

PAUL RUSESABAGINA  
CASE RP00018-2020-HC-HCCI

BEFORE:  
THE HIGH COURT CHAMBER FOR INTERNATIONAL CRIMES  
HIS HONOUR JUDGE ANTOINE MUHIMA, PRESIDING

DEFENDANT: RUSESABAGINA PAUL, SON OF RUPFURE THOMAS AND NYIRAMPARA KESIA, BORN ON 15 JUNE 1954, IN THE FORMER NYAKABUNGO CELL, NKOMERO SECTOR, MURAMA COMMUNE, BELGIAN NATIONAL AND RESIDENT OF KRAAINEM. BRUSSELS, CURRENTLY DETAINED AT NYARUGENGE CENTRAL PRISON, RWANDA

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REQUEST FOR A REMEDY FOR VIOLATION OF FUNDAMENTAL RIGHTS

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APPLICATION FOR PROVISIONAL RELEASE

(Articles 68, 76, 80 and 97 of the *Law relating to the criminal procedure*, No 027/2019 of 19/09/2019)

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I. SUMMARY OF THE COMPLAINT

1. The Defendant, a Belgian citizen and United States permanent resident, is detained in Nyarugenge Central Prison following an illegal and enforced disappearance and extraordinary rendition to Rwanda on 27 August 2020. Between 28 and 31 August, the Defendant was held incommunicado at an unknown location in Rwanda, bound at the legs, hands and blindfolded, and interrogated in the absence of a lawyer.
2. Since the Defendant's re-appearance on 31 August 2020, he has suffered on-going violations of both his rights as an accused, and his basic human rights. These violations have undermined the Defendant's ability to prepare for the proceedings scheduled to commence on 26 January 2021. The Prison Director of Nyarugenge Central Prison has systematically confiscated his legal documents, he has been deprived access to legal counsel of his choosing, and he does not even have access to a paper and pen let alone the materials necessary for preparation for a trial of this volume and complexity.

3. More concerning, the Defendant has been deprived of his prescribed medication for his underlying heart condition, despite it having been provided by the Embassy of the Kingdom of Belgium to the relevant Rwandan authorities. The Defendant, who has lost approximately 50 pounds of weight since his arrest, is experiencing extreme headaches and dizziness which not only prevent him from preparing for his defence, but have led him to fear that he will suffer a stroke. Despite this putting him at extreme risk of complications resulting from COVID-19, all requests for provisional release have been denied.
4. The circumstances of the Defendant's illegal and enforced disappearance and extraordinary rendition to Rwanda are so egregious as to undermine the integrity of any judicial process which follows. The only sufficient remedy for the violation of the Defendant's rights is **his immediate release, and a permanent stay of the proceedings against him**. Should the Chamber decide that Mr. Rusesabagina was not kidnapped, and instead arrived in Rwanda pursuant to a legal process of extradition or transfer from a third state, then his case must be tried pursuant to the Transfer Law (2013),<sup>1</sup> which would require the immediate severance of his case from all other co-accused who have not been transferred, and the application of all fair trial guarantees as protected by the Transfer Law.<sup>2</sup>
5. In the alternative, the Defendant seeks concrete measures to remedy the violations of his rights including: his immediate provisional release, the return of all confiscated materials; the appointment of legal counsel of his choosing (and meaningful access to these lawyers); materials for the preparation of his defence including a laptop for electronic storage and management of the casefile; and **a delay in the start of the trial proceedings to allow for adequate time and resources to prepare**.

## II. SUBMISSIONS

### A. IRREGULARITIES IN THE DEFENDANT'S ARREST AND DETENTION

#### Facts

6. On 26 August 2020, the Defendant left Chicago, USA, and entered Dubai, United Arab Emirates ("UAE") on Emirates Flight EK236. He arrived in Dubai at approximately 7:00 pm

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<sup>1</sup> LAW N° 47/2013 OF 16/06/2013 RELATING TRANSFER OF CASES TO THE REPUBLIC OF RWANDA ("Transfer Law"), Article 3 "This Law also applies in other matters where there is transfer of cases to the Republic of Rwanda from other States or where transfer of cases or extradition of suspects for other crimes is sought by the Republic of Rwanda from other States."

<sup>2</sup> Transfer Law, Article 14.

local time on the evening of 27 August 2020. 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, the Defendant was brought to the Remera Metropolitan Police Station in Kigali, Rwanda, where he was identified as a prisoner of the Rwandan government.

7. The Defendant is a Belgian national, and a permanent resident of the United States of America. Rwanda did not engage in any legal process for extradition or deportation of the Defendant from either of these two states. Rather, on 5 September 2020, the Rwandan Head of State President Paul Kagame stated that the Defendant, who has lived outside Rwanda for the past 24 years, had been “lured” to Rwanda in a “flawless operation”.<sup>3</sup> This corroborates a statement from the UAE authorities that they were not involved in the Defendant’s arrest, nor did they provide any cooperation to Rwanda in this regard.<sup>4</sup>
8. When the Defendant boarded the GainJet aircraft on 27 August 2020, he had been told and believed that he was going to Bujumbura, Burundi. Significantly, the Defendant’s hands were bound during the flight, and he was transported as a prisoner. When he arrived at Kigali International Airport on the morning of 28 August 2020, the Defendant was surrounded by armed Rwandan law enforcement, blindfolded, and tied at the hands and feet. Between 28 and 31 August 2020, the Defendant was held incommunicado, and interrogated while bound in the absence of a lawyer. It remains unclear **where** he was held during this period, but no indication has been given that he was held in an appropriate remand centre as required by Rwandan law. The Defendant gave an interview to *The New York Times* on 17 September 2020, in the presence of his former lawyers, in which he “he appeared to be speaking under duress.” In this interview, the Defendant 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, the face. I could not see anything.”
9. On 30 September 2020, Mr. Nils Melzer Special, the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Ms. Elina Steinerte,

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<sup>3</sup> See Tweet by Presidency | Rwanda (@UrugwiroVillage), 7 September 2020, 1.22pm: “There was no kidnap he will attest to that. He got here on the basis of what he believed & wanted to do. It’s like dialing to talk to somebody & finding out you’ve called the wrong number”. President Kagame on Rusesabagina’s arrest. For full interview: <https://bit.ly/2R1BzTS>. Tweet Available at:

<https://twitter.com/UrugwiroVillage/status/1302930285324103680>. See also A. Latif Dahir, ‘Rwanda Hints It Tricked ‘Hotel Rwanda’ Dissident Into Coming Home’, *The New York Times*, 18 September 2020, available at: <https://www.nytimes.com/2020/09/06/world/africa/paul-rusesabagina-hotel-rwanda-arrest.html>

<sup>4</sup> C. Faraj, S. Halasz, D. McKenzie, ‘UAE denies knowledge of Hotel Rwanda film hero’s arrest as family raise ‘kidnap’ fears’, *CNN*, 2 September 2020, available at: <https://edition.cnn.com/2020/09/02/africa/paul-rusesabagina-rwanda-arrest-intl/index.html>

the Vice-Chair of the United Nations Working Group on Arbitrary Detention; Mr. Luciano Hazan, the United Nations Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, and Ms Fionnuala Ní Aoláin, the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, wrote to the government of Rwanda raising these allegations, and noting that the Defendant “reportedly has been forcibly transferred from Dubai to Kigali, under uncertain circumstances”,<sup>5</sup> and requesting further information.

### Legal Framework

10. By the admission of the Rwandan authorities, the Defendant was “tricked” or “lured” to Rwandan in a “flawless operation”, meaning that he was transported across state boundaries, against his knowledge or will, in a process that fell outside the legal procedures in place of extradition of suspects between Rwanda, and the United States of America and Belgium. The Defendant was deprived of his right to lawfully challenge his arrest or transfer, and to be provided with a legal basis for its occurrence. No “International Arrest Warrant” has ever been provided to the Defendant or his lawyers. The Defendant’s enforced disappearance and extraordinary rendition to Rwandan was accordingly illegal, and resulted in his arbitrary arrest.
11. The Defendant’s arrest also breaches the requirements of Rwandan Law. Article 68 of the *Law relating to the criminal procedure* (2019) (“Criminal Procedure Law”) requires 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**” (emphasis added). No arrest statement has ever been produced in the present case, and as such the Defendant’s arrest is illegal.
12. Article 16 of the Criminal Procedure Law also requires that “[a]n investigator writes a statement of arrest and detention and reserves a copy to the suspect.” Again, this has never been produced, further undermining the legality of the Defendant’s arrest. Nor does it appear that between 28 and 30 August, the Defendant was held in an appropriate and designated remand centre, in violation of Article 69 of the Criminal Procedure Law.

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<sup>5</sup> Letter, UN Special Procedures to the Government of Rwanda, 30 September 2002, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25575>

13. As regards the Defendant's lack of access to a lawyer between 28 and 31 August, Article 68 of the Criminal Procedure Law requires that "[a]ny person held in custody has the right to seek a legal counsel of his or her choice and is allowed to have private communication with him or her." This reflects Rwanda's obligations under international conventions that require an accused to be provided with legal assistance.<sup>6</sup> The Defendant in this case was interrogated for a period of three days without access to legal assistance, which violated his fundamental rights as an accused.
14. Incommunicado detention is also incompatible with the Defendant's rights, given that it "may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture."<sup>7</sup> Ensuring that the Defendant was cut off from the outside world between 28 and 31 August, particularly while he was interrogated in the absence of any legal assistance and before the authorities of Belgium were informed was a deliberate and particularly egregious violation of his rights.
15. The use of restraints is particularly concerning. Article 47 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), provides that "[t]he use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited", and that "other instruments of restraint shall only be used when authorized by law", such as a precaution to prevent escape during transfer, or in order to prevent a prisoner from injuring himself or herself or others or from damaging property. No justification has been provided for the use of restraints in the Defendant's case, particularly for the duration of a three-day period, adding yet another layer to the violations of his rights.

## **B. DENIAL OF THE DEFENDANT'S RIGHT TO ADEQUATE TIME AND RESOURCES TO PREPARE A DEFENCE**

### Facts

16. The present proceedings are extremely complex. Three different cases have been joined. The indictment for the first case, the "Nyungwe" case, alone is more than 290 pages, joining charges against 18 separate accused, none of whom are known to the Defendant. The casefile is thousands of pages in length. The voluminous supporting material for this first indictment has been recently provided to the Defendant's lawyer.

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<sup>6</sup> See, e.g. Article 14 (3)(d), International Covenant on Civil and Political Rights ("ICCPR") to which Rwanda is a signatory; See also Article 11, Universal Declaration of Human Rights;

<sup>7</sup> U.N. Commission on Human Rights, Resolution 2003/32, para. 14.

17. The two cases that have been joined to the Defendant's case are those against Callixte Nsabimana and Herman Nsengimana. The supporting material of the indictments against these two other accused has so far not been disclosed, either to the Defendant, or to his counsel.
18. The Defendant has been systematically deprived of the time and resources necessary for the preparation of his defence. First, the Defendant has no access to the casefile. The case-related materials brought to him in the Nyarugenge Central Prison by his lawyer, have been routinely confiscated by the Prison Director following these legal visits. As such, the Defendant has been unable to read the NPPA evidence against him, or legal documents relevant to his defence. His trial preparation has been completely blocked. Direct requests by the Defendant's lawyer to the Prison Direct for the return of these documents have been refused.
19. Even if this confiscation had not occurred, the Defendant has no materials to allow him to read or analyse a casefile of this volume. He has no laptop for electronic storage and management, and does not even have access to pens and paper. Nor has he been provided with the relevant laws and jurisprudence.
20. The Defendant's ability to prepare is also undermined by his inability to have regular phone contact with his lawyer. Phone calls in Nyarugenge Central Prison are conducted on a shared mobile phone, for which authorization must be requested 24 hours in advance. Importantly, phone calls do not take place in a privileged setting, and are limited to five minutes in length. As such, the Defendant has no ability to give detailed instructions or receive meaningful advice over the phone.

#### Legal Framework

21. The Rwandan Constitution sets out fair trial guarantees to be afforded to any person accused of a crime in Rwanda. Article 19 of the Constitution requires that guilt must be conclusive proven in a "fair hearing in which all the necessary guarantees for defence have been made available." The right of an accused to communicate **confidentially** with his lawyer in the preparation of his defence is one of these necessary guarantees. Enshrined in international human rights treaties, confidential attorney-client communications are being protected in both international<sup>8</sup> and Rwandan law.

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<sup>8</sup> See African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, ("ACHPR Principles") Section N3, "The **right to confer privately with one's lawyer** and exchange confidential information or instructions is a fundamental part of the preparation of a defence. Adequate facilities shall be provided that **preserve the confidentiality of communications with counsel**"; See also Article 67(1)(b), ICC Statute, "(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing **in confidence**".

22. Article 54 of the RBA Law<sup>9</sup> provides that professional secrecy covers “what is said in an Advocates’ office, correspondences exchanged between an Advocate and his/her clients and those between Advocates.” Article 130(3) and (8) of the internal “Rules and Regulations of the Rwandan Bar Association” also requires that professional secrecy or confidentiality is maintained. The confiscation of privileged documents by the Prison Director violates the Defendant’s rights to confidential communication, and the right of his lawyer to perform his professional duties and obligations. As such, it infringes on the Defendant’s ability to prepare his defence.
23. The confiscation of privileged and case-related documents is also inconsistent with internationally recognised detention standards. Rule 53 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), provides that “[p]risoners shall have access to, or be allowed to keep in their possession without access by the prison administration, documents relating to their legal proceedings.”
24. An accused is also entitled to adequate time and resources to prepare his defence, and to communicate with counsel of his choosing.<sup>10</sup> Even if the Prison Director was not systematically confiscating the case documents, the Defendant’s lack of basic materials (even paper and a pen) renders any meaningful preparation impossible. A casefile of this complexity requires access to a laptop to manage and store thousands of documents. In the absence of these basic materials, his ability to prepare for his defence is manifestly impeded. Moreover, the Defendant’s right to communicate with his counsel must extend to privileged and meaningful phone access, during which they can communicate in full confidentiality about the case. Given the circumstances arising from the current COVID-19 pandemic, daily phone access would also reduce the risks of transmission for both the Defendant and his legal team.

### **C. DENIAL OF THE DEFENDANT’S RIGHTS TO LEGAL ASSISTANCE OF HIS CHOOSING**

#### *Facts*

25. On 8 September 2020, following consultation with her husband, the Defendant’s wife, Mrs Taciana Mukangamije gave a Power of Attorney to Me Philippe Larochelle (from the Bar of

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<sup>9</sup> LAW N°83/2013 of 11/09/2013 Establishing the Bar Association in Rwanda and Determining its Organisation and Functioning (“RBA Law”)

<sup>10</sup> ICCPR, Article 14(3)(b): “To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

Quebec, Canada) and Ms Kate Gibson (admitted before the Supreme Court of Queensland, Australia) to provide legal representation in Rwanda to the Defendant.<sup>11</sup>

26. On 17 September, 2020 Me Larochelle wrote to the Rwanda Bar Association (“RBA”), annexing documentation required by the RBA to process applications to receive a temporary authorization to practice in Rwanda.<sup>12</sup> On 21 September 2020, the RBA sent an acknowledgement to the effect that the application was received, and that the RBA Commission dealing with such applications was seized of the matter, for preliminary analysis and opinion.<sup>13</sup> Following this correspondence, the Defendant’s lawyer attempted to talk and meet with the RBA Bâtonnier, Me Julien Kavuraganda, or other representatives of the RBA to resolve Me Larochelle and Ms Gibson’s designation to the Defendant’s case, without success.
27. On 29 December 2020, the Defendant reiterated his wish to have lawyers appointed to defend him, by writing a letter designating Ms Gibson, Me Larochelle and adding Me Peter Choharis as lawyers to assist in the preparation and presentation of his case (“Designation Letter”). The Designation Letter was provided to the Prison Director of Nyarugenge Central Prison, to be stamped and forwarded to the RBA.
28. On 7 January 2020, the Prison Director informed the Defendant’s lawyer that the Designation Letter **had not** been stamped nor forwarded, thereby preventing these lawyers from being assigned to the case, and depriving the Defendant of legal assistance of his own choosing. On 18 January, the Defendant’s lawyer wrote again to the RBA, following up on the Designation Letter of 29 December 2020.<sup>14</sup> On 19 January 2021, Me Larochelle wrote again to the RBA, recalling the correspondence of 17 and 21 September 2020.<sup>15</sup> Phone calls to the Bâtonnier continue to go unanswered.

### Legal Framework

29. The right of an accused to a lawyer of his own choosing is an internationally protected one. Article 14(3)(d) of the ICCPR provides that in the determination of a criminal charge against him, an accused shall have the right “(d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing”.<sup>16</sup> A failure to designate counsel also

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<sup>11</sup> Power of Attorney of 8 September 2020

<sup>12</sup> E-mail of 17 September 2020 from Me Larochelle to RBA and annexed documents

<sup>13</sup> E-mail of 21 September from RBA to Me Larochelle

<sup>14</sup> E-mail of 18 January from Me Gashabana to RBA.

<sup>15</sup> Letter of 19 January 2020 from Me Larochelle to RBA and Me Kavuraganda and Letter of Bâtonnier of Quebec Bar Association to Bâtonnier of RBA.

<sup>16</sup> See also ICC Statute, Article 67(1)(b) “In the determination of any charge, the accused shall be entitled to [...] have adequate time and facilities for the preparation of the defence.

impacts on the right of an accused to adequate time and facilities for the preparation of his defence.<sup>17</sup>

30. The practice of international lawyers assisting on Rwandan cases, even without formal admission to the RBA, is a long one. It was a practice relied upon by the (former) Kigali Bar Association in its *amicus curiae* brief in support of the transfer of cases back to Rwanda from the ICTR, citing the case of “*Iain Edwards who applied for accreditation and was approved to practice in Rwanda on the same day of the application*”,<sup>18</sup> despite there being no formal reciprocity agreement signed between the RBA and the Bar of England and Wales. The same procedure could be adopted in the present case, to allow the Defendant to access to the legal counsel of his choosing, and to ensure that his ability to prepare for trial is not further impeded by these ongoing violations.

#### **D. VIOLATION OF THE RIGHT TO ADEQUATE MEDICAL TREATMENT**

##### Facts

31. The Defendant’s state of health is of extreme concern. On 7 January 2020 the Defendant informed his lawyer that he thinks he may have a stroke, and is in grave fear for his life. He has lost an estimated at 50 pounds since 28 August 2020.
32. The Defendant, who is a cancer survivor, suffers from high blood pressure, for which he has been taken prescribed medication since 1996.<sup>19</sup> His treating doctor in Brussels wrote on 18 September 2020:

L’interruption ou la modification de son traitement antihypertenseur ainsi que les stress intenses de tous ordres entraînent un risque de poussée hypertensive sévère et de complications telles qu’un accident vasculaire cérébral.

On me signale que son hypertension est actuellement sévère malgré une triple antihypertensive, ce qui en fait une hypertension résistante, nécessitant une prise en charge dans un centre spécialisé.

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<sup>17</sup> ICCPR, Article 14(3)(b): “To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

<sup>18</sup> *Prosecutor v. Uwinkindi*, ICTR-200 1-75-Rule 11bis, Amicus Curiae Brief of the Kigali Bar Association in the Matter of the Prosecutor’s Request for the Referral of the Case of UWINKINDI Jean, 26 April 2001, para. 18.

<sup>19</sup> Letter, Professor Alexandre-Persu MD-PHD, 18 September 2020.

33. The Defendant's prescribed medication was provided by the Belgian Embassy in Kigali to the Rwandan prison authorities via diplomatic pouch. It has never been given to the Defendant. The medication given to the Defendant in Nyarugenge Central Prison (the details of which he has not been told) has resulted in his blood pressure remaining high, and extreme headaches and dizziness. All attempts by the Defendant's lawyer to meet with the medical staff treating the Defendant in prison have been unsuccessful.

#### Legal Framework

34. Article 12 of the Rwandan Constitution protects the right to life. Article 15 then provides that every person has the right to physical integrity, and no person shall be subject to torture, physical abuse or cruel, inhuman or degrading treatment. These guarantees are not only also reflected in international instruments,<sup>20</sup> but form part of minimum standards for the treatment of prisoners.<sup>21</sup>
35. The deprivation of the Defendant's prescribed medication is causing him mental and physically distress and suffering. The corroborated view of both himself and his treating doctor in Belgium is that the deprivation of his prescribed medication will put his life in danger. As a related but subsidiary concern, while the Defendant is suffering from dizziness and headaches, he has no ability to engage in any preparation for the case.

### **E. OTHER VIOLATIONS OF INTERNATIONALLY RECOGNISED STANDARDS OF DETENTION**

#### Facts

36. Since early November 2020, the Defendant's daughter Ms. Carine Kanimba has been receiving messages from "Hamiss Mjinya" who claims to be one of the Defendant's prison guards. First contacting her via Twitter, Mr. Mjinya also contacts Ms. Kanimba via the WhatsApp messaging platform and by phone. Ms. Kanimba has never written back to the prison guard, or responded to his messages, which she has recorded and provided to the US Federal Bureau of Investigations.

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<sup>20</sup> ICCPR, Articles 6(1): Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life; Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; Universal Declaration of Human Rights, Article 3: Everyone has the right to life, liberty and the security of person; Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

<sup>21</sup> ICCPR, Article 10(1): All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person; United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Rule 1: All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

37. Relevantly, these messages claim that:

- Hamiss Mjinya is one of Mr. Rusesabagina's guards, and spends much time with him;
- The Defendant is not imprisoned in Nyarugenge Central Prison. When there is media or others who want to see him, he is brought to Nyarugenge Central Prison to make it seem like that is where he is detained, but in reality he is detained in a military prison with "Sankara" and "Herman";
- The Defendant is not receiving proper medical care or edible food, and fed with unsanitary oil, and salt and sugar;
- The Defendant spends the days being blindfolded and bound;
- The Defendant's trial will begin on 26 January at the High Court of Nyanza, he has been told to present on that day. He will be sentenced and get life in jail;
- The authorities have already foreseen that Sankara and more than 10 others will accuse the Defendant, and for this their own sentences will be reduced;
- The only way to avoid the Defendant spending the rest of his life in jail is for him to escape. Mr. Mjinya and his three colleagues have a plan for his escape, but they need Ms. Kanimba to agree to this plan, and provide money for a vehicle for the escape; and
- Other prisoners have successfully escaped, such as Hussen Rajabu (Burundian), Ntamuhanga Cassien (Abaryankuna) who was in the prison of Mpanga and he had been sentenced to 25 years in prison, General Mupenzi Jean de la Paix (Butare Prison) who escaped with 3 other people.

38. The messages also threaten Ms. Kanimba that if she speaks about this in the newspapers or radio, the guards will be imprisoned, and the authorities will note in the Defendant's file that he was trying to escape.

#### Legal Framework

39. The reports that the Defendant is (i) being held in a military prison; (ii) is blindfolded and bound while detained; (iii) is not receiving adequate medical care; (iv) is not receiving adequate food, are extremely concerning.

40. If true, they give rise to a host of violations of the Defendant's human rights, as well as breaches of minimum international standards for detainees, many of which have been set out above. Notably, these conditions would be incompatible with, *inter alia*, Article 10 of the Rwandan Constitution, which provides that the human person is sacred and inviolable, and

that State and all public administration organs have the absolute obligation to respect, protect and defend him or her.<sup>22</sup>

### III. RELIEF REQUESTED

#### A. Primary Relief Requested –Permanent Stay of Proceedings and Release

41. The violation of the accused's rights, stemming from the moment of his arrest, have been numerous, and manifest. Subject to an enforced disappearance and extraordinary rendition to Rwanda, arbitrarily detained, held incommunicado, bound and gagged, and interrogated in the absence of a lawyer, the Defendant's arrest violated internationally recognised fundamental rights. The Defendant's arrest was also illegal under Rwandan law, given the failures to comply with the requirements of Articles 16, 68, and 69 of the Criminal Procedure Law.
42. Cumulatively, the violation of the Defendant's rights between 27 and 31 August 2020 are so egregious as to undermine the integrity of any judicial process that follows them. There is no sufficient or alternative remedy for such a blatant violation of an individual's rights other than a permanent stay of the proceedings against him. A permanent stay is warranted in these circumstances, given that to proceed with the trial would countenance behaviour that threatens basic human rights and the rule of law. As such, the Defendant respectfully request that the Chamber:

**ORDER** the immediate release of the Defendant into the custody of representatives of the Embassy of the Kingdom of Belgium, and a permanent stay of the proceedings against him.

43. The only alternative to the Defendant's illegal kidnap and extraordinary rendition to Rwanda, was that he was in fact lawfully transferred following international cooperation with a third state. This would require his trial under the Transfer Law (2013), which applies "in other matters where there is transfer of cases to the Republic of Rwanda from other States or where transfer of cases or extradition of suspects for other crimes is sought by the Republic of Rwanda from other States."<sup>23</sup> As such, should the Chamber decline to order the permanent

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<sup>22</sup> See also ICCPR, Article 10(1): All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person; United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Rule 1: All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

<sup>23</sup> Transfer Law, Article 3.

stay and immediate release of the Defendant, it is respectfully asked to immediately order the severance of the Defendant's case from that of his co-accused, and order that the trial proceed under the framework of the Transfer Law (2013). The Chamber should also then grant the alternate remedies set out below.

*B. Secondary Relief Requested – Immediate Provisional Release*

44. Should the Chamber decide not to stay the proceedings against the Defendant, it is requested at a minimum to urgently order his provisional release. Under Article 76(2), (6) and (7) of the Criminal Procedure Law, a judge seized with a hearing on provisional detention must consider a) if the period of detention and the other rights of the suspect have been respected during investigation (Article 76(2)), b) the living conditions and the health of the accused person (Article 76(6)) and c) any other argument contained in the submissions of the parties (Article 76(7)).
45. Concerning the respect of the rights of the suspect during the investigation under Article 76(2) of the Criminal Procedure Law, the Defendant's rights under Article 68 of were systematically violated from the very beginning of the present case. The Defendant's kidnapping, illegal arrest and detention are described in paragraphs 6 to 15 above, hereby incorporated by reference. The Defendant has also denied the time and resources necessary to prepare for his trial, as described in paragraphs 16 to 24 above, hereby incorporated by reference. Furthermore, despite efforts dating back to September 2020, the Defendant is still deprived at the moment of writing, of the assistance of the counsel of his choosing, as set out in paragraphs 25-31, hereby incorporated by reference.
46. As regards the living condition and health of the Defendant under Article 76(6) Criminal Procedure Law, the current medical condition of the Defendant is cause for extreme concern, as detailed in paragraphs 32-36 above. The deterioration of the physical condition of the Defendant and his sudden complete isolation from his family and friends are making his detention conditions particularly harsh. This is notwithstanding the risks posed by the ongoing COVID-19 pandemic, to which the Defendant would be particularly vulnerable in view of his age and underlying medical conditions.
47. Article 76(7) of the Criminal Procedure Law also requires a Judge to "to examine any other arguments contained in the submissions by the parties. The current state of trial readiness, disclosure, and ability of the Defendant to meaningfully prepare his defence, render it likely that the delay in the start of the trial will be significant. Moreover, the difficulties associated

with the worsening COVID-19 pandemic currently prevent the Defendant's lawyer from accessing the prison. Both of these circumstances further militate in favour of granting provisional release to the Defendant.

48. For all the above reasons, the Chamber is respectfully requested to:

**ORDER** the provisional release of the Defendant, and convene an immediate hearing to determine the provisional release conditions that should be imposed under Article 80 of the Criminal Procedure Law.

C. Tertiary Relief Requested – Minimum Remedies to Address Violations

49. In the alternative, should the Chamber decide not to stay the proceedings, and not to order the Defendant's provisional release, the Defendant accordingly requests the following minimum remedies to address the violations which have occurred, and respectfully requests that the Chamber:

**ORDER** that the case proceed under the framework of the Transfer Law (2013);

**ORDER** the prescribed medications transmitted by the Belgian Embassy in Kigali to be provided immediately to the Defendant in Nyarugenge Central Prison;

**ORDER** the Prison Director of Nyarugenge Central Prison to provide a detailed medical report on the Defendant's medical condition to the Chamber within 7 days;

**ORDER** the Prison Director of Nyarugenge Central Prison to immediately return all materials confiscated from the Defendant, and refrain from confiscating any materials in the future;

**ORDER** the Prison Director of Nyarugenge Central Prison to ensure that the Defendant and his lawyers can meet in a setting that allows for privileged and secret communications;

**ORDER** the Prison Director of Nyarugenge Central Prison to authorise daily phone calls between the Defendant and his lawyers, which should be privileged and confidential;

**ORDER** that the Defendant be provided with adequate materials for the preparation of his defence, including a laptop for the storage and organization of electronic material;

**ORDER** that the Prison Director of Nyarugenge Central Prison conduct an immediate investigation into the allegations made by the Defendant’s “prison guard” concerning the conditions of the Defendant’s detention, and report back to the Chamber within 7 days;

**ORDER** the international lawyers named in the Defendant’s letter of 29 December 2020 to be immediately designated to the Defendant’s defence team, and be given immediate access to the Defendant at the prison, and via telephone;

**VACATE** the date for the commencement of trial of 26 January 2021; and

**SCHEDULE** a status conference on 26 January 2021, at which the Prison Director of the Nyarugenge Central Prison should be present, whereby the parties can discuss compliance with the Chamber’s order, as well as proposed timelines for the commencement of trial.

The whole respectfully submitted, this 20 day of January 2020.

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Maitre Gatera Gashabana  
Lawyer of Mr. Paul Rusesabagina

This filing is filed in its original English. A Kinyarwanda version is being prepared, and will be filed as soon as practicable.