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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021**

### **Opinion No. 81/2021 concerning Paul Rusesabagina (Rwanda)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work,<sup>1</sup> on 3 June 2021 the Working Group transmitted to the Government of Rwanda a communication concerning Paul Rusesabagina. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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<sup>1</sup> A/HRC/36/38.

## Submissions

### *Communication from the source*

4. Paul Rusesabagina, born in 1954, is a Rwandan and Belgian national and a permanent resident of the United States of America.
  5. According to the information received, Mr. Rusesabagina has supported survivors and victims of genocide and oppression. In 1994, while he was serving as the manager of the Hôtel des Mille Collines in Kigali, he risked his life to shelter Hutus and Tutsis seeking refuge from genocide. The source refers to a movie, *Hotel Rwanda*, which contains a representation of those events. Mr. Rusesabagina has dedicated his life to speaking about the lessons learned from the genocide, addressing journalists, educators, students, policymakers, business leaders and human rights advocates.
  6. Mr. Rusesabagina founded the Hotel Rwanda Rusesabagina Foundation to generate support for an internationally administered truth and reconciliation commission for Rwanda and the Great Lakes Region. The Foundation has worked on issues related to the ongoing conflicts. It campaigned for an end to military intervention and against the exploitation of conflict minerals. Mr. Rusesabagina has criticized the Government of Rwanda and openly discussed its responsibility for alleged war crimes, crimes against humanity and possible genocide.
  7. The source reports that Mr. Rusesabagina became the target of public criticism by the Government of Rwanda because of his opinions and beliefs. After a failed assassination attempt in 1996, he left Rwanda to seek political asylum in Belgium, where he continued to voice criticism of the Government. In 2009, out of fear for his safety, he was forced to relocate to the United States.
  8. In 2010, the Government of Rwanda allegedly began accusing Mr. Rusesabagina of funding a rebel group in the Democratic Republic of the Congo that is considered a terrorist organization. Mr. Rusesabagina has reportedly continued to face threats and attempts on his life, as well as the ransacking of his home in Belgium.
  9. Mr. Rusesabagina has become a political opponent in the diaspora, serving for a time as the first head of a coalition of political parties when it was founded in 2018 and regularly criticizing the Government for its repression of political dissent and freedom.
- a. Arrest and detention
10. According to the information received, in 2020 Mr. Rusesabagina was invited to travel to Burundi to speak at churches and public gatherings. On 26 August 2020, he left Chicago and flew to Dubai, United Arab Emirates. There, he planned to meet his host and fly on to Burundi. He arrived in Dubai at approximately 7 p.m. local time on 27 August 2020. The source claims that the Government of Rwanda arranged for a private jet to take Mr. Rusesabagina to Kigali without his knowledge and against his will, arriving in the early morning of 28 August 2020. The Justice Minister of Rwanda later admitted that the Government had paid for the flight. No application for Mr. Rusesabagina's arrest, extradition or deportation is known to have been made.
  11. The source alleges that Mr. Rusesabagina was sedated in the aircraft while in Dubai. When he realized that the plane was landing in Kigali, he started screaming and tried to exit the plane, thinking he was going to be killed or harmed. He was then restrained by four agents from the Rwanda Investigation Bureau, who entered the plane and tied him up. They dragged him across the tarmac and into a car. He has never been provided with either a warrant of arrest or arrest documents, as required under Rwandan law.
  12. From 28 to 31 August 2020, Mr. Rusesabagina was allegedly held in a facility described as a "slaughterhouse", where it was possible to "hear persons, women screaming, shouting and calling for help". During the morning of 28 August, Mr. Rusesabagina was allegedly tortured by an agent of the Rwanda Investigation Bureau wearing military boots, who stepped on his neck affirming "we know how to torture". While at the "slaughterhouse", Mr. Rusesabagina was restrained, blindfolded and held in solitary confinement. He was

deprived of food and at times of sleep. A 66-year-old cancer survivor with chronic medical issues, he was kept tied up, unable to stand up or walk, lacking strength and suffocating.

13. According to the information received, while he was held at the “slaughterhouse”, Mr. Rusesabagina’s blindfold was removed once, for an interrogation by the Prosecutor General of Rwanda and the Secretary-General of the Rwanda Investigation Bureau. They allegedly told him that they needed an acknowledgement falsely implicating a foreign leader in the charges that he was going to be accused of, including receiving money for a terrorist organization. They allegedly offered to release him if he accepted the accusation. Mr. Rusesabagina refused. He was then transferred to the Remera police station, where he was held until 17 September, and then transferred to Nyarugenge central prison in Mageragere. During the 22 days that he was kept in police stations, he lost approximately nine kilos, due to sleep and food deprivation.

14. On 31 August 2020, Mr. Rusesabagina was brought to the Remera metropolitan police station in Kigali, where he was registered as a prisoner and detained. At that point, the Rwandan authorities reportedly informed the Belgian authorities that a Belgian citizen had been detained.

15. The source claims that Mr. Rusesabagina was in a state of incommunicado detention from 27 and 31 August 2020 and was tortured during that period. It is not known where he was held during this time, or in what conditions. Despite inquiries, it has not been possible for his family or his lawyers to clarify what happened during this period, as they have not been able to raise the issue in public interviews or in proceedings before the courts.

16. From the evening of 27 August until 8 September, Mr. Rusesabagina had allegedly no direct contact with his family. He gave an interview to the New York Times on 17 September 2020, in which “he appeared to be speaking under duress”.<sup>2</sup> In the interview, in which his account was at times muddled, he could not say what had happened to him for the three days between his flight from Dubai and his reappearance in Kigali, but said: “I do not know where I was. I was tied – the leg, the hands, the face. I could not see anything.”

17. On 31 August 2020, the Rwanda Investigation Bureau reportedly announced a first version of the arrest in a tweet, stating that the authorities had arrested Mr. Rusesabagina “through international cooperation” and taken him into custody. The specifics of the “international cooperation” were not provided. That tweet was retweeted on the same day by the Minister of Justice and Attorney General, who praised the arrests taking place “thanks to international cooperation”. The Bureau also announced that Mr. Rusesabagina was “suspected to be the founder, leader, sponsor and member of violent, armed, extremist terror outfits ... operating out of various places in the region and abroad” and that he was the subject of an international arrest warrant. The source however has refuted this allegation.

18. On 6 September 2020, the President of Rwanda appeared on national television and indicated that Mr. Rusesabagina had been “lured”, suggesting he had been tricked into boarding the flight. Reportedly, he said that: “There was no kidnap. There was not any wrongdoing in the process of his getting here. He got here on the basis of what he believed and wanted to do. ... It was actually flawless.” The head of the National Intelligence and Security Services, reportedly commented that “it was quite flawless and I should say one of the best operations that any country can ever conduct”.

19. The source claims that later in February 2021, when speaking with a reporter, the President again confirmed the operation. In an interview on 26 February 2021, the Minister of Justice affirmed that the Government of Rwanda had paid for the flight to Kigali. The Government admitted to deceiving Mr. Rusesabagina into leaving his home and going against his will to Rwanda, which he left after a failed assassination attempt in 1996 and where he would not voluntarily return out of fear for his life.

20. The source argues that the Government’s versions of the arrest are contradictory. However, following criticism, the Government issued a third version, stating that Mr. Rusesabagina had boarded a private jet voluntarily, which then made a stopover in Kigali and the Rwandans took advantage of the situation to arrest him. That explanation allegedly

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<sup>2</sup> See <https://www.nytimes.com/2020/09/17/world/africa/paul-rusesabagina-rwanda-interview.html>.

contradicts the version issued by the Rwanda Investigation Bureau and the Minister of Justice and Attorney General and the version put forward by the President and the head of the National Intelligence and Security Services.

21. On 1 September 2020, a spokesperson for the Rwanda Investigation Bureau indicated that Mr. Rusesabagina “has the right to a lawyer and the right to speak to his family”. A newspaper published an interview with Mr. Rusesabagina, which he purportedly gave from his cell at Remera metropolitan police station. The journalist was given access to Mr. Rusesabagina before he had even had contact with legal counsel, consular officials or family. During the interview, Mr. Rusesabagina allegedly claimed that he was being “treated with kindness” and had been “offered an option to choose [his] defence team”, that he expected to receive justice and a fair trial in Rwanda and that “he was choosing his defence team to prove his innocence”. He confirmed, however, that he was not able to speak freely while in custody. It is unknown whether he willingly participated in the interview, if it was supervised, or the conditions under which he agreed to talk.

b. Judicial proceedings

22. According to the source, Mr. Rusesabagina’s family engaged the services of a lawyer. He brought a letter to the Rwanda Investigation Bureau, confirming that the family had asked him to represent Mr. Rusesabagina.

23. On 2 September 2020, after hearing about his detention at Remera metropolitan police station, Mr. Rusesabagina’s family called the police station and asked to speak to him. They were informed that the request would be passed on, but never received a response. On the same day, the lawyer they had retained visited the police station twice, but was denied access. He then informed the Bar Association that he had not been allowed to see his client.

24. On 5 September 2020, a different Rwandan lawyer gave a press conference, during which he claimed to have been selected by Mr. Rusesabagina from a list of public lawyers. The following day, Mr. Rusesabagina’s family stated that the lawyer had not been appointed by them, but had been selected by the Government; Mr. Rusesabagina would never have engaged a lawyer who would hold a public press conference without first speaking with or consulting the family and who refused to address his kidnapping and arrest.

25. The source claims that the public lawyer represented Mr. Rusesabagina in a manner contrary to his interests, including by failing to challenge the jurisdiction of the Rwandan courts; failing to argue in support of a provisional release pending trial, given Mr. Rusesabagina’s age, his medical condition and the coronavirus disease (COVID-19) pandemic; by holding a press conference to undermine the family’s claim; and by failing to contact the family-appointed lawyer.

26. It is reported that on 9 September 2020, the President 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.”

27. The source submits that 13 days after Mr. Rusesabagina’s arrest, the Rwanda Investigation Bureau handed over its investigation case file to the National Public Prosecution Authority. On 14 September 2020, 18 days after his arrest, Mr. Rusesabagina was brought before the Kicukiro primary court in Kigali for a pretrial hearing, his first appearance before a judge. Mr. Rusesabagina’s government-appointed lawyers requested his provisional release because of his poor health. On 17 September 2020, the court denied him bail, finding that the charges against him were “grave and serious” and that “the health concerns brought by Mr Rusesabagina are baseless”.

28. On 25 September 2020, Mr. Rusesabagina reportedly appeared in front of the Nyarugenge intermediate court with his government-appointed lawyers, to appeal the denial of bail. Mr. Rusesabagina’s government-appointed lawyers again failed to make any arguments that could challenge the Government, including failing to raise his kidnapping and incommunicado detention, or his susceptibility to serious illness. On 2 October 2020, the Nyarugenge intermediate court denied the appeal.

29. Mr. Rusesabagina remains in Mageragere prison, a local prison, where he cannot communicate freely and confidentially with his legal counsel. In an interview in February

2021, the Justice Minister specifically defended the right of the prison authorities to monitor the correspondence between Mr. Rusesabagina and his legal counsel, and acknowledged that they were intercepting and reading those communications.

30. The source claims that, after being represented by two government-appointed lawyers, who failed to put forward basic motions and objections, and only after extensive efforts by his family to permit Mr. Rusesabagina to select his own attorney, the family was able to engage a private lawyer.

31. On 16 November 2020, an indictment was issued, charging Mr. Rusesabagina with nine offences that carry a sentence of life imprisonment. The indictment listed 17 co-defendants, none of whom Mr. Rusesabagina had ever met.

32. Although the private lawyer was appointed in October 2020, he represented Mr. Rusesabagina in court for the first time on 27 November 2020, before the Nyarugenge intermediate court by videoconference. It was then, for the first time, that counsel for Mr. Rusesabagina raised the issue of his transfer to Rwanda from the United Arab Emirates. The trial was postponed until 17 February 2021, however his counsel had been unable to meet with Mr. Rusesabagina frequently enough to prepare his defence effectively.

33. In addition, the source claims that Mr. Rusesabagina continued to be denied access to his international lawyers. On 29 December 2020, Mr. Rusesabagina wrote a letter from prison to the Bar Association, designating his international legal team but the letter was subsequently confiscated. Finally, after several attempts to submit the request, on 26 January 2021 the Bar Association denied his request to be represented by international counsel.

34. The source argues that the prison restrictions deprive Mr. Rusesabagina of effective legal advocacy. It is not possible to receive calls where he is being held. His only option for communicating with counsel is to make calls out. However, as a detainee, he is limited to a five-minute phone call, which is not confidential. Court and other legal documents left by his lawyer have been confiscated by prison officials. The Director of the prison allegedly told him that they had been confiscated and would not be returned, despite being privileged documents.

35. The authorities have allegedly denied Mr. Rusesabagina access to the documents and materials needed to prepare his defence. He only received his indictment in early January 2021, a month after his trial date was set and more than four months after he was arrested. Prison officials have allegedly denied him access to pens and paper, let alone a computer.

36. According to the source, on 2 December 2020 the trial court dismissed his appeal against an order extending his pretrial detention. On 3 December 2020, the date of Mr. Rusesabagina's criminal trial was set for 26 January 2021. Additionally, the Court approved merging the case of Mr. Rusesabagina and his 17 co-defendants with ongoing proceedings against a former spokesperson of a rebel group. On 26 January 2021, the trial was rescheduled for 17 February 2021.

37. On 13 January 2021, Mr. Rusesabagina's private lawyer filed a letter to the presiding judge in the Rwandan court system, seeking remedies for ongoing fair trial violations. Further motions were filed with the court on 21 January and 12 February. On 26 February, the court ruled that it was not relevant to talk about how Mr. Rusesabagina was arrested or detained; none of the fair trial violations raised were addressed by the court.

38. On 10 March 2021, the court ruled on certain pretrial motions concerning due process violations. Despite permitting Mr. Rusesabagina a computer with his case file on it, the court ruled that, moving forward, privileged documents would be protected only after having been identified, without specifying by whom or whether copies would be shared with Ministry of Justice officials. Further, the court reportedly did not provide any remedy for the Government's prior access to all privileged communications, including documents outlining his defence strategy. Mr. Rusesabagina appealed the ruling and the session ended without a date set for the next hearing. The criminal trial is currently ongoing.

39. Since 23 April 2021, Mr. Rusesabagina's Rwandan lawyers have been prohibited from taking any documents, computers or electronic devices into their meetings with Mr. Rusesabagina without first submitting them for inspection and review to the Director of the

prison. Documents marked privileged and confidential sent by international lawyers were confiscated by the prison authorities on 29 April 2021. In addition, Mr. Rusesabagina's Rwandan lawyers have been subjected to invasive and extraordinary searches of their bodies and possessions.

40. The source claims that Mr. Rusesabagina's health has progressively and seriously deteriorated in detention. He is a 66-year-old cancer survivor who suffers from hypertension and cardiovascular disease. His medication for a heart disorder is being withheld. His treating physician in Belgium stated that interrupting and modifying his treatment, as well as inducing stress, risk causing him severe hypertensive attacks and even a stroke. Mr. Rusesabagina is experiencing worsening dizziness and very high blood pressure. Additionally, he has lost a significant amount of weight. He has not been able to disclose the full extent of his physical injuries to his lawyers or to an independent doctor whom he can trust.

41. On 17 February 2021, the day that the trial began, the President of Rwanda again reportedly affirmed Mr. Rusesabagina's guilt. No prospect of a free and fair trial exists because neither the Ministry of Justice nor the Rwandan judiciary could or would do anything to undermine the President's pronouncements.

42. The source reports that in early May 2021, after 260 days, Mr. Rusesabagina's solitary confinement finally ended. During that time, his only human contact was occasionally speaking to prison guards, sporadic visits from his attorneys and five minutes per week on a monitored phone call with his family. Mr. Rusesabagina's placement in solitary confinement early in his imprisonment and not as a last resort, the dire circumstances and length of time he has been in solitary confinement, as well as the lack of judicial oversight, allegedly constitute a violation of his rights.

i. Category I

43. According to the source, Mr. Rusesabagina's extrajudicial transfer to Rwanda had no legal basis. The source refers to articles 9 and 13 of the International Covenant on Civil and Political Rights, to article 6 of the African Charter on Human and Peoples' Rights and to article 68 of the Rwandan Code of Criminal Procedure. Mr. Rusesabagina's arrest and transfer to Rwanda allegedly lacked a legal basis and the due process of law, in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant.

ii. Category II

44. The source argues that the detention of Mr. Rusesabagina is arbitrary because it resulted from the exercise of his fundamental right to freedom of expression.

45. The right to freedom of expression is protected under article 19 of the Covenant, which is of special importance for political opponents. Restrictions on the right to political free speech are strongly limited. The right to free expression is also protected by article 19 of the Universal Declaration of Human Rights, while article 38 of the Rwandan Constitution recognizes and guarantees the right to freedom of expression.

46. The protection of free expression "is broad enough to include the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment. Without such protection, members of political opposition and human rights activists will not be able to criticize, investigate, or expose corrupt and illegal practices by government officials".<sup>3</sup>

47. It is alleged that, despite international and national legal guarantees for the rights of individuals to freedom of expression, the Government arbitrarily detained Mr. Rusesabagina as a direct result of his public condemnation of the Government and his political opposition. Allegedly, the Government has a documented pattern of attacking and attempting to silence its opponents and critics through harassment and detention.

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<sup>3</sup> Opinion No. 22/2013, para. 11.

48. The source recalls that “sharing of information and ideas through online media cannot reasonably qualify as posing threats against morality, public order and the general welfare in a democratic society”.<sup>4</sup>

49. The source states that Mr. Rusesabagina’s public criticisms of the President and the Government are protected under his right to freedom of expression. Whether in the form of a book, speaking on the radio, sharing his opinion online or in interviews, Mr. Rusesabagina has been an outspoken critic that the Government has wanted to silence for many years. His public criticisms constitute his exercise of a fundamental right and thus cannot be the basis for a deprivation of liberty.

iii. Category III

50. The source claims that the Government has violated Mr. Rusesabagina’s right to be presented with a warrant, to counsel of his own choosing, to the presumption of innocence until proved guilty, to humane treatment, to prompt consular assistance and to be brought promptly before a tribunal.

51. The Rwandan authorities allegedly violated Mr. Rusesabagina’s rights in the absence of a warrant or judicial order. Article 9 (1) of the Covenant and principle 2 of the Body of Principles for the Protection of All persons under Any Form of Detention or Imprisonment prohibit arbitrary arrest and require compliance with domestic rules that define procedures for arrest, such as specifying when a warrant is required and permitting access to counsel. Rwandan law reportedly stipulates that an arrest warrant must be shown to the person against whom it is issued, who shall be given a copy of it.

52. The source alleges that Mr. Rusesabagina was never presented with a warrant or other judicial order when he was arrested. While the Government has stated that there was an international arrest warrant, it has never produced one. It is alleged that, because Mr. Rusesabagina was arrested without a warrant when one is required by law, the authorities violated his legal rights and his subsequent detention is arbitrary.

53. The source also recalls that article 36 of the Vienna Convention on Consular Relations, to which both Rwanda and Belgium are parties, outlines the requirement to provide consular assistance for those detained in a foreign country.

54. Principle 16 (2) of the Body of Principles recognizes the right of a detained foreign national to “communicate by appropriate means with a consular post of the diplomatic mission of the State of which he is a national”. Rule 62 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) also provides that: “Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.” Denial of consular rights is allegedly a deprivation of the right to a fair trial.

55. Mr. Rusesabagina is a Belgian citizen. However, the Government of Rwanda did not inform the Belgian authorities of his detention until three days after his arrest. In addition, the detaining authorities did not promptly provide Mr. Rusesabagina with an opportunity to communicate with the Belgian consulate.

56. Article 14 (3) (b) of the Covenant provides that a defendant is entitled to “have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”. In its general comment No. 32 (2007), the Human Rights Committee stated that defendants must have access to documents and other evidence, including “all materials that the prosecution plans to offer in court against the accused or that are exculpatory”. Also, that counsel “be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications” (paras. 33–34).

<sup>4</sup> Opinion No. 71/2019, para. 79.

57. The European Court of Human Rights has interpreted this as a non-derogable right and has found that restriction of an applicant's access to a lawyer he or she has retained constitutes a violation of the right to legal representation of his or her choice.<sup>5</sup>

58. The source claims that the Government used its own legal aid system, designed for indigent defendants, to impose a lawyer on Mr. Rusesabagina, when it knew that his family had retained a lawyer to represent him. Allegedly, this could only have been done to deny Mr. Rusesabagina an independent counsel. The government-appointed lawyers never raised the issue of his transfer to Rwanda from the United Arab Emirates as a limit to the jurisdiction of the court, or as a reason why the court should decline to exercise its jurisdiction based on the abuse of process that brought Mr. Rusesabagina before it.

59. The lawyer appointed by Mr. Rusesabagina's family brought a letter to the Rwanda Investigation Bureau confirming his representation shortly after the arrest. After the Bureau received the letter and the lawyer had visited the police station twice, the Government appointed a public defence lawyer. Over a month after the arrest, the private lawyer was finally permitted to visit Mr. Rusesabagina, although he was only able to represent him in court for the first time at the end of November 2020.

60. The source claims that Mr. Rusesabagina continues to be denied access to international lawyers. Even though Mr. Rusesabagina has finally been permitted counsel of his own choosing, he is still not allowed private phone conversations with his counsel, nor can his counsel share case files with him. In addition, because of COVID-19, his counsel was unable to confer with Mr. Rusesabagina for several weeks, despite the trial commencing. As a result, Mr. Rusesabagina was deprived of his ability to have counsel prepare for his trial.

61. The source claims that the inability of Mr. Rusesabagina to be assisted by counsel of his own choice for well over a month after his arrest; the continued denial of rightful international legal assistance, despite the international nature of his arrest and charges; and the practical restrictions that are depriving him of the ability to prepare an effective defence, amount to a violation of article 14 of the Covenant.

62. The source recalls that under article 14 (2) of the Covenant, article 11 (1) of the Universal Declaration of Human Rights and principle 36 of the Body of Principles, everyone has the right to be presumed innocent until proved guilty. Under the presumption of innocence, the burden of proof to establish the guilt of the accused lies with the prosecution. Public authorities must refrain from prejudging the outcome of the proceedings by making any official statements or using conclusory language that would portray an accused person as guilty.

63. On 6 September 2020, during a broadcast on national television, the President reportedly said: "Rusesabagina heads a group of terrorists that have killed Rwandans. He will have to pay for these crimes. Rusesabagina has the blood of Rwandans on his hands." He also allegedly said that Mr. Rusesabagina became "an associate of these groups or even a leader of different groups" and that "these groups ... that Rusesabagina was leading or is one of their leaders, killed people in the south-western part of our country in about three districts". Mr. Rusesabagina was reportedly charged by a Rwandan court on 14 September 2020, a week after the President's broadcast. Then, on 17 February 2020, the first day of Mr. Rusesabagina's trial, the President supposedly made similar comments. The source claims that these were a violation of the presumption of innocence and constitute a *de facto* guilty verdict.

64. The source further recalls that article 10 (1) of the Covenant and principle 1 of the Body of Principles state that persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Article 7 of the Covenant, article 5 of the Universal Declaration of Human Rights, article 14 of the Rwandan Constitution and principle 6 of the Body of Principles contain a prohibition of torture or cruel or inhuman treatment. The source claims that in the present case, the violations further

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<sup>5</sup> See, for example, *Croissant v. Germany* (application No. 13611/88), judgment of 25 September 1992, para. 29, and *Martin v. Estonia* (application No. 35985/09), judgment of 30 May 2013, para. 90.



amount to a contravention of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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

66. An enforced disappearance is any 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 places such a person outside the protection of the law. Enforced disappearances violate numerous substantive and procedural provisions of the Covenant, including articles 9 and 14, and constitute a particularly aggravated form of arbitrary detention.

67. The source alleges that the authorities violated Mr. Rusesabagina's right to humane treatment when they kidnapped and subsequently imprisoned him, held him incommunicado for three days under circumstances that involved torture, interrogations and physical and mental abuse, and rendered him subject to an enforced disappearance. In addition, the subsequent 260 days of solitary confinement is allegedly a form of torture because of the severe psychological distress and physical toll that it created.

68. According to the Body of Principles, medical care and treatment shall be provided, whenever necessary, free of charge. In the present case, Mr. Rusesabagina is allegedly in extremely poor health and has taken prescribed medication since 1996.

69. The source claims that the Government is not providing adequate medical treatment for Mr. Rusesabagina's condition, as the authorities are not delivering the prescribed medication that has been provided to the prison guards. Mr. Rusesabagina has suffered rapid weight loss since his arrest. He suffers from constant high blood pressure, extreme headaches and dizziness. His health has deteriorated to the point that he is at risk of dying from a stroke. The source argues that the Government's denial of adequate medical treatment amounts to a violation of articles 7 and 10 of the Covenant and article 5 of the Universal Declaration of Human Rights.

70. Due process guarantees include the right of an arrested or detained person to be brought promptly before a judge or other officer authorized to exercise judicial power. The Human Rights Committee interprets the term "promptly" to be within about 48 hours, except in exceptional circumstances. The 2018 Rwandan Law on Counter-terrorism, which reportedly provides for the duration of arrest and provisional detention of a suspect of a terrorist act for 15 days, renewable, allegedly violates the country's obligations under the Covenant.

71. The source claims that the Government detained Mr. Rusesabagina for 18 days before allowing him to see a judge. Eighteen days of detention without being brought before a tribunal is 16 days more than international human rights law permits. The source argues that the treatment of Mr. Rusesabagina and the Government's failure to guarantee his rights under the Universal Declaration of Human Rights and the Covenant amount to an arbitrary deprivation of liberty under category III.

iv. Category V

72. The source alleges that the Government is targeting Mr. Rusesabagina because of his expression of political views and in particular for his association with a group politically opposed to the President, as well as for his criticism of the Government, his work with intergovernmental and civil society organizations and his anti-genocide advocacy.

73. Mr. Rusesabagina has criticized a broad range of human rights violations in Rwanda, including a lack of democracy and unfair elections. He has also challenged cases of arbitrary detention, torture and extrajudicial killings. He has publicly made allegations of war crimes and crimes against humanity. His criticisms are echoed by civil society organizations, government agencies and others.

74. The Government has allegedly threatened Mr. Rusesabagina since 2005. The President has called him a manufactured hero. During a genocide commemoration in 2007, the President called Mr. Rusesabagina a swindler, a gangster and someone who maligns the name of Rwanda. In 2010, leading up to the presidential elections, the harassment by the Government reportedly increased, as Mr. Rusesabagina became more active in his criticism. Mr. Rusesabagina has been active in organizing Rwandans in the diaspora. Fifteen years of these activities have allegedly led to his current kidnapping and detention. Accordingly, the source claims that his detention is arbitrary under category V.

#### *Response from the Government*

75. On 3 June 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 3 August 2021, detailed information about the situation of Mr. Rusesabagina and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Rwanda under international human rights law, and in particular with regard to the treaties ratified by the State. The Working Group called upon the Government to ensure his physical and mental integrity.

76. The Working Group regrets that it received no reply from the Government.

#### **Discussion**

77. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

78. In determining whether a person's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>6</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

79. The Working Group wishes to reaffirm that States have the obligation to respect, protect and fulfil all human rights and fundamental freedoms, including liberty of person, and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights, the Covenant and other applicable international and regional instruments. Consequently, even if the detention is in conformity with national legislation, regulations and practices, the mandate of the Working Group is to assess the circumstances of the detention, including the law itself, to determine whether such detention is also consistent with the relevant provisions of international human rights law.<sup>7</sup>

#### Category I

80. In arguing that Mr. Rusesabagina's transfer to and arrest in Rwanda had no legal basis, the source referred to articles 9 and 13 of the Covenant, to article 6 of the African Charter on Human and Peoples' Rights and to article 68 of the Rwandan Code of Criminal Procedure.

81. It is clear from the facts presented by the source that Mr. Rusesabagina's conveyance from Dubai to Kigali in a private jet was arranged by the Government of Rwanda, as admitted by the Minister of Justice, and was without his knowledge and consent. He was sedated while in the aircraft. The Working Group considers the whole process of getting Mr. Rusesabagina on board and transporting him to a destination he did not intend to go to as constituting an abduction, which also involves a detention.

82. In the present case, Mr. Rusesabagina was not informed of the grounds for his arrest at the time he was taken onto the private jet, which constitutes a violation of the prohibition of arbitrary arrest. When he later realized that the plane was landing in Kigali, he tried to exit

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<sup>6</sup> A/HRC/19/57, para. 68.

<sup>7</sup> See, for example, opinions No. 36/2019, para. 33; No. 42/2019, para. 43; No. 51/2019, para. 53; and No. 56/2019, para. 74.

the plane, thinking he was going to be killed or otherwise harmed. He was then restrained by four Rwandan agents, who entered the plane and tied him up. They dragged him across the tarmac and into a car. He has never been provided with arrest documents, as required under Rwandan law.

83. International law concerning the right to personal liberty allows restrictions to this right in appropriate circumstances. The right however includes the guarantee of being presented with an arrest warrant, in cases that do not involve arrests made in flagrante delicto, to ensure the objectivity and fairness of the arrest. It is also required that the decision on whether the arrest is warranted be taken by an outside, competent, independent and impartial judicial authority. That is procedurally inherent in the right to personal liberty and security and the prohibition of arbitrary deprivation of liberty under articles 3 and 9 of the Universal Declaration of Human Rights.<sup>8</sup>

84. In consequence, the Working Group considers that Rwanda violated Mr. Rusesabagina's rights under article 9 of the Universal Declaration of Human Rights, article 9 of the Covenant and principles 2, 10, and 36 (2) of the Body of Principles.

85. The source claims that Mr. Rusesabagina was in a state of incommunicado detention from 27 and 31 August 2020 and was tortured during that period. It is not known where Mr. Rusesabagina was held during that time, or in what conditions.

86. Holding persons at secret, undisclosed locations and in circumstances undisclosed to the person's family violates their right to be brought promptly before a judge and to challenge the legality of their detention before a court or tribunal, under articles 9 (3) and (4) of the Covenant. Judicial oversight of any detention is a central safeguard for personal liberty and is critical in ensuring that detention has a legitimate basis. In the circumstances attending the incarceration of Mr. Rusesabagina, his disappearance led to him not being presented before a judge and unable to challenge his detention before a court for the first 18 days after his arrest. Consequently, his rights to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant were also violated. Mr. Rusesabagina was placed outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

87. Holding a detainee at a location unknown to their families and lawyers is a deprivation of liberty analogous to an enforced disappearance, which entails a wilful refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention. This lacks any valid legal basis under any circumstance. Enforced disappearances violate numerous substantive and procedural provisions of the Covenant and constitute a particularly aggravated form of arbitrary detention.<sup>9</sup> They are also inherently arbitrary, as they place the person outside the protection of the law.

88. For these reasons, the Working Group finds that Mr. Rusesabagina's detention has no legal basis and is therefore arbitrary under category I.

## Category II

89. Freedom of opinion and expression and of peaceful assembly are fundamental human rights, enshrined in articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the Covenant.<sup>10</sup> The Government must respect, protect and fulfil the right to hold and express opinions, including those that are not in accordance with its official policy, as well as the right to think and manifest personal convictions that can be at odds with its official ideology.<sup>11</sup>

90. Restrictions on the right to freedom of expression must not be overbroad; they must conform to the principle of proportionality, be appropriate to achieving their protective function, be the least intrusive instrument among those that might achieve their protective

<sup>8</sup> Opinion No. 32/2020, para. 33.

<sup>9</sup> Human Rights Committee, general comment No. 35 (2014), para. 17.

<sup>10</sup> *Yong Joo-Kang v. Republic of Korea* (CCPR/C/78/D/878/1999), para. 7.2.

<sup>11</sup> Opinions No. 76/2017, para. 62; No. 88/2017, para. 32; and No. 94/2017, para. 59.

function and be proportionate to the interest protected. It is worth noting that the value placed by the Covenant on uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.<sup>12</sup>

91. The source argues that Mr. Rusesabagina's detention is arbitrary because it resulted from the exercise of his fundamental right to freedom of expression. Since 1994, Mr. Rusesabagina has been supporting survivors and victims of genocide and oppression. He has dedicated his life to speaking about the lessons learned from the Rwandan genocide, addressing journalists, educators, students, policymakers, business leaders and human rights advocates. Through his Hotel Rwanda Rusesabagina Foundation, he aims to generate support for an internationally administered truth and reconciliation commission for Rwanda and the Great Lakes Region. He has criticized the Government and openly discussed its responsibility for alleged war crimes, crimes against humanity and possibly genocide. As a result, he has become the target of public criticism by the Government because of his opinions and beliefs. After a failed assassination attempt in 1996, he left Rwanda to seek asylum in Belgium, where he continued to voice criticism of the Government's policies. In 2009, out of fear for his safety, he was forced to relocate to the United States.

92. Mr. Rusesabagina became a political opponent in the diaspora, serving for a time as the first head of a coalition of political parties, when it was founded in 2018, regularly criticizing the Government for its repression of political dissent and freedom.

93. In this context, the Human Rights Committee has urged Rwanda to refrain from prosecuting "politicians, journalists and human rights defenders as a means of discouraging them from freely expressing their opinions and take immediate action to investigate attacks against them".<sup>13</sup> The Committee against Torture has also issued similar recommendations.<sup>14</sup>

94. The Working Group agrees with the source that Mr. Rusesabagina's public criticisms of the President and the Government are protected under his right to freedom of expression. Whether in the form of a book, speaking on the radio, sharing his opinion online or in interviews, Mr. Rusesabagina has been an outspoken critic that the Government has wanted to silence for many years. Mr. Rusesabagina's public criticisms constitute his exercise of a fundamental right and thus cannot be the basis for a deprivation of liberty.

95. The deprivation of liberty of Mr. Rusesabagina results from his exercise of universally recognized human rights, in particular the right to freedoms of opinion, expression and peaceful assembly. Mr. Rusesabagina's detention can be interpreted as a calculated move to curb his dissent by intimidating him and others associated with his work.

96. The Working Group concludes that Mr. Rusesabagina's detention resulted from the peaceful exercise of his right to freedom of opinion and expression and the right to take part in the conduct of public affairs, contrary to articles 19 and 21 of the Universal Declaration of Human Rights and 19 and 25 of the Covenant. His detention is arbitrary under category II.

### Category III

97. Given its finding that Mr. Rusesabagina's deprivation of liberty is arbitrary under category II, the Working Group wishes to emphasize that, in such circumstances, no trial should take place. However, given that Mr. Rusesabagina is held in detention and considering the allegations made by the source, the Working Group will now examine the reported violations of the right to a fair trial and to the guarantees of due process.

98. The Working Group notes that the alleged violations of international human rights norms and standards in the arrest and detention of Mr. Rusesabagina include those in the minimum standards of due process relating to fair trial and treatment of detainees. The source recalls that Mr. Rusesabagina was arrested without a warrant and was not informed of the reasons for his arrest. This was contrary to articles 9 (2) and 14 (3) (a) of the Covenant, as well as principles 10 and 13 of the Body of Principles.

<sup>12</sup> Human Rights Committee, general comment No. 34, para. 34.

<sup>13</sup> [CCPR/C/RWA/CO/4](#), para. 40.

<sup>14</sup> [CAT/C/RWA/CO/2](#), paras. 52–53.

99. The source claims that Mr. Rusesabagina's rights to a fair trial were violated when he was not brought promptly before a tribunal, was denied the right to a counsel of his own choosing, was not granted prompt consular assistance, was not accorded the presumption of innocence and was subjected to inhumane treatment.

100. The source alleges that Mr. Rusesabagina was never presented with a warrant or other judicial order when he was arrested. While the Government claimed that there was an international arrest warrant for him, it has not produced one. It is alleged that, because Mr. Rusesabagina was arrested without a warrant while one was required by law, the authorities violated his legal rights and his subsequent detention is arbitrary.

101. The arrest in the absence of a warrant or judicial order violated Mr. Rusesabagina's right under article 9 (1) of the Covenant and principle 2 of the Body of Principles, which prohibit arbitrary arrest and require compliance with domestic rules that define such procedures, such as specifying when a warrant is required and permitting access to counsel. Rwandan law reportedly stipulates that an arrest warrant "must be shown to the persons against whom they are issued and such persons shall be given a copy of the warrant".

102. As regards the right to legal representation, the source claims that the Government imposed a public defence lawyer on Mr. Rusesabagina, when it was known that another lawyer had been privately appointed to represent him. Allegedly, this could only have been done to deny Mr. Rusesabagina an independent counsel.

103. The family requested a specific lawyer for Mr. Rusesabagina, who had a letter confirming his representation. Government officials received this letter and, after the lawyer had visited the police station twice, Mr. Rusesabagina had a public defence lawyer appointed for him. In October, over a month after the arrest, the private lawyer was finally permitted to visit Mr. Rusesabagina, although he was only able to represent him in court at the end of November 2020.

104. Legal representation is a core guarantee of the right to a fair trial. Legal assistance should be available at all stages of criminal proceedings, during the pretrial, trial and appellate stages. Denial of access to a lawyer substantially undermines and compromises the capacity to defend oneself from accusations in any judicial proceedings, which can enable further violations of due process guarantees.

105. Principle 18 (3) of the Body of Principles and rule 61 (1) of the Nelson Mandela Rules, stipulate that defendants must have access to legal counsel without delay. Persons deprived of their liberty have the right to legal assistance by a counsel of their choice at any time during their detention, including immediately after apprehension, and must be promptly informed of this right upon apprehension.<sup>15</sup>

106. Article 14 (3) (b) of the Covenant provides that a defendant is entitled to "have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing". Defendants must have access to documents and other evidence, including all materials that the prosecution plans to offer in court against the accused or that could assist the defence. It further requires that defendants "be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications".<sup>16</sup>

107. In addition, the Working Group notes the allegations of the source concerning Mr. Rusesabagina being denied access to consular assistance. In terms of article 36 of the Vienna Convention on Consular Relations, to which both Rwanda and Belgium are parties, consular assistance ought to be provided for those detained in a foreign country. Additionally, principle 16 (2) of the Body of Principles recognizes the right of a detained foreign national to "communicate by appropriate means with a consular post of the diplomatic mission of the State of which he is a national" and rule 62 of the Nelson Mandela Rules provides that: "Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate

<sup>15</sup> See also United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

<sup>16</sup> Human Rights Committee, general comment No. 32 (2007), paras 33–34.

with the diplomatic and consular representatives of the State to which they belong.” Denial of consular rights is alleged to be a deprivation of the right to a fair trial.

108. Mr. Rusesabagina has been a Belgian citizen since 1999. However, it appears that Rwanda did not inform the Belgian authorities of his detention until several days after his arrest, nor did Rwanda promptly inform Mr. Rusesabagina of his right to communicate with a Belgian consular officer, or facilitate such communication.

109. Concerning the presumption of innocence, the source recalls that on 6 September 2020, on national television, the President reportedly accused Mr. Rusesabagina of leading a terrorist organization that had killed Rwandans and that he had the blood of his compatriots on his hands. He also allegedly said that Mr. Rusesabagina had killed people in the southwest of the country. On 14 September 2020, a week after the President’s broadcast, a Rwandan court reportedly charged Mr. Rusesabagina. Then, on 17 February 2020, the first day of Mr. Rusesabagina’s trial, the President supposedly made similar comments.

110. Under articles 14 (2) of the Covenant and 11 (1) of the Universal Declaration of Human Rights and principle 36 of the Body of Principles, everyone has the right to be presumed innocent until proved guilty. This requires that to establish the guilt of the accused, the burden of proof lies with the prosecutor and public authorities must refrain from prejudging the outcome of the proceedings, make any official statements, or use conclusive language that would portray an accused person as guilty.

111. According to the source, from 28 to 31 August 2020, Mr. Rusesabagina was held in a facility described as a “slaughterhouse”. During the morning of 28 August, Mr. Rusesabagina was allegedly tortured by a Government agent, wearing military boots, who stepped on his neck while affirming “we know how to torture”. While at the “slaughterhouse”, Mr. Rusesabagina was restrained, blindfolded and held in solitary confinement. He was deprived of food and at times of sleep. A 66-year-old cancer survivor with chronic medical issues, he was kept tied up, unable to stand up or walk, lacking strength and suffocating.

112. According to the information received, also while held at the “slaughterhouse”, Mr. Rusesabagina’s blindfold was removed once, for an interrogation by the Prosecutor General of Rwanda and the Secretary-General of the Rwanda Investigation Bureau. They allegedly told Mr. Rusesabagina that they needed an acknowledgement falsely implicating a foreign leader in the charges that he was going to be accused of, including receiving money for a terrorist organization. They allegedly offered to release him if he accepted the accusation. Mr. Rusesabagina refused. He was then transferred to the Remera police station, where he was held until 17 September, and then transferred to Nyarugenge central prison in Mageragere.

113. International human rights law requires that detainees be protected from any practices that violate their right to be free from any act that could cause severe pain or suffering, whether physical or mental, and which is inflicted intentionally on a person. The right to freedom from torture and other ill-treatment or punishment is absolute, it applies in all circumstances and it may never be restricted, including in times of war or states of emergency. No exceptional circumstances whatsoever, including threats of terrorism or other violent crime, may be invoked to justify torture or other ill-treatment. Such a prohibition applies irrespective of the offence allegedly committed by the accused person.

114. Article 10 (1) of the Covenant and principle 1 of the Body of Principles state that persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Article 7 of the Covenant, article 5 of the Universal Declaration of Human Rights, article 14 of the Rwandan Constitution and principle 6 of the Body of Principles contain a prohibition on torture, cruel or inhuman treatment. Article 14 (3) (g) of the Covenant further prohibits using methods of coercion or duress, including torture and ill-treatment, to extract and use incriminatory confessions. The source claims that, in the present case, the violations further amount to a contravention of the Convention against Torture. The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

115. The source alleges that the authorities violated Mr. Rusesabagina’s right to humane treatment when they kidnapped and subsequently imprisoned him, held him incommunicado

for three days under circumstances that involved torture, interrogations and physical and mental abuse, and rendered him subject to an enforced disappearance. In addition, the subsequent 260 days of solitary confinement, is allegedly a form of torture because of the severe psychological distress and physical toll that it created.

116. It is alleged that government authorities violated the right of Mr. Rusesabagina to be free from torture, cruel, inhuman or degrading treatment or punishment by their continued denial of proper medical care, including blood pressure medication, despite Mr. Rusesabagina's pre-existing and serious medical conditions.

117. According to the Body of Principles, medical care and treatment shall be provided, whenever necessary, free of charge. In the present case, Mr. Rusesabagina is allegedly in extremely poor health and has taken prescribed medication since 1996.

118. The source claims that the Government is not providing adequate medical treatment for Mr. Rusesabagina's condition, as the authorities are not delivering the prescribed medication, which the Belgian Embassy reportedly provided to the prison authorities. Mr. Rusesabagina has suffered rapid weight loss since his arrest. He suffers from constant high blood pressure, extreme headaches and dizziness. His health has deteriorated to the point that he is at risk of dying from a stroke. The source argues that the Government's denial of adequate medical treatment amounts to a violation of articles 7 and 10 of the Covenant and article 5 of the Universal Declaration of Human Rights. None of these allegations have been rebutted by the Government. The Working Group thus finds that the detention was arbitrary under category III.

#### Category V

119. The source alleges that the Government is targeting Mr. Rusesabagina because of his expression of political views and in particular for his association with a group politically opposed to the President, his widely published criticism of the Government, his work with intergovernmental and civil society organizations and his anti-genocide advocacy. Mr. Rusesabagina has supported calls for regime change and many opposition groups look to him as a leader.

120. It is clear on the facts that Mr. Rusesabagina has been targeted by the Government on account of his work as a human rights defender, because of his criticism of the Government on a broad range of human rights issues, including unfair elections and a lack of democracy, freedom of speech, freedom of association and freedom of the press. He has also challenged cases of arbitrary detention, torture and extrajudicial killings. He has publicly made allegations of war crimes and crimes against humanity since before the 1994 genocide and especially since 1998. Mr. Rusesabagina's criticisms are echoed on a regular basis by civil society organizations and government agencies, among others. As Mr. Rusesabagina has been targeted on account of his activism as a human rights defender and his political opposition to the Government, his detention is thus discriminatory, contrary to articles 2 (1) and 26 of the Covenant and 2 and 7 of the Universal Declaration of Human Rights, and is considered arbitrary under category V.

#### Concluding remarks

121. The Working Group has been informed that on 20 September 2021, a court in Kigali rendered a guilty verdict on eight of nine charges against Mr. Rusesabagina and sentenced him to imprisonment for 25 years. Allegedly, the violation of his guarantees of due process, necessary for the defence, continued during the trial, hearings and sentencing. For example, it is reported that the conviction relied upon a confession extracted under duress. Mr. Rusesabagina is now 67 years old and in poor health, so this sentence is allegedly tantamount to a death sentence.

122. The source stresses that the most urgent concern remains Mr. Rusesabagina's health, which requires his immediate humanitarian release. He suffers daily symptoms linked to the deprivation of his prescription heart medication and although he is in remission from cancer, he has not received a cancer screening since his incarceration began. He has recently suffered a swollen arm, which may be a result of a thrombosis. The European Parliament adopted a resolution on 7 October 2021 calling for Mr. Rusesabagina's immediate release.

123. The Working Group wishes to stress that every detainee has the right to the highest attainable standard of physical and mental health. That right extends not only to timely and appropriate health care, but also to underlying determinants of health, such as adequate food, water and sanitation. Moreover, sick prisoners whose health requires specialist treatment should be transferred to specialized institutions or to civil hospitals. The failure to provide access to adequate medical care violates the right to health and risks further human right violations, such as to the right to life.

124. Finally, the Working Group wishes to make it clear that the findings in the present opinion are without prejudice to the allegations that Mr. Rusesabagina was deprived of his liberty in the context of a flight that made a connection layover in the United Arab Emirates.

### **Disposition**

125. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Paul Rusesabagina, being in contravention of articles 5, 6, 8, 9 and 11 of the Universal Declaration of Human Rights and articles 2, 7, 9, 10, 14, 16, 19 and 21 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

126. The Working Group requests the Government of Rwanda to take the steps necessary to remedy the situation of Mr. Rusesabagina without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

127. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Rusesabagina immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate unconditional release of Mr. Rusesabagina.

128. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Rusesabagina and to take appropriate measures against those responsible for the violation of his rights.

129. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

130. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

### **Follow-up procedure**

131. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Rusesabagina has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Rusesabagina;
- (c) Whether an investigation has been conducted into the violation of Mr. Rusesabagina's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Rwanda with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

132. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and



whether further technical assistance is required, for example through a visit by the Working Group.

133. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

134. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>17</sup>

*[Adopted on 19 November 2021]*

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<sup>17</sup> See Human Rights Council resolution 42/22, paras. 3 and 7.