabana

### *Continued Due Process Violations*

On 9 September 2020, the Rwandan President Kagame said: "Rusesabagina heads a group of terrorists that have killed Rwandans. He will have to pay for these crimes. Rusesabagina has the blood of Rwandans on his hands."<sup>60</sup>

Thirteen days after Mr. Rusesabagina's arrest, the RIB handed over its investigation case file to the Rwandan National Public Prosecution Authority ("NPPA"). On 14 September 2020, 18 days after his unlawful rendition and arrest, Mr. Rusesabagina was brought in front of the Kicukiro Primary Court in Kigali for a pre-trial hearing, his first appearance before a judge since his arrest. Mr. Rusesabagina's state-appointed lawyers requested provisional release due to his poor health. On 17 September 2020, the court denied bail, finding that the charges against him are "grave and serious" and that "[t]he health concerns brought by Mr Rusesabagina are baseless since he does not show how being in detention prevents him from accessing all the medical attention he needs."<sup>61</sup>

On 25 September 2020, Mr. Rusesabagina appeared in front of the Nyarugenge intermediate court with his state-appointed lawyers, to appeal the denial of bail. Again, Mr. Rusesabagina's state-appointed lawyers failed to make any arguments that could embarrass the Rwandan government, including failing to raise his kidnapping, illegal rendition, and *incommunicado* detention between 27 and 30 August 2020, or his susceptibility to serious illness from COVID-19. On 2 October 2020, the Nyarugenge intermediate court denied Mr. Rusesabagina's appeal.

Mr. Rusesabagina remains in Mageragere Prison, a local prison—not Mpanga prison that is supposed to house internationally transferred detainees—where he cannot communicate freely and confidentially with his legal counsel. In a February 2021 interview with Al Jazeera, Rwandan Justice Minister Busingye specifically defended the "right" of prison authorities to "monitor correspondence" between Mr. Rusesabagina and his legal counsel, and acknowledge prison officials intercepting and reading communications between Mr. Rusesabagina and his lawyers.<sup>62</sup> In fact, when the Al Jazeera correspondent asked Minister Busingye directly "When you looked at the communications of Mr. Rusesabagina and his attorney and found no security concerns, you then left it alone?" He responded "Yes of course," confirming that he had in fact looked at communications.<sup>63</sup>

### *Appointment of Chosen Counsel Partially Granted*

After being represented by two state-sponsored lawyers who failed to make basic motions and objections on behalf of Mr. Rusesabagina, and only after extensive efforts by his family and the international community to permit Mr. Rusesabagina to select his own attorney, Mr. Rusesabagina's family was finally able to engage Maitre Gatera Gashabana to represent him

<sup>59</sup> "Tatiana Rusesabagina yashyizwe mu majwi // Yasuzuguye umwunganizi w'umugabo we," UTUNTUNUTUNDI TV, Youtube, 16 September 2020 [Hereinafter "Utuntunundi TV"], available at <https://www.youtube.com/watch?v=nQB3cFmSbF0&feature=youtu.be> (last accessed 6 October 2020).

<sup>60</sup> "Rwanda's Kagame denies Paul Rusesabagina was kidnapped," AL JAZEERA, 7 September 2020, available at <https://www.aljazeera.com/news/2020/9/7/rwandas-kagame-denies-paul-rusesabagina-was-kidnapped> (last accessed 6 October 2020).

<sup>61</sup> 17 September Al Jazeera Article.

<sup>62</sup> 26 February Al Jazeera Interview, at 19:20.

<sup>63</sup> *Id.*

On 16 November 2020, an indictment was issued specifically charging Mr. Rusesabagina with nine offenses which carry the punishment of life imprisonment.<sup>64</sup> Furthermore, this indictment lists seventeen co-defendants, none of whom Mr. Rusesabagina has ever met.<sup>65</sup>

Although Maitre Gashabana was finally appointed as Mr. Rusesabagina's lawyer in October, he represented Mr. Rusesabagina in court for the first time on 27 November 2020, before the Nyarugenge Intermediate Court via videoconference technology.<sup>66</sup> It was then, for the first time, that counsel for Mr. Rusesabagina raised the issue of his forcible transfer from Dubai to Kigali.<sup>67</sup> And despite Mr. Rusesabagina's trial being postponed to 17 February 2021, Maitre Gashabana had been unable to meet with Mr. Rusesabagina frequently enough to prepare his defense effectively.

Additionally, Mr. Rusesabagina continues to be denied access to his international lawyers. On 29 December 2020, Mr. Rusesabagina wrote a letter from prison to the Rwandan Bar Association (RBA), designating Kate Gibson, Philippe Larochelle and Peter Choharis as members of his international legal team; the letter was subsequently confiscated. On 18 January 2021, Maitre Gashabana was told by the Secretariat of the RBA that the letter was never received. Finally, after efforts by Maitre Gashabana to submit the request, on 26 January 2021, the RBA denied Mr. Rusesabagina his request to be represented by international counsel<sup>68</sup>—contrary to its past practice.

### *Inability to Prepare for Trial*<sup>69</sup>

The Rwandan government's restrictions deprive him of effective legal advocacy. It is not possible to receive calls at the prison where Mr. Rusesabagina is being held. His only option for communicating with counsel is to call out, and as a detainee he is limited to a five-minute phone call that is not confidential—not even with his lawyer. Court and other legal documents left by Maitre Gashabana with Mr. Rusesabagina have been confiscated by prison officials. According to counsel, the Prison Director told him that they were confiscated and would not be returned because they contained information against the State, even though these were privileged documents.

Rwandan authorities have also denied Mr. Rusesabagina access to documents and materials needed to prepare for his defense. He only received his indictment in early January 2021 (a month after his trial date was set, and more than four months after he was kidnapped and arrested). Prison officials have even denied him access to pens and paper—let alone a computer—with which to assist in his own defense.

On 2 December 2020, the trial Court dismissed the appeal of an order extending Mr. Rusesabagina's pre-trial detention. On 3 December, 2020, Mr. Rusesabagina's criminal trial date was set for 26 January 2021. Additionally, the Court approved merging Mr. Rusesabagina and his 17 co-defendants' with current proceedings against former spokesmen for the FLN. On 26 January 2021, the trial was rescheduled for 17 February 2021.

On 13 January 2021, Maitre Gatera Gashabana filed a letter to Presiding Judge Antoine Muhima in the Rwandan Court system, seeking remedies for ongoing fair trial violations. Further motions were filed with the Court on 21 January 2021, and 12 February 2021. On 26 February 2021, the Rwandan Court ruled that “it is not relevant to talk about how he [Mr. Rusesabagina] was arrested or detained.”, but none of the fair trial violations raised were addressed by the Court. On 10 March 2021, the Court ruled on some pre-trial motions concerning due process violations. Despite permitting a computer with his casefile on it, the Court ruled that moving forward, privileged documents would be protected only “after having been identified,” without specifying by whom or whether copies would be shared with Ministry of Justice officials, as before. Further, the Court did not provide any remedy for the Rwandan government's prior access to all privileged communications, including documents outlining his defense strategy. Mr. Rusesabagina appealed the ruling immediately, and the session ended without a date set for the next hearing. The criminal trial is currently ongoing, and Mr. Rusesabagina remains in detention.

### *Deterioration of Mr. Rusesabagina's Health*

Meanwhile, Mr. Rusesabagina's health has deteriorated steadily. He is a 66-year-old cancer survivor who suffers from hypertension and cardiovascular disease.<sup>70</sup> His prescribed medication for a heart disorder is being

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<sup>64</sup> January 2021 ABA Briefing, at 5 (The 16 November indictment charges Mr. Rusesabagina with the creation of an illegal unit; being a member of a terrorist organization; sponsoring terrorism; murder as an act of terrorism; illegal human trafficking as an act of terrorism; armed robbery as an act of terrorism; raiding of buildings, and transporting persons or objects to commit terrorist attacks; Murder as an act of terrorism; and beating and intentionally injuring as an act of terrorism.)

<sup>65</sup> January 2021 ABA Briefing, at 5.

<sup>66</sup> January 2021 ABA Briefing at 9-10.

<sup>67</sup> January 2021 ABA Briefing at 10.

<sup>68</sup> <https://www.prlog.org/12855723-rusesabaginas-trial-delayed-lawyers-denied-amid-legal-irregularities-covid-worries.html>

<sup>69</sup> Information in this section provided by Paul Rusesabagina's lawyers.

<sup>70</sup> January 2021 ABA Briefing, at 20.

withheld, which he fears will cause a stroke.<sup>71</sup> This fear is well-founded and his treating physician in Belgium has stated that interrupting and modifying his treatment, as well as inducing stress risks severe hypertensive attacks and even a stroke.<sup>72</sup> His family has expressed worry that he has not been receiving his hypertension medication, which he has taken for years, for close to six months.<sup>73</sup> Mr. Rusesabagina has told his family via telephone that he is experiencing worsening dizziness and very high blood pressure.<sup>74</sup> Additionally, he has lost a significant amount of weight while being detained.<sup>75</sup>

### *Public Pronouncements of Mr. Rusesabagina's Guilt*

President Kagame himself has precluded Mr. Rusesabagina from receiving a fair trial by pronouncing him guilty:

Rusesabagina heads a group of terrorists that have killed Rwandans. He will have to pay for these crimes. Rusesabagina has the blood of Rwandans on his hands.<sup>76</sup>

He became an associate of these groups or even a leader of different groups. They have names, FLN and MRCD . . . these groups FLN and MRCD that Rusesabagina was leading or is one of their leaders, killed people in the southwestern part of our country in about three districts. So, there are victims, there's information known by local people. Rusesabagina himself knows it.<sup>77</sup>

On 17 February 2021, the day that Mr. Rusesabagina's trial began, President Kagame again pronounced Mr. Rusesabagina guilty.<sup>78</sup> No prospect of a free and fair trial exists because neither the Ministry of Justice nor the Rwandan judiciary could or would do anything to undermine the President's pronouncements.

## **B. Legal Analysis**

As explained below, the Rwandan government's treatment of Mr. Rusesabagina amounts to an arbitrary detention under Categories I, II, III, and V.<sup>79</sup> The Statement of Facts above establishes a *prima facie* case for breach of international requirements condemning arbitrary detention, shifting the burden of proof to the Government of the Republic of Rwanda. The detention is arbitrary under Category I because it does not have any legal justification. The detention is arbitrary under Category II because it resulted from Mr. Rusesabagina's exercise of his right to freedom of expression and because the Rwandan government targeted Mr. Rusesabagina because of his political opinion. The detention is arbitrary under Category III because the government's detention and prosecution of Mr. Rusesabagina failed to meet minimum international standards of due process. Finally, the detention is arbitrary under Category V because the government targeted Mr. Rusesabagina because of his political opinion.

### **1. Arbitrary Deprivation of Liberty under Category I: No Basis for Detention.**

A deprivation of liberty is arbitrary under category I of the Methods of Work "[w]hen it is clearly impossible to invoke any legal basis justifying the deprivation of liberty"<sup>80</sup> Mr. Rusesabagina's extrajudicial rendition to Rwanda had no legal basis.

Article 9(1) of the ICCPR confirms the human right to liberty and freedom from arbitrary detention when it guarantees that "[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." This requires that "[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."<sup>81</sup>

<sup>71</sup> Ignatius Ssuuna, "Hotel Rwanda Hero Faces Trial as Family Fears for his Life," LA TIMES, 16 February 2021, available at <https://www.latimes.com/world-nation/story/2021-02-16/hotel-rwanda-hero-faces-trial-as-family-fears-for-his-life>.

<sup>72</sup> January 2021 ABA Briefing, at 20-21.

<sup>73</sup> Ignatius Ssuuna, "Hotel Rwanda Hero, Paul Rusesabagina, Arrested," PBS NEWS, 31 August 31 2020, available at <https://www.pbs.org/newshour/world/hotel-rwanda-hero-paul-rusesabagina-arrested>.

<sup>74</sup> January 2021 ABA Briefing, at 20.

<sup>75</sup> Ibid.

<sup>76</sup> January 2021 ABA Briefing at 7; See also "Rwanda's president says 'Hotel Rwanda' hero must stand trial", WASHINGTON POST, 6 September 2020, available at [https://www.washingtonpost.com/world/africa/rwandas-president-says-hotel-rwanda-hero-must-stand-trial/2020/09/06/5fd64012-f059-11ea-8025-5d3489768ac8\\_story.html](https://www.washingtonpost.com/world/africa/rwandas-president-says-hotel-rwanda-hero-must-stand-trial/2020/09/06/5fd64012-f059-11ea-8025-5d3489768ac8_story.html).

<sup>77</sup> Rwanda TV, "President Kagame discusses Rusesabagina's arrest, crimes and how he arrived in Kigali", 6 September 2020.

<sup>78</sup> Interview with Richard Quest, CNN Business Anchor, February 2021, Reported on 17 February 2021. CNN.com - Transcripts; <http://www.cnn.com/TRANSCRIPTS/2102/17/qmb.01.html>.

<sup>79</sup> <https://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

<sup>80</sup> WGAD Methods of Work, A/HRC/33/66, para 8(a).

<sup>81</sup> International Covenant on Civil and Political Rights, GA Res 2200A (XXI), 21 U.N.

GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, Art. 9(1) and 9(2), [hereinafter ICCPR].

Article 6 of the African Charter on Human and Peoples' Rights (ACHPR) provides that "[e]very individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."<sup>82</sup> Rwandan domestic law similarly provides that "[a]ny person held in custody by the organ in charge of investigation or public prosecution must be notified of the charges against him or her and his or her rights including the right to inform his or her legal counsel or any other person of his or her choice. Such a notification is made in a statement signed by both the investigator and the suspect."<sup>83</sup>

Article 13 of the ICCPR provides: "[a]n alien lawfully in the territory of a State Party [...] may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall [...] be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority." Article 9(4) provides: "[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

This Working Group has found that "[i]nvoluntary expulsion to a foreign State without a hearing by judicial authorities cannot be in conformity with due process."<sup>84</sup> There, in the case of Truong Duy Nhat (Thailand and Viet Nam), Mr. Nhat was seized by Thai authorities, where he was physically located, and given to Vietnamese State agents without a fair and public extradition hearing by an impartial tribunal - nor did he have access to legal counsel - and he was removed to Vietnam in a matter of hours.<sup>85</sup> These actions amounted to a finding his detention was arbitrary under category I.<sup>86</sup> Here, it is similarly clear that there was no fair and public extradition hearing, from Belgium, the U.S., or the UAE.

The UAE has denied any involvement in the rendition to Kigali.<sup>87</sup> It is clear that Mr. Rusesabagina was never presented to a court before leaving the U.S. or Dubai. Instead, Mr. Rusesabagina was taken against his will from Dubai to Rwanda outside of any legal extradition process, and without any legal protections. He was duped into traveling to Dubai and then Kigali by the Rwandan government, which also paid for the plane. This Working Group has expressed concern over forcible transfers where individuals are taken to another country "outside the confines of any legal procedure, such as extradition, and [they were not allowed] access to counsel or to any judicial body to contest the transfers."<sup>88</sup> Mr. Rusesabagina's arrest and transfer to Rwanda lacked legal basis and due process of law, in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the ICCPR. His arrest and detention are therefore arbitrary under category I.

## **2. Arbitrary Deprivation of Liberty under Category II: Substantive Fundamental Rights.**

A detention is arbitrary under Category II when the detention results from the exercise of fundamental rights protected by international law. More specifically, arbitrary detention results "[w]hen 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, 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."<sup>89</sup> Mr. Rusesabagina's detention is arbitrary because it resulted from the exercise of his fundamental right to freedom of expression.<sup>90</sup>

The right to freedom of expression is expressly protected under international and Rwandan law. Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Rwanda is a State Party, provides that "[e]veryone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."<sup>91</sup> The right to free expression is also protected by Article 19 of the Universal Declaration of Human Rights (UDHR).<sup>92</sup> Further, Article 38 of the Rwandan Constitution

<sup>82</sup> African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) [hereinafter ACPHR], Article 6.

<sup>83</sup> Rwandan Code of Criminal Procedure, Article 68. <https://gazettes.africa/archive/rw/2019/rw-government-gazette-dated-2019-11-08-no-Special.pdf>

<sup>84</sup> UNWCAD Opinion No. 42/2020 concerning Truong Duy Nhat (Thailand and Viet Nam) (18 September 2020), para 64.

<sup>85</sup> *Id.*, para 43.

<sup>86</sup> *Id.*, paras 59-61.

<sup>87</sup> Permanent Mission of the United Arab Emirates in Geneva, Ref: 2/3/32 – 362, 21 December 2020 <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35816>; 2 September CNN Article.

<sup>88</sup> WGAD, 'Opinion No. 47/2005 (Yemen)' (30 November 2005) UN Doc. A/HRC/4/40/Add.1, paras 19-22. (finding a violation of Article 9 and an arbitrary detention under category I).

<sup>89</sup> Revised Methods of Work, ¶7(e).

<sup>90</sup> ICCPR, Art. 22

<sup>91</sup> *Id.*

<sup>92</sup> UDHR, Art. 19(2).

likewise recognizes and guarantees the right to freedom of expression: “Freedom of press, of expression and of access to information are recognised and guaranteed by the State.”<sup>93</sup>

Article 19 of the Covenant is of “special importance” for political opponents.<sup>94</sup> Restrictions on the right to political free speech are “strongly circumscribed.”<sup>95</sup> In *Gulgeldy Annaniyazov v. Turkmenistan*, the Working Group described how the protection of free expression “is broad enough to include the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment. Without such protection, members of political opposition and human rights activists will not be able to criticize, investigate, or expose corrupt and illegal practices by government officials.”<sup>96</sup>

Despite international and Rwandan law’s clear guarantees for individuals’ rights to freedom of expression, the Rwandan government arbitrarily detained and prosecuted Mr. Rusesabagina as a direct result of his expression, public condemnation of corrupt and illegal acts by the Kagame government, and political opposition. As set forth above, the Rwandan government has a well-documented pattern of attacking and attempting to silence its opponents and critics through harassment and arbitrary detention.

In the 2019 case concerning Issa al-Nukheifi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid, this Working Group recognized that “sharing of information and ideas through online media cannot reasonably qualify as posing threats against morality, public order and the general welfare in a democratic society,” the limited exception provided for freedom of expression.<sup>97</sup> In that case, the Working Group found a Category II deprivation based on Article 19 of the UDHR where the petitioners were charged, tried and imprisoned for their online postings in support of the Saudi Civil and Political Rights Association or of political change.<sup>98</sup>

So too here, Mr. Rusesabagina’s public criticisms of President Kagame and his government are protected under his right to Freedom of Expression. Whether in the form of publishing a book, speaking on the radio, describing his outrage online or in interviews, Mr. Rusesabagina has been an outspoken critic whom President Kagame has wanted to silence for many years. Mr. Rusesabagina’s public criticisms of the Kagame government constitute his exercise of a fundamental right and thus cannot be the basis for a legitimate deprivation of liberty.

### **3. Arbitrary Deprivation of Liberty under Category III: Due Process Rights.**

A deprivation of liberty is arbitrary according to Category III of the Methods of Work “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out 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.”<sup>99</sup> Rwanda is a party to the ICCPR and bound to uphold its due process protections. Further, Article 29 of the Rwandan Constitution enumerates basic due process protections as including criminally accused (a) having access to adequate defense and legal representation; (b) being presumed innocent; and (c) being brought before a court in a timely manner. The Rwandan government has violated Mr. Rusesabagina’s right to: be presented with a warrant, counsel of his own choosing, the presumption of innocence, humane treatment, prompt consular relations, and to be brought promptly before a tribunal.

#### **a. Rwanda violated Mr. Rusesabagina’s right by detaining him without a warrant.**

Rwandan authorities violated Mr. Rusesabagina’s right against detention in the absence of a warrant or judicial order. Article 9(1) of the ICCPR and Principle 2 of the Body of Principles for the Protection of All persons under Any Form of Detention or Imprisonment prohibit arbitrary arrest and requires compliance with domestic rules that define such procedures for arrest, such as specifying when a warrant is required and permitting access to counsel.<sup>100</sup> Rwandan law stipulates that an arrest warrant “must be shown to the persons against whom they are

<sup>93</sup> Constitution of the Republic of Rwanda, Rwanda 2003 (rev. 2015), Art. 38.

<sup>94</sup> *Gulgeldy Annaniyazov v. Turkmenistan*, Working Group on Arbitrary Detention, Opinion No. 22/2013, U.N. Doc. A/HRC/WGAD/2013/22 (2014), para 11. <http://hrlibrary.umn.edu/wgad/22-2013.html>.

<sup>95</sup> *Liu Xiaobo v. China*, Working Group on Arbitrary Detention, Opinion No. 15/2011, U.N. Doc. A/HRC/WGAD/2011/15 (2011), para 26. <http://hrlibrary.umn.edu/wgad/15-2011.html>

<sup>96</sup> *Gulgeldy Annaniyazov v. Turkmenistan*, Working Group on Arbitrary Detention, Opinion No. 22/2013, U.N. Doc. A/HRC/WGAD/2013/22 (2014), para 11. (Finding the detention of a political activist arbitrary in part on Category II freedom of expression grounds when the petitioner had fled Turkmenistan after being jailed for organizing an anti-government demonstration and upon his return to the country nine years after his release, was arrested by a plainclothes officer and sentenced again in a closed trial on charges that were disputed, but his family suspects they were related to the earlier incident.) <http://hrlibrary.umn.edu/wgad/22-2013.html>.

<sup>97</sup> A/HRC/WGAD/2019/71, para 79. available at

[https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session86/A\\_HRC\\_WGAD\\_2019\\_71\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session86/A_HRC_WGAD_2019_71_AdvanceEditedVersion.pdf)

<sup>98</sup> *Id.*

<sup>99</sup> WGAD Methods of Work, A/HRC/33/66, para 8(c) (category III).

<sup>100</sup> ICCPR 9(1), Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, GA Res. 47/173, 43 U.N. GAOR Supp. (No. 49) 298, A/43/49, 9 December 1998, [hereinafter Body of Principles], Principle 2.

issued and such persons shall be given a copy of the warrant.”<sup>101</sup>

Mr. Rusesabagina was never presented with a warrant or other judicial order when he was arrested. While the RIB claims that there was an international arrest warrant for him, they have never produced one.<sup>102</sup> The Rwandan Criminal Code defines an international arrest warrant as “an order signed by the Prosecutor General or Military Prosecutor General issued against a person in a foreign country.”<sup>103</sup> Yet Rwanda has not produced such a signed international arrest warrant to date. Because Mr. Rusesabagina was arrested without a warrant where one was required by law, authorities violated his legal rights and his subsequent detention is arbitrary.

**b. Rwanda violated Mr. Rusesabagina’s right by denying him consular assistance.**

Article 36 of the 1963 Vienna Convention on Consular Relations, to which both Rwanda and Belgium are parties, outlines the requirement to provide consular assistance for those detained in a foreign country. In *Taysir Hasan Mahmoud Salman v. United Arab Emirates*, this Working Group explained Article 36(1)(b) as recognizing that “a foreign national ‘arrested or committed to prison or to custody pending trial or is detained in any other manner’ should be informed ‘without delay’ of his or her rights to inform consular officers about his or her detention and to have any communication addressed to them forwarded ‘without delay’.”<sup>104</sup> Further, the Body of Principles recognizes in 16(2) the right of a detained foreign national to “communicate by appropriate means with a consular post of the diplomatic mission of the State of which he [or she] is a national.”<sup>105</sup> The United Nations Standard Minimum Rules for the Treatment of Prisoners also provides that “[p]risoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.”<sup>106</sup> Denial of consular rights is a deprivation of the right to a fair trial.<sup>107</sup>

Mr. Rusesabagina has been a Belgian citizen since 1999. However, Rwanda did not inform Belgian authorities of his detention in Rwanda until three days after his arrest, nor promptly provide Mr. Rusesabagina an opportunity to communicate with Belgian authorities. Nor did Rwanda promptly inform Mr. Rusesabagina of his right to communicate with a Belgian consular officer, nor did it facilitate such communication. In finding the detention of five Kenyan men held by South Sudan to be arbitrary under Category III, this Working Group considered that the men had “not been granted their right to receive a visit from their consular officer as guaranteed by international norms on consular relations” as a critical part of the determination.<sup>108</sup> Rwanda’s similar denial for Mr. Rusesabagina amounts to a due process violation, rendering his detention arbitrary under Category III.

**c. Rwanda violated Mr. Rusesabagina’s right by denying him counsel of his own choosing.**

Article 14(3)(b) of the ICCPR provides that a defendant is entitled to “have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.”<sup>109</sup> Defendants must have access to documents and other evidence, including “all materials” that the prosecution plans to offer in court against the accused or that could assist the defence.”<sup>110</sup> It further requires that defendants “be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.”<sup>111</sup> Internationally recognized human rights standards require prompt recourse to legal assistance of his own choosing for any individual charged with a criminal offence not wishing to defend himself.<sup>112</sup>

<sup>101</sup> Rwandan Code of Criminal Procedure (2019), Article 37. <https://gazettes.africa/archive/rw/2019/rw-government-gazette-dated-2019-11-08-no-Special.pdf>.

<sup>102</sup> Rwanda Investigation Bureau (@RIB\_Rw), Twitter, 31 August 2020, available at [https://twitter.com/RIB\\_Rw/status/1300350300377710594](https://twitter.com/RIB_Rw/status/1300350300377710594) (last accessed 6 October 2020).

<sup>103</sup> Rwandan Code of Criminal Procedure (2019), Article 36. <https://gazettes.africa/archive/rw/2019/rw-government-gazette-dated-2019-11-08-no-Special.pdf>.

<sup>104</sup> *Taysir Hasan Mahmoud Salman v. United Arab Emirates*, A/HRC/WGAD/2017/58, 20 October 2017, para 61.

<sup>105</sup> Body of Principles, Principle 16(2).

<sup>106</sup> Rule 62(1), [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf)

<sup>107</sup> *Boniface Muriuki Chuma et al. v. South Sudan*, A/HRC/WGAD/2016/18 (20 June 2016), para 29.

<sup>108</sup> *Id.*

<sup>109</sup> ICCPR Art. 14(3).

<sup>110</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, 23 August 2007, para 33.

<sup>111</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, 23 August 2007, para 34.

<sup>112</sup> See ECtHR, Guide to Article 6 of the Convention – Right to a fair trial (criminal limb), 31 August 2020, para 448. See also ECtHR, *Martin v. Estonia*, App. No. 35985/09, Judgement (Merits and Just Satisfaction), 30 May 2013 (“*Martin v. Estonia*”), para 92; HRC: *Butovenko v. Ukraine*, Comm. No. 1412/2005, UN Doc. CCPR/C/102/D/1412/2005, 19 July 2001, para 7.6; *Gunan v. Kyrgyzstan*, Comm. No. 1545/2007, UN Doc. CCPR/C/102/D/1545/2007, 25 July 2011, para 6.3; *Krasnova v. Kyrgyzstan*, Comm. No. 1402/2005, UN Doc. CCPR/C/101/D/1402/2005, 27 April 2010, para 8.6; *Johnson v. Jamaica*, Comm. No. 592/1994, UN Doc. CCPR/C/64/D/592/1994, 25 November 1998, para 10.2; *Levy v. Jamaica*, Comm. No. 719/1996, UN Doc. CCPR/C/64/D/719/1996, 3 November 1998, para 7.2; IACmHR: Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Res. 1/08, 13 March 2008, Principle V (Due Process of Law).

The European Court of Human Rights (“ECHR”) has interpreted this as a non-derogable right, unless there is a clear showing of “relevant and sufficient reasons” to so justify.<sup>113</sup> Even in such exceptional cases, the ECHR will still assess whether, in limiting the right, the rights of the defense were “adversely affected” to such a degree as to have undermined the overall fairness of the proceedings.<sup>114</sup>

The ECHR has found that restriction of the applicant’s access to a lawyer already retained by his parents constituted a violation of his right to legal representation of his choice. As in the present case, the family-appointed lawyer in *Dvorski v. Croatia* was denied access to the applicant at the police station in which he was being detained. In holding that there had existed no “relevant and sufficient reasons” justifying the police officers’ conduct, the Court found that the applicant had been denied the opportunity to challenge the lawyer assigned to him against his will and that any statement made by the applicant in the absence of his family-appointed lawyer could not be used at his trial.<sup>115</sup> Similarly, in *Martin v. Estonia*, the ECtHR emphasised that the right to counsel of “one’s own choosing” included representation chosen by family members on his or her behalf.<sup>116</sup>

Rwanda used its own legal aid system, designed solely for indigent defendants, to impose a lawyer on Mr. Rusesabagina when it knew that he was not indigent and that his family had retained a lawyer to represent him. This could only have been done to deny Mr. Rusesabagina an independent advocate and instead control all of the players in the courtroom—the judge, the prosecution, and even the defense. The state-appointed lawyers never raised the illegal rendition of Mr. Rusesabagina as a bar to the jurisdiction of the court or as a reason why the court should decline to exercise its jurisdiction based on the abuse of process that brought Mr. Rusesabagina before it.

The family had requested a specific counsel for Mr. Rusesabagina, Maitre Gashabana as his local counsel, who brought a letter to RIB confirming his representation in early September, shortly after his arrest. It was after the RIB received this letter, and after Maitre Gashabana twice visited the police station but was denied access, that Rwanda appointed its own State-appointed lawyers. In October, well over a month after he was initially arrested, Maitre Gashabana was finally permitted to visit Mr. Rusesabagina, though was only able to represent him in court for the first time at the end of November.

Mr. Rusesabagina continues to be denied access to any international lawyers, including the three international lawyers whom he requested by name: Philippe Larochelle, Kate Gibson, and Peter Choharis. This is vital because local counsel are *de facto* restricted regarding the kind of legal challenges and arguments they can make, lest they offend the Rwandan authorities and endanger themselves. And even though Mr. Rusesabagina was finally permitted counsel of his own choosing, Maitre Gashabana, he still does not have access to private phone conversations with his counsel, nor can his counsel share case files with him without the prison confiscating them. In addition, ostensibly due to COVID restrictions, Maitre Gashabana has been unable to confer with Mr. Rusesabagina for weeks despite the trial commencing on 17 February 2021. As a result, Rwanda continues to deprive Mr. Rusesabagina of his ability to use even local counsel to prepare properly for trial—an always critical task made all the more urgent in a complex case such as Mr. Rusesabagina’s, with an indictment over 200 pages long and charges intertwined with those against 17 other individuals.

This Working Group specifies that “[a]ll persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access must be provided without delay.” The inability of Mr. Rusesabagina to be aided by any counsel of his own choice for well over a month, the continued denial of rightful international legal assistance despite the international nature of his arrest and the charges, and the practical restrictions that are depriving him of the ability to mount an effective defense amount to a violation of Article 14.

#### **d. Rwanda violated Mr. Rusesabagina’s right to be presumed innocent until proven guilty.**

Under Article 14(2) of the ICCPR,<sup>117</sup> Article 11(1) of the UDHR,<sup>118</sup> and Principle 36 of the Body of Principles,<sup>119</sup> every citizen has the right to be presumed innocent. The Human Rights Committee has stated that: “the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt. No guilt can

<sup>113</sup> ECtHR, *Croissant v. Germany*, App. No. 13611/88, Judgement (Merits and Just Satisfaction), 25 September 1992 (“*Croissant v. Germany*”), para 29; *Martin v. Estonia*, para 90.

<sup>114</sup> *Dvorski v. Croatia*, paras 103 *et seq*; *Martin v. Estonia*, para 94. See also *Al-Khawaja and Tahery v. the United Kingdom*, App. No. 26766/05 and 22228/06, Judgement (Merits and Just Satisfaction), 20 January 2009, para 84; *Taxquet v. Belgium*, App. No. 926/05, Judgement (Merits and Just Satisfaction), 16 November 2010, para 84.

<sup>115</sup> *Dvorski v. Croatia*, para 98.

<sup>116</sup> *Martin v. Estonia*, para 93.

<sup>117</sup> ICCPR, Art. 14.

<sup>118</sup> *Universal Declaration*, Art. 11.

<sup>119</sup> *Body of Principles*, Principle 36.

be presumed until the charge has been proved beyond reasonable doubt. The presumption of innocence implies a duty for all public authorities to refrain from prejudging the outcome of a trial.<sup>120</sup>

Thus, under well-established international law, people charged with crimes are presumed to be innocent.<sup>121</sup> The burden of proof to establish the guilt of the accused lies with the Prosecutor, and public authorities must refrain from prejudging the outcome of the proceedings,<sup>122</sup> making any official statements, or using conclusory language that would portray an accused as guilty.<sup>123</sup> Similarly, the media must avoid news coverage which could undermine this right.<sup>124</sup>

On 6 September 2020 during a broadcast on national television, President Kagame said that “Rusesabagina heads a group of terrorists that have killed Rwandans. He will have to pay for these crimes. Rusesabagina has the blood of Rwandans on his hands.”<sup>125</sup> He also said that Mr. Rusesabagina became “an associate of these groups or even a leader of different groups. They have names, FLN and MRCD . . . these groups FLN and MRCD that Rusesabagina was leading or is one of their leaders, killed people in the southwestern part of our country in about three districts. So, there are victims, there’s information known by local people. Rusesabagina himself knows it.”<sup>126</sup> A Rwandan Court charged Mr. Rusesabagina on 14 September 2020, barely a week after President Kagame’s broadcast.<sup>127</sup> Then, on 17 February 2020, the first day of Mr. Rusesabagina’s trial, President Kagame made similar comments pronouncing Mr. Rusesabagina guilty.<sup>128</sup> These statements by a President reportedly elected by a vote of 99% of the Rwandan electorate were a devastating violation of the presumption of innocence and the right to a fair trial. In the Rwandan context, they constitute a *de facto* guilty verdict.

The application of this principle is particularly delicate where no formal charges have been brought. In *Batiashvili v. Georgia*, the State was found to have committed a violation of the applicant’s right to be presumed innocent by disseminating a manipulated recording to the public for the purpose of insinuating the existence of a crime prior to formally charging the applicant.<sup>129</sup> International courts have similarly rebuked their prosecutorial organs for presupposing facts that have not been verified or confirmed and have reminded them to “exercise caution when phrasing [...] submissions and to refrain from making statements that might be interpreted as undermining the presumption of innocence.”<sup>130</sup> Those failings pale in comparison to comments by President Kagame, whose control over his country’s judiciary in high-profile political cases is well-documented.<sup>131</sup>

Under the circumstances of this case, the Government of Rwanda, through its President Paul Kagame, violated Mr. Rusesabagina’s right to be presumed innocent.

#### **e. Rwanda violated Mr. Rusesabagina’s right to be free from cruel, inhuman, or degrading treatment.**

Article 10(1) of the ICCPR and Principle 1 of the Body of Principles state that persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Article 7 of the ICCPR, Article 5 of the UDHR, Article 14 of the Rwandan Constitution, and Principle 6 of the Body of Principles collectively establish the prohibition on cruel or inhuman treatment. The Body of Principles states that this prohibition “should be interpreted so as to extend the widest possible protection against abuses, whether physical

<sup>120</sup> *General Comment No. 13*, ¶7.

<sup>121</sup> ICCPR, Art. 14(2); UDHR, Art. 11(1); ECHR, Art. 6(2); ACHR, Art. 8(2); ACHPR, Art. 7(1).

<sup>122</sup> *HRC, J.O. v. France*, Comm. No. 1620/2007, UN Doc. CCPR/C/101/D/1620/2007/Rev.2, 23 March 2011, para. 9.6.

<sup>123</sup> *HRC, Mwamba v. Zambia*, Comm. No. 1520/2006, UN Doc. CCPR/C/98/D/1520/2006, 30 April 2010 (“*Mwamba v. Zambia*”), para. 3.2; *HRC, Larranaga v. the Philippines*, Comm. No. 1421/2005, UN Doc. CCPR/C/87/D/1421/2005, 24 July 2006, para. 7.4; *HRC, Gridin v. Russian Federation*, Comm. No. 770/1997, UN Doc. CCPR/C/69/D/770/1997, 18 July 2000, para. 8.3.

<sup>124</sup> *Mwamba v. Zambia*, para. 6.5; *HRC, Saidova v. Tajikistan*, Comm. No. 964/2001, UN Doc. CCPR/C/81/D/964/2001, 8 July 2004, para. 3.5.

<sup>125</sup> Urgent Complaint to OHCHR and SRT, p. 7, citing “Paul Rusesabagina: President Denies Hotel Rwanda Hero Was Kidnapped, BBC NEWS, 6 September 2020, available at <https://www.bbc.com/news/world-africa-54050510> (last accessed 17 September 2020).

<sup>126</sup> Rwanda TV, “President Kagame discusses Rusesabagina’s arrest, crimes and how he arrived in Kigali,” 06 September 2020, available at <https://www.youtube.com/watch?v=LvG-cqknKg>.

<sup>127</sup> I. Ssuuna, “Hotel Rwanda hero charged with terrorism in Rwanda court”, AP NEWS, 14 September 2020, available at <https://apnews.com/article/dubai-kigali-paul-rusesabagina-genocides-rwanda-fd1be48da5900dbe2f262a9b7f0e13bb> (last accessed on 1 December 2020).

<sup>128</sup> Interview with Richard Quest, CNN Business Anchor, February 2021, Reported on 17 February 2021. CNN.com - Transcripts; <http://www.cnn.com/TRANSCRIPTS/2102/17/qmb.01.html>.

<sup>129</sup> ECtHR, *Batiashvili v. Georgia*, App. No. 8284/07, Judgement (Merits and Just Satisfaction), 10 October 2019, para. 79.

<sup>130</sup> International Criminal Court, *Bemba*, Decision on “Defence request for withdrawal or clarification of a filing”, ICC-01/05-01/08-3011, 11 March 2014, para. 8.

<sup>131</sup> See e.g. Nate Schenkkan and Isabel Linzer, “Not Out of Reach: The Global Scale and Scope of Transnational Repression,” FREEDOM HOUSE at 26 (February 2021), available at [https://freedomhouse.org/sites/default/files/2021-02/Complete\\_FH\\_TransnationalRepressionReport2021\\_rev020221.pdf](https://freedomhouse.org/sites/default/files/2021-02/Complete_FH_TransnationalRepressionReport2021_rev020221.pdf); Anjan Sundaram, “Rwanda’s Rendition of a Hollywood Hero Confirms the Country’s Descent Into Dictatorship, FOREIGN POLICY, 23 January 2021, available at <https://foreignpolicy.com/2021/01/23/hotel-rwanda-paul-rusesabagina-imprisoned-kagame-dissidents/>; “Human Rights Watch Submission to the Universal Periodic Review of Rwanda,” HUMAN RIGHTS WATCH, 9 June 2020, available at <https://www.hrw.org/news/2020/07/09/human-rights-watch-submission-universal-periodic-review-rwanda>; “Rwanda 2019,” AMNESTY INTERNATIONAL, available at <https://www.amnesty.org/en/countries/africa/rwanda/report-rwanda/>.

or mental....”<sup>132</sup> Here, the violations further amount to a contravention of the U.N. Convention Against Torture, to which Rwanda is a party.<sup>133</sup>

Rwandan authorities violated the right of Mr. Rusesabagina to be free from cruel, inhuman or degrading treatment or punishment when they forcibly disappeared him, and by their continued denial of proper medical care, including blood pressure medication, despite Mr. Rusesabagina’s pre-existing, serious medical conditions.

***i. Rwandan authorities subjected Mr. Rusesabagina to an enforced disappearance.***

An enforced disappearance is considered to be “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”<sup>134</sup> There is “no minimum time required, however short, to deem that an enforced disappearance has occurred.”<sup>135</sup>

The Working Group has recognized that enforced disappearances violate “numerous substantive and procedural provisions of the Covenant, including articles 9 and 14,” and constitute a “particularly aggravated” form of arbitrary detention.<sup>136</sup> In *Mojica v. Dominican Republic*, the Human Rights Committee concluded that the disappearance of persons is “inseparably linked to treatment that amounts to a violation of article 7.”<sup>137</sup> In the Inter-American case of *Velásquez Rodríguez v. Honduras*, the government authorities violated Velásquez’s right to humane treatment when they kidnapped and imprisoned him, even when it was not directly shown that he was physically tortured.<sup>138</sup>

The Rwandan authorities violated Mr. Rusesabagina’s right to humane treatment when they kidnapped and subsequently imprisoned him; held him incommunicado for three days (more than the 48-hour deadline for being brought before a Rwandan magistrate); under circumstances that may have involved physical or mental abuse rendered him subject to an enforced disappearance.<sup>139</sup>

***ii. Rwandan authorities deprived Mr. Rusesabagina of medical care.***

Article 7 of the ICCPR, Article 5 of the UDHR, Article 14 of the Rwandan Constitution, and Principle 6 of the Body of Principles all prohibit cruel or inhuman treatment. The Body of Principles is clear that “medical care and treatment shall be provided whenever necessary . . . free of charge.”<sup>140</sup>

In *Zhaslan Suleimenov v. Kazakhstan*, the Human Rights Committee found Kazakhstan had violated ICCPR Article 10(1) when the complainant was unable to “receive medical treatment adequate to his condition, that [sic] continued suffering from lack of specialised medical care and medicine that he needed.”<sup>141</sup> Here, Mr. Rusesabagina is in extremely poor health, and has taken prescribed medication since 1996. His legal counsel similarly reports that Rwandan authorities are not providing medical treatment adequate to his condition, as they are not delivering the prescribed medication for his underlying heart condition, which the Belgian Embassy in Kigali provided to the Rwandan prison authorities. Mr. Rusesabagina has suffered rapid weight loss (approximately 50 pounds) since his arrest. He suffers from constant high blood pressure, extreme headaches, and dizziness, and informed his lawyer Maitre Gatera Gashabana that his health has deteriorated to the point that he believes he will die of a stroke.

Rwanda has thus denied him adequate medical treatment, amounting to a violation of ICCPR Articles 10 and 7, UDHR Article 5, and Article 14 of the Rwandan Constitution.

<sup>132</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988); Principle 6.

<sup>133</sup> Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, G.A. res. 39/46 of 10 December 1984.

<sup>134</sup> International Convention for the Protection of All Persons from Enforced Disappearance (29 June 2006), entered into force 23 December 2010

<sup>135</sup> OHCHR, Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/30/38 Monday, 10 August 2015, par. 102.

<sup>136</sup> UNWGAO Opinion No. 42/2020 concerning Truong Duy Nhat (Thailand and Viet Nam) (18 September 2020), para 74.

<sup>137</sup> *Mojica v. Dominican Republic*, CCPR/C/51/D/449/1991, para 5.7, <http://hrlibrary.umn.edu/undocs/html/vws449.htm>.

<sup>138</sup> IACHR, Case of Velásquez Rodríguez v. Honduras, judgment of 29 July 1988, para 187. [http://hrlibrary.umn.edu/iachr/b\\_11\\_12d.htm](http://hrlibrary.umn.edu/iachr/b_11_12d.htm).

<sup>139</sup> “Rwanda: Rusesabagina Was Forcibly Disappeared,” HUMAN RIGHTS WATCH, 10 September 2020, (“Based on all relevant human rights norms” any detained person should be brought before independent judicial officer within 48 hours of the start of their detention.) *available at*

<https://www.hrw.org/news/2020/09/10/rwanda-rusesabagina-was-forcibly-disappeared?search=48#>; “Torture and Unlawful Military Detention in Rwanda,” HUMAN RIGHTS WATCH, 10 October 2017, (Under the 2008 counterterrorism law No. 45/2008 arts. 44 and 45, authorized persons can arrest suspected terrorists but must hand them over to the nearest police station within 48 hours.) *available at* [https://www.hrw.org/report/2017/10/10/we-will-force-you-confess/torture-and-unlawful-military-detention-rwanda#\\_ftn244](https://www.hrw.org/report/2017/10/10/we-will-force-you-confess/torture-and-unlawful-military-detention-rwanda#_ftn244); Also, regarding the temporal question as an element of enforced disappearance, the Committee on enforced Disappearance and the Working Group on Enforced or Involuntary Disappearance have clarified that “There is no time limit, no matter how short, for an enforced disappearance to occur.” See Joint Declaration of 30 August 2016 *available at* <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20416&LangID=E>.

<sup>140</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988); Principle 24.

<sup>141</sup> *Zhaslan Suleimenov v. Kazakhstan*, CCPR/C/119/D/2146/2012, 6 April 2017, para 8.7.

**f. Rwanda violated Mr. Rusesabagina's right to be brought promptly before a judge.**

Due process under the ICCPR guarantees the right of an arrested person or a detainee to be promptly brought before a judge or other officer authorized to exercise judicial power.<sup>142</sup> This requirement “applies in all cases without exception [...] even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”<sup>143</sup> This right is also enshrined in Article 9 of the Universal Declaration of Human Rights (UDHR) and principles 2 and 36(2) of the Body of Principles.<sup>144</sup> The United Nations Human Rights Committee interprets the term “promptly” to be within about 48 hours, except in exceptional circumstances.<sup>145</sup> Thus, the 2018 Rwandan Law on Counterterrorism<sup>146</sup> which provides for duration of arrest and provisional detention of a suspect of a terrorist act for 15 days, renewable, violates Rwanda’s treaty obligations, in particular as a signatory to the ICCPR.

Rwanda detained Mr. Rusesabagina for 18 days before allowing him to be brought before a judge—three full days longer than permitted by Rwandan law. More importantly, his eighteen-day detention without being brought before a tribunal is 16 days more than international human rights law permits. Rwanda’s treatment of Mr. Rusesabagina and its failure to afford him rights set forth in the UDHR, ICCPR, and Body of Principles amounts to a deprivation of liberty an arbitrary character under category III.

**4. Arbitrary Deprivation of Liberty under Category V: Discrimination Based on Political Opinion.**

A detention is arbitrary according to Category V of the Methods of Work when it “constitutes a violation of international law on the grounds of discrimination based on . . . political or other opinion, . . . or any other status.”<sup>147</sup> Article 26 of the ICCPR provides that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as . . . political or other opinion . . . .”<sup>148</sup> Equal protection is also guaranteed for political opinion by Article 7 of the UDHR. Article 16 of the Rwandan Constitution guarantees equality and prohibits discrimination based on, *inter alia*, “opinion.”<sup>149</sup>

The Rwandan government is targeting Mr. Rusesabagina due to his political expression - in particular, for his association with a group politically opposed to President Kagame, his widely-published criticism of the government, his work with intergovernmental and civil society organizations, and his anti-genocide advocacy. Mr. Rusesabagina has supported calls for regime change and many opposition groups look to him as a leader due to his “international standing as well as his popularity inside Rwanda” both among Hutus and Tutsis.<sup>150</sup>

Mr. Rusesabagina has criticized a broad range of human rights violations in Rwanda since 2005, including lack of democracy and unfair elections,<sup>151</sup> freedom of speech,<sup>152</sup> freedom of association<sup>153</sup> and freedom of the press.<sup>154</sup> He has also questioned arbitrary detentions, torture and extra-judicial killings by the Kagame government.<sup>155</sup> He has publicly brought out allegations of war crimes and crimes against humanity by Kagame’s forces since before the 1994 genocide and especially since 1998 in the neighboring Democratic Republic of the Congo.<sup>156</sup> Mr. Rusesabagina’s criticisms are echoed on a regular basis by Human Rights Watch, Amnesty International, Reporters Without Borders, the U.S. State Department and the United Nations, among others.

Paul Kagame and members of his government have been criticizing and threatening Mr. Rusesabagina since the movie *Hotel Rwanda* premiered in 2005. Shortly after the premier, Mr. Kagame called Mr. Rusesabagina a

<sup>142</sup> ICCPR, Art. 9(3).

<sup>143</sup> 16/2009, UN Doc. CCPR/C/104/D/1914,1915&1916/2009, 6 June 2012, para 9.3 (this right is intended to bring the detention of a person in a criminal investigation or prosecution under judicial control).

<sup>144</sup> (III), U.N. Doc. A/810, Art. 9 (1948); Body of Principles, Principles 2 and 36(2).

<sup>145</sup> UN Human Rights Committee, *General Comment No. 35*, UN Doc. CCPR/C/GC/35, ¶ 33, (16 Dec. 2014).

<sup>146</sup> [https://www.rlrc.gov.rw/fileadmin/user\\_upload/LawsOfRwanda/Laws%20of%20Rwanda/4.\\_Criminal/4.9.\\_Terrorism/4.9.1.\\_Counter\\_terrorism\\_Law\\_n\\_\\_46\\_of\\_2018.pdf](https://www.rlrc.gov.rw/fileadmin/user_upload/LawsOfRwanda/Laws%20of%20Rwanda/4._Criminal/4.9._Terrorism/4.9.1._Counter_terrorism_Law_n__46_of_2018.pdf) (last accessed 6 October 2020).

<sup>147</sup> WGAD Methods of Work, A/HRC/33/66, para 8(e) (category V).

<sup>148</sup> ICCPR, Art. 26.

<sup>149</sup> Rwandan Constitution, Art (16).

<sup>150</sup> Anjan Sundaram, “Rwanda’s Rendition of a Hollywood Hero Confirms the Country’s Descent Into Dictatorship, FOREIGN POLICY, 23 January 2021, available at <https://foreignpolicy.com/2021/01/23/hotel-rwanda-paul-rusesabagina-imprisoned-kagame-dissidents/>.

<sup>151</sup> Paul Rusesabagina and Brian Endless, “Rwandan Elections are a Step Away from Democracy,” HOTEL RWANDA RUSESABAGINA FOUNDATION REPORT, 5 August 2010, available from Prof. Brian Endless.

<sup>152</sup> *Ibid.*

<sup>153</sup> “Statement by Exiled Rwandan Civil Society at the Conclusion of Round Table Discussion in Belgium,” 7 September 2008, available from Prof. Brian Endless.

<sup>154</sup> Paul Rusesabagina and Brian Endless, “Rwanda Now Also Tries to Limit *International Press Freedom*,” 28 April 2009, available from Prof. Brian Endless.

<sup>155</sup> Paul Rusesabagina and Brian Endless, “A Tale of Two Rwandas,” 12 June 2009, available from Prof. Brian Endless.

<sup>156</sup> Hotel Rwandan Rusesabagina Foundation Report: “What’s Happening in Rwanda: A Brief Update on Recent Events,” 19 May 2009, available from Prof. Brian Endless.

“manufactured hero.”<sup>157</sup> The president of a genocide survivors group said that “he has hijacked heroism. He is trading with the genocide. He should be charged.”<sup>158</sup> At a 2007 genocide commemoration, Mr. Kagame called Mr. Rusesabagina a “swindler,” a “gangster” and someone who “maligns”<sup>159</sup> the good name of Rwanda. In that same speech, Mr. Kagame announced that the RPF had made a mistake in 1994, and that they “should have finished off all the Hutus before they fled to Congo (Zaire).”<sup>160</sup> This statement was later walked back by the government in official documents to make it less extreme, but Mr. Kagame’s anti-Hutu campaign is very apparent and well reported.<sup>161</sup> In 2010, harassment and slander by Mr. Kagame and his government increased as Mr. Rusesabagina became more active in his criticism leading up to the 2010 Rwandan presidential elections.<sup>162</sup> Over the past four years, Mr. Rusesabagina has been more active in organizing Rwandans in the diaspora, especially in Europe, and has again engaged the Rwandan government ire over that time. Fifteen years of these activities have led to his current kidnapping and detention. Accordingly, Mr. Rusesabagina’s detention is arbitrary under Category V.

## V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN.

Internationally, on 7 September 2020, a team of international legal counsel filed a complaint with the Special Rapporteur on Torture at the Office of the High Commissioner for Human Rights. On 18 September 2020, the family filed a communication with the UN Working Group on Enforced or Involuntary Disappearances regarding Paul’s unlawful arrest and rendition to Rwanda. On 27 October, 2020, lawyers for Mr. Rusesabagina filed a claim in front of the East African Court of Justice, detailing the unlawful arrest and other violations of his fair trial rights.<sup>163</sup>

Domestically, Mr. Rusesabagina’s state-appointed Rwandan lawyers requested provisional release in mid-September, but on 17 September 2020, the court denied bail.<sup>164</sup> On 2 October 2020, the Nyarugenge intermediate court denied Mr. Rusesabagina’s appeal of this decision, and he remains in Mageragere Prison. On 2 December 2020, the trial Court dismissed the appeal of an order extending Mr. Rusesabagina’s pre-trial detention.

On 13 January 2021, Maitre Gatera Gashabana filed a letter to Presiding Judge Antoine Muhima in the Rwandan Court system, seeking remedies for ongoing fair trial violations. Further motions were filed with the Court on 21 January 2021, and 12 February 2021. On 26 February 2021, the Rwandan Court ruled that “it is not relevant to talk about how he [Mr. Rusesabagina] was arrested or detained.”, but none of the fair trial violations raised were addressed by the Court. On 10 March 2021, the Court ruled on some of the pre-trial motions concerning Mr. Rusesabagina’s due process rights. Despite permitting a computer with his casefile on it, the Court declared that moving forward, privileged documents would be protected only “after having been identified,” without specifying by whom or whether copies would be shared with Ministry of Justice officials, as before. Further, the Court did not provide any remedy for the fact that the Rwandan government has already had access to all privileged communications, including documents outlining his defense strategy. Mr. Rusesabagina appealed the ruling immediately. The criminal trial is proceeding, and Mr. Rusesabagina remains in detention.

## VI. FULL NAME AND ADDRESSES OF THE PERSON(S) SUBMITTING THE INFORMATION

We have been retained and/or authorized by Mr. Rusesabagina and/or his wife and all his children to submit this application on his behalf.

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<sup>157</sup> 10 March Wash. Post Opinion.

<sup>158</sup> Ibid.

<sup>159</sup> Keith Harmon Snow, “The Grinding Machine: Terror and Genocide in Rwanda,” TOWARD FREEDOM, 24 April 2007, available at <https://towardfreedom.org/story/archives/africa-archives/the-grinding-machine-terror-and-genocide-in-rwanda/>.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> Press Release, “Rusesabagina Combats Fiction with Facts,” HOTEL RWANDA RUSESABAGINA FOUNDATION, 18 October 2010 available at <https://hotelrwanदारusesabaginafoundation.files.wordpress.com/2020/09/falseaccusationresponse-copy.pdf>.

<sup>163</sup> “Paul Rusesabagina seizes the East African Court with complaint against Rwanda” (27 October 2020). <https://www.prlog.org/12844377-paul-rusesabagina-seizes-the-east-african-court-with-complaint-against-rwanda.html>

<sup>164</sup> 17 September Al Jazeera Article.