



To: Mrs. [REDACTED]
The Minister of Security and Justice
The Netherlands

From: The Kenyan Section of the International Commission of Jurists (ICJ Kenya)

Prosecutor

Vs.

[REDACTED] M [REDACTED]

Quarterly Monitoring Report from October to December 8, 2021

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1.0 INTRODUCTION

1. This monitoring report pertains to the ICJ Kenya Monitor's activities, appointed to observe the trial of the transfer case of Mr [REDACTED] M [REDACTED] (herein referred to as the Accused) from October to December 8, 2021 (herein referred to as the Reporting Period).
2. This report covers the proceedings of the hearing held in November and meetings with the Accused, Defence Counsel and Prosecution.

2.0 BACKGROUND OF THE TRANSFER CASE

3. On November 22, 2012, the Rwandan Ministry of Foreign Affairs officially requested the Dutch authorities to extradite Mr [REDACTED] M [REDACTED] to face trial in Rwanda for his alleged involvement in the Rwandan genocide. The Extradition Division of The Hague District Court declared extradition for facts admissible in its judgment of December 20, 2013.
4. The Accused arrived in Kigali on November 12, 2016. On November 21, 2016, the Accused was arraigned before the Primary Court at Nyarugunga's initial appearance before Judge President [REDACTED]. The charges were read to him by a Court Registrar in Kinyarwanda. He did not take a plea because the Prosecution had served the Accused with the indictment during the hearing, and the Accused was therefore not prepared to respond to the charge.
5. A subsequent hearing regarding pretrial detention was held on November 22, 2016, before Presiding Judge [REDACTED]. The Accused pleaded not guilty and was placed on pretrial detention.
6. The trial at the High Court in Kigali commenced on September 14, 2017, and has been proceeding since. The case is currently at the trial phase at the International Crimes High Court Chamber in Nyanza.
7. At the hearing held on May 22, 2020, the Prosecution submitted they had made an application to amend the charges of two crimes: complicity in genocide and conspiracy to commit genocide.
8. As of the date of this report, the Prosecution has closed its case. The Prosecution completed presenting its evidence, finalised with its closing submissions, and addressed all the queries posed by the Court. Also, Defence made its closing submissions. The Court took their retreat to write the judgment.

9. In the hearings scheduled for January 14 and February 16, 2021, the Court adjourned the delivery of the Judgement. The Court noted that they could not meet and finalise their Judgement because of the COVID-19 restrictions imposed by the government to curb the spread of infections. This included the imposition of partial lockdown and a curfew in and out of Kigali.
10. On March 18, 2021, the Court rendered a decision to re-open the case as guided under Article 1 of the Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour, and administrative procedure, and Article 75, paragraph 4 of that law states that before taking the decision and upon its motion, the Court may re-open the hearing if it finds that it needs further clarifications on some facts which remained unclarified in the hearing for the establishment of the truth.
11. On May 18, 2021, the Court communicated that the next hearing of the recalled witness would be held on July 7, 2021, at the High Court in Nyanza.
12. Notably, there were three adjournments by the Court due to challenges posed by the COVID-19 pandemic throughout 2021. Following this, the hearing was scheduled for November 9, 2021.

3.0 Hearing Scheduled for November 9, 2021, at the International Crimes Chamber of the High Court of Rwanda

13. The hearing was held before Justice [REDACTED], Justice [REDACTED], Justice [REDACTED]. Also present was Mr [REDACTED] - the Registrar.
14. The Accused was present and represented by Defence Counsel Mr [REDACTED] and [REDACTED].
15. Mr [REDACTED] represented the Prosecution.
16. The purpose of the hearing was for the Court to make clarifications on evidence issued earlier at the Gacaca Courts against the Accused person by witness [REDACTED] based on a document kept by the CNLG. The Court noted that both the Defence and Prosecution would have a chance to elaborate their position on the findings after reviewing the documents from the Gacaca hearings.
17. At the hearing, the Defence highlighted differences in the testimony of witness [REDACTED] at the Gacaca hearings and the information issued to the investigation authority.
18. The Defence posited that the Accused was not mentioned as having taken part in any Crisis meetings, in the killing of one Mr [REDACTED], nor in hosting the meeting

allegedly held on April 8 1994. The Defence maintained their interpretation that M [REDACTED] was not present when Mr [REDACTED] was killed.

19. According to the document, the Defence further posited that witness [REDACTED] never said anything in the Gacaca that gave detailed explanations on the meeting on April 8 1994. However, claims of M [REDACTED]'s involvement in the meeting and the events in Nyakabanda were the centrepiece of the trial.
20. The Defence questioned the credibility of witness [REDACTED] and referred to a ruling made by the *ICTR in the case of Musema Alfred No: ICTR-96-13-A*. The Defence referred to Paragraph 36, where the Court emphasised the credibility of each witness. Further reference was made to the Prosecutor's file *C/DISCO CADUC Paragraph 541 in the case against Bagilishema Ignace in Case Number ICTR-95-1-A* in this regard.
21. The Defence, referencing the minutes of the hearing held on 09/10/2018 and relying on the *ICTR case of Musema Alfred - 1st Instance Chamber of the ICTR in 96-13* Paragraph 4, highlighted contradictions between the testimony issued by [REDACTED] about the death of Mr [REDACTED] and claimed that the witness based his testimony on hearsay.
22. In agreement with the Defence Counsel, the Accused, Mr M [REDACTED] highlighted contradictions in [REDACTED]'s testimony and notably denied taking part in the Crisis Committee.
23. The Accused also highlighted contradictions noting that [REDACTED] had identified the involvement of [REDACTED]. However, in the document, [REDACTED] had identified [REDACTED], an employee of BNR (National Bank of Rwanda) at the time.
24. The Defence Counsels and the Accused persons questioned the credibility of witness [REDACTED] and requested the Court to disregard their testimony.
25. The Defence questioned why the Prosecution had not included the Gacaca documents at the first instance.
26. At the invitation of the Court, the Prosecution emphasised the involvement of the Accused in hosting the meeting held on April 8, 2021.
27. The Prosecution noted contradictions in the Defence claims about the involvement of M [REDACTED] in the meeting held on April 8, 2021. The Prosecution noted that although the Defence noted that M [REDACTED] was sick and had left Nyakabanda, the Prosecution posited that the Accused never left Nyakabanda and was part of the Crisis Committee. The Prosecution referred to the testimony of witness [REDACTED] and video evidence they submitted regarding the location of M [REDACTED] during the time.

28. The Prosecution asserted that according to the documents obtained from the CNLG, witness [REDACTED] appeared before the Gacaca Courts to respond to two main issues, including his role in the crimes that he was accused of and the people killed and general questions about the events that occurred at Tapis Rouge, and the events at BNR.
29. The Prosecution, while referring to *ICTR case number ICTR-2000-61-T Paragraph 130 Page 30 of Gatete vs The Prosecution*, maintained that although there were no specific questions and answers about the meeting of April 8, 1994, by Witness [REDACTED] as shown in the Gacaca documents, it did not mean that the meeting did not happen.
30. The Prosecution maintained that the witness, at the Gacaca hearing, only responded to what he was asked. Further, the Prosecution argued the relevance of witness [REDACTED], although he referred to [REDACTED] instead of [REDACTED].
31. The Prosecution referred to the testimony of [REDACTED] and minutes of the hearing of October 20, 2018, and averred [REDACTED]'s role in the Crisis Committee.
32. In response to the Defence and the Court's inquiry, the Prosecution noted ambiguity on the recipient of some questions as seen on Page 3 and 4. The Prosecution noted errors in the minutes and note taking about the events at the BNR. The Prosecution maintained that Witness [REDACTED] mentioned [REDACTED] in the Gacaca hearings and Court.
33. The Defence Counsels raised questions about the location, time and attendance of the alleged meeting of April 8, 1994. They posited that the meeting that Witness [REDACTED] had mentioned and Conseiller (Councillor) differed from the meeting allegedly held on April 8, 1994.
34. Turning to witness [REDACTED]'s testimony, the Defence Counsels stated that an investigation was ordered, although the specific meeting was not mentioned until five years later into the trial. Relying on the Case of *ICTY IT-96-91* and that against Belaluc, where the Court handled doubt and acquittal in the trial, the Defence Counsels noted that there was only one [REDACTED] whose testimony they were refuting.
35. The Accused, referring to page 6, highlighted the testimony of Witness [REDACTED] about the meetings held in the three communes including in Nyakabanda. The Accused questioned the integrity of Witness [REDACTED] and asked why the witness did not specifically mention the events earlier.
36. The Prosecution challenged the Defence's assertions by clarifying that there were two witnesses and their testimonies are complimentary regarding this meeting of April 8, 1994.

37. The Court considered arguments by both the Prosecution and Defence. Following an agreement with both parties, the Court concluded the case and noted that the Judgement would be delivered on December 23, 2021.

4.0 Meeting with Prosecution Counsel held on November 9, 2021

38. The Monitor held a meeting with Mr [REDACTED], the Prosecutor in M [REDACTED]'s case.

39. Mr [REDACTED] noted that there was difficulty retrieving the document at the CNLG due to COVID-19 restrictions, protocols and related approvals.

40. Mr [REDACTED] informed the Monitor that the Prosecution did not have any concerns about the case's progress. He noted that the Prosecution would be waiting for the Court's verdict to be issued on December 23, 2021.

5.0 Meeting with the Prison Director held on November 10, 2021, at Nyanza Prison

41. The Monitor held a meeting with the Prison Director, Mr [REDACTED], at the Prison in Nyanza on November 10 2021.

42. The Prison Director shared challenges posed by the COVID-19 pandemic and expressed concerns on the reception and acceptance of the vaccine by the Accused.

43. The Monitor expressed gratitude for the Prison Director's support to ensure that the Monitor met with the Accused.

6.0 Meeting with the Accused held on November 10, 2021, at Nyanza Prison

44. The Monitor held a meeting with the Accused at Mpanga Prison in Nyanza on November 10 2021. An interpreter assisted the Monitor.

45. The Accused noted three adjournments by the Court before the recent hearing held on November 9, 2021. However, he expressed satisfaction with how the Court had taken its time to examine all the evidence adduced before it and how the Court pointed out the issues for clarification at the hearing.

46. The Accused told the Monitor that the core of his case was a meeting allegedly held in his house. Although, he felt that the Prosecution had not carried out thorough due diligence in their investigations before charging him.

47. The Accused felt that the Court's decision to re-open the case and order further examination of the Gacaca proceedings from the CNLG confirmed the lack of due diligence. The Accused expressed concerns that the Prosecution was fishing for evidence and was ignoring previous evidence issued. He opined and was confident

that the Court would find him innocent once they objectively reviewed all evidence on the table.

48. The Accused highlighted contradictions in the evidence provided by the Prosecution and was confident that they had not put up a strong case against him. He noted that the Prosecution witness [REDACTED] was not credible.
49. The Accused noted that communication between him and the Defence Counsels was not secure and private. He, however, stated that he was not worried about this because his case was in a public trial.
50. The Accused expressed the challenges posed by COVID-19. He noted that he could not meet his family during the reporting period due to restrictions imposed by the Prison facility.
51. The Accused noted that the medical system had changed due to the covid restrictions, which is understandable. A doctor would visit Nyanza Prison for consultations.
[REDACTED]
[REDACTED]
52. The Accused noted that there were 12 inmates held in the same area. He stated that they had more space to walk around before the wall building. They would also be allowed to go to the field. The Accused noted that the space for exercise is minimal.
53. The Monitor informed the Accused that they would follow up on space with the Prison Director directly.

7.0 Meeting with the Defence Counsel held on November 11, 2021

54. The Monitor held a meeting with Mr [REDACTED], M [REDACTED]'s Defence Counsel, on November 11, 2021.
55. According to Mr [REDACTED], the evidence produced in Court by the Prosecution was not strong enough to sustain a conviction. He told the Monitor that the charges against the Accused were centred on an alleged meeting held on April 8 1994, at Accused's house. An engagement which they noted that the Accused had not taken participated.
56. The Defence Counsel expressed satisfaction with the Court and the equality of arms between the Prosecution and the Defence. He was contentment with how the Court had addressed respective matters.
57. The Defence Counsel highlighted some contradictions in the testimony of Witness [REDACTED] and shared their interpretation according to the minutes of the Gacaca found at the CNGL.

58. Mr [REDACTED] pointed out challenges in communication with the Accused. He stated that sometimes he was not able to reach him through telephone.
59. The Defence Counsel noted that there were still challenges posed by the limited funds disbursed to counsel in the genocide cases. He stated a review of the contract of the funds to be disbursed; however, it had not been fully implemented. He expressed that this resulted in many financial constraints on his work.
60. Mr [REDACTED] noted that he could raise any concerns he had in favour of his client without fear of being reprimanded by the Court.

8.0 Meeting with the Ministry of Justice on November 12 2021, at the Ministry of Justice

61. The Monitor held a meeting with [REDACTED], the Head of the Department of International Justice and Judicial cooperation at the Ministry of Justice.
62. Ms [REDACTED] informed the Monitor that the Ministry of Justice and the Rwanda Bar Association (RBA) had amended the Defence Counsels' contract to cater for the additional expenses following the transfer of the Accused to Nyanza.
63. Ms [REDACTED] explained the mandate of the Ministry of Justice concerning the case. She noted that follow up could be done with the Rwanda Bar Association about implementing the revision.
64. Ms [REDACTED] informed the Monitor that the Ministry was following the case closely to ensure that their mandate was carried out properly and that everything went as required by the law.

9.0 Conclusion

65. The Court has concluded the case and will deliver the Judgement on December 23, 2021.
66. The Prosecution and the Defence teams were given adequate opportunity to interpret the documents retrieved at the CNLG on the Gacaca Hearings and the testimony issued by Witness [REDACTED].
67. The Monitor notes that to date, they have not been able to see the wall built at the Prison and the space provided for the Accused of exercise following the construction attributed to Covid restrictions on prison visits.
68. The Monitor remains available to share any information regarding this case.

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