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RWANDA: ENSURE REMEDY AFTER FAIR TRIAL VIOLATIONS IN PAUL RUSESABAGINA CASE

Paul Rusesabagina was found guilty today on terrorism charges and sentenced to 25 years in prison by the International and Cross-Border Crimes Chamber of Rwanda's High Court. The trial was marred by numerous violations of his fair trial rights, including the unlawful circumstances of his arrest and transfer to Kigali, his enforced disappearance and incommunicado detention, among other irregularities before and during his trial. Amnesty International independently monitored the trial which was livestreamed online. Amnesty International's monitoring of the pre-trial period and the case focused on procedural adherence to international fair trial standards.

During the genocide, Paul Rusesabagina was instrumental in protecting the lives of around 1200 people who sought refuge at the Hotel des Milles Collines in Kigali. After leaving Rwanda in 1996, he became increasingly critical of the Rwandan Patriotic Front (RPF) government and founded an opposition political party called the Party of Democracy in Rwanda (PDR-Ihumure) in 2006. In 2018, he co-founded the Rwanda Movement for Democratic Change (MRCD), a coalition of opposition groups of which he was president at the time of his arrest.

Paul Rusesabagina and 20 other individuals were tried in connection to armed attacks in southern Rwanda attributed to the armed wing of the MRCD, the National Liberation Forces (FLN), in 2018 and 2019 in which nine people were killed. Rusesabagina was charged with nine terrorism-related charges: formation of an irregular armed group, membership of a terrorist group, financing terrorism, murder as an act of terrorism, abduction as an act of terrorism, armed robbery as an act of terrorism, arson as an act of terrorism, attempted murder as an act of terrorism and assault and battery as an act of terrorism.

By failing to uphold fair trial standards in this case, the Rwandan judicial authorities have done a disservice to the victims and survivors of the armed attacks who deserve justice.

UNLAWFUL TRANSFER TO RWANDA

In the early hours of 28 August 2020, Paul Rusesabagina boarded a private jet in Dubai with Constantin Niyomwungere, believing he was going on a business trip to Burundi, but instead arrived in Rwanda. On 31 August, his arrest was announced by the Rwanda Investigation Bureau (RIB) and he was presented to the media. Details about his transfer and arrest emerged gradually and were often contradictory. In February 2021, the Minister of Justice confirmed, however, that the Government of Rwanda "facilitated the journey that led to Paul Rusesabagina's arrest in Kigali in August 2020."¹

On 10 March, the court dismissed Rusesabagina's complaint he had been abducted. The judges ruled that no force had been used to coerce Rusesabagina to travel to Rwanda and that having been tricked into travelling to Rwanda, rather than kidnapped, the trial could continue. The prosecution also confirmed that he had been tricked into travelling to Rwanda and differentiated this from kidnap.

Regardless of whether coercive force was used, it is clear that Rusesabagina boarded the plane to Rwanda under false pretences. From the moment he boarded the plane, he was deprived of his liberty by actors working on behalf of the Government of Rwanda in an operation that was facilitated and funded by the Government of Rwanda, and unlawfully transferred to Rwanda. Under international human rights law, anyone who is arrested shall be informed, at the time of arrest, of the reasons for their arrest and shall be promptly informed of any charges against them. Under international law, the transfer of people from one country to another without any kind of judicial or administrative process, so called rendition, is illegal.

The court should therefore have recognized the fair trial violation constituted by the rendition and should have sought to remedy the violation, rather than dismissing the complaint brought by Rusesabagina against the manner in which he was brought before the courts of Rwanda.

¹ https://twitter.com/Rwanda_Justice/status/1365375804423561216?s=20

ENFORCED DISAPPEARANCE AND INCOMMUNICADO DETENTION

Paul Rusesabagina was presented to the media by the RIB in Kigali on 31 August 2020. Before then, his family reported that they had last spoken to him on 27 August 2020 after he arrived in Dubai from the United States and were unaware of his whereabouts. The prosecution and others have stated that he was arrested on arrival in Rwanda.

Between his last communication with his family on the night of 27 August 2020 and the presentation to the media on 31 August 2020, Rusesabagina's whereabouts and fate were unknown. During this four-day period he was therefore subjected to an enforced disappearance. Rusesabagina's lawyers raised the illegal circumstances of his arrest and transfer and conditions of detention, among other issues, in a submission to the court in January 2021 and requested a remedy.

Between his presentation to the media on 31 August and an interview with The East African newspaper conducted in custody on 3 September 2020, Rusesabagina was held in incommunicado detention. In that interview Rusesabagina said that he had been offered an option to choose his defence team – it is not clear if he had access to legal counsel by that time. However, he was questioned by RIB on 31 August without a lawyer present. The first consular and family contact he had was when he was visited by the Belgian deputy ambassador on 7 September and allowed to speak to his family by phone on 8 September.

ALLEGATIONS OF TORTURE

In May 2021, Rusesabagina's international legal team submitted an urgent appeal to the UN Special Rapporteur on Torture detailing new allegations of torture during the period he was forcibly disappeared when he first arrived in Rwanda. The complaint states that between 28 and 31 August 2020, "Mr. Rusesabagina was tortured by at least one agent of the Rwanda Investigation Bureau (RIB), questioned by high-ranking government officials during and after the use of torture, and subjected to other forms of inhumane and degrading treatment." An affidavit from one of his lawyers and a copy of lawyer's conversation with Rusesabagina – in which he described an agent in military boots stepping on his neck, being tied up and blindfolded – were also submitted.

INITIAL DENIAL OF A FREE CHOICE OF LAWYER

After his arrest was announced and during the key first six weeks of the investigation and pre-trial period, Rusesabagina was initially denied access to the lawyer hired by his family, choosing instead two lawyers from a list of pro-bono advocates provided by the Rwanda Bar Association. Nine days after Rusesabagina boarded the plane in UAE, on 5 September 2020, David Rugaza announced at a press conference that Rusesabagina had chosen him as his legal counsel. Gatera Gashabana, the Rwandan lawyer appointed by Rusesabagina's family, repeatedly sought access but was not allowed to meet with Rusesabagina until October.

In November 2020, the two pro-bono lawyers, David Rugaza and Emeline Nyembo, were recalled by the RBA and Rusesabagina began to be represented by Gashabana. He was represented by Gashabana and Felix Rudakemwa during the trial. The foreign lawyers hired by the family were not granted standing.

INTERCEPTION OF COMMUNICATIONS

From December 2020, Rusesabagina's lawyers complained about the confiscation of privileged and confidential legal documents from Rusesabagina in prison. At a hearing on 5 March, the court ruled that documents in relation to the case should not be confiscated by the prison authorities, but that documents not related to the case should be inventoried by the prison authorities before reaching Rusesabagina. Despite this ruling, Rusesabagina's lawyers report that documents marked privileged and confidential were confiscated during a visit on 29 April 2021.

In July 2021, it was revealed that the phone of Paul Rusesabagina's daughter Carine Kanimba was infected with the NSO Group's Pegasus spyware. Rwanda is believed to be an NSO Group client and recent revelations by the Pegasus Project indicate that more than 3,500 phone numbers, including those of activists, journalists, political opponents, foreign politicians, and diplomats of interests to Rwanda had been selected as potential targets of Pegasus.

FAIR TRIAL VIOLATIONS

Shortly before the start of the trial in February, CNN asked President Kagame whether Rusesabagina would receive a fair trial. The president responded: "Rusesabagina, a citizen of this country, who has done something terribly wrong, committed a crime [...] He certainly did something wrong. [...] It is important that there is a fair trial." President Kagame

undermined Rusesabagina's right to a fair trial by going against the key principle of the presumption of innocence until proven guilty and making a statement likely to influence the outcome of the trial.

On 5 March 2021, Paul Rusesabagina and his defence team objected to the court hearing evidence from Constantin Niyomwungere on the grounds that he had not appeared on the list of witnesses and that Rusesabagina had lodged legal complaints against him in Belgium and at the African Court on Human and Peoples' Rights. The court decided to hear Niyomwungere not as a witness but as someone simply providing information to the court. Although the judges asked some questions, he was not cross-examined by the prosecution or the defence.

At the next hearing, on 12 March, after his request to adjourn the trial for six months to allow him to prepare his defence was refused, Paul Rusesabagina announced that he would no longer participate in hearings as it was clear his fair trial rights would not be respected.

The presiding judges had many opportunities today and throughout the trial to ensure appropriate, timely and effective remedies for the violations to Paul Rusesabagina's right to a fair trial. They have not done so. Amnesty International calls on the Rwandan judicial authorities to recognize violations of Paul Rusesabagina's right to a fair trial and remedy those during appeal proceedings or a retrial.