Opinions
When will Blinken "press" the FBI on Rusesabagina ?

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This week the Secretary of State of the United States, Anthony Blinken, will visit different African countries. On his agenda in Kigali, it is reported, will be the conflict in the Democratic Republic of the Congo and apparently a meeting where he will "press" President Kagame to release Paul Rusesabagina, he of Hollywood fame and Rwandan infamy, and now convict, serving 25 years in prison for terrorism. How does Blinken propose to promote good governance while simultaneously interfering with judicial decisions ?

My time as a judicial officer spanned more than two decades. During that time, I found that those who purport to promote good governance have also tended to interfere with the independence of the judiciary. This conduct has always had me wondering whether they were genuine regarding their desire to promote good governance. We ought to recall that the independence of the judiciary is a key pillar of the ideals they claim to promote. It is just not logical that one would promote good governance while also undermining one of its key pillars.

In cases involving the judiciary in Rwanda and pretty much of the global south, there is never any attempt to analyze the subject matter of criticism substantively on merit. For instance, in the criticisms against Rwanda's judiciary, if there was any attempt to analyze the country's laws and say "look ; this is what the law says, this is how the court decision contradicts the law", then that would be a worthwhile discussion. However, their criticism does not focus on substantive analysis of a particular case. Rather, it is raised in the form of a collective verdict, underlain by a contemptuous attitude, against the entire judicial system of the country as incapable of

delivering fair justice. And this happens only when verdicts pertain to cases in which they have interests.

Peter Erlinder and American tourists

Consider the case of Peter Erlinder, the American lawyer who was arrested in Rwanda in May 2010 when I was the Prosecutor General. He was arrested based on our law against genocide denial and revisionism. The law itself had been criticized a lot by some countries in the West. However, that law had been enacted based on a similar law that existed in Europe on punishing the denial of the holocaust. In other words, as I explained then, we were facing a situation that also obtained in Europe. France and Belgium have since also enacted laws against denial of the genocide against the Tutsi.

When Mr. Erlinder was arrested on the basis of that law, before we could produce him in court, guided by our own law on criminal procedure, the State Department had already begun to exert diplomatic pressure. There were also petitions from some of his peers in academia in the U.S, pressing us to release him. The fact that this reaction was coming before, not after the person had been produced in court, can only explain one thing : that for them, it did not matter what the charges were going to be. Nor even did it matter how much evidence we had collected against him, and how credible it was. What mattered most to them was that, based on who he was, he should not be in custody at all and, additionally, he should not be the subject of any judicial process in Rwanda, an African country.

This is a clear example of an attack on the independence of the Rwandan judiciary. Moreover, and based on the circumstances, personally in my capacity as a judicial officer in Rwanda, I had to meet with political authorities in America to explain why this person was being held in Rwanda and why we intended to prosecute him.

It is astonishing that the politicians in America entertained that discussion. I attended it but it was a very problematic arrangement because this was a meeting between a judicial officer and political authorities. I doubt it could happen in their context : a judicial officer meeting officials in a foreign ministry or state department to explain a case, in an effort to show them the evidence against the accused. However, it is exactly what I was in the US to do before senior officials in the State Department : show them the evidence we had against their citizen.

I met the Assistant Secretary of State for African Affairs, Mr. Johnny Carson. The specific purpose of the meeting which had taken me to Washington was to explain why Peter Erlinder had been arrested in Rwanda. The meeting took place while he was still in custody. It may sound unusual that a Prosecutor General of a sovereign country had to go all the way to explain to political authorities why he was making certain decisions back home. As a universal principle, mine were the same kinds of decisions taken by judicial officers who are supposed to be independent and

to be treated as such. Here I was, the Prosecutor General of Rwanda and bearer of a constitutionally protected office, but because of the realities we live in, in Washington to explain to Johnny Carson why I had made those decisions.

After the meeting at the State Department, I spoke at a gathering of academics and other interested parties that the Atlantic Council had invited. Here I tried again to explain why Mr. Erlinder was being held. I met some of the people in academia who had written a petition for his release to explain to them how indeed they were interfering with the judiciary in our country. That is how we responded to that interference in our judicial process.

Later on, Hillary Clinton, who was the Secretary of State, sent us documents making the case for bail on medical grounds. Basically, Mr Erlinder was granted bail based on medical reports furnished by the State Department, and in which Mrs Clinton was guaranteeing that should the Rwandan courts need Mr Erlinder back, then the US was going to cooperate.

Another case is when we had some Rwandan nationals involved in crimes in which victims were Americans in Bwindi forest. We came under intense pressure to have them prosecuted in the US.

To the Americans, they didn't conceive of a situation in which these people would face justice in any other country other than the United States of America.

The Rusesabagina case

Paul Rusesabagina's case and the way it ended was a product of many years of judicial cooperation among several countries. During the investigations, Rwanda worked with the United States, Belgium, Burundi and the Democratic Republic of Congo. So, it was not simply a single incident that happened and led to the conviction, contrary to what is being portrayed out there. Some time back in 2010 two senior commanders of FDLR were arrested in Bujumbura where they had gone to collect money from a Western Union outlet. There was a transfer of funds that Paul Rusesabagina had effected from San Antonio in Texas. Through judicial cooperation, the two were extradited to Rwanda. The documents they had on them had already been recovered by the Burundian authorities. They handed them over to us officially. We discovered on further investigation that there were earlier transfers via Western Union outlets in Dar es salaam in Tanzania and Goma in the DRC. The money had been collected.

I travelled to Washington and sought the services of an international law firm to help me to secure an appointment with senior officials of the Federal Bureau of Investigation (FBI). When we met, I shared the evidence I had. That is the time that FDLR, an offshoot of another terrorist group, Army for the Liberation of Rwanda (ALIR), was still blacklisted by the US as a foreign terrorist group. So, there was a good discussion between me and FBI officials. I got to learn from them the following day that they had actually uncovered 11 more instances of transfers of money

through Western Union, which we knew nothing about. So, they uncovered more than twice as much evidence as we had. But in this case, it does not really matter how many transfers there were ; what matters are the intentions behind them.

My point is that while I knew of about five transfers at the time I left for Washington, by the time I departed to return to Rwanda, another 11 transfers that I hadn't known about before, had been uncovered. So, I returned to Rwanda with a promise from the FBI that they were going to continue with the investigation. Then one morning I received a phone call from the then US ambassador to Rwanda, who wanted me to meet an official from Washington who had a message from the FBI, which could not be shared through diplomatic channels. When I met the official from Washington, he handed me a letter confirming that the FBI had officially commenced investigations against Rusesabagina.

Through our own activities as prosecutors, we learnt that around that time Rusesabagina could not continue to engage in as much public speaking as he had done previously. So he moved to Brussels. Once back in Brussels, he visited the US only occasionally. As a result, we sought judicial cooperation from prosecutors in Brussels and started working with them. They agreed to a commission rogatoir, an arrangement under which their investigators can, on request from another country, interrogate a suspect on their territory. The actual questioning was done by Belgian prosecutors in the presence of Rwandan officials. I had dispatched the then head of the Criminal Investigations Department of the Rwanda National Police and one of the senior prosecutors from my office. Under the supervision of Belgian prosecutors and police, Paul Rusesabagina was interrogated in camera in the presence of the two Rwandans. These records are available in the Prosecutor-General's office.

I understand that after I left Prosecution these efforts continued. Rusesabagina's homes were searched several times and he was interrogated several times. This is when he went back to the United States. I learnt from one of the witnesses during the trial that even when he was trying to fly to Burundi where he thought he was going, he was trying to avoid going to certain European destinations because he knew that the investigations into his activities had intensified in Belgium. I think this clarifies the point I made earlier, that the investigations into his activities were a collective effort under international law, through judicial cooperation that involved several jurisdictions, not simply the Rwandan authorities on their own.

People who have come forward to criticize the way the case proceeded are mainly politicians and Rusesabagina's friends. These politicians know very well that they cannot engage their own judicial authorities with these kinds of questions because if they did that it would really be offensive to the independence of those same authorities. This is why the Senate or House of Representatives in the US cannot summon the FBI to talk about this case. Nor can the Belgian or even European parliament summon Belgian prosecutors to talk about it. If they did, they would

get to learn that there is a lot more they do not know about. Or perhaps they pretend not to know.

I think it is as inappropriate for Western politicians to question the legal actions of their own judicial institutions that have independent mandates, as it is to question our own decisions which are properly made in line with our laws and international laws. Our institutions are equally independent. They must be treated as such.

If there was a need to discuss what went wrong in all those three cases in technical terms, it would have to be about whether it is a breach of criminal procedure in Rwanda or of any internationally known judicial principle, based on evidence, based on procedural stage or the judgement itself. That is the kind of discussion people ought to have. However, a blanket condemnation of Rwanda's judiciary, apparently because it cannot conduct a fair trial against anyone, is extremely problematic.

Rusesabagina was properly sentenced. Then a House Committee sits and decides that this was not fair ! There is no criticism that focuses on the evidence. Was it fabricated ? No one says anything about this. All they say is "no no, the trial was not fair !" In what sense was it not fair ?

If it was an appeal brief, something that someone can use in a higher judicial authority to show that the authority below did not do their job, even if this was to be at an appeal level in America, what would be the content of that brief ? Nothing, literally nothing.

So, what they are trying to do is simply to get him released because he is who he is, regardless of what he did. They want him released because he is a resident of the US. However, residents or nationals of the US are capable of committing crimes outside of the US. If this is true, then it follows that they can end up in the judicial arms of jurisdictions outside the US.

Erlinder and Rusesabagina are citizens and residents of the United States, respectively, who chose to be involved in crimes in Rwanda. Where they committed crimes was a matter of choice and implicitly they chose where they would face justice for those crimes. You cannot say that these are Americans and they should not face justice where they committed crimes. Unlike Erlinder, Rusesabagina's crimes involved the loss of nine lives. But it is surprising that American pressure against Rwanda isn't aligned with the victims as was the case with the two Americans who were victims of the attacks in Bwindi forest. It is similarly unfortunate that Mr. Blinken hasn't even interested himself in meeting with the victims of Rusesbagina's crimes.

Respect at home, contempt abroad

What comes out clearly from the discussion up to this point is that interferences are generic in nature and never attempt to discuss the cases on merit. Also, they tend to be from political authorities. Their own judicial authorities which in some cases get involved in investigations would never countenance such interference. For example, while Rusesabagi-

na was being investigated by the FBI, at no point did they complain to us that what we did interfered with their own investigations. Even the same politicians who sought details about our investigations could not possibly tell us about the investigation processes in their own countries, because of the principle of separation of powers, leading to respect for judicial independence in their countries.

It is because of respect for their own judicial authorities that the Department of State in their discussions with the Rwandan authorities do not mention what they know about the FBI's involvement in the case. It is because they cannot interfere with the FBI in the same way they interfere with our judicial authorities. This is exactly what the Dutch authorities were doing when we were prosecuting Victoire Ingabire and working with Dutch judicial authorities. They simply did not comment on the issue. They would talk to us in a manner that suggested they were not at liberty to discuss with their own judicial authorities regarding what they knew and what they had done about the case in question.

The same applies to Belgium. The noises Members of Parliament have been making about the matter never go as far as mentioning the fact that Rusesabagina was once interrogated by the office of the prosecutor in Belgium. They would never mention that the Belgian police raided his home several times, conducted searches, and handed over to Rwanda the documents they found there. Because they do not have that liberty to discuss freely what their judicial authorities do with regard to specific cases, they look for low hanging fruits.

And so, in countries such as Rwanda, they even raise these issues with authorities that ordinarily would have no liberty to make decisions about them. So, when Blinken says they will travel to Rwanda to "press" the president, how do you press the executive for something that is actually in the judiciary ? If a reverse situation were to happen, which button do you press in America ? Moreover, when Blinken seeks to raise the Rusesabagina affair with the President of Rwanda, is it in order for him to do what without breaching any of those principles that are so treasured in the US, just as they are in Rwanda ?

When Blinken starts his tour to lecture Africans on good governance, he should shed light on this blatant violation of judicial independence that time and again makes a mockery of the very principles of democracy and the rule of law. When is he going to talk to his own judicial officers who were also involved in working with us on these matters, who know a lot more than he does ? Indeed, Blinken should be prepared to tell us when he is going to solicit their views and whether this is possible without endangering his political career. If there is such an opening in the United States, when is it going to be operationalized to allow him to press the FBI before pressing Rwanda ? Perhaps judicial interference promotes good governance in Rwanda but undermines democracy in the United States ?

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