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VIA EMAIL: URGENT-ACTION@OHCHR.ORG, SR-TORTURE@OHCHR.ORG

September 7, 2020

Dr. Nils Melzer  
Special Rapporteur on Torture  
c/o Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
CH-1211 Geneva 10  
Switzerland

RE: Paul Rusesabagina/Rwanda – Imminent Risk of Torture or Cruel, Inhuman, or Degrading Treatment or Punishment

Dear Dr. Melzer,

We are writing to request urgent action on behalf of our client, Paul Rusesabagina, a Belgian citizen and U.S. legal permanent resident, who was recently abducted, disappeared, and subjected to an extraordinary rendition from Dubai to Rwanda and is currently being held *incommunicado* by Rwandan authorities in Kigali. He has had no contact with his family, authorized legal counsel, or Belgian diplomats, since Thursday, August 27. The Rwandan Government has not provided proof of life since Monday, August 31, when the authorities in Kigali paraded Mr. Rusesabagina in handcuffs in front of the media. Given these serious human rights violations, and the Rwandan Government's long-standing prior persecution of Mr. Rusesabagina (described below), he is at immediate and serious risk of torture or cruel, inhuman, or degrading treatment or punishment. Moreover, it is not clear what conditions Mr. Rusesabagina is being held in or whether he is being provided the daily medication he requires for his heart condition.

We respectfully request that, in accordance with your working methods, you investigate the situation and immediately reach out to the Government of Rwanda, urging it to provide proof that Mr. Rusesabagina is still alive, uphold his physical and mental integrity, and ensure his right to access to family, counsel, the Belgian diplomats, and needed medication, as guaranteed by the International Covenant on Civil and Political Rights (ICCPR) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles).

## **I. BACKGROUND ON PAUL RUSESABAGINA**

Paul Rusesabagina is a Rwandan humanitarian and activist. Born to farmers in Southern Rwanda in 1954, Mr. Rusesabagina studied hotel management at Utalii College in Nairobi, Kenya. After completing his education in Kenya, Switzerland, and Belgium, Rusesabagina joined Sabena Hotels, where he managed luxury hotels in Rwanda's capital, Kigali. As violence swept through Rwanda in 1994, Mr. Rusesabagina converted Kigali's Hôtel des Milles Collines into a safe haven, offering refuge to 1,268 Tutsis and moderate Hutus fleeing the Interhamwe militias. As the Rwandan genocide raged outside the hotel's gates, no one in the hotel was injured or killed. Mr. Rusesabagina's story inspired the Academy Award-nominated film *Hotel Rwanda*, which was met with international acclaim.

Since his acts of heroism during the 1994 genocide, Mr. Rusesabagina has remained a tireless advocate for human rights and justice. In 2006, he founded the Hotel Rwanda Rusesabagina Foundation, a U.S. 501(c)(3) non-governmental and non-profit organization that works to promote reconciliation and peace in Africa's Great Lakes region, and also supports survivors and victims of genocide. Rusesabagina has also been an outspoken critic of the regime of Paul Kagame in Rwanda, who came to power immediately after the genocide. While Kagame has been lauded in some quarters for maintaining political and economic stability, his rule has also been marked by ongoing repression and gross human rights violations.

Mr. Rusesabagina resides with his wife in San Antonio, Texas and Brussels, Belgium. Mr. Rusesabagina's son Roger and his daughter Carine are both American citizens. They originally came to the U.S. in the late 2000s, graduated from American universities, and currently live and work in the U.S. Mr. Rusesabagina's other two children – his son Trésor and daughter Anaïse – are both legal permanent residents of the United States. They came to the U.S. around 2007, and attended middle school, high school, and college in the United States. They currently live and work in the U.S. as well.

Mr. Rusesabagina has been the recipient of numerous prestigious awards, including the Presidential Medal of Freedom, awarded by President George W. Bush in 2005, the Tom Lantos Human Rights Prize, the University of Michigan's Raoul Wallenberg Medal, and the National Civil Rights Museum's Freedom Award.

## **II. HISTORY OF PERSECUTION BY RWANDAN AUTHORITIES**

Because of Mr. Rusesabagina's outspoken criticism of the Kagame regime, combined with his high-profile following the success of *Hotel Rwanda*, the Rwandan Government has sought to discredit, smear, and silence him.

First, the Government has repeatedly tried to damage Mr. Rusesabagina's image by promoting revisionist histories of what happened inside the Hôtel des Milles Collines. Despite numerous accounts that confirm Mr. Rusesabagina's acts of heroism, the Rwandan government has tried to paint him as a "false hero" created by Hollywood, even resorting to bribing some of

the witnesses to publicly support this narrative. President Kagame himself, soon after *Hotel Rwanda* was released, called the stories of Mr. Rusesabagina's heroism "totally false."<sup>1</sup>

Second, the Government of Rwanda has labeled Mr. Rusesabagina as a genocide negationist, genocide ideologist, and genocide denier. As one example, in January 2020, the state-owned<sup>2</sup> newspaper *The New Times* called him "a known denier of the 1994 Genocide."<sup>3</sup> Of course, nothing could be further from the truth – Mr. Rusesabagina is a sought out speaker about the horrors of the 1994 genocide. But he speaks about the genocide in a way that deviates from the one-sided, sanitized, and simplified narrative propagated by the Rwandan Government – he acknowledges that both Tutsis and Hutus were killed in the genocide, and that the RPF (Rwandan Patriotic Front) committed atrocities when it took control of the country. Rusesabagina's positions on the 1994 genocide, which have been documented and confirmed by humanitarian and aid groups, scholars, and UN reports, have earned him the ire of the Kagame regime. While ridiculous, these accusations are serious – genocide denial and similar acts are crimes in Rwanda with significant prison terms.<sup>4</sup>

The Government has also repeatedly accused him of other criminal conduct. For example, Rwanda's Ambassador to the United States, James Kimonyo, stated at a forum in Chicago that Mr. Rusesabagina purchased guns in South Africa in 2007 to aid rebel groups in the Congo – an accusation that has been repeated by the state-owned newspaper, *The New Times*. Yet no evidence was ever produced and no criminal charges were ever filed. Similarly, starting in 2010, Rwandan Government spokespersons and *The New Times* began asserting that Mr. Rusesabagina was funding the FDLR, a Hutu rebel group based in Congo that is considered a terrorist organization. But no evidence was ever brought forth to prove this either. Mr. Rusesabagina's current detention, and the alleged charges that appear will be brought against him, are little more than a repackaging of these same unproven allegations.

Mr. Rusesabagina also endured break-ins at his home, received death threats, and survived an assassination attempt in 1996. While these incidents cannot be definitively linked to the Government, they are at least suspicious – during the break-ins, for example, only documents in the Kinyarwanda language were stolen. Moreover, it is clear the regime is watching him –

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<sup>1</sup> Max Bearak, *Paul Rusesabagina, of 'Hotel Rwanda' Fame, Arrested on Terrorism Charges*, WASHINGTON POST, Aug. 31, 2020, available at [https://www.washingtonpost.com/world/africa/paul-rusesabagina-of-hotel-rwanda-fame-arrested-on-terrorism-charges/2020/08/31/24e6d5ca-eb7c-11ea-bd08-1b10132b458f\\_story.html](https://www.washingtonpost.com/world/africa/paul-rusesabagina-of-hotel-rwanda-fame-arrested-on-terrorism-charges/2020/08/31/24e6d5ca-eb7c-11ea-bd08-1b10132b458f_story.html) ("Just a few months after the film [Hotel Rwanda] was screened in front of thousands in Kigali's biggest stadium, Kagame called Rusesabagina a 'manufactured hero.' 'He should try his talents elsewhere and not climb on the falsehood of being a hero, because it's totally false,' the president said.").

<sup>2</sup> *Freedom on the Net 2019: Rwanda*, FREEDOM HOUSE, accessed Sept. 6, 2020, available at <https://freedomhouse.org/country/rwanda/freedom-net/2019> (noting "[t]he state-owned newspaper, the New Times") and Georgette Gagnon, *Response to The New Times Article on Rwandan Genocide*, HUMAN RIGHTS WATCH, May 18, 2019, available at <https://www.hrw.org/news/2009/05/18/response-new-times-article-rwandan-genocide> (calling The New Times "Rwanda's state-owned newspaper").

<sup>3</sup> James Karuhanga, *Uproar as Rusesabagina is Given Platform to Negate Genocide Against Tutsi*, THE NEW TIMES, Jan. 5, 2020, available at <https://www.newtimes.co.rw/news/uproar-rusesabagina-given-platform-negate-genocide-against-tutsi>.

<sup>4</sup> Law on the Crime of Genocide Ideology and Related Crimes, No. 59/2018, Aug. 22, 2018, at Arts. 5–7 (Rwanda), available at [https://minijust.gov.rw/fileadmin/Laws\\_and\\_Regulations/Law\\_on\\_Cyber\\_crimes\\_2018.pdf](https://minijust.gov.rw/fileadmin/Laws_and_Regulations/Law_on_Cyber_crimes_2018.pdf) (denial of genocide, minimization of genocide, and justification of genocide are each punishable by 5 to 7 years' imprisonment).

Rwandan Government agents regularly attend his public lectures, frequently attempting to disrupt them.

The Government's persecution of Mr. Rusesabagina is part of a much broader pattern of oppression targeting those who speak out against or challenge the Rwandan government. As Human Rights Watch recently highlighted: "President Paul Kagame and other senior government officials, regularly threatened those who criticize the government or the RPF,"<sup>5</sup> and in 2019, "[s]everal opposition members and one journalist disappeared or were found dead in mysterious circumstances."<sup>6</sup> In addition, "[s]tate interference and intimidation have forced many civil society actors and journalists to stop working on sensitive political or human rights issues."<sup>7</sup>

### **III. DISAPPEARANCE, EXTRAORDINARY RENDITION AND INCOMMUNICADO DETENTION**

On August 26, 2020, Mr. Rusesabagina flew from Chicago to Dubai on Emirates flight 236. The visit was intended to be short – he was scheduled to return from Dubai to Chicago on Emirates flight 235 on Wednesday, September 2. He arrived in Dubai just before 7:00 pm local time on August 27. Later that night, around 11:00 pm, he contacted his family to let them know he had arrived safely. This is the last time that the family heard from him. His wife and children attempted to reach him through a variety of ways over the following days, but were unable to do so.

On August 30, Rwandan authorities notified Belgium, Rusesabagina's country of citizenship, that it had detained a Belgian citizen, but did not specify who was detained.

On August 31, Mr. Rusesabagina was paraded in front of the Rwandan media as a prisoner at the Remera Police Station on August 31, 2020. That same day, the Rwanda Investigation Bureau (RIB) announced via its Twitter account and official website that Mr. Rusesabagina had been taken into custody through "international cooperation" as the "subject of an International Arrest Warrant."<sup>8</sup> The announcement also stated that he was wanted by Rwandan authorities "to answer charges of serious crime including terrorism, arson, kidnap and murder, perpetrated against unarmed, innocent Rwandan civilians on Rwandan territory . . . including in Nyabimata - Nyaruguru district in June 2018 and in Nyungwe - Nyamagabe district in December 2018."<sup>9</sup>

On September 1, 2020, RBI spokesperson Thierry Murangira reiterated the above information to the press and stated that the case "investigator has 15 days to determine whether Rusesabagina should stay in custody, that he has the right to a lawyer, and the right to speak to his family."<sup>10</sup> On September 2, 2020, the United Arab Emirates adamantly denied to the press

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<sup>5</sup> *Rwanda: Events of 2019*, HUMAN RIGHTS WATCH, accessed Sept. 6, 2020, available at <https://www.hrw.org/world-report/2020/country-chapters/rwanda>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Tweet by Rwanda Investigation Bureau (@RIB\_Rw), TWITTER, Aug. 31, 2020, 4:30 am, available at [https://twitter.com/RIB\\_Rw/status/1300350300377710594](https://twitter.com/RIB_Rw/status/1300350300377710594).

<sup>9</sup> *Id.*

<sup>10</sup> Caroline Faraj et al., *UAE Denies Knowledge of Hotel Rwanda Film Hero's Arrest as Family Raise 'Kidnap' Fears*, CNN, Sept. 2, 2020, available at <https://www.cnn.com/2020/09/02/africa/paul-rusesabagina-rwanda-arrest-intl/index.html>.

that it played any role in Mr. Rusesabagina’s extraordinary rendition to Rwanda, stating that the country has no extradition agreements with Rwanda and that as far as it knew Mr. Rusesabagina entered and left the country legally.<sup>11</sup> According to UAE authorities, Mr. Rusesabagina was in Dubai for approximately five hours – after landing, he allegedly went to a hotel, then left on a private jet from Al Maktoum airport shortly after midnight on August 28.<sup>12</sup>

From these assertions and flight records from that evening, it appears highly likely that Mr. Rusesabagina traveled to Kigali on a Bombardier Challenger 605 Plane (Tail # SX-FSA) operated by the private jet charter company GainJet Aviation, which left Dubai at 12:55 am local time and arrived in Kigali, Rwanda at 4:50 am local time:

Flight history for aircraft - SX-FSA

DATE	FROM	TO	FLIGHT	FLIGHT TIME	STD	ATD	STA	STATUS
31 Aug 2020	Arbil (EBL)	Athens (ATH)	(GNJ68)	—	—	—	—	Landed 7:12 PM
31 Aug 2020	Mykonos (JMK)	Arbil (EBL)	(GNJ68)	2:18	—	1:16 PM	—	Landed 3:34 PM
31 Aug 2020	Athens (ATH)	Mykonos (JMK)	(GNJ68)	0:28	—	11:43 AM	—	Landed 12:11 PM
30 Aug 2020	Beirut (BEY)	Athens (ATH)	(GNJ68)	1:40	—	8:33 PM	—	Landed 10:13 PM
30 Aug 2020	Athens (ATH)	Beirut (BEY)	(GNJ68)	1:32	—	6:17 PM	—	Landed 7:49 PM
28 Aug 2020	Kigali (KGL)	Athens (ATH)	(GNJ68)	5:52	—	6:15 AM	—	Landed 1:07 PM
28 Aug 2020	Dubai (DWC)	Kigali (KGL)	(GNJ68)	5:55	—	12:55 AM	—	Landed 4:50 AM



<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Informing this conclusion, GainJet Aviation has worked with the Rwandan Government previously, including having transported President Kagame himself. In addition, credible sources have reported that the Government of Rwanda has used GainJet Aviation charters on a number of different occasions.



Furthermore, GainJet also has an office and base of operations in Rwanda. The CEO and President of GainJet, Captain Ramsey Shaban (ramsey@gainjet.com) reported: “We’re focusing on Rwanda and fly to Kigali quite often; we many permanently base [another] aircraft there, a Challenger,”<sup>13</sup> which is the exact plane that flew from Dubai to Kigali on August 28th. We sent an email to Captain Shaban and several of his employees to give them an opportunity to deny they were involved in Mr. Rusesabagina’s disappearance and extraordinary rendition and asking them to reveal who chartered this GainJet flight. They failed to respond to our email.

On September 3, The East African ran a story alleging that it had been granted an “exclusive interview” with the detained Mr. Rusesabagina in the Remera Police Station.<sup>14</sup> In the article, The East African asserts that Mr. Rusesabagina stated he had been “treated with kindness” and given food and medication; that he was ready to face the charges brought against him and expected a fair and just trial in Rwanda; and that he was putting together a defense team. He is pictured sitting in a chair allegedly within the police station and the article notes that he has been provided a bed with mosquito netting and personal bathroom.<sup>15</sup> The article goes on to say that he is accused of “founding and sponsoring an armed rebellion that claimed multiple attacks

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<sup>13</sup> Ian Sheppard, *After Surviving Recession, GainJet Widens Outlook*, MEBAA CONVENTION NEWS, Dec. 2, 2016, available at <https://www.ainonline.com/aviation-news/business-aviation/2016-12-02/after-surviving-recession-gainjet-widens-outlook>.

<sup>14</sup> *I’m Ready to Face Terror Charges Against Me, says ‘Hotel Rwanda’ Hero*, THE EAST AFRICAN, Sep. 3, 2020, available at <https://www.theeastafrican.co.ke/tea/news/east-africa/hotel-rwanda-hero-ready-to-face-terror-charges--1931064>.

<sup>15</sup> *Id.*

on Rwandan territory, leading to deaths and destruction of property.”<sup>16</sup> It is not clear if Mr. Rusesabagina even gave an interview with the newspaper, as he has been held incommunicado for 11 days, unable to communicate with his family, authorized counsel, or Belgian diplomats.

After learning of Mr. Rusesabagina’s detention, his wife called the Remera Police Station and requested to speak with him. That request was denied. A local lawyer hired by his family twice tried to visit, but was denied access each time.

On September 5, Rwandan lawyer David Rugaza appeared in a press conference, claiming that he was Mr. Rusesabagina’s counsel.<sup>17</sup> The “press conference” was held only in Kinyarwanda with only state media in attendance. Mr. Rusesabagina’s daughter Carine Kanimba told media that Mr. Rugaza “is a fake lawyer chosen by Kagame’s people.”<sup>18</sup> Also 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.

On September 6, President Kagame appeared on national television and discussed Mr. Rusesabagina’s case. The president stated: “You will be surprised how he got here . . . . It was actually flawless!”<sup>19</sup> President Kagame insisted that Mr. Rusesabagina was not kidnapped,<sup>20</sup> yet he continues to unapologetically hold Mr. Rusesabagina *incommunicado* after 11 days. President Kagame offered only a cryptic explanation of how Mr. Rusesabagina had come to Rwanda – “He got here on the basis of what he believed he wanted to do and he found himself here.”<sup>21</sup> President Kagame further insisted 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>22</sup> Mr. Rusesabagina’s family and friends maintain that he would not, under any circumstances, have travelled willingly to Rwanda, nor would he have willingly accepted an appointed lawyer, let alone without first consulting with his family.

Since arriving in Rwanda, Mr. Rusesabagina has had no communication with his family, no visits by his authorized counsel, and no visits with Belgian diplomats, the Red Cross, or any independent person. While the Rwandan Government has claimed that it has talked to Mr.

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<sup>16</sup> *Id.*

<sup>17</sup> RwandaTV, *Paul Rusesabagina ameze neza| Ni we wahisemo ko mwunganira| Me Rugaza David*, YOUTUBE, Sept. 5, 2020, available at <https://www.youtube.com/watch?v=ddDgF2PXRpc>.

<sup>18</sup> ‘Hotel Rwanda’ Hero Returned To Country Of Own Accord: Kagame, BARRON’S, Sept. 6, 2020, available at <https://www.barrons.com/news/hotel-rwanda-hero-returned-to-country-of-own-accord-kagame-01599411304>.

<sup>19</sup> *Rwanda’s President Says ‘Hotel Rwanda’ Hero Must Stand Trial*, NEW YORK TIMES, Sept. 6, 2020, available at <https://www.nytimes.com/aponline/2020/09/06/world/africa/ap-af-rwanda-hotel-rwanda-arrest.html>.

<sup>20</sup> *Id.*

<sup>21</sup> *Paul Rusesabagina: President Denies Hotel Rwanda Hero was Kidnapped*, BBC NEWS, Sept. 6, 2020, available at <https://www.bbc.com/news/world-africa-54050510>.

<sup>22</sup> *Id.*

Rusesabagina's sons about a potential visit, the Hotel Rwanda Rusesabagina Foundation has said this was simply "not true," as his sons have received no contact of any kind from its officials.<sup>23</sup>

#### **IV. INTERNATIONAL LEGAL ANALYSIS**

Despite it only having been 11 days since he was abducted, Mr. Rusesagabina has been subjected to a wide array of flagrant violations of his rights under international law by the actions of the Government of Rwanda. These include: (A) he was subjected to an enforced disappearance; (B) he was extraordinarily rendered from Dubai to Rwanda; (C) he was not brought promptly before a court in Dubai or Kigali; (D) he has been held incommunicado, without access to his family, authorized counsel, or Belgian diplomats; (E) he has been denied his right to the presumption of innocence; and (F) as a result of past persecution, combined with the aforementioned violations, he is at immediate risk of torture or other cruel, inhuman, or degrading treatment or punishment.

##### ***A. Mr. Rusesabagina was Subjected to an Enforced Disappearance***

An enforced disappearance occurs when a person is subjected to:

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>24</sup>

As the UN Human Rights Committee has explained, "[e]nforced disappearances violate numerous substantive and procedural provisions of the [ICCPR],"<sup>25</sup> including the rights to personal liberty, personal security, and protection of life,<sup>26</sup> and they "constitute a particularly aggravated form of arbitrary detention."<sup>27</sup> Moreover, enforced disappearance is not only a risk

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<sup>23</sup> *Id.*

<sup>24</sup> International Convention for the Protection of All Persons from Enforced Disappearance, 2716 U.N.T.S. 3, entered into force Dec. 23, 2010, at Art. 2, available at <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>; see also Declaration on the Protection of all Persons from Enforced Disappearance, G.A. Res. 47/133, U.N. Doc. A/47/49, adopted Dec. 18, 1992, at pmbl., available at <http://hrlibrary.umn.edu/instate/h4dpaped.htm> (defining "enforced disappearance").

<sup>25</sup> *General Comment No. 35 on Article 9: Liberty and Security of Person*, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/GC/35, Dec. 16, 2014, at ¶ 17, available at <https://undocs.org/CCPR/C/GC/35>.

<sup>26</sup> *Id.*, at ¶ 55.

<sup>27</sup> *Id.*, at ¶ 17.

factor for torture,<sup>28</sup> but also itself constitutes a form of torture, at least in some cases.<sup>29</sup> In fact, the Human Rights Committee has found that the “anguish and stress” experienced by a disappeared person’s family members can also constitute ill treatment prohibited by Article 7 of the ICCPR.<sup>30</sup>

Mr. Rusesabagina last contacted his family from Dubai on the evening of August 27. From that time, until he was shown on television in the custody of the Rwandan Investigation Bureau in Kigali on August 31, he was deprived of his liberty with no acknowledgement by any authorities that he was detained. During this time, he was placed completely outside the protection of the law. Thus, he was subjected to an enforced disappearance.

### ***B. Mr. Rusesabagina Was Extraordinarily Rendered from Dubai to Rwanda***

Article 13 of the ICCPR provides: “An 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.”<sup>31</sup> Article 9(4) similarly provides: “Anyone 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.”<sup>32</sup> The UN Working Group on Arbitrary Detention has identified extraordinary rendition as a form of arbitrary detention under

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<sup>28</sup> REPORT OF THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES, U.N. COMMISSION ON HUMAN RIGHTS, 62nd Sess., U.N. Doc. E/CN.4/2006/56, Dec. 27, 2005, at ¶ 22, *available at* <https://undocs.org/E/CN.4/2006/56> (“As is well documented, disappearance is often a precursor to torture . . .”) and *Enforced Disappearances*, AMNESTY INT’L, *accessed* Sept. 5, 2020, *available at* <https://www.amnesty.org/en/what-we-do/disappearances/#:~:text=A%20disappeared%20person%20is%20also,the%20protection%20of%20the%20law.&text=Victims%20of%20enforced%20disappearance%20are%20also%20at%20heightened%20risk%20of,sexual%20violence%20or%20even%20murder> (“A disappeared person is . . . at a high risk of torture since they are placed completely outside the protection of the law.”).

<sup>29</sup> *See* Declaration on the Protection of all Persons from Enforced Disappearance, *supra* note 24, at Art. 1(2) (“Any act of enforced disappearance . . . constitutes a violation of the rules of international law guaranteeing, inter alia . . . the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.”); *Francisco Dionel Guerrero Larez v. Venezuela*, Communication No. 456/2011, U.N. Doc. CAT/C/54/D/456/2011, U.N. COMMITTEE AGAINST TORTURE, *adopted* May 15, 2015, at ¶ 6.6, *available at* <https://undocs.org/CAT/C/54/D/456/2011> (“[T]he Committee concludes that . . . in the specific circumstances of this case, his enforced disappearance constitutes an act of torture within the meaning of article 1 of the Convention.”); and *S. Jegatheeswara Sarma v. Sri Lanka*, Communication No. 950/2000, U.N. Doc. CCPR/C/78/D/950/2000, U.N. HUMAN RIGHTS COMMITTEE, July 16, 2003, at ¶ 9.3, *available at* <https://juris.ohchr.org/Search/Details/1051> (“Any act of such disappearance [as defined under the Rome Statute] constitutes a violation of many of the rights enshrined in the Covenant, including . . . the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 7) . . .”).

<sup>30</sup> *Jegatheeswara Sarma v. Sri Lanka*, *supra* note 29, at ¶ 9.5 (“[N]oting the anguish and stress caused to the author’s family by the disappearance of his son and by the continuing uncertainty concerning his fate and whereabouts, the Committee considers that the author and his wife are also victims of violation of article 7 of the Covenant.”).

<sup>31</sup> International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, at Art. 13 [hereinafter ICCPR].

<sup>32</sup> *Id.*, at Art. 9(4); *see also* REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION, U.N. GENERAL ASSEMBLY, 30th Sess., U.N. Doc. A/HRC/30/37, July 6, 2015, at ¶ 47(a), *available at* <https://undocs.org/A/HRC/30/37> (noting that “[t]he right to bring proceedings before a court to challenge the arbitrariness and lawfulness of detention” is applicable to “detention for extradition”) [hereinafter Basic Principles].

Category I of its Working Methods<sup>33</sup> – i.e., as lacking “any legal basis justifying the deprivation of liberty”<sup>34</sup> – explaining that “both human rights law and the anti-terror conventions adopted under the auspices of the United Nations enshrine a clear preference for extradition as the legal framework for [the international transfer of detainees]. The practice of so-called ‘renditions’, on the contrary, because it is aimed at avoiding all procedural safeguards, is not compatible with international law.”<sup>35</sup> The Working Group found a violation of ICCPR Article 9 and the detention to be arbitrary where three men were transferred 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>36</sup>

The Rwanda Investigation Bureau claimed in a tweet on August 31 that Mr. Rusesabagina was arrested through “international cooperation”<sup>37</sup> and pursuant to “an international arrest warrant.”<sup>38</sup> However, there is no extradition treaty between the UAE and Rwanda,<sup>39</sup> so it is impossible that his rendition occurred through any lawful cooperation, and because the UAE has denied any involvement, it is clear he was never presented to a court before leaving Dubai. Moreover, a UAE official has denied that Mr. Rusesabagina was “on any wanted lists.”<sup>40</sup> Thus, it is clear Mr. Rusesabagina was taken from Dubai to Rwanda outside of any legal process, and without any legal protections, including the opportunity to contest his removal from Dubai or any opportunity to claim asylum and contest his return because he had a well-founded fear of persecution. In short, he was subjected to an extraordinary rendition. As President Kagame stated in his press conference on September 6, the plan to forcibly get Mr. Rusesabagina back to Rwanda “was actually flawless.”<sup>41</sup>

It does not appear but has not been independently confirmed that UAE officials did not cooperate with their Rwandan counterparts extra-legally in conducting the extraordinary rendition. To prove its Government was not complicit, the UAE should make available all evidence concerning Mr. Rusesabagina’s recent visit to Dubai, including video footage of him at the hotel and airport and all information available on the airplane that transported him to Kigali.

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<sup>33</sup> *Zhiya Kassem Khammam al Hussain v. Saudi Arabia*, Opinion No. 19/2007, U.N. Doc. A/HRC/10/21/Add.1, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Nov. 22, 2007, at ¶ 21, *available at* <https://undocs.org/A/HRC/10/21/Add.1>.

<sup>34</sup> METHODS OF WORK OF THE WORKING GROUP ON ARBITRARY DETENTION, U.N. HUMAN RIGHTS COUNCIL, 36th Sess., U.N. Doc. A/HRC/36/38, July 13, 2017, at ¶ 8(a), *available at* <https://undocs.org/en/A/HRC/36/38> (explaining Category I).

<sup>35</sup> REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION, U.N. HUMAN RIGHTS COUNCIL, 4th Sess., U.N. Doc. A/HRC/4/40, Jan. 9, 2007, at 2, *available at* <https://undocs.org/A/HRC/4/40>.

<sup>36</sup> *Walid Muhammad Shahir Muhammad al-Qadasi v. Yemen*, Opinion No. 47/2005, U.N. Doc. A/HRC/4/40/Add.1, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Nov. 30, 2005, at ¶ 19, *available at* <https://www.ohchr.org/EN/Issues/Detention/Pages/Annual.aspx>.

<sup>37</sup> Tweet by Rwanda Investigation Bureau (@RIB\_Rw), TWITTER, Aug. 31, 2020, 4:30 am, *available at* [https://twitter.com/RIB\\_Rw/status/1300350300377710594](https://twitter.com/RIB_Rw/status/1300350300377710594) (“1. RIB informs the general public that, through international cooperation, Paul Rusesabagina was arrested and is in the custody of RIB.”).

<sup>38</sup> Tweet by Rwanda Investigation Bureau (@RIB\_Rw), TWITTER, Aug. 31, 2020, 4:30 am, *available at* [https://twitter.com/RIB\\_Rw/status/1300350304186257408](https://twitter.com/RIB_Rw/status/1300350304186257408).

<sup>39</sup> *UAE Denies Knowledge of Hotel Rwanda Film Hero's Arrest as Family Raise 'Kidnap' Fears*, *supra* note 10 (“[T]he UAE official confirmed that there is no agreement between the Gulf state and Rwanda to extradite criminals or wanted people.”).

<sup>40</sup> *Id.*

<sup>41</sup> *Rwanda's President Says 'Hotel Rwanda' Hero Must Stand Trial*, *supra* note 19.

If UAE officials are found to have been involved extraordinary rendition, this will render the UAE jointly liable for any subsequent human rights violations he has experienced or goes on to experience in Rwanda.<sup>42</sup> In a recent case, the UN Working Group on Arbitrary Detention found that Azerbaijan’s involvement in the extraordinary rendition of an individual to Turkey meant that Azerbaijan was “responsible for its own actions in the arrest, detention and deportation of [the victim], as well as the subsequent violations of his rights in Turkey.”<sup>43</sup>

Therefore, because there was no legal basis for Mr. Rusesabagina’s extraordinary rendition to Rwanda, all subsequent legal action in Rwanda is *ultra vires*, his ongoing detention is arbitrary and unlawful, and he must be immediately and unconditionally released.

### **C. Mr. Rusesabagina was Not Brought Promptly Before a Court**

Article 9(3) of the ICCPR provides: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.”<sup>44</sup> The UN Human Rights Committee has explained that this requirement “applies in all cases without exception” and “applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”<sup>45</sup> The Committee has emphasized that, in most cases, a detained person must be brought before a court within 48 hours of arrest, and that “any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances” because “[l]onger detention in the custody of law enforcement officials without judicial control unnecessarily increases the risk of ill-treatment.”<sup>46</sup>

As detailed above, it appears that Mr. Rusesabagina was initially detained on the evening of August 27 or morning of August 28. Yet as of the date of submission of this urgent appeal, he has not yet been brought before a court (either in Dubai or in Rwanda). Moreover, the Government of Rwanda has given no explanation for this delay, nor even attempted to justify it, clearly contravening ICCPR Article 9(3).

### **D. Mr. Rusesabagina Has Been Held Incommunicado, Without Access to Counsel, Family, or Belgian Diplomats**

Under Article 14(3)(b) of the ICCPR, everyone has the right, “[i]n the determination of any criminal charge against him,” to “communicate with counsel of his own choosing.”<sup>47</sup> The Human Rights Committee has explained that counsel must be provided to detainees in criminal

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<sup>42</sup> REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION, *supra* note 35, at ¶ 50 (“The practice of ‘renditions’ . . . is irretrievably in conflict with the requirements of international law. When a Government eludes procedural safeguards, in particular the affected person’s right to be heard, it cannot in good faith claim that it has taken reasonable steps to protect that person’s human rights after removal, including the right not to be arbitrarily detained. As a consequence, it will share responsibility for ensuing arbitrary detention.”).

<sup>43</sup> *Mustafa Ceyhan v. Azerbaijan and Turkey*, Opinion No. 10/2019, U.N. Doc. A/HRC/WGAD/2019/10, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Apr. 25, 2019, at ¶ 77, *available at* [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session84/A\\_HRC\\_WGAD\\_2019\\_10.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session84/A_HRC_WGAD_2019_10.pdf) (emphasis added).

<sup>44</sup> ICCPR, *supra* note 31, at Art. 9(3).

<sup>45</sup> *General Comment No. 35*, *supra* note 25, at ¶ 32.

<sup>46</sup> *Id.*, at ¶ 33.

<sup>47</sup> ICCPR, *supra* note 31, at Art. 14(3)(b).

cases “from the outset of their detention.”<sup>48</sup> The UN Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court Basic Principles similarly state that detainees “have the right to legal assistance by counsel of their choice . . . immediately after the moment of apprehension.”<sup>49</sup>

Detainees also have the right to have access to their family. The Body of Principles states that “communication of the detained or imprisoned person with the outside world, and in particular his family . . . shall not be denied for more than a matter of days.”<sup>50</sup> It further provides that a “detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world.”<sup>51</sup> The UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) similarly assert: “Prisoners shall be allowed . . . to communicate with their family and friends at regular intervals,” including “[b]y receiving visits.”<sup>52</sup>

It is widely recognized that prolonged *incommunicado* detention both facilitates the perpetration of torture and cruel, inhuman or degrading treatment, and also may itself constitute such treatment.<sup>53</sup>

Since he was disappeared and extradited 11 days ago, Mr. Rusesabagina has not had access to counsel, his family, or Belgian diplomats (he has a right to a consular visit as a Belgian citizen). While on September 5, a lawyer named David Rugaza held a press conference claiming to have been hired by Mr. Rusesabagina,<sup>54</sup> it appears this lawyer was appointed without Mr. Rusesabagina’s consent – there is no way Mr. Rusesabagina would interview and voluntarily hire a lawyer without consulting with his own family first, let alone instruct the lawyer to hold a press conference without connecting with them in advance. This violates Mr. Rusesabagina’s right to counsel *of his own choosing*. In fact, Mr. Rusesabagina’s family hired a local lawyer on his behalf, who attempted to visit him at least twice – but he was denied access each time.

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<sup>48</sup> *General Comment No. 35*, *supra* note 25, at ¶ 35.

<sup>49</sup> REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION, U.N. GENERAL ASSEMBLY, 30th Sess., U.N. Doc. A/HRC/30/37, July 6, 2015, at ¶ 12, *available at* <https://undocs.org/A/HRC/30/37> (emphasis added).

<sup>50</sup> Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, G.A. Res. 47/173, U.N. Doc. A/43/49, *adopted* 1988, at Principle 15 [hereinafter Body of Principles], *available at* <https://www.globaldetentionproject.org/wp-content/uploads/2016/06/The-Body-of-Principles-for-the-Protection-of-All-Persons-under-Any-Form-of-Detention-or-Imprisonment.pdf>.

<sup>51</sup> *Id.*, at Principle 19.

<sup>52</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), G.A. Res. 70/175, U.N. Doc. A/RES/70/175, *adopted* Dec. 17, 2015, at Rule 58(1), *available at* <https://undocs.org/A/RES/70/175>.

<sup>53</sup> REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION, HUMAN RIGHTS COUNCIL, 16th Sess., U.N. Doc. A/HRC/16/47, Jan. 19, 2011, at ¶ 54, *available at* <https://undocs.org/A/HRC/16/47> (“Prolonged incommunicado detention may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment, and may in itself constitute such treatment.”) and Torture and Other Cruel, Inhuman or Degrading Treatment, Resolution 8/8, U.N. Doc. A/HRC/RES/8/8, June 18, 2008, at ¶ 7(c), *available at* [https://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_8\\_8.pdf](https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_8.pdf) (“Prolonged incommunicado detention . . . may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment . . .”).

<sup>54</sup> RwandaTV, *Paul Rusesabagina ameze neza| Ni we wahisemo ko mwunganira| Me Rugaza David*, YOUTUBE, Sept. 5, 2020, *available at* <https://www.youtube.com/watch?v=ddDgF2PXRPe>.

***E. Mr. Rusesabagina Has Been Denied His Right to the Presumption of Innocence***

Article 14(2) of the ICCPR protects the right to the presumption of innocence.<sup>55</sup> The Human Rights Committee, analyzing this right, has explained that “[i]t is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused.”<sup>56</sup> Moreover, the “media should avoid news coverage undermining the presumption of innocence.”<sup>57</sup> The Human Rights Committee and the UN Working Group on Arbitrary Detention, respectively, found violations of the right to the presumption of innocence where there were “public statements made by high ranking law enforcement officials portraying the author as guilty which were given wide media coverage” and an Attorney General claimed that a detainee and his family were part of a criminal network.<sup>58</sup>

As mentioned above, on September 6, President Kagame stated 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>59</sup> This is an egregious violation of Mr. Rusesabagina’s right to the presumption of innocence.

Moreover, when combined with his *incommunicado* detention, the president’s statement elevates the risk of Mr. Rusesabagina being tortured or subjected to cruel, inhuman, or degrading treatment, as it provides police and prison authorities license to take justice into their own hands without the need for a legal process.

***F. Mr. Rusesabagina is at Immediate Risk of Torture or Other Cruel, Inhuman, or Degrading Treatment or Punishment***

In addition to the risks of torture and ill treatment detailed above, Mr. Rusesabagina is 66 years old, is a cancer survivor, and suffers from a heart condition and hypertension, both of which require ongoing medication. The Rwandan Government has given no indication that he has access to this medication. Denying a detainee adequate medical care violates ICCPR Article 7.<sup>60</sup>

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<sup>55</sup> ICCPR, *supra* note 31, at Art. 14(2).

<sup>56</sup> *General Comment No. 32 on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, at ¶ 30, available at <https://undocs.org/CCPR/C/GC/32>.

<sup>57</sup> *Id.*

<sup>58</sup> *Dimitry L. Gridin v. Russian Federation*, Communication No. 770/1997, U.N. Doc. CCPR/C/69/D/770/1997, U.N. HUMAN RIGHTS COMMITTEE, adopted July 20, 2000, at ¶ 8.3, available at <https://undocs.org/CCPR/C/69/D/770/1997> and *Daniel García Rodríguez and Reyes Alpizar Ortiz v. Mexico*, Opinion No. 66/2017, U.N. Doc. A/HRC/WGAD/2017/66, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Aug. 25, 2017, at ¶ 69, available at [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session79/A\\_HRC\\_WGAD\\_2017\\_66.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session79/A_HRC_WGAD_2017_66.pdf) [in Spanish].

<sup>59</sup> *Rwanda’s President Says ‘Hotel Rwanda’ Hero Must Stand Trial*, *supra* note 19.

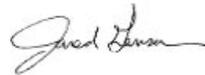
<sup>60</sup> *See Raul Sendic Antonaccio v. Uruguay*, Communication No. R.14/63, U.N. Doc. A/37/40 (Supp.), U.N. HUMAN RIGHTS COMMITTEE, adopted Oct. 28, 1981, at ¶ 20, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=A%2F37%2F40\(SUPP\)&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=A%2F37%2F40(SUPP)&Lang=en) (finding a violation of Article 7 where a detainee was “denied the medical treatment his condition requires”).

## V. CONCLUSION

Given the long-standing persecution Mr. Rusesabagina has faced from the Rwandan government, the egregious human rights violations involved in his forced return to Rwanda, his ongoing *incommunicado* detention, and serious health problems, it is clear that Mr. Rusesabagina faces an immediate risk of torture and/or cruel, inhuman, or degrading treatment.

We respectfully reiterate our request that, in accordance with your working methods, you investigate the situation and immediately reach out to the Government of Rwanda, urging it to provide proof that Mr. Rusesabagina is still alive, uphold the physical and mental integrity of Mr. Rusesabagina, and ensure his right to access to family, counsel, and required medicines.

Sincerely,



Jared Genser  
International Counsel to Paul Rusesabagina



Brian Tronic  
International Counsel to Paul Rusesabagina