

**To the United Nations Working Group on  
Arbitrary Detention - Office of the United  
Nations High Commissioner for Human  
Rights, Geneva**

**COMMUNICATION**

IN SUPPORT OF:

**Ms. Ghislaine MAXWELL**

Born 25 December, 1961 in Maisons Laffitte (France)

Of French, British & American Nationality

Detained at the Metropolitan Detention Center, Brooklyn, (USA)

ON THE INITIATIVE OF ALL OF HER BROTHERS AND SISTERS:

**Anne HOLVE**

**Dr. Philip MAXWELL**

**Dr. Christine MAXWELL**

**Isabel MAXWELL**

**Ian MAXWELL**

**Kevin MAXWELL**

REPRESENTED BY:

**Maître François ZIMERAY et Maître Jessica FINELLE**

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**MAY IT PLEASE THE UNITED NATIONS  
WORKING GROUP ON ARBITRARY DETENTION**

At the request of her family, the undersigned have the honor to submit to your attention the case of Ms. Ghislaine Maxwell, detained since July 6, 2020 in solitary confinement conditions in the Metropolitan Detention Center (“MDC”) in Brooklyn, USA. Since the undersigned are not involved with Ms. Maxwell’s legal defense, they highlight the reasons which have led them to conclude that the case procedure does not meet the legal standards of a fair trial. In particular the presumption of her guilt permeates Ms. Ghislaine Maxwell’s case in depth, and her detention, which is abnormally rigorous, contravenes the “Mandela Rules” of which your Working Group is the custodian.

The background to the case, the nature of the accusations and the parties involved account for the exceptional level of publicity. However, the obligation to hold a fair trial respecting the presumption of innocence is essential, especially given the seriousness of the accusations and the extensiveness of the overwhelmingly negative media coverage which, since July 2019, has been as relentless as it has been voluminous, comprising: dozens of broadcast documentaries, tens of streamed films and podcasts and the publication of some fifty books and thousands of superficially written articles. The hundreds of millions of people exposed to this torrent of one-sided coverage will have inevitably had their view of the case shaped by it as the voice of Ms. Maxwell has never been heard and the counter narrative has had no traction in the prevailing negative climate. Shockingly, it will be shown here that not only have the prosecution authorities made no effort to mitigate the effects of the demonization of Ms. Maxwell, but that after her arrest on July 2, 2020, they staged a melodramatic press conference where Ghislaine Maxwell was deliberately portrayed to the world as guilty. Perceived as such since that day, she was and remains treated as guilty even though, it must be emphasized, she has still not been tried.

It will also be shown that her conditions of detention are exceptionally prejudicial to her and are unprecedented for a person with no prior criminal record, who is ‘no threat to society’ and with no suicidal tendencies. In addition, Ms. Maxwell is charged with acts allegedly committed 20 to 27 years ago. Physically and psychologically weakened by her detention, the accused has thus been placed in a seriously imbalanced position with respect to the accusers which is as striking as it is unjustified and which has seriously compromised the exercise of the rights of the defense.

Furthermore, Ms. Maxwell’s continuing detention, especially in such adverse conditions, appears totally arbitrary since she presented the Court with a bail package that was unprecedented in its scope and which should have allayed all fears of her absconding. Only the concern not to upset the inflamed passions of the public and the media in this case can possibly explain the rejection of Ms. Maxwell’s successive requests for release. As with previous proceedings, the universal principle that before trial, liberty is the rule and detention the exception, needs to be stressed.

This is the context in which the trial of Ghislaine Maxwell will soon begin. The entire focus and all the complaints initially directed against Mr. Jeffrey Epstein have now pivoted towards this one defendant alone, whose presumption of innocence has been repeatedly flouted. Under these conditions, it is difficult to see how the jury that will soon be constituted will be able to resist the pressure of social opprobrium instigated by the American authorities in this case and bruited about by the media, and guarantee the impartiality that calls for the strict respect of ratified international treaties by the United States of America.

## 1. THE CASE PROCEDURE AND THE EXCEPTIONAL CONTEXT OF GHISLAINE MAXWELL'S ARREST

1. Ms. Ghislaine Maxwell, of French, British and American nationality, was born on December 25, 1961 in Maisons Laffitte, France.
2. She was arrested on July 2, 2020, at dawn, at her New Hampshire home where she had taken refuge sometime after the death of Jeffrey Epstein to escape the upsurge of highly intrusive media coverage with which she was then engulfed,<sup>1</sup> and to ensure her own safety in the face of death threats and violence of which she had become the target.

American prosecutors had made the decision, as surprising as it was arbitrary, not to send her a judicial summons, even though her counsel was in contact with them (**Exhibit n°1, p.28**) and Ms. Maxwell was not on the run from US authorities.

She is accused among other charges of having facilitated the commission of acts of sexual assault committed by Jeffrey Epstein on young underage girls from 1994 to 2004 (**Exhibit n°2, p.1**).

3. The orchestrated arrest of Ms. Maxwell, which took place almost a year to the day after that of Jeffrey Epstein, was immediately followed by a melodramatic press conference by prosecutors whose staging and contempt for her right to the presumption of innocence, must be denounced.<sup>2</sup> They engaged in a total demonization of Ghislaine Maxwell in front of hundreds of journalists and TV cameras from all over the world:

*“Maxwell lied because the truth, as alleged, was almost unspeakable” (04’:42’’).*

*“In addition to allegedly enabling and participating in the sexual abuse of young victims, Maxwell compounded her crimes by repeatedly lying in 2016 when she was questioned under oath” (3’:40’’).*

*‘Maxwell enticed minor girls, got them to trust her and then delivered them into the trap that that she and Epstein had set for them. She pretended to be a woman they could trust, all the while she was setting them up to be sexually abused by Epstein and, in some cases, by Maxwell herself’ (5’:20’’).*

*“Today, we announced the arrest of one of the villains in this investigation” (08’:37’’),* said FBI Special Agent William Sweeney. He also compared her to a snake that *“slithered away to a gorgeous property in New Hampshire” (08’:37’’).*

*“Like Epstein, Ms. Maxwell chose to blatantly disregard the law and her responsibility as an adult, using whatever means she had at her disposal to lure vulnerable youth into behavior they should never have been exposed, and which creates lasting harm” (09’:21’’).*

4. At this point, it is worth recalling the extraordinary circumstances in which the arrest of Ghislaine Maxwell took place which explains the appalling treatment she has been subjected to. Just under a year earlier, on August 10, 2019, Jeffrey Epstein was found dead in his cell at the Metropolitan Correctional Center in New York, where he had been imprisoned on July 6, 2019, on charges of sexual abuse of minors allegedly committed in Manhattan, New York and Palm Beach in Florida between 2002 and 2005 (**Exhibit n°3**).
5. The highly publicized announcement of Jeffrey Epstein’s imprisonment came as a relief to the women who had filed complaints against him, but also to public opinion incredulous at the plea deal negotiated by his legal representative in October 2007 with the prosecution - the conditions of which had been perceived as unusually favorable to Mr. Epstein.

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<sup>1</sup> In its 19 November 2019 issue, the British tabloid *The Sun* even offered a reward of 10,000 GBP to anyone with information leading to locating the whereabouts of Ghislaine Maxwell (Exhibit 22).

<sup>2</sup> Prosecution’s press conference following Ghislaine Maxwell’s arrest on 2 July 2020. Available at: <https://www.cbsnews.com/news/ghislaine-maxwell-jeffrey-epstein-confidante-arrested-fbi/>.

It would be an understatement to say that the news of Jeffrey Epstein's death widely reported by the American and international media, a month after his incarceration, negating any prospect of trial, caused a tremendous shock. It also highlighted the failure of the US government to ensure that an inmate in Federal custody, in such a sensitive case, could be kept safe and alive to attend trial.

**It was therefore urgent, the day after Jeffrey Epstein's death, in the face of strong media and popular outcry, to repair the serious shortcomings attributable to the authorities, and to offer up a substitute culprit.**

The spotlight then turned to Ghislaine Maxwell with whom Mr. Epstein had had a relationship by then long since over, but whose name had not figured in the plea deal referred to above, even though the names of four other women designated as co-conspirators or accomplices of Jeffrey Epstein were mentioned in it. (**Exhibit n°4, p.6**). Nor did Ms. Maxwell's name appear in Jeffrey Epstein's two indictments - the prior one in 2007 (as declared by Detective Joe Recarey – **Exhibit n°3bis, p. 489**) and the more recent dated July 2, 2019, prior to his arrest four days later (**Exhibit n°3**).

At their press conference on July 2, 2020, prosecutors claimed that the investigation leading to Ghislaine Maxwell's arrest had taken place over the previous year - following the death of Jeffrey Epstein:

*“We were working hard on this investigation this past year. It's not easy to put together a case that goes back that far, but it was nothing other than we did the investigation and we were ready at this time to proceed” (13'19”).<sup>3</sup>*

6. On July 6, 2020, Ghislaine Maxwell was remanded in custody at the Metropolitan Detention Center, in Brooklyn, after the US government asserted that she represented an “*extreme risk of flight*”, stressing: “*there are no conditions of bail that would assure the defendant's presence in court proceedings in this case*” (**Exhibit n°5, p. 10**). As will be shown below, the conditions of detention imposed on her from the outset of her detention are extraordinarily inhumane and unjustifiable in view of her profile (see **Section 2.2.1**) – other than because of the shadow of the death of Jeffrey Epstein hanging over her case.
7. Ms. Maxwell has filed four applications for bail. Despite being underpinned by unprecedented commitments including: home confinement with GPS tracking and 24-hour surveillance, the pledging of US\$28.5 million of assets and cash and the renunciation of both her French and British nationalities, each of these bail requests was rejected, which appears unprecedented in the United States given the nature of the case and the profile of the accused. Once again, the specter of the fiasco of Jeffrey Epstein's death in Federal Custody appears behind these systematic refusals.
8. **The concept of arbitrary is clearly defined by your work as well as by the literature and supreme courts case law. It is contrary to the concept of a fair trial. It will be shown below that the pre-trial detainment of Ghislaine Maxwell is arbitrary for several reasons: her detention is not necessary and is taking place in wholly undignified conditions; in the face of the serious charges she faces, she has been unable to defend herself adequately; from the moment of her arrest, she has been presented as guilty and treated as such, her presumption of innocence no longer exists and it is difficult to see how it can be restored; and, finally, the prosecution authorities have shown themselves to be both prejudiced and discriminatory insofar as the treatment meted out to Ms. Maxwell is unprecedented.**

## **2. GHISLAINE MAXWELL'S PROVISIONAL DETENTION IS ARBITRARY**

9. As a preliminary point, it should be noted that the United States ratified the International Covenant on Civil and Political Rights (hereinafter “ICCPR”) on June 8, 1992, which provides, in article 9, that no one can be arbitrarily detained. American law has incorporated this principle in the 4th Amendment of its Constitution.

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<sup>3</sup> op. cit. n°3.

10. However, in the present case, the Working Group will find that the deprivation of Ms. Maxwell's liberty since July 2, 2020 is arbitrary in that her situation, which bears the mark of multiple violations of Articles 9, 10 and 14 of the ICCPR, falls under categories I, III and V as defined by the "Methods" of the Working Group.

**2.1. Ms. Maxwell's detention is neither necessary nor reasonable and thus devoid of any legal basis (Category I)**

11. Article 9 (3) of the ICCPR states that "*it shall not be the general rule that persons awaiting trial shall be detained in custody*". In this regard, the Working Group has constantly affirmed that "*liberty is recognized as a principle and detention as an exception in the interests of justice*".<sup>4</sup> Moreover, the United Nations Human Rights Committee has specified that "*detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances*", and that "*courts must examine whether alternatives to pretrial detention such as bail, electronic bracelets or other conditions, would render detention unnecessary in the particular case*".<sup>5</sup> The Working Group therefore has had the opportunity to stress that "*it is clearly impossible to invoke any legal basis justifying the deprivation of liberty*" when detention is not an absolute necessity dictated by the circumstances of the case.<sup>6</sup> It has thus considered detention as arbitrary in the absence of any individualized assessment of its "*necessary and reasonable*"<sup>7</sup> nature - for example in the case of a seriously ill individual requiring medical follow-up, or of a person whose notoriety is such as to make any risk of flight unlikely and implausible.<sup>8</sup>
12. There is nothing in the circumstances of the present case to consider Ghislaine Maxwell's pre-trial detention as being either necessary or reasonable. On the contrary, it is completely disproportionate and discriminatory (see **Section 2.3** below).
13. In order to secure her provisional detention on July 2, 2020, the prosecutors argued before the US District Court for the Southern District of New York (hereinafter the "SDNY District Court") that Ms. Maxwell was a significant flight risk (**Exhibit n°5, p.10**), which had justified her arrest in her residence in New Hampshire.

At the time of her arrest, however, Ghislaine Maxwell was not remotely considering flight – even though, given her French and British nationalities, she could have taken refuge in one of these two countries at any time prior to her arrest, and had not attempted to flee to either, nor to any other jurisdiction, nor conceal her residence from US authorities. Indeed, **her lawyers had been in contact with prosecutors in the months preceding her arrest**. As stated earlier, her presence at her New Hampshire home was driven by the need to protect herself and her family from threats of physical harm and from the unprecedented press and public lynch mob she had had to endure since the death of Jeffrey Epstein in custody.

In view of the hearing of her bail application on July 14, 2020, less than two weeks after her arrest, Ms. Maxwell immediately countered the request for provisional detention made by the American Government with a proposal for house arrest accompanied by a considerable bond, making any flight risk moot:

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<sup>4</sup> United Nations, Human Rights Council, Report from the Working Group on Arbitrary Detention, 26 December 2011, A/HRC/19/57, para. 54. See also: United Nations, Human Rights Council, Working Group on Arbitrary Detention, Opinion No. 1/2020, para. 53; Opinion No. 8/2020, para. 54; Opinion No. 14/2020, para. 53; Opinion No. 57/2014, para. 26; Opinion No. 49/2014, para. 23; Opinion No. 28/2014, para. 43.

<sup>5</sup> United Nations, Human Rights Committee, General Comment No. 35, Article 9: Liberty and Security of person, 16 December 2014, CCPR/C/GC/35, para. 38.

<sup>6</sup> See, in particular, United Nations, Working Group on Arbitrary Detention, Opinion No. 59/2020, 18 November 2020, A/HRC/WGAD/2020/59.

<sup>7</sup> *ibid.*

<sup>8</sup> United Nations, Working Group on Arbitrary Detention, Opinion No. 62/2017, 2 October 2017, A/HRC/WGAD/2017/62, par. 45-46; Opinion No. 9/2018, 19 April 2018, A/HRC/WGAD/2018/9, para. 51.

“(i) a \$5 million personal recognizance bond, co-signed by six financially responsible people, all of whom have strong ties to Ms. Maxwell, and secured by real property in the United Kingdom worth over \$3.75 million;  
(ii) travel restricted to the Southern and Eastern Districts of New York;  
(iii) surrender of all travel documents with no new applications;  
(iv) strict supervision by Pretrial Services;  
(v) home confinement at a residence in the Southern District of New York with electronic GPS monitoring;  
(vi) visitors limited to Ms. Maxwell’s immediate family, close friends and counsel;  
(vii) travel limited to Court appearances and to counsel’s office, except upon application to Pretrial Services and the government; and  
(viii) such other terms as the Court may deem appropriate” (Exhibit n°6, p.8).

The SDNY District Court denied Ms. Maxwell’s proposed bail package, however, granting the Government’s request and ordered her detention (Exhibit n°7).

14. Ms. Maxwell then set about assembling an enhanced bail package - of unprecedented breadth and depth - to respond to the fears of the Government that she was a flight risk:

⇒ on December 8, 2020, she proposed the sum of US\$28.5 million, comprising the value of all her assets and those of her husband, together with significant additional sureties provided by relatives and – in an unprecedented development - even by the security company that would guard her. This security package, as well as the waiver of her right to contest extradition from France or the UK, was added to her originally proposed conditions of home detention with electronic GPS monitoring and 24/7 guards (Exhibit n°1).<sup>9</sup>

“- A \$22.5 million personal recognizance bond co-signed by Ms. Maxwell and her spouse [...] As noted in the financial report, **the \$22.5 million figure represents the value of all of Ms. Maxwell and her spouse’s assets.** [...];  
- **Five additional bonds totaling approximately \$5 million personal co-signed by seven of Ms. Maxwell’s closest friends and family members.** [...];  
- A \$1 million bond posted by the security company that would provide security services to Ms. Maxwell if she is granted bail and transferred to restrictive home confinement. [...];  
- Ms. Maxwell will remain in the custody of [redacted] a U.S. citizen who has lived in the United States for 40 years. [redacted] will serve as Ms. Maxwell’s third-party custodian [...] and will live with Ms. Maxwell in a residence in New York City until this case has concluded. [...];  
- Travel restricted to the Southern and Eastern Districts of New York [...];  
- Surrender of all travel documents with no new applications;  
- Ms. Maxwell will provide the Court irrevocable written waivers of her right to contest extradition in France and the United Kingdom;  
- Strict supervision by Pretrial Services;  
- home confinement at her residence with electronic GPS monitoring;  
- Visitors to be approved in advance by Pretrial Services, with counsel and family members to be pre-approved.  
- Such other terms as the Court may deem appropriate”.

**By putting all of her assets, those of her husband and, to a certain extent, those of her family and friends into play, she signified her absolute determination to appear before American justice.**

<sup>9</sup> In the event that she would manage to abscond, which would notably imply getting rid of her GPS monitoring and evading security.

Despite this almost unprecedented combination of bail conditions, the government systematically opposed her release, again claiming her to be an “*extreme risk of flight*”, stressing in particular that she “*continues to have extensive financial resources and foreign ties, as well as the demonstrated ability to live in hiding for the long term*” (**Exhibit n°8 p. 4-5**). The prosecutors’ claims were endorsed by the SDNY’s District Court in a judgment dated December 28, 2020, **ordering her continued detention, thus blocking any possibility of her release:**

*“the Defendant plainly poses a risk of flight and that no combination of conditions can ensure her appearance. This is so because: the charges, which carry a presumption of detention, are serious and carry lengthy terms of imprisonment if convicted; the evidence proffered by the Government, including multiple corroborating and corroborated witnesses, is strong; the Defendant has substantial resources and foreign ties (including citizenship in a country that does not extradite its citizens); and the Defendant, who lived in hiding and apart from the family to whom she now asserts important ties, has not been fully candid about her financial situation”* (**Exhibit n°9, p.1**).

Ghislain Maxwell appealed this decision.<sup>10</sup>

⇒ On February 23, 2021, she made a new request for release on bail, augmenting the already exceptional bail package she had proposed two months earlier by offering to renounce her French and British nationalities on the one hand, and on the other to establish a bank account which would be administered by a retired federal judge into which all the assets of Ghislaine Maxwell and her husband would be paid (save for such sums needed to cover current expenses, legal fees, etc) (**Exhibit n°10**).

On March 22, 2021, the SDNY District Court yet again rejected this request for release in the following terms (**Exhibit n°11**):

*“the Court concludes that none of the Defendant’s new arguments and proposals disturb its conclusion that the Defendant poses a risk of flight and that there are no combination of conditions that can reasonably assure her appearance. Thus, for substantially the same reasons that the Court denied the Defendant’s first and second motions for release, the Court DENIES the Defendant’s third motion for release on bail”* (**p.2**).

*“the Defendant’s willingness to renounce her French and UK citizenship does not sufficiently assuage the Court’s concerns regarding the risk of flight that the Defendant poses. Considerable uncertainty regarding the enforceability and practical impact of the renunciations cloud whatever relevance they might otherwise have to the Court’s assessment of whether the Defendant poses a risk of flight”* (**p.7**).

*“The monitorship condition does not reasonably assure the Defendant’s future appearance, even when viewed in combination with the rest of the Defendant’s bail package. The Defendant would continue to have access to substantial assets—certainly enough to enable her flight and to evade prosecution”* (**p.11**).

Ms. Maxwell appealed the decision again.<sup>11</sup>

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<sup>10</sup> *United States v. Maxwell*, Document n°113, “Notice of appeal of the order denying the renewed motion for bail” (11 January 2021). Available at: <https://www.courtlistener.com/docket/17318376/united-states-v-maxwell/>. (N.B. : this link provides access to all the files available on the public docket of the *United States v. Maxwell* case, including those referred to henceforth).

<sup>11</sup> *United States v. Maxwell*, Document n°173, “Notice of appeal of the Order denying Ghislaine Maxwell’s third motion for release on bail” (24 March 2021).

By judgment of June 7, 2021, the Second Circuit Court of Appeal upheld the decisions of the SDNY District Court of December 28, 2020 and March 22, 2021 in particularly terse terms (**Exhibit n°12**).

The Court did note the point raised by the defense that Ms. Maxwell was being deprived of sleep in MDC. However, it ignored the matter, and left it for the District Court to address which was tantamount to doing nothing to alleviate this particularly onerous treatment of her:

*“During oral argument, counsel for Appellant expressed concern that Appellant was improperly being deprived of sleep while incarcerated. To the extent Appellant seeks relief specific to her sleeping conditions, such request should be addressed to the District Court” (Ibid).*

⇒ On November 3, 2021, as the start of her trial was approaching, Ms. Maxwell made yet another request to be released, on the conditions set forth in her previous bail applications (**Exhibit n°24**). Refusing to address the points raised by the defense, the Court simply ordered:

*“For the reasons stated in this Court’s prior bail determinations, Dkt. Nos. 93, 106, 169, and the Government’s letter in opposition, Dkt. No. 423, the renewed request for bail is denied” (Exhibit n°25).*

15. However, the conditions of bail and house arrest proposed by Ghislaine Maxwell were completely without precedent and should have led the American judges to conclude that her appearance at trial was thus assured. By comparison with other notorious cases also involving alleged acts of a sexual nature, much smaller financial guarantees have proven sufficient to ensure the release of the principal accused (see **Section 2.3** below) - even though in this case Ms. Maxwell is not the principal accused but, as alleged by the prosecution, his accomplice.

As an aside, it is difficult to conceive how Ghislaine Maxwell could possibly manage to escape the round-the-clock guard and GPS-monitored home confinement she had proposed given her notoriety and how well her face had become known both in the United States and indeed globally since the death of Jeffrey Epstein.

**The continuing detention of Ghislaine Maxwell therefore appears manifestly unreasonable, rendered entirely unnecessary in view of the meaningful alternative presented to the judges guaranteeing her appearance at trial. As mentioned above, her ongoing detention can only be explained as a reaction to the death whilst in Federal custody of the principal suspect in this case, and the absolute determination of the authorities to organize the bringing to trial of a substitute suspect – with whom no risk of her failing to attend trial can reasonably be taken.**

**In other words, Ms. Ghislaine Maxwell is suffering the consequences of the US administration’s failure to protect the life of Jeffrey Epstein and secure his appearance at his own trial.**

16. It follows from the above that the detention of Ghislaine Maxwell is arbitrary and completely unjustified.

**2.2. The multiple violations of international standards relating to the right to a fair trial are so serious that the deprivation of Ghislaine Maxwell’s liberty is arbitrary (Category III)**

17. Since the opening of criminal proceedings against her in the United States, Ms. Maxwell has suffered serious and repeated violations of her fundamental rights guaranteed by Articles 9, 10 and 14 of the ICCPR. Thus, on the one hand, the abnormally harsh conditions of her detention considerably impact the balance between the parties (**2.2.1**) and compromise the exercise of the rights of the defense (**2.2.2**); and on the other, her presumption of innocence has been sacrificed since the death of Jeffrey Epstein (**2.2.3**) and her right to an independent and impartial tribunal has also been violated (**2.2.4**).



**2.2.1. Inhumane conditions of detention undermining the equality of arms principle (arts. 10 and 14 of the ICCPR).**

18. Article 10 (1) of the ICCPR provides that “*all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person*”.<sup>12</sup> This principle is taken up by rules 1 and 11 of the so-called *Nelson Mandela Rules for the treatment of prisoners*.<sup>13</sup> The United Nations Human Rights Committee further considers that there are close links between the right to be treated humanely and the right to security enshrined in Article 9 of the ICCPR. **The Committee believes that the conditions of detention can be taken into account to determine the arbitrary nature of a particular detention and that isolation in prison can constitute a violation of articles 7<sup>14</sup> and 10 of the ICCPR.**

During a visit to US detention centers in 2016, the Working Group was previously concerned about the widespread use of solitary confinement in US prisons:<sup>15</sup>

*“The Working Group is concerned about the widespread use of solitary confinement, its prolonged duration and its application at the discretion of detention officials. In some cases, individuals were reported to have been subjected to periods of confinement ranging from a few weeks to years, with the review of such confinement taking place only after 30, 60 or 180 days. There was, reportedly, a lack of independent and external review of solitary confinement, allowing for the possibility of abuse of authority by detention officials”.*<sup>16</sup>

... an observation shared by the Office of the High Commissioner for Human Rights on the occasion of the universal periodic review of the United States by the United Nations Human Rights Council in 2020.<sup>17</sup>

19. Furthermore, Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that “*a detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations*”.
20. Finally, article 14 (1) of the ICCPR states that “*(...) everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law*”, thus establishing the equality of arms principle, a corollary of the right to a fair trial. The Working Group, like the United Nations Human Rights Committee,<sup>18</sup> has had the opportunity to underline the close **link existing between a violation of Article 10 (1) of the ICCPR and the violation of equality of arms:**

*“One of the fundamental principles of due process of law is equality between the prosecution and the defence. A detainee who has to endure detention conditions that affect his or her health, safety or well-being is participating in the proceedings in less favourable conditions than the prosecution (...). Where conditions of detention are so inadequate as to seriously weaken the pre-trial detainee and thereby impair equality, a fair trial is no longer ensured, even if procedural fair-trial guarantees are otherwise scrupulously observed. (...)*

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<sup>12</sup> See also: *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, Principle 8.

<sup>13</sup> United Nations, General Assembly, Resolution 70/175, *Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*, 17 December 2015.

<sup>14</sup> Article 7 of the ICCPR states: “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*”

<sup>15</sup> Human Rights Council, Report of the Working Group on Arbitrary Detention on its visit to the United States of America, A/HRC/36/37/Add.2, para. 51.

<sup>16</sup> *ibid.*, para. 64.

<sup>17</sup> Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights - United States, A/HRC/WG.6/36/USA/2, para. 32).

<sup>18</sup> United Nations Human Rights Committee, General Comment No. 35, Article 9: Liberty and Security of person, CCPR/C/GC/35, 16 December 2014, para. 59.

*Moreover, pre-trial detention becomes arbitrary where the conditions are such as to create an incentive for self-incrimination, or - even worse - to make pre-trial detention a form of advance punishment in violation of the presumption of innocence”.*<sup>19</sup>

21. **In this case**, the conditions of detention imposed on Ghislaine Maxwell are particularly harsh. According to some prison officials, they are more stringent and dehumanizing than for those applicable to inmates in the most supervised units in MDC, and those sentenced to death for terrorism or murder.<sup>20</sup> Such conditions therefore appear unjustifiable for a detainee who has exhibited - and has - no suicidal tendencies, with no prior criminal record about whom the court has opined on two occasions that she poses no “*danger to any person or to the community*” (**Exhibits 9 and 11**).

The fact is that the exceptionally intrusive prison regime she is subjected to is in response to a unique Government imperative: to avoid, at all costs, the repetition of the scandal of Jeffrey Epstein’s death in Federal custody in 2019 with which Ghislaine Maxwell of course had no involvement.

In any event, the conditions to which she is subject in prison are a marked attack on her dignity, health, safety and psychological well-being. The fundamental principle of equality of arms between the accused and the prosecution is wholly incompatible with such treatment, in particular:

- ⇒ Since her arrival at the MDC on July 6, 2020, Ghislaine Maxwell has been placed in isolation in a cell measuring circa 5m<sup>2</sup> “9-by-7-foot”, in a unit located away from the general population of prisoners (**Exhibit n°13, p.7**);
- ⇒ **The procedures in place deprive her of all privacy and prevent her from sleeping**: she is monitored 24 hours a day by prison security cameras and by an additional hand-held camera as well as by several prison guards who scrutinize her every move, take notes of her activities and record her telephone conversations with her lawyers (**Exhibit n°13, p.10; Exhibit n°14, p. 4**). She is awakened constantly at night and has been subjected, for the 500+ days of her detention, to a “**suicide watch**” - completely inappropriate in the case of a non-suicidal person - **involving a flashlight shone every 15 minutes on her face to check that she is breathing, literally preventing her from sleeping (Exhibit n°15, p.4)**. Ms. Maxwell has no other option but to seek solutions to protect her eyes, for instance by covering them with a sock or a towel (**ibid, p.6**). Such a situation is plainly unsatisfactory, as evidenced by the black eye with which she woke up one morning.<sup>21</sup> This torturous and unjustified sleep deprivation strongly affects her general physical condition as well as her well-being;
- ⇒ Her cell is searched several times a day and she is subjected to **up to seven body searches per day**, which are particularly damaging to her well-being. The searches appear even more unreasonable since Ghislaine Maxwell is not in contact with any other detainee and, as stated above, is under multiple forms of surveillance both by prison guards and cameras. (**Exhibit n°14, p. 5**). Most importantly, as her defense counsel outlined in her latest request for pretrial release, in the course of those searches: “*she alleges to have been touched in a sexually inappropriate manner by corrections officers on multiple occasions*”, and as a result “*declines recreation time to avoid being searched, which has negatively impacted her physical health*” (**Exhibit n°24**).
- ⇒ Originally detained in prison in New Hampshire, she was then moved to MDC where in the first weeks of her detention, she was only allowed to leave her cell for reasons of hygiene and, although she had access to her trial lawyers, she had no access to her papers and was not allowed any physical exercise. Her lawyers denounced this treatment which differed without valid reason from that applied to other detainees:

<sup>19</sup> United Nations, Report of the Working Group on Arbitrary Detention, 1 December 2004, E/CN.4/2005/6, para. 69-70.

<sup>20</sup> *United States v. Maxwell*, Document n°75, “Letter of Ms. Ghislaine Maxwell’s defense counsel regarding conditions of detention” (24 November 2020), p. 2.

<sup>21</sup> *United States v. Maxwell*, Document n°257, “Letter of Ms. Ghislaine Maxwell’s defence lawyer regarding her sleep deprivation at the MDC” (29 April 2021), p. 1.

*“While generally permitted to be out of her isolation cell and confined to the day room from 7:00 am to 8:00 pm with one hour of recreation time, general population inmates are permitted to be out of their cells until 9:30 pm and given more extensive recreation time. (...) Because Ms. Maxwell is kept in isolation, she is not permitted to participate in activities accorded inmates in general population, such as programming (educational, leisure and wellness), movies, religious services, job assignment” (Exhibit n°13, p.1).*

- ⇒ During the six weeks following her arrival at the MDC, she was only allowed **two 15-minute phone calls per month** (Exhibit n°13, p.1), considerably limiting contact with her family;
- ⇒ **Her diet is abominable:** at times, she has been deprived of meals for long periods - sometimes for a whole weekend (Exhibit n°13, p.7), she has been given rotten, even inedible food, and is most often served dishes whose content does not respect her vegetarian diet. When the cell's tap water is foul-smelling and undrinkable, her requests and those of her counsel for bottled water are rejected by the prison administration (Exhibit n°16, p.2). As a result of this inadequate diet, Ms. Maxwell has lost between 15 to 20 pounds since being detained in MDC and suffers from telogen effluvium (hair loss due to stress and poor nutrition) (ibid, p.8);
- ⇒ **The dilapidated state of MDC further worsens Ghislaine Maxwell's situation:** despite her strong protests both to prosecutors and to the District Court (Exhibit n°15, p.8), Ms. Maxwell still has to endure the catastrophically unsanitary conditions of MDC. In 2019, the *New York Times* reported that, according to investigators, **“the jail is among the worst in the Federal system, determining at different times that prisoners have been beaten, raped or held in inhumane conditions”** (Exhibit n°17). In the month of April 2021, another detainee alerted a federal judge to the sordid conditions of her detention at the MDC: *“I also survived the disgusting feces flood that we were actually told to clean with our own hands. It was humiliating. Floating, dead water bugs, mice, chunks of defecation coming out of the pipes and urine-filled water gushing all through the area”* (Exhibit n°15, p. 6). This judge expressed her indignation in very strong terms:

*“The conditions to which [Mrs X] was subjected are **as disgusting, inhuman as anything I've heard about in any Colombian prison**, but more so because we're supposed to be better than that” (ibid, p.7).*

22. Finally, another serious attack on Ms. Maxwell's well-being occurred on November 1, 2021. After being awoken in the middle of the night to be taken to an in-person hearing at the Manhattan Federal Court, **she was obliged to attend court shackled with ankle restraints and with her hands chained to her bust. This scene of exceptional psychological and physical violence was reported by the media in these terms:**

*“Maxwell, who has been in federal custody for more than a year, was awoken at 3:45 a.m. in her cell and arrived at the federal courthouse at 5:38 a.m., where she stayed alone in a cold cell for hours and was given a small amount of food to eat with no utensils, her attorney said. **She was forced to climb into the transport van on her hands and knees because she was restricted by the shackles”** (Exhibits n°18 and 19).*

23. All in all, the treatment imposed by the US government on Ghislaine Maxwell is unquestionably inhumane and degrading, and seriously undermines her dignity. Although legally presumed innocent, she is publicly humiliated and treated in a way that even established guilt cannot justify.

**Having been physically and psychologically weakened, Ms. Maxwell finds herself in a situation of clear imbalance vis-à-vis the prosecution - a situation further aggravated by her ongoing demonization in the media. Her right to a fair trial has been irreparably compromised.**

Moreover, this detention regime considerably affects the exercise of the rights of the defense.

### 2.2.2. Repeated violations of the rights of the Defense (article 14(3) of the PIDCP)

24. It should be recalled that, under Article 14 (3) b) of the ICCPR, any accused person has the right “(b) to have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing”.

This right constitutes, according to the UN Human Rights Committee, an “important element of the guarantee of a fair trial and an application of the principle of equality of arms”.<sup>22</sup> The Committee was able to clarify that “adequate facilities’ must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory”.<sup>23</sup>

25. How can one consider this principle to be respected, however, for a detainee who is so deprived of sleep and subjected to such undignified and dehumanizing conditions of detention, that she is considerably weakened psychologically and has great difficulty concentrating? It is in these conditions that she meets her lawyers and works on one of MDC's computers and a government laptop for which she is moved from one cell to another in order to access a multi-million-page<sup>24</sup> prosecution file that she cannot search, print, highlight, or annotate. How can Ghislaine Maxwell meaningfully prepare her defense in such circumstances?

Furthermore, the delays, repeatedly denounced by her counsel, with which MDC has transferred the discovery files disclosed by the prosecution to Ms. Maxwell, and the technical problems she has experienced while trying to access the said files on the computer has adversely and repeatedly affected her trial preparation.<sup>25</sup>

**Ensuring a deep understanding of the discovery on which the charges are based and the capacity to respond in detail to them should be even more stringently guaranteed in this case where the accusers are anonymous. In reality, Ghislaine Maxwell is effectively being prevented from properly preparing her defense.**

26. In addition, the principle provided for in Article 14 (3) b) of the ICCPR implies the right to communicate freely with the counsel of one's choice. As such, the European Court of Human Rights - whose specialized and demanding case law is one of the standard references underpinning the opinions of the Working Group - considers that the right of every accused to be effectively defended by a lawyer is among the fundamental elements of a fair trial, and requires that the accused be able to benefit from the assistance of a lawyer at any stage of the proceedings.<sup>26</sup> If, however, this right may be subject to restrictions for compelling reasons, such restrictions must not prejudice the guarantees of Article 6.<sup>27</sup>
27. In this case, Ghislaine Maxwell's fundamental right to the assistance of her lawyers has been repeatedly compromised. In view of the Covid-19 pandemic, the meetings between Ms. Maxwell and her lawyers took place remotely for several months. However, during these interviews, the permanent surveillance to which she is subject, continued. Ms. Maxwell was filmed with a camera pointed at her to the extent that she did not feel able to communicate freely and in confidence with her counsel. At other times, her calls with them as well as her legal mail have been interfered with and her papers taken from her (**Exhibit n°13, p. 10**).

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<sup>22</sup> United Nations, Human Rights Committee, General Comment No. 32, Article 14: Right to equality before the courts and tribunals and to a fair trial, 23 August 2007, CCPR/C/GC/32, para. 32.

<sup>23</sup> *ibid.*, par. 33.

<sup>24</sup> *United States v. Maxwell*, Document n°130, “Letter from counsel Ms. Ghislaine Maxwell's defence lawyer concerning her need to use a laptop to access the prosecution file” (1 February 2021), p. 2

<sup>25</sup> *ibid.*, p.1.

<sup>26</sup> ECHR, *Salduz v. Turkey* [GC], 27 November 2008, No. 36391/02, para. 51

<sup>27</sup> *ibid.*, para. 55.

28. All in all, Ghislaine Maxwell's rights of defense have been seriously and negatively impacted throughout her detention when having effective counsel has been all the more essential given that she has suffered since the start of these proceedings from repeated infringements of her presumption of innocence as will be explained below:

**2.2.3. Portrayed as guilty and treated as such, Ghislaine Maxwell cannot benefit from a fair trial (violation of article 14 (2) of the ICCPR)**

29. Having been portrayed as guilty and treated as such since the death of Jeffrey Epstein, Ghislaine Maxwell's presumption of innocence has been crushed and it is hard to see how this can be reestablished.
30. The right to the presumption of innocence is, however, an essential guarantee of the right to a fair trial. It is protected by the American Constitution, by all international commitments on human rights, in particular article 14 (2) of the ICCPR, as well as by the Body of principles for the protection of all persons subject to any form of detention or imprisonment.

The UN Human Rights Committee has clarified the scope of the principle, stressing that ***“it is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused”*** and that *“the media should avoid news coverage undermining the presumption of innocence”*.<sup>28</sup>

The Working Group also had the opportunity to consider that **a government communication campaign presenting an arrest as a victory for the authorities in suppressing terrorism constituted a violation of the right to the presumption of innocence.**<sup>29</sup>

Finally, one of the main courts specializing in human rights clarified the scope of this principle and **ruled that a virulent press campaign could undermine the fairness of a trial by influencing public opinion and, consequently, the jurors called upon to pronounce on the guilt or otherwise of the accused.**<sup>30</sup> Likewise, broadcasting images of the suspect on television could, in certain circumstances, contravene the principle of the presumption of innocence.<sup>31</sup>

31. In the present case, Ghislaine Maxwell has been the subject of sustained and overwhelming media coverage, aimed at presenting her as the accomplice to the crimes alleged against Jeffrey Epstein, to the point that the certainty of her guilt is seen as clear-cut before any trial has taken place. This saturation coverage was *de facto* incited by the prosecution, beginning with their aforementioned July 2, 2020 press conference, as well as by the plaintiffs - going so far as to make anti-Semitic remarks<sup>32</sup> - and their attorneys, who made extensive and inappropriate comments such as, following her spectacular arrest: ***“Take her down and embarrass the hell out of her. It’s what she deserves”*** (*“Ghislaine Maxwell: Epstein’s Shadow”* Episode 3, 34’42’’).

By contrast, Ghislaine Maxwell's defense team has been muzzled. This is evidenced by the fact that the Government brought to the Court's attention an opinion piece authored by Attorney David Markus, who is not a member of her trial team but represented Ms. Maxwell exclusively on her bail appeal, arguing that it violated *“provisions relating to extrajudicial public statements by attorneys”*.<sup>33</sup> The Court once again sided with the Government, considering in particular that ***“the public, which includes potential jurors, may perceive Mr. Markus as an authoritative source of information regarding the pending matter and***

<sup>28</sup> op. cit. n°23, para. 30.

<sup>29</sup> United Nations, Working Group on Arbitrary Detention, Opinion No. 20/2003, n° n°E/CN.4/2005/6/Add.1, 27 November 2003, para. 9, 10.

<sup>30</sup> ECHR, *Kuzmin v. Russia*, 30 June 2005, No. 58939/00, para. 62.

<sup>31</sup> ECHR, *Rupa v. Romania* (No. 1), 16 December 2008, No. 58478/00, para. 232.

<sup>32</sup> Whitney Webb, “Epstein Victim Maria Farmer Speaks With Whitney Webb, Full Phone Call – Part 2” (26 May 2020), available at: <https://www.thelastamericanvagabond.com/epstein-victim-maria-farmer-speaks-with-whitney-webb-full-phone-call-part-2/>.

<sup>33</sup> *United States v. Maxwell*, Document n°309, “Letter from the Government drawing the court's attention on a column authored by David Markus” (1 July 2021).

*may readily consider his remarks to be accurate and reliable*".<sup>34</sup> It is to say the least startling that the court did not reach similar decisions regarding the voluminous statements in the media on the part of the accusers' representatives.

***Inevitable – but entirely uncritical - media coverage with no investigative analysis:***

32. The context of the case, the prurient fascination exerted by the nature and gravity of the accusations and the parties involved, easily explain why widespread media coverage was and remains inevitable. But such unparalleled publicity is a challenge to justice whose highest mission must be to resist the forces of prejudice particularly prevalent due to the pervasiveness of global social media.

**This essential mission has been completely abrogated in this case where the judicial authorities** have abandoned all pretense of fairness and their duty to protect the accused against the urge for revenge. Demonized as a "monster"<sup>35</sup> and "the mother pimp"<sup>36</sup> and then deprived of her freedom, the voice of Ghislaine Maxwell has been effectively silenced by the court's discriminatory interpretation of Local Rule 23.1 (see above, §32).

***2.2.3.1. A media outpouring, unprecedented and without perspective***

33. In the first place, the sheer number of publications which Ms. Maxwell has been the subject of, particularly since the death of Jeffrey Epstein, characterize the violation of her presumption of innocence. Since 2016, the year of publication of James Patterson's book "*Filthy Rich*",<sup>37</sup> more than fifty books have been devoted to Ghislaine Maxwell, entrenching in the minds of readers the certainty of her guilt. A number of these books, such as "*One Nation Under Blackmail: The Sordid Union Between Intelligence and Crime that Gave Rise to Jeffrey Epstein*",<sup>38</sup> "*TRASH: Encounters with Ghislaine Maxwell*"<sup>39</sup> and "*Epstein & Maxwell Inc.: How the US Gov Helped Make Spying, Sex Trafficking and Blackmail Big Business*",<sup>40</sup> have had their publication dates pushed back so that they could appear shortly before or during the accused's trial.

To the list of these publications must be added countless press articles, TV programs, documentary films and series, some of which have struck a special chord with public opinion (**Exhibit n°20**) despite being based on no evidence but purely on conjecture or hearsay. This is the case for two documentaries with provocative titles – "*Jeffrey Epstein: Filthy Rich*"<sup>41</sup> and "*Ghislaine Maxwell: Epstein's Shadow*",<sup>42</sup> broadcast respectively in 2020 and 2021 on streaming platforms which reached a very large, global audience. Within three days of its release in May 2020, "*Jeffrey Epstein: Filthy Rich*" – which designated Ms. Maxwell as Jeffrey Epstein's collaborator in his sexual exploitation of young women: "...at the top of the pyramid scheme was Ghislaine Maxwell, who was really Jeffrey Epstein's right hand person with helping to recruit these individuals for sexual abuse" (Episode 2, 33'10'') - reached number one on the

<sup>34</sup> *United States v. Maxwell*, Document n°315, "Order requiring David Markus to comply with Local Criminal Rule 23.1" (30 July 2021).

<sup>35</sup> *Channel 4 News*, "Revealed: Epstein and Maxwell implicated in multiple claims of abuse in UK over a decade" (broadcast released on 15 June 2021 at 19:00) 00'05".

<sup>36</sup> *BFM avec RMC*, « Expliquez-nous le monde, épisode 19 : Ghislaine Maxwell, riche héritière et mère maquerelle », available at: <https://rnc.bfmtv.com/mediaplayer/audio/episode-19-ghislaine-maxwell-riche-heritiere-et-mere-maquerele-519682.html>.

<sup>37</sup> James Patterson, *Filthy Rich* (Grand Central Publishing, 10 October 2016).

<sup>38</sup> Whitney Webb, "One Nation Under Blackmail: The Sordid Union Between Intelligence and Crime that Gave Rise to Jeffrey Epstein" (Trine Day, 14 September, 2021), available at: <https://www.amazon.fr/One-Nation-Under-Blackmail-Intelligence/dp/1634243013>.

<sup>39</sup> Christina Oxenberg, "TRASH: Encounters with Ghislaine Maxwell" (Kindle edition, 28 October 2021), available at: [https://www.amazon.com/gp/product/B09GKLT7T1/ref=dbs\\_a\\_def\\_rwt\\_bibl\\_vppi\\_i0](https://www.amazon.com/gp/product/B09GKLT7T1/ref=dbs_a_def_rwt_bibl_vppi_i0).

<sup>40</sup> Dylan Howard, Melissa et al, "Epstein & Maxwell Inc.: How the US Gov Helped Make Spying, Sex Trafficking and Blackmail Big Business" (Kindle edition, 25 January 2022), available at: [https://www.amazon.com/gp/product/B08ZNVG9G7/ref=dbs\\_a\\_def\\_rwt\\_bibl\\_vppi\\_i8](https://www.amazon.com/gp/product/B08ZNVG9G7/ref=dbs_a_def_rwt_bibl_vppi_i8).

<sup>41</sup> John Connolly et Tim Malloy, "Jeffrey Epstein: Filthy rich" (27 May 2020), available at: <https://www.netflix.com/title/80224905>.

<sup>42</sup> Barbara Shearer, "Epstein's Shadow: Ghislaine Maxwell" (28 June 2021), available at: <https://www.sky.com/watch/title/series/442629f9-505b-42d1-8a0e-ec905095b6a5>.

list of most watched shows on Netflix in the United States.<sup>43</sup> There is not a search engine that does not automatically refer to this literature by reference to Ghislaine Maxwell's name.

In the 90 days following her arrest alone, there were **more than 6,000 instances**<sup>44</sup> targeting Ghislaine Maxwell in online and print media (**Exhibit n°21**). This swamping coverage is far greater than that found in cases involving other prominent parties. For example, Ms. Maxwell was mentioned during the same 90-day period after her arrest in more US press articles than Harvey Weinstein, Bill Cosby, Joaquín “El Chapo” Guzman Loera and Keith Raniere *combined* (**ibid**).

34. Secondly, even more than the sheer quantity, the extremely virulent and degrading content of these publications portray Ghislaine Maxwell as guilty even before she has been tried, let alone heard. It should also be pointed out that this phenomenon is not limited to the United States, as illustrated by the title of the podcast put out by a large French radio station “*Ghislaine Maxwell, rich heiress and pimp mother*”.<sup>45</sup>

The documentary “*Ghislaine Maxwell: Epstein's Shadow*” paints an exceptionally prejudicial portrait, without ever putting the words of its speakers into a wider context or providing any balance. One of the speakers, Virginia Giuffre, states: “*Jeffrey had the sickness, but they worked together as a unit. I was brought in by Ghislaine and at that time she was the main procurer for Jeffrey*” (Episode 1, 09’06”). With regard to Ms. Giuffre, it should be noted that she is not one of the accusers in Ghislaine Maxwell’s trial which calls into question her credibility from the Government’s perspective.

Another speaker claims, without her words being explained or questioned that: “*Ghislaine was always on the phone organizing things. Ghislaine knew every time she called me that I was going to be raped - every time*” (Episode 1, 09’19”). A third speaker relates that: “*Ghislaine Maxwell was predominantly in charge of everything, because she's the one who determines like what his appointments were (...). [I] saw her spotting a girl in a uniform, and I saw her, pop out, jump out of the car and go get the girl's phone numbers*” (Episode 2, 23’50” and 25’00”).

In other respects, too, these documentaries unambiguously portray Ms. Maxwell as being guilty of sexual assault, regardless of Jeffrey Epstein’s involvement:

*“An investigation by this programme (...) has found multiple claims that the pair targeted, groomed, trafficked **and sexually abused** at least half a dozen young women in the UK over a ten-year period”* (Channel 4 News, 00’05”).<sup>46</sup>

35. **Consisting of a long series of incriminating statements, these wholly biased documentaries seek to present, as indisputable ‘truth’, a version of the facts which Ghislaine Maxwell is not in a position to rebut.** In any event, and even though the authors or producers of some of this product had solicited a statement from her, inevitably insufficient time was provided for any meaningful response from her.

Indeed, not content with associating Ghislaine Maxwell with the crimes alleged against Jeffrey Epstein, these documentaries have featured alleged acquaintances of hers who have sought to portray her as a manipulative woman, driven by the need for financial security and eager to insert herself in English and American high society: “*You absolutely had the sense that she wasn't really present to you and she wasn't really going to connect with you, it was a sense of scanning always to see who could be more influential or useful to her*” (“*Ghislaine Maxwell: Epstein's Shadow*” Episode 1, 27’09”). Her charisma would only have been the facade of a ‘violent’ and ‘vicious’ person: “*Ghislaine was very charismatic too, dangerously so. But once you got to know her at all, it all fell apart. And she was verbally violent and vicious, and physically violent and vicious*”.<sup>47</sup>

<sup>43</sup> See, in particular, *The Atlantic*, “How Is Jeffrey Epstein Still So Elusive?” (29 May 2020), available at: <https://www.theatlantic.com/culture/archive/2020/05/netflix-jeffrey-epstein-filthy-rich-review/612217/>.

<sup>44</sup> obtained on the Nexis Newsdesk platform, <https://www.newsdesk.lexisnexis.com/>.

<sup>45</sup> op. cit. n°37.

<sup>46</sup> op. cit. n°36.

<sup>47</sup> op. cit. n°33, 1’45”.

To the fore among such “acquaintances” making gratuitous comments about Ms. Maxwell is Anna Pasternak who claimed to be at Oxford with her but who was not in fact her contemporary there. This misleading claim - designed to provide a patina of verisimilitude and authority - is in fact completely false. Obviously, such damning portraits help to support the hypothesis of Ghislaine Maxwell's guilt by suggesting that the acts attributed to her are perfectly consistent with her personality. This is the whole difference between legitimate accusation and universal demonization.

Thus Ghislaine Maxwell, who had not been targeted by the Government until the death of Jeffrey Epstein, in the space of a few days, became “*a monster, worse than Epstein*”<sup>48</sup> - inspiring horror even among her so-called “friends”: “*I was very, very fond of her - but this is another dimension of Ghislaine Maxwell that I was totally unaware of and was deeply sickened and horrified by it*” (“Ghislaine Maxwell: Epstein's Shadow” Episode 3, 18’08”). Indeed, in November 2019, barely three months after Epstein’s death, in a parody of the TV Western’s “*Wanted – Dead or Alive*” posters, the UK tabloid newspaper *The Sun* even offered a £10,000 GBP reward to anyone with information leading to the location of Ghislaine Maxwell (**Exhibit n°22**).

36. Such is the state of opinion today. How can one believe, under these conditions, and despite the supposed best intentions, in the very possibility of an impartial jury, free from all prejudice? But perhaps even more seriously, not only has the US judiciary not protected the right of Ghislaine Maxwell to the presumption of innocence, it has taken an active part in its destruction.

2.2.3.2. *Before any trial, Justice has been instrumental in entrenching the idea of Ms. Maxwell's guilt*

37. As previously stated (**Section 1.**), the press conference held on July 2, 2020, during which the prosecution announced, following a carefully prepared staging, the arrest of Ghislaine Maxwell earlier the same day, constitutes a flagrant violation of her presumption of innocence. In particular, Acting U.S. Attorney General for the SDNY Audrey Strauss stood silent **for nearly twenty seconds** (01’46’’-2’04’’),<sup>49</sup> pointing an accusing finger at a photo mounted behind her of Ghislaine Maxwell with Jeffrey Epstein, his arm entwined around her neck (**Exhibit n°26**). Subsequently, at no time has the prosecutor's office taken care to moderate its use of language or to point out that Ghislaine Maxwell must be presumed innocent. On the contrary, it is unequivocal that prosecutors claimed to have arrested “*one of the villains*” (08’37’’).<sup>50</sup>

*“Maxwell lied because the truth, as alleged, was almost unspeakable (...). Maxwell enticed minor girls, got them to trust her and then delivered them into the trap that she and Epstein had set for them. She pretended to be a woman they could trust, all the while she was setting them up to be sexually abused by Epstein and, in some cases, by Maxwell herself”* (5’20’’).<sup>51</sup>

38. In a classic show trial move, the District Court of the SDNY then published seven books, many of them with the same title: the “*Crimes of Ghislaine Maxwell & Jeffrey Epstein: Unsealed Case Files*” (**Exhibit n°23**).
39. **All in all, it follows from the foregoing that, since the death of Jeffrey Epstein, Ms. Maxwell has been the target of a relentless media witch hunt. US Justice has not sought to resist or counter the extreme emotion of public opinion in this case as is its duty, and nor has it seized each and every opportunity to remind everyone that Ms. Maxwell is presumed innocent or to enable her to respond and prepare for her trial freely and with dignity. Instead, the acting Attorney General bowed to the court of public opinion by portraying her as already guilty and the court has sanctioned that view by permitting and indeed condoning her being punished as such, before any trial. Article 14.2 of the ICCPR has thus been violated.**

<sup>48</sup> op. cit. n°36, 1’24’’. See also: “Ghislaine Maxwell: Epstein’s Shadow” Episode 2 (op. cit. n°43), 42’36’’.

<sup>49</sup> op. cit. n°3.

<sup>50</sup> FBI Special Agent William Sweeney’s statements.

<sup>51</sup> Acting US Attorney Audrey Strauss’s statements.



#### 2.2.4. Violation of the right to an independent and impartial tribunal (art. 14 (1) of the ICCPR)

40. The “*independent and impartial*” character of a court in accordance with the requirements of Article 14 (1) of the ICCPR presupposes in particular that the judicial authority “*enjoys in specific cases judicial independence*” while being protected “*from any form of political influence*”.<sup>52</sup> As recalled by the UN Human Rights Committee, the right to such a tribunal is thus “*an absolute right that is not subject to any exception*”.<sup>53</sup>

With regard to judges, the Bangalore Principles of Judicial Deontology, which describe the main duties of judicial ethics,<sup>54</sup> provide that judicial functions are exercised without favor, bias or prejudice. Judges must therefore refrain from making “*any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process*”.<sup>55</sup>

41. Prosecutors, although considered a primary party in proceedings, are also bound to a certain degree by rules of independence, impartiality and fairness. These requirements are enshrined in the United Nations Guiding Principles Applicable to the Role of Prosecutors (hereafter United Nations Guiding Principles), according to which:

*“Prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice (...)”*.<sup>56</sup>

They must therefore “*strive to be, and to be seen to be, consistent, independent and impartial*”,<sup>57</sup> perform their duties, in particular avoiding any political or social discrimination<sup>58</sup>, and “*remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest*”.<sup>59</sup>

42. In this case, the attitude of the prosecutors whose over-the-top theatrical press conference of July 2, 2020 is perfectly illustrative of their bias, together with the publication by the District Court of the SDNY, before any trial is held, of seven works presenting unsealed court documents and prosecution exhibits mostly relating to the “*Crimes of Ghislaine Maxwell*” (**Exhibit n°23**), obviously calls into question the impartiality of American justice. Taken together, these actions are also particularly revealing of the lack of consideration given by judges to how the outcome of the trial might be affected.
43. On this point, it seems difficult to imagine that the prosecutors have not been influenced, in their pursuit of Ghislaine Maxwell, by the pressures exerted as much by the public as by the press and social media networks, at a time when the subject of sexual violence is at the heart of social debate and where the death of Jeffrey Epstein had deprived the plaintiffs of the possibility of a trial. The impartiality of the investigation carried out is all the more open to question as it appears to have only commenced against Ghislaine Maxwell upon the death of Jeffrey Epstein, as the prosecutors stated during their press conference:

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<sup>52</sup> op. cit. n°23 para. 18, 19.

<sup>53</sup> ibid., para. 19.

<sup>54</sup> Bangalore Principles on Judicial Conduct 2002, (The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002).

<sup>55</sup> ibid, 2<sup>nd</sup> value, 2.4.

<sup>56</sup> United Nations Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (27 August to 7 September 1990).

<sup>57</sup> International Association of Prosecutors (IAP), Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors (23 April 1999), 1(e).

<sup>58</sup> United Nations Guiding Principles, para. 13 (a).

<sup>59</sup> op. cit. n°58, 3(b).

*“We were working hard on this investigation this past year. It’s not easy to put together a case that goes back that far, but it was nothing other than we did the investigation and we were ready at this time to proceed”.*<sup>60</sup>

44. Finally, it is difficult to see how the jury, which will have to rule in a few weeks’ time on the guilt or innocence of Ghislaine Maxwell, will be able to form an objective view of this case and ignore the demonization of her to which the general public has been exposed since the death of Jeffrey Epstein.
45. The fact is that Ms. Maxwell is deprived of her inalienable right to an independent and impartial tribunal.

### **2.3. The detention of Ghislaine Maxwell is the result of discrimination (Category V)**

46. According to Article 26 of the ICCPR: *“all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.*

According to the UN Human Rights Committee, *“discrimination”* is constituted by any *“distinction, exclusion, restriction or preference which is based”* on one of the aforementioned characteristics, *“the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”*.<sup>61</sup> In short, in the light of the case-law of the ECHR, which is particularly extensive on the subject, discrimination consists in *“treating differently, without an objective and reasonable justification, persons in relevantly similar situations”*.<sup>62</sup>

47. However, the Human Rights Committee considers that: *“arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is also in principle arbitrary”*.<sup>63</sup> The same is true of the treatment of detainees, which cannot be discriminatory.<sup>64</sup>

#### **In this case, the detention of Ms. Ghislaine Maxwell is evidently discriminatory.**

48. Firstly, it no longer needs to be shown that the brutality of her detention regime is completely gratuitous considering her profile, and that she has significantly less extensive rights than her co-detainees. Ghislaine Maxwell undergoes body searches much more frequently and extensively than usual, these searches being sometimes carried out up to seven times a day (**Exhibit n°13, attachment A p. 7**). More provocatively, some prison officers appear to believe her conditions of detention are more stringent and dehumanizing than those applicable to inmates of MDC’s most supervised, and those sentenced to death for terrorism or murder.<sup>65</sup>

More generally, the fact that Ms. Maxwell is subject to an anti-suicide surveillance regime even though she has no suicidal tendencies demonstrates that she is being treated differently, without any objective justification.

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<sup>60</sup> op. cit. n° 3.

<sup>61</sup> United Nations, Human Rights Committee, General Comment No. 18: Non-discrimination, 10 November 1989, HRI/GEN/1/REV.9, para. 7.

<sup>62</sup> See, in particular, ECHR, *Willis v. United Kingdom*, 11 June 2002, No. 36042/97, para. 48; ECHR, *Bekos and Koutropoulos v. Greece*, 13 December 2005, No. 15250/02, para. 63.

<sup>63</sup> op. cit. n°6, para. 17.

<sup>64</sup> op. cit. n°14, Rule n°5.

<sup>65</sup> op. cit. n°21, p. 2.

49. Secondly, Ghislaine Maxwell was clearly discriminated against in the denial of her requests for release on bail. As explained in **Section 2.1**, her multiple bail applications were accompanied by considerable and unprecedented sureties. By contrast, in a number of cases with similarities to the present one, the main defendants have been released pending trial with a considerably lighter bail package than that proposed by Ms. Maxwell.

This was the case with Dominique Strauss-Khan, prosecuted for seven counts of sexual offenses and released in May 2011 on condition of a security deposit of five million dollars and the payment of a deposit of one million dollars,<sup>66</sup> or of the former investment manager Bernard Madoff, released on a bond of US\$10 million in June 2010, several months after having admitted his role in a gigantic fraud<sup>67</sup> (see also **Exhibit n°27**).

These sums are much lower than the bail package of US\$28.5 million offered by Ghislaine Maxwell on the occasion of her application for release on December 8, 2020, accompanied by the renunciation of her French and British nationality - a proposal which was also refused.

50. This two-folded discrimination is rooted mainly in the scandal of the death in Federal custody of Jeffrey Epstein on August 10, 2019, and in the urgent need to provide the public with a substitute culprit. The relationship she may have had with Jeffrey Epstein years before - regardless of the reality of it, its origin and its duration – as well as her gender; the privileged international family upbringing of Ms. Maxwell and the controversies surrounding her long-dead father, as well as allusions to her oft-mentioned financial position (“*rich heiress*”), made her the ideal candidate for this substitute role. For example, during the press conference held on the day of her arrest, it was alluded to by FBI agent Bill Sweeney as follows:

*“More recently, we learned she had slithered away to a gorgeous property in New Hampshire continuing to live a life of privilege, while her victims live the trauma inflicted upon them years ago. We moved when we were ready, and Ms. Maxwell was arrested without incident” (9’00’’).*<sup>68</sup>

Particularly revealing of the prosecution’s bias, the above egregious intervention was especially inappropriate since it contrasted the situation of the plaintiffs to the alleged wealth of Ghislaine Maxwell, who nevertheless remains presumed innocent. It is a sharp illustration of the gap between the idea of justice and the drive for revenge, between the demands of a trial and the rites of expiation. In short, Ms. Maxwell is not only being made to answer for the acts of which she is accused, which is as it should be, but it is abundantly clear that she is paying a heavy price for what she symbolizes as well.

51. **Taking all of the above matters into consideration, the Working Group will find that, based on discriminatory grounds, the detention of Ms. Ghislaine Maxwell is arbitrary.**

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<sup>66</sup> New York Post, “DSK’s \$6M bail among the largest in NY history” (21 May 2011). Available at: <https://nypost.com/2011/05/21/dsk-6m-bail-among-the-largest-in-ny-history/>

<sup>67</sup> CBS News, “Madoff’s Ex-Finance Chief Released on \$10M Bail” (22 June 2010). Available at: <https://www.cbsnews.com/news/madoffs-ex-finance-chief-released-on-10m-bail/>.

<sup>68</sup> op. cit. n°3.

## FOR THESE REASONS

Having regard to the Universal Declaration of Human Rights adopted on December 10, 1948,  
Having regard to the International Covenant on Civil and Political Rights (ICCPR, New York Pact) of December 16, 1966,  
Having regard to the United Nations Minimum Rules for the Treatment of Prisoners (Mandela Rules) of December 17, 2015,  
Having regard to *Principes de Bangalore sur la déontologie judiciaire* (2002),  
Having regard Resolutions 40/32 and 40/146 of the UN General Assembly,  
Having regard to Resolutions 15/18, 20/16 and 33/30 of the UN Human Rights Council which provides for the UN Working Group on Arbitrary Detention's mandate,

### **The UN Working Group on Arbitrary Detention is invited to:**

- Determine that the deprivation of Ms. Ghislaine Maxwell's liberty of since 2 July 2020, has been in contravention of articles 9, 10, and 14 of the International Covenant on Civil and Political Rights;

### **And as a consequence,**

- State that the deprivation of liberty of Ms. Ghislaine Maxwell since 2 July 2020, is arbitrary according to the criteria set by the Working Group for cases in Categories I, III, and V;


### **Therefore,**

- Urge the Government of the United States of America to release Ms. Ghislaine Maxwell without delay, and call on it to order an independent investigation into the circumstances that led to her arbitrary detention, and to take appropriate action against those responsible for the violation of her rights.

Submitted from Paris/Geneva,  
22 November, 2021



**Maître François Zimeray**  
Avocat au Barreau de Paris



**Maître Jessica Finelle**  
Avocat au Barreau de Paris

### List of exhibits

- Exhibit n°1 :** *United States v. Maxwell*, Document n°97, “Memorandum of Ghislaine Maxwell in support of her renewed motion for bail” (14 December 2020);
- Exhibit n°2 :** *United States v. Maxwell*, Document n°187, “Superseding indictment” (29 March 2021);
- Exhibit n°3 :** *United States v. Epstein*, Document n°2, “Sealed Indictment” (2 July 2019);
- Exhibit n°3<sup>bis</sup> :** *Giuffre v. Maxwell*, Document n° 278 Attachement GG, “Affidavit of Detective Joe Recarey (21 June 2016)” ;
- Exhibit n°4 :** *Doe v. United States*, Document n°361 Attachment n°62, “Non-prosecution agreement between federal prosecutors in Florida and Jeffrey Epstein” (30 October 2007);
- Exhibit n°5 :** *United States v. Maxwell*, Document n°4, “The government’s memorandum in support of detention” (2 July 2020);
- Exhibit n°6 :** *United States v. Maxwell*, Document n°18, “Memorandum of Ghislaine Maxwell in opposition to the government’s motion for detention” (10 July 2020);
- Exhibit n°7 :** *United States v. Maxwell*, Document n°23, “Order granting the government’s motion to detain the Defendant” (14 July 2020);
- Exhibit n°8 :** *United States v. Maxwell*, Document n°100, “The Government’s memorandum in opposition to the defendant’s renewed motion for release” (18 December 2020);
- Exhibit n°9 :** *United States v. Maxwell*, Document n°106, “Order granting the government’s motion to detain the Defendant” (30 December 2020);
- Exhibit n°10 :** *United States v. Maxwell*, Document n°160, “Memorandum in support of Ghislaine Maxwell’s third motion for release on bail” (23 February 2021);
- Exhibit n°11 :** *United States v. Maxwell*, Document n°169, “Order denying Ghislaine Maxwell’s third motion for release on bail” (22 March 2021);
- Exhibit n°12 :** *United States v. Maxwell*, Document n°299, “Mandate of the US Court of Appeals affirming district court’s orders” (7 June 2021);
- Exhibit n°13 :** *United States v. Maxwell*, Document n°91, “Memorandum of Ghislaine Maxwell in response to the Metropolitan Detention Center regarding her conditions of detention” (7 December 2020);
- Exhibit n°14 :** *United States v. Maxwell*, Document n°38, “Letter of Ghislaine Maxwell regarding the violations of her right to a fair trial” (10 August 2020);
- Exhibit n°15 :** *United States v. Maxwell*, Document n°70-1, “Appeal renewed motion for pretrial release” (17 May 2021);
- Exhibit n°16 :** *United States v. Maxwell*, Document n°159, “Letter of Ghislaine Maxwell regarding her conditions of confinement” (16 February 2021);
- Exhibit n°17 :** *New York Times*, “It’s cold as hell”: Inside a Brooklyn Jail’s Weeklong Collapse” (9 February 2019);
- Exhibit n°18 :** CNN, “Ghislaine Maxwell at pretrial hearing: 'I have not committed any crimes” (1<sup>er</sup> November 2021);
- Exhibit n°19 :** *New York Post*, “Feds refuse to offer Ghislaine Maxwell a plea deal as judge says witnesses can remain anonymous” (1<sup>er</sup> November 2021);
- Exhibit n°20 :** Compilation of books, articles and podcasts on Ghislaine Maxwell;
- Exhibit n°21 :** Graph calculating the number of occurrences of public personalities in the media in the 90-day period after their arrest;
- Exhibit n°22 :** *The Sun*, “WANTED The Sun is offering a £10,000 reward for information on Jeffrey Epstein pal Ghislaine Maxwell” (20 November 2019);

- Exhibit n°23 :** Books published by the United States District Court Southern District of New York between 2019 and 2021;
- Exhibit n°24 :** *United States v. Maxwell*, Document n°408, “Letter by counsel asking the Court to release Ghislaine Maxwell prior to trial” (3 November 2021);
- Exhibit n°25 :** *United States v. Maxwell*, Document n°426, “Order denying Ms. Ghislaine Maxwell’s request for release prior to trial on the conditions set forth in her previous bail applications” (9 November 2021);
- Exhibit n°26 :** Screenshot of the recording of the press conference held on 2 July 2020, following Ms. Ghislaine Maxwell’s arrest;
- Exhibit n°27 :** Comparative table of the conditions of bail of several personalities.