

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
AL RWA 1/2020

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/20, 42/22, 36/6 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. Paul Rusesabagina, who reportedly has been forcibly transferred from Dubai to Kigali, under uncertain circumstances, and is currently detained in Rwanda facing terrorism related charges.

Please note that a letter expressing similar concerns is being sent to the Government of the United Arab Emirates (UAE).

According to the information received:

Mr. Paul Rusesabagina is a Rwandan national born in 1954. He studied hotel management and became the managing director of luxury Hotel "Des Mille Collines", where he reportedly offered shelter and protection to 1268 Tutsis and moderate Hutus, who were fleeing the genocide atrocities in 1994.

In 1996, following alleged threats and intimidation by the Rwandan authorities, Mr. Rusesabagina and his family left to Belgium, where they sought refuge, and later obtained Belgian nationality in 1997. He is also a permanent resident in the United States of America (USA).

In 2006, Mr. Rusesabagina founded a non-governmental organisation called "the Hotel Rwanda Rusesabagina Foundation", in Chicago, USA, to promote peace in Africa and support victims of the genocide.

Since 2007, the Rwandese Government and its officials have reportedly been blocking the activities of the Foundation, making false accusations against Mr. Rusesabagina in the media. They have been suspected of break-ins into his house in Belgium where only documents in Kinyarwanda language were taken. Meanwhile, Mr. Rusesabagina has been outspokenly criticising the Rwandese authorities, including the current President.

Forced transfer and arrest

On 27 August 2020, Mr. Rusesabagina travelled from the USA to Dubai in the United Arab Emirates (UAE). He contacted his family the night of his arrival to Dubai, and then went missing for four days, until 31 August 2020, when he appeared before the media at the Rwandan Investigation Bureau (RIB) headquarters. During that morning, the RIB issued a statement, on their official twitter account, explaining that Mr. Rusesabagina was suspected to be the founder, leader, sponsor and member of violent, armed, extremist terror groups including Rwandese Movement for Democratic Change (MRCD) and PDR-lhumure. He has been arrested through international cooperation, as he was subject to an international arrest warrant, he was facing charges of serious crimes including terrorism, arson, kidnap and murder, perpetrated against unarmed innocent Rwandan civilians on Rwandan territory, notably in Nyabimata-Nyaruguru district in June 2018 and in Nyungwe-Nyamagabe district in December 2018; and that he was detained at the Remera Police Station following Rwandan criminal procedures.

On 1 September 2020, the RIB spokesperson confirmed the information on the arrest and charges, and stated that the investigator had 15 days to determine whether Mr. Rusesabagina should stay in custody, and that Mr. Rusesabagina had the right to a lawyer, and the right to speak to his family.

On 2 September 2020, international press reported that an Emirati official denied any official role in Mr. Rusesabagina's transfer from Dubai to Kigali, stating that the country has no extradition agreements with Rwanda and that Mr. Rusesabagina entered and left the country legally. According to reported information, the UAE authorities confirmed that Mr. Rusesabagina was in Dubai for approximately five hours. After landing, he allegedly went to a hotel, and then left on a private jet, from Al Maktoum airport, shortly after midnight, on 28 August 2020. In the absence of any official statement from the Rwandan or Emirati Governments concerning the circumstances under which Mr. Rusesabagina was transferred, his family maintain that he would not have travelled willingly to Rwanda.

According to the flight records from that evening, it appears likely that Mr. Rusesabagina travelled to Kigali on a Bombardier Challenger 605 Plane, operated by the private jet charter company GainJet Aviation, which left Dubai at 12.55am local time and arrived in Kigali, Rwanda at 4.50am local time. This information could not be confirmed by the aviation company or by the Governments of UAE and/or Rwanda.

On 6 September, the Rwandan President reportedly discussed the case of Mr. Rusesabagina, on national television, stating that he had not been kidnapped, and describing his transfer as "flawless", adding that "[Mr. Rusesabagina] got here based on what he believed he wanted to do and he found himself here", and insisting that Mr. Rusesabagina had to pay for his crimes.

Due process and procedural safeguards

On 5 September 2020, a Rwandan lawyer appeared in a press conference claiming that he was Mr. Rusesabagina's legal counsel. This was refuted by his family, who claimed that this lawyer had been imposed by the Government, and insisted that the family-appointed lawyer had been trying to visit Mr. Rusesabagina at the Remera Police station, but that his requests had been repeatedly denied.

Furthermore, since the family learned of Mr. Rusesabagina's place of detention, they contacted the police station incessantly, requesting to speak with him. Mr. Rusesabagina's family was finally eventually allowed to speak with him over the phone on 8 September 2020. During the call, Mr. Rusesabagina was reportedly not alone and could not speak freely, or explain the circumstances of his transfer from Dubai to Kigali. He mentioned, nonetheless, that he woke up in Kigali, which alludes to the possibility of having been drugged during the forcible transfer from Dubai.

Mr. Rusesabagina was held incommunicado and denied any contact with the external world, from his arrest on 28 August and until 7 September 2020, when the Belgian Deputy Ambassador in Kigali visited him. During this visit, Mr. Rusesabagina was found to be in good health but afraid to speak due to the presence of the Government-imposed legal counsels. There are concerns that Mr. Rusesabagina might not be provided with the necessary medication for his blood pressure and cardiovascular condition, and that he has not been examined by an independent medical doctor.

On 9 September 2020, the RIB handed Mr. Rusesabagina's file to the Public Prosecutor and the first pre-trial hearing was held on 14 September 2020, when Mr. Rusesabagina appeared before the Kicukiro Primary Court in Kigali, accompanied by two State-imposed legal counsels. The Court confirmed twelve charges against Mr. Rusesabagina. Those charges were not announced publicly. The prosecution requested the Court to continue detaining Mr. Rusesabagina pending investigations, while he reportedly requested bail based on his health condition. On 17 September, the Court denied bail for Mr. Rusesabagina, and confirmed his detention. He is believed to be currently detained in Mageragere prison, outside of Kigali.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

2. Please provide detailed information on the circumstances under which Mr. Rusesabagina was transferred from Dubai to Kigali and handed over to the Rwandan authorities. Please also clarify any international cooperation measures that may have taken place to arrest and transfer Mr. Rusesabagina and provide any international arrest warrant that may have been issued against him, prior to his arrest.
3. Please provide detailed information on the factual and legal grounds of the arrest and detention of Mr. Rusesabagina, as well as any formal charges against him, and the legal provisions used to charge him.
4. Please provide full information on the period between 28 and 31 August 2020, during which Mr. Rusesabagina was subjected to enforced disappearance, including his whereabouts and the conditions in which he was held, on the informal detention facilities during this period and explain how this is compatible with Rwanda's international human rights obligations.
5. Please provide full information on measures which have been taken, or which are foreseen, to guarantee the conduct of criminal proceedings by independent and impartial judicial authorities, in full compliance with the norms of due process recognised by international law, and the observance of fundamental safeguards, including unrestrained and confidential access a lawyer of his own choice and to an independent medical doctor, as well as regular contact with his family.
6. Please provide information in details of how your Excellency's Government's counter-terrorism efforts comply with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123, 72/180 and 73/174 in particular with international human rights law, refugee law, and humanitarian law contained therein.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no

way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Elina Steinerte

Vice-Chair of the Working Group on Arbitrary Detention

Luciano Hazan

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to draw the attention of your Excellency's Government that Enforced disappearance violates numerous human rights, among them the right to security of the person and the right to be protected from torture and other ill-treatment. In this respect, the enforced disappearance of Mr. Rusesabagina, from 27 to 31 August 2020, contravened Rwanda's obligations under International **Covenant on Political and Civil Rights (ICCPR - articles 6 and 9)**, the **Convention against Torture and other cruel, inhuman or degrading treatment or punishment (CAT - articles 2 and 16)**. **Article 9 of the Universal Declaration of Human Rights (UDHR)** provides that "no one shall be subjected to arbitrary arrest, detention or exile". **Article 9(1) of the ICCPR** provides that "[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Moreover, **The Committee against Torture¹ and the UN Human Rights Committee²** have repeatedly concluded that enforced disappearances may amount to torture and other forms of ill-treatment both with regard to the disappeared and with regard to their family members, due to the anguish and uncertainty concerning the fate and whereabouts of loved-ones.

We would like to stress that the failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance. In this regard, we would like to draw the attention of your Excellency's Government to **paragraph 27 of General Assembly Resolution 68/156** (February 2014), which, "[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished".

We are further drawing your Excellency's Government's attention to the United Nations **Declaration on the Protection of All Persons from Enforced Disappearances**, which establishes the prohibition to practice, permit or tolerate enforced disappearances (**article 2**); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (**article 3**) and that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (**article 7**). The Declaration recognizes the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty (**article 9**), the right

¹ See, for example, conclusions and recommendations on the second periodic report of Algeria (A/52/44, para. 79), on the initial report of Namibia (A/52/44, para. 247) and on the initial report of Sri Lanka (A/53/44, paras. 249 and 251).

² CCPR/C/50/D/440/1990 (24 March 1994), para. 5.4.

to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention in order to challenge the legality of the detention (**article 10**). The same article of the Declaration establishes the obligation of the detaining authorities to make available accurate information on the detention of persons and their place or places of detention, including transfers, to their family, counsel or other persons with a legitimate interest (article 10). The Declaration also establishes the obligation to make the findings of an investigation into the circumstances of the disappearance available upon request to all persons concerned and to ensure that all involved in the investigation are protected against ill-treatment, intimidation or reprisal (**article 13**).

In particular, we wish to further draw the attention to the obligation of every State not to forcibly expel, return or extradite a person to another State where there are substantial grounds to believe that the individual would be in danger of enforced disappearance as stipulated in **Article 8 of the Declaration**. The Working Group stressed on numerous occasions that a failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration. Any transfer of a person has to comply with the human rights obligations of all State parties, including in relation to habeas corpus, the respect of due process, and the principle of non-refoulement (**CAT, article 3**). When states actively condone practices of incommunicado detention and transnational abductions, they may not only violate their national laws and procedural safeguards that provide for fair and due process. Therefore, it is essential that in each case, as provided for in international law, comprehensive individual assessments are carried out to determine whether and what risks for their rights the individual may face upon return. Furthermore, the Declaration sets out an obligation for States to take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control (**article 14**).

Furthermore, we like to bring to your Excellency's Government attention the legal and procedural safeguards against torture and ill-treatment including the right to legal counsel and to contact one's family from the outset of arrest provided in the **UN Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment** (Body of Principles). According to body of principles the "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."(**Principle 15**). Notwithstanding, the right to immediately inform a person of his choice of the arrest (**Principle 16.1**) and to further correspond with family "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."(**Principle 19**). Furthermore, the **Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment** reiterated, "The risk of torture and ill-treatment is greatest in the first hours of custody and during incommunicado detention. Therefore, preventive safeguards must be implemented immediately after arrest, including the notification of a third party, access to a lawyer and a physician and the furnishing of the detainee with information on their rights, available remedies and the reasons for arrest.."(**A/73/207**). We note the jurisprudence of the international criminal tribunals in this respect, emphasizing that "in a situation where an accused is very seriously

mistreated, maybe even subjected to inhuman, cruel or degrading treatment, or torture, before being handed over to the Tribunal, this may constitute a legal impediment to the exercise of jurisdiction over such an accused.”³

We wish to further highlight that the “prohibition of arbitrary deprivation of liberty is non-derogable and recognized in all major international and regional instruments for the promotion and protection of human rights.” (A/HRC/22/44, para. 42). A State “can never claim that illegal, unjust, or unpredictable deprivation of liberty is necessary for the protection of a vital interest or proportionate to that end.” (A/HRC/22/44, para. 48). Moreover, the duty to comply with the prohibition of arbitrary detention “rests on all bodies and representatives of the State, all officials, including judges, prosecutors, police and security officers, and prison officers with relevant responsibilities”. (A/HRC/WGAD/2017/83, para. 90).

Moreover, we remind that incommunicado detention constitutes “the most heinous violation of the norm protecting the right to liberty of human being under customary international law,” as the individual is “left outside the cloak of any legal protection.” (A/HRC/22/44, para. 60). Incommunicado detention “effectively nullifie[s]” the “right to be brought promptly before a judge or other officer authorized by law to exercise judicial power, as established under **article 9 (3) of the ICCPR**,” and the right to challenge the lawfulness of the detention before that court. (A/HRC/WGAD/2017/83, para. 67).

We further wish to highlight that among the core elements of a fair trial is the right to legal assistance, which undergirds “the right to a fair and public hearing by a competent, independent and impartial tribunal, as established by law under **articles 3 and 9 of the UDHR** and **articles 9 (1) and 14 (1) of the ICCPR**.” (A/HRC/WGAD/2017/83, para. 63). All persons have the right to have adequate time and facilities for the preparation of their defense and to communicate with counsel of their choice, pursuant to **article 14 (3) (b) and (d) of the ICCPR**. A fair trial also affords individuals the right to be presumed innocent until proved guilty according to law, pursuant to **Article 14 (2) of the ICCPR and Article 11 of the UDHR**.

We would like to refer to **Human Rights Council resolution 22/6**, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights. (**OP 10**).

We respectfully remind your Excellency’s Government of the relevant provisions of the **United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017)**; as well as **Human Rights Council resolution 35/34** and **General Assembly resolutions 49/60, 51/210, 72/123 and 72/180**. All these resolutions require that States must ensure that any

³ Prosecution v. Barayagwiza, ICTR-97-12-AR72, Decision on the Extremely Urgent Motion by the Defence for Orders to Review and/or Nullify the Arrest and Provisional Detention of the Suspect, Appeals Chamber, 3 November 1999, para. 74 and 114.

measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

Lastly, we would like to remind your Excellency's Government of the right of foreign nationals to access consular services, communicate with them immediately and confidentially, as codified in **article 36 of the Vienna Convention on Consular Relations**, and further explained in the **Body of principles for the protection of all persons under any form of detention or imprisonment, (principle 16.2.)**.