



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

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

PROSECUTOR

Vs.

[REDACTED] R [REDACTED]

Monitoring Report for the [REDACTED] R [REDACTED] Case for October, November, and December 2021

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Introduction

1. This report pertains to the monitoring activities of the ICJ Kenya Monitor appointed to observe the transfer case of Mr. [REDACTED] R [REDACTED] before the Judiciary of the Republic of Rwanda.
2. The report activities include; hearings before the courts in Rwanda, interactions with various stakeholders between September 2021 and December 2021 ("Reporting period").
3. During the Reporting Period, the Monitor undertook three missions to Rwanda to monitor the [REDACTED] R [REDACTED] case (hereinafter referred to as the Accused).
4. Therefore, this report covers the Court hearings and meetings with the Accused, his Defense Counsel, and the Prison Director.

Detailed Report

Background

5. The International Crime Unit of the Dutch National Police arrested [REDACTED] R [REDACTED] in March 2019. This followed a request by Rwanda authorities for the extradition of [REDACTED] R [REDACTED].
6. The Hague District Court ruled on 23 May 2019 that there are no grounds to decline the extradition request by [REDACTED] R [REDACTED] a to Rwanda, which led to an appeal on the District Court's decision. However, on 28 January 2020, the Supreme Court dismissed the case.
7. The Minister of Justice and Security approved the extradition request on 28 April 2020. [REDACTED] R [REDACTED] appealed this decision, but The Hague District Court decided on 23 December 2020 that the extradition of [REDACTED] R [REDACTED] to Rwanda was granted. The Hague Court of Appeal confirmed this decision on 4 May 2021.
8. On 26 July 2021, [REDACTED] R [REDACTED] was extradited to Rwanda for trial.
9. Upon his arrival, duty counsel, Mr. [REDACTED], was assigned to him by the Rwanda Bar Association (RBA). Mr. [REDACTED] is now the Accused's Defense Counsel.
10. The investigators had five days from the day Accused arrived to conduct investigations, and thereafter the Prosecution was also allowed five days to conduct investigations. On 12 August 2021, the Accused was arraigned at Kagarama Primary Court for a hearing on his provisional detention.
11. The Accused is charged with the following crimes:

- I. Crime of genocide: R [REDACTED] is alleged to have ordered the killing of two employees of [REDACTED], a government institution he headed as a director-general.
 - II. Complicity in genocide: R [REDACTED] is alleged to have participated in a meeting. He ordered the storekeeper of [REDACTED] to open the store and distribute machetes and other tools used to kill Tutsis. He is also alleged to transport "gendarmes" in [REDACTED]'s official vehicle, to come and help in killing Tutsis.
 - III. Extermination as a crime against humanity: R [REDACTED] is alleged to have requested the support of "gendarmes" (armed policemen) to help to kill around 2000 Tutsis who had taken refuge on a nearby hill because the Interahamwe militia was unable to kill them all; he is alleged to have supervised the killing spree by gendarmes and Interahamwe.
12. Due to the gravity of allegations against the Accused, the Prosecution requested the Court order that the Accused be provisionally detained for thirty more days to allow further investigations into his crimes. He explained that if the Accused was granted bail, he could interfere with investigations, especially since most witnesses were under his leadership at [REDACTED]. In addition to this, the Accused denied the charges asserting that he did not commit any of the alleged crimes
13. On 17 August 2021, the Court found that there are compelling reasons to suspect the Accused of genocide, complicity in committing genocide, and the crime of Destruction as a crime against humanity, and therefore ordered that the Accused should be remanded in custody for thirty (30) days because of the gravity of the offences.

Hearing held at the Primary Court of Kicukiro on 20 September 2021

14. On September 2021, the Court held a hearing before Judge [REDACTED] in the presence of Registrar [REDACTED].
15. The Accused was present in Court.
16. Mr. [REDACTED], the Accused person's Defence Counsel and the Prosecution represented by Mr. [REDACTED] and Ms. [REDACTED], were also present in Court.
17. The purpose of the hearing was to renew the Accused's provisional detention.
18. After welcoming the parties to the Court, the Judge asked the Defense to explain their objection.

19. In response, the Defense Counsel stated that the primary Court of Nyarugenge is competent to try the case since it is near the Mageragere prison, which is located in the Nyarugenge District. Notably, the primary Court of Kicukiro had ordered that the Accused be detained in Nyarugenge prison.¹
20. The Court then asked the Prosecution to react to the objection raised by the Defense.
21. The Prosecution stated that the objection on the lack of competence by the Court as raised by the Defense Counsel was not legally founded as he was arrested at the international airport at Kanombe, which is under the jurisdiction of the Primary Court Kicukiro. Secondly, he asserted that even if the Accused is detained at Mageragere prison in Nyarugenge district, the nearest Judge is the one who rendered the detention order in the first instance on 17/08/2021.
22. At this juncture, the Court asked the Defense to respond to the Prosecution.
23. The Defense Counsel stated that the law governing lawyers places a responsibility on the lawyers to assist their clients. He added that the other party should share this responsibility in the trial. In this regard, the Defence Counsel expected the Prosecution to accept that there was a mistake in where the first hearing was heard. He further asserted that regarding the renewal of the provisional detention or the provisional release, the competent Court should be nearest to the place of detention. In addition to this, Defence Counsel reminded the Prosecution that these kinds of trials are monitored and read by many people; therefore, they should be keen on every detail. Finally, he stated that he would leave this issue to the Court.
24. At the invitation of the Court, the Prosecution stated that the Defense Counsel had spent so much time on the objection. Yet, they were in Court for the renewal of the provisional detention as the Accused was still in detention as provided under Article 79 of the law relating to the criminal procedure. He reiterated that the Primary Court in Kicukiro was the nearest Court to the international airport in Kanombe where the Accused was arrested. In this regard, he emphasized that they had made no mistake and that the Court was competent to hear the case.
25. The Court stated that they would retreat and make a decision.

Hearing held at the Primary Court of Kicukiro on 23 September 2021

26. On 23 September 2021, a hearing was held before Judge [REDACTED], [REDACTED], the Registrar, was present in Court.

¹ Article 79 paragraph 5 of the law relating to the criminal procedure shows which court has to order to release or renew provisional detention that, it is rendered by the Judge who is nearest to the place of detention of the Accused, and it is imperative and it shows how things have to be done by the public order.

27. Mr. [REDACTED], the Accused person's Defence Counsel and the Prosecution represented by Mr. [REDACTED] and Ms. [REDACTED], were also present in Court.
28. The purpose of the hearing was for the Court to decide on the issues raised during the hearing held on 20 September 2021.
29. The Court ruled as follows :
 - i. The objection of lack of competence as raised by the Defence is unfounded; and
 - ii. The Primary Court is competent to try the matter referenced RDP 00891/2021/TB/KICU.
30. The Court also extended the Accused's pre-trial detention for an additional 30 days.

Meeting with the Accused at Mageregere Prison held on 2 December 2021

31. The Monitor met the Accused at Mageregere prison with the assistance of an interpreter.
32. The Accused informed the Monitor that his pre-trial hearings should be held in the Primary Court of Nyarugenge, but they are still being held at the Primary Court of Kicukiro; however, he stated that he has chosen not to challenge that.
33. The Accused raised a complaint regarding the time taken to rule on the provisional detention. He opined that the matter was not heard after thirty days had elapsed from his last hearing on 17 August 2021; it was held 33 days later. He stated that the hearing should have been held before the lapse of 30 days as this was illegal. In addition to this, he pointed out that the second batch of 30 days ended on 23 October 2021.
34. The Accused informed the Monitor that the Prosecution paid him a visit in Mageregere prison. He expressed his frustration regarding the lengthy time that the investigation was taking, yet his case was opened in the year 2010 they had ample time to gather evidence against him. In light of this, the Prosecution assured him that they would not extend his pre-trial detention by an additional thirty days.
35. The Accused updated the Monitor that the case had been filed at the International Crimes Division of the High Court on 21 October 2021. Notably, he stated that the Defence now has access to the Prosecution's witness testimonies' therefore, he is well aware of the accusations against him.
36. The Accused stated that communication with his family had been a challenge. This is because he had agreed with his wife that they would speak through an intermediary; however, according to

the prison rules, detainees can only speak directly to their spouses and/or children. The fact that he wanted to talk to a third party raised suspicion amongst the prison authorities.

37. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Meeting with the Prison Director, [REDACTED], at Mageregere Prison held on 2 December 2021

38. The Monitor met with the Prison Director to inquire about the concern raised by the Accused regarding the Accused's inability to speak to his family through an intermediary an intermediary based in the Netherlands.

39. The Prison Director stated that the prison rules only allow detainees to speak to their spouses and/or children. However, he informed the Monitor that he had presented the matter regarding an intermediary to his supervisors and was awaiting feedback and guidelines.

Meeting with Defence Counsel, Mr. [REDACTED] held on 3 December 2021

40. The purpose of the meeting was to discuss any new developments in the case.

41. Mr. [REDACTED] stated that because the Prosecution had filed the case at the High Court, the Defence was preparing its submissions. He explained that the Accused would prepare the Defence submissions and send them to Mr. [REDACTED] for his review. He will then input and send it to the Accused to review one more time before they file them. He added that they would get a hearing date soon thereafter.

42. On the issue of the provisional detention, Mr. [REDACTED] clarified that the Accused's provisional detention was not extended by an additional thirty days after the lapse of the second batch of thirty days expired on 23 October 2021. The Prosecution filed the case at the International Crimes Division of the High Court; therefore, they are anticipating that the Accused will soon be moved to Mpanga Prison.

43. Mr. [REDACTED] stated that he was unsure of the exact date when the Accused would be moved to Mpanga Prison in Nyanza.

44. Mr. ██████ explained that the Defence would soon contact the Defence witnesses. However, he expressed concern regarding the inability of the Accused to call an intermediary in the Netherlands. This is because it is the wish of the Accused that the middleman contacts the witnesses based in the Netherlands.

Conclusion

- 45. The pre-trial phase of the case is now at its conclusion. The case will now move to the trial phase at the International Crimes Division of the High Court.
- 46. The Monitor remains available to share any information regarding this case.