

**2009-2010**  
**NIAGARA INTERNATIONAL MOOT COURT COMPETITION**

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**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#: 2010-08A**

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## STATEMENT OF FACTS

Emanuel Rutaganda is a Canadian citizen by birth, having been born in Montreal, Quebec, on September 10, 1978 to Rwandan nationals. Since birth, Mr. Rutaganda has enjoyed dual citizenship in Canada and Rwanda. After graduating from McGill University in 1979, Mr. Rutaganda's parents moved home to Kigali, Rwanda, taking their infant son with them.

At the age of 14, Mr. Rutaganda was recruited into *Interahamwe*, a non-State paramilitary force, where he served from April until August of 1994. During this time, Mr. Rutaganda is alleged to have been one of seven *Interahamwe* soldiers involved in the so-called "Boutaire High School Massacre" – an event that led to the deaths of some 275 Tutsi children in the destruction of a school building.

In 2001, Mr. Rutaganda and six other *Interahamwe* soldiers were charged by the Rwandan District Court in Boutaire with 275 counts of murder.

Following the war in 1994, Mr. Rutaganda and his mother returned to Canada, where they took up residence in Windsor and earned a living by operating a successful African curio shop. Since his return to Canada, Mr. Rutaganda has married, and now has three young children. During his time in Canada, Mr. Rutaganda has lived peacefully, and has never run afoul of the law.

Canada has received numerous requests from the Rwandan government to surrender Mr. Rutaganda so that he may face prosecution for his alleged crimes during the Rwandan civil war. Canada has repeatedly denied these Rwandan requests on the grounds that Canada and Rwanda do not have an extradition treaty in place, that child soldiers are not criminals, and that the Rwandan district courts are not equipped to provide a fair trial.

At the insistence of the Rwandan government, INTERPOL issued a Red Notice for Mr. Rutaganda's arrest in January 2002. The United States and Canada had no communication regarding Mr. Rutaganda after the Red Notice was issued. The United States did not request Mr. Rutaganda's extradition at any time.

On July 7, 2009, Mr. Rutaganda was featured on an American television show, "The Wanted," which protested that an indicted genocide perpetrator was living freely in Canada. This created a public and media outcry, and inspired the U.S. Inter-Agency Working Group for Human Rights Violators to focus on Mr. Rutaganda's case.

On July 21, 2009, Mr. Rutaganda's mother, Marie, traveled to Detroit, Michigan, to receive a specialized medical procedure at the Detroit Clinic's Cardiac Centre. Seeing an opportunity to respond to the recent public outcry, the Inter-Agency Working Group devised a plan to exploit the presence of Mr. Rutaganda's mother in the United States to lure him out of Canada and arrest him.

On the morning of July 22, 2009, President Barack Obama authorized the execution of "Operation Motown Express." Agents from U.S. Immigration and Customs Enforcement ("I.C.E."), a government agency, used the Detroit Clinic's computer to send an email to Mr. Rutaganda. The email stated that Marie was in serious medical trouble, and that she was likely to die shortly. The email went on to encourage Mr. Rutaganda to rush to the Detroit Clinic if he wanted to see his mother again before she died.

In fact, Marie was in perfect health, having undergone a successful surgery. Fearing for his mother's life, Mr. Rutaganda acted instinctively. Using a valid passport that he borrowed from a Canadian friend, Mr. Rutaganda entered the United States via the Windsor-Detroit tunnel.

After clearing customs, Mr. Rutaganda proceeded directly to the Detroit Clinic and, upon arrival, was arrested and taken into custody by I.C.E. agents. Canada was promptly notified of Mr. Rutaganda's arrest, and was informed that the United States had begun proceedings with the goal of extraditing Mr. Rutaganda to Rwanda to face trial.

After learning of Mr. Rutaganda's apprehension, the Government of Canada launched a formal protest through the Canadian Embassy in Washington, D.C. to voice its disapproval of the circumstances surrounding the arrest, and the continuing detention of Mr. Rutaganda.

Mr. Rutaganda's extradition case has passed through several levels of American courts. The Federal Court of Appeals has affirmed that Mr. Rutaganda can be removed to Rwanda, and a request for *certiorari* has been denied by the United States Supreme Court.

## QUESTIONS PRESENTED

1. Whether the “luring” of Canadian citizen Emanuel Rutaganda from Canada violated Canada’s territorial sovereignty, the U.S.-Canada 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 United States to Rwanda for trial would violate international law because: neither the United States nor Canada has an extradition treaty with Rwanda; as a child soldier Rutaganda lacked criminal culpability; and/or the courts of Rwanda are not capable of providing a fair trial.

## **JURISDICTIONAL STATEMENT**

The governments of Canada and the United States, the Parties to the dispute, appear before the International Court of Justice pursuant to Articles 36(1) and 40(1) of the Statute of the International Court of Justice.<sup>1</sup> The Parties have complied with all requirements of Articles 36(1) and 40(1), and agree to submit their dispute to the jurisdiction of this Court for a final and binding judgment.

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<sup>1</sup> *Statute of the International Court of Justice*, 59 Stat. 1055 (1945), arts. 36, 40.

## INDEX OF AUTHORITIES

### Treaties and Other International Agreements

- Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone*, 16 January 2002, 2178 U.N.T.S. 138 ..... 19
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- Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 U.N.T.S. 277 ..... 12,13
- Establishment of an International Tribunal and adoption of the Statute of the Tribunal*, UN SCOR Res. 955, 3453rd mtg., U.N. Doc. S/RES 955 (1994)..... 11
- International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, arts. 9-14, Can. T.S. 1976 No. 47, I.L.M. 368 ..... 8,9,16
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, UN ESCOR, Commission on Human Rights, 51st Sess., Agenda Item 24, U.N. Doc. E/CN.4/1995/96 (1995) ..... 18
- Protocol Additional to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 U.N.T.S. 3 ... ..... 19
- Protocol Additional to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 U.N.T.S. 609 .. ..... 18
- Protocol Amending the Extradition Treaty Between the United States and Canada*, 11 January 1988, S. TREATY DOC. 101-17, 101st CONG., 2D SESS. (1990) ..... 4
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- ### International Cases
- Soering v. United Kingdom* (1989), 11 E.H.R.R. 439 ..... 13
- Prosecutor v. Samuel Hinga Norman*, SCSL-2004-14-AR729E, Reply (31 May 2004)..... 18
- The Prosecutor v. Munyakazi*, ICTR-97-36-R11bis, Decision (8 May 2008)..... 17
- Van Alphen v. The Netherlands*, Communication No. 305/1988 (15 August 1990), U.N. Doc. CCPR/C/39/D/305/1988 (1990) ..... 9

## Domestic Cases

<i>Brown and others v. Government of Rwanda and another</i> , [2009] EWHC 770 (Admin) ... ..	16
<i>In re Surrender of Ntakirutimana</i> , 988 F. Supp. 1038, 1042 (S.D. Tex. 1997).....	12
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<i>R. v. Horseferry Road Magistrates' Court, ex p Bennett</i> , [1993] 3 W.L.R. 90 (H.L.) .....	7
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## Secondary Sources

Andreas F. Lowenfeld, "U.S. Law Enforcement Abroad: The Constitution and International Law" (1990) 84 Am. J. Int'l L. 444 .....	3
Andrew L.-T. Choo, "International Kidnapping, Disguised Extradition and Abuse of Process" (1994) 57 Mod. L. Rev. 626 .....	7
Edward M. Wise, "Some Problems of Extradition" (1968-1969) 15 Wayne L. Rev. 709 ....	10
F.A. Mann, <i>Further Studies in International Law</i> (New York: Oxford University Press, 1990).....	5,6
Lakmini Seneviratne, "Accountability of Child Soldiers: Blame Misplaced?" (2008) 20 Sri Lanka J. Int'l L. 29.....	17
Mark A. Drumbl, "Rule of Law Amid Lawlessness: Counseling the Accused in Rwanda's Domestic Genocide Trials" (1997-1998) 29 Colum. Hum. Rts. L. Rev. 545.....	14
Matthew Happold, <i>Child Soldiers in International Law</i> (Manchester: Manchester University Press, 2005).....	17

Moore's <i>Digest of International Law</i> , vol. 4 (Washington D.C.: Government Printing Office, 1906) .....	10
Paul Michell, "English-Speaking Justice: Evolving Responses to Transnational Forcible Abduction After Alvarez-Machain" (1996) 29 <i>Cornell Int'l L.J.</i> 383 .....	5
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Sarah Joseph, Jenny Schultz & Melissa Castan, <i>The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary</i> , 2d ed. (New York: Oxford University Press, 2004).....	8
Sonja Grover, "'Child Soldiers' as 'Non-Combatants': The Inapplicability of the Refugee Convention Exclusion" (2008) 12:1 <i>Int. J. Hum. Right</i> 53 .....	18,19
Valerie Oosterveld, "International Decisions" (2009) 103 <i>Am. J. Int'l L.</i> 103.....	19

### Web Resources

Amnesty International, Memorandum, AFR 47/013/2007, "Rwanda: Suspects must not be transferred to Rwandan courts for trial until it is demonstrated that trials will comply with international standards of justice" (2 November 2007), online: Amnesty International < <a href="http://www.amnesty.org/en/library/asset/AFR47/013/2007/en/04cd6827-d369-11dd-a329-2f46302a8cc6/afr470132007en.pdf">http://www.amnesty.org/en/library/asset/AFR47/013/2007/en/04cd6827-d369-11dd-a329-2f46302a8cc6/afr470132007en.pdf</a> > .....	15
<i>Cape Town Principles and Best Practice on the Prevention of Recruitment of Children into the Armed Forces and Demobilization and Social Integration of Child Soldiers in Africa</i> . Adopted by participants of a symposium on child soldiers in Africa organized by UNICEF, Cape Town, (30 April 1977), online: UNICEF < <a href="http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf">http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf</a> > .....	17
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U.S. Department of State, "Country Report on Human Rights Practices for 1999" <i>Rwanda</i> (23 February 2000), online: U.S. Department of State < <a href="http://www.state.gov/g/drl/rls/hrrpt/1999/266.htm">http://www.state.gov/g/drl/rls/hrrpt/1999/266.htm</a> > .....	14
U.S. Department of State, "Country Report on Human Rights Practices for 2006" <i>Rwanda</i> (6 March 2007), online: U.S. Department of State < <a href="http://www.state.gov/g/drl/rls/hrrpt/2006/81364.htm">http://www.state.gov/g/drl/rls/hrrpt/2006/81364.htm</a> > .....	16
U.S. Department of State, "Country Report on Human Rights Practices for 2008" <i>Rwanda</i> (25 February 2009), online: U.S. Department of State < <a href="http://www.state.gov/g/drl/rls/hrrpt/2008/af/119019.htm">http://www.state.gov/g/drl/rls/hrrpt/2008/af/119019.htm</a> > .....	14,15

## SUMMARY OF ARGUMENT

By unilaterally orchestrating a luring plot without Canadian consent, the United States breached its obligations under the U.S.-Canada Extradition Treaty and denied Mr. Rutaganda the procedural safeguards to which he is entitled under the Treaty. By failing to secure Canadian consent, the United States also violated Canada's territorial sovereignty.

The plot itself violated Mr. Rutaganda's rights under the *International Covenant on Civil and Political Rights*, specifically, protection from arbitrary arrest, and undue interference with privacy and family.

The extradition of Mr. Rutaganda in the absence of a treaty or statute violates United States domestic law. Extradition is also barred under international law, which requires the United States to comply with domestic statutes and treaties.

States must not extradite individuals to situations where a fair and competent trial would not be guaranteed. The Rwandan justice system is overburdened and unable to guarantee Mr. Rutaganda a fair trial. Extradition could violate Mr. Rutaganda's right to liberty and right to a trial in a reasonable time, and could result in a sentence that violates international human rights standards.

Mr. Rutaganda's recruitment into the *Interahamwe* was a war crime that violates international law. As a child soldier, Mr. Rutaganda was not a combatant because he lacked an unqualified right to participate in hostilities. The Republic of Rwanda failed to prevent Mr. Rutaganda's illegal recruitment and should be held accountable for any alleged acts undertaken by children forced into armed conflict by the *Interahamwe*.

## ARGUMENT

### I. “OPERATION MOTOWN EXPRESS” VIOLATED THE U.S.-CANADA EXTRADITION TREATY BY IGNORING IT ALTOGETHER

The exchange of citizens between Canada and the United States is governed solely by the *Treaty on Extradition Between the Government of Canada and the Government of the United States* (the “Treaty”).<sup>1</sup> As a party to this bilateral treaty, the United States has an obligation to adhere to the protocol of the Treaty, and to formally request the extradition of any Canadian citizen it seeks. Lawful extradition between Treaty parties must be initiated by a formal request.

In the present case, however, the United States did not request the extradition of Emanuel Rutaganda, formally or informally. Instead, without consulting any Canadian authorities, it initiated a unilateral scheme, disregarding the Treaty and the spirit of cooperation for which it stands. “Operation Motown Express” and the apprehension of Emanuel Rutaganda violated the protocols of the Treaty by ignoring it altogether.

#### A. “Operation Motown Express” was a Unilateral Abduction of a Canadian Citizen Arranged without the Cooperation or Authorization of the Canadian Government

Despite the Treaty’s stated objective of fostering cooperation between the United States and Canada,<sup>2</sup> United States’ government officials carried out “Operation Motown Express” unilaterally, without consulting any Canadian authorities.

Emanuel Rutaganda is a Canadian citizen and, as such, is afforded all of the legal protections that Canadian citizens enjoy. Among these protections are the procedural protocols of the Treaty,<sup>3</sup> which provide a legal framework for extradition under specific circumstances.

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<sup>1</sup> *Treaty on Extradition Between the Government of Canada and the Government of the United States*, 11 December 1971, C.T.S. 1976 No. 3, T.I.A.S. No. 8237 (entered into force 22 March 1976).

<sup>2</sup> *Ibid.*, Preamble.

By ignoring the Treaty altogether, the United States denied Mr. Rutaganda these procedural safeguards, while ignoring its Treaty obligations to Canada. The United States deliberately chose to circumvent the Treaty when other, more diplomatic, avenues were available under the circumstances.

B. The Treaty Provides the Legal Mechanism for the Extradition of Citizens Between Canada and the United States

Since the Treaty is the legal mechanism for the extradition of persons between Canada and the United States, any unilateral action that occurs outside of the protocols of the Treaty is a violation of the Treaty itself. Apart from violating the Treaty and its amending instruments, the plan to lure and apprehend Mr. Rutaganda is a violation of American domestic law and customary international law. Article VI of the Constitution of the United States explicitly states: “This Constitution, and the laws of the United States which shall be made in pursuance thereof; *and all treaties made*, or which shall be made, under the authority of the United States, shall be the supreme law of the land.”<sup>4</sup> Since treaties are a component of “the supreme law” of the United States, U.S. agents breached both domestic and customary international law through “Operation Motown Express.”<sup>5</sup>

C. “Operation Motown Express” Violated the Spirit of the 1988 Exchange of Letters on Transborder Abduction

While the *Protocol Amending the Extradition Between the United States and Canada*, including the 1988 Exchange of Letters on Transborder Abduction (the “1988 Letters”) was

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<sup>3</sup> Andreas F. Lowenfeld, “U.S. Law Enforcement Abroad: The Constitution and International Law” (1990) 84 Am. J. Int’l L. 444 at 473.

<sup>4</sup> U.S. Const. art VI, cl. 2 (emphasis added).

<sup>5</sup> Ruth Wedgwood, “The Argument Against International Abduction of Criminal Defendants” (1991) 57 Am. U.J. Int’l L. & Pol’y 537 at 558.

created to curtail the actions of “civilian agents of bail bonding companies, so-called ‘bounty hunters,’”<sup>6</sup> the spirit of these letters extends to any similar abduction of Canadian citizens. The very nature of transborder abduction is an aggressive act of one State on another, whether this act is carried out by civilians or government agents. While abductions carried out by civilians should certainly be decried, State-sponsored abduction is an even more serious offence, as it represents direct State action against another sovereign nation.

The 1988 Letters specifically address situations where civilian agents commit abduction, but the outcome is no different where government officials perpetrate an identical abduction. As stated, the fact that the luring and apprehension was orchestrated by the State in many ways makes it more reprehensible. First, the United States cannot deny responsibility in the luring and apprehension of Mr. Rutaganda. Second, the United States must account for its decision to act outside the scope of the Treaty. Third, the United States must account for the predatory tactics it employed to induce Mr. Rutaganda to leave his home in Canada.

## II. THE LURING OF EMANUAL RUTAGANDA OUT OF CANADA AND INTO THE UNITED STATES IS A VIOLATION OF CANADA’S TERRITORIAL SOVEREIGNTY AND OF CUSTOMARY INTERNATIONAL LAW

Violations of territorial sovereignty are not limited to physical intrusions into the territory of another sovereign nation. Although American agents did not enter Canada in effecting the apprehension of Mr. Rutaganda, their circumvention of the Treaty violated Canada’s sovereignty. After all, “protection of the contracting states’ sovereignty lies at the treaty’s very core.”<sup>7</sup>

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<sup>6</sup> *Protocol Amending the Extradition Treaty Between the United States and Canada*, 11 January 1988, S. TREATY DOC. 101-17, 101st CONG., 2D SESS. (1990).

<sup>7</sup> Wedgwood, *supra* note 5 at 548.

It is critical that Canada did not consent to the abduction of Mr. Rutaganda. Further, upon learning of the abduction, Canada launched a formal protest through the Canadian embassy in Washington D.C. The lack of consent and formal protest indicate that international law has been violated through the United States' refusal to remand Mr. Rutaganda to Canada. As F.A. Mann explains: "a breach of international law occurs only in the absence of consent by the State whose sovereignty the abduction affects."<sup>8</sup> Transborder abduction is a *prima facie* "international wrong," which can only be defended by establishing consent on the part of the victim State.<sup>9</sup> The fact that Canada did not consent to this abduction and has protested for the immediate release of Mr. Rutaganda is sufficient to establish a violation of international law for which there is no defence.

A. Luring is a Violation of Sovereignty even though American Authorities did not Enter Canada

Legal scholars remind us that, "according to conflict of laws rules, a fraud perpetrated upon a person located in a foreign state occurs in that state."<sup>10</sup> This is so because "the illegal means are used or have their effect [in the foreign state, and] a State, being sovereign, is not expected to tolerate acts that involve generally recognized illegality."<sup>11</sup> This principle applies whether the fraud is carried out by individual citizens or government agents. However, where government agents carry out the fraud, the act can be seen as State action against another

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<sup>8</sup> F.A. Mann, *Further Studies in International Law* (New York: Oxford University Press, 1990) at 341.

<sup>9</sup> *Ibid.* at 342.

<sup>10</sup> Paul Michell, "English-Speaking Justice: Evolving Responses to Transnational Forcible Abduction After Alvarez-Machain" (1996) 29 *Cornell Int'l L.J.* 383 at 493.

<sup>11</sup> Mann, *supra* note 8 at 341.

sovereign nation. In this regard, because American government agents sent a fraudulent email that was received in Canada and affected a Canadian citizen, “Operation Motown Express” is a wrong carried out by the United States against Canada, and is a violation of Canada’s territorial sovereignty.

Further, it is not dispositive that the United States did not use force in luring and apprehending Mr. Rutaganda. Mann explains: “it is not necessarily the use of force, but the illegality [of State action] that constitutes the wrong done to the sovereignty of the state.”<sup>12</sup> Therefore, even though U.S. agents did not breach Canadian borders, and Mr. Rutaganda was not physically injured in his apprehension, the general illegality of “Operation Motown Express” in terms of using fraud to procure the arrest of a Canadian citizen violates the territorial sovereignty of Canada.

Finally, as Mann indicates, where the victim is induced “by fraud or other means to leave the country of refuge and proceed to some other country where he is apprehended [...] a violation of international law occurs.”<sup>13</sup>

B. Customary International Law Demands at Least a Stay of Proceedings where an Extradition Treaty has been Circumvented and a Formal Protest has been Submitted

International jurisprudence suggests that, where a defendant has been brought to trial under illegal circumstances, the court has a duty to exercise its discretion in entering a stay of proceedings.<sup>14</sup> In rejecting the principle of *male captus bene detentus*, the House of Lords

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<sup>12</sup> *Ibid.* at 340.

<sup>13</sup> *Ibid.* at 341.

<sup>14</sup> *R. v. Horseferry Road Magistrates’ Court, ex p Bennett*, [1993] 3 W.L.R. 90 (H.L.) [*Bennett II*].

invoked its supervisory jurisdiction to stay the proceedings where the apprehension of the defendant was found to constitute an abuse of process.<sup>15</sup>

The New Zealand Court of Appeal also rejected the *male captus* principle in *R. v. Hartley*,<sup>16</sup> stating: “This must never become an area where it will be sufficient to consider that the end has justified the means. The issues raised by [the abduction of the defendant] are basic to the whole concept of freedom in society.”<sup>17</sup> Simply put, the international legal community does not share the same views on this issue as the United States. While the concept of *male captus bene detentus* still thrives in America, much of the world now rejects this position, recognizing instead a court’s ability to “safeguard the moral integrity of the criminal process” by exercising discretion in allowing a stay of proceedings where arrest has been secured by improper means.<sup>18</sup>

As stated, the apprehension of Mr. Rutaganda was predicated on fraud and the exploitation of human emotion. These actions, which took place without consent and outside the scope of the Treaty, amount to an abuse of process. Following the logic of *Bennett II*, the courts of the United States, as well as the International Court of Justice, have an obligation to prevent such abuses in ordering a stay of the extradition proceedings against Mr. Rutaganda and ordering his prompt return to Canada.

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<sup>15</sup> *Ibid.* at 104.

<sup>16</sup> [1978] 2 N.Z.L.R. 199 (C.A.).

<sup>17</sup> *Ibid.* at 216-217.

<sup>18</sup> Andrew L.-T. Choo, “International Kidnapping, Disguised Extradition and Abuse of Process” (1994) 57 Mod. L. Rev. 626 at 629.

III. “OPERATION MOTOWN EXPRESS” AND THE APPREHENSION OF EMANUAL RUTAGANDA WERE VIOLATIONS OF THE *INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* AND OTHER INTERNATIONALLY RECOGNIZED HUMAN RIGHTS

Both Canada and the United States have signed and ratified the *International Covenant on Civil and Political Rights (ICCPR)*,<sup>19</sup> and thus have obligations to uphold the various individual rights enshrined therein. The *ICCPR* operates “in recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family,”<sup>20</sup> and signatory States parties have agreed to uphold these individual rights which, generally, protect individuals from unlawful and arbitrary interference by the state.<sup>21</sup>

The fraudulent means employed in “Operation Motown Express” constitute a violation of both articles 9(1) and 17(1) of the *ICCPR*. These violations amount to an infringement of Mr. Rutaganda’s basic human rights.

A. The Arrest of Emanuel Rutaganda Violated Article 9(1) of the *ICCPR* by Subjecting Him to an Arbitrary Arrest Using Procedures that are not Established by Law

Article 9(1) of the *ICCPR* states: “Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”<sup>22</sup>

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<sup>19</sup> *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, arts. 9-14, Can. T.S. 1976 No. 47, I.L.M. 368 [*ICCPR*].

<sup>20</sup> *Ibid.*, Preamble.

<sup>21</sup> Sarah Joseph, Jenny Schultz & Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*, 2d ed. (New York: Oxford University Press, 2004) at 33.

<sup>22</sup> *ICCPR*, *supra* note 19, art. 9(1).

The luring and apprehension of Mr. Rutaganda violated article 9(1) in two ways. First, by ignoring the procedural safety mechanisms of the Treaty, the United States jeopardized Mr. Rutaganda's security of the person. Second, by perpetrating the apprehension by use of fraud, the agents of the United States used a procedure that was not established by law. Further, since the United States acted outside the scope of the Treaty in violation of international law, as well as the domestic laws of the United States, the apprehension of Mr. Rutaganda was not in accordance with established legal procedures.

As established by the United Nations Human Rights Committee in *Van Alphen v. The Netherlands*,<sup>23</sup> the term "arbitrary" in article 9(1) refers to "elements of inappropriateness, injustice, [and] lack of predictability."<sup>24</sup> In perpetrating an abduction scheme based on fraudulent deception, the United States acted outside the law. These actions are nothing less than arbitrary, and resulted in the denial of Mr. Rutaganda's liberty.

B. The Means of Perpetrating the Luring Violated Article 17(1) of the *ICCPR* by Interfering with Mr. Rutaganda's Privacy, Family, and Correspondence

Article 17(1) of the *ICCPR* states: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence."<sup>25</sup> The Applicant submits that "Operation Motown Express" violated all three of these protected rights.

In implementing "Operation Motown Express," I.C.E. agents violated article 17(1) of the *ICCPR* by sending an email to Mr. Rutaganda's Blackberry. Both the content and the medium of the email constitute a violation of article 17(1). First, I.C.E. agents violated Mr. Rutaganda's

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<sup>23</sup> *Van Alphen v. The Netherlands*, Communication No. 305/1988 (15 August 1990), U.N. Doc. CCPR/C/39/D/305/1988 (1990).

<sup>24</sup> *Ibid.* at para 5.8.

<sup>25</sup> *ICCPR*, *supra* note 19, art. 17(1).

privacy by using his personal email (correspondence) to effect their scheme. Second, the “bait” for the U.S. scheme was Mr. Rutaganda’s mother, a family member. By convincing Mr. Rutaganda that his mother was in serious jeopardy, when she was in fact in good health, I.C.E. agents exploited Mr. Rutaganda’s human compassion in a way that seriously interfered with his family’s privacy, contrary to Canadian and international practice.<sup>26</sup> Article 17(1) of the *ICCPR* was enacted to prevent situations such as this, where government agents interfere with private family issues in a way that causes undue grief to an individual.

#### IV. THE EXTRADITION OF EMANUAL RUTAGANDA TO THE REPUBLIC OF RWANDA VIOLATES INTERNATIONAL LAW

##### A. Extradition of Mr. Rutaganda is Prohibited by U.S. Law in the Absence of a Treaty or Statute

The existence of a treaty or statute is a prerequisite for the extradition of a suspect to a requesting state.<sup>27</sup> In both the United States and Canada, no prerogative power exists at common law to apprehend a fugitive for the purposes of extradition to a foreign state.<sup>28</sup> Executive authority to extradite must be supported by statute or treaty.

The United States Constitution provides the power to make treaties as a part of the President’s foreign relations power. The Constitution states that the President “shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur.”<sup>29</sup> Although this section does not expressly refer to the requirement of an extradition treaty, the United States Supreme Court has held that “the power to surrender is

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<sup>26</sup> *R. v. Mack*, [1988] S.C.R. 903 at 963.

<sup>27</sup> Edward M. Wise, “Some Problems of Extradition” (1968-1969) 15 *Wayne L. Rev.* 709 at 713.

<sup>28</sup> Moore’s *Digest of International Law*, vol. 4 (Washington D.C.: Government Printing Office, 1906) “Extradition Without Treaty” § 580.

<sup>29</sup> U.S. Const. art. III, § 2, cl. 2.

clearly included within the treaty-making power and the corresponding power of appointing and receiving ambassadors.”<sup>30</sup> The Supreme Court has further held that the discretion to surrender is not an absolute power of the Executive, but rather a national power<sup>31</sup> that:

rests upon the fundamental consideration that the Constitution creates no executive prerogative to dispose of the liberty of the individual. ...There is no executive discretion to surrender him to a foreign government, unless that discretion is granted by law. ...*it is not enough that the statute or treaty does not deny the power to surrender. It must be found that statute or treaty confers the power.*<sup>32</sup>

The existence of a statute or treaty explicitly providing for surrender is a necessary prerequisite for extradition. In the present case, there is no treaty between the United States and the Republic of Rwanda to support the extradition of Mr. Rutaganda.

The United States Appeals Court decision in *Ntakirutimana v. Reno*<sup>33</sup> established that extradition is possible in the absence of a treaty, provided that some authority in law exists to support the transfer request. In *Reno*, the accused was indicted in 1996 by the International Criminal Tribunal for Rwanda<sup>34</sup> (“ICTR”) for alleged acts of genocide in Rwanda in 1994. In the interim, the President of the United States had entered into an executive agreement with the ICTR providing that the United States would “surrender to the [ICTR]...persons...found in its territory whom the [ICTR] has charged with or found guilty of a violation...within the

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<sup>30</sup> *Terlinden v. Ames*, 184 U.S. 270 (1902).

<sup>31</sup> *Valentine v. United States*, 299 U.S. 5 (1936) [*Valentine*].

<sup>32</sup> *Ibid.* at 8 (emphasis added).

<sup>33</sup> *Ntakirutimana v. Reno*, 184 F.3d 419 (5th Cir. 1999) [*Reno*].

<sup>34</sup> Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States. See *Establishment of an International Tribunal and adoption of the Statute of the Tribunal*, UN SCOR Res. 955, 3453rd mtg., U.N. Doc. S/RES 955 (1994).

competence of the Tribunal.”<sup>35</sup> The United States Congress subsequently enacted implementing legislation for the Agreement.<sup>36</sup>

A Magistrate at the court of first instance denied the Government’s request for surrender, citing historical precedent that a treaty is required for extradition.<sup>37</sup> The case was ultimately appealed to the United States Court of Appeals, which affirmed the extradition request. The Court of Appeals, citing *Valentine*, found that “a court should look to whether a treaty *or statute* grants executive discretion to extradite. Hence, *Valentine* supports the constitutionality of using the Congressional-Executive Agreement to extradite.”<sup>38</sup> The existence of a transfer Agreement with the ICTR and accompanying implementing legislation clearly distinguish *Reno* from the present case. Furthermore, there is no domestic law in the United States that provides the United States Executive with the discretion to surrender Mr. Rutaganda to the Republic of Rwanda.

International law imposes several obligations on States when dealing with persons accused of participating in genocide. The United States is a party to the *Genocide Convention*,<sup>39</sup> which makes genocide-related offences punishable. Under Article V, ratifying States are required to implement enabling legislation that gives effect to the provisions of the *Genocide Convention*, including the apprehension and punishment of persons suspected of genocide-

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<sup>35</sup> *Agreement on Surrender of Persons Between the Government of the United States and the ICTR*, art. 1, cl. 1, 24 January 1995, U.S.-Int’l Trib. Rwanda, KAV No. 4529, 1996 WL 165484 at 1.

<sup>36</sup> *National Defense Authorization Act*, Pub. L. 104-106, § 1342, 110 Stat. 486 (1996).

<sup>37</sup> See *In re Surrender of Ntakirutimana*, 988 F. Supp. 1038, 1042 (S.D. Tex. 1997) at para. 13.

<sup>38</sup> *Reno*, *supra* note 33 at 425.

<sup>39</sup> *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 U.N.T.S. 277 [*Genocide Convention*].

related activities.<sup>40</sup> However, the *Genocide Convention* does not provide States with an unfettered discretion to extradite an accused person. Article VII requires States to “grant extradition in accordance with their laws and treaties in force.”<sup>41</sup> Mr. Rutaganda’s extradition is not supported under the *Genocide Convention* in the absence of an appropriate domestic law or treaty between the United States and the Republic of Rwanda.

The *Genocide Convention* imposes further restrictions on how an accused individual may be tried. A person charged with genocide must be tried by “a *competent* tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction.”<sup>42</sup> In the present case, Mr. Rutaganda is not sought after by the ICTR or another international penal tribunal. The Rwandan justice system lacks a competent tribunal that would be capable of providing a fair trial, as discussed in further detail below. For these reasons, Mr. Rutaganda’s extradition is not supported under the *Genocide Convention*.

#### B. The Rwandan Justice System is Overburdened and Incapable of Providing a Fair and Competent Trial to Mr. Rutaganda

The right to a fair trial in criminal proceedings is a fundamental principle of democratic society.<sup>43</sup> States must refrain from extraditing individuals to countries where an accused will not be guaranteed a fair trial, no matter how heinous the alleged offence. Despite some recent improvements in the treatment of detainees, numerous hurdles remain before a fair trial can be guaranteed in Rwanda. These obstacles include unacceptably long pre-trial detention under inhuman conditions; the inability to present a full defence; a judiciary of internationally-

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<sup>40</sup> *Ibid.*, art. V.

<sup>41</sup> *Ibid.*, art. VII.

<sup>42</sup> *Ibid.*, art. VI (emphasis added).

<sup>43</sup> *Soering v. United Kingdom* (1989), 11 E.H.R.R. 439 at para. 113.

questioned impartiality and fairness; and sentences that violate international human rights standards.

In response to the atrocities committed during the 1994 genocide, the Rwandan government chose to promote a program of social deterrence through extensive retribution.<sup>44</sup> Unfortunately, the resultant influx of detainees was met by an under-staffed and ill-equipped justice system. By 1998, there were 130,000 prisoners in a system originally designed to hold a maximum of 15,000 individuals.<sup>45</sup> The result was inhuman conditions that were horribly overcrowded and rampant with disease. In 1999, the U.S. Department of State reported:

Prison conditions are harsh and life threatening. Overcrowding is a chronic problem, and sanitary conditions are extremely poor. The Government does not provide adequate food or medical treatment. Harsh prison conditions and malnutrition contributed to the deaths of numerous inmates. Some deaths in custody were due to mistreatment or abuse by corrupt officials. Most of the 1,148 deaths were the result of curable diseases, suspected AIDS, or the cumulative effects of severe overcrowding.<sup>46</sup>

Over-crowded and inhuman detention conditions continue to plague the Rwandan justice system. The U.S. State Department's Human Rights Report on Rwanda notes that "[c]onditions in prisons and detention centers were harsh"<sup>47</sup> in 2008. The prison population remained overcrowded, with 59,000 people detained within 14 prisons. Insufficient sanitary conditions and medical care contributed to "a number of deaths in prison during the year, largely the result

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<sup>44</sup> Mark A. Drumbl, "Rule of Law Amid Lawlessness: Counseling the Accused in Rwanda's Domestic Genocide Trials" (1997-1998) 29 Colum. Hum. Rts. L. Rev. 545 at 571.

<sup>45</sup> *Ibid.*

<sup>46</sup> U.S. Department of State, "Country Report on Human Rights Practices for 1999" *Rwanda* (23 February 2000), online: U.S. Department of State < <http://www.state.gov/g/drl/rls/hrrpt/1999/266.htm> >.

<sup>47</sup> U.S. Department of State, "Country Report on Human Rights Practices for 2008" *Rwanda* (25 February 2009), online: U.S. Department of State < <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119019.htm> >.

of preventable diseases.”<sup>48</sup> Although the recently opened Mpanga prison was designed to meet international standards, the newer prison remains an exception in an otherwise abysmal prison system. Even if Rwanda initially detains Mr. Rutaganda in the Mpgana prison, there is no guarantee that he would not be subsequently transferred to any other facility in the country, all of which fail to meet international standards.<sup>49</sup> The extradition of Mr. Rutaganda could suggest that the United States condones a two-tier system of imprisonment in Rwanda. Extradition should be refused until detainees in all prisons can be provided with safe and sanitary facilities that meet international standards.

The Rwandan justice system is unable to efficiently handle the number of cases that it must address. With many prisoners held for over 10 years without trial, Rwanda’s justice system has an unacceptable length of pre-trial detention.<sup>50</sup> Some prisoners held for such grossly inappropriate lengths of time have been subsequently released for a lack of evidence. These delays are a violation of a detainee’s right to be tried within a reasonable time and demonstrate that the Rwandan courts continue to be overwhelmed by a backlog of cases. Mr. Rutaganda should not be forced to endure these unreasonable delays, in violation of his human rights.

The influence of public pressure and the involvement of the Rwandan Executive in the courts are also factors that limit the fairness and competency of the Rwandan courts. A 2006 U.S. State Department country report for Rwanda found that “some members of the executive

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<sup>48</sup> *Ibid.*

<sup>49</sup> Amnesty International, Memorandum, AFR 47/013/2007, “Rwanda: Suspects must not be transferred to Rwandan courts for trial until it is demonstrated that trials will comply with international standards of justice” (2 November 2007), online: Amnesty International <<http://www.amnesty.org/en/library/asset/AFR47/013/2007/en/04cd6827-d369-11dd-a329-2f46302a8cc6/afr470132007en.pdf>>.

<sup>50</sup> *Ibid.*

branch...thought that calling judges to discuss ongoing cases privately and express executive preferences was appropriate. In a few cases viewed as politically sensitive, including those dealing with “genocide ideology”...indirect public pressure may have influenced the judiciary.”<sup>51</sup> Government interference with the judiciary was also one reason cited in the United Kingdom for halting the extradition of four British residents requested by Rwanda.<sup>52</sup> The High Court of Justice concluded that, if the accused were extradited, they “would suffer a real risk of a flagrant denial of justice by reason of their likely inability to adduce the evidence of supporting witnesses.”<sup>53</sup> The United Kingdom is one of several States that have refused extradition requests from Rwanda, some as recently as July 2009, on the grounds that an accused person’s right to a fair trial would be violated.<sup>54</sup>

The ICTR has also refused to transfer five suspects to Rwandan courts for prosecution. In considering the requested transfer of Yussuf Munyakazi in 2008, the Trial Chamber expressed concern that the maximum penalty in Rwandan courts, life imprisonment in solitary confinement, violated international human rights standards.<sup>55</sup> The Trial Chamber was

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<sup>51</sup> U.S. Department of State, “Country Report on Human Rights Practices for 2006” *Rwanda* (6 March 2007), online: U.S. Department of State <<http://www.state.gov/g/drl/rls/hrrpt/2006/81364.htm>>.

<sup>52</sup> *Brown and others v. Government of Rwanda and another*, [2009] EWHC 770 (Admin) at para. 107.

<sup>53</sup> *Ibid.* at para. 66.

<sup>54</sup> “Switzerland Will Not Extradite Rwandan-Genocide Suspect to Kigali” *Hirondelle News Agency* (1 July 2009), Fondation Hirondelle online: <<http://www.hirondellenews.com/content/view/12563/535>>.

<sup>55</sup> *ICCPR*, *supra* note 19, art. 7.

specifically concerned that, based on past actions by the Rwandan government, the independence of the judiciary could not be guaranteed.<sup>56</sup>

Despite recent improvements, serious infringements of human rights, lengthy pre-trial detentions and significant external pressures on the judiciary continue to undermine the credibility and competency of the Rwandan justice system. Extradition of Mr. Rutaganda to such conditions would violate his fundamental human rights and is not permitted under international law.

### C. Mr. Rutaganda Was Illegally Recruited as a Child Soldier and Lacks Criminal Culpability for any Alleged Actions

A child soldier is any person “under 18 years of age who is part of any kind of regular or irregular armed force in any capacity.”<sup>57</sup> Regardless of what capacity a child is used for during a conflict, children are incapable of making sound judgements and therefore remain especially vulnerable.<sup>58</sup> Children are less socialized and more susceptible to manipulation than adults, allowing them to be more easily coerced into committing atrocities.<sup>59</sup>

The international legal framework addressing the use of children in armed conflict imposes obligations on States and non-State actors, as opposed to individuals. Customary

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<sup>56</sup> *The Prosecutor v. Munyakazi*, ICTR-97-36-R11bis, Decision (08 May 2008) at para. 40 (International Criminal Tribunal for Rwanda, Trial Chamber).

<sup>57</sup> *Cape Town Principles and Best Practice on the Prevention of Recruitment of Children into the Armed Forces and Demobilization and Social Integration of Child Soldiers in Africa*. Adopted by participants of a symposium on child soldiers in Africa organized by UNICEF, Cape Town, (30 April 1977), online: UNICEF < [http://www.unicef.org/emerg/files/Cape\\_Town\\_Principles\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf) >.

<sup>58</sup> Lakmini Seneviratne, “Accountability of Child Soldiers: Blame Misplaced?” (2008) 20 Sri Lanka J. Int’l L. 29 at 30.

<sup>59</sup> Matthew Happold, *Child Soldiers in International Law* (Manchester: Manchester University Press, 2005) at 142.

international law prohibits States and non-State actors from recruiting children less than 15 years of age or involving them in hostilities.<sup>60</sup> Protocol II of the *Geneva Convention* (1977)<sup>61</sup> explicitly prohibits the recruitment and direct involvement of children under the age of 15 in non-international hostilities.<sup>62</sup> Mr. Rutaganda's recruitment by the *Interahamwe* was in violation of international law. It would be illogical and immoral to prosecute Mr. Rutaganda for the actions he was *trained* to commit by the *Interahamwe* forces after his *illegal* recruitment at the age of 14.

Mr. Rutaganda's alleged criminal actions occurred when he was 15 years old. The Optional Protocol to the *Convention on the Rights of the Child*<sup>63</sup> established a dual standard for the obligations of State and non-State actors regarding persons under the age of 18. Non-State actors are prohibited from involving persons less than 18 years of age in hostilities. An individual younger than 18 but older than 15 ("teenager") does not therefore enjoy an unqualified right to directly participate in hostilities.<sup>64</sup> This restriction distinguishes a teenager, acting in the

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<sup>60</sup> *Prosecutor v. Samuel Hinga Norman*, SCSL-2004-14-AR729E, Reply (31 May 2004) at paras. 31 and 33 (Special Court for Sierra Leone, Appeals Chamber).

<sup>61</sup> *Protocol Additional to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 U.N.T.S. 609.

<sup>62</sup> *Ibid.*, art. 4.

<sup>63</sup> *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, UN ESCOR, Commission on Human Rights, 51st Sess., Agenda Item 24, U.N. Doc. E/CN.4/1995/96 (1995), art. 3(1).

<sup>64</sup> Sonja Grover, "'Child Soldiers' as 'Non-Combatants': The Inapplicability of the Refugee Convention Exclusion" (2008) 12:1 Int. J. Hum. Right 53 at 56.

capacity of a soldier, from an adult “combatant,” who has an *unqualified* right to directly participate in hostilities.<sup>65</sup>

The limitations imposed on a teenager in armed conflict preclude an unfettered right to participate as a “combatant.”<sup>66</sup> As a teenage soldier, Mr. Rutaganda was not a “combatant” because he lacked an unqualified right to participate in hostilities. Unlike an adult soldier, a teenage soldier, as a non-combatant, is not governed by international law. Culpability for the actions of a non-combatant must be assigned to the State which is a party to the *Geneva Convention*.<sup>67</sup> The Republic of Rwanda failed to prevent Mr. Rutaganda, a person under the age of 18, from being recruited by the *Interahamwe*.

State and non-State actors must be held accountable for allowing children and teenagers to be used in armed conflicts. The Special Court for Sierra Leone<sup>68</sup> has taken the crucial first step by criminally convicting the individuals responsible for recruiting and using child soldiers.<sup>69</sup> Canada requests that this court further the cause of protecting children in situations of armed conflict by refusing to allow the extradition of Mr. Rutaganda for alleged actions resulting from his illegal recruitment as a child soldier.

## CONCLUSION

The luring of Emanuel Rutaganda by the United States violated the U.S.-Canada Extradition Treaty, the territorial sovereignty of Canada, and Mr. Rutaganda’s human rights as

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<sup>65</sup> *Protocol Additional to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 U.N.T.S. 3, art. 43.

<sup>66</sup> Grover, *supra* note 64 at 56.

<sup>67</sup> *Ibid.* at 58.

<sup>68</sup> *Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone*, 16 January 2002, 2178 U.N.T.S. 138.

<sup>69</sup> Valerie Oosterveld, “International Decisions” (2009) 103 Am. J. Int’l L. 103 at 108.

guaranteed by the *ICCPR*. This violation occurred in breach of customary international law and such unlawful unilateral State behaviour must not be condoned. Canada respectfully requests that this court prevent Mr. Rutaganda's extradition to Rwanda on the grounds that no extradition treaty exists between the United States and Rwanda, and any such extradition is not supported by international or domestic law. For these reasons, Canada requests that this Court order an immediate stay of the extradition proceedings against Mr. Rutaganda, and order his return to Canadian soil as expediently as possible.

Respectfully Submitted,

Agents for Canada, 2010-08A