

**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#: 2010-10A**

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

STATEMENT OF FACTS.....iii

QUESTIONS PRESENTED.....v

STATEMENT OF JURISDICTION.....vi

INDEX OF AUTHORITIES.....vii

SUMMARY OF ARGUMENT..... 1

ARGUMENT..... 1

I. THE U.S. VIOLATED CANADIAN TERRITORIAL SOVEREIGNTY, BINDING  
TREATY LAW, AND CUSTOMARY INTERNATIONAL LAW BY LURING  
RUTAGANDA TO THE U.S.....1

    A. Operation Motown Express violated Canadian territorial sovereignty because U.S.  
    personnel conducted law enforcement activities on Canadian  
    soil..... 1

    B. Operation Motown Express violated the US-Canada Extradition Treaty because the  
    treaty implies an obligation to not seek custody of a Canadian resident except through  
    the mechanisms in the treaty.....2

    C. Operation Motown Express violated Rutaganda’s human rights under treaty law and  
    customary international law because “luring” a subject is not permitted under international  
    law.....4

II. THE U.S. VIOLATED INTERNATIONAL LAW AND HUMAN RIGHTS NORMS BY  
EXTRADITING RUTAGANDA TO RWANDA.....5

    A. Customary international law does not support extradition in absence of a  
    treaty.....6

        1. US jurisprudence states that extradition without a treaty is outside the capacity  
        of the Executive and unlawful.....7

        2. There are no assurances that Rutaganda’s human rights will be safeguarded if he  
        is extradited.....8

    B. The *gacaca* court system of Rwanda is overburdened and does not serve the true  
    interests of criminal justice .....9

1. <i>Gacaca</i> is not a fair process aligned with international standards.....	9
2. <i>Gacaca</i> is highly politicized and lacks consideration for ethnic differences .....	10
3. Rutaganda will not have a competent bench who will respect his status as a minor .....	11
4. Retributive justice for child soldiers contradicts international norms.....	12
C. Customary international law disfavors traditional criminal proceedings in favor of alternative methods of rehabilitation for former child soldiers.....	12
1. Rwanda’s determination of 14 as the minimal age of criminal responsibility is unusual, and contradicts international law principles.....	13
2. Other international agreements support the idea that child soldiers are not culpable .....	14
3. Rutaganda’s recruitment into the <i>Interhamwe</i> may render him immune from prosecution.....	15
CONCLUSION.....	16

## STATEMENT OF FACTS

The genocide in Rwanda resulted in the deaths of hundreds of thousands of ethnic Tutsis at the hands of the Hutus. Several Hutus who were involved in the genocide fled from Rwanda after the collapse of the Hutu government in August 1994. One such Hutu was a child soldier named Emanuel Rutaganda, a Canadian by birth who is also a Rwandan citizen. Rutaganda was recruited into the *Interhamwe* militia at age 14; at age 15 he participated in killing 275 Tutsi children in the Boutaire High School massacre. Rutaganda and six other *Interhamwe* militia members set fire to a Tutsi detention center, positioning themselves at the exits so that no victims could escape the fire. This brutal atrocity is one of the more The Rwandan district court in Boutaire charged Rutaganda and his conspirators with 275 counts of murder.

When the government in Rwanda fell in 1994, Rutaganda and his mother used their Canadian citizenship to flee to Canada. There, Rutaganda married a Canadian woman and established a small business. The Rwandan government, discovering that a genocidaire was freely living in Canada, requested diplomatically that Canada surrender Rutaganda to Rwanda for prosecution. Canada persistently refused, claiming that extradition without a treaty was not possible, Rutaganda would not get a fair trial in Rwanda, and child soldiers should not be culpable for their crimes. Rwanda then issued an INTERPOL Red Notice seeking Rutaganda's arrest in 2002.

In 2009, the Inter-Agency Working Group for Human Rights Violators ("Working Group"), composed of representatives from agencies of National Security Council, State Department, Department of Homeland Security, and Department of Justice, begin focusing its attention on Rutaganda's case. The Working Group devised a plan to arrest Rutaganda by luring him to the United States ("U.S.") while his mother Marie was having surgery in the Detroit

Clinic. The plan, “Operation Motown Express,” involved the Detroit Clinic and was authorized by President Obama. The plan involved emailing Rutaganda’s personal BlackBerry with the false message that Marie was near death and that Rutaganda should travel to Detroit to see her. Rutaganda borrowed a friend’s Canadian passport, entered the U.S., went to the Detroit Clinic where he was immediately arrested by U.S. Immigration and Customs Enforcement agents.

The U.S. instituted a series of immigration and judicial proceedings against Rutaganda, resulting in a order of removal based on Rutaganda’s illegal entry to the U.S. Canada was notified at each stage of the proceedings in accordance with the 2004 Canada-U.S. Consular Notification Agreement, and Canada argued via amicus briefs at each stage of the proceedings. Additionally, the Government of Canada protested the luring and apprehension of Rutagada as a violation of international law, territorial sovereignty and the U.S.-Canada Extradition Treaty and the 1988 Exchange of Letters on Transborder Abduction. Canada further threatened to withdraw its troops from Afghanistan a year early if the U.S. did not agree to resolve the dispute surrounding Rutaganda in the International Court of Justice.

## **QUESTIONS PRESENTED**

1. Was the alleged “luring” of a Canadian citizen to the U.S. a violation of Canada’s territorial sovereignty, the U.S.-Canada Extradition Treaty, the 1988 Exchange of Letters on Transborder Abduction, and/or the protections of Emanuel Rutaganda’s human rights under the International Covenant on Civil and Political Rights and customary international law?
  
2. Would the rendition of Emanuel Rutaganda from the U.S. to stand trial in Rwanda violate international law due to an absence of both a U.S.-Rwanda and Canada-Rwanda extradition treaty, questions about Rwanda’s ability to provide a fair trial for Rutaganda, and the idea that child soldiers lack criminal culpability?

## **STATEMENT OF JURISDICTION**

The Parties to this dispute, Canada and the United States consent to the jurisdiction of this Honourable Court, composed of a Chamber of three judges, pursuant to Article 36(1) of the *Statute of the International Court of Justice*.<sup>1</sup> Each party agrees to bring its actions and positions in conformity with the legal conclusions of this Court with respect to the questions presented as described in the *Compromis*.

---

<sup>1</sup> Statute of the International Court of Justice arts. 36(1), 40(1), June 26, 1945, 59 Stat. 1055, T.S. No. 993 [hereinafter ICJ Statute].

## **INDEX OF AUTHORITIES**

### **TREATIES**

- African Charter on the Rights and Welfare of the Child, art. 2 & 23, OAU  
Doc.CAB/LEG/24.9/49 (1990)
- Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst  
Forms of Child Labour (ILO No. 182), June 17, 1999, 38 I.L.M. 1207
- Convention on the Prevention and Punishment of the Crime of Genocide, opened for  
signature Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277
- Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3
- European Convention on Human Rights, Nov. 4, 1950, 213 U.N.T.S. 222.
- International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171
- Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90
- Statute of the International Court of Justice, 26 June 1945, Can. T.S. 1945 No. 7
- United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment  
or Punishment, 1465 U.N.T.S. 113, Dec. 10, 1984
- Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331

### **I.C.J. AND PERM. CT. JUSTICE DECISIONS**

- Summary, Int'l Court of Justice, Questions Relating to the Obligation to Prosecute or Extradite  
(Belg. v. Sen.), (May 28, 2009) *available at*  
<http://www.icj-cij.org/docket/files/144/15146.pdf>
- Bozano v. France*, 9 Eur. Ct. H.R. (ser. A) 297 (1986)
- Prosecutor v. Dokmanovic, Case No. IT-95-13a-PT, Decision on the Motion for Release by the

Accused (Oct. 22, 1997)

*Sardinas Albo v. Italy*, App. No. 56271/00, ECHR 2004-1 (Jan. 8, 2004)

Statement to Facts and Questions to the Parties by Gal Yair Klein Against Russia, App. No. 24268/08, ECHR (May 26, 2008)

United States Diplomatic and Consular Staff in Tehran Judgment (U.S. v. Iran), 1980 I.C.J. 3 (May 24, 1980)

### **UNITED NATIONS DOCUMENTS**

*Report of the UN Committee on the Rights of the Child, Twenty-third Session (Geneva, Jan. 10-28, 2000)*, Armenia, ¶ 350, Grenada, ¶ 411(a), South Africa, ¶ 455(a), UN doc. CRC/C/94, (Mar. 3, 2000)

U.N. Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”) U.N. Doc. A/40/53 (Nov. 29, 1985)

*Principles and Guidelines on Children Associated With Armed Forces or Armed Groups*, Feb. 7, 2007, available at [http://www.diplomatie.gouv.fr/en/IMG/pdf/Paris\\_Conference\\_Principles\\_English\\_31\\_January.pdf](http://www.diplomatie.gouv.fr/en/IMG/pdf/Paris_Conference_Principles_English_31_January.pdf)

*Report of the UN Committee on the Rights of the Child, Twenty-third Session (Geneva, Jan. 10-28, 2000)*, Armenia, UN doc. CRC/C/94, ¶ 350, Grenada, ¶ 411(a), South Africa, ¶ 455(a)

The Secretary-General, *Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children*, ¶ 250-51, delivered to the General Assembly, U.N. Doc. A/51/306 (Aug. 1996)

The Secretary General, *The Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone*, U.N. SCOR, ¶ 32, U.N. Doc. S/2000/915 (Oct. 4, 2000)

### **RWANDAN FEDERAL LAWS**

Organic Law No. 08/96 on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since October 1, 1990, Aug. 30, 1996

Law No. 27/2001 of 28/04/2001 Relating to Rights and Protection of the Child Against Violence, published in *Official Gazette* No. 23, Dec. 1, 2001

### **U.S. FEDERAL STATUTES AND PROCLAMATIONS**

8 U.S.C. § 1101(a)(42)

18 U.S.C. § 3183(a)

18 U.S.C. § 3181(b)

### **U.S. FEDERAL COURT CASES**

*Negusie v. Holder*, 129 S.Ct. 1159 (2009)

*Ntakirutimana v. Reno*, 184 F. 3d 419 (1999)

*United States v. Charles McArthur Emmanuel*, No. 06-20263 (S.D. Fla., Apr. 28, 2006)

*Valentine v. United States ex rel. Neidecker*, 299 U.S. 5 (1936)

The President's Authority to Force the Shah to return to Iran, 4A U.S. Op. Off. Legal Counsel 149 (Nov. 23, 1979) (Memorandum Opinion)

## **U.S. GOVERNMENT POLICIES**

Restatement (Third) of the Foreign Relations Law of the U.S. §403(2)(b) (1986)

United States Department Of Justice, United States Attorney's Manual (2007), *available at* [http://www.usdoj.gov/usao/eousa/foia\\_reading\\_room/usam/index.html](http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/index.html) (last visited Nov. 30, 2007) [hereinafter “USAM”]

## **BOOKS AND JOURNAL ARTICLES**

William J. Aceves, *United States of America: A Safe Haven for Torturers* 23-25 (Amnesty Int’l USA 2001)

Arther Asiimwe, *End of Genocide Tribunal Stirs Emotions in Rwanda*, Jan. 27, 2008, *available at* <http://www.reuters.com/article/worldNews/idUSL2765872520080127>

Amnesty Int’l, *Sweden: Extradition of Rwandan genocide suspect jeopardizes right to fair trial*, July 10, 2009, *available at*:  
<http://www.unhcr.org/refworld/docid/4a5aff4fc.html> [accessed 21 January 2010]

Amnesty Int’l, *International Law Commission: The Obligation to Extradite or Prosecute (Aut Dedere Aut Judicare)* AI Index IOR 40/001/2009 (Feb. 3, 2009)

Amnesty Int’l, *Rwanda: Suspects Must Not be Transferred to Rwandan Courts for Trial Until it is Demonstrated that Trials will Comply with International Standards of Justice* (2007) *available at* <http://www.amnestyusa.org/document.php?lang=e&id=ENGAFR470132007>

M. CHERIF BASSIOUNI, *INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE* (5th ed. 2007)

Jonathan A. Bush, *How Did We Get Here? Foreign Abduction After Alvarez-Machain*, 45 *STAN. L. REV.* 939 (1993)

Nanda Na Champassak, *Canada Convicts Rwandan for His Part in Killing Spree*, Oct. 20, 2009,  
*available at* <http://www.theepochtimes.com/n2/content/view/24084/>

Nienke Grossman, *Rehabilitation or Revenge: Prosecuting Child Soldiers For Human Rights Violations*, 38 GEO. J. INT'L L. 323 (2007)

HUMAN RIGHTS WATCH, *LASTING WOUNDS: CONSEQUENCES OF GENOCIDE AND WAR FOR RWANDA'S CHILDREN* (2003)

HUMAN RIGHTS WATCH, *LAW AND REALITY: PROGRESS IN JUDICIAL REFORM IN RWANDA* (2008)

Office of the Special Representative of the Secretary-General for Children and Armed Conflict & UNICEF, *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World* 73, 76 (April 2009)

Rosemary Rayfuse, *International Abduction and the United States Supreme Court: The Law of the Jungle Reigns*, 42 INT'L & COMP. L.Q. 882 (1993)

Michael P. Sharf, *The Prosecutor v. Slavko Dokmanovic: Irregular Rendition and the ICTY*, 11 *Leiden Journal of International Law* 369 (1998)

Lars Waldorf, *Mass Justice For Mass Atrocity: Rethinking Local Justice As Transitional Justice*, 79 TEMP. L. REV. 1 (2006)

## SUMMARY OF ARGUMENT

The luring of Rutaganda from Canada to the U.S. violated Canadian territorial sovereignty, as well as multiple treaty-based and customary international law-based obligations of the U.S. Rutaganda should not be extradited to Rwanda because both U.S. precedent and customary international law advise against this and Rutaganda will not have a fair trial in Rwanda. Moreover, child soldiers should not be held culpable for their crimes.

## ARGUMENT

### **I. THE U.S. VIOLATED CANADIAN TERRITORIAL SOVEREIGNTY, BINDING TREATY LAW, AND CUSTOMARY INTERNATIONAL LAW BY LURING RUTAGANDA TO THE U.S.**

The United States, in the execution of Operation Motown Express, which conned Emanuel Rutaganda into believing his mother was gravely ill and which arrested him as he rushed to her bedside, violated the territorial sovereignty of Canada, the United States-Canada Extradition treaty, the Exchange of Letters between Canada and the United States on Transborder Abduction, Emanuel Rutaganda's human rights protected by the International Covenant on Civil or Political Rights, and Emanuel Rutaganda's human rights protected under customary international law.

#### **A. Operation Motown Express violated Canadian territorial sovereignty because U.S. personnel conducted law enforcement activities on Canadian soil.**

The primary responsibility of state sovereignty is the protection of a state's people.<sup>2</sup> A state's sovereignty is violated therefore when a foreign state endeavors to circumvent the protections a state grants to its residents.

---

<sup>2</sup> Int'l Comm'n on Intervention & State Sovereignty, *The Responsibility To Protect*, at XVI (2001), available at <http://www.iciss.ca/pdf/commission-report.pdf>.

Canadian policy is that child soldiers are more properly categorized as victims of the horrors of war than as culpable for them.<sup>3</sup> Because of this, Canada has repeatedly refused extradition requests for Rutaganda by Rwanda, in an effort to protect Rutaganda, a Canadian citizen, from state action Canada believes to be unwarranted. This responsibility to protect Rutaganda lies at the heart of Canadian sovereignty.

For the United States, therefore, after Canada repeatedly and publicly denied Rutaganda's extradition to Rwanda, to concoct a scheme to nullify Canadian efforts to protect Rutaganda, is an egregious violation of Canadian sovereignty.

Importantly, even the United States recognizes the unpopularity of its position on the legality of lures. Rule 9-15.630 of the Criminal Resource Manual for United States Attorneys discusses lures in this way. "[S]ome countries may view a lure of a person from its territory as an infringement on its sovereignty."<sup>4</sup> Such an observation has particular force in the context of the circumvention of an established treaty-based extradition method.

**B. Operation Motown Express violated the US-Canada Extradition Treaty because the treaty implies an obligation to not seek custody of a Canadian resident except through the mechanisms in the treaty.**

Treaties are to be interpreted differently from statutes. It would be inappropriate to construe the treaty as permitting everything not expressly prohibited. The Vienna Convention on Treaties<sup>5</sup>, and other international authorities, show that, unlike statutes, treaties are to be read liberally, with the purpose of the treaty always in mind.<sup>6</sup>

---

<sup>3</sup> Compromis, ¶ 5.

<sup>4</sup> USAM 9-15.630.

<sup>5</sup> Vienna Convention on the Law of Treaties, art. 31 May 23, 1969, 1155 U.N.T.S. 331.

<sup>6</sup> Jonathan A. Bush, *How Did We Get Here? Foreign Abduction After Alvarez-Machain*, 45 STAN. L. REV. 939, 951 (1993).

The Exchange of Letters on Transborder Abduction contains evidence that the purpose of the treaty includes more than merely setting forth an extradition process. The Exchange, by its terms, “is not intended to create or otherwise alter legal obligations for either Government nor to create or otherwise alter any rights or privileges for private parties.”<sup>7</sup> In light of this mutual understanding, the extradition treaty itself must be read to bind the parties to the obligations set forth in the exchange of letters, and to not sanction any activity prohibited by the exchange of letters.

The exchange of letters clarifies that the treaty prohibits civilian “bounty hunters” from crossing a border and forcibly abducting someone from their state of residence for the purpose of bringing that person to trial in a foreign state.<sup>8</sup> The practice of bounty hunting is legal within the United States, but the exchange of letters (and therefore the treaty) bans this practice as a way of bringing individuals across a border. Indeed, the exchange of letters, and therefore the treaty, requires that a state extradite those bounty hunters responsible for the illegal act.<sup>9</sup>

If the treaty bans this form of transborder abduction, and holds each government responsible when transborder abduction occurs where there are usually no government agents involved in the abduction plot, *a fortiori* the treaty should be construed as to ban government activity of the same nature. By a similar nature, the treaty bans the form of transborder abduction where there is no involvement of United States government agents on Canadian

---

<sup>7</sup> Canada-United States: Protocol Amending the Treaty on Extradition (“Exchange of Letters on Transborder Abduction”) 27 I.L.M. 422 (1988).

<sup>8</sup> Canada-United States: Protocol Amending the Treaty on Extradition (“Exchange of Letters on Transborder Abduction”) 27 I.L.M. 422 (1988).

<sup>9</sup> Canada-United States: Protocol Amending the Treaty on Extradition (“Exchange of Letters on Transborder Abduction”) 27 I.L.M. 422 (1988).

territory. For this reason, the treaty should be read as to bad a practice where the United States coerces Rutaganda by falsely informing him that his mother was in mortal peril to come to the United States. This circumvents the mechanisms set forth in the treaty, and is therefore illegal.

**C. Operation Motown Express violated Rutaganda’s human rights under treaty law and customary international law because “luring” a subject is not permitted under international law.**

The International Covenant on Civil and Political Rights guarantees to everyone “the right to liberty and security of person. No one shall be subjected to arbitrary arrest...”,<sup>10</sup> but in a manner as prescribed by law.

The luring of Rutaganda was not conducted by a method as prescribed by law. The procedures for luring Rutaganda were established by an ad-hoc committee in the United States executive branch.<sup>11</sup>

To become customary international law, a law must achieve two things. First, it must become an obligation as practiced by states. Second, it must be acknowledged as an obligation. Luring has failed to become legal under international law because it is not yet customary state practice. The United States executive branch, as stated above, openly recognizes that the practice of luring has not achieved legitimacy with many legal authorities.<sup>12</sup>

The United States’ reliance upon *Prosecutor v. Dokmanovic* is misplaced because, the Trial Court’s decision was based in large part upon the fact that there was no extradition treaty between the arresting force, UNTAES, and Yugoslavia, and therefore there was no established

---

<sup>10</sup> International Covenant on Civil and Political Rights, art. 9(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

<sup>11</sup> Compromis, ¶ 6.

<sup>12</sup> USAM at 9-15.630.

process to arbitrarily circumvent.<sup>13</sup> To illustrate, the European Commission and Court of Human Rights found in *Stoche v. Germany* that, if the German government had been involved in the lure of the subject from a country with which Germany had an extradition treaty, the treaty would thereby have been circumvented and thus the lure would be illegal under the ICCPR Article 9.<sup>14</sup> When state personnel are involved in luring a suspect, “the rights of the individual under the Convention are violated.”<sup>15</sup>

## **II. THE U.S. VIOLATED INTERNATIONAL LAW AND HUMAN RIGHTS NORMS BY EXTRADITING RUTAGANDA TO RWANDA.**

The rendition of Rutaganda from the U.S. to stand trial in Rwanda violates international law due to an absence of both a U.S.-Rwanda and Canada-Rwanda extradition treaty. Moreover, the extradition jeopardizes Rutaganda’s human rights due to the inability of Rwanda to provide a fair trial for Rutaganda and the internationally accepted notion that child soldiers lack criminal culpability.

### **A. Customary international law does not support extradition in absence of a treaty.**

No State extradites in absence of a treaty based *opino juris*; several nations turn a blind eye to human rights abusers residing within their borders. While the principle of *aut dedere aut judicare*<sup>16</sup> (“extradite or prosecute”) exists as an emerging international legal principle, it is not a

---

<sup>13</sup> Prosecutor v. Dokmanovic, Case No. IT-95-13a-PT, Decision on the Motion for Release by the Accused (Oct. 22, 1997)

<sup>14</sup> Rosemary Rayfuse, *International Abduction and the United States Supreme Court: The Law of the Jungle Reigns*, 42 INT’L & COMP. L.Q. 882, 892 (1993).

<sup>15</sup> Michael P. Sharf, *The Prosecutor v. Slavko Dokmanovic: Irregular Rendition and the ICTY* 11 Leiden Journal of International Law 369, 380 (1998).

<sup>16</sup> United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 7(1), 1465 U.N.T.S. 113, Dec. 10, 1984; Summary, Int’l Court of Justice, Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), (May 28, 2009) available at <http://www.icj-cij.org/docket/files/144/15146.pdf>.

widely accepted notion. The U.S. itself harbors thousands of human rights abusers,<sup>17</sup> ignoring the *aut dedere aut judicare* principle.

Additionally, Council of Europe States may not use deportation to surrender a fugitive offender to the requesting state;<sup>18</sup> without an extradition treaty, states have limited legal options for surrendering fugitives.

In the case of genocide, state practice appears to be shifting in favor of the exercise of universal jurisdiction over rendition to the requesting country, in part due to the horrific nature of the crimes and lack of assurances of a fair trial in the requesting country. Several nations have rejected extradition requests specifically from Rwanda, preferring to exercise universal jurisdiction to try Rwandan war criminals in domestic courts.<sup>19</sup> Finally, binding treaty law states that extradition must occur in line with statute or treaty<sup>20</sup> – neither of which is present in Rutaganda's case.

**1. US jurisprudence states that extradition without a treaty is outside the capacity of the Executive and unlawful.**

The Inter-Agency Working Group forcibly abducted Rutaganda from his country of nationality with the express purpose of extradition; Rutaganda is not lawfully within the jurisdiction of the U.S., and therefore cannot be extradited to Rwanda. International legal

---

<sup>17</sup> William J. Aceves, *United States of America: A Safe Haven for Torturers* 23-25 (Amnesty Int'l USA 2001).

<sup>18</sup> See *Bozano v. France*, 9 Eur. Ct. H.R. (ser. A) 297 (1986).

<sup>19</sup> Amnesty Int'l, *Sweden: Extradition of Rwandan genocide suspect jeopardizes right to fair trial*, 10 July 2009, available at: <http://www.unhcr.org/refworld/docid/4a5aff4fc.html> [hereinafter *Amnesty Int'l, Sweden*].

<sup>20</sup> Convention on the Prevention and Punishment of the Crime of Genocide, art. VII, opened for signature Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277.

principles require the U.S. to return Rutaganda from the State of his abduction<sup>21</sup> – Canada – upon request.<sup>22</sup>

Should the Court decide Rutaganda is lawfully in the U.S., he still can not be extradited. The Executive cannot unilaterally extradite under U.S. statute<sup>23</sup> and precedent.<sup>24</sup> The Inter-Agency Working Group, a committee of agency officials under the auspices of the Executive, similarly have no right to extradite. The *Ntakirutimana v. Reno*<sup>25</sup> case is distinguishable because the instrument used to extradite Ntakirutimana was an Executive-Congressional agreement, necessarily incorporating the will of the Congress.

Additionally, current law does not authorize the U.S. to engage in renditions. The only statute on renditions involves suspects who commit crimes against U.S. nationals abroad.<sup>26</sup> Instances where the Executive has used extraordinary rendition to combat terrorism are widely recognized as violations of international law<sup>27</sup> and inapplicable to Rutaganda, who is not a terrorist. It is too far a leap to extend the power to extradite over foreigners who commit crimes

---

<sup>21</sup> See Restatement (Third) of the Foreign Relations Law of the U.S., §403(2)(b) (1986); see also *United States Diplomatic and Consular Staff in Tehran Judgment (U.S. v. Iran)*, 1980 I.C.J. 3 (May 24, 1980).

<sup>22</sup> *Compromis*, ¶ 11.

<sup>23</sup> 18 U.S.C. § 3183(a).

<sup>24</sup> See *Valentine v. United States ex rel. Neidecker*, 299 U.S. 5, 8 (1936); *The President's Authority to Force the Shah to return to Iran*, 4A U.S. Op. Off. Legal Counsel 149 (Nov. 23, 1979) (Memorandum Opinion).

<sup>25</sup> 184 F. 3d 419 (1999).

<sup>26</sup> 18 U.S.C. § 3181(b).

<sup>27</sup> See, e.g., M. CHERIF BASSIOUNI, *INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE* 289-90 (5th ed. 2007).

against foreign nationals. Moreover, *aut dedere aut judicare* is internationally eschewed by the U.S.<sup>28</sup>

**2. There are no assurances that Rutaganda's human rights will be safeguarded if he is extradited.**

There is a potential for violation of the European Convention on Human Rights<sup>29</sup> because there are no assurances that Rutaganda will have access to a fair and speedy trial, and that he will be safeguarded from inhumane treatment. Delays in justice are the norm in Rwanda.<sup>30</sup> As recently as 2007, Amnesty International reported fears that torture still occurs in Rwandan detention centers.<sup>31</sup> Nations are obliged to stay extradition proceedings if there is a real risk of ill-treatment.<sup>32</sup>

**B. The *gacaca* court system of Rwanda is overburdened and does not serve the true interests of criminal justice.**

Nations, international organizations, and scholars disfavor *gacaca*, the local form of justice used for accused génocidaires in Rwanda, for its judicial delays and unfair process.<sup>33</sup>

---

<sup>28</sup> See Amnesty Int'l, *International Law Commission: The Obligation to Extradite or Prosecute (Aut Dedere Aut Judicare)* n.48, AI Index IOR 40/001/2009 (Feb. 3, 2009).

<sup>29</sup> European Convention on Human Rights, arts. 3 & 6, Nov. 4, 1950, 213 U.N.T.S. 222.

<sup>30</sup> See generally, Lars Waldorf, *Mass Justice For Mass Atrocity: Rethinking Local Justice As Transitional Justice*, 79 TEMP. L. REV. 1, 3 (2006).

<sup>31</sup> Amnesty Int'l, *Rwanda: Suspects must not be transferred to Rwandan courts for trial until it is demonstrated that trials will comply with international standards of justice* (2007) available at <http://www.amnestyusa.org/document.php?lang=e&id=ENGAFR470132007>.

<sup>32</sup> See *Sardinas Albo v. Italy*, App. No. 56271/00, ¶ 20, ECHR 2004-1 (Jan. 8, 2004), see also Statement to Facts and Questions to the Parties by Gal Yair Klein Against Russia, App. No. 24268/08, ECHR (May 26, 2008).

<sup>33</sup> See e.g., HUMAN RIGHTS WATCH, *LASTING WOUNDS: CONSEQUENCES OF GENOCIDE AND WAR FOR RWANDA'S CHILDREN* 18 (2003) [hereinafter *LASTING WOUNDS*].

Since 2005, 800,000 suspected genocidaires have been awaiting trial before *gacaca*.<sup>34</sup> Low participation rates of both the *gacaca* “jury” and judges often results in further delays of justice,<sup>35</sup> in violation of international agreements on the right to justice without delay.<sup>36</sup> If the current practice of Rwanda persists, Rutaganda’s access to justice will be delayed, potentially resulting in further violations of his rights.

**1. *Gacaca* is not a fair process aligned with international standards.**

There is little trust in *gacaca*; for example, the International Criminal Tribunal for Rwanda refuses to transfer cases to *gacaca*, fearing a misadministration of justice.<sup>37</sup> Other nations, such as France, Finland, Switzerland and the United Kingdom, similarly refuse to transfer cases to Rwanda.<sup>38</sup> *Gacaca* proceedings minimize the legitimacy of other tribunals and create a fear that the “*gacaca* proceedings would ‘trivialize the genocide’ and diminish the credibility of convictions.”<sup>39</sup> In addition, *gacaca* judges are poorly trained, often have no legal background and are sometimes illiterate.<sup>40</sup>

---

<sup>34</sup> Nanda Na Champassak, *Canada Convicts Rwandan for His Part in Killing Spree*, Oct. 20, 2009, available at <http://www.theepochtimes.com/n2/content/view/24084/>.

<sup>35</sup> Waldorf, *supra* note 30 at 64-68.

<sup>36</sup> African Charter on the Rights and Welfare of the Child, art. 2(c)(iv), OAU Doc.CAB/LEG/24.9/49 (1990) [hereinafter African Charter]; Convention on the Rights of the Child, art. 40(2)(b)(iii), Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

<sup>37</sup> See Arther Asimwe, *End of Genocide Tribunal Stirs Emotions in Rwanda*, Jan. 27, 2008, available at <http://www.reuters.com/article/worldNews/idUSL2765872520080127>.

<sup>38</sup> Amnesty Int’l, *Sweden*, *supra* note 5.

<sup>39</sup> HUMAN RIGHTS WATCH, *LAW AND REALITY: PROGRESS IN JUDICIAL REFORM IN RWANDA* 13 (2008).

<sup>40</sup> LASTING WOUNDS, *supra* note 33, at 20.

## **2. *Gacaca* is highly politicized and lacks consideration for ethnic differences.**

Currently, *gacaca* is insufficient to offer solace to both Hutu and Tutsi genocide survivors. Tutsi victims are not offered reparations when génocidaires confess, and Tutsi soldiers who killed Hutus are held unaccountable for their crimes.<sup>41</sup> Differing ethnic views of justice are not addressed through *gacaca*; “Hutus generally view it as a way to release family members wrongly imprisoned, while Tutsi survivors often see it as a disguised amnesty for those who killed their family members.”<sup>42</sup> Finally, *gacaca* are run by community members, but organized by the government; this same government has silenced the voices of Tutsi genocide survivors and targeted its political opponents.<sup>43</sup> Judges are elected, and potentially biased; the *gacaca* “jury,” composed of neighbors and peers, has potential to make false accusations and further complicate the fair administration of justice.<sup>44</sup>

## **3. Rutaganda will not have a competent bench who will respect his status as a minor.**

Though Rwandan law requires a separate “minor’s bench” for trials of accused children aged 14 to 18,<sup>45</sup> it is now largely defunct due to overburdened courts and the transfer of judges.<sup>46</sup> Rwanda cannot offer a separate judicial process for Rutaganda through a “minors’ bench,” thus

---

<sup>41</sup> Waldorf, *Mass Justice*, *supra* note 30, at 55.

<sup>42</sup> Waldorf, *supra* note 30, at 74.

<sup>43</sup> Waldorf, *supra* note 30, at 36-37.

<sup>44</sup> *See* Waldorf, *supra* note 30.

<sup>45</sup> Organic Law No. 08/96 of August 30, 1996 on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since October 1, 1990, art. 19 [hereinafter Genocide Law].

<sup>46</sup> *See* LASTING WOUNDS, *supra* note 33, at 34.

violating international law. Binding international agreements<sup>47</sup> cite the need for procedures to respect the accused's status as a minor. The United Nations has chastised States for inefficient (or absent) juvenile justice systems.<sup>48</sup> State practice codified in the Beijing Rules<sup>49</sup> and Paris Principles<sup>50</sup> similarly supports the need for separate or modified procedures for children.

#### **4. Retributive justice for child soldiers contradicts international norms.**

Both *opinio juris* and state practice show that the international community favors processes of reintegration of child soldiers into their communities through education, community service and healing ceremonies. Treaties such as African Charter on the Rights and Welfare of the Child<sup>51</sup> bind State parties to ensure “the essential aim of treatment of every child ... shall be his or her reformation, re-integration into his or her family and social rehabilitation.” The Special Court for Sierra Leone (“SCSL”) exemplifies this in choosing not to prosecute child soldiers, instead offering them healing and dialogue in Truth and Reconciliation Commissions.<sup>52</sup>

---

<sup>47</sup> ICCPR, *supra* note 10, at art. 14(4); CRC, *supra* note 36, at art. 40(3).

<sup>48</sup> *Report of the UN Committee on the Rights of the Child, Twenty-third Session (Geneva, Jan. 10-28, 2000)*, Armenia, ¶ 350, Grenada, ¶ 411(a), South Africa, ¶ 455(a), UN doc. CRC/C/94 (Mar. 3, 2000).

<sup>49</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, art. 2.3, U.N. Doc. A/40/53/Annex (Nov. 29, 1985) [hereinafter Beijing Rules].

<sup>50</sup> The Paris Principles: *Principles and Guidelines on Children Associated With Armed Forces or Armed Groups*, art. 8.91, Feb. 7, 2007, available at [http://www.diplomatie.gouv.fr/en/IMG/pdf/Paris\\_Conference\\_Principles\\_English\\_31\\_January.pdf](http://www.diplomatie.gouv.fr/en/IMG/pdf/Paris_Conference_Principles_English_31_January.pdf) [hereinafter Paris Principles].

<sup>51</sup> African Charter, *supra* note 36, at art. 17(3).

<sup>52</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict & UNICEF, *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World* 38 (April 2009) [hereinafter Machel Study 2009].

Similarly, international criminal tribunals have not prosecuted child soldiers, though this form of retributive justice is available by statute.<sup>53</sup>

**C. Customary international law disfavors traditional criminal proceedings in favor of alternative methods of rehabilitation for former child soldiers.**

Typically, child soldiers have not been prosecuted for their crimes, even where a tribunal has the mandate to do so.<sup>54</sup> The SCSL statute permits the prosecution of soldiers 15 years and older, but the prosecutor stated he would not prosecute child soldiers.<sup>55</sup> Rwanda is the first nation to criminally prosecute child soldiers through the national justice system,<sup>56</sup> in contradiction of international norms. The Convention on the Rights of the Child (“CRC”) and the Paris Principles advocate for alternatives to judicial proceedings, based on the notion that child soldiers are not culpable and should be rehabilitated for their past actions.<sup>57</sup> The gravity of the crime of genocide committed by the child soldier does not alter a State’s obligations under the CRC to protect the child’s fundamental rights and provide legal safeguards.<sup>58</sup>

Other nations have upheld these international standards. For example, the SCSL uses a Truth and Reconciliation Commission, focusing on education and dialogue, to afford justice for

---

<sup>53</sup> See e.g., Nienke Grossman, *Rehabilitation or Revenge: Prosecuting Child Soldiers For Human Rights Violations*, 38 GEO. J. INT’L L. 323, 338-9 (2007).

<sup>54</sup> See, e.g., Grossman, *supra* note XX at 338-9.

<sup>55</sup> See The Secretary General, *The Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone*, U.N. SCOR, ¶ 32, U.N. Doc. S/2000/915 (Oct. 4, 2000).

<sup>56</sup> LASTING WOUNDS, *supra* note 33 at 18.

<sup>57</sup> Paris Principles, *supra* note 50, at art. 3.7.; Convention on the Rights of the Child, art. 40(1), Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]; ICCPR, *supra* note 10, art. 14(4)

<sup>58</sup> The Secretary-General, *Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children*, ¶ 250-51, delivered to the General Assembly, U.N. Doc. A/51/306 (Aug. 1996).

child soldiers and their victims.<sup>59</sup> The international community should treat child soldiers from a “framework of restorative justice and social reintegration,” not blame and punishment.<sup>60</sup> In Rutganda’s case, a war crime was committed against him; he was forcibly recruited into military service at a young age.<sup>61</sup> This crime committed against him should not result in his culpability for actions resulted from his conscription.

**1. Rwanda’s determination of 14 as the minimal age of criminal responsibility is unusual, and contradicts international law principles.**

Rwandan law regards children aged 14 to 18 as minors, and holds minors criminally liable with certain special protections.<sup>62</sup> However, 14 is an unusually low age for criminal liability, particularly for child soldiers. Since several international agreements (and Rwandan national law<sup>63</sup>) prohibit military recruitment of children under age 18,<sup>64</sup> holding child soldiers liable for crimes is incongruent, since it was a crime to recruit the child soldiers in the first place. Additionally, the CRC notes that children younger than 15 should be protected from the dangers of war.<sup>65</sup>

---

<sup>59</sup> Machel Study 2009, *supra* note 52, at 73, 76.

<sup>60</sup> Machel Study 2009, *supra* note 52, at 76.

<sup>61</sup> *See, e.g.*, United States v. Charles McArthur Emmanuel, No. 06-20263 (S.D. Fla., Apr. 28, 2006).

<sup>62</sup> *See* LASTING WOUNDS, *supra* note 33, at 18.

<sup>63</sup> Law No. 27/2001 of 28/04/2001 Relating to Rights and Protection of the Child Against Violence, published in *Official Gazette* No. 23, Dec. 1, 2001, art. 19.

<sup>64</sup> African Charter, *supra* note XX, at art. 2 & 23; Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO. No. 182), art. 3(a), June 17, 1999, 38 I.L.M. 1207; Rome Statute of the International Criminal Court, art. 26, July 17, 1998, 2187 U.N.T.S. 90.

<sup>65</sup> CRC, *supra* note 57, at art. 38.

Several States extrapolate from the international minimal age of military recruitment and the practice of international criminal tribunals to establish a minimal age of criminal responsibility at 18,<sup>66</sup> even though the CRC allows States to set a minimal age of criminal responsibility.<sup>67</sup>

## **2. Other international agreements support the idea that child soldiers are not culpable.**

The growing international consensus points to a principle that child soldiers should not be held criminally liable. For example, the Paris Principles find that child soldiers should be considered primarily as victims of an international law crime – that is, conscription at a young age – rather than as perpetrators.<sup>68</sup> The Beijing Rules state that nations must balance “the facts of emotional, mental and intellectual maturity” where the age of criminal responsibility is set at a low age.<sup>69</sup> Article 6(5) of the International Covenant on Civil and Political Rights (“ICCPR”) “suggests that all persons under the age of 18 should be treated as juveniles” in criminal justice matters.<sup>70</sup> Given Rutaganda’s tender age of 14 at the time of his military recruitment, and the fact that he had just lost his father in a tumultuous political environment, the “Beijing Rules” require inquiry into his emotional maturity prior to holding Rutaganda culpable.

## **3. Rutaganda’s recruitment into the *Interhamwe* may render him immune from prosecution.**

---

<sup>66</sup> Machel Study 2009, *supra* note 52, at 76.

<sup>67</sup> CRC, *supra* note 57, at art. 40(3)(a).

<sup>68</sup> Machel Study 2009, *supra* note 52, at 76.

<sup>69</sup> Beijing Rules, *supra* note 49, at art. 4.1.

<sup>70</sup> ICCPR, *supra* note 10, at art. 6(5).

Analogizing to immigration law, Rutaganda may be exempt from prosecution under the concept of the “persecutor bar.” In U.S. immigration law, the “persecutor bar” denies asylum to those refugees who engaged in grave international crimes.<sup>71</sup> However, there may be an exception under the persecutor bar for those who involuntarily persecuted others in their home country.<sup>72</sup> In *Negusie*, the U.S. Supreme Court left open the question of whether the persecutor bar applied to a prison guard in an Ethiopian jail.<sup>73</sup> Rutaganda, who was recruited into the *Interhamwe*, was an involuntary persecutor who may be exempt from the persecutor bar. Likewise, he should not be held criminally culpable for his involuntary persecution committed as a child soldier.

### **CONCLUSION**

Therefore, the luring of Rutaganda from Canada to the U.S. was illegal under multiple treaties as well as under customary international law. Rutaganda should not be extradited to Rwanda because both U.S. precedent and customary international law advise against this and Rutaganda will not have a fair trial in Rwanda, and child soldiers are not culpable for their crimes.

Respectfully Submitted,

Team 2010-10A  
Counsel for Applicant, the  
Government of  
Canada

---

<sup>71</sup> 8 U.S.C. § 1101(a)(42).

<sup>72</sup> *See Negusie v. Holder*, 129 S.Ct. 1159 (2009).

<sup>73</sup> *See Id.*