

2009-2010
NIAGARA INTERNATIONAL MOOT COURT COMPETITION

**A Dispute Arising Under the
Statute of the International Court of Justice**

February 2010

**THE GOVERNMENT OF CANADA
(Applicant)**

v.

**THE GOVERNMENT OF THE UNITED STATES
(Respondent)**

MEMORIAL OF THE APPLICANT

TEAM#: 2010-02A

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Treaty on Extradition, U.S.-Can., July 9, 1974, 27 U.S.T. 983.....	<i>passim</i>
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United Nations High Commissioner for Refugees, <i>The Scope and Content of the Principle of Non-refoulement in Refugee Protection (Opinion) [Global Consultations on International Protection/Second Track]</i> (June 20, 2001).....	13
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United Nations International Covenant on Civil and Political Rights, Mar. 23, 1976, 1996 U.S.T. 521, 999 U.N.T.S. 171.....*passim*

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SECONDARY AUTHORITY

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JURISDICTIONAL STATEMENT

The parties to this dispute, Canada and the United States of America, hereby submit this case for a decision on the merits pursuant to Article 36(1) of the Statute of the International Court of Justice.¹ The parties stipulate to the facts and questions presented in the *Compromis Between Canada (Applicant) and The United States of America (Respondent) to Submit to the International Court of Justice Their Differences Regarding Emanuel Ruguganda*, dated October 24, 2009. The parties agree to stay any relevant action pending this Court's decision and to comply with the Court's decision in good faith.

QUESTIONS PRESENTED

1. Whether the “luring” of Emanuel Rutaganda from Canada violated Canada’s territorial sovereignty, the Canada-U.S. Extradition Treaty, the January 11, 1988 Exchange of Letters Between Canada and the United States on Transborder Abduction, and/or the internationally protected human rights of Emanuel Rutaganda guaranteed by the International Covenant on Civil and Political Rights and customary international law?

2. Whether the rendition of Emanuel Rutaganda from the U.S. to Rwanda for trial would violate international law because (1) neither the U.S. nor Canada have an extradition treaty with Rwanda; (2) as a child soldier Mr. Rutaganda lacked criminal culpability; and/or (3) the courts of Rwanda are not capable of providing Mr. Rutaganda a fair trial?

¹ Statute of the International Court of Justice, art. 36(1), June 26, 1945, 59 Stat. 1055 [hereinafter *ICJ Statute*].

STATEMENT OF FACTS

In 1994, a horrific internal conflict broke out in Rwanda between the Hutu and Tutsi ethnic groups² Extremists supporting the Hutu-run government waged war on the Tutsis, resulting in a genocide that claimed hundreds of thousands of lives.³ The epicenter of the conflict was in Kigali, the Rwandan capital.⁴ During and immediately prior to the genocide, the *Interahamwe* militia, which was closely associated with the government, forcibly recruited children to serve as child soldiers. Some reports indicate that child soldiers, many of whom were involved in atrocities during the genocide, made up approximately 20% of the *Interahamwe* forces⁵. Following the genocide, the Tutsis took control of the government and forced much of the Hutu community out of the country.⁶ Although most Rwandan refugees fled to neighboring countries, some left the region entirely in order to build new lives and escape the war-torn region.⁷

Emanuel Rutaganda [Mr. Rutaganda] was born in Canada.⁸ When he was young he and his parents moved to Rwanda and when Mr. Rutaganda was just 14 years old, the *Interhamwe*

² See Frontline, “The Triumph of Evil: 100 Days of Slaughter”, *available at* <http://www.pbs.org/wgbh/pages/frontline/shows/evil/etc/slaughter.html> (last visited Jan. 22, 2010).

³ *See id.*

⁴ *See id.*

⁵ See Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2004 - Rwanda*, 2004, *available at* <http://www.unhcr.org/refworld/docid/49880632c.html>.

⁶ See Howard W. French, *Hutu Refugees Trapped in Zaire Between Tutsi and the Crocodiles*, N.Y. TIMES MARCH 13, 1997, at A1.

⁷ *See Compromis* ¶ 3.

⁸ *Id.* at ¶ 2.

recruited him into their militia to fight as a child soldier.⁹ He was kept as a child soldier until late 1994 when he and his mother, Marie Rutaganda, were able to escape to Canada.¹⁰

The Rutagandas were deeply affected by the genocide, by the premature death of Mr. Rutaganda's father¹¹ and by Mr. Rutaganda's experiences as a child soldier.¹² However, the Rutagandas were able to put these traumatic experiences behind them and build a stable and successful life in Canada. Canada was the logical choice for the Rutagandas' to seek refuge in because Mr. Rutaganda is a Canadian citizen by birth and his mother previously lived in and attended school there.¹³ Mr. Rutaganda eventually opened a business, was married, and had three children, who are currently 3, 5, and 7 years old.¹⁴ Mr. Rutaganda has settled into his new life, and in the 16 years since he left Rwanda, he has been a productive and law abiding citizen of Canada.¹⁵ The Canadian government believes that the case of Mr. Rutaganda is a verification of Canada's policy against prosecuting child soldiers and in favor of providing them an opportunity to reintegrate into society.¹⁶

In 2001, the Rwandan Tutsi government issued an indictment for Mr. Rutaganda alleging that he had participated in an incident known as the Boutaire High School Massacre during the

⁹ *Id.* at ¶ 3; *Compromis Correction*.

¹⁰ *Id.* at ¶¶ 2, 3.

¹¹ *Id.* at ¶ 2.

¹² *Compromis Correction*.

¹³ *Id.* at ¶ 2.

¹⁴ *Id.* at ¶ 3.

¹⁵ *Id.*

¹⁶ *See id.* at ¶ 5.

time he was a child soldier in Rwanda.¹⁷ In the intervening years the Rwandan government has repeatedly requested Mr. Rutaganda's extradition from Canada.¹⁸ However, Canada has consistently refused these requests, and has maintained that granting Rwanda's request would violate Mr. Rutaganda's human rights under international law.¹⁹ Despite Canada's objections, Rwanda requested that Interpol issue a Red Notice for Mr. Rutaganda's arrest.²⁰ This request was granted but the Notice misspelled Mr. Rutaganda's as "Rutagonda" and described his eye color as "black".²¹

Over seven years later a U.S. television docu-drama entitled "The Wanted" aired a segment on Mr. Rutaganda's case. This segment presented a sensationalized narrative concerning Mr. Rutaganda's indictment in Rwanda and the fact that he was currently living in Canada.²² This television segment generated significant public outcry, which in turn led the U.S. Inter-Agency Working Group on Human Rights Violators to focus on Mr. Rutaganda's case.²³

Sixteen years after the Rwandan genocide, law enforcement officials in the U.S. began to develop a scheme to lure Mr. Rutaganda out of his home country due to crimes he allegedly committed when he was 14 years old.²⁴ In July of 2009 Marie Rutaganda went to the Detroit

¹⁷ *Id.* at ¶ 4.

¹⁸ *Id.* at ¶ 5.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at ¶ 7.

²³ *Id.*

²⁴ *Id.*

Clinic for a specialized medical procedure.²⁵ Agents for the U.S. Immigration and Customs Enforcement [ICE] were alerted to Ms. Rutaganda's presence in the U.S. and exploited an opportunity to lure Mr. Rutaganda into visiting her.²⁶ Taking advantage of Ms. Rutaganda's health condition, and the close relationship between Mr. Rutaganda and his mother, ICE sent deceptive emails from the Detroit Clinic's computers to Rutaganda's blackberry, deliberately crafted to make Mr. Rutaganda believe he would never see his mother alive again if he did not quickly visit her in the Detroit Clinic.²⁷ The Canadian government had no knowledge of any of these actions and did not consent to them at any time.²⁸

The scheme implemented by ICE was successful in luring Mr. Rutaganda out of Canada. As he arrived at the Detroit Clinic in search of his mother, ICE agents immediately arrested and detained him on the purported basis of an illegal entry into the U.S.²⁹ No explanation was provided as to why Mr. Rutaganda had been lured into the U.S. in order to arrest him for entering illegally and soon afterwards the U.S. government announced its decision.³⁰ to render Mr. Rutaganda to Rwanda.³¹

The immigration proceedings and judicial appeals related to Rutaganda's removal case in the U.S. moved along at an extremely rapid pace. In less than two months after Mr. Rutaganda

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See id.* at ¶ 11.

²⁹ *Id.* at ¶ 10.

³⁰ *See id.*

³¹ *Id.*

was arrested, and had exhausted all of his appeals up to and including a denial of *certiorari* from the U.S. Supreme Court³² The Government of Canada has protested the U.S. government's intention to render Mr. Rutaganda to Rwanda at every level and this dispute has directly impacted Canada-U.S. foreign relations.³³ In order to bring closure to this issue, the parties have submitted this case under Article 36(1) of the Statute of the International Court of Justice.³⁴

³² *Id.*

³³ *See id.* at ¶ 12.

³⁴ *Id.* at; ICJ Statute at 36(1).

SUMMARY OF ARGUMENT

The United States breached the Canada-U.S. Extradition Treaty by luring Emanuel Rutaganda out of Canada without the Canadian government's consent or recourse to lawful procedures. By prescribing its law enforcement policies extraterritorially without lawful authority, the U.S. also violated Canada's territorial sovereignty and Mr. Rutaganda's human rights. Because neither Canada nor the U.S. has an extradition treaty with Rwanda, the U.S. would further violate international law by rendering Mr. Rutaganda to Rwanda instead of returning him to Canada. Such rendition, if effected, would also violate the customary international norm of *non-refoulement* and Mr. Rutaganda's internationally protected right to receive a fair and expeditious trial. For all of these reasons the U.S. is obligated to refrain from rendering Mr. Rutaganda to Rwanda and to repatriate him to Canada.

ARGUMENT

I. THE U.S. BREACHED THE CANADA-U.S. EXTRADITION TREATY, VIOLATED CANADA'S TERRITORIAL SOVEREIGNTY, AND ALSO VIOLATED RUTAGANDA'S HUMAN RIGHTS.

In order to prescribe its laws and policies extraterritorially, the U.S. government exploited Marie Rutaganda's health problems and lured Mr. Rutaganda out of his home country so he could be arrested and rendered to Rwanda. These actions violated the Canada-U.S. Extradition Treaty,³⁵ Canada's territorial sovereignty, and Mr. Rutaganda's basic human rights.

³⁵ Treaty on Extradition, U.S.-Can., July 9, 1974, 27 U.S.T. 983 [hereinafter Extradition Treaty].

A. The U.S. Violated the Extradition Treaty by Seeking to Gain Custody of Mr. Rutaganda Outside the Treaty’s Provisions.

The Canada-U.S. Extradition Treaty [Treaty] was adopted “to make more effective the cooperation of the two countries in the repression of crime,”³⁶ and its provisions generally provide for liberal extradition relations.³⁷ However, the Treaty prohibits extradition in certain circumstances and requires each government to follow explicit procedures in every case.³⁸ Treaties are to be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms” together with “subsequent agreement[s] between the parties” or “subsequent practice[s] in the application of the treaty.”³⁹ Given the express terms of the Treaty and its surrounding context, it is clear that the signatory States may not lawfully circumvent the Treaty’s provisions without some outside grant of authority.⁴⁰

1. The treaty is the exclusive legal means by which extradition may be requested or granted.

The Treaty’s explicit provisions, together with the subsequent diplomatic exchanges and general practices of Canada and the U.S., confirm that the procedures set forth in the Treaty are the exclusive means by which one signatory may legally gain custody over persons within the jurisdiction of the other. First, the Treaty provides that Canada and the U.S. agree to extradite persons charged with offenses committed “within the territory of the other” or where “the laws

³⁶ *Id.* at preamble.

³⁷ *See id.* at art. 1.

³⁸ *See id.* at arts. 4-17.

³⁹ Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].

⁴⁰ *See id.* at art. 32(b).

of the requested State provide for jurisdiction over such an offense committed in similar circumstances.”⁴¹ Here, the alleged crimes were neither committed in the U.S. nor does Canada have jurisdiction to prosecute them.

Second, the Treaty provides that decisions whether to grant or deny extradition requests “shall be made in accordance with the law of the requested State”⁴² and “shall be granted only if the evidence be found sufficient, according to the laws of the place where the person sought shall be found” that the person sought should be extradited.⁴³ By circumventing these requirements, the U.S. violated the Treaty and its goal of “mak[ing] more effective the cooperation between the two countries in the repression of crime.”⁴⁴ Finally, the Treaty prohibits extradition under certain conditions and provides legal protections for persons whose extradition is requested. Specifically, extradition may not be granted where the perpetrator was under 18 years old at the time of the alleged offense⁴⁵ or where an extradition request is based on an offense “of a political character.”⁴⁶

Thus, even if the U.S. complied with the Treaty’s procedural requirements,⁴⁷ Mr. Rutaganda could not be lawfully extradited because he was under 18 years old at the time of the offenses he is charged with and because Canada might have adjudged the crimes at issue to be of

⁴¹ Extradition Treaty arts.1, 3(3).

⁴² *Id.* at art. 8.

⁴³ *Id.* at art. 10.

⁴⁴ *Id.* at preamble.

⁴⁵ *Id.* at art. 5.

⁴⁶ *Id.* at art. 4(1)(iii).

⁴⁷ *Id.* at arts. 8, 10.

a political character.⁴⁸ By preventing Canada from exercising its rights under the Treaty to consider these issues and exercise its discretion, the U.S. violated the Treaty's object and purpose as well as its plain terms.

2. Subsequent agreements and state practices further demonstrate that the Treaty's provisions may not be legally circumvented.

State practice--as evidenced by the statements of government officials, diplomatic agreements and the general practices of both Canada and the U.S.--further demonstrates a mutual understanding that the Treaty may not be read to include an implied right to abduct or lure persons outside of the Treaty's express terms. Canada has "consistently maintained the position in diplomatic correspondence and in oral representations that improperly seeking to acquire persons from Canada to the United States constitutes a breach of the Treaty."⁴⁹ The January 11, 1988 Exchange of Letters Between Canada and the U.S. on Transborder Abduction [Exchange of Letters] provides that "Canada and the United States agree to cooperate to deter such transborder abductions."⁵⁰ These letters amended the Treaty in response to a pattern of private bounty hunters taking custody of Canadian nationals through means prohibited under the Treaty.⁵¹ In response to protests from the Canadian government, the U.S. has extradited persons who have improperly taken custody over Canadian nationals under the crime of kidnapping.⁵²

⁴⁸ See Canada Extradition Act, S.C. 1999, ch. 18, art 46(1)(c).

⁴⁹ Brief for The Government of Canada as Amici Curiae Supporting Respondent, *United States v. Alvarez-Machain*, 504 U.S. 655 (1992) (No. 91-712) at 6.

⁵⁰ Letter from The Right Honorable Joe Clark, P.C., M.P., Secretary of State For External Affairs of Canada, Ottawa to Hon. George P. Schultz, Secretary of State of the U.S. (Jan. 11, 1988).

⁵¹ See, e.g., *Kear v. Hilton*, 699 F.2d 181 (4th Cir. 1983); *Collier v. Vacaro*, 51 F.2d 17 (4th Cir. 1931).

⁵² See, e.g., *Kear*, 699 F.2d 181.

A common sense reading of the Treaty and the Exchange of Letters, along with subsequent agreements and state practices demonstrate that the Treaty is a binding instrument which provides the *exclusive* means by which extradition may be sought or granted as between Canada and the U.S. By seeking to avoid its requirements and gain custody of Mr. Rutaganda by way of a deceptive lure, the U.S. breached its Treaty obligations⁵³ and is therefore obligated to repatriate Mr. Rutaganda to Canada.

B. The U.S. Violated Canada’s Sovereignty by Prescribing its Laws Against a Canadian National Within the Territory of Canada.

Territorial sovereignty is a bedrock principle of international law and its protections require a concomitant duty to refrain from activities which impinge on the domestic affairs of other States.⁵⁴ Because States “may not exercise [their] powers in any form in the territory of another State,”⁵⁵ an exercise of law enforcement which has direct effects within the territory of another state against a national of that state is prohibited in the absence of consent or some other lawful grant of authority. In reviewing the U.S. *Alvarez-Machain*⁵⁶ decision, the Inter-American Juridicial Committee found that the abduction of a Mexican national from Mexico by the U.S. government “was a serious violation of public international law since it was a transgression of the territorial sovereignty of Mexico.”⁵⁷ This finding is applicable here because the luring of Mr.

⁵³ See VCLT art. 26.

⁵⁴ See UN Charter arts. 2.1, 2.7. See also *Corfu Channels*, (U.K. v. Alb.), 1949 I.C.J. 224 (Dec. 15); *American Banana v. United Fruit Co.*, 213 U.S. 347 (1909).

⁵⁵ *The Case of the S.S. "Lotus"*, 1927 P.C.I.J. (ser. A) No. 10 at 18 (Sept. 7).

⁵⁶ *United States v. Alvarez-Machain*, 504 U.S. 655 (1992).

⁵⁷ Legal Opinion on the Decision of the Supreme Court of the United States of America, OAS Perm. Council, OEA/ser. G/CP/doc. 2302/92 (Sept. 1, 1992) [hereinafter OAS Opinion on *Alvarez-Machain*].

Rutaganda into the U.S. is tantamount to abduction by deceit. By sending deceitful emails into Canada, directed at a Canadian national, the U.S. violated Canada's territorial sovereignty to the same degree as if Mr. Rutaganda had been abducted by force.

1. Transnational luring is prohibited under international law because it impinges on territorial sovereignty.

Luring as a law enforcement mechanism illegally encroaches on the territorial sovereignty of States in which its effects are felt. Several international tribunals have expressed a concern that luring schemes deprive States of their sovereign right to weigh extradition requests and they have implied that the illegality of transborder abductions should apply to abductions by deceit. In *Prosecutor v. Dokmanovic*, the International Criminal Tribunal for the Former Yugoslavia [ICTY] stated that "there may be a question of whether . . . sovereignty would be violated if the accused was fraudulently lured and subsequently arrested by another state."⁵⁸ Although the ICTY in that case held that the UN Transitional Administration for Eastern Slavonia [UNTAES] did not violate the sovereignty of the Former Republic of Yugoslavia [FRY] by luring an individual out of its territory in order to arrest him, the tribunal noted that there was a distinction between those facts, where the UNTAES acted pursuant to a legitimate grant of extraterritorial authority under Chapter VII of the UN Charter, and a case involving two sovereign States which are obligated to respect each other's sovereignty with no authority to conduct law enforcement activities in each others' territory.⁵⁹ Similarly, the European Court of Human Rights [ECHR] has stated that law enforcement activities conducted by one state in the

⁵⁸ *Prosecutor v. Dokmanovic*, Case No. IT-95-13a-PT, Decision on the Motion for Release by the Accused Slavko Dokmanovic, ¶ 77 (Oct. 22, 1997).

⁵⁹ *Id.*

territory of another “involve[s] the State’s responsibility vis-à-vis the other State.”⁶⁰ By engaging in law enforcement activities which were intended to and did have direct effects in the territory of Canada, the U.S. failed to adhere to its responsibilities vis-à-vis Canada and has improperly infringed on Canada’s territorial sovereignty.

2. The universality principle does not apply to this case.

Universal jurisdiction trumps principles of state sovereignty and territoriality where the crime at issue is of universal concern.⁶¹ These crimes include genocide and war crimes, neither of which is applicable here. Although the actions of ICE and the U.S. Inter-Agency Working group were conducted pursuant to domestic law aimed at punishing perpetrators of genocide,⁶² the crimes which Mr. Rutaganda have been accused of do not fall within the definition of genocide. International law views children who are recruited to be soldiers as victims of grave human rights abuses and not as criminals.⁶³ Furthermore, Mr. Rutaganda has been charged with murder,⁶⁴ not with genocide or war crimes, and murder is not a crime for which universal jurisdiction is available regardless of the age of the alleged perpetrator.

The U.S. has no authority under the principle of universal jurisdiction or any other international law norm to lure Canadian nationals out of Canada for the purpose of furthering U.S. law enforcement policies. The luring activities conducted by U.S. agents in this case were

⁶⁰ *Stocké v. Federal Republic of Germany*, App. No. 11755/85 Eur. Ct. H.R. Rep. 839, 843 (1989).

⁶¹ *See, e.g., Attorney Gen. of Israel v. Eichmann*, 36 I.L.R. 5 (Jerusalem Dist. Ct. 1961), *aff'd*, 36 I.L.R. 277 (Isr. Sup. Ct. 1962).

⁶² *See* Genocide Accountability Act of 2007, Pub. L. No. 110-151, 121 Stat. 1821 (2007).

⁶³ *See* Section II(C), *infra*.

⁶⁴ *Compromis* at ¶ 4.

abhorrent to Canada's territorial sovereignty and the U.S. is obligated to repatriate Mr. Rutaganda to Canada.⁶⁵

C. By Luring Mr. Rutaganda Into the U.S. for the Purpose of Rendering Him to Rwanda, the U.S. Violated Mr. Rutaganda's Human Rights.

Extradition treaties exist to protect individuals from arbitrary arrest as well as to promote cooperation in international criminal proceedings. By breaching the Treaty and prescribing its domestic laws abroad, the U.S. government violated Mr. Rutaganda's right to be free from arbitrary arrest and detention. Given the current state of the criminal justice system in Rwanda, the overall scheme developed by the U.S. to gain custody over Mr. Rutaganda and render him to Rwanda also violated Mr. Rutaganda's rights to a fair trial and to be free from cruel and inhumane treatment.

1. The U.S. violated Mr. Rutaganda's right to liberty.

Article 9 of the International Covenant on Civil and Political Rights [ICCPR]⁶⁶ prohibits deprivations of liberty which do not comport with domestic law or are otherwise arbitrary.⁶⁷ In *Van Alphen v. Netherlands* the Human Rights Committee [HRC] found that arbitrariness relates to compliance with lawful procedures as well as the "inappropriateness, injustice and lack of predictability" inherent in the challenged actions.⁶⁸ Here, the luring of Mr. Rutaganda was

⁶⁵ See OAS Opinion on *Alvarez-Machain* at ¶ 12(c).

⁶⁶ International Covenant on Civil and Political Rights, art 9, Mar. 23, 1976, 1996 U.S.T. 521, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁶⁷ See United Nations Human Rights Committee General Comment No. 8, (Sixteenth session, 1982), U.N. Doc. HRI/GEN/1/Rev.6 at 130 (2003).

⁶⁸ *Van Alphen v. Netherlands*, Communication No. 305/1988, ¶ 5.8, U.N. Doc. CCPR/C/39/D/305/1988 (1990).

conducted with no process whatsoever, and violated Canadian domestic law,⁶⁹ the Treaty, and Canada's territorial sovereignty. The strategy adopted by U.S. agents was underhanded and manipulative, and the decision to send Mr. Rutaganda to Rwanda instead of his home country is contrary to U.S. domestic law⁷⁰ with no rational purpose other than to mollify political anger resulting from the publicity surrounding Mr. Rutaganda's case.⁷¹ Under the standard set forth by the HRC, the actions of the U.S. government here clearly violate Mr. Rutaganda's right to liberty.⁷²

2. The U.S. violated Mr. Rutaganda's right to be free from inhumane treatment and right to a fair trial.

The role of an extradition judge is to "protect the fundamental rights of the fugitive."⁷³ Under the Canadian Charter of Rights and Freedoms, extradition requests must be denied if the punishment likely to be inflicted on the person requested "shocks the conscience."⁷⁴ Likewise, international law provides individuals with a right to a fair trial⁷⁵ and to be free from inhumane

⁶⁹ Canada Extradition Act S.C. 1999, ch. 18 (Can.).

⁷⁰ See 8 U.S.C. § 1231(b) (2008).

⁷¹ *Compromis* at ¶ 7.

⁷² See also Universal Declaration of Human Rights, G.A. Res. 217A, art. 3 U.N. Doc. A/217 (Dec. 8, 1948) [hereinafter UDHR] ; Organization of American States, American Convention on Human Rights, art. 7, Nov. 22, 1969, 1144 U.N.T.S. 123 [hereinafter ACHR] ; Council of Europe, European Convention on Human Rights, art. 5, Sept. 3, 1954, 213 U.N.T.S. 222 [hereinafter ECHR].

⁷³ *United States v. Manno*, [1997] 112 C.C.C. 3d 544, 561 (Que. C.A.) (Can).

⁷⁴ See *United States v. Jamieson*, [1996] 1 S.C.R. 465 (Can.); *United States v. Burns*, [2001] 1 S.C.R. 283 (Can.).

⁷⁵ See UDHR arts. 8, 10; ICCPR arts. 14, 15.

treatment.⁷⁶ The U.S. cannot ensure that Mr. Rutaganda's right to a fair trial will be honored⁷⁷ or that he will be free from inhumane or cruel treatment if he is rendered to Rwanda. The international norm of *non-refoulement* prohibits rendition of any person to a country where that person will likely be subjected to inhumane punishment; the U.S. will violate this principle if it renders him to Rwanda instead of repatriating him to Canada.⁷⁸

II. THE RENDITION OF MR. RUTAGANDA TO RWANDA WILL VIOLATE INTERNATIONAL LAW.

A. The Rendition of Mr. Rutaganda to Rwanda is Illegal Because Rwanda Does Not Have an Extradition Treaty With Either the U.S. or Canada.

The illegality of rendition in the absence of an extradition treaty is a well established principle of international law. Additionally, legal removal proceedings may not be used to skirt an otherwise illegal rendition. Finally, the international principle of *non-refoulement* prevents the rendition of Mr. Rutaganda to Rwanda.

1. Extradition treaties create the sole legal means of rendering a person to another country.

Rendition refers to extradition by treaty.⁷⁹ No internationally recognized procedure exists for the type of "rendition" the U.S. is attempting to pursue in this case. Extradition treaties help States create legal standards for rendition and extradition and ensure that individuals' rights will

⁷⁶ See *Soering v. United Kingdom*, 161 Eur. Ct. H.R. (ser. A) 1989). See also UDHR art 5; ICCPR art. 7; ACHR art. 5; ECHR art. 3.

⁷⁷ See section II(B) *infra*.

⁷⁸ See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3(1), June 26, 1987, 1465 U.N.T.S. 85 [hereinafter CAT].

⁷⁹ See M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER 121 (1974).

be respected in accordance with international and domestic norms.⁸⁰ In the absence of an extradition treaty, international law looks to the domestic laws of the States in question to determine the legality of a rendition.⁸¹

U.S. domestic law provides that extradition or rendition from the U.S. to another state may *only* occur when there is an extradition treaty⁸² or a where there is a federal statute directly on point.⁸³ Since there is no applicable treaty or statute in this case, there are no legal means to render Mr. Rutaganda to Rwanda under U.S. domestic law or international law.

2. The U.S. would violate international law by attempting to use an immigration removal proceeding to circumvent the international law norm which prohibits rendition in the absence of a treaty.

International law recognizes that States may refuse to extradite a person under several circumstances, such as where the person is a national of the requested country or where the extradition would be “incompatible with humanitarian considerations.”⁸⁴ In *Bozano v. France*, the ECHR found that the right to security of person and to be free from arbitrary detention is violated where removal is “used for objects and purposes other than its normal ones.”⁸⁵ A French court had deemed Mr. Bozano’s extradition contrary to public policy, but the French police

⁸⁰ See, e.g., Extradition Treaty.

⁸¹ See Donna E. Arzt, *The Lockerbie “Extradition by Analogy” Agreement: “Exceptional Measure” or Template for Transnational Criminal Justice?* 18 AM. U. INT’L L. REV. 163, 174 (2002).

⁸² 18 U.S.C. §§ 3181, 3184 (2008).

⁸³ See, e.g., *Valentine v. United States ex rel. Neidecker*, 299 U.S. 5, 8-9 (1936).

⁸⁴ Model Treaty on Extradition, G.A. Res. 45/116, arts. 4(a), (h)., U.N. Doc. A/Res/45/116 (Dec. 14, 1990).

⁸⁵ *Bozano v. France*, 111 Eur. Ct. H.R. 1 (1986).

ignored that finding and removed him to Switzerland, a country that was likely to extradite him.⁸⁶ The ECHR found “flagrant unlawfulness” in the removal because it violated the domestic judgment and because the French government specifically and purposefully removed him to a country which they knew would extradite him.⁸⁷ By arbitrarily sending Mr. Rutaganda to Rwanda instead of Canada, the U.S. has acted with “flagrant unlawfulness” and in violation of its own immigration laws, which provide that, in general, persons who are illegally present in the U.S. shall be removed to the country from which he arrived or to a country they wish to go to and that is willing to accept them.⁸⁸ Mr. Rutaganda arrived in the U.S. directly from Canada and has repeatedly requested removal to Canada. By arbitrarily sending Mr. Rutaganda to Rwanda the U.S. would violate the object and purpose of U.S. domestic law and international law.

3. Mr. Rutaganda’s rendition is prohibited because he will likely be subjected to cruel and unusual punishment in Rwanda.

If Mr. Rutaganda is rendered to Rwanda there is a substantial likelihood he will face a cruel and inhumane sentence of life imprisonment in isolation. This is contrary to the customary international law prohibition on *refoulement*. In all cases, the principle of *non-refoulement*, provides that “[n]o State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”⁸⁹ This prohibition extends to cases where the person is in danger of being subjected to

⁸⁶ *Id.* at 6.

⁸⁷ *Id.* at 27.

⁸⁸ 8 U.S.C. §1231(b)(2008).

⁸⁹ CAT art. 3(1).

any form of cruel and unusual punishment,⁹⁰ such as prolonged solitary confinement.⁹¹ Under Rwandan law, the sentence for murder is life imprisonment in isolation.⁹² In reviewing Rwanda's compliance with the ICCPR, the HRC has deemed this punishment inhumane and in violation of fundamental human rights.⁹³ Given the severity of the crime that Mr. Rutaganda is accused of, there are substantial grounds to believe that he will be subjected to this punishment if returned to Rwanda, and therefore rendering him to Rwanda would violate the principle of *non-refoulement*.

B. Rendition of Mr. Rutaganda to Rwanda Would Violate International Law Because He Cannot be Criminally Culpable for the Crime he Allegedly Committed as a Child Soldier.

Returning Mr. Rutaganda to Rwanda will violate international law because upon his return he will likely be convicted for a crime of which he is not criminally culpable due to his diminished capacity at the time of the events in question.

1. Mr. Rutaganda was a minor and was under severe duress at the time of the events in question.

International law presumes that child soldiers who enter military service under severe duress are illegally recruited and serving involuntarily. As such, child soldiers cannot be

⁹⁰ See UN High Commissioner for Refugees, *The Scope and Content of the Principle of Non-refoulement in Refugee Protection (Opinion) [Global Consultations on International Protection/Second Track]*, ¶ 6 (June 20, 2001).

⁹¹ See United Nations Human Rights Committee, General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7) (Forty-fourth session 1992) U.N. Doc. HRI/GEN/1/Rev.6 at 151 (2003).

⁹² Organic Law No. 31/2007 of 25/07/2007, Relating to the Abolition of the Death Penalty, art. 5.

⁹³ Human Rights Committee, *Concluding Observations of the Human Rights Committee – Rwanda*, ¶ 14 (May 7, 2009).

criminally culpable for their actions.⁹⁴ In situations of armed conflict, children under the age of 15 are afforded special care in international law.⁹⁵ The underlying rationale for this protection is that “the child, by reason of his physical and mental immaturity, needs special safeguards and care.”⁹⁶ Additionally, the ICC has deemed the recruitment of children under the age of 15 into armed groups to be a war crime⁹⁷ and has refused to exercise jurisdiction over cases where the alleged perpetrator was under 18 at the time of the crime.⁹⁸ Through these provisions, the Rome Statute reflects the crystallization of a customary international law norm to provide special protection to children under the age of 18 and view them as victims rather than perpetrators of war crimes and other human rights violations.⁹⁹

Moreover, empirical research shows that militias frequently target children as soldiers *because of* their immaturity and the belief that they are “more obedient, do not question orders and are easier to manipulate than adult soldiers.”¹⁰⁰ Additionally, even where “young people may appear to choose military service; the choice is not exercised freely. They may be driven by

⁹⁴ See Motion for Leave to File Amicus Curiae Brief of International Law Scholars as Amici Curiae in Support of Respondent Omar Khadr at 12, *Khaled v. United States*, No. 06-1196 (Aug. 23, 2007) [hereinafter ILS Brief].

⁹⁵ See, e.g., Geneva Convention Relative to the Protection of Civilian Persons in Time of War arts. 14, 17, Oct. 21, 1950, 75 U.N.T.S. 287.

⁹⁶ Convention on the Rights of the Child, Preamble, Sept. 2, 1990, 1577 U.N.T.S. 3 [hereinafter CRC].

⁹⁷ Rome Statute of the International Criminal Court, art. 8, July 1, 2002, 2187 U.N.T.S. 90.

⁹⁸ *Id.* at art. 26.

⁹⁹ See The Secretary-General, *Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children*, ¶ 62(a), U.N. Doc. A/51/150, (Aug. 26, 1996) [hereinafter *Impact of Armed Conflict*].

¹⁰⁰ *Id.* at ¶ 34.

any of several forces, including cultural, social, economic or political pressures.”¹⁰¹ Appeals to ideology can play a large role in the enlistment of children, especially where the children’s families are involved with the military.¹⁰²

In *Khaled v. United States*, experts have argued that Mr. Khadr, a child soldier detained at the age of 16 should be released from Guantanamo Bay because he was criminally culpable due to his age and the duress he suffered.¹⁰³ Mr. Khadr was recruited into Al Qaeda at an early age, and was subsequently indoctrinated and radicalized to the extent that he lacked the mental capacity to be culpable for his actions. Mr. Khadr’s recruitment was significantly intertwined with his father’s prior involvement with Al Qaeda.¹⁰⁴ After substantial exposure to his father’s radicalized speech, and having witnessed his father’s torture and imprisonment at the hands of “the enemy” it seemed that “the son accepted the price and necessity of the father’s cause.”¹⁰⁵

Mr. Rutaganda should benefit from the presumption that as a child soldier he entered the military against his will, and that his age and the duress accompanying his recruitment into the *Interhamwe* made him sufficiently incapacitated such that he is not criminally culpable. Mr. Rutaganda was a mere 14 years of age when he was involuntarily recruited from his one-parent home into the militia, and only 15 at the time he allegedly took part in the crime in question. Additionally, Mr. Rutaganda and his mother were living in Kigali at the time of the conflict,

¹⁰¹ *Id.* at ¶ 38.

¹⁰² *Id.* at ¶ 39.

¹⁰³ ILS Brief at 12.

¹⁰⁴ See Melissa A. Jamison, *The Sins of the Father: Punishing Children in the War on Terror*, 29 U. LA VERNE L. REV. 88, 116-18 (2008).

¹⁰⁵ *Id.* at 118.

which was the center of most of the killings and fighting.¹⁰⁶ The duress he sustained when he joined the military continued to taint his actions until he finally escaped to Canada. Mr. Rutaganda's participation in the militia was nothing more than a desperate attempt to protect his mother and himself in an atmosphere of mayhem and murder. Mr. Rutaganda was no more criminally culpable at the time of the alleged events than at the time he was coercively recruited into the militia. Because Mr. Rutaganda suffered significant mental duress and anguish, as a result of his involvement with *Interhamwe* at such a young age, he cannot be said to have sufficient mental capacity to be criminally culpable for any events that took place during that time.

Mr. Rutaganda, like Mr. Khadr, was the victim of paternal radicalization that left him with additional diminished capacity such that he cannot be criminally culpable. Like Mr. Khadr, Mr. Rutaganda spent a significant amount of his childhood subsumed in a culture of indoctrination. Mr. Rutaganda's father was killed while fighting for the same militia that he was later coerced into fighting for. Mr. Rutaganda's diminished capacity is sufficient to free him of criminal culpability under international law.

2. Mr. Rutaganda should not be criminally culpable for his actions because child soldiers are to be viewed primarily as victims.

Mr. Rutaganda should benefit from the crystallization of this international law norm. The severity of crimes that Mr. Rutaganda is accused of and the fact that he is no longer a child should not sway this court into finding that he should be treated as a perpetrator rather than a victim as required by international law. The Paris Principles confirm the norm that child soldiers "unlawfully recruited or used by armed forces or groups and are accused of crimes against

¹⁰⁶ See Frontline, "The Triumph of Evil: 100 Days of Slaughter."

international law are considered primarily as victims.”¹⁰⁷ This norm has crystallized in response to the events in Rwanda and other internal conflicts where child soldiers were implicated, reflecting the international norm that the “best interests of the child” should be protected at all times.¹⁰⁸

C. The Rendition of Mr. Rutaganda Would Violate International Law Because He Will Not Receive a Fair Trial in Rwanda.

The right to a fair trial encompasses general principles of due process, including the right to a trial without undue delay before an impartial tribunal.¹⁰⁹ Rwanda has attempted to exercise jurisdiction over other persons from the International Criminal Tribunal for Rwanda and other countries. In each instance an independent review revealed that the Rwandan judiciary was incapable of providing a fair trial.¹¹⁰ If Mr. Rutaganda is forced return to Rwanda, his rights would be violated because he will not receive a timely trial before an impartial tribunal.

1. Mr. Rutaganda will not be granted a fair trial because it will be unduly delayed in violation of international law.

International law protects the right “to be tried without undue delay” as a necessary component of a fair trial.¹¹¹ Rwandan national courts are currently plagued with a huge backlog

¹⁰⁷ United Nations Children's Fund, *The Paris Principles. Principles and Guidelines on Children Associated With Armed Forces or Armed Groups*, art. 3.6 (Feb. 2007).

¹⁰⁸ CRC, art. 3(1).

¹⁰⁹ *See, e.g.*, ICCPR art. 14; Organization of African Unity, African Charter on Human and Peoples' Rights, art. 7, Oct. 21, 1986, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 [hereinafter ACHPR].

¹¹⁰ *See* HUMAN RIGHTS WATCH, LAW AND REALITY: PROGRESS IN JUDICIAL REFORM IN RWANDA 50-51 (2008) [hereinafter HRW Report].

¹¹¹ *See, e.g.*, ICCPR art. 14(3); ACHPR art. 7(1).

of cases that only promises to get worse in the coming months.¹¹² As of September 2007 the Rwandan High Court had a backlog of 5,000 cases, with 100 new cases filed every month.¹¹³ The courts have been slow to hear claims against even the most notorious and “highly visible persons” already within their jurisdiction.¹¹⁴ For example, the former Minister of Justice was detained for nine years before he was brought to trial.¹¹⁵ It would be a gross violation of Mr. Rutaganda’s right to a fair trial to allow him to remain in a Rwandan prison indefinitely while awaiting trial.

2. Mr. Rutaganda will not be granted a fair trial in Rwanda because the judiciary is not sufficiently independent or impartial.

The ICCPR provides that every person is entitled to a fair hearing by a “competent, independent and impartial tribunal.”¹¹⁶ The HRC has found that “where the functions and the competence of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former it is incompatible with” Article 14 of the ICCPR.¹¹⁷ Human Rights Watch [HRW] found that Rwandan judges are subject “to pressure from members of the executive branch and other powerful persons.”¹¹⁸ This pressure and coercion has caused

¹¹² See *Rwanda/Gacaca-Gacaca Courts Wind Up Proceedings*, HIRONDELLE NEWS AGENCY, Dec. 17, 2009, available at <http://www.hirondellenews.com/content/view/13079/309/>.

¹¹³ HRW Report at 29.

¹¹⁴ HRW Report at 30-31.

¹¹⁵ HRW Report at 30-31.

¹¹⁶ ICCPR art. 14(1).

¹¹⁷ United Nations Human Rights Committee, *Bahamonde v. Equatorial Guinea*, Com. No. 468/1991, U.N. Doc. CCPR/C/49/D/468/1991 (1993).

¹¹⁸ HRW Report at 110.

judges to make “decisions that fail to reflect the law and facts of the case.”¹¹⁹ HRW also found that high profile cases in Rwanda are significantly more likely to be subject to judicial misconduct.¹²⁰

Mr. Rutaganda’s case has become significantly politicized through Interpol’s involvement, “The Wanted” television segment and coverage in American newspapers. Thus, it would be highly improbable that Mr. Rutaganda will receive a hearing in front of a “competent, impartial and independent tribunal.”¹²¹ It is highly unlikely that the corrupt individuals who have been compromising the independence of the Rwandan judiciary would leave the outcome of this politically charged and internationally noticed case to chance. Therefore, by subjecting Mr. Rutaganda to criminal proceedings in Rwanda, the U.S. will deprive him of his rights to a fair trial.

CONCLUSION

ICE agents—whose mandate is to enforce U.S. immigration law rather than lure foreign nationals into violating them—conducted law enforcement operations directed at a national of Canada, within the territory of Canada, and without Canada’s consent. In so doing, the U.S. has violated the Extradition Treaty, Canada’s territorial sovereignty, and Mr. Rutaganda’s fundamental human rights.

The U.S. is prohibited by international law from rendering Mr. Rutaganda to Rwanda in the absence of an extradition treaty. Rendition to Rwanda would violate Mr. Rutaganda’s human rights and the principle of *non-refoulement*. International law treats child soldiers as victims rather than criminals, and subjecting Mr. Rutaganda to trial in Rwanda would violate this

¹¹⁹ HRW Report at 52.

¹²⁰ HRW Report at 53-55.

¹²¹ ICCPR art. 14(1).

principle. This Court should therefore find that the intended actions of the U.S. would violate international law and order the U.S. to repatriate Mr. Rutaganda to Canada.