



**To: 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]

FINAL TRIAL MONITORING REPORT

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1.0 INTRODUCTION

1. In October 2015, the First Secretary of Justice, Security, and Good governance of the Netherlands Embassy in Kigali contacted the Kenyan Section of the International Commission of Jurists (ICJ Kenya) to independently monitor the case of ██████████ M ██████████ transferred from the Kingdom of Netherlands to Rwanda for Trial.
2. ICJ Kenya and the Ministry of Justice and Security in the Netherlands entered into a contract that conferred ICJ Kenya the role of an independent monitor in the transfer case of ██████████ ██████████ M ██████████ (hereafter referred to as the Accused).
3. The objective of the trial monitoring contract was to observe the Trial independently and impartially and assess the Rwandan justice system's compliance with international standards and best practices relating to human rights, fair trial rights, and regional trial standards.
4. The fair trial rights of the Accused observed during the trial processes included in the Rwanda Law Relating to the Transfer Cases¹ were:
 - a) Fair and public hearing before a competent, independent, and impartial court, with no government, political or third parties influencing the procedure and outcome of the Trial;
 - b) Right to be presumed innocent;
 - c) Right to be promptly informed, in a language, understood by the accused, of the charges against him;
 - d) Right to adequate time and facilities to prepare for his defence;
 - e) Right to defend himself in person or through counsel of his choice. As per the transfer law², Defence Counsel the expenses absorbed by the Republic of Rwanda;
 - f) Right to communicate freely with defence counsel and exercise the role free from third party influence and granted access to all evidence;
 - g) Right to be tried while present and without undue delay;
 - h) Right not to be compelled to testify against himself or to confess guilt;
 - i) Right to silence during legal procedures;
 - j) Right to examine the witnesses against him
 - k) Right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

¹ Law N° 47/2013 OF 16/06/2013 Relating Transfer of Cases to the Republic of Rwanda

² Ibid 1 above, Article 14.

5. In fulfilling the contractual obligations, the ICJ Kenya Monitors attended court hearings to observe the proceedings, conducted regular prison visits to assess detention conditions, held regular meetings with various interlocutors involved in the case, and obtained updates on the trial process. Finally, the Monitors addressed concerns raised by the Accused person with respective authorities and Defence Counsel.
6. The trial observation entailed an examination of human rights standards provided under the International Bill of Rights³; The European Convention on Human Rights; regional normative frameworks under the African Charter on Human and People's rights and related soft law principles and guidelines; basic principles on the independence of the judiciary; guidelines on the role of prosecutors; and basic principles on the role of lawyers.
7. Accordingly, the primary base documents that guided the development of ICJ Kenya's monitoring protocol included: Decision on the Transfer of the Accused Person; Organic Law No. 11/2007 of 16/03/2007⁴; Law No 47/2013 of 16/06/2013⁵, Law N° 13/2004⁶ and Law Relating to the Transfer Cases⁷ Fundamental international instruments providing for the right to a fair trial, standards of detention and imprisonment, and the protection of human rights.
8. This report covers the trial monitoring of the Accused's case from his transfer to the Republic of Rwanda in 2016 to the delivery of the judgment on 17 March 2022. The report will provide observations and conclusions drawn in the following areas: proceedings in the courtroom; interviews with interlocutors; detention conditions; and independence, impartiality, and transparency of the monitoring team.

2.0 BACKGROUND TO THE CASE

9. As the initial introductory session outlined, ICJ Kenya's monitoring efforts focused on examining the Rwandan justice system against fair trial standards during the Trial of the Accused. It required observation of all court proceedings and regular communication with the Prosecution, Defence Counsel, and the Accused.

³ The International Bill of Human Rights consists of the Universal Declaration of Human Rights (adopted in 1948), the International Covenant on Civil and Political Rights (ICCPR, 1966) with its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966).

⁴ Rwanda: Organic Law No. 11/2007 of 2007 Concerning Transfer of Cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from Other States

⁵ Law N° 47/2013 Of 16/06/2013 Relating Transfer of Cases to the Republic of Rwanda

⁶ Law N° 13/2004 Relating to the Code of Criminal Procedure

⁷ Law N° 47/2013 OF 16/06/2013 Relating Transfer of Cases to the Republic of Rwanda

10. During the case monitoring, the ICJ Kenya Monitors arrived well before the hearings to obtain sufficient time to locate the courtroom. The Trial was conducted in the Kinyarwanda language; hence, interpreters assisted the Monitors throughout the pre-trial and trial phases.
11. The Monitors have also been observing and documenting the Bench, the Parties, the Accused and the Witnesses. The observation entailed listening to submissions and oral testimonies and observing the body language, general attitude, and interactions between all the parties.

3.0 THE PRE-TRIAL PHASE

12. The Pre-trial phase involved observing the Primary Court proceedings to confirm or reject the charges against the Accused. The Primary Court also determined the jurisdiction and admissibility of the case. The court reviewed the Prosecution's decisions and requested to continue further investigations on its initiative.
13. The Accused had been transferred to Rwanda from the Netherlands on 12 November 2016. He was detained at Kigali Central Prison and charged with the following crimes allegedly committed in the period between 7 April to 14 July 1994:
 - a) Genocide;
 - b) Complicity in Genocide;
 - c) Conspiracy to commit Genocide;
 - d) Murder as a crime against humanity;
 - e) Extermination as a crime against humanity;
 - f) Violation of article 3 common to the Geneva Conventions;
 - g) Formation, membership, leadership, and participation in an association of a criminal gang whose purpose and existence harm people or their property.
14. The Accused first appeared in a Rwandan Court on 21 November 2016. The initial court appearance was two-fold: i) to confirm the indictment and ii) to consider the pre-trial detention conditions or an application for provisional release pending the hearing. The Accused applied for provisional release pending Trial. The court rejected the application and ruled that there were serious grounds to suspect that the Accused had committed the alleged crimes.
15. The pre-trial detention period lasted eight (8) months, during which there were 22 court appearances. The hearings entailed: requests by the Prosecution team to extend the pre-trial detention orders issued by the Primary Court, each time by 30 days as permitted by the Law,

appeals by the Accused, and determinations by the Intermediate Court allowing further detention of the Accused.

16. After seven extensions on the pre-trial detention order, the case was finally transferred to the High Court for Trial. The Accused's official indictment filing on 15 June 2017 marked the end of the pre-trial and trial phase.

4.0 THE TRIAL PHASE

17. The Trial began on 14 September 2017, and the judgment in the case was delivered on 17 March 2022.
18. The Prosecutors assigned to the case were Ms [REDACTED] and Mr [REDACTED]. The Defence Counsels were Mr [REDACTED] and Mr [REDACTED].
19. The monitoring of the Trial Phase involved observing the responsibility of the Trial Court to ensure that the Accused's Trial is fair and expeditious, the proceedings are conducted under the rules of procedure and evidence, with full respect for the rights of the Accused and due regard for the protection of victims and witnesses.

4.1 Right to a fair trial

20. The Accused's fair trial rights discussed below have been the primary focus of the monitoring exercise.

4.2 Trial without undue delay

21. The Accused's Trial at the High Court, International Crimes Division, commenced on 21 November 2016. Both the Prosecution and Defence teams requested several adjournments. During the initial appearance before the Primary Court, the Defence team was served with documents that contained charges on the morning of 21 November 2016.⁸ It caused a delay in the Trial's start and contributed to several subsequent requests for extensions by the Accused regarding his pre-trial detention.
22. The Defence team asserted that the Prosecution had not gathered sufficient evidence to sustain a trial before the extradition request. The Defence claimed that the Prosecution had either contradictory or insufficient evidence to sustain a conviction.⁹ Consequently, the

⁸ Monitoring report for November to December 2016, paragraphs 19 – 21.

⁹ Monitoring report for November to December ,2016, paragraph 61- The accused person noted that by the time the Prosecution issued an international arrest warrant against him, they ought to have finalized their investigations.

Prosecution asked for time to finalise its investigations even during the extension hearing on the pre-trial detention order held on 22 December 2016.¹⁰

23. In certain instances, the adjournments were administrative and did not have substantive implications on the Trial. For example, on 14 September 2018, a prosecution witness informed the court that he had been ambushed and was not ready to proceed in court. Another witness said they had to attend to a medical condition.¹¹ In the hearing held on 18 December 2019, the court adjourned to 6 January 2020 because the Prosecutor, who was to make part of the closing submissions, was away on official duty.¹²
24. There were instances where the Defence Counsel failed to appear in court. For example, in the hearing of 23 November 2016, the Accused refused to sign the Court transcripts because his Defence Counsel was not present in court to assist him.¹³ On 27 February 2017, the Defence Counsel did not appear after informing the court that he had a scheduling conflict because of another case at the Supreme Court in Kigali.¹⁴ On 12 March 2019, the Defence Counsel was not present in court as he had another hearing in Arusha, Tanzania, causing the hearing to be adjourned to 10 April 2019 - a month later.
25. Judicial recess (held annually in August), conflicting calendars in the court's operations, or other hearings have led to the lapse of time in hearing the case. This was in addition to the Accused's detention order extension after the hearing on 16 May 2017. Later, in June 2017, there were no hearing sessions. The indictment was subsequently filed on 15 June 2017.
26. In the hearings scheduled for 14 January and 16 February 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.
27. On 18 March 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. 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 9 November 2021. On 9 November 2021, the court held a hearing to clarify evidence issued

¹⁰ Monitoring report for November to December ,2016, paragraph 60 – The Prosecution required sufficient time to conduct investigations.

¹¹ Para 54 of the hearing of 14 September 2018

¹² Ibid, Para 5 of the report

¹³ Para 40, hearing of 23 November 2016

¹⁴ Monitoring report for January -February 2017, paragraph 30.

earlier at the Gacaca Courts against the Accused person by witness [REDACTED] based on a document kept by the CNLG.

4.3 The right to have adequate time and facilities to prepare a defence

28. Article 14 (4) of the Law Relating to the Transfer of Cases to the Republic of Rwanda provides that the Accused must have adequate time and facilities to prepare for their Defence. The Defence team raised concern with the court that the Prosecution had not given them specific information on the case even after the hearing's commencement.
29. Article 144(4) of Rwanda: Law No. 13/2004 Relating to the Code of Criminal Procedure requires the Prosecution to provide evidence against the Accused. In some instances, the Defence complained to the court that they had either been served documents on the morning of the hearing or had not been served. On the 14 September 2018 hearing, the Defence team noted that they had only been given two names out of the nine prosecution witnesses. The court informed Defence that they should have obtained all the nine prosecution witnesses from the online electronic list. The court intervened and handed the Defence team a hard copy list of the Prosecution witnesses.¹⁵
30. During the hearing held on 19 December 2018, the Prosecution introduced new facts not contained in the statements previously made by the witness and that had been filed in court.¹⁶ After objecting, the court assured the Defence team that the court would consider the witness' statements during final submissions.
31. At the hearing on 10 April 2019, the Defence team noted they had not accessed the witness statements that the Prosecution was using to examine the Accused. However, the Prosecution asserted that they had filed the documents in the court's filing system. The court acknowledged that the Court filing system had technical challenges. Nonetheless, the court advised the Prosecution to continue with the interrogation.¹⁷

4.4 The right to representation

32. Article 14 (6) of the Transfer law provides for legal representation of the Accused persons. In compliance with this provision, the Rwanda Bar Association (RBA) provided the Accused with Defence Counsel, [REDACTED], on a pro-bono basis as soon as he arrived in Kigali. The RBA and the Ministry of Justice have been paying the Defence Counsel's expenses, which amount to approximately RWF 15,000,000.

¹⁵ Monitoring report for December 2017 and January- February 2018, paragraph 38-40.

¹⁶ Ibid, Para 4 to 6 of the monitors report for the period

¹⁷ Para 7 of the Monitoring Report for the [REDACTED] M [REDACTED] Case for April and May 2019

33. The Defence Counsel informed the Monitor that he had faced challenges since the Trial moved from Kigali to the Nyanza Courts. As a result, the Defence Counsel had been having challenges meeting the Accused regularly because of Kigali's distance to Mpanga prison.
34. The Defence Counsel had, in some instances, been reprimanded for lateness by the court.¹⁸ The Defence Counsel had further complained that since the Trial moved to Nyanza, the remuneration was inadequate to meet his travel and accommodation costs.

4.5 Witness protection mechanisms

35. ICJ Kenya noted instances when the Accused's Trial could not be conducted because witnesses were unavailable or afraid to testify. Substantial injustice would have occurred if no protective mechanisms were in place. However, ICJ Kenya is satisfied that the court had sufficient protective mechanisms to protect both the Prosecution and Defence witnesses.
36. Article 15 of the Transfer Law provides for the protection and assistance of witnesses, and to this end, the High Court is to provide appropriate protection for witnesses. It has the power to order protective measures similar to those outlined in Articles 53, 69, and 75 of the Mechanism Rules of Procedure and Evidence.¹⁹
37. Considering the provisions relating to witness protection and referencing international standards, ICJ Kenya assessed Rwandan policies and procedures on protecting highly vulnerable and sensitive witnesses. The fear, tension, and considerable scrutiny associated with an appearance on behalf of the Accused were apparent. However, the court used protective measures such as the use of pseudo names to witnesses upon requests by the parties, particularly Defence witnesses and the use of voice distortion.
38. At the hearing held on 14 September 2018, the court pronounced that some witnesses had requested witness protection²⁰ out of fear of reprisals or intimidation.
39. The Defence contested the application for witness protection by the Prosecution witnesses, alleging that the witnesses would take advantage of the protective measures and give false testimony in court. In various instances, the court considered both parties' applications on merit and facts and ruled on the appropriate witnesses' protection mechanism.
40. Throughout the Trial, the court used voice distortion to protect the witness' identity and assigned pseudonyms to the witness. All parties used pseudonyms whenever they referred to the witness.

4.6 Equality of arms

¹⁸ Court hearing on 17th January 2019

¹⁹ International Residual Mechanism for Criminal Tribunals MICT/1/Rev.6 of 18 December 2019 and revised on 20 Dec 2019

²⁰ Supra note 1 at paragraph 42

41. The principle of equality of arms ensures that the Accused is not substantially disadvantaged in the presentation of his case and that he likewise benefits from the fair trial guarantees.
42. ICJ Kenya has maintained regular communication with the Defence team members, monitoring their treatment in court and assessing any undue limitations on their ability to present a robust Defence.
43. Consistently, the court has maintained and ensured equality of arms between the Prosecution and the Defence. Throughout the Trial, there has been an equal allocation of time, the ability to ask for adjournments, and the opportunity to interject or raise objections to the procedure, substantive arguments or evidence.

4.7 Judicial competence, independence and impartiality

44. ICJ Kenya's trial monitoring considered the judiciary's role in conducting the Trial according to international standards.
45. The Monitor has been referring to and considering the decisions at the ICTR on Rwanda's ability to ensure fair trial rights and security of the Accused person.²¹
46. The Monitors prioritised this as a significant factor in the transfer cases. The Monitor observed that the Trial Court considered the facts and merits of the Accused's arguments, particularly those that have not previously been advanced in any judicial forum of the same nature.

4.8 Meetings with interlocutors

47. The Interviews conducted with the interlocutors have been with:
 - a) The Prosecution Counsels;
 - b) Defence Counsel;
 - c) The Rwanda Bar Association, and
 - d) Officials from the Ministry of Justice in Rwanda.
48. The interviews with the interlocutors were held in confidence, and the source of information was protected. The meetings were arranged in advance, and the Monitor explained the reasons for the meetings to allow for adequate preparation. As a result of the Monitor's interactions with the interlocutors, the following issues were identified:
 - a) The Defence Counsel raised concerns with the Monitor over the delays in payment of legal fees²² by the Ministry of Justice. The payment rates had initially not factored in the increase in travel costs after the Accused was transferred from Kigali to Nyanza.

²¹ *The Prosecutor V. Bernard Munyagishari* Case no. Ictr-2005-89-R16is

²² Monitoring report for December 2016: Minutes on the meeting with [REDACTED], Head of department international justice and judicial cooperation at the Ministry of Justice held on 22 December 2016.

The Monitor engaged the Ministry of Justice on this issue, who noted to pick up the matter with the RBA.

- b) The Defence Counsel informed the Monitor that the money allocated to him under the legal aid scheme was insufficient to cater for the travel costs to Nyanza;²³
 - c) The Defence Counsel has informed the Monitor that the Accused's transfer had made it difficult for him to visit the Accused in prison.²⁴
49. When the Accused was transferred to Mpanga Prison in Nyanza on 9 February 2017, the Monitor held meetings with relevant interlocutors to discuss the transfer. The relocation involved some prisoners from Kigali Central Prison to the new prison facility - Mageragere prison, which housed the international prisoners convicted of Genocide.
50. This transfer had not been earlier communicated to either the Accused, Defence Counsel, or the Monitor and took a toll on the Accused as he had to travel to Kigali to attend his court hearings. During this period, he could not meet with his Defence Counsel. His family visits were significantly reduced due to the travel distance.
51. The Monitor played an essential role in ensuring the relevant officers were informed of the challenges being experienced by the Accused and Defence Counsel. After several deliberations, the Accused was, on 28 February 2017, transferred back to Kigali Central Prison.
52. The Monitor was very deliberate about discussing the issue of legal fees of the Defence Counsel with the Rwanda Bar Association(RBA). The RBA stated they would follow up on the concern with the Ministry of Justice.²⁵

5.0 DETENTION CONDITIONS

53. The Monitor has been monitoring the Accused's treatment in detention facilities since he arrived in Rwanda on 12 November 2016, guided by the United Nations Standard Minimum Rules for Prisoners' Treatment.

a) Treatment of prisoners concerning their inherent dignity and value as human beings:

During the Accused's initial meeting, the Accused informed the Monitor that the prison conditions were conducive. The prison authorities were well prepared to receive him when he arrived.²⁶

²³ Monitoring report for December 2019: Minutes on the meeting with M [REDACTED] a counsel- Head of held on 10 October 2019.

²⁴ Ibid

²⁵ Monitoring Report for December 2021-February 2022, paragraph 59

²⁶ Monitoring report for November –December 2016, paragraph 30

b) Information and complaints by prisoners:

The Accused told the Monitor about a letter dated 26 December 2016, jointly drafted and sent to the National Public Prosecution Authority (NPPA), raising the issue of an external user he believed was spying on the documents on his laptop.²⁷ The Accused was thereafter issued with a new laptop and security software installed in his presence, assuring him of the documents' security.²⁸

c) Contact with the outside world:

In January 2017, the Accused was transferred from Kigali Central Prison to Mpanga Prison. He explained that he was unhappy because this affected his meetings with the Defence Counsel and his family's visits.²⁹ The Accused informed the Monitor that the number of phone calls he could make at Mpanga Prison was limited. While in Kigali Central Prison, he had been allowed two phone calls weekly to his family members in The Netherlands. At Mpanga prison, he did not speak with his family for the first two weeks. He stated that the prison officials had informed him that they did not have airtime to enable him to make the phone calls.³⁰

d) Removal of prisoners:

The Accused expressed frustrations about the long drive from Mpanga prison to Kigali. The Accused stated that he had to wake up early in the morning to make it to court by 9.00 am. He explained that the long-distance travel was emotionally and physically draining, thus hindering his ability to make a proper Defence.³¹ Following a meeting held on 27 February 2017 with the Director of Mpanga Prison, [REDACTED], it was resolved that the Accused would be transferred back to Kigali Central Prison.³² However, the specialised Chamber For International Crimes in the High Court moved its premises from Kigali to the Nyanza district in April 2018. Therefore the accused was moved from Kigali Central Prison to Mpanga Prison.

e) Separation of different prisoners:

While in Mpanga prison, the Accused noted on various occasions that he had been uncomfortable being detained with convicted prisoners in the detention facility.³³ The Accused raised the issue of

²⁷ Monitoring report for January-February 2017, paragraph 10

²⁸ Monitoring report for January-February 2017, paragraph 61

²⁹ Monitoring report for January-February 2017, paragraph 84 and 85

³⁰ Monitoring report for January-February 2017, paragraph 88

³¹ Monitoring report for January-February 2017, paragraph 87

³² Monitoring report for January-February 2017, paragraph 105

³³ Monitoring report for July-September 2018, paragraph 5 and monitoring report of June 2018, paragraph 18

provisional detention during the Monitor's prison visit.³⁴ The Monitor raised the issue with the Permanent Secretary/Solicitor General at the Ministry of Justice, [REDACTED]. The latter undertook to visit the detention facility at Mpanga prison and ascertain the conditions.

f) Accommodation:

The Monitor visited the Accused's accommodation facility at Mpanga prison severally and observed that the Accused occupies a room by himself. The windows were large enough, and the shower and toilets were adequate.³⁵

g) Clothing and bedding:

The Accused had sufficient beddings, which were clean.³⁶

[REDACTED]

i) Food: The Accused noted that Nyanza Prison had only one vehicle at the time that could transport him to court for the hearings. Therefore, the Accused had to be dropped in court very early at 6:00 am, so he sometimes had to leave for court before having breakfast. He also had to wait for long periods in court before returning to prison, which affected his health.³⁸ The Monitor had raised this issue with the Prison Director, who noted that this was the case because there was an inadequate number of prison vehicles. The Prison Director, however, ensured that the Accused's breakfast was kept for him. The Accused would receive his breakfast once he got back to the prison. The Accused acknowledged the Prison Director's efforts in ensuring that food was prepared adequately according to the direction of the Accused's doctor.

³⁴ ICJ Kenya Detailed Monitoring Report for the case of the Prosecutor – vs- [REDACTED] M [REDACTED] for the months of July to September 2018 at paragraph 5.

³⁵ Monitoring report for July-September 2018, paragraph 11-15

³⁶ Monitoring report for July-September 2018, paragraph 16

³⁷ Monitoring report for October-November 2018, paragraph 33

³⁸ Monitoring report for December 2019-February 2020, paragraph 8

6.0 JUDGMENT

6.1 Summary of Judgment

54. This section provides a summary of the Judgment, including salient key themes that were determined, an analysis of the evidence and sentence rendered

6.2 Issues for Determination

1. Issue of whether The Accused held a meeting at his residence on 08/04/1994 to conspire on a plan to kill the Tutsi.

55. The court evaluated the testimony given by witness [REDACTED]. The court found that the witness clearly explained how he had been invited to the meeting as a leader in the Nyakabanda sector and the meeting attendees. The witness explained to the court that the attendees at the meeting made decisions, including defending themselves against the accomplices of RPF, making a list of those who were to be killed and requesting guns.

56. The court held that witness [REDACTED] had given sufficient detail on the meeting.

57. The court held that the testimony was admissible because, on 08/04/1994, the Accused held a meeting at his house to plan on exterminating the Tutsis; more specifically, this testimony correlates exactly with his statements during the investigation and those of the 07/12/2016 in the investigation.

2. Issue of whether the Accused was an accomplice in the Genocide because he gave a venue to host the meeting.

58. The court found that the act posed by the Accused in offering a venue to host the meeting on the 08/04/1994 did not make him an accomplice to the perpetrators of the Genocide in the Nyakabanda sector, but this is an act that assisted in holding a meeting that conspired to commit Genocide which is part of the crime to conspire to commit Genocide.

3. Whether the Accused was an accomplice in the Genocide because he distributed guns that were used to kill the Tutsi in the Nyakabanda sector.

59. The court analysed the testimony given by [REDACTED] and found it admissible evidence to prove that the Accused distributed guns used to kill the Tutsi in the Nyakabanda sector.
60. The witness asserted that the meeting took place at the Accused's house on 08/04/1994, and he is the one who requested guns from [REDACTED]. The witness explained that after three days, the Accused was given five guns which he gave to the *Responsible* for the Kabuguru sector, [REDACTED], who too gave out these guns at the roadblocks where Tutsis were killed.
61. Witness [REDACTED], the former leader of the [REDACTED] commune, affirmed that there was a report where he saw the name of the Accused as one of the people who distributed guns to [REDACTED]. The court found that the people mentioned by [REDACTED] to have received guns from the Accused were also in the testimony and statements of [REDACTED] as the people who were at the roadblocks and used these guns to kill people.
62. The court found that the testimony and the investigation statements of [REDACTED] and [REDACTED] were irrefutable proof to show that The Accused gave the support of guns that were used in the killing of the Tutsi in the Nyakabanda sector.

4. Issue of whether The Accused played a role in the killing of [REDACTED].

63. The court found that they could not rely on the testimony of [REDACTED] that the Accused played a role in the killing of [REDACTED] because he did not personally see it take place.
64. The court also found that the testimony of [REDACTED] did not show the role of The Accused in the killing of [REDACTED] because he based his testimony on the list of people who were killed, which was made at M [REDACTED] house. The court found this part of the crime to conspire to commit Genocide.
65. The court also raised doubt on the role of the Accused in the killing of [REDACTED] from the witnesses, [REDACTED] and [REDACTED], who testified that they were there during this killing, yet contradicted one another on the role of the Accused.

5. Issue whether the Accused played a role in killing the other people who had been put on the list in the meeting of 08/04/1994.

66. The court analysed the testimonies and found that they could not be relied on in determining whether the Accused played a role in the killings; because [REDACTED] and [REDACTED] asserted that they did not see him kill anyone. The witnesses could not explain the people killed and only stated the Accused's role in hosting the meeting in which those people were put on the list of the people to be killed. The court found that the function of hosting a meeting, in which different activities, including listing people to be killed, are components of the crime of conspiracy to commit Genocide.

67. In analysing the statement from witness [REDACTED] regarding the killing of [REDACTED], the court held that there was no evidence to substantiate the testimony. The statement from the witness was inconsistent as the witness contracted himself whereby in one instance, he stated that he witnessed the killing and in another instance stated that he heard about the killing from young men who had seen it.

6. Issue whether The Accused played a role in establishing and leading roadblocks where Tutsis were killed.

68. The court found that the testimonies of [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] did not show M [REDACTED] role in establishing and leading the roadblocks.

7. Issue whether The Accused made a list of the Impuzamugambi youth that went through military training and trained them, inciting them to hate the Tutsi.

69. The court found that the evidence given on the matter was not credible.

70. The court noted that the witnesses' testimony was based on their assumption of the position of Secretary-General that the Accused held in the [REDACTED] party.

71. Therefore, the court stated that accusing him of that crime contradicts the rule of the speciality of extradition.³⁹

7. Issue whether The Accused bought a share in the RTLM, thus making him an accomplice in the Genocide.

72. The court analysed the evidence presented regarding the Accused being a shareholder in the RTLM.

73. The evidence presented to the court indicated that the Accused bought shares on the radio station.

74. No evidence was adduced that indicates that when the Accused bought those shares, at the time of founding the radio, he knew that the radio would be used in inciting the Hutus against the Tutsis and as a tool of sowing hate.

6.3 Basis for Punishment

75. At the point of delivery of the judgment, M [REDACTED] charges had been reduced to:

- Conspiracy to commit Genocide; and
- Complicity in Genocide

³⁹ Under the principle of specialty a state which has received a criminal defendant pursuant to an extradition treaty may try the defendant only for those offenses for which he or she was extradited", International extradition, The principle of specialty and effective treaty Enforcement, Kenneth G. Levitt, University of Minnesota Law School, 1992, p 1018

76. The court found the Accused guilty of conspiracy to commit Genocide because of the complicity to commit Genocide at his house through the meeting on 08/04/1994.
77. He was also found guilty of committing the crime of complicity in Genocide because he distributed guns used to kill the Tutsi. The court found that those crimes provided for by article 93 10, 50 of the Law NO 68/2018 of the 30/08/2018 providing for crimes and their punishments in general, states that crimes considered Genocide crimes are punished with life imprisonment, which cannot be reduced.
78. The court found the Accused guilty of concurrence of offences as provided by Articles 61 and 62 of the Law NO 68/2018 of the 30/08/2018. This is a crime that punishable by life imprisonment.
79. The court reviewed the acts of the crimes for which the Accused was found guilty and his conduct throughout the Trial. It reduced the sentence to twenty-five years imprisonment (25) instead of life imprisonment with special provisions for each crime for which he is guilty.

6.4 Analysis of Judgment

1. Admissibility of hearsay evidence

80. The allegation that the Accused hosted the meeting on 08/04/1994 is a material fact in the case as it was alleged that plans were made that led to the Genocide in the Nyakabanda sector during the meeting. The court relied on the evidence of [REDACTED] and [REDACTED] to determine whether the meeting happened. However, witness [REDACTED] testified that he was not present in the meeting, but instead, the people who attended it informed him that it took place, and he was also told by the *Responsible* of the cell called [REDACTED] and [REDACTED]
81. The above raised whether hearsay evidence was sufficient to prove such a material fact. In the case of **Prosecutor Vs. Jean Dieu Kamuhanda**⁴⁰, regarding hearsay evidence, the court stated that 'the Chamber makes its decision as to the weight to be given to testimony based on tests of "relevance, probative value and reliability." Accordingly, the Chamber noted that evidence which appears to be "second-hand" was not inadmissible in and of itself; rather, it is assessed, like all other evidence, based on its credibility and its relevance...'
82. The witness [REDACTED] alleged that he got the information from a *Responsible* of the cell called [REDACTED]. This gives the evidence probative value as *Responsables* were cell leaders during the Genocide; therefore, they were aware of meetings held at the time. However, ICJ Kenya concludes that this testimony should have been corroborated further with more witnesses or written evidence.

⁴⁰ Case No. ICTR-95-54A-T

2. Reliance on one witness to prove a material fact

83. The conviction of the Accused centres around a meeting he held on 08/04/1994 at his house. The court relied on the testimony of witness [REDACTED] that on the said date, he was invited to the meeting because he was a leader in the Nyakabanda sector. He testified that The Accused held the meeting at his house to plan on exterminating the Tutsis.
84. Witness [REDACTED] was the only witness who alleged to have attended the meeting, and he further alleged that the Accused requested the distribution of guns while in the meeting. These are extreme allegations and beg the question of whether the testimony of one witness is enough to prove this; however, ICJ Kenya notes that this will be among the issues that the Accused will raise during the appeal process.
85. In **The Prosecutor v. Georges Anderson Nderubumwe Rutaganda**,⁴¹ it was held that 'the issue as to whether it is necessary to rely on one or several witness testimonies to establish proof of a material fact depends on different factors that have to be assessed in the circumstances of each case. One Trial Chamber can prefer that a witness statement be corroborated, but neither the International Tribunal jurisprudence nor the ICTY makes this an obligation....'
86. In this regard, ICJ Kenya opines that in the circumstances, the evidence of witness of [REDACTED] should have been corroborated further either by other people who attended the meeting or documentary evidence.

3. Fairness of the sentence

87. ICJ Kenya notes that the length of time which had elapsed since the events in question took place, the difficulties in recollecting precise details several years after the fact, and the near impossibility of recounting them in precisely the same detail and manner on every occasion. Therefore, it is appreciated that this may have posed a challenge in getting witnesses for both the Prosecution and Defence.
88. In this regard, the hands of the judges in the case were tied by Article 60 Law n° 68/2018 of 30/08/2018 determining offences and penalties in general that provides that "If there are mitigating circumstances, penalties may be reduced and life imprisonment may be reduced but cannot be less than twenty-five (25) years.

7.0 INDEPENDENCE, IMPARTIALITY, AND TRANSPARENCY OF THE MONITORING TEAM

89. The Monitor was able to follow the proceedings in a transparent manner and without bias.
90. The Court hearings, prison visits, and meetings with various interlocutors were conducted diligently and recorded in reports.

⁴¹ ICTR-96-3-A

91. The reports are drawn up without third-party interference and include a summary of court hearings, meetings with Defence Counsel, the Accused, the Rwanda Bar Association and Rwandan authorities.
92. All matters arising are immediately brought to the attention of the relevant officials. On follow-up, the Monitor provides feedback on the reports.
93. The Monitor was able to carry out the monitoring activities independently and without obstruction.

8.0 CHALLENGES

94. The Coronavirus pandemic affected the monitoring because the monitoring team could not physically travel to Kigali to attend the hearings and meet the interlocutors.
95. In 2020, the Monitor opted to monitor the Trial via Skype and held meetings with interlocutors. Rwanda also had lockdowns which posed a great challenge to the movement of the monitoring team and more because requesting movement permits was tedious.

DATED 16TH JUNE 2022

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