



# The Case of Paul Rusesabagina

April 2022

**TRIALWATCH FAIRNESS REPORT**

A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

## ABOUT THE AUTHOR

**Geoffrey Robertson AO, QC** is the founder and head of Doughty Street Chambers, which is Europe's largest human rights practice. He has had a long and distinguished career as trial and appellate counsel in Britain and in international courts, and he served as first President of the UN war crimes court in Sierra Leone, and as a founding member of the UN's Internal Justice Council. In 2011, he received the New York Bar Association Award for distinction in international law and affairs, and in 2018 he was awarded the Order of Australia for services to human rights. He is the author of *Crimes against Humanity – The Struggle for Global Justice* and other scholarly works on genocide and the use of targeted sanctions against human rights abusers. He is a Master of the Middle Temple and visiting professor at the New College of Humanities.

## ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

The **Clooney Foundation for Justice** (CFJ) advocates for justice through accountability for human rights abuses around the world. **TrialWatch** is an initiative of the Clooney Foundation for Justice. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. TrialWatch monitors criminal trials globally against those who are most vulnerable — including journalists, protesters, women, LGBTQ+ persons and minorities — and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Ranking exposing countries' performance and use it to support advocacy for systemic change.

*The legal assessment and conclusions expressed in this report are those of the author and not necessarily those of the Clooney Foundation for Justice.*



**Geoffrey Robertson AO, QC, a member of the TrialWatch Experts Panel, assigned this trial a grade of D and made this overall assessment of the trial:**

This was an important trial, of international consequence, of an acclaimed Rwandan who had become through his leadership role a sworn enemy of the state, in the form of its present government. He was captured by that state, either through deception or force, whose agents held him incommunicado for some time and extracted certain ‘admissions’ from him. The central issue was whether he was just a political leader or whether he was sufficiently connected to armed groups, which had committed attacks in Rwanda, to bear criminal responsibility for those actions.

His trial did not, in many ways, conform to international and regional standards. The Court did not adequately investigate, as was its duty, whether he was illegally and/or forcibly brought into its jurisdiction. It protected the main state witness on the circumstances of Mr. Rusesabagina’s arrival in Rwanda by allowing him to speak as an ‘informant’ and not provide sworn testimony, which it then credited without testing further. It did not investigate allegations that Mr. Rusesabagina’s ‘admissions’ had been extracted by torture or maltreatment. It did not inquire into the motivations of the two live witnesses who testified against him. It did, and to its credit, rule that authorities had denied him the facilities to prepare his defense, but then it declined to provide an effective remedy for this breach of a fundamental right. Nor did it question or find other means of ensuring testing of the case for the prosecution, which failed to distinguish clearly between Mr. Rusesabagina’s role as a political organizer and the allegation that he had directed terrorism. There were other defects, notably in explaining the evidence against him which had been provided by Belgium. The trial was regrettably overshadowed by President Kagame’s extravagant declarations of Mr. Rusesabagina’s guilt.

For all the reasons given in this report, and in its predecessor published last year, I consider that the procedures in a number of respects violated international and regional standards for fair trial procedures, and smacked of a “show trial.”

This report is not concerned with whether Mr. Rusesabagina is innocent or guilty. But it does mean that the evidence was not properly evaluated, and to the extent described in this report, his trial was seriously flawed, and the judgment convicting him should not be relied upon.

The proceedings against ‘Hotel Rwanda’ figure Paul Rusesabagina were seriously flawed. In particular, this report, which supplements prior TrialWatch reporting on the case, shows

how the Court that tried and convicted him did not test the prosecution's theory of the case, rapidly brushing aside—or ignoring entirely—concerns about the reliability of pre-trial statements and significant factual disputes relating to the relationship between the Mouvement Rwandais pour la Changement Démocratique (“MRCD”), a coalition of opposition parties with which Mr. Rusesabagina was affiliated, and the Front de Libération Nationale/National Liberation Front (“FLN”), the armed group the prosecution stated was responsible for the deadly attacks that were at issue in the case. The Court's unquestioning acceptance of the prosecution's argument that there was an ‘MRCD-FLN terrorist group,’ which was founded and led by Mr. Rusesabagina, sustained his conviction but was not proved other than by speculation.

This report is the third in a series of TrialWatch reports on Mr. Rusesabagina's trial, which was monitored by the American Bar Association Center for Human Rights as part of the Clooney Foundation for Justice's TrialWatch initiative. The first report, a Background Briefing by staff at the ABA Center for Human Rights, was released in January 2021, before the trial, and accompanied by a statement from TrialWatch Expert Geoffrey Robertson QC identifying key legal issues. The second report, by Geoffrey Robertson QC and staff at the ABA Center for Human Rights, was released in June 2021, near the end of the trial. The ABA Center for Human Rights also contributed to this third report.

These TrialWatch reports identified a litany of violations prior to trial and documented how, in the face of significant arguments regarding whether it should hear the case, as well as Mr. Rusesabagina's inability to prepare for trial, the Court pressed ahead with the proceedings. With respect to the former issue, the Court relied on untested, unsworn testimony to find that Mr. Rusesabagina had merely been ‘lured’ to Rwanda and not in any sense ‘kidnapped,’ and that therefore it could hear the case. The Court's jurisdiction should not have been at issue—the defendant was in Rwanda and the Court had power to try him under Rwandan law—but the question was whether it was fair to exercise that jurisdiction, and that question the Court should have probed further in light of varying accounts that had previously been given by the Rwandan authorities on the issue.<sup>1</sup> As for the defendant's admitted inability to prepare for trial, this was not satisfactorily redressed by the Court's suggestion that he could prepare whilst the trial continued, for what would be a short time, against his co-defendants—while their testimony was also deeply relevant to his own case and so would have required his full engagement.

These issues, and others, were set out in detail in the preliminary report of June 2021, released as the evidential stage of the trial was completed and which highlighted a number of breaches of international and regional trial standards that had already been committed. In particular, it condemned the Court's refusal to swear in, and failure to test, a vital prosecution witness—a Bishop who worked for the Rwandan intelligence service and had apparently persuaded the defendant to join him on a plane provided by that service to deliver him, unbeknown, to Kigali. His account was disputed by the defense and fairness, as in all trials, required that it be adequately tested. But the Court overruled the defense's

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<sup>1</sup> Cf. BBC, *Paul Rusesabagina: Hotel Rwanda Hero 'Abducted in Dubai'* (Sept. 1, 2020), available at <https://www.bbc.com/news/world-africa-53978707> (“Rwandan officials said on Monday that Mr. Rusesabagina had been detained following ‘international co-operation.’”).

objections that “if he is not under oath, he will not be truthful” and that he had been ‘sprung’ on the defense, and allowed the Bishop to speak as an ‘informant.’ The Court then used the Bishop’s statements as a basis for its ruling that the trial should proceed.

Moreover, the Court itself had found that Mr. Rusesabagina was not being given adequate time or facilities to prepare his defense and it did not remedy the issue. It then had a duty of fairness to protect his interest during the ensuing proceedings following his withdrawal from them. It did not do so. The two main witnesses against him were allowed to give their testimony without any examination of their motives, including their connections with the Rwandan government.

The June TrialWatch Report concluded that “many aspects of the proceedings so far cause grave disquiet as to their fairness and may have irretrievably prejudiced the defense.” I recommended that the Court sever Mr. Rusesabagina’s trial from that of the twenty other defendants so that he could properly prepare for it; and that it should recall the Bishop and the main two prosecutor witnesses so they could be properly cross-examined, if need be by counsel acting as *amicus curiae* who could additionally be invited to address the Court in a final speech opposing the prosecution. These suggestions were not taken up, and the prosecution’s case went unchallenged; in fact, the Court’s judgment accepted it without question. In addition to the defects in the trial procedure adumbrated in the preliminary report, and elaborated further here, there are now defects in the judgment itself which this final report will discuss.

It is important, however, to emphasize that this report is not concerned with whether Mr. Rusesabagina is innocent or guilty, or with finding facts about whether he exceeded his role in legitimate overseas opposition to the Rwandan government. It is concerned only to point out how his trial was unfair, by international and regional standards, in its procedures.

The trial concluded in July 2021 and the Court adjourned until delivering its judgment on September 20, 2021. Mr. Rusesabagina had withdrawn from the proceedings on March 12, 2021, thereby obligating the Court to treat him fairly in his absence and to insist on testing the evidence led against him, but the Court did not do so.

For instance, Mr. Rusesabagina alleged several times prior to trial—including in a signed affidavit filed with the Court before his withdrawal from the proceedings—that he had been detained incommunicado upon his arrival in Rwanda and ‘tied at the legs, face and hands.’ Subsequently, as documented in prior TrialWatch reporting on the case, after announcing that he was in their custody, the Rwandan authorities violated Mr. Rusesabagina’s right to counsel by interrogating him first without counsel and later by denying him access to counsel of his choice. Rather than address these issues so as to ensure the fairness of the trial, the prosecution and the Court’s judgment routinely relied on statements Mr. Rusesabagina made during this timeframe. Indeed, the judgment cites an interview with Mr. Rusesabagina from August 31, 2020—during or immediately following<sup>2</sup> the period

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<sup>2</sup> Rwanda acknowledged that Mr. Rusesabagina was in their custody at 11:30am local time on August 31, 2020. See Rwandan Investigation Bureau (@RIB\_Rw), Twitter (August 31, 2020),

when Mr. Rusesabagina alleged, including before the Court, that he was being held incommunicado and subjected to mistreatment.

Then, when several of Mr. Rusesabagina's co-defendants likewise raised concerns regarding their pre-trial interrogations or testified that statements they had made to the authorities had not been accurately recorded, the Court again forged ahead without any substantive inquiry. For instance, when a co-defendant said that he had given a statement "because they could torture me under the pretext that I was hiding information," the Court ignored his comment, asking no follow-up questions and merely continuing with "you recognize that it was you who provided the information?" Likewise, when another co-defendant sought to explain to the Court the conditions he had been under when he gave a pre-trial statement, the Court interrupted him and eventually simply concluded, "Let's move on to the other offense." Such examples demonstrate the Court's failure to fulfill its obligation to investigate this pattern of allegations or provide a reasoned basis for dismissing them.

This raises substantial concerns regarding the impartiality of the tribunal.

These concerns were exacerbated by the Court's seeming focus on implicating Mr. Rusesabagina in its questioning of his co-defendants. For instance, when questioning one co-defendant on April 29, 2021, the Court prompted him to speak about Mr. Rusesabagina, saying "in your pleading there is nowhere where you talk about Rusesabagina, but . . . you should say something about him."

Further, and most critically, the Court seemed to accept the prosecution's theory of the case, despite significant factual disputes that it did not address in any meaningful way, and despite the fact that only two prosecution witnesses testified in court, neither of them as to the principal subject matter of the allegations.

The charges against Mr. Rusesabagina were based on attacks in the Nyaruguru, Nyamagabe, and Rusizi districts of Rwanda that the prosecution attributed to a group they referred to as the "MRCD-FLN," which they further alleged was a terrorist organization co-founded and led by Mr. Rusesabagina. While the prosecution—throughout the trial—was unable clearly to explain the differences between, and respective roles of, the MRCD and the FLN, either through pleadings or questioning at trial, the Court nevertheless quickly acquiesced to the prosecution's argument that the joint 'MRCD-FLN' was the relevant entity, and rested much of the judgment on Mr. Rusesabagina's role in the 'MRCD-FLN.'

This tilted treatment of a key issue in the case was further evidenced by the way the Court questioned co-defendants who offered alternative accounts of their involvement in the groups at issue, or the roles played by the different groups, with the Court often assuming the existence of an 'MRCD-FLN' by default. For instance, the Court indicated during a hearing that the lawyer for one of Mr. Rusesabagina's co-defendants had "said that Nizeyimana Marc admits to having been in the terrorist group of MRCD-FLN," prompting defense counsel to respond that "Marc admits to having been in the armed group of the

FLN,” not the ‘MRCD-FLN.’ Likewise, in a colloquy about the leadership of the FLN, the Court interrupted the testimony of one co-defendant to ask about the “the leaders of the MRCD.” After the co-defendant responded that he “knew the leaders of CNRD-UBWIYUNGE” (one of the component groups of the MRCD that several co-defendants asserted actually commanded the FLN), the Court urged him to identify others, asking, “Didn’t you know others?” to which he again explained, “I did not know the MRCD leaders.”

In its judgment, the Court then mischaracterized the testimony of one of Mr. Rusesabagina’s co-defendants on this key point. During a hearing on June 23, 2021, this co-defendant stated that “the prosecutors wrote that Rusesabagina admitted he was among the founders of FLN. I will show the court where Rusesabagina says he is not among the founders of FLN.” The judgment, however, asserts that this co-defendant testified that Mr. Rusesabagina “is one of the founders of the MRCD coalition and its armed wing FLN”—nearly the opposite of the testimony at issue.

This denied Mr. Rusesabagina the right a reasoned judgment. Further, against the backdrop of President Kagame publicly asserting that Mr. Rusesabagina was guilty, the Court’s behavior and treatment of these key issues would give an objective observer grounds to doubt its impartiality, giving rise to a violation of Mr. Rusesabagina’s right to an impartial tribunal.

For all of these reasons, this report concludes that the judgment convicting Mr. Rusesabagina should not be relied upon and did not meet the necessary guarantees of fairness.

# PROCEDURAL HISTORY



This report covers events subsequent to or otherwise not covered by the June 2021 [TrialWatch report on Mr. Rusesabagina's trial](#) by Geoffrey Robertson QC and staff at the American Bar Association Center for Human Rights.<sup>3</sup>

The case can be divided into six phases: the pre-trial phase, which extended from Mr. Rusesabagina's arrival in Rwanda until February 17, 2021, when the trial opened; pre-trial litigation, which lasted from February 17 until March 12, 2021, when the Court denied Mr. Rusesabagina's last request for a stay and Mr. Rusesabagina withdrew from the proceedings; the prosecution's presentation of its case, which lasted from March 12, 2021 until April 28, 2021; defense presentations (but not by Mr. Rusesabagina) from April 29, 2021 until May 20, 2021; civil party presentations from May 20, 2021 until June 16, 2021; and closing arguments (but not on behalf of Mr. Rusesabagina), which lasted from June 16, 2021 until July 22, 2021. The Court delivered its judgment, convicting Mr. Rusesabagina and sentencing him to twenty-five years in prison, on September 20, 2021.

This report focuses in particular on the prosecution's presentation of its case following Mr. Rusesabagina's withdrawal from the trial, testimony from Mr. Rusesabagina's co-defendants, and the trial judgment convicting Mr. Rusesabagina.

In brief, this case concerns attacks in Rwanda in 2018 and 2019 that the prosecution attributed to the Front de Libération Nationale/National Liberation Front ("FLN") and which, according to the authorities, resulted in deaths, injury, and burning of homes and vehicles,<sup>4</sup> and which the Rwandan authorities also attributed to the Mouvement Rwandais pour la Changement Démocratique ("MRCD"), a group of opposition political parties of which Mr. Rusesabagina was at one point President and which included the PDR-Ihumure, a political party Mr. Rusesabagina led.<sup>5</sup> In particular, the prosecution—and, ultimately, the judgment—asserted that the attacks were committed by an entity they labeled the 'MRCD-FLN terrorist group.'<sup>6</sup>

Proceedings had already been ongoing against former FLN Spokesperson Callixte Nsabimana ("Sankara") and his successor as FLN Spokesperson, Herman Nsengimana, to which the cases against Mr. Rusesabagina and other co-accused were added on

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<sup>3</sup> See Geoffrey Robertson QC & Staff at the American Bar Association Center for Human Rights, *The Case of Paul Rusesabagina* (June 2021) (hereinafter "June TrialWatch Report"), available at [https://www.americanbar.org/content/dam/aba/administrative/human\\_rights/trialwatch/rwanda-paul-rusesabagina.pdf](https://www.americanbar.org/content/dam/aba/administrative/human_rights/trialwatch/rwanda-paul-rusesabagina.pdf).

<sup>4</sup> See High Court, Specialized Chamber in International and Transnational Crimes, Judgment in Case No. 00031/2019/HC/HCCIC (hereinafter "Judgment"), ¶¶ 5-6.

<sup>5</sup> Cf. American Bar Association Center for Human Rights, *Rwanda: Background Briefing on Proceedings Against Paul Rusesabagina* (Jan. 26, 2021) (hereinafter "Background Briefing"), available at [https://www.americanbar.org/groups/human\\_rights/reports/background\\_briefing\\_rwanda\\_paul\\_rusesabagina](https://www.americanbar.org/groups/human_rights/reports/background_briefing_rwanda_paul_rusesabagina) (noting that in 2018, Mr. Rusesabagina publicly expressed his "unreserved support" for the FLN).

<sup>6</sup> See, e.g., National Public Prosecution Authority, Nyungwe Case, Indictment (Nov. 16, 2020) (hereinafter "Indictment"), ¶ 93 (arguing that "the activities of the MRCD-FLN in its attacks on Rwandan soil are acts of terrorism."); Judgment, ¶ 106 (considering "that the MRCD-FLN is a terrorist group because it operates based on a strategy. It has the intention of carrying out acts of terror. . . .").



December 2, 2020.<sup>7</sup> In particular, Mr. Rusesabagina was charged with: (1) forming an illegal armed group;<sup>8</sup> (2) being a member of a terrorist group;<sup>9</sup> (3) supporting a terrorist group<sup>10</sup> (with this latter charge eventually assimilated to allegations of ‘commission’ of terrorist acts<sup>11</sup>); and (4) specific crimes as acts of terrorism.<sup>12</sup>

## Pre-Trial Litigation

Prior to the start of trial and as discussed in the June 2021 TrialWatch Report, Mr. Rusesabagina and his defense counsel alleged violations of his rights,<sup>13</sup> including on the basis of the circumstances of Mr. Rusesabagina’s “extraordinary rendition to Rwanda,” his denial of access to counsel, the prison authorities’ interception of case-related materials from his lawyers, and the failure to provide the necessary facilities for Mr. Rusesabagina

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<sup>7</sup> See Background Briefing. See also Judgment, ¶ 8.

<sup>8</sup> Under Article 200 of Law N°68/2018 of August 30, 2018, “[a]ny person who by donations, remuneration, intimidation, abuse of power or promise of another interest, forms, incites or arranges for the formation of an irregular armed group or signs an agreement with this group for the purposes of supporting an armed attack of irregular forces, commits an offence.” Under Article 459 of Law N°01/2012/OL of May 2, 2012, “[a]ny person who carries out recruitments or incites or makes an agreement with the armed group other than the regular forces of the State, by gifts, remuneration, threats, abuse of authority or power shall be liable to a term of imprisonment of ten (10) years to fifteen (15) years.” The prosecution argued that the FLN was an illegal armed group not provided for under Rwandan law and that Mr. Rusesabagina violated the statutory prohibition by founding the FLN, See Indictment, ¶ 121. The Court ultimately found that the latter law was applicable because it was “in force at the time of the creation of the FLN.” Judgment, ¶ 98.

<sup>9</sup> Under Article 18 of Rwanda’s Counter-Terrorism Law N°46/2018 of August 13, 2018, “[a] person who is member of a terrorist group or accepts to join a terrorist group or who deliberately participates in the acts of a terrorist group or a group which contributes to the capacity-building of another terrorist group, commits an offence.” Article 19 of the same law criminalizes ‘supporting’ or ‘participating’ in terrorist acts. The law also defines as a terrorist act “promotion, sponsoring, contribution to, command, aid, incitement, teaching, training, attempt, encouragement, threat, conspiracy, organizing or procurement of any person, with the intent to commit any [terrorist act].” See Counter-Terrorism Law N°46/2018 of August 13, 2018, Article 4(b). The prosecution argued that Mr. Rusesabagina was a member and leader of the alleged ‘MRCD-FLN’ entity and that his role in the MRCD-FLN’s establishment and activities violated the Counter-Terrorism Law. See Indictment, ¶ 150.

<sup>10</sup> Article 24 of Law N°69/2018 of August 31, 2018 provides that “[a]ny person who finances terrorism commits an offence.” The prosecution alleged that Mr. Rusesabagina provided financial support to the alleged ‘MRCD-FLN’ terrorist group personally, through fundraising efforts, and through his position as a leader of the PDR-Ilhumure, which they allege also provided support to the ‘MRCD-FLN.’ See Indictment, ¶¶ 158-60.

<sup>11</sup> Judgment, ¶ 161 (“[W]hen a person commits a terrorist act or participates directly in such an act, in particular by providing financial support or by carrying out another act that has a direct link with a terrorist act, he or she must be punished for the offence of committing and participating in terrorist acts provided for in Article 19.”).

<sup>12</sup> See Background Briefing (noting charges of murder as an act of terrorism, illegal human trafficking as an act of terrorism, armed robbery as an act of terrorism, raiding of buildings, arson as an act of terrorism, and transporting persons or objects to commit terrorist attacks, and beating and intentionally injuring as an act of terrorism). These charges arose from attacks in the Nyaruguru, Nyamagabe, and Rusizi districts that the prosecution alleged were carried out by the ‘MRCD-FLN’ group. See Indictment, ¶¶ 223, 267, 285, 307, 327, 350. The prosecution argued that these activities were carried out by the ‘MRCD-FLN’ under Mr. Rusesabagina’s leadership and financial sponsorship and that, therefore, he should be held liable. *Id.* The Court ultimately found that “it was FLN combatants who carried out the attacks” that “killed people among the population, wounded others, damaged their property through arson, and property was looted and abducted persons were forced to carry it,” and, although “there is no evidence that [Mr. Rusesabagina was] personally among the assailants of these attacks,” his role in “authori[z]ing and support[ing] the MRCD-FLN proves that [he] played a role in the terrorist acts.” Judgment, ¶¶ 149-50.

<sup>13</sup> See June TrialWatch Report, pp. 5-6.

to prepare for trial.<sup>14</sup> Counsel for Mr. Rusesabagina filed motions on January 21<sup>15</sup> and again on February 12,<sup>16</sup> asking the Court to release Mr. Rusesabagina from detention and to stay the proceedings. The January 21 motion also explicitly asserted that “[b]etween 28 and 31 August 2020, the Defendant was held incommunicado . . . . He remained tied up during those three days of interrogation.”<sup>17</sup> Further, it stated that “the Defendant has been deprived of his prescribed medication for his underlying heart condition, despite it having been provided by the Embassy of the Kingdom of Belgium to the relevant Rwandan authorities.”<sup>18</sup>

When the trial began on February 17, the Court had yet to respond to defense counsel’s motions.<sup>19</sup> Ultimately, on February 26, the Court ruled that allegations relating to the circumstances of Mr. Rusesabagina’s transfer to Rwanda were “irrelevant” and that the trial would proceed as scheduled.<sup>20</sup>

As described in greater detail in the June TrialWatch Report, in late February, Rwandan authorities also conceded that Mr. Rusesabagina’s right to counsel had been violated, with the then-Minister of Justice saying in a video that was inadvertently shared with *Al Jazeera* that prison authorities had reviewed attorney-client materials destined for Mr. Rusesabagina.<sup>21</sup> On March 1, the judges and parties visited the prison where Mr. Rusesabagina was detained. During this visit, Mr. Rusesabagina reiterated that the authorities were seizing case-related documents.<sup>22</sup>

Prior to the next hearing on March 5, the defense also submitted an affidavit from Mr. Rusesabagina reiterating that he had been held at an “unknown location” and “tied at the legs, face and hands” upon his arrival in Rwanda.<sup>23</sup> The defense also reiterated their jurisdictional objections in a separate written filing.<sup>24</sup>

At the March 5 hearing, the Court summarized its findings from the prison visit (which were ultimately reflected in a written decision). The Court concluded that Mr. Rusesabagina lacked adequate facilities to prepare for trial and that case documents had been inappropriately confiscated.<sup>25</sup> The Court ordered the prison authorities to provide Mr. Rusesabagina “with the means to facilitate the preparation for his trial, as he requests, by giving him the necessary tools, such as a computer with copies of all the documents that

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<sup>14</sup> Rusesabagina Defense Team, *Request for A Remedy for Violation of Fundamental Rights*, January 21, 2021.

<sup>15</sup> *Id.*

<sup>16</sup> Rusesabagina Defense Team, *Request for A Remedy for Violation of Fundamental Rights*, February 12, 2021.

<sup>17</sup> Rusesabagina Defense Team, *Request for A Remedy for Violation of Fundamental Rights*, January 21, 2021.

<sup>18</sup> *Id.* See also Background Briefing (discussing violations of Article 10 of the ICCPR).

<sup>19</sup> See *id.*; Trial Monitor Notes, February 17, 2021.

<sup>20</sup> Trial Monitor Notes, February 26, 2021.

<sup>21</sup> See June TrialWatch Report, pp. 7-8.

<sup>22</sup> *Id.*, at p. 8.

<sup>23</sup> Affidavit of Paul Rusesabagina, March 3, 2021.

<sup>24</sup> Rusesabagina Defense Team, *Request for Court to Revoke Arrest*.

<sup>25</sup> See June TrialWatch Report, pp. 8-9; High Court Chamber for International Crimes, *Conclusions of the Visit to Mageragere Prison Following the Problems Raised by Paul Rusesabagina*, March 1, 2021 (“Paul Rusesabagina does not have sufficient means to allow him to prepare for his trial. . . . the Court rules that the documents which form part of the case file which Rusesabagina Paul exchanges with his lawyers should not be seized.”).

comprise his case file” and to “give him enough time to study the case file.”<sup>26</sup>

At that same March 5 hearing, the Court revisited the integrity of the proceedings based on the circumstances of Mr. Rusesabagina’s arrival in Rwanda, hearing ‘information’ from Bishop Constantin Niyomwungeri, who stated he had ‘lured’ Mr. Rusesabagina to Rwanda and that Mr. Rusesabagina had not been ‘forced.’<sup>27</sup> The Bishop was permitted to speak without being under oath and was not cross-examined by the defense, who had emphatically challenged the prospect of the Bishop speaking without taking an oath, arguing that “if he is not under oath, he will not be truthful.”<sup>28</sup> On March 10, the Court concluded, in a written decision which relied on the Bishop’s untested ‘statement,’ that the trial could proceed.<sup>29</sup> In its final judgment, the Court simply noted that it had decided it had jurisdiction and that “there is no evidence that he was brought to Rwanda by force.”<sup>30</sup> But one of the reasons there was ‘no evidence’ on this crucial subject was because a witness who could give evidence—the Bishop—was not allowed to give evidence. He only delivered a ‘statement,’ which the Court accepted as the truth without adequate testing.

It is important to be very clear on this point. It did not go to jurisdiction at all—once Mr. Rusesabagina was in Kigali, the Court had ‘jurisdiction’—i.e., power to put him on trial. The question raised by his defense was whether it would be an abuse of process to exercise this power. On January 21, 2021, the defense lawyers filed a motion pointing out that he was a Belgian national and a U.S. resident who had not lived in Rwanda for 24 years, and had not been subject to extradition proceedings from either country. Instead, in a plane he believed would be headed to Burundi, the defense asserted that his hands were tied and he was forcibly flown to imprisonment in Kigali. This was an extraordinary rendition, the defense argued, and its illegality meant he should not be tried.

In a further motion filed on February 12, the defense lawyers argued in more detail that the Mr. Rusesabagina was “kidnapped” and illegally transported across state borders to circumvent extradition safeguards, which was further elaborated in legal arguments filed before the March 5 hearing.<sup>31</sup> This was an arguable objection which required the Court to investigate the facts and decide whether the public interest in trying serious crime allegations was overborne by the public interest in deterring executive misconduct and bringing the justice system into disrepute.<sup>32</sup> Instead, though, the Court took its facts from an unsworn statement from the Bishop, who was ‘sprung’ upon the defense. This may have been to insulate the government’s narrative from being questioned, as President Kagame had already publicly boasted that Mr. Rusesabagina had been ‘lured’ to Kigali by

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<sup>26</sup> *Id.*

<sup>27</sup> See June TrialWatch Report, pp. 9-10.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*, at p. 10; Decision, March 10, 2021, ¶ 18 (“[R]ien ne prouve qu’il a été fait usage de la force ou que la souveraineté d’un autre pays aurait été violée. Le fait qu’il ait été leurré, outre qu’il le reconnaît lui-même, est confirmé par les déclarations de NIYOMWUNGERE Constantin.”).

<sup>30</sup> See Judgment, ¶ 5.

<sup>31</sup> Rusesabagina Defense Team, *Request for Court to Revoke Arrest*.

<sup>32</sup> See, for instance, *United States v. Noriega*, 746 F. Supp. 1506 (S.D. Fla. 1990) (defendant arguing that “the manner in which he was brought before this Court as a result of the United States government’s invasion of Panama is ‘shocking to the conscience and in violation of the laws and norms of humanity’ and that therefore the “Court should therefore divest itself of jurisdiction”); *R v. Horseferry Road, ex parte Bennett* 1994 1AC 42 (“[T]he High Court, in the exercise of its supervisory jurisdiction, has power to enquire into the circumstances by which a person has been brought within the jurisdiction and, if satisfied that it was in disregard of extradition procedures, it may stay the prosecution and order the release of the accused.”).

a “flawless operation” by his intelligence services, and there were some inconsistencies in the accounts that the Rwandan authorities had given.

In its March 10 decision, the Court also specifically noted Mr. Rusesabagina’s allegation that he had been detained incommunicado and tied,<sup>33</sup> but did not address this other than to suggest that Mr. Rusesabagina had agreed to be interrogated without a lawyer<sup>34</sup>—specifically contradicting Mr. Rusesabagina’s affidavit filed with the Court a week before,<sup>35</sup> and without addressing the potential impact of the conditions Mr. Rusesabagina described on any ostensible waiver of his right to counsel.

On March 12, Mr. Rusesabagina’s counsel reiterated his request for a stay due to a lack of adequate time and facilities to prepare, as had been recognized by the Court just one week prior. The Court denied the requested stay, asserting that Mr. Rusesabagina’s lawyers had had access to the case file, even if he did not, that the proceedings had already been ongoing for a long time, and that the allegations against Mr. Rusesabagina could be heard last.<sup>36</sup> At that point, Mr. Rusesabagina informed the Court he would no longer participate in the trial.<sup>37</sup>

The June TrialWatch report concludes that “prior to his decision not to participate in the trial, Mr. Rusesabagina did not have the opportunity to thoroughly inspect the case file, which reportedly encompasses more than 3,000 pages” and that “prison authorities routinely seized and read documents relayed by defense counsel to Mr. Rusesabagina and often did not return such materials to him.” As a result, “the court was obligated to grant reasonable requests for adjournment,” and its failure to do so violated Mr. Rusesabagina’s right to adequate time and facilities to prepare a defense.<sup>38</sup> The report also concludes that the repeated violation of Mr. Rusesabagina’s right to counsel meant that his defense had “likely been ‘irreparably prejudiced.’”<sup>39</sup> Notably, both before and during the trial, the President of Rwanda repeatedly characterized Mr. Rusesabagina as guilty, which the June TrialWatch Report found violated Mr. Rusesabagina’s right to be presumed innocent.<sup>40</sup>

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<sup>33</sup> Decision, March 10, 2021, ¶ 3 (“Ils soutiennent aussi qu’une fois arrivé au Rwanda, il a été arrêté sans avoir été préalablement convoqué, qu’il a été détenu pendant 4 jours dans un lieu secret, les bras liés et les yeux bandés, sans être présenté aux organes d’investigation.”).

<sup>34</sup> *Id.*, at ¶ 28.

<sup>35</sup> Affidavit of Paul Rusesabagina, March 3, 2021 (“I did not waive my right to legal assistance.”).

<sup>36</sup> June TrialWatch Report, pp. 10-11.

<sup>37</sup> *See id.*

<sup>38</sup> *Id.*, at pp. 23-24.

<sup>39</sup> *Id.*, at p. 29.

<sup>40</sup> *Id.*, at pp. 29-30.

## The Prosecution's Case

At that March 12 hearing, the prosecution began its presentation by outlining the charges against Sankara. The prosecution alleged that Sankara had served as Second Vice-President of the MRCD and Spokesperson for the FLN. In particular, the prosecution alleged that Sankara had led a small party, the Rwandese Revolutionary Movement ("RRM") which, together with Mr. Rusesabagina's party, the PDR-Ihumure, and a third party, the CNRD-Ubwiyunge, had formed the MRCD.<sup>41</sup>

The Court began by summarizing prior proceedings against Sankara and then engaged in a colloquy with Sankara, during which Sankara ostensibly admitted some of the charges against him but explained that while he agreed that FLN fighters had committed certain acts alleged, "orders were given by the military leaders," by "the General Staff," and that "as a civilian he did not give orders to soldiers," explaining that "he was a politician."<sup>42</sup>

On March 24 and 25, the prosecution moved on to the case against Mr. Rusesabagina and presented the testimony of two witnesses. The first witness was Michelle Martin, an American citizen who had briefly served as a volunteer with Mr. Rusesabagina's Hotel Rwanda Foundation in the U.S. and, later on, also consulted for the Rwandan government.<sup>43</sup> Ms. Martin discussed reviewing "hundreds of old emails [and other digital communications] to prepare this testimony."<sup>44</sup> The emails were not written by Mr. Rusesabagina himself.<sup>45</sup> She spoke generally about Mr. Rusesabagina's attitude toward the Rwandan genocide<sup>46</sup> and also testified about emails on which he had allegedly been 'cc'd' or part of a group of recipients relating to the Forces Démocratiques de Libération du Rwanda ("FDLR") armed group.<sup>47</sup> Her testimony, however, related to alleged events that entirely predated the events at issue in this case, and the Court did not ask her about her relationship with the Rwandan government.

The second witness was Noel Habiyaemye, who had previously been part of the FDLR armed group and who had subsequently testified against Victoire Ingabire, another prominent government opponent.<sup>48</sup> (Amnesty International reported at the time that Habiyaemye had been "unlawfully held in incommunicado detention by the Rwandan military before incriminating Victoire Ingabire."<sup>49</sup>) He testified that his relationship with Mr. Rusesabagina had begun in 2006 when he had asked Mr. Rusesabagina to provide support to the FDLR.<sup>50</sup> According to Mr. Habiyaemye, Mr. Rusesabagina later asked him to recruit fighters from "inside FLDR because they had well-trained soldiers."<sup>51</sup> In exchange, Mr. Habiyaemye asked Mr. Rusesabagina to provide the FDLR with funding

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<sup>41</sup> Trial Monitor Notes, March 12, 2021.

<sup>42</sup> Trial Monitor Notes, March 12, 2021.

<sup>43</sup> Trial Monitor Notes, March 24, 2021.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Trial Monitor Notes, March 25, 2021.

<sup>49</sup> Amnesty International, *Justice in Jeopardy-The First Instance Trial of Victoire Ingabire* (2013), p. 22.

<sup>50</sup> Trial Monitor Notes, March 25, 2021.

<sup>51</sup> Trial Monitor Notes, March 24, 2021.

“for transport, medication, [and other logistical requirements.]”<sup>52</sup> At no point did the Court examine Mr. Habiyaemye’s credibility<sup>53</sup> and, in any event, his testimony too concerned events that predated the acts at issue in this case.<sup>54</sup>

These were the only live prosecution witnesses against Mr. Rusesabagina. The prosecution otherwise relied on statements by several of his co-defendants (which may have been made in the hope of a lighter sentence—see, for instance, *infra* for a discussion of Sankara’s claim that he had made a plea deal in exchange for cooperation), or under circumstances which made them unreliable—and in particular on documentary exhibits supplied by the Belgian police as a result of raids on Mr. Rusesabagina’s home and investigations of his seized electronic devices. The provenance of these exhibits was mysterious (no Belgian police officer attended to produce them) and the messages themselves were open to interpretation. The prosecution claimed that they not only showed him issuing communiques and making statements on behalf of the MRCD, but also that he was in touch with FLN commanders and arranging to get money to them. There was no evidence he actually ordered terrorist operations.<sup>55</sup>

On March 31, the prosecution explained the charges against Mr. Rusesabagina’s co-defendant Herman Nsengimana, who had allegedly been the FLN’s youth commissioner but later replaced Sankara as Spokesperson for the FLN after the latter’s arrest.<sup>56</sup> During the hearing, the Court and the prosecution engaged in a discussion of whether the FLN should be classified as an irregular armed group, terrorist group, or both, with the Court pointing out that “it is difficult understand how in one crime you would be an illegal militia and in another you would be a terrorist.”<sup>57</sup> One prosecutor argued that the FLN was both an illegal armed group and a terrorist organization, though another prosecutor later clarified that, in their view, “the illegal army unit is the FLN” and “the terrorist group is the combination of [the MRCD and the FLN,] which is the MRCD-FLN.”<sup>58</sup>

Later during that same hearing, the prosecution began explaining the charges against Mr. Rusesabagina—continuing with this presentation during hearings on April 1 and April 21. The prosecution’s theory of the case against Mr. Rusesabagina is explained in greater detail below.

During the hearing on April 21, and during hearings on April 28 and 29, the prosecution also explained the charges against Mr. Rusesabagina’s other co-defendants.

In many conflicts against an established government, its opposition will comprise a political wing and an armed guerilla wing—a classic example being Sinn Fein and the IRA in Northern Ireland, before the Good Friday agreement. Sometimes they will overlap, but in criminal trials of political actors such as Mr. Rusesabagina, it will be necessary to prove by

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<sup>52</sup> Trial Monitor Notes, March 25, 2021.

<sup>53</sup> June TrialWatch Report, p. 12 (the Court “never probed the credibility of Ms. Martin or Mr. Habiyaemye[,] such as by asking them about their potential motivations for testifying against Mr. Rusesabagina.”).

<sup>54</sup> *Id.* (noting that these witnesses were characterized by the prosecution as “‘context’ witnesses providing background on the formation and progression of the armed movement against the Kagame government.”).

<sup>55</sup> *Cf.* Judgment, ¶ 150 (concluding that Mr. Rusesabagina had “authorized and supported the attacks” despite finding that “there is no evidence linking [him and Sankara] to the scene of the crime.”).

<sup>56</sup> Trial Monitor Notes, March 31, 2021.

<sup>57</sup> Procès-verbal, March 31, 2021.

<sup>58</sup> Procès-verbal, March 31, 2021.

admissible evidence that they intended to commit or else abetted the terrorist actions with which they are charged. The confusion in the prosecution case over the relationship between the MRCD, to which Mr. Rusesabagina was undoubtedly attached, and the FLN, which the prosecution asserted carried out the attacks at issue, was apparent and the Court's failure to investigate the admissibility of the evidence extracted from Mr. Rusesabagina in the days after his capture, and from searches in Belgium, undermined a judgment that accepted without question that the evidence was admissible and sufficed to show Mr. Rusesabagina's intent to commit the terrorist acts with which he was charged.

## Co-Defendant Responses

On April 29, May 6, May 7, May 14, May 19, and May 20, Mr. Rusesabagina's co-defendants offered replies.

During the April 29 hearing, for instance, Herman Nsengimana explained that Sankara had told him when recruiting him that "Paul Rusesabagina will be in charge of politics and diplomacy."<sup>59</sup> Later, Mr. Nsengimana's lawyer also took the floor to explain that the prosecution was conflating the MRCD and the FLN. He stated that his client "admits to having been in FLN," but argued that "in the indictment<sup>60</sup> that the prosecution presented to the court, there is simply MRCD, not MRCD-FLN. The fact for the prosecution of associating two different groups (MRCD and FLN) is unfair because they are two different groups." He also said Mr. Nsengimana was not part of the MRCD.<sup>61</sup>

Mr. Nsengimana also denied knowledge of violence allegedly committed by the FLN. He told the Court, "I heard that the FLN is a terrorist group for the first time in the RIB [Rwanda Investigation Bureau] when they read me the offenses for which I am being prosecuted."<sup>62</sup> He said that he had indeed functioned as Spokesperson for the group but had simply read what a military leader told him to say.<sup>63</sup>

As described in the June TrialWatch Report, it was during this hearing that the Court asked Mr. Nsengimana to testify about Mr. Rusesabagina.<sup>64</sup> He responded that "[i]n reality, there was no relationship between me and Rusesabagina because he was on another level."<sup>65</sup>

Other co-defendants also testified that they did not know about the MRCD or the alleged 'MRCD-FLN' entity until the trial began.<sup>66</sup> Co-defendants also argued that while they may

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<sup>59</sup> Trial Monitor Notes, April 29, 2021

<sup>60</sup> This refers to the prior indictment against Sankara and Mr. Nsengimana, to which the case against Mr. Rusesabagina and others was joined.

<sup>61</sup> *Id.*; see also *id.* ("What is evident is that FLN was never the MRCD army and the prosecution never showed Herman's involvement in MRCD on a personal basis.")

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* ("I spoke as a spokesperson for the FLN, I read the report as I had received it from Geva, I admit that I did it.")

<sup>64</sup> June TrialWatch Report, p. 13; Trial Monitor Notes, April 29, 2021 ("[I]n your pleading there is nowhere where you talk about Rusesabagina, but as a president of the MRCD-FLN, you should say something about him."); see also *id.* ("When was the latter [Wilson Irategeka] president of the MRCD, was there another president of the MRCD that you knew?"); *id.* ("Have you never spoken to Rusesabagina?")

<sup>65</sup> *Id.*

<sup>66</sup> See, e.g., Trial Monitor Notes, May 7, 2021 (Emmanuel Shabani).

have fought with the FLN,<sup>67</sup> they did not knowingly join a terrorist group<sup>68</sup> (i.e. they thought they were joining an armed group, not a terrorist group) or commit acts of terrorism.<sup>69</sup> Yet others confessed their involvement in FLN attacks,<sup>70</sup> but said that they were “forced to follow the commands of the upper echelon military,”<sup>71</sup> that they had been given “orders to do sabotage as one of the elements of the non-conventional war, so that there is negotiation” and that military leaders “told us that we should not kill, loot,”<sup>72</sup> or simply said that they had not been aware of “what was going on”<sup>73</sup> (in the case of a co-defendant who admitted to having transported an FLN soldier but allegedly had been unexpectedly made to accompany him into Rwanda).

## Civil Party Presentations

On May 20, May 21, and June 16, the civil parties presented their claims for compensation. Over 90 civil parties made claims.<sup>74</sup> A subset of the civil parties then took the floor in Court to explain their claims. They told the court of their losses, from killings, burning of their property and other depredations that the prosecution attributed to the FLN. The witnesses themselves were not in a position to identify the group that caused them loss.<sup>75</sup>

## Renewed Allegations of Mistreatment

On May 18, Mr. Rusesabagina’s international defense team made public additional allegations regarding his treatment during the initial period of his detention.<sup>76</sup> In materials submitted to the UN, they specifically alleged that Mr. Rusesabagina was “held in a facility which he describes as a ‘slaughterhouse,’ where he ‘could hear persons, women screaming, shouting, calling for help,’” that he was not able to stand due to having been being tied up for so long, and that his blindfold had been taken off him only once.<sup>77</sup> They also alleged that on August 28, 2020 a Rwandan Investigation Bureau agent stepped on Mr. Rusesabagina’s neck while he was tied and lying down and said “we know how to torture.”<sup>78</sup>

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<sup>67</sup> See, e.g., Trial Monitor Notes, May 6, 2021 (Cassien Bizimana) (“I have been in the armed group of FLN since October 2016 and this group was created on June 10, 2016.”).

<sup>68</sup> See, e.g., Trial Monitor Notes, May 6, 2021 (Marc Nizeyimana) (“[I]t was in Rwanda that he learned about the terrorist group... [H]e knew it when he was arrested... He admits he was in FLN and not in MRCD-FLN”).

<sup>69</sup> See, e.g., Trial Monitor Notes, April 29, 2021 (Marc Nizeyimana) (“I do not deny that the acts were committed but what I deny is my role in the commission of these acts.”); Trial Monitor Notes, May 6, 2021 (Marc Nizeyimana) (“Nizeyimana Marc denied having prepared or sent fighters to commit anything.”).

<sup>70</sup> See, e.g., Trial Monitor Notes, May 6, 2021 (Cassien Bizimana) (bringing equipment for an operation in Rusizi); Trial Monitor Notes, May 7, 2021 (“When I threw the grenade there, I didn’t see people. . . . I beg the forgiveness of this injured person.”).

<sup>71</sup> Trial Monitor Notes, May 6, 2021.

<sup>72</sup> See, e.g., Trial Monitor Notes, May 6, 2021.

<sup>73</sup> See, e.g., Trial Monitor Notes, May 7, 2021 (Emmanuel Shabani). See also Trial Monitor Notes, May 6, 2021 (Cassien Bizimana) (“I did not know that they were terrorist attacks because they told me to do sabotage...”)

<sup>74</sup> Trial Monitor Notes, May 21, 2021; Trial Monitor Notes, June 16, 2021.

<sup>75</sup> See, e.g., Trial Monitor Notes, June 16, 2021 (civil party Viani Gimba).

<sup>76</sup> See <https://www.youtube.com/watch?v=pHfyHmDUyrw> (describing his detention in an ‘abattoir’).

<sup>77</sup> Rusesabagina Defense Team, Communication to the UN Special Rapporteur on Torture, *Urgent Appeal on behalf of Paul Rusesabagina*, May 18, 2021.

<sup>78</sup> *Id.*



## Closing Arguments

On June 16, the prosecution responded to the defense presentations, with a particular focus on questions raised regarding Sankara's defense.<sup>79</sup> On June 17 and 18, the prosecution made their closing arguments.

On June 23, July 15, July 16, and July 22, Mr. Rusesabagina's co-defendants and their counsel made their closing arguments. Mr. Rusesabagina was not represented and the Court did not appoint anyone to speak for him or to reply to the prosecution's arguments.

In particular, on June 23, Sankara testified that it was one of the constituent parties of the MRCD, the CNRD-Ubwiyunge, which was led by Wilson Irategeka, that had created and controlled the FLN. He explained:

The point of disagreement with the prosecution is that they willfully ignored the truth and seek to make the court understand that FLN was founded by MRCD in April 2018 and that I am among the founders and yet there is tangible proofs made from various writings which they themselves put in the file which prove the contrary. These writings clearly show that FLN was an armed wing of CNRD and which later became an armed wing of MRCD.<sup>80</sup>

He also reiterated that he "had no power to give orders to the FLN army," because "its management was the peculiarity of the CNRD-UBWIYUNGE" and "it is the CNRD which gave the orientation and the orders."<sup>81</sup>

By contrast, he asserted that "[t]he writings containing the objectives, the fundamental principles and the master plan of the MRCD [are] different from that which the prosecutors explained by saying that we had the plan to carry out terrorism by killing the population to force the Rwandan government to accept negotiations with MRCD."<sup>82</sup> He explained, "The fundamental principles of the MRCD which appear in these writings are truth, justice, reconciliation and unity of Rwandans, simplicity, no division within ethnic groups, freedom for all, respect for the rights of the man. You cannot have principles like these and then give orders to the soldiers to kill the population."<sup>83</sup> Further, he said that "Rusesabagina says he is not among the founders of FLN."<sup>84</sup> Finally, he asserted that the FLN was no longer affiliated with the MRCD, as the CNRD had left the coalition, taking with it the FLN, in June 2020.<sup>85</sup>

He went on to respond in the affirmative to a question from the Court as to whether "when FLN was in MRCD, it was commanded by CNRD,"<sup>86</sup> arguing that "[t]he prosecutors had to show the article which gives me the competence to command the army of FLN."<sup>87</sup> He

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<sup>79</sup> Trial Monitor Notes, June 16, 2021.

<sup>80</sup> Trial Monitor Notes, June 23, 2021.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*; see also *id.* (arguing that an MRCD document confirmed that it was the role of CNRD-UBWIYUNGE to "ensure the high command of the army and the management of the FLN in the field").

<sup>87</sup> *Id.*

further stated that his position on this was consistent with records of interrogations of Mr. Rusesabagina.<sup>88</sup> Finally, he reiterated that the MRCD had no intention of attacking civilians.<sup>89</sup>

On June 23, Mr. Nsengimana's defense counsel added that "we could not find any proof which shows that this terrorist group [MRCD-FLN] existed" and argued on this basis that Mr. Nsengimana was "never in this terrorist group."<sup>90</sup> Counsel stated that Mr. Nsengimana was not a member of the MRCD<sup>91</sup> and that the "FLN remained in CNRD, which means that this armed group was never owned by the MRCD."<sup>92</sup>

On July 15, 2021, one of Mr. Rusesabagina's co-defendants, Siméon Nikuzwe, told the Court that he no longer wished to be represented by his lawyer because counsel had "said that I confessed to him that I was in the terrorist group, that is not true."<sup>93</sup> In particular, Mr. Nikuzwe explained that "he wants me to confess that I belonged to the MRCD-FLN group based on the fact that I was caught in possession of a grenade. I don't know anything about this group."<sup>94</sup>

## A. THE PROSECUTION'S CASE

The prosecution's theory of the case was that Mr. Rusesabagina had long sought to recruit fighters to support his political party, the PDR-Ihumure, beginning by approaching the FDLR in 2009.<sup>95</sup> According to the prosecution, when that approach was unsuccessful, he allied with the CNRD-Ubwiye, which had fighters at its disposal.<sup>96</sup> The MRCD was constituted by the alliance between the PDR-Ihumure and CNRD-Ubwiye (and eventually Sankara's Rwandese Revolutionary Movement, RRM, which reportedly "brought in 30 young men who had been recruited into the CNRD army"<sup>97</sup>).

The prosecution stated in the indictment that the alliance between the PDR-Ihumure and CNRD-Ubwiye "led to RUSESABAGINA Paul and PDR-Ihumure having an army

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<sup>88</sup> *Id.* ("Rusesabagina did not recognize that the college of presidents gave orders to the FLN army, He specified that it was rather CNRD which gave orders to the FLN.").

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Trial Monitor Notes, July 15, 2021.

<sup>94</sup> *Id.*

<sup>95</sup> Indictment, ¶ 57 (asserting that "[a]fter three (3) years of PDR-Ihumure, RUSESABAGINA began to look for ways to form an allied force"); Judgment, ¶ 29 ("According to the Prosecution, since 2009, after creating the PDR-Ihumure political party operating outside Rwanda, RUSESABAGINA Paul and his comrades also had the idea of creating its armed wing. It was in this context that he looked for FDLR-FOCA combatants . . .").

<sup>96</sup> Indictment, ¶ 77 (alleging that "RUSESABAGINA Paul continued his idea of having an army affiliated with PDR-Ihumure as he began talks with Gen. NDAGIJIMANA Laurent alias Wilson IRATEGEKA Lumbago, who had split from the FDLR and deployed troops to form the CNRD-Ubwiye"); Judgment, ¶ 29 (discussing prosecution assertion that "RUSESABAGINA Paul joined General NDAGIJIMANA Laurent alias Wilson IRATEGEKA Rumbago who had separated from the FDLR and had formed the CNRD-Ubwiye party.").

<sup>97</sup> Indictment, ¶ 78; *cf.* Judgment, ¶ 29 (summarizing prosecution contention that "[o]n 18/03/2018, the RRM political party led by NSABIMANA Callixte alias Sankara also joined this coalition and they created the FLN armed wing").

because they had already joined the CNRD-Ubwiyunge which had an army.”<sup>98</sup> The indictment further alleged that once the RRM joined the group, the three parties decided to “change the name of the FLN/NLF (Forces nationales de libération/National Liberation Forces) to the MRCD.”<sup>99</sup> The prosecution then alleged that this group, the ‘MRCD-FLN,’ was responsible for the attacks in Rwanda that were the subject of the case.

The prosecution’s case appears to have proceeded on the logic that: (1) Mr. Rusesabagina was among the ‘founders’ of the FLN due to his role in the MRCD;<sup>100</sup> and (2) alleged FLN attacks could be attributed to the leadership of the MRCD based on their asserted formal or operational links.<sup>101</sup> This meant that the precise relationship between the MRCD and FLN were among the most important factual questions to be resolved at trial.

As to a first key question—whether the MRCD had ‘created’ the FLN or whether the FLN predated the existence of the MRCD (as an armed group of the CNRD)—the prosecution argued at trial that whatever fighters the CNRD had previously controlled had been reconstituted into a new group by and under the MRCD,<sup>102</sup> despite inconsistencies between these claims and the language of the indictment. For instance, in a written summary of their argument at trial, the prosecution asserted that the MRCD had formed the FLN, which had united “fighters who had withdrawn from [CNRD] and 30 former RRM fighters.”<sup>103</sup> By contrast, the indictment asserted that “this merger led to RUSESABAGINA Paul and PDR-Ihumure having an army because they had already joined the CNRD-Ubwiyunge *which had an army.*”<sup>104</sup>

A second important question was the formal relationship between the MRCD and the FLN—in particular, whether one or both were ‘irregular armed groups’ or ‘terrorist groups.’ According to the prosecution, an irregular armed group is an organization of individuals that “[take] up arms to fight [the Rwandan] army,” while a terrorist group is one that attacks “innocent people.”<sup>105</sup> More formally, under Rwandan law, a “terrorist group” is defined as a group of individuals “acting in concert” to endanger the “life, physical integrity or freedoms of” others, causing “serious injury or death,” or causing “damage to public or private property, natural resources, environmental or cultural heritage,” with the intent to either “i) intimidate, put in fear, force, coerce or induce [others] to do or abstain from doing any act or to adopt or abandon a particular standpoint or to act according to certain principles; ii) disrupt any public service, the delivery of any essential service to the public

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<sup>98</sup> Indictment, ¶ 77.

<sup>99</sup> Indictment, ¶ 78; *cf.* Judgment, ¶ 31 (Mr. Rusesabagina “acted with other members of the MRCD and created the FLN armed group.”).

<sup>100</sup> Judgment, ¶ 30 (summarizing prosecution argument that Mr. Rusesabagina was “one of the founders of the illegal armed group FLN” due to his role with the MRCD). The prosecution also alleged that Mr. Rusesabagina had supported the FLN financially.

<sup>101</sup> Judgment, ¶ 30 (“[W]hen the MRCD-FLN was chaired by RUSESABAGINA Paul, the FLN carried out terrorist attacks.”).

<sup>102</sup> Trial Monitor Notes, June 16, 2021 (“FLN of which Nsabimana Callixte is accused of being the founder, was founded during the time that his party or after his party joined the larger group [the MRCD] in 2018.”).

<sup>103</sup> Prosecution’s Conclusions on Defense of Defendants and Prosecution’s Request in Case RP 00031/2019/HC/HCCIC, ¶ 117.

<sup>104</sup> Indictment, ¶ 77 (emphasis added).

<sup>105</sup> Trial Monitor Notes, March 31, 2021.

or to create a public emergency; or iii) create general insurrection in a State.”<sup>106</sup>

The prosecution did not offer a consistent classification of the MRCD and the FLN, referring most frequently to the ‘MRCD-FLN’ as a ‘terrorist group.’ For instance, during the March 25 hearing, the prosecution asserted:

The terrorist organization we’re talking about is MRCD-FLN. It’s an entity with a political and military wing, so it forms one terrorist organization. Obviously MRCD by itself is a political party, an umbrella that included 3 political parties including PDR-Ihumure. It had a political agenda. And then the three political parties formed FLN.<sup>107</sup>

And during the April 21 hearing, the prosecution answered a question from the Court by arguing:

There is no difference between the acts committed by MRCD-FLN as a terrorist group and those of FLN as an armed group. There are terrorist groups which do not have armed branches but which commit terrorist acts. But for the MRCD, terrorist acts went through the armed group and the latter is part of the terrorist group.<sup>108</sup>

Toward the end of trial, the prosecution reiterated, “FLN is not FLN alone, it is MRCD that is a parent organization that created it as its own *armed group*, therefore, it is, MRCD-FLN together that is a *terror organization*.”<sup>109</sup>

Yet in the indictment, the prosecution suggested a sharper distinction—with the FLN more clearly classified as the ‘armed affiliate’<sup>110</sup> of the MRCD. Likewise, during the March 24 hearing the prosecution stated that some of the defendants “were members of MRCD and some were members of MRCD without being part of FLN.”<sup>111</sup> During the March 31 hearing, the prosecution said that “there is MRCD-FLN (a terrorist organization) and MRCD on its own (political group) and an illegal armed group, FLN.”<sup>112</sup> And during the April 28 hearing, the prosecution again reiterated that “[f]or the offense of belonging to terrorist groups, the groups in question are FDLR-FOCA and MRCD-FLN. But for the offense of belonging to irregular armed groups, for FDLR it is FOCA and for MRCD it is FLN.”<sup>113</sup>

The third and final key question was the operational relationship between the MRCD and

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<sup>106</sup> Law N° 46/2018 of 13/08/2018, accessible at [https://www.rlrc.gov.rw/fileadmin/user\\_upload/Laws3/4.\\_Criminal/4.9.\\_Terrorism/4.9.1.\\_Counter\\_terrorism\\_Law\\_n\\_\\_46\\_of\\_2018.pdf](https://www.rlrc.gov.rw/fileadmin/user_upload/Laws3/4._Criminal/4.9._Terrorism/4.9.1._Counter_terrorism_Law_n__46_of_2018.pdf).

<sup>107</sup> Trial Monitor Notes, March 25, 2021.

<sup>108</sup> Trial Monitor Notes, April 21, 2021.

<sup>109</sup> Trial Monitor Notes, June 17, 2021 (emphasis added).

<sup>110</sup> See, e.g., Indictment, ¶ 122 (describing the FLN as “affiliate of the MRCD”); *id.* 109 (“The FLN is currently the military wing of the MRCD’s four-party coalition.”).

<sup>111</sup> Trial Monitor Notes, March 24, 2021.

<sup>112</sup> Trial Monitor Notes, March 31, 2021. On another occasion during that same hearing, however, the prosecution suggested that the MRCD-FLN was an irregular armed group. *Id.*

<sup>113</sup> Trial Monitor Notes, April 28, 2021.

the FLN—that is, whether the actions of the latter could be attributed to members of the former. In this regard, the prosecution suggested on numerous occasions that they were inextricably intertwined, for instance stating at the March 25 hearing that “[e]ven if on the ground terrorist acts were carried out by FLN, it received orders from the MRCD and it was the president of this coalition in the person of Paul Rusesabagina who was the main donor.”<sup>114</sup> Later, on March 31, the prosecution stated that the MRCD and the FLN were, in its view, indistinguishable.<sup>115</sup>

And yet during trial, the prosecution struggled to establish that individual co-defendants who had allegedly participated in attacks had been aware of these ostensibly close organizational affiliations. For instance, with respect to charges related to an attack in Rusizi, the prosecution argued that a General Geva, identified as the ‘FLN Chief of Staff,’ had given orders to co-defendant Cassien Bizimana to carry out an attack.<sup>116</sup> As to Mr. Bizimana, the prosecution alleged that he was both in the ‘MRCD-FLN’ and the FDLR.<sup>117</sup> One of the other co-defendants charged with involvement in the same set of attacks said, “For FLN, they did not tell me that it is an armed group, but I do not know anything about CNRD or MRCD.”<sup>118</sup>

Proving the MRCD’s control of the FLN was, however, key to the prosecution’s theory. For instance, on March 31, the prosecution emphasized that “MRCD-FLN was led by Rusesabagina. He is the who defined their mission, is also the one who define their activities, order their activities.”<sup>119</sup> On this basis, the prosecution argued that he could be found guilty of terrorism, asserting that “[t]he actual active leader of these terrorist institutions, that legally suffices”<sup>120</sup> and reiterating at a later hearing that “[t]here need not be any orders given.”<sup>121</sup> The prosecution also relied on an alleged organizational chart to show that the presidency of the MRCD would have controlled the finances of the group.<sup>122</sup>

If, on the other hand, the CNRD had ‘brought’ the FLN (or the individuals who allegedly comprised the FLN) to the partnership with the MRCD and/or exercised operational control over those individuals—or more broadly if the MRCD did not exercise operational control over the conduct of individuals allegedly affiliated with FLN—the prosecution’s case would have been weakened.

## **B. CO-DEFENDANT TESTIMONY**

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<sup>114</sup> Trial Monitor Notes, March 25, 2021.

<sup>115</sup> See Trial Monitor Notes, March 31, 2021 (“FLN and MRCD are one and the same group. It’s clear here that FLN is MRCD’s military wing.”). *But see id.* (“To clarify: the armed group is called FLN. The terrorist organization is MRCD-FLN. Both bodies are interconnected.”).

<sup>116</sup> See Trial Monitor Notes, April 22, 2021 (alleging that Bizimana helped “[plan] the attack of Rusizi on behalf of the FLN as required by General Geva, who had given them the mission”).

<sup>117</sup> Trial Monitor Notes, April 22, 2021.

<sup>118</sup> Trial Monitor Notes, May 6, 2021 (Jean Berchimas Matakamba, explaining he learned about it later on the radio).

<sup>119</sup> Trial Monitor Notes, March 25, 2021.

<sup>120</sup> *Id.*

<sup>121</sup> Trial Monitor Notes, April 21, 2021.

<sup>122</sup> Indictment, ¶ 198.

As described above, several of Mr. Rusesabagina's co-defendants and/or their counsel described a more complex relationship between the various entities. For instance, the lawyer for co-defendant Herman Nsengimana disputed the prosecution's characterization of the relationship between the MRCD and the FLN. He said, "What is evident is that FLN was never the MRCD army."<sup>123</sup> He explained, "There is nowhere where it is mentioned that FLN was an armed group of MRCD, we have shown that it is an armed group of CNRD. If it were an armed group of the MRCD, now that the CNRD is no longer in the coalition, the FLN would still be with the MRCD." (According to Sankara, the CNRD left the MRCD coalition in 2020.) On this basis, Mr. Nsengimana's defense counsel argued that his client could not be charged with membership in a *terrorist group* (i.e., the 'MRCD-FLN'), since he was only alleged to have been part of the FLN.<sup>124</sup>

According to Mr. Nsengimana, the "FLN has existed since 2016,"<sup>125</sup> a point also made by co-defendant Cassien Bizimana, who said "I have been in the armed group of FLN since October 2016 and this group was created on June 10, 2016."<sup>126</sup>

Co-defendant Emmanuel Iyamuremye likewise testified, "I was at the FLN but the fact of having been at the FLN does not make me a member of the MRCD."<sup>127</sup> Co-defendant Emmanuel Nshimiyimana said, "[I]t is obvious that FLN was an armed wing of the CNRD. As I mentioned, I'm not familiar with MRCD. . . . I never saw the signature of the one who was president of the MRCD Rusesabagina Paul."<sup>128</sup> And the lawyer for co-defendant Marc Nizeyimana, when asked by the Court whether "Nizeyimana Marc admits to having been in the terrorist group of MRCD-FLN," explained that "Nizeyimana Marc admits to having been in the *armed group of the FLN*, I do not know what the court wants to know but he does not deny that."<sup>129</sup> Defense counsel went on to say that "[t]he prosecution also likes to say that Nizeyimana Marc was in MRCD-FLN and this is not true because as he explained, as a soldier, he was in FLN and had nothing to do with MRCD."<sup>130</sup>

In addition to those defendants who argued that the FLN remained associated with the CNRD and not the MRCD, others argued that even if the FLN *were* the armed wing of the

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<sup>123</sup> Trial Monitor Notes, April 29, 2021.

<sup>124</sup> Trial Monitor Notes, April 29, 2021 (Court: "You say your client admits to having been in FLN. Isn't that enough for him to be prosecuted for belonging to the terrorist group?" Lawyer: "In the explanations given, the prosecution said that the terrorist groups referred to here are MRCD-FLN and FDLR-FOCA, the prosecution did not present FLN as a terrorist group.").

<sup>125</sup> *Id.*

<sup>126</sup> Trial Monitor Notes, May 6, 2021.

<sup>127</sup> Trial Monitor Notes, May 14, 2021.

<sup>128</sup> Trial Monitor Notes, May 19, 2021. Another co-defendant, Théogène Hakizimana likewise said in court, "The prosecution also said that when MRCD founded the armed group of the FLN, I entered it directly. This is not true because when I was arrested in May 2018 in South Kivu while I was on a work mission, I was at CNRD-UBWIYUNGE." Trial Monitor Notes, May 19, 2021. Mr. Hakizimana also testified that "[i]t was during the prosecution that I heard about the FLN, before being arrested, I had never heard it." *Id.* In closing, the lawyer for Herman Nsengimana likewise reiterated that "[a]fter having looked in the file seeking the proofs provided by the prosecution on this terrorist group, Mr. President, we could not find any proof which shows that this terrorist group ['MRCD-FLN'] existed." Trial Monitor Notes, June 23, 2021. Other co-defendants on the other hand accepted the characterization of the 'MRCD-FLN' as the relevant organizational frame.

<sup>129</sup> Trial Monitor Notes, May 6, 2021.

<sup>130</sup> *Id.*; see also *id.* ("MRCD-FLN and FLN quite simply, are two different things. He admits that he was in FLN and not in MRCD-FLN.").

MRCD, it was actually *commanded* either by the ‘generals in the field’ or the CNRD. For instance, as described above, Sankara disputed that attacks could be attributed to him based on his role in the MRCD because ‘civilians’ did not give orders to the FLN.<sup>131</sup> Later, in responding to the prosecution, Sankara said that it was CNRD that commanded the FLN.<sup>132</sup> Likewise, Cassien Bizimana explained that even when “the CNRD made an alliance with other parties and created the MRCD” “nothing changed in the FLN and I was forced to follow the commands of the upper echelon military.”<sup>133</sup>

Additionally, while testifying, several of Mr. Rusesabagina’s co-defendants recanted statements they had apparently given prior to the trial, including because they had been or feared being mistreated.<sup>134</sup> Mr. Ntabanganyimana said of his statement to the RIB,

I did not know where I was being detained, I was tied with points and feet and was interrogated by different people. They brought me some documents and told me to sign. I told them I can't read and write and they told me to put my fingerprint on it. That's why I don't agree with what was written to the Investigation Bureau when they say I signed after reading.<sup>135</sup>

Some of Mr. Rusesabagina’s co-defendants also asserted that they were not given an opportunity at the time to review the records of the statements they gave the authorities, and they later identified discrepancies. For instance, Marc Nizeyimana said of one such record, “I cannot say that I did not sign, but I signed blindly, they did not give us time to read, they told us to trust them, that we are in period of COVID. Even though it is mentioned that I signed after reading, it is not true. . . . afterwards I noticed that they did not write what I had said, I do not know if it was done intentionally or if it was a typo.”<sup>136</sup> Another co-defendant said of his statement, “[T]here are two things that were said that I do not recognize.”<sup>137</sup> Like Mr. Nizeyimana, he noted, “This is what I wanted to explain Mr. President, because of COVID-19, we did not read.”<sup>138</sup> Mr. Ntabanganyimana likewise said that while he had applied his fingerprint to the statement, “they didn't give me the chance to choose a person I trust to read for me.”<sup>139</sup>

In at least one case, a co-defendant alleged that discrepancies between what he said he had actually told the investigators and what was recorded were material to questions regarding institutional affiliations and relationships. Félicien Nsanzubukire explained, “the investigator asked me if I was at FLN and I replied that I do not know FLN. When I read the minutes, I noticed that he said that I admitted having been in the FLN. I told him he wrote down what I didn't say and he replied that there is no problem.”<sup>140</sup>

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<sup>131</sup> Trial Monitor Notes, March 12, 2021.

<sup>132</sup> Trial Monitor Notes, June 23, 2021.

<sup>133</sup> Trial Monitor Notes, May 5, 2021.

<sup>134</sup> See Trial Monitor Notes, April 29, 2021; Trial Monitor Notes, May 7, 2021.

<sup>135</sup> Trial Monitor Notes, May 7, 2021.

<sup>136</sup> Trial Monitor Notes, April 29, 2021.

<sup>137</sup> Trial Monitor Notes, May 6, 2021.

<sup>138</sup> *Id.*

<sup>139</sup> Trial Monitor Notes, May 7, 2021.

<sup>140</sup> *Id.*

## C. OTHER PROSECUTION EVIDENCE

As described above, the two prosecution witnesses against Mr. Rusesabagina did not testify on the MRCD's role with respect to the attacks at issue in the case, focusing instead on alleged conduct that predated the events in question.

The prosecution instead relied principally on statements Mr. Rusesabagina apparently made upon his arrival in Rwanda—during a period when, as described in the Background Briefing on the case by American Bar Association Center for Human Rights staff<sup>141</sup> and elaborated in more detail below, Mr. Rusesabagina was without counsel and has alleged he was subjected to mistreatment.<sup>142</sup> For instance, the prosecution sought to prove Mr. Rusesabagina's alleged role in forming the FLN,<sup>143</sup> alleged provision of personal financial assistance to the 'MRCD-FLN,'<sup>144</sup> and alleged support for terrorist activities<sup>145</sup> based on interrogations conducted on August 31, 2020. This was during or immediately following the period when he was detained incommunicado and when he was without counsel.

Similarly, the prosecution also relied on statements Mr. Rusesabagina made in the early days of September, after Rwanda had made known that he was in their custody but when, as described in the Background Briefing, Mr. Rusesabagina was not represented by counsel of his choice.<sup>146</sup> For instance, the prosecution referenced statements allegedly made by Mr. Rusesabagina during interrogations on September 11, 2020 and September 16, 2020 to support their arguments with respect to several key questions in the case, including whether Mr. Rusesabagina was a member of the 'MRCD-FLN terrorist group,'<sup>147</sup> what role Mr. Rusesabagina had in the FLN,<sup>148</sup> and whether Mr. Rusesabagina personally provided financial support to the FLN.<sup>149</sup>

Finally, the prosecution relied heavily on information that was assertedly obtained from Belgium. This included a press release signed by Sankara that stated that the MRCD had 'created' the FLN.<sup>150</sup> The prosecution suggested that the fact that it was allegedly found during a search of Mr. Rusesabagina's computer<sup>151</sup> showed that he agreed with its contents. The prosecution also referenced information on transfers of funds. For instance, the prosecution asserted that money allegedly transferred by several actors, including Eric

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<sup>141</sup> See Background Briefing ("Mr. Rusesabagina appears to have been denied access to a lawyer from August 27, when he was arrested, until at least September 3...").

<sup>142</sup> See, e.g., Indictment, ¶¶ 126, 146-48, 161-63, 176, 183, 193, 204, 212, 240.

<sup>143</sup> Trial Monitor Notes, March 30, 2021; see also Indictment, ¶ 81 ("FLN's main sponsor was RUSESABAGINA Paul, according to the cross-examination at the Judiciary on August 31, 2020, where he explained that he had provided personal financial assistance and advocated for it to the best of his ability."); Judgment, ¶ 87 (discussing Mr. Rusesabagina's "cross-examin[ation] during the investigation on 31/08/2020").

<sup>144</sup> Indictment, ¶ 147.

<sup>145</sup> Indictment, ¶ 160.

<sup>146</sup> Background Briefing ("In the present case, Mr. Rusesabagina appears to have been denied access to a lawyer from August 27, when he was arrested, until at least September 3...").

<sup>147</sup> Trial Monitor Notes, March 31, 2021.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> See, e.g., Indictment, ¶ 129 (referencing MRCD Media Report No. 2018/07/01).

<sup>151</sup> See Trial Monitor Notes, March 30, 2021.



Munyemana,<sup>152</sup> a MRCD ‘treasurer,’<sup>153</sup> was “evidence that RUSESABAGINA ha[d] a direct role in sponsoring terrorist activities.”<sup>154</sup> At trial, the prosecutors stated that the “Belgian prosecution also conducted investigation of money transfer companies - Western Union, Moneygram, Money Transfer – and revealed evidence that MRCD-FLN sent money to fighters in Burundi and elsewhere.”<sup>155</sup>

Further, the prosecution relied on WhatsApp messages allegedly seized from Mr. Rusesabagina’s phone, in which the prosecution argued, among other things, that he had referred to fighters as ‘farmers’ in coded messages<sup>156</sup> and said that ‘his sons’ were ‘in the fire.’<sup>157</sup>

There was, however, no substantive discussion of the evidence apparently received from Belgium in Court (other than references to it by the prosecution). For instance, the prosecution did not explain the chain of custody or otherwise authenticate the evidence by calling any official from Belgium who had been responsible for collecting it. This is necessary to test, for instance, whether the evidence came from an illegal search or may have been tampered with. The behavior of the Belgian police in supplying this evidence to the Rwandan prosecutors without safeguards as to its use has not been explained, and has been subject to criticism in Belgium.

## **D. PRESENTATIONS BY THE CIVIL PARTIES**

During the hearings at which the civil parties presented their claims, the Court considered the extent of responsibility of each of the defendants for restitution.<sup>158</sup> Though the Court distinguished the questions of criminal liability and responsibility for restitution, the Court asked the lawyers for the civil parties to explain whether “the scope of criminal liability is the same for all [defendants].”<sup>159</sup> The civil parties’ position was that all defendants were liable to compensate the civil parties without particular regard to the specific roles played by the defendants.<sup>160</sup> The Court noted this explanation.<sup>161</sup>

## **E. MR. RUSESABAGINA’S ACCESS TO COUNSEL AND TREATMENT FOLLOWING HIS WITHDRAWAL FROM COURT**

The June TrialWatch Report describes violations of Mr. Rusesabagina’s right to counsel as of that date. Mr. Rusesabagina’s defense team has also alleged that even following the conclusion of trial there were significant restrictions on their ability to engage their

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<sup>152</sup> See Indictment, ¶ 185.

<sup>153</sup> Judgment, ¶ 112.

<sup>154</sup> Indictment, ¶ 185.

<sup>155</sup> Trial Monitor Notes, March 25, 2021.

<sup>156</sup> Trial Monitor Notes, April 1, 2021.

<sup>157</sup> Trial Monitor Notes, March 30, 2021.

<sup>158</sup> Trial Monitor Notes, May 20, 2021.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

client, such as a prohibition on bringing him documents. Further, after the judgment was delivered, the defense team were assertedly unable to share a copy with him until October 14—and only after the press had asked why Mr. Rusesabagina had not been able to read it yet.

## F. CONVICTION AND SENTENCE

After a nearly two months' adjournment, the Court returned on September 20, 2021 to render a judgment. This began by setting out the prosecution case,<sup>162</sup> which it went on to accept and to convict Paul Rusesabagina of membership in a terrorist organization and commission of terrorist acts. The Court sentenced him to 25 years in prison—a length of time by which, at 67 years old and already in ill-health, he is likely to die in prison. (Even so, the prosecution is appealing this sentence, claiming it should have been life imprisonment.<sup>163</sup>) The judgment concluded that, together with Sankara, Mr. Rusesabagina “formed MRCD and FLN military wing and they instructed them to carry out attacks.” It specifically found that “the MRCD-FLN is a terrorist group”<sup>164</sup> and that “the court cannot separate the MRCD from its militia’s activities.”<sup>165</sup>

The judgment relies on the testimony of the two prosecution witnesses for the proposition that Mr. Rusesabagina had sought to cooperate with the FDLR<sup>166</sup>—not to prove allegations relating to the MRCD or FLN. As to the latter, it relies on the testimony of co-defendants, including in particular Sankara, who accepted his guilt and could well have been motivated, in the hope of early release, to assist the prosecution.<sup>167</sup> (In fact, during appeal proceedings, Sankara’s lawyer said he had not been given the lighter sentence he had expected in exchange for cooperation, explaining that “he had been cooperative, he provided information that assisted the legal authorities, and much more. He even collaborated with the Prosecution in order to request the court to reduce his sentence.”)

It also relies on the statements Mr. Rusesabagina made when he was first interrogated in Rwanda,<sup>168</sup> which it finds to be reliable but without any investigation of the circumstances in which they were given,<sup>169</sup> and the evidence apparently obtained by the Belgian authorities,<sup>170</sup> including the press release allegedly found on Mr. Rusesabagina’s

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<sup>162</sup> See Judgment, ¶¶ 16-48.

<sup>163</sup> See Reuters, *Prosecutor seeks life imprisonment for convicted 'Hotel Rwanda' hero* (Jan. 24, 2022), available at <https://www.reuters.com/world/africa/prosecutor-seeks-life-sentence-convicted-hotel-rwanda-hero-2022-01-24/>.

<sup>164</sup> Judgment, ¶ 106.

<sup>165</sup> Judgment, ¶ 109.

<sup>166</sup> Judgment, ¶¶ 71-75.

<sup>167</sup> Judgment, ¶ 31.

<sup>168</sup> See Judgment, ¶ 31 (discussing “statements during his interrogation by the Investigation authorities, as well as by the Prosecution”); *id.* ¶ 48; *id.* at ¶ 81; *id.* at ¶ 89 (“RUSESABAGINA Paul, as he was cross-examined by the Prosecution, . . .”); *id.* ¶ 112 (“[Mr. Rusesabagina] was interrogated during the investigation on 31/08/2020 . . .”)

<sup>169</sup> Judgment, ¶ 94.

<sup>170</sup> See, e.g., Judgment, ¶ 129 (“Further evidence that sums of money are sent to the Congo comes from the statements of UWIRAGIYE Odette, Eric MUNYEMANA’s wife, during the investigations carried out in Belgium.”).

computer<sup>171</sup> and the WhatsApp exchanges.<sup>172</sup> The Court also relied on statements made to the Rwandan authorities by other individuals who did not testify during the trial and who were not co-defendants in the case and therefore could not be questioned.<sup>173</sup>

Mr. Rusesabagina's alleged role in 'creating' the FLN through the MRCD is the linchpin of the judgment. In particular, the judgment explains that Mr. Rusesabagina is guilty of belonging to the terrorist group 'MRCD-FLN' under Article 18<sup>174</sup> because he and Sankara "were members of the MRCD" and "they created the FLN armed group."<sup>175</sup> The judgment further holds that Mr. Rusesabagina and Sankara were 'intentional' members in part because of their role in 'creating' the FLN.<sup>176</sup>

The Court also found Mr. Rusesabagina guilty of "committing and participating in terrorist group acts" under Article 19.<sup>177</sup> In particular, the judgment finds that 'financing terrorism' should be considered 'commission of terrorist acts,'<sup>178</sup> and goes on to find that by allegedly authorizing attacks and "support[ing] the MRCD-FLN [this] proves that they played a role in the terrorist acts."<sup>179</sup> Again, the Court relies on the assertion that "they themselves admit that they founded the MRCD coalition and created its armed branch, the FLN, [and] that it was this organisation that carried out the attacks."<sup>180</sup>

Finally, the Court found Mr. Rusesabagina not guilty of creating an illegal armed group on the ground that his alleged role in the FLN was not an offense "against the external State security."<sup>181</sup>

The Court also agreed with the civil parties that the defendants could be held jointly and severally liable on the theory that the 'MRCD-FLN' was responsible for the attacks.<sup>182</sup> While the Court made assessments of the sufficiency of the evidence, it was generally with a view to determining whether claims for compensation could be supported.

The Court noted that Mr. Rusesabagina, at hearings at which he applied for bail on September 11, 2020 and September 14, 2020, had expressed sorrow for the FLN killings

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<sup>171</sup> See Judgment, ¶ 32; *id.*, at ¶ 85; *id.*, at ¶ 92.

<sup>172</sup> See Judgment, ¶ 33; *id.*, at ¶ 93; *id.*, at ¶ 126; *id.*, at ¶ 132.

<sup>173</sup> See, e.g., Judgment, ¶ 118 ("Colonel NIYONZIMA Arthémon, who was the treasurer of CNRD, during his hearing at the Rwandan Investigation Office on 06/02/2020 also explained that friends of CNRD were personally sending money through Eric while those who were in the coalition like RUSESABAGINA.").

<sup>174</sup> Law N°46/2018 of 13/08/2018.

<sup>175</sup> Judgment, ¶ 107.

<sup>176</sup> Judgment, ¶ 108.

<sup>177</sup> Law N°46/2018 of 13/08/2018; Judgment, ¶¶ 157-58.

<sup>178</sup> Judgment, ¶ 137 ("[A] person who has financed terrorist acts should not be punished for financing as a special offence under Article 24 of the aforementioned Law no. 69/2018 of 31/08/2018, but rather should be punished as having committed a terrorist act."); *id.* at ¶ 157 ("by financing it, by supporting its actions and by claiming responsibility for them as explained, the Court finds that they played a role in the acts that were committed by this organisation.").

<sup>179</sup> Judgment, ¶ 150.

<sup>180</sup> Judgment, ¶ 151.

<sup>181</sup> Judgment, ¶ 100.

<sup>182</sup> Judgment, ¶ 632 (citing "[t]he fact that the attacks launched on the Rwandan territory were carried out according to a plan of the MRCD-FLN to carry out terrorism, as has been explained, and that if this organization had not existed it would not have been possible for these acts, which had consequences on the persons who brought the civil action").

but insisted that he never gave them any orders. (International counsel for Mr. Rusesabagina have alleged that his lawyers at these hearings, who were not of his choice, did not properly represent him.<sup>183</sup>) The Court however found that he was responsible for the deadly attacks as he was a leader of the MRCD, which had “a broad objective to terrorise the population to force the government to accept negotiations with this organization and to change its governance principles.”<sup>184</sup> As discussed above, the evidence from the two prosecution witnesses, however, was that he had allegedly collaborated with a previous organization, the FDLR, which operated before the creation of the FLN.<sup>185</sup>

The judgment also claimed that Mr. Rusesabagina had been heard in radio broadcasts and on social media claiming responsibility for FLN attacks,<sup>186</sup> but no transcripts of such broadcasts were reproduced in the judgment—to the extent specific broadcasts relating to attacks are discussed, they are attributed to Sankara<sup>187</sup> and Nsengimana<sup>188</sup> (as to Mr. Rusesabagina, the only specific radio broadcast referenced is one where he reportedly discussed the creation of the MRCD and FLN and the only social media broadcast is one where he expresses general support for the FLN).<sup>189</sup> The Court concluded, on the basis of his alleged admissions whilst examined in detention, that he was among the founders of the MRCD—the political wing—and involved in the creation of the FLN.<sup>190</sup> Again, however, it created confusion, calling the perpetrators of violence “the MRCD-FLN organization.”<sup>191</sup> This was the prosecution’s theory, and the basis for his conviction. However, if the MRCD was a political group, the judgment does not recite sufficient proof that all of its members intended the crimes of the FLN, which was led by its own generals who some co-defendants testified reported to only some elements with the MRCD, and had fighters who never met the political figures.

To find Mr. Rusesabagina guilty of acts of murder and terrorism required more than attributing to him communiqués boasting of FLN success. There was also evidence from Belgium (as to the provenance of which, *see supra*) referenced in the indictment that he

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<sup>183</sup> Peter C. Choharis et al., Petition to UN Working Group on Arbitrary Detention (“Mr. Rugaza represented Mr. Rusesabagina in a manner contrary to his interests.”), *available at* [https://rfkhr.imgix.net/asset/Paul-Rusesabagina-UNWGAD-Final-Petition\\_16-March-2021\\_For-Website-and-Circulation.pdf](https://rfkhr.imgix.net/asset/Paul-Rusesabagina-UNWGAD-Final-Petition_16-March-2021_For-Website-and-Circulation.pdf). *Cf.* Background Briefing (“Notably, Mr. Rusesabagina’s lawyer did not contest the legitimacy of his detention with respect to his alleged abduction from Dubai.”).

<sup>184</sup> Judgment, ¶ 48.

<sup>185</sup> *Id.*, at ¶¶ 71-75.

<sup>186</sup> Judgment, ¶¶ 78, 163.

<sup>187</sup> Judgment, ¶¶ 23, 61, 64, 145.

<sup>188</sup> Judgment, ¶¶ 192, 195, 204, 206.

<sup>189</sup> *Cf.* Indictment, ¶ 131 (“All of this evidence is consistent with the content of an online radio interview called ‘The Rock’ in which RUSESABAGINA Paul and TWAGIRAMUNGU Faustin spoke about the founding of the FLN.”). *See also* Judgment, ¶ 32; Judgment, ¶ 93 (discussing broadcast on radio station “The Rock, that operates online, whereby RUSESABAGINA Paul revealed that they... had launched the FLN”). The indictment and judgment also refer to a YouTube video in which Mr. Rusesabagina expressed support for the FLN. *See* Indictment, ¶ 143; Judgment, ¶ 93.

<sup>190</sup> *See* Judgment, ¶ 31 (finding “the fact that RUSESABAGINA Paul had created the illegal armed group, FLN... based on his statement during his interrogation by the Investigation authorities, as well as by the Prosecution whereby he admitted that in collaboration with others with whom he was working under the MRCD banner they had created the armed group, the FLN...”); Judgment, ¶ 33 (noting that, “as he told the Prosecution during his cross examination on 16/09/2020,” Mr. Rusesabagina referred to FLN fighters as “his boys”). *See also* Judgment, ¶ 87.

<sup>191</sup> Judgment, ¶ 150.

was connected with raising money for the cause of regime change in Rwanda, but this did not directly connect him, as the Court asserted, with “indiscriminate attacks on populations, killing, looting and burning their properties including houses and vehicles, attack[ing] people on the roads and burn[ing] vehicles and thr[owing] grenades in public places.”<sup>192</sup> The judgment does not reference any evidence to connect Mr. Rusesabagina to any particular terrorist act, and the Court was reduced to instancing a letter he wrote to the Secretary-General of the UN in 2018 saying that the MRCD was determined to effect a change of government and his speeches to the same effect,<sup>193</sup> to prove his intention to commit them. He was a political enemy, certainly, but not for that reason alone guilty of terrorism. Whether the deadly attacks at issue in this case can be brought home to him is not the question addressed in this report: it is whether the judgment that did so was based on a trial that lived up to international and regional standards. In a number of respects, it did not.

The prosecution had requested a life sentence. The Court justified Mr. Rusesabagina’s twenty-five year sentence on the ground that “he admitted certain facts, explained how they were committed and asked for forgiveness for these acts, [and] given that this is the first time he has been prosecuted before the courts.” The Court also stated that it would not reduce Mr. Rusesabagina’s sentence further because he “did not appear at the hearings to allow the Court to know if he continues to plead guilty to the offences he is prosecuted for.”<sup>194</sup>

Following this decision, the prosecution appealed, arguing that a life sentence was warranted.<sup>195</sup>

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<sup>192</sup> Judgment, ¶ 110.

<sup>193</sup> *Id.*, at ¶ 152.

<sup>194</sup> *Id.*, at ¶ 675.

<sup>195</sup> Reuters, *Prosecutor Seeks Life Sentence for Convicted 'Hotel Rwanda' Hero*, Jan. 24, 2022, available at <https://www.reuters.com/world/africa/prosecutor-seeks-life-sentence-convicted-hotel-rwanda-hero-2022-01-24/>.

# METHODOLOGY



The American Bar Association Center for Human Rights deployed monitors to observe the trial of Paul Rusesabagina before the High Court Chamber for International Crimes in Kigali as part of the Clooney Foundation for Justice's TrialWatch initiative. The trial opened on February 17, 2021 and concluded on September 20, 2021 with Mr. Rusesabagina's conviction. For the first two hearings, the Center sent an English-speaking monitor to Kigali to observe in person. The monitor experienced no impediments in accessing the hearings, which were translated into English. For the remainder of the hearings, monitors viewed the trial via the Court's live feed and were fluent in either Kinyarwanda or English (many of the hearings were translated into English). Monitors experienced no impediments in accessing and viewing the live feed.

The June 2021 TrialWatch report was published at the close of the evidence, once certain violations had become apparent, as is common practice.<sup>196</sup> This report completes the assessment of the trial.

# ANALYSIS



## A. APPLICABLE LAW

This report draws upon the International Covenant on Civil and Political Rights (“ICCPR”); jurisprudence from the United Nations Human Rights Committee, tasked with monitoring implementation of the ICCPR; the Convention Against Torture (“CAT”); the African Charter on Human and Peoples’ Rights (the “African Charter”); jurisprudence from the African Commission on Human and Peoples’ Rights (the “African Commission”) and African Court on Human and Peoples’ Rights (the “African Court”); and the African Commission’s Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (the “Fair Trial Guidelines”). While different legal systems will, of course, implement international and regional standards in different ways, they reflect an irreducible floor, below which proceedings will be deemed unfair.<sup>197</sup>

As discussed above, this report primarily focuses on matters not addressed in the June TrialWatch Report. In particular, the findings here specifically elaborate on the June report’s conclusion that “the judges have acted in a manner that suggests they are more

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<sup>196</sup> The June TrialWatch Report on this case received some criticism from the Rwanda Bar Association on the ground that it was released before the conclusion of the trial, with the suggestion that this might constitute contempt of court. On the contrary, it is critical the public hear and understand legitimate criticism of trials held in their name.

<sup>197</sup> Among the criticisms in the RBA report is the argument that “each jurisdiction has its own distinct history and culture and its own constitutional arrangements and institutions” and that “what may be fundamental in some legal systems may not be fundamental in others.” Yet there are also certain basic fair trial rights, recorded in Conventions and international and regional court decisions, which are applicable to all legal systems, as preconditions of a fair trial. It is by these standards that Paul Rusesabagina’s trial must be judged, and by which this report and its predecessor seek to judge it.

invested in building the prosecution's case against Mr. Rusesabagina than endeavoring to protect his rights in his absence, as is their obligation."<sup>198</sup>

## B. VIOLATIONS AT TRIAL

### Admission of Potentially Coerced Evidence

Article 14(3)(g) of the ICCPR establishes the right "not to be compelled to testify against [one]self or to confess guilt." This means that statements against one's interest made under physical or psychological pressure must be "excluded from the evidence."<sup>199</sup> The UN Human Rights Committee has made it clear that Article 14(3)(g) puts the burden on "the State to prove that statements made by the accused have been given of their own free will."<sup>200</sup> The Committee has also held that prior mistreatment may have an ongoing coercive effect on later interrogations.<sup>201</sup>

Likewise, Article 5 of the African Charter forbids torture and cruel, inhuman or degrading punishment and treatment<sup>202</sup> and the African Commission's Fair Trial Guidelines provide that "[t]he accused has the right not to be compelled to testify against him or herself or to confess guilt."<sup>203</sup> In particular, the Guidelines stipulate that "[a]ny confession or other evidence obtained by any form of coercion or force may not be admitted as evidence or considered as probative of any fact at trial or in sentencing. Any confession or admission obtained during incommunicado detention shall be considered to have been obtained by coercion."<sup>204</sup>

Finally, under Rwandan law, torture may not be used to "extort an admission," and "the presentation of [such] evidence, its admission or reception are void in determining the issues of a case."<sup>205</sup>

The European Court of Human Rights has held that incommunicado detention may itself be coercive.<sup>206</sup> That court has also specified that "the admission of statements obtained

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<sup>198</sup> June TrialWatch Report, p. 21.

<sup>199</sup> See Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, ¶ 41.

<sup>200</sup> *Id.*

<sup>201</sup> UN Human Rights Committee, *Butovenko v. Ukraine*, U.N. Doc. CCPR/C/102/D/1412/2005, ¶2.4 (2011) ("The author submits that, unable to withstand the torture, he had to incriminate himself in the murder. He was then 'passed on' to an investigator of the prosecutor's office for an 'official interrogation'. The author was warned by the police inquiry officers that he should give the same self-incriminating testimony, otherwise the torture would continue as soon as the lawyer and investigator left.").

<sup>202</sup> African Charter on Human and Peoples' Rights, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Art. 5.

<sup>203</sup> African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, DOC/OS(XXX)247, 2003, p. 15.

<sup>204</sup> *Id.* The Guidelines also make clear that "[w]hen prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the judicial body accordingly." African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, DOC/OS(XXX)247, 2003, p. 7.

<sup>205</sup> Law N° 15/2004 of 12/06/2004.

<sup>206</sup> European Court of Human Rights, *Magee v. United Kingdom*, App. No. 28135/95, June 6, 2000, ¶ 43

as a result of torture or of other ill-treatment . . . as evidence to establish the relevant facts in criminal proceedings renders the proceedings as a whole unfair.”<sup>207</sup> The African Court has also previously found that denial of medicine may contribute to a claim of mistreatment.<sup>208</sup>

Mr. Rusesabagina and his defense team have consistently alleged mistreatment during his initial period of detention in Rwanda—at least through August 31, when the Rwandan authorities announced that he was in their custody.<sup>209</sup> For instance, in an affidavit dated March 3, 2021, Mr. Rusesabagina said he was held at an unknown location for three days and “tied at the legs, face and hands.”<sup>210</sup> In a subsequent communication to the UN, the substance of which was made public in a press conference, Mr. Rusesabagina’s international lawyers have added that he was “held in a facility which he describes as a ‘slaughterhouse,’ where he ‘could hear persons, women screaming, shouting, calling for help.’”<sup>211</sup> His team further allege that a RIB agent stepped on Mr. Rusesabagina’s neck and told him ‘we know how to torture.’ At this time, Mr. Rusesabagina was also reportedly “deprived of food and at times deprived of sleep.”<sup>212</sup> As discussed above, some of these claims were specifically brought to the attention of the Court,<sup>213</sup> while others were widely publicized in the media. Further, Mr. Rusesabagina has said he had no contact with the outside world between his arrival in Rwanda and August 31<sup>214</sup>--a claim that was also brought to the Court’s attention. Finally, Mr. Rusesabagina has also alleged that he was denied medicine.<sup>215</sup>

And yet the indictment relies on statements by Mr. Rusesabagina from August 31, September 5, and September 11.<sup>216</sup> The August 31 interrogation was during or

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(“[T]he applicant was kept incommunicado during the breaks between bouts of questioning . . . .The austerity of the conditions of his detention and his exclusion from outside contact were intended to be psychologically coercive and conducive to breaking down any resolve he may have manifested at the beginning of his detention to remain silent.”).

<sup>207</sup> European Court of Human Rights, *Kaçiu & Kotorri v. Albania*, App. Nos. 3192/07 and 33194/07, June 25, 2013, ¶ 117; *cf. id.*, at ¶ 125 (identifying a limited exception in the context of a confession extracted in the presence of a lawyer through inhuman and degrading treatment).

<sup>208</sup> African Court on Human and Peoples’ Rights, *Mugesera v. Rwanda*, App. No. 012/2017, Nov. 27, 2020, ¶¶ 90-91 (“the Applicant’s deprivation of adequate food, limited access to a doctor and medication, non-provision of an orthopaedic pillow, difficulties in establishing contact with his family and his counsel would lead to demoralisation and deterioration of the physical and mental condition of the detainee . . . . the Court finds that this situation amounts to cruel, inhuman and degrading treatment of the Applicant.”).

<sup>209</sup> See Defense Counsel’s Request for A Remedy for Violation of Fundamental Rights, ¶¶ 2-3; Defense Counsel’s Second Request Seeking Request for A Remedy for Violation of Fundamental Rights & Application for Provisional Release, ¶ 1-3.

<sup>210</sup> Affidavit of Paul Rusesabagina, March 3, 2021.

<sup>211</sup> Letter from Peter C. Choharis et al. to UN Special Rapporteur on Torture, Urgent Appeal on Behalf of Paul Rusesabagina, May 18, 2021.

<sup>212</sup> Communication to the UN Working Group on Arbitrary Detention, Request for Urgent Action on behalf of Paul Rusesabagina, May 18, 2021, p. 4.

<sup>213</sup> See also Trial Monitor Notes, March 5, 2021 (prosecution acknowledging “[i]n fact they submitted an affidavit yesterday”); Request for a Remedy for Violation of Fundamental Rights, Jan. 21, 2021 (“Between 28 and 31 August, the Defendant was held incommunicado at an unknown location in Rwanda, bound at the legs, hands and face, and interrogated in the absence of a lawyer.”).

<sup>214</sup> Background Briefing (“Mr. Rusesabagina’s whereabouts were unknown until August 31.”); Affidavit of Paul Rusesabagina, March 3, 2021, ¶ 7 (“I was not able to contact anyone.”).

<sup>215</sup> Rusesabagina Defense Team, Request for A Remedy for Violation of Fundamental Rights, January 21, 2021.

<sup>216</sup> See, e.g., Indictment, ¶¶ 56, 81, 126, 128, 147-48, 161, 163, 176, 183, 193, 204.



immediately following the period when the defense have alleged mistreatment and incommunicado detention. The later interrogations were during a period when Mr. Rusesabagina does not appear to have been represented by counsel of his choice (see *supra* and *infra*)—and in any event were close enough in time to the alleged mistreatment that Mr. Rusesabagina may still have felt its effects.

The prosecution not only relied on these statements in the indictment, but also in their arguments in court. For instance, in summing up on June 17, the prosecution asserted that “[e]ven though [Mr. Rusesabagina] didn't actively take part in these attacks, but he is considered as one who played a role by simply being one of the sponsors of these fighters and the evidence provided, *based on what he said before the investigators, what he said before the prosecution . . .*”<sup>217</sup>

Where there is a dispute regarding whether evidence was obtained voluntarily, the burden is on the State to prove that the relevant inculpatory statements were given of the accused’s own free will.<sup>218</sup> When such a dispute is raised at trial, the court should correspondingly take measures to validate the voluntariness of confessions.<sup>219</sup>

Here, however, the Court barely addressed these issues. In its March 10 decision on jurisdiction, the Court states that Mr. Rusesabagina waived his right to counsel (discussed further below), but does not reckon at all with the potentially coercive circumstances under which the August 31 interrogation took place. The judgment then relies on the interview on August 31 in four key parts of the section setting out the facts against Mr. Rusesabagina.<sup>220</sup> With respect to the voluntariness of these statements,<sup>221</sup> the judgment simply finds that “it is up to the judge to determine the value he gives to the minutes collected during the investigations” and that Mr. Rusesabagina statements along with other evidence “constitute evidence beyond reasonable doubt.”<sup>222</sup> Again, the judgment makes no reference to potential coercion.

This approach is consistent with the perfunctory manner in which the Court handled similar claims by three of Mr. Rusesabagina’s co-defendants that indicated that statements they had given to the authorities were either not voluntary, or qualified or recanted as having been given based on fear. For instance, when Mr. Nizeyimana specifically said that he had mentioned names “because they could torture me under the pretext that I was hiding

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<sup>217</sup> Trial Monitor Notes, June 17, 2021.

<sup>218</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, ¶ 41.

<sup>219</sup> *Id.*, at ¶ 33.

<sup>220</sup> See Judgment, ¶¶ 34 (relying on interview at Rwandan Investigation Office to support theory that Mr. Rusesabagina provided financial support to the MRCD-FLN), 87 (relying on interview at Rwandan Investigation Office to explain origins of MRCD coalition), 112 (relying on Interview at Rwandan Investigation Office to prove Mr. Rusesabagina’s provision of financial support to the MRCD-FLN), 128 (relying on interview at Rwandan Investigation Office to show Mr. Rusesabagina had provided telephones to MRCD leaders). See *also* Judgment, ¶114 (discussing information from “his hearing at the Rwandan Investigation Office on 05/09/2020”).

<sup>221</sup> This assessment seemed to apply to all of the statements Mr. Rusesabagina gave prior to trial. See Judgment, ¶ 94. (discussing “the statements of RUSESABAGINA Paul during the investigations and at the hearing on his detention and release from provisional detention”).

<sup>222</sup> *Id.*

information,” the Court ignored the comment, responding that “you recognize that it was you who provided the information.”<sup>223</sup> When Mr. Ntabanganyimana said that he had been “tied with points” as he was interrogated by several people, that he did not sign documents prepared by the Investigation Bureau because he could not read or write, and that he was simply instructed “to put [his] fingerprint on it,” the Court did not address the allegations and simply pressed him to acknowledge that the fingerprint on the document prepared by the Investigation Bureau was his.<sup>224</sup> And when Félicien Nsanzubukire sought to explain to the Court the conditions he had been under when he gave his statement, the Court interrupted him and eventually simply concluded, “[l]et’s move on to the other offense.”<sup>225</sup>

In fact, the court records do not reflect any of the three defendants’ claims of duress at all. For instance, though at the hearing Mr. Ntabangyimana spoke of being “tied with points and feet” while he was interrogated,<sup>226</sup> the record of Mr. Ntabangyimana’s account simply stated that he was “imprisoned for over a year.”<sup>227</sup> While the judgment addresses Mr. Ntabangyimana’s claim that he could not read or write,<sup>228</sup> it does not refer to Mr. Ntabangyimana’s claims of mistreatment, nor does it refer to similar claims of duress raised by other defendants.

Taken together, based on the allegations by Mr. Rusesabagina’s defense team, in the context of other related allegations by his co-accused, there are reasonable grounds to conclude that the proceedings violated Mr. Rusesabagina’s right not to be compelled to testify against oneself or admit guilt under Article 14(3)(g) of the ICCPR and Article 5 of the African Charter, and, as a result, that the proceedings as a whole were unfair, because the judges simply turned a blind eye to these complaints. They did not investigate or evaluate them. In common law countries, this is done in a ‘voir dire’ procedure in which the admissibility of such statements is considered, and in civil law trials allegations of forced confessions are considered by the investigating judge prior to trial. The Court in this case made no proper examination and did not permit Mr. Rusesabagina and other defendants to develop their argument for evidential exclusion.

## **Admission of Evidence Obtained in Violation of the Right to Counsel**

As described in the Background Briefing on the case, both the ICCPR and the African Charter protect the right to counsel.<sup>229</sup> The African Court has specifically noted that “the person held in custody has the right to be assisted by a lawyer from the outset of such a measure and *during interrogations*.”<sup>230</sup> In one case, the African Court recognized a

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<sup>223</sup> Trial Monitor Notes, April 29, 2021.

<sup>224</sup> Trial Monitor Notes, May 7, 2021.

<sup>225</sup> *Id.*

<sup>226</sup> Trial Monitor Notes, May 7, 2021.

<sup>227</sup> Procès-verbal, May 7, 2021.

<sup>228</sup> See Judgment, ¶¶ 375, 384.

<sup>229</sup> See Background Briefing (describing international legal standards protecting the right to counsel); ICCPR, Art. 14(3)(b) (“In the determination of any criminal charge against him, everyone shall be entitled...to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.”); African Charter, Art. 7(1) (“Every individual shall have the right to have his cause heard...including the right to be defended by counsel of his choice.”).

<sup>230</sup> African Court of Human & Peoples’ Rights, *African Commission on Human and Peoples’ Rights v. Libya*

“situation of extreme gravity and urgency, as well as a risk of irreparable harm” after the African Commission on Human and Peoples’ Rights raised concerns about a defendant who faced “an imminent trial ... following a period of arbitrary detention based on interrogations carried out in the absence of a lawyer.”<sup>231</sup> The Commission considered “interrogation without appropriate due process safeguards,” including “refusing the Detainee access to a lawyer” violated the right to counsel protected under Article 7 of the African Charter.<sup>232</sup> The Commission emphasized the effect on a defendant’s preparation for trial of being “interrogated in the absence of counsel.”<sup>233</sup>

The right to counsel includes the right to counsel of one’s choice. For instance, in one case the UN Human Rights Committee found a violation where a single interrogation took place in the presence of a government-appointed lawyer, but not the private lawyer the family of the applicant had retained.<sup>234</sup> Likewise, the African Commission has explained that “[t]he right to freely choose one’s counsel is essential to the assurance of a fair trial. To give the tribunal the power to veto the choice of counsel of defendants is an unacceptable infringement of this right.”<sup>235</sup>

The European Court of Human Rights has also held that where the right to counsel is violated during an interrogation, the subsequent introduction of the statement obtained may result in a violation of the right to a fair trial as a whole.<sup>236</sup> Indeed, the European Court has routinely held that reliance on incriminating statements made during interrogations without the presence of counsel in convicting a defendant compromises the right to a fair trial.<sup>237</sup>

Even where a suspect has ostensibly waived their right to counsel, such waiver is invalid if it was involuntary. Indeed, the European Court of Human Rights has found that the right to counsel is a “prime example of those rights which require the protection of the knowing and intelligent waiver standard.”<sup>238</sup> The Court has specifically taken into consideration the pressure a defendant may have been under in assessing whether a waiver could be considered voluntary.<sup>239</sup>

In this case, as described in the Background Briefing, “Mr. Rusesabagina appears to have

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(*merits*) (2016), 1 AfCLR 153, ¶ 95 (emphasis added).

<sup>231</sup> African Court of Human & Peoples’ Rights, *African Commission on Human and Peoples’ Rights v. Libya (provisional measures)* (2013), 1 AfCLR 145, ¶ 3.

<sup>232</sup> African Court of Human and Peoples’ Rights, *African Commission on Human and Peoples’ Rights v. Libya (merits)* (2016), 1 AfCLR 153, ¶¶ 84, 93.

<sup>233</sup> *Id.*, at ¶ 96.

<sup>234</sup> UN Human Rights Committee, *Lyashkevich v. Uzbekistan*, UN Doc. CCPR/C/98/D/1552/2007, ¶ 9.4 (2010).

<sup>235</sup> African Commission on Human & Peoples’ Rights, *Amnesty International & Others v. Sudan*, Comm. No. 48/90, 50/91, 52/91, 89/93, ¶ 64 (1999).

<sup>236</sup> European Court of Human Rights (Grand Chamber), *Salduz v. Turkey*, App. No. 36391/02, Nov. 27, 2008, ¶¶ 56-62.

<sup>237</sup> See, e.g., European Court of Human Rights, *Brusco v. France*, App. no. 1466/07, Oct. 14, 2010, §§ 44-46; European Court of Human Rights, *Plonka v. Poland*, App. No. 20310/02, Mar. 21, 2009, §§ 41 (holding that “the applicant was undoubtedly directly affected by the lack of access to a lawyer during her questioning by the police. Neither the assistance provided subsequently by a lawyer or the adversarial nature of the ensuing proceedings could cure the defects which had occurred during the police custody.”)

<sup>238</sup> European Court of Human Rights, *Pishchalnikov v. Russia*, App. No. 7025/04, Sept. 24, 2009, ¶¶ 77-78.

<sup>239</sup> *Id.*, at ¶ 80.

been denied access to a lawyer from August 27, when he was arrested, until at least September 3.” Thereafter, it was not clear that Mr. Rusesabagina had the benefit of counsel of *his choice* until on or about October 6.<sup>240</sup>

This concern—like the concern about Mr. Rusesabagina’s treatment—was raised with the Court indirectly (with reference to international defense counsel’s ability to represent Mr. Rusesabagina) in the defense motion dated January 21<sup>241</sup> and then more directly in Mr. Rusesabagina’s affidavit filed with the Court before the March 5 hearing.<sup>242</sup>

And yet, as described above, the indictment relies on statements from Mr. Rusesabagina’s interrogations on August 31, September 5, and September 11, when he was either not represented at all or not represented by counsel of his choice.

The Court’s judgment likewise relies upon “the statements of RUSESABAGINA Paul during the investigations.”<sup>243</sup> In particular, the Court refers to Mr. Rusesabagina’s “interrogat[ion] during the investigation on 31/08/2020” when he allegedly “acknowledg[ed] having been among the most prominent backers of the FLN, and that he had donated twenty thousand Euros” to the organization.<sup>244</sup> The Court also refers to Mr. Rusesabagina being “cross-examined by the Prosecution,” without date—presumably one of the September interrogations.

In its March 10 decision on jurisdiction, the Court held that Mr. Rusesabagina waived his right to counsel, but does not address the contradictory affidavit filed with the Court the week prior, nor significant concerns that any waiver might have been coerced.

The judgment does not take up these issues at all. As described above, the discussion of admissibility is essentially limited to stating that it is up to the judge to assess the weight to be accorded to minutes of interrogations.<sup>245</sup>

In addition to the violations of Mr. Rusesabagina’s right to counsel described in prior TrialWatch reporting, the Court’s reliance on evidence obtained during interrogations when Mr. Rusesabagina was either not represented or not represented by counsel of his choice violated his right to counsel and further compromised the fairness of the trial as a whole.

## **Right to a Reasoned Judgment**

The judgment was long and discussed in some detail the local laws under which the prosecution was brought. But its findings about the facts and their application to those laws was confusing and relied on the Court’s complete acceptance of the prosecution case.

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<sup>240</sup> Background Briefing.

<sup>241</sup> Request for a Remedy for Violation of Fundamental Rights, Jan. 21, 2021.

<sup>242</sup> Affidavit of Paul Rusesabagina, March 3, 2021 (“He was not the lawyer of my choosing”).

<sup>243</sup> Judgment, ¶ 127.

<sup>244</sup> Judgment, ¶ 112.

<sup>245</sup> Judgment, ¶ 94.

First, the Court accepted, without sufficient testing or explanation, the prosecution's arguments regarding the proper framing of the various entities: that there was a terrorist group named the 'MRCD-FLN,' despite the fact that, as described above, the relationship between the MRCD and the FLN was one of the principal questions of fact at issue in the case. For instance, as early as February 26, when taking an initial decision on jurisdiction, the Court explained that "Mr. Paul Rusesabagina is accused of heading the FLN-MRCD, it's a military organization based in neighboring countries."<sup>246</sup> Likewise, during examination of one of Mr. Rusesabagina's co-defendants regarding the terrorist group to which he was alleged to belong, the Court said that the terrorist group at issue in the case was the "MRCD-FLN."<sup>247</sup>

This pattern continued through the examination of co-defendants, with the Court prompting them to link the FLN to the MRCD. For instance, when one co-defendant was testifying about his role with the FLN, the court asked, "Before you started working with Bugingo, did you know he worked for the MRCD-FLN group?"<sup>248</sup> And during the presentation of the defense of Emmanuel Yamuremye, the Court also interrupted counsel to say, "You focused on FDLR-FOCA but didn't say anything about MRCD-FLN."<sup>249</sup>

While the Court did ask the prosecution several questions about the differences, if any, between the MRCD and the FLN, the Court ultimately reoriented the prosecution around the thesis that the MRCD was integrally involved in FLN actions. For instance, on March 31, when the prosecution explained their classification of the FLN group, the Court said, "Again I want you to comment on whether MRCD-FLN is an armed group or a terrorist organization," which in turn prompted the prosecution to argue that the 'MRCD-FLN' was one organization.<sup>250</sup>

In other instances, the Court asked witnesses about the MRCD, when they seemed to wish to speak about the CNRD or FLN. For instance, the Court said to one witness, "you speak of the CNRD but we ask you of the MRCD!"<sup>251</sup> In response, the co-defendant explained that "It was here at the court that I learned about the MRCD."<sup>252</sup> Further, the Court interrupted the testimony of co-defendant Cassien Bizimana regarding possession of guns to suddenly ask about the "the leaders of the MRCD?"<sup>253</sup> In fact, the Court pressed him on this point, in the following colloquy: After Mr. Bizimana responded that he "knew the leaders of CNRD-UBWIYUNGE," the Court urged him to identify others, asking "Didn't you know others?" to which he again explained, "I did not know the MRCD leaders."<sup>254</sup> Likewise, when discussing Marc Nizeyimana's testimony with his defense lawyer after the former had denied knowing that he was 'part of a terrorist group' until his arrest, the Court told the lawyer he had "said that Nizeyimana Marc admits to having been in the terrorist

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<sup>246</sup> Trial Monitor Notes, February 26, 2021.

<sup>247</sup> Trial Monitor Notes, May 6, 2021. In response, the defendant said, "I do not know anything about CNRD or MRCD," appearing to seek to distinguish those groups from the FLN. *Id.*

<sup>248</sup> Trial Monitor Notes, May 7, 2021.

<sup>249</sup> Trial Monitor Notes, May 14, 2021.

<sup>250</sup> Trial Monitor Notes, March 31, 2021.

<sup>251</sup> Trial Monitor Notes, May 7, 2021.

<sup>252</sup> *Id.*

<sup>253</sup> Trial Monitor Notes, May 6, 2021.

<sup>254</sup> *Id.*

group of MRCD-FLN.” Defense counsel responded that “Marc admits to having been in the armed group of the FLN,” disagreeing with the Court’s reframing of the testimony and seeking to distinguish membership in the FLN from the ‘MRCD-FLN.’<sup>255</sup>

Second, in addition to appearing to accept this central tenet of the prosecution’s case, and asking questions to support its articulation, the Court also asked leading questions of witnesses, which appeared to be directed to encouraging the witnesses to give evidence about Mr. Rusesabagina. For instance, as described above, during the testimony of co-defendant Herman Nsengimana, the Court prompted him to speak about Mr. Rusesabagina.<sup>256</sup> As the June TrialWatch report concluded, “the court undertook inquiries seemingly geared towards establishing Mr. Rusesabagina’s guilt.”<sup>257</sup>

Third, the judgment does little to resolve these concerns. The fourth paragraph of the judgment (ostensibly in the ‘introduction to the case’) refers to “the formation of the MRCD-FLN.”<sup>258</sup> This continues throughout the judgment, with interchangeable references to the ‘FLN’ and the ‘MRCD-FLN.’<sup>259</sup>

Further, the judgment barely addresses the varying accounts of the relationship between the MRCD and FLN, in particular regarding when and how the FLN was established. For instance, while Sankara had been at pains to testify that the FLN predated the MRCD,<sup>260</sup> the judgment says that it “considers unsupported” his testimony that “he did not play any role in the creation of the FLN because this organisation was also created by the CNRD-Ubwiye.”<sup>261</sup> Likewise, with respect to Herman Nsengimana, while the judgment refers to the distinction he sought to draw between the FLN and the MRCD,<sup>262</sup> it dismisses them with little discussion, concluding “he himself admits that he was in the MRCD on behalf of his party of RRM, he is also the youth commissioner and as explained FLN was a military unit of the MRCD. Also in a statement dated 10/06/2019, signed by RUSESABAGINA shows that they were doing what they were doing as the MRCD-FLN.”<sup>263</sup>

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<sup>255</sup> Trial Monitor Notes, May 6, 2021. The lawyer went on to explain, “[t]he prosecution also likes to say that Nizeyimana Marc was in MRCD-FLN and this is not true because as he explained, as a soldier, he was in FLN and had nothing to do with MRCD.” *Id.*; see also *id.* (“Mr. President MRCD-FLN and FLN quite simply, are two different things. He admits that he was in FLN and not in MRCD-FLN.”)

<sup>256</sup> Trial Monitor Notes, April 29, 2021. When asked about Mr. Rusesabagina, Mr. Nsengimana responded by explaining that “[i]n reality, there was no relationship between me and Rusesabagina because he was on another level. As president, he was at the level of Wilson Irategeka and Sankara.” The court then returned to the question of the ‘MRCD-FLN,’ asking Mr. Nsengimana, “I will come back to the question of MRCD-FLN. At the prosecution, you said that you were talking to Lieutenant General Irategeka Wilson who was president of the MRCD. When was the latter president of the MRCD, was there another president of the MRCD that you knew?” This was presumably another effort to elicit information regarding Mr. Rusesabagina. Again, later, the court asked “Have you never spoken to Rusesabagina?”

<sup>257</sup> June TrialWatch Report, p. 20.

<sup>258</sup> Judgment, ¶ 4; see also Judgment, ¶ 16 (asserting, prior to assessment of the evidence, that Sankara “joined the CNRD-Ubwiye and the PDR-Ihumure to form the MRCD coalition which *created* its illegal armed wing, the FLN”) (emphasis added); *id.* at 24 (discussing “creating” the FLN).

<sup>259</sup> Compare for instance Judgment, at ¶ 24 (discussing creation of the FLN) with *id.* at ¶ 25 (describing prosecution arguments regarding “terrorist acts perpetrated by the MRCD-FLN”) and *id.* at ¶ 49 (discussing acts allegedly committed by the “MRCD-FLN”).

<sup>260</sup> *Cf.* Judgment, ¶ 52 (discussing his testimony that the FLN would ‘continue’ following the establishment of the MRCD).

<sup>261</sup> Judgment, ¶ 167.

<sup>262</sup> Judgment, ¶¶ 197-98.

<sup>263</sup> Judgment, ¶ 208.

More broadly, the judgment simply says in paragraph 77 that, “[i]n May 2018, they [Mr. Rusesabagina and the leader of the CNRD] created the FLN armed group which was composed of fighters from FDLR-FOCA and others who were recruited in the aftermath including those presumably sent by the RRM party, and it is this armed group that conducted attacks on Rwandan territory in 2018 and 2019.”<sup>264</sup> That was essentially the extent of the Court’s treatment of an issue that had bedeviled the prosecutors during the proceedings and had been substantially contested by numerous defendants.<sup>265</sup>

In another respect, the judgment simply mischaracterizes Sankara’s testimony. The judgment asserts that he said that Mr. Rusesabagina “is one of the founders of the MRCD coalition and its armed wing FLN”<sup>266</sup>—except that during his testimony on June 23, Sankara instead explained that “[i]n the indictment note, there is where the prosecutors wrote that Rusesabagina admitted he was among the founders of FLN. I will show the court where Rusesabagina says he is not among the founders of FLN.”<sup>267</sup>

The judgment also essentially ignores questions regarding the operational relationship between the MRCD and the FLN, including testimony to the effect that the CNRD controlled the FLN, not the MRCD. The sole bases in the judgment for attributing alleged FLN attacks to Mr. Rusesabagina (e.g., the specific acts of terrorism with which Mr. Rusesabagina was charged, such as murder and arson, as opposed to membership in the terrorist group) are (1) his admissions (as to which, see above);<sup>268</sup> (2) his alleged financial support<sup>269</sup> allowing the FLN to buy “military equipment and food”<sup>270</sup> and (3) the assertion that he had ‘created’ the FLN<sup>271</sup> and the assumption that the MRCD and FLN were inextricably intertwined.<sup>272</sup> That is, the judgment bootstraps allegations that he committed terrorist attacks onto allegations that he was a member of a terrorist group and/or supported a terrorist group. As the Court itself explains, “by financing it, by supporting its actions and by claiming responsibility for them . . . [through e.g. the press release described above], the Court finds that [Mr. Rusesabagina] played a role in the acts that were committed by this organisation.”<sup>273</sup> As a result, to the extent the Court’s treatment of evidence from Mr. Rusesabagina’s interrogations and the allegation that Mr. Rusesabagina founded the FLN is flawed with respect to the charges of membership in or support to a terrorist group, those same flaws infect its logic as to his responsibility for alleged FLN attacks.

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<sup>264</sup> Judgment, ¶ 77.

<sup>265</sup> Elsewhere the Court makes the finding in relation to individual defendants’ roles in the creation of the FLN. It also cites an interrogation of Mr. Rusesabagina for the proposition that it was at the moment the RRM joined MRCD that “the fighters originally from the CNRD became those of the FLN.” Judgment, ¶ 89.

<sup>266</sup> Judgment, ¶ 91.

<sup>267</sup> Trial Monitor Notes, June 23, 2021.

<sup>268</sup> Judgment, ¶ 147 (“The Court notes that, during his interview at the Rwandan Investigation Office on 04 and 05/09/2020, RUSESABAGINA Paul admitted that, as leaders of the MRCD, they had authorised the missions carried out by the FLN forces.”).

<sup>269</sup> Judgment, ¶ 150 (“the fact that they . . . supported the MRCD-FLN proves that they played a role in the terrorist acts”).

<sup>270</sup> *Id.*, at ¶ 151.

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*, at ¶ 150 (“[T]he fact that they authorised the attacks and supported the MRCD-FLN proves that they played a role in the terrorist acts committed by the MRCD-FLN organization.”).

<sup>273</sup> *Id.*, at ¶ 157.

This is made clear by the Court’s brief effort to rebut Sankara’s testimony as to the operational control exercised by the CNRD, which it considered unsupported because “at the time of the attacks, he was one of the leaders of the MRCD and its military wing had already been created.”<sup>274</sup> Further, the judgment concludes that the argument that the MRCD “did not aim at terrorist acts” is “unfounded” because the FLN in fact carried out indiscriminate attacks.<sup>275</sup> Although the judgment summarized part of the prosecution’s case as resting on Sankara’s admission “that the conduct of attacks on Rwandan territory was one of the missions they entrusted to this group [the FLN]” and that this meant their “objective was terrorist actions,”<sup>276</sup> as discussed above, Sankara asserted in his testimony that there was a difference between the MRCD’s objective of challenging the Rwandan army and terrorism.<sup>277</sup> Whatever the truth of the matter, this was an important issue for the Court to address—and it did not do so adequately.

Likewise, the Court moves from the contention that “the MRCD coalition had different organs and that it was this organisation which founded the FLN armed group . . . [which] began to carry out attacks that targeted civilian populations” to the holding that “the MRCD-FLN is a terrorist group because it is structured and has an objective of committing terrorism.”<sup>278</sup> In this regard, the Court does not address testimony to the effect that there were different elements within the MRCD that had different roles vis-à-vis the FLN (for instance, Sankara’s contention that it was the CNRD that commanded the FLN). The Court simply concludes that the MRCD-FLN “committed acts of terror” because “the court cannot separate the MRCD from its militia’s activities”<sup>279</sup> without more.

Strikingly, nowhere in the judgment does the Court address the question of Mr. Rusesabagina’s intent (see also *supra* and *infra*). This is compounded by the Court’s failure to articulate a standard of proof or make clear that it was the prosecution that bore the burden of proving guilt beyond a reasonable doubt.

These failings do not necessarily mean that the Court was subjectively biased: judges can, in good faith, make mistakes in characterizing facts, in overlooking evidence and in failing to see the flaws in prosecution arguments—even failing to apply the correct burden of proof. But the overwhelming impression left by this judgment is that the court favoured the prosecution to the extent that it failed to analyse the case for the defense. In Mr. Rusesabagina’s case, of course, it was handicapped by the fact that he had withdrawn from the trial, but it could and should have done more to test the prosecution theory in fairness to him.

## Right to an Independent and Impartial Court

Under Article 14(1) of the ICCPR, “everyone shall be entitled to a fair and public hearing

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<sup>274</sup> *Id.*, at ¶ 168.

<sup>275</sup> Judgment, ¶ 110.

<sup>276</sup> Judgment, ¶ 24.

<sup>277</sup> Trial Monitor Notes, June 23, 2021.

<sup>278</sup> Judgment, ¶¶ 105-106.

<sup>279</sup> Judgment, ¶ 109.



by a competent, independent and impartial tribunal established by law.”<sup>280</sup> This right, according to the UN Human Rights Committee, is absolute and “not subject to any exception.”<sup>281</sup> Article 7 of the African Charter provides similar protections.<sup>282</sup> The UN Human Rights Committee has clarified that impartiality has both objective and subjective components and that the former requires that a tribunal must appear to a reasonable observer to be impartial: “[j]udges must not only be impartial, they must also be seen to be impartial.”<sup>283</sup>

Here, even without addressing the subjective component of the test, a reasonable observer would have had some grounds to doubt the impartiality of the court. In particular, the UN Human Rights Committee has previously found violations of this right where the domestic court asked leading questions,<sup>284</sup> did not give due consideration to defense arguments at trial,<sup>285</sup> or failed to address central defense arguments in its decision.<sup>286</sup> All of these concerns are present in this case. The African Court has likewise found a violation of the right to a fair trial as a whole where the domestic court convicted the defendant “on the testimony of a single individual” “riddled with inconsistencies.”<sup>287</sup> Further, the European Court of Human Rights has found violations of the corresponding right to an impartial tribunal under the European Convention where the domestic court unquestioningly accepted the prosecution’s characterization of events.<sup>288</sup> The Court’s findings in Mr. Rusesabagina’s case likewise reflected these issues.

The Court can be credited with its finding that Mr. Rusesabagina did not have adequate time and facilities to prepare his defense. This was a sign of independence and impartiality, despite the excuses of the government and its prison officials, but lamentably it did not follow up by giving him the adjournment that he sought, or by severing his case so it could be heard in 6 months’ time. All it offered was to postpone his case so it could hear from his co-defendants.<sup>289</sup> But the prosecution’s case against the co-defendants took only four hearings, which would hardly have been long enough for him to prepare, and besides he needed to attend as accusations were being made against him. So the court’s display of independence went nowhere as it was not prepared to remedy the breach of his

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<sup>280</sup> ICCPR, Art. 14(1).

<sup>281</sup> UN Human Rights Committee (HRC), General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32, ¶ 19.

<sup>282</sup> African Charter of Human and Peoples’ Rights, Art. 7 (“Every individual shall have the right to have his cause heard, [which includes] [t]he right to be presumed innocent until proven guilty by a competent court or tribunal...[and] [t]he right to be tried within a reasonable time by an impartial court or tribunal.”).

<sup>283</sup> Human Rights Committee, *Maria Cristina Lagunas Castedo v. Spain*, U.N. Doc. CCPR/C/94/D/1122/2002, Oct. 20, 2008, ¶ 9.7.

<sup>284</sup> Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, Mar. 20, 2007, ¶¶ 2.8, 6.6 (the judge “asked leading questions to prosecution witnesses, corrected and completed their answers and instructed the court’s secretary to record only those testimonies establishing [the accused’s] guilt”).

<sup>285</sup> Human Rights Committee, *Toshev v. Tajikistan*, U.N. Doc. CCPR/C/101/D/1499/2006, Apr. 28, 2011, ¶ 6.6 (“several of the lawyers’ requests were not given due consideration.”)

<sup>286</sup> Human Rights Committee, *Khostikoev v. Tajikistan*, U.N. Doc. No. CCPR/C/97/D/1519/2006, Dec. 3, 2009, ¶¶ 7.2-7.3.

<sup>287</sup> African Court on Human and Peoples’ Rights, *Mohamed Abubakari v United Republic of Tanzania*, Application 007/2013, June 3, 2016, ¶ 185.

<sup>288</sup> European Court of Human Rights, *Adjaric v. Croatia*, App. No. 20883/09, December 13, 2011, ¶¶ 40-52.

<sup>289</sup> June TrialWatch Report, p. 11 (“Mr. Rusesabagina could study the case file and prepare as the trial was ongoing, with Mr. Rusesabagina pleading last”).

right to adequately prepare.

There were a number of matters canvassed in the June TrialWatch Report in which the Court breached international and regional law: most notably, its refusal to require the Bishop to testify under oath or to entertain the argument that the trial should be stayed because of the denial of Mr. Rusesabagina's rights to counsel and to adequate time and facilities to prepare. As to the claims that Mr. Rusesabagina had been illegally and/or forcibly rendered to Rwanda, "[t]his chamber does not find it necessary to continue discussing how he was arrested and detained, so that concern expressed by Paul Rusesabagina is irrelevant"<sup>290</sup> it ruled on February 26, although it was essential to do so and to establish the facts of whether he had been taken to Rwanda by unlawful force at the hands of agents of the Rwandan government.

This was a political trial, at least in the sense that Mr. Rusesabagina was a political figure and leading opponent of President Kagame. This did not bear on his guilt or innocence, but did mean that his trial should have been free of any government pressure to convict. Regrettably, as the June Report details, President Kagame saw fit on a number of public occasions prior to and during the trial proceedings to emphasise his own opinion as to Mr. Ruesabagina's guilt, for instance, stating that Mr. Rusesabagina "heads a group of terrorists that have killed Rwandans. He will to pay for these crimes. He has the blood of Rwandans on his hands."<sup>291</sup> These statements were most regrettable: the power of Paul Kagame is well known, and they would reasonably be thought to put pressure on government-appointed judges and thus give concern as to their independence and impartiality.

The June Report concluded that these defects, and others, were giving the impression that the trial "was more public spectacle than judicial undertaking," i.e., a predominantly political proceeding which showed off the prosecution case and shut out the defense. For the reasons given in this final report, this impression continued and is deepened by the judgment itself, wherein the conviction of Mr. Rusesabagina, the enemy of the state, seemed inevitable from prosecution theories and evidence that were not adequately tested.

The Court also appeared dismissive of allegations the defense made regarding Mr. Rusesabagina's conditions of confinement and health. For instance, as discussed above, in a filing dated January 21, 2021, Mr. Rusesabagina's defense team informed the court that "the Defendant was held incommunicado at an unknown location in Rwanda, bound at the legs, hands and face, and interrogated in the absence of a lawyer." The filing went on to assert that "the Defendant has been deprived of his prescribed medication for his underlying heart condition, despite it having been provided by the Embassy of the Kingdom of Belgium to the relevant Rwandan authorities." In the same filing, the defense requested (alternatively to other remedies) a delay in the start of the proceeding. Mr. Rusesabagina's affidavit filed with the Court before the March 5 hearing raised similar concerns. Yet the Court did not address these arguments (except cursorily with respect to the absence of

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<sup>290</sup> Trial Monitor Notes, February 26, 2021.

<sup>291</sup> June TrialWatch Report, p. 29.

counsel and Mr. Rusesabagina’s purported waiver, discussed above). Instead, as discussed above, the Court relied on statements made by Mr. Rusesabagina during a period when (or shortly after) he has alleged he was subject to mistreatment and deprived of access to counsel of his choice.

This is also consistent with how the Court addressed—or, in fact, failed to address—concerns described above raised by other defendants regarding allegedly coercive behavior by the Rwandan Investigative Bureau (“RIB”).<sup>292</sup> And the Court was equally dismissive when several co-accused raised concerns regarding the accuracy of records of their interrogations, failing to take any steps to address or investigate these concerns. For instance, co-defendant Nizeyimana stated:

I found that in the prosecution hearing report they wrote down what I didn't say, I don't know if it's a spelling mistake or if they did knowingly. There is a question that the prosecution asked me concerning the ideology they taught us when we were mobilized to enter the army, I answered what they taught us but in the minutes, these words were appropriated to me as if they were my own.<sup>293</sup>

When Mr. Nizeyimana explained that he had not said what was recorded, the Court pressed him as to whether he had signed the minutes of the interrogation. He again responded that he had, but he had “signed blindly, they did not give us time to read, they told us to trust them, that we are in period of COVID.”<sup>294</sup> And yet instead of investigating the allegation—which tracked allegations by other co-defendants—the Court stated that it ‘not understandable’ that someone who had gone to university would have signed without reading<sup>295</sup> and simply ‘took note’ of what he had alleged.<sup>296</sup> In the judgment, the Court essentially dismisses these concerns with respect to co-defendant Mr. Ntabanganyima on the ground that the records of his interrogation were consistent with other statements he had given and that errors could be explained by his illiteracy.<sup>297</sup>

Taken together, a reasonable observer would have had grounds for believing that that the Court had a predetermined theory of the case. The fact that Rwanda is a civil law system, in which judges investigate the evidence themselves, does not affect this conclusion. States are required to comply with baseline fair trial standards, regardless of differences in domestic law. As the European Court observed in a case involving the handling of witness testimony, “in the context of the diverse legal systems in the Contracting States, and in particular in the context of both common-law and continental-law systems, . . . while it is important for it to have regard to substantial differences in legal systems and procedures, including different approaches to the admissibility of evidence in criminal

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<sup>292</sup> *See supra*.

<sup>293</sup> Trial Monitor Notes, April 29, 2021.

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Cf.* Judgment, ¶¶ 371, 375.

<sup>297</sup> Judgment, ¶ 384 (“The Court finds that [Mr. Ntabanganyima’s] claim . . . is baseless because the contents of the said written testimony correspond with what he told the Prosecution during his bail hearing...[, and] his statements at the very beginning of his trial... The court finds that the fact that the written testimony mentions that he read it before signing it is a simple error, since his thumb print demonstrates that he cannot read.”).

trials, ultimately it must apply the same standard of review . . . irrespective of the legal system from which a case emanates.”<sup>298</sup>

While there is the principle of *l’intime conviction* in civil law systems, which “requires that the judge decides according to his conscience based on the evidence at the hearing including an evaluation of the truth of the facts and the credibility of witnesses,”<sup>299</sup> judges are still expected to test, rather than simply accept, prosecution evidence. For instance, in the case of *Navalnyy & Yashin v. Russia*, the Grand Chamber of the European Court of Human Rights considered that the domestic court—in a civil law system—should have probed prosecution witnesses where there was a dispute over the facts.<sup>300</sup>

These proceedings therefore violated Mr. Rusesabagina’s right to an independent and impartial tribunal.

## C. FAILURE TO INVESTIGATE MISTREATMENT ALLEGATIONS

Article 12 of the Convention against Torture mandates that State Parties “proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under [their] jurisdiction.” Article 13 further requires State Parties to ensure that complaints are “promptly and impartially examined by . . . competent authorities.” Article 14(3)(g) of the ICCPR imposes similar obligations. The UN Human Rights Committee has found that the State is required to investigate reports of coercive interrogations promptly and impartially,<sup>301</sup> and that “[a] failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the [ICCPR.]”<sup>302</sup> Similarly, the African Commission on Human and Peoples’ Rights has found that a State’s failure to take “measures to investigate [allegations of torture] and bring the perpetrators to justice”<sup>303</sup> violates obligations imposed by the African Charter under Article 1, which requires States Parties to “recognise the rights, duties and freedoms enshrined in the Charter,”<sup>304</sup> and Article 5, which prohibits “torture, cruel inhuman or degrading punishment or treatment.”<sup>305</sup>

Here, however, despite the fact that Mr. Rusesabagina and co-defendants drew the Court’s attention to allegations of mistreatment, the Court took and has taken no known

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<sup>298</sup> European Court of Human Rights, *Schatschaschwili v. Germany*, Application No. 9154/10, Dec. 15, 2015, ¶ 108.

<sup>299</sup> Demetra Fr. Sorvatzioti & Allan Manson, *Burden of Proof and L’intime Conviction: Is the Continental Criminal Trial Moving to the Common Law?*, 22 Canadian Crim. L. Rev. 107, 113 (2018). See also EU Directive 343/2016/EU, Mar. 11, 2016, which at paragraph 23 states that “In various Member States not only the prosecution, but also judges and competent courts are charged with seeking both inculpatory and exculpatory evidence.”

<sup>300</sup> European Court of Human Rights, *Navalnyy and Yashin v. Russia*, App. No. 76204/11, Dec. 4, 2014, ¶ 83.

<sup>301</sup> Human Rights Committee, *Grishkovtsov v. Belarus*, U.N. Doc. CCPR/C/113/D/2013/2010, Apr. 1, 2015, ¶ 8.2.

<sup>302</sup> Human Rights Committee, General comment no. 31, *The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, ¶ 15.

<sup>303</sup> African Commission on Human and Peoples’ Rights, *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v. Sudan*, Communication 379/09, Mar. 10, 2015, ¶ 101.

<sup>304</sup> African Charter on Human and Peoples’ Rights, Art. 1.

<sup>305</sup> African Charter on Human and Peoples’ Rights, Art. 5.

steps to investigate.

## CONCLUSION AND GRADE



The June TrialWatch report concluded that breaches of international and regional fair trial standards were giving the impression that the proceedings were “more public spectacle than judicial undertaking,” i.e., proceedings which showed off the prosecution case and shut out the defense. For the reasons given in this final report, this impression continued and is deepened by the judgment itself, wherein the conviction of Paul Rusesabagina, an enemy of the state, seemed inevitable from evidence that may not have been properly admitted and was not adequately tested—as well as from the significant constraints on his preparation and President Kagame’s statements about his guilt. His trial was seriously flawed and his conviction lacks the necessary guarantees of fairness.

**GRADE**

**D**



## GRADING METHODOLOGY

Experts should assign a grade of A, B, C, D, or F to the trial reflecting their view of whether and the extent to which the trial complied with relevant international human rights law, taking into account, *inter alia*:

- The severity of the violation(s) that occurred;
- Whether the violation(s) affected the outcome of the trial;
- Whether the charges were brought in whole or in part for improper motives, including political motives, economic motives, discrimination, such as on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,”<sup>155</sup> and retaliation for human rights advocacy (even if the defendant was ultimately acquitted);
- The extent of the harm related to the charges (including but not limited to whether the defendant was unjustly convicted and, if so, the sentence imposed; whether the defendant was kept in unjustified pretrial detention, even if the defendant was ultimately acquitted at trial; whether the defendant was mistreated in connection with the charges or trial; and/or the extent to which the defendant’s reputation was harmed by virtue of the bringing of charges); and
- The compatibility of the law and procedure pursuant to which the defendant was prosecuted with international human rights law.

### Grading Levels

- A: A trial that, based on the monitoring, appeared to comply with international standards.
- B: A trial that appeared to generally comply with relevant human rights standards excepting minor violations, and where the violation(s) had no effect on the outcome and did not result in significant harm.
- C: A trial that did not meet international standards, but where the violation(s) had no effect on the outcome and did not result in significant harm.
- D: A trial characterized by one or more violations of international standards that affected the outcome and/or resulted in significant harm.
- F: A trial that entailed a gross violation of international standards that affected the outcome and/or resulted in significant harm.