REVIEW OF THE REPORT PUBLISHED BY THE AMERICAN BAR ASSOCIATION (ABA) ON THE PAUL RUSESABAGINA CASE

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About the Author

Justice (former) Dr. Emmanuel Ugirashebuja, is the immediate past President of the East African Court of Justice. He is the Dean Emeritus of the Faculty of Law University of Rwanda, where he continues to teach. He has taught and given lectures on diverse subjects, including the role of the judiciaries in the society as well as the evolution of the judiciary in Rwanda, in over 20 well renowned Universities. He spearheaded the publication of *The Court Manual: A Practical Guide to Law and Practice of the East African Court of Justice.* He served in the Advisory Department to the Commission that drafted the 2003 Rwandan Constitution. He served as a member of the High Council of the Judiciary and the High Council of the National Public Prosecution Authority in Rwanda. In 2020, he was awarded by the Jindal Global University, India, the prestigious life time appointment as a Distinguished Fellow and Eminent Jurist due to *"outstanding qualifications, academic interests, vast experience and commendable contributions to the global legal profession and for strengthening the legal systems and judicial processes"*. He was hosted by the William Richardson, School of Law, University of Hawai'i as the 2019 Bright International Jurist-in- Residence.

Introduction

After the release of the Report published by the American Bar Association (ABA) Centre for Human Rights, the Rwanda Bar Association (RBA), which is a key stakeholder in the Rwandan Legal and Justice Sector, invited the Author of this Review to provide an impartial view of the Report in order to establish veracity of the Report.

It should be noted that the statements and analysis expressed in this Review are not necessarily those of the RBA.

This Review shall only analyse the Report and its findings and will refrain from independently analysing the case at this stage, since the case is on-going, and the Author of the Review strictly observes the principle of *sub-judice.*

It is not the purpose of this Review to deduce the motives (ulterior or otherwise) of the Report.

Analysis of the Report

Monitoring of Trials, if carried out effectively and impartially, is an important tool in ensuring and sustaining fairness in court processes.

The Report authored by Geoffrey Robertson AO, QC (who appears to be the lead author, helped to draft the Report by the staff of the American Bar Association Centre for Human Rights), raises some important aspects of fair trial rights but suffers from serious flaws which calls into question its credibility, veracity, objectivity and usefulness. The flaws in the Report shall be reviewed under the following broad issues: I. Competence of the Author of the Report; II. The Timing of the Report; III. The Lack of Analysis of the Rwandan Legal Framework, Court and Legal Practices; IV. Reliance on Extraneous Issues to the Court Proceedings.

I. Competence of the Author of the Report

The note about the Authors of the Report clearly illustrates that Mr. Geoffrey Robertson AO, QC, the Author, has had an illustrious legal career as a common law practitioner. However, just like everyone else, Mr. Robertson has his limited circle of competence.

It is humanly impossible to understand the whole gamut of existing legal systems and court practices worldwide. There are certain things which a legal practitioner might regard as fundamental concerns yet they are not given similar emphasis in other jurisdictions.

Each jurisdiction has its own distinct history and culture and its own constitutional arrangements and institutions. When one is engaged in the task of monitoring court proceedings, he/she should possess the requisite expertise in the legal system that he/she is monitoring. A top-notch case monitoring report requires that its author has expertise in the legal system and practices of a given jurisdiction or one which is comparable to the one which is being monitored.

Mr. Robertson's lack of expertise in the Rwandan legal system or a comparable one is reflected in the severe distortions of the proceedings in his Report as shall be illustrated in subsequent sections of the present Review.

A competent expert in Rwandan legal system or a comparable system would have certainly arrived at different conclusions in the Report on the monitoring of proceedings of Mr. Rusesabagina Case as shall be demonstrated later in this Review.

II. The Timing and Content of the Report

The timing of the Report raises eye brows. It is rightly pointed out in the Report that at the time of its publications, the court was hearing the prosecution closing arguments. The proceedings in the Court are still on-going and a verdict is yet to be delivered.

This Report goes contrary to an earlier commitment made on the 25th January 2021 by the Clooney Foundation for Justice and the lead Author of this Report that *"a TrialWatch Fairness Report evaluating the conduct of the proceedings against international and regional standards will be released following the* ***trial's conclusion".1*** This pledge was not kept. Instead, the Authors of this Report have opted to release it before the conclusion of the trial.

A question, not unnaturally presents itself, why has the Report been released at this point in time? Why did the Author not exercise restraint and publish the Report at the conclusion of the proceedings, which is imminent, given the stage of the proceedings?

It would be legitimate to suggest that the Author of the Report has violated the *sub judice* rule which prevents anyone and more so those who have participated in the proceedings as monitors or otherwise to discuss ongoing court cases. *Sub judice* applies to avoid debating a case and possibly influencing the legal outcome of a case.

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1 See, Clooney Foundation for Justice, TrialWatch Expert Highlights Key Legal Issues Ahead of the Trial of Paul Rusesabagina, January 25, 2021, p. 2., at, https://cfj.org/wp-content/uploads/2021/01/TrialWatch-Expert-Highlights-Key-Legal-Issues-Ahead-of-the-Trial-of-Paul-Rusesabagina-in-Rwanda.pdf.

Sub judice rule should particularly be observed in criminal proceedings since publicly discussing a case before a court renders its verdict may constitute interference of due process.

In one of the Jurisdictions where Mr. Robertson practices, England and Wales, *sub judice* can be an offence that can lead to contempt of court proceedings.2 Section 1 of the UK Contempt of Court Act 1981 applies a "strict liability rule" whereby *"conduct may be treated as contempt of court as intending to interfere with the course of justice in particular legal proceedings regardless of intent to do so."* Section 2 subsection 1 applies the "strict liability" rule to publications, and for the purpose of the Act, "publications" include speech, writing or other communication, *"which is addressed to the public at large or any section of the public"*. Section 2 subsection 2 provides that "strict liability rule" applies to a publication *"which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced"*.

According to the Victorian Law Reform Commission, Australia, *"the law of sub-judice contempt operates to restrict the publication of material, which has, as a matter of practical reality, a real and definite tendency to prejudice or embarrass legal proceedings pending in court at the time of publication". 3*

In the case of Rwanda, even though not expressly provided for, the doctrine of *sub judice* is a well-known and observed principle in practice. The breach of the doctrine of *sub judice* is implicitly characterized as an element of contempt of court in Rwandan law. Article 262 of the Rwandan Law no68/2018 of 30/08/2018 Determining Offences and Penalties in General stipulates that *'[a]ny person who discredits an act or a decision of judicial organs, in a manner likely to cause contempt or lack of independence of the judicial organ, by use of statements, writings, images or any act, commits an offence.'*

Accordingly, anticipating a course of a trial or predicting its outcome is a strong candidate of *sub-judice* and in certain jurisdictions contempt of court.

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2 Countries with strict rules on the rule of sub-judice include: England and Wales, New Zealand, Australia, South Africa, Bangladesh, India, Pakistan, Canada, Sri Lanka, Kenya, Uganda.

3 Victorian Law Commission, Contempt of Court: Consultation Paper", 2019, https://www.lawreform.vic.gov.au/content/contempt-consultation-paper-html

The Report has not only predicted the outcome of the verdict yet to be delivered, but also even went an extra- mile of suggesting to the Court how the case should be resolved. In the Executive Summary of the Report, the Author states: *"it is doubtful that the court is prepared to offer the guarantees of fairness that these proceedings require in order to be credible if they are to result, as seems predetermined, in a conviction which may carry a sentence of life imprisonment". 4* The Report goes on to state that: "*Further, the verdict will not have been based on evidence which has been properly tested and will thus lack credibility".* The Author removes any lingering doubt that he is in breach of the principle of *sub judice* by dictating to the judges what they ought to do in order for the Court to *"regain credibility at this stage".* He dictates as follows:

> *The court could sever Mr. Rusesabagina's trial from that of the co-defendants, and provide the adjournment that is necessary for him to prepare his defense. It could permit international counsel, representing him or invited as amici, to more fully make their case that the circumstances of Mr. Rusesabagina's transfer to Rwanda amount to an abuse of process, and rule upon it properly so that an adverse decision could be made the subject of appeal. It could recall the Bishop and the two vital witnesses and have their testimony subjected to cross examination.*[5]

The lead Author of the Report should understand better given that he comes from a jurisdiction which upholds the principle of *sub judice* to the extent of equating it to contempt of court if breached. He should have restrained himself from commenting on and giving suggestions on the resolution of a live case before the court. This abhorrent behavior by the Authors of the Report is beyond doubt intended to interfere with the course of justice in the Paul Rusesabagina court proceedings.

III. The Lack of Analysis of the Rwandan Legal Framework, Court and Legal Practices

A credible monitoring report would have commenced by laying down the legal framework within which the monitoring is carried out. This is glaringly absent in the Paul Rusesabagina Case Report. The Report does not even make any slight attempt to analyse the legal framework as well as the court and legal practices in Rwanda or comparable jurisdictions. The Report in its entirety does not mention a single Rwandan legal provision in its analysis.

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4 American Bar Association (ABA), Centre of Human Rights, "The Rusesabagina Case" Trial Watch Fairness Report, A Clooney Foundation for Justice Initiative, 2021, at p. 3

5 Id., at p. 3 and p. 34.

Due to the lack of expertise in the Rwandan legal and court practices or a jurisdiction comparable to Rwanda, the Authors have reached distorted conclusions as shall be illustrated subsequently.

In order to illustrate the serious flaws in the Report, it is important to briefly describe the Rwandan legal system.

Until the early years of this century, Rwanda's legal system was based on civil law principles which were a legacy of the former German and then Belgian administrations, the latter of which administered Rwanda between 1920 and independence in 1962. During this period, laws instituted in Rwanda were based on the Belgian Civil Code. Since around 2002 the Rwandan legal system has undergone a renovation which has seen it introduce a new constitution (2003), and a series of new laws some based on those from common law jurisdictions especially in the areas of commercial laws. In a nutshell, the legal system of Rwanda which was originally rooted in civil law traditions has been suffused, to some extent, by common law so that it has become a unique system incorporating "best practices" from both legal traditions. As the then Deputy Chief Justice, Prof Sam Rugege stated in 2011, "*We are not married to any legal system. What we do is look around for best practices from other systems and integrate them to come up with our own*". 6 Despite the reforms in the Rwandan legal system, the procedures in Court largely reflect those in the Civil law tradition especially in criminal matters.

Traditionally, in the civil law system, a judge determines the matters in the dispute, identify the necessary evidence, schedule necessary intermediate and final hearings, and eventually formulates the judgment according to the applicable law and the evidence.7 It is commonly known that a judge in the civil law system directs fact-gathering and investigates the dispute in a manner that is likely to narrow the inquiry. In this system, commonly referred to as an inquisitorial system, judges are inquisitors who in an active fashion participate in fact-finding inquiry by questioning defense lawyers, prosecutors, witnesses or anyone else who may be beneficial in the interest of justice in whichever way they deem necessary. A review of the court practices in Rwanda would reveal that judges approach the criminal proceedings in a similar fashion to any civil law judge where judges actively inquire in cases before them in order to establish the facts.

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6 See article in the New Times of Rwanda, 18 November 2011. https://www.newtimes.co.rw/section/read/36929

7 See generally, John H. Langbein, The German Advantage in Civil Procedure, 52 U. Chi. L. Rev. 823- 845, (1985)

This brief description of the court proceedings and the role of a judge in Rwanda is important in the subsequent analysis of some of the issues raised by the Report.

A. The Bishop's Testimony, Ruling on Transfer to Rwanda, and Mr. Rusesabagina Exit from the Trial

On the question of the Bishop's Testimony, the Report questions the wisdom of the Court in ruling that oral arguments were sufficient and that the witness could make a statement. The Report negates the fact that in civil law traditions, the court is the master of procedure and that it is in the inherent powers of the court to make such orders as may be necessary for the ends of justice. The Report, in its analysis, does not reveal that the Bishop's testimony was in the context of a pre-trial stage in the preliminary hearing as provided for in Article 125 of the Rwandan Law Relating to the Criminal Procedure.8 Article 125 provides among other things that matters examined in the preliminary hearing include *"matters related to jurisdiction, interests and capacity"*. The Bishop's statement was made during the preliminary hearing on the question of jurisdiction and admissibility of the case. The preliminary hearing was a result of a preliminary objection raised by the counsel of Mr. Rusesabagina on the question of lack of jurisdiction of the Court to entertain the case as well as the admissibility of the case with regards to his transfer to Rwanda. A preliminary objection is a point of law which has been pleaded, or which arises in the course of pleadings and which, if argued as a preliminary point, may dispose of the case. In the **Attorney Gen. of Kenya v. Indep. Med. Legal Unit, Appeal No. 1 of 2011, at 7 (Mar. 15, 2012); Pontrilas Invs. Ltd. v. Central Bank of Kenya & Other, Ref. No. 8 of 2017, at 14-15 (July 4, 2019)**, the East African Court of Justice (EACJ) held that *"only those points that are pure law: unstained by facts or evidence, especially disputed points of fact or evidence"* qualify as appropriate subjects of a preliminary objection. In the **Att'y Gen. of Tanz. v. Afr. Network for Animal Welfare (ANAW), Appeal No. 3 of 2011, at 18 (Mar. 15, 2012),** the EACJ Appellate Division opined as follows: *"Factual or evidentiary issues instead are matters of substantive adjudication of litigation on the merits"* which requires *"evidence adduced, facts shifted, testimony weighed, witnesses called, examined and cross-examined; and a finding of fact then made by the court"*. Simply put, preliminary objections as illustrated in the findings above do not require the calling of witnesses to be examined and cross-examined or a finding of the fact by the court because a proper preliminary objection is *"a purely question of law"*.

8 *Law Relating to the Criminal Procedure,* Law No. 027/2019 of 19/09/2019.

Hence, the invitation of the Bishop to make a statement by the court, was within its broad discretion and inherent powers, especially in the context of the role of a judge in the civil law tradition espoused by Rwandan judges in criminal proceedings.

It is possible that an aggrieved party may appeal in a higher court for the review of the propriety of the exercise of the discretion or inherent powers of a trial judge. This right of appeal after the determination of the Court was available to Mr. Rusesabagina. In fact, according to the Report, the Counsel for Rusesabagina indicated several times that he would appeal the rulings of the Court on the preliminary issues. The appeals were not subsequently made. Instead, Mr. Rusesabagina, according to the Report was *"provoked"* to *"withdraw from the proceedings".9* An impartial and credible report ought not to have arrived at the conclusion that Mr. Rusesabagina *"was provoked to withdraw from the case"* especially that there were still avenues at his disposal to appeal the ruling of the court on any of the preliminary objections raised by him. Availability of an appellate process is an important ingredient in gauging the fairness of a trial. That is because, in the ordinary course of the criminal appellate process, a higher court is generally called upon to determine whether something that was done or said in the course of the trial, resulted in the accused being deprived of a fair trial and led to a miscarriage of justice.

The Report admits that the Counsel for Mr. Rusesabagina had knowledge of the appellate avenues available. On p. 6 of the Report, it is stated that *"Mr. Gashabana* [counsel for Rusesabagina] *additionally stated that he would appeal the court's ruling on jurisdiction and the relevance of the circumstances of Mr. Rusesabagina's transfer to Rwanda"*. Instead of analysing whether the case was appealed against or not, the Report arrives at the preposterous conclusion that Mr. Rusesabagina was *"provoked to withdraw from the proceedings"*.

B. Mr. Rusesabagina's Withdrawal from the Proceedings: Right to be Present at Trial and Right to a Defense

The Report makes an incontrovertible statement that *"while it is within Mr. Rusesabagina's discretion to refrain from participating in the proceedings, it is more important than ever that the court protect his fair trial rights".*[10]

9 ABA Report, *Supra* note 4 at p. 10.

10 *Id.,* at p. 18.

The Report rightly substantiates the point by referring to different standards and case law.11 The Report then proceeds to illustrate reasons why the rights to a fair trial of Mr. Rusesabagina were not observed in the case.

The first reason was that the court did or did not ask certain questions. On p. 20 of the Report, the Author states as follows:

> *In the present case, the judges have not "safeguarded" Mr. Rusesabagina's fair trial rights since his exit. With respect to prosecution witnesses Michelle Martin and Noel Habiyaremye, for example, the judges did not ask any questions about potential motivations for their testimony, such as financial incentives or connections with the Rwandan government, and did not otherwise attempt to test their credibility. Notably, Ms. Martin, as she acknowledged in her testimony, was previously employed by the Rwandan government and Mr. Habiyaremye had previously provided testimony against government opponents. The court's failure to probe their credibility or to appoint an amicus to do so was an indication of its reluctance to allow any action which might challenge the government's case.*

It is absurd to measure the fairness of the trial on the basis of the questions that the Court did or did not ask. Generally speaking, Judges pose questions as they deem necessary to establish the truth. There is no rule book on which questions a judge should or should not ask especially in the context of the civil law tradition. This new standard introduced by the Report is unsubstantiated and not founded on any legal or general principles of law.

In a similar vein, the Report faults the questions posed by the Judges during the proceedings. A slight understanding of the role of a judge in the civil law tradition would have revealed to the Author of the Report that, as earlier noted, a judge in this system is an inquisitor. As earlier pointed out, Judges in this system participate in fact-finding inquiry by questioning defense lawyers, prosecutors, witnesses or anyone else who may be beneficial in the interest of justice in whichever way they deem necessary.

The case monitors would have enriched their monitoring of the Mr. Rusesabagina Case by reviewing the entirety of the case and observe how judges pose questions to the prosecution as well as other co-accused of Mr. Rusesabagina. The monitors would also have benefited from observing other cases in Rwanda to understand the role of a judge in a proceeding. From this observation, the Authors of the Report would have been able, in an objective manner, to formulate general propositions on the fairness of the trial. It is important to stress here that the exercise of analyzing the fairness of a trial should be done after the verdict is delivered so as not to breach the principle of *sub-judice*.

11 See generally, *id.,* at p. 18-19.

The Report goes further to suggest that the Court had a duty to appoint an "*amicus counsel*" in the absence of Mr. Rusesabagina from his trial. The Report borrows this practice from the International Criminal Tribunal for Rwanda/Yugoslavia (ICTR/ICTY). The appointing of an *amicus counsel* in a proceeding in case of absence of the accused is not a general principle of law and neither is it provided for in Rwandan laws. Apart from the practice of ICTR/Y, the Report does not point to any other jurisdiction that has adopted the practice. The Report does not refer to any legal provision or practice that a Rwandan judge can base on to appoint an *amicus counsel.*

C. Right to Adequate Facilities to Prepare a Defense

The Report admits that the Court made a ruling that Mr. Rusesabagina had been denied adequate facilities to prepare for trial and that certain documents had been confiscated, and thus, remedying the situation. This ruling is a clear sign that the Court wanted to ensure fairness in the trial of Mr. Rusesabagina. This ruling against the actions of prison's authorities should remove any doubt that the court is independent and bold to make fair judgments in any aspect of the case including the substantive one. In determining this case, the Court applied the law to the facts and arrived at the conclusion. Similarly, the Court applied the same process to determine that *"the trial could continue because Mr. Rusesabagina's lawyers had access to the documents and because the case against Mr. Rusesabagina could be reviewed last, after the cases against his 20 co-accused, meaning that Mr. Rusesabagina could prepare as the trial was in progress".* The Court, in the light of the facts before it, determined that there was adequate time for Mr. Rusesabagina to continue preparing his case. In practice, parties before a court abide by the decisions of the court on what is adequate time for the preparation of a case, and if the time is not enough at the time when their case is due, they may seek leave of the court to extend the time. Alternatively, a party who is aggrieved of a decision of a court in such matters can appeal the decision.

D. Right to Confidential Communications with Counsel

The Report makes a finding that Mr. Rusesabagina's right to confidential communication with his lawyers was violated. The Report then further states that materials exchanged between Mr. Rusesabagina and his lawyer had been confiscated. The Report cites the following ruling by the Court:

> *The other thing that has been observed and that needs to be corrected is that there are documents from his trial, as well as other documents, that have been seized, and their return to his person is taking a long time. … [D]ocuments which form part of the case file which Rusesabagina Paul exchanges with his lawyers should not be seized. As regards other documents which are not part of the trial file, as well as various other objects which are sent to him through his lawyers, they should make a list (inventory) and hand them over to him through the prison administration.*

The Report admits that the breach that had occurred was remedied by the Court. It should be noted here that the line between searching documents for legitimate reasons and confidentiality is thin and at times authorities cross the line. In *the Question Relating to the Seizure and Detention of Documents and Data (Timor-Leste v. Australia)*[12], Timor Leste instituted proceedings against Australia in the International Court of Justice(ICJ) for seizure of documents and data containing correspondence between Timor Leste and one of its legal advisers relating to a pending arbitration by the Australian authorities, allegedly under a warrant issued under Article 25 of the Australian Security Intelligence Organization Act 1979. Timor Leste filed a Request of *"provisional measures in order to protect its interests and rights and to prevent the use of seized documents and data by Australia against its rights in the pending arbitration…".*[13] After Hearing of the Parties, the ICJ decided that:

> *Australia should ensure that the content of the seized material was not in any way or at any time used by any person or persons to the disadvantage of Timor-Leste until the case was concluded; should keep under seal the seized documents and electronic data and any copies thereof until further decision of the Court; and should not interfere in any way in communications between Timor-Leste and its legal advisers…*[14]

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12 *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia), Provisional Measures*, Order of 3 March 2014, I.C.J. Reports 2014, p. 147

13 Id., at p. 148.

14 *Id.*, at p.149 .

This case, just like the Rusesabagina case, illustrates that authorities may at times cross the thin line between legitimate searches and confidentiality. In case breaches occur, it is incumbent upon the aggrieved party to bring the breach to the attention of a competent Court. This is exactly what Mr. Rusesabagina did and a ruling was made in his favor. The Counsel of Mr. Rusesabagina was at liberty to seek from the Court an order that confidential communication could not be used against his interests (the Counsel did not make such a prayer). The Report does not point to this possibility.

Instead, the Report states that *"the ensuing UN appeals filed by the international defense team allege that violations have not only persisted but have worsened in the month's since the Court's ruling.* These allegations have not been brought before the Court by Rusesabagina or his defense team. The Report relies on issues not before the court to monitor the trial. The purpose of introducing proceedings before the UN Appeals in the Report, which have not been brought before the Court dealing with the case in Rwanda, and concluding that *"Mr. Rusesabagina's defense has likely been "irreparably prejudiced"* is questionable.

E. Taking of Photographs on February 17th 2021

The Report questions the taking of photographs of Mr. Rusesabagina at the beginning of the Trial and concludes that this raised concerns *"the trial was more public spectacle than judicial undertaking.*[15] This concern negates the fact that courtroom photography, videotaping and broadcasting is more and more allowed in a vast majority of courts.[16] It is true that the practice of allowing photographing, videotaping and broadcasting is restricted in other jurisdictions. The laws and practices vary from allowing media coverage in some jurisdictions, to a complete prohibition in others.

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15 See, ABA, *supra* note 4 at p. 2.

16 In the United Kingdom, Photography and broadcasting of a Crown Court case in the United Kingdom was illegal from 1925 until June 2020 per code 41 of the Criminal Justice Act and the Contempt of Court Act. In 2004, a small number of cases in the Court of Appeal were filmed in a trial basis. The Supreme Court has permitted filming since 2009 while the Court of Appeal has allowed it on a regular basis since 2013. See, Born, Matt, (30 Aug. 2004), *Appeal Court lets in cameras as a test for televising trials,* London: Telegraph, https://www.telegraph.co.uk/news/uknews/1470504/Appeal-Court-lets-in-cameras-as-a-test-for-televising-trials.html last retrieved on June 25, 2021. See also, *Crown courts to allow filming for first time, BBC News.* 20 March 2016. , https://www.bbc.com/news/uk-35854485 last retrieved June, 25 2017.

In the United States, photography and broadcasting is allowed in some courtrooms andnot in others.17 There is no standard practice on photography and broadcasting in courtrooms and how it should be carried out.

In Rwanda, Audio and visual Recording in courtroom is permitted after fulfilling certain requirements. Art. 136 of Law No. 027/2019 of 19/09/2019 entitled **"Audio and Visual Recording in Court Hear"** provides that the Presiding Judge of the court may authorize persons to take audio or visual records in the courtroom. The Article further provides that *"the President of the court takes a decision to take audio or visual records* ***before the hearing (emphasis mine)*** *after examining whether there are no consequences on justice, national security, security of parties and public morals.* The law is very clear that the presiding judge may allow photograph taking **before the hearing**. It was therefore not out of the ordinary for the presiding judge in the Rusesabagina Case to allow photographs to be taken before the hearing. Therefore, the assertion by the Authors of the Report that "*the trial was more public spectacle than judicial undertaking",* is yet another blunt ignorance of Rwandan laws and practices in this regard.

It is natural that in jurisdictions where photography and broadcasting is allowed, there are certain cases which attract more media attention than others. In many famous trials such the O.J. Simpsons murder trial case in the US, the Death of Floyd Murder Trial in the US and the Oscar Pistorius Case in South Africa, cameras were allowed in the courtroom. Allowing the cameras in the courtroom in those cases did not turn them into *"public spectacle than judicial undertakings".*

In the Rusesabagina case, the adjournment granted for taking of photographs was done within the confines of the law. In addition, the magnitude of journalists in the courtroom during the commencement of the Rusesabagina trial possibly necessitated effective courtroom management. A review of the proceedings would reveal that allowing the journalists to take photographs at the beginning of the trial was more effective than to allow them to do so during the proceedings because it would have caused distractions.

IV. Reliance on Extraneous Issues to the Court Proceedings

The Report has heavily relied on extraneous issues to the Court proceedings to prejudge *"the fairness of any potential convicting verdict".*

17 In the 1981 case *Chandler v. Florida*, the U.S. Supreme Court ruled that televising trials does not, per se, violate due process. *Chandler v. Florida,* 449 U.S. 560 (1981).

The Report has analyzed issues such as pronouncements by the President of Rwanda and the Minister of Justice in interviews, as well as Mr. Rusesabagina's international defense team submissions to UN Special Procedures, to call into question the fairness of the proceedings. Neither Mr. Rusesabagina nor his Counsel have raised these matters before the Court. How can the fairness of trial proceedings be evaluated against matters that have not been presented before the Court?

Another peripheral issue that the Report raises is that of the cooperation between Belgium and Rwanda in evidence gathering. The intention of the Report on this issue calls for an analysis.

The importance of international legal cooperation in certain cases in order to acquire evidence to convict suspects cannot be stressed enough. Without international legal cooperation, it becomes an uphill task to obtain the required evidence to convict accused persons in certain cases. The analysis of the Report which calls into question the cooperation borders obstruction of the flow of crucial evidence especially that the Report points out that the spokesperson for the Belgian Federal Prosecutor's Office has indicated that *"the investigation in Belgium is ongoing"*. It is difficult to establish the causal link between what the Report has prejudged as an unfair trial and the international legal cooperation. Legal practitioners should unreservedly support international legal cooperation which furnishes a court of law with sufficient evidence to determine a case. Then, in the event that the evidence is improperly used or evaluated, the accused party can appeal the outcome of the trial court. It is only after the verdict is delivered that a Report of this nature can determine whether the evidence was wrongly evaluated in the whole exercise of gauging the fairness of the trial from start to end.

V. Conclusion

A credible monitoring report should convey a neutral and nondramatic representative picture of the case it is monitoring. When monitors and authors of such reports have an opinion, they should be prepared to change it when they discover new facts. They should try to embrace facts that don't fit their world-view and try to understand them.

The Report on Mr. Paul Rusesbagina's Case has dismally failed to deliver a neutral and drama-free view of the case. This Review therefore concludes that the Report demonstrably lacks veracity, objectivity and usefulness.

The competence of the lead Author of the Report, the questionable timing of the Report, the lack of analysis of the Rwandan legal framework, court and legal Practices, and the reliance of the Report on extraneous issues to the court proceedings calls into question the credibility of the Report. The Report has predicted the outcome of the verdict in a manner that casts doubt on the legitimacy of the justice system and in the process attempting to corrode the public's trust in one of the most important institutions in Rwanda, the courts. This Review recommends that, due to the serious flaws in the Report, it should be given a wide berth.

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