



**To: 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]

Quarterly Monitoring Report for March 2022 to May 2022

Contents

Introduction 3

Detailed Report..... 3

Background 3

Hearing on 22 March 2022 at the High Court chamber for the International and cross-border crimes based in Nyanza. 4

Meeting with ■ R ■ at Mageregere Prison held on 23 March 2022 5

Meeting held with Defence Counsel, ■ held on 24 March 2022 6

Hearing on 26 May 2022 at the High Court chamber for the International and cross-border crimes based in Nyanza- Presentation of the Prosecution's evidence. 7

Meeting with ■ R ■ at Mageregere Prison held on 28 April 2022..... 12

Meeting with the Rwanda Bar Association (RBA) President, ■, was held on 29 April 2022...... 12

Meeting with ■, Head of International Justice and Judicial Cooperation Department at the Ministry of Justice, held on 29 April 2022...... 13

Conclusion. 13

Introduction

1. This report contains the monitoring activities of the ICJ Kenya Monitor appointed to observe the transfer case of ██████ R ██████ before the Judiciary of the Republic of Rwanda.
2. The report activities include court proceedings and interactions with various stakeholders from March 2022 to May 2022 ("Reporting period").
3. The Monitor undertook two missions to Rwanda during the Reporting Period to monitor the ██████ R ██████ case (hereinafter referred to as the Accused).
4. Therefore, this report covers court hearings, meetings with the Accused, his Defense Counsel, Rwanda Bar Association President, and the Head of the International Justice and Judicial Cooperation Department at the Ministry of Justice.

Detailed Report

Background

5. The International Crime Unit of the Dutch National Police arrested ██████ R ██████ in March 2019 and the subsequent request by Rwanda authorities for the extradition of ██████ R ██████.
6. The Hague District Court ruled on 23 May 2019 that there are no grounds to decline the extradition request by ██████ R ██████ 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. ██████ R ██████ appealed this decision, but The Hague District Court decided on 23 December 2020 that the extradition of ██████ R ██████ to Rwanda was granted. The Hague Court of Appeal confirmed this decision on 4 May 2021.
8. On 26 July 2021, ██████ R ██████ was extradited to Rwanda for trial.
9. Upon his arrival, duty counsel, ██████, was assigned to him by the Rwanda Bar Association (RBA). ██████ is now the Accused's Defense Counsel.
10. The investigators had five days from the day Accused arrived in Rwanda 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 ██████ is alleged to have ordered the killing of two employees of ██████ ██████, 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] 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 investigate his crimes further. He explained that if the Accused was granted bail, he could interfere with investigations, especially since most witnesses were under his leadership at [REDACTED]. 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.
 14. The Accused's provisional detention was not extended by an additional thirty days as provided in the law after the lapse of the second batch of thirty days that expired on 23 October 2021. Subsequently, the case was filed at the International Crimes Division of the High Court on 21 October 2021.

Hearing on 22 March 2022 at the High Court chamber for the International and cross-border crimes based in Nyanza.

15. On 22 March 2022, the Accused was presented before the High court chamber for the International And Cross-Border Crimes based in Nyanza for his first hearing.
16. R [REDACTED] appeared before a three-judge bench court composed of Judge President [REDACTED], Judge [REDACTED], and Judge [REDACTED].
17. The Prosecution was represented by National Prosecutor [REDACTED].
18. Defence Counsel [REDACTED] was present.
19. The hearing commenced with the court holding that after it had evaluated all the evidence submitted by both parties and, based on that, decided that it was not necessary to hold a preliminary hearing which meant the matter would proceed to a full hearing.

20. The President requested that the court registrar [REDACTED] identify the Accused and the indictment.
21. The Court invited the Accused to confirm his identity description and that it was correct as read before the Court. The Accused responded, "*In reading my identity, there is a place they read [REDACTED]. I disagree with the Gacaca ruling that gave me a sentence that I don't know where it came from.*"
22. The Court directed the court registrar to amend the Accused person's identity accordingly.
23. The Court called the parties to submit on the witnesses they intend to rely upon, which would allow the Court to prepare sufficiently during the subsequent hearings:
 - a) The Defense Counsel informed the Court that the defence would rely on three witnesses based in [REDACTED]. He mentioned they were experiencing some challenges in tracing other witnesses but were working on it.
 - b) The Prosecution informed the Court that they would rely on twelve witnesses and that all the witness statements were in the case file.
24. The Defence Counsel stated that during the identification of the Accused, the Registrar said the Accused was sentenced to life imprisonment by the Gacaca Court Gikarambwa with special provisions for crimes of genocide.
25. The Defence Counsel requested the Court to annul the Gacaca court decision before the trial decision commences because the decision was illegal and referenced the Organic Law 04/2012 statute that states that "any outstanding sentences on an extradited person should be annulled."
26. The Prosecution had no objection to the Defense's request. Therefore, he requested the Court to nullify the Gacaca Court sentence of the Accused person.
27. The Court said they would issue a ruling and upload it on the judiciary website on 24 March 2022 at 1100hrs.
28. On 24 March 2022, the Court nullified the Gacaca decision citing the organic law 04/2012 that terminated the Gacaca courts.

Meeting with [REDACTED] R [REDACTED] at Mageregere Prison held on 23 March 2022

29. The Monitor and the interpreter met with the Accused at Mageregere prison.
30. The Accused informed the Monitor that he was concerned about the trend of the concluded genocide cases; the limited time to confer with his Advocate, which he fears might affect the

defence witnesses. He told the Monitor that he needed enough time with his Advocate to discuss more on his case, primarily on the witnesses.

31. The Monitor asked the Accused whether he was comfortable at Mageregere prison or should he be moved to Mpanga prison, which is closer to Nyanza High Court. The Accused explained to the Monitor that he prefers Mageregere prison because [REDACTED].
32. The Accused stated that the prison authorities treated him humanely and gave an example that they immediately provided a vehicle to take him to [REDACTED].

Meeting held with Defence Counsel, [REDACTED] held on 24 March 2022

33. The Monitor met with the Prosecution in the presence of an interpreter.
34. The purpose of the meeting was to discuss any new developments in the case.
35. The Defence counsel informed the Monitor that they were still concluding on the witnesses to beef up their case.
36. Their primary concern was with the current list of witnesses provided to him, the logistics involved in tracing them because their physical location is unknown, and getting them to Rwanda because some were out of the country.
37. He also told the Monitor that he had advised the Accused to consider witnesses residing in Rwanda to refute specific evidence put across by the Prosecution and not only rely on the witnesses living abroad.
38. The Defence Counsel mentioned that in the evidence law of Rwanda, the quality of testimony is stronger than the quantity, hence why he insists on getting vital witnesses, especially those in Rwanda.
39. He said when he visits the Accused in prison; they ensure they have sufficient time to discuss the case. He also insisted that he has a good client counsel relationship with [REDACTED] R [REDACTED].
40. The Defence Counsel informed the Monitor that the decision of the Court to nullify the Gacaca decision was procedural and that the Prosecution is only limited to referring to the testimonies in the Gacaca case and not the decision.
41. The Defence Counsel further mentioned that they worked tirelessly to get the witnesses abroad to testify in the case despite the raised challenges. He queried whether the Dutch Embassy in Rwanda could assist in getting the addresses of the witnesses, [REDACTED].

**Hearing on 26 May 2022 at the High Court chamber for the International and cross-border crimes
based in Nyanza- Presentation of the Prosecution's evidence.**

42. The hearing was held before The president of the court judge [REDACTED] and Judge [REDACTED].
43. Prosecutors [REDACTED] represented the Prosecution.
44. The Accused was represented by The Defence Counsels - [REDACTED].
45. The hearing started with the Court summarising the submissions made by both parties.
46. The Accused requested the Court change his particulars to read R [REDACTED] [REDACTED] [REDACTED] [REDACTED].
47. The Court informed the parties that the hearing session would form a platform to interrogate the Prosecution submissions, especially the evidence they will rely on.
48. The Court inquired from the Prosecution about the indictment they relied upon against the Accused because the Prosecution had relied on various indictments in their submissions. The Prosecution informed the Court to use the indictment signed on 21 October 2021 because the Accused used his position as a Director at [REDACTED] to plan for the genocide, which led to mass killings of the Tutsis who sought refuge in the Institute.
49. The Prosecution submitted to Court that the Accused was charged with complicity in committing genocide because he supplied tools used to kill Tutsis and used the [REDACTED] car to go and bring the gendarmes to kill the Tutsi and further rewarded the killers with a bull.
50. The Prosecution further informed the Court that the Accused was facing the crime of extermination as a crime against humanity because he brought the gendarmes to the [REDACTED] that killed Tutsis seeking refuge there.
51. The Court proceeded to inquire about the Accused's role in the death of [REDACTED]. In responding to the Court, the Prosecution mentioned that the Accused brought the gendarmes who killed [REDACTED]. The Prosecution further submitted that the Accused was present when [REDACTED] was killed and rewarded the killers.
52. The Court asked the Prosecution to explain who gave the instructions and their nature. On the instructions, the Prosecution stated that they relied on witnesses who said this happened in a meeting led by [REDACTED].
53. The Court also sought clarification from the Prosecution on; i) the composition of the security council, ii) its purpose, iii) the nature of the instructions, and iv) the Accused's role in those

instructions. In response, the Prosecution stated that the council was composed of the former top leaders [REDACTED], and the Accused.

54. The Prosecution added that the council was responsible for supervising security issues in the institution, profiling persons causing insecurity, accomplices, and Tutsis, also determining who would be killed. However, the Prosecution noted that they do not have minutes of the security council but would rely on witnesses to corroborate the information.
55. On the nature of the instructions, the Prosecution stated the security council placed a bounty on [REDACTED] as a reward for anyone who found him. They also informed the Court that the Accused was implicated for playing a role in the meetings and the death of [REDACTED] because he sent him for a work mission to have him killed.
56. The Court, during the session, sought clarity on how the Accused committed acts of genocide based on the evidence presented before the Court. The Prosecution stated that they rely on a witness to collaborate the evidence.
57. The Court also sought clarity on whether the Accused individually committed the crime of genocide or if they had any information on the killing of [REDACTED]. In responding to the question, the Prosecution informed Court that they did not have that information.
58. The Prosecution informed the Court that their submissions on the death of [REDACTED] wholly relied on what the driver told the deceased wife. He further informed the Court that the Accused was the catalyzer of the killing of the Tutsis who sought refuge at the [REDACTED].
59. The Court interrogating the Prosecutions submissions on the Accused's role in the killings of the Tutsis at the Institute, asked the Prosecution to explain the difference between the Accused person's role and that of [REDACTED].
60. The Prosecution that the Accused ferried the gendarmes to [REDACTED] held a meeting with them and started shooting at the people who had taken refuge there using grenades and guns. As evidenced in the case of [REDACTED], The Accused (the deputy) and [REDACTED] (President) were in the meeting where they decided on the reward to be given to the gendarmes. The Prosecution requested that the Court refer to the case file for further information on the issue.
61. The Prosecution proceeded to mention that [REDACTED] R [REDACTED] was not mentioned in the case because he not only participated in the killing but also brought people to dispose of dead bodies in pits and later rewarded them with money and sweet potatoes.

62. On the allegations that the Accused ordered people to be thrown in pits, the Prosecution stated that the Accused asked civilians to clear the "dirt" and throw it in [REDACTED] pits. He informed the Court that "dirt" referred to Tutsis.
63. In responding to the question on the difference between the crisis committee and the civilian auto defense, the Prosecution stated that the crisis committee was at the institute level dealing with the security, and the civil auto defense was at the national level.
64. The Prosecution mentioned that the civil auto defense was a strategy used to make the Interahamwe fight people who were opposers to the government.
65. The Prosecution further submitted that there were soldiers and gendarmes in [REDACTED], but the gendarmes killed the Tutsis, not the soldiers.
66. The Prosecution submitted that the Accused committed these three crimes from the 26-30/04/1994. For attending a meeting accompanied by [REDACTED]; ordering [REDACTED] to arm staff working at [REDACTED] with tools used to kill the Tutsi. That among those killed were; [REDACTED] and others.
67. The Prosecution further submitted that the Accused be charged with complicity because he armed people to kill the Tutsis based on the above-outlined facts.
68. On the crime of complicity, the Court directed the Prosecution to explain how the accused, [REDACTED] R [REDACTED], had killed people. The Prosecution stated that it was guided by the case of The Prosecutor v. Jean-Paul Akayesu where the ICTR ruled that one can be charged for both crimes. However, the Court noted that the Accused could not be punished for both. Thus, one can be charged as an individual or as an accomplice.
69. On the crime of extermination, the Prosecution stated that it was because of his role in attacking and killing the displaced persons who were civilians and had taken refuge in Gakera.
70. The Court asked the Prosecution to explain why they were not considering it as one crime since the people killed were the Tutsi who had fled to Gakera. The Prosecution stated they were looking at the intention of extermination, and the plan was to exterminate the Tutsis. Between 1,000 and 2,000 people had taken refuge, and numerous people were killed. Thus, killing 1,000 civilians is genocide and should also invoke extermination as a crime against humanity.
71. To emphasize this, The Prosecution mentioned that Article 2 of the 1948 Convention describes **genocide as the act that involves killing people of a group that shares their ethnicity or skin colour**. He stated that in Rwanda, ethnicities appeared on identity cards; Tutsi, Hutu, and Twa. The Prosecution that this should not be considered an ethnic based on Rwanda's history. Even

- those who looked like Tutsi were killed since the killers checked the description on the Identity cards, which is why the Prosecution stated that the people killed were people of a certain group.
72. The Prosecution referenced Article 91 NO 68/2018 of the law regarding genocide offences and penalties in general, which states that people were killed based on the aforementioned points.
73. He further mentioned that killing people because of their ethnicity, the plan to kill them, helping, ordering, or inciting others to kill someone or people, and giving foundational support to commit these acts amounted to the crime of genocide.
74. Based on the Prosecution's submission, the Court requested the Prosecution to show the legal provisions in Rwanda and combine them with what the Accused did. Responding to this, the Prosecution mentioned that the Accused committed the crime by calling the gendarmes and bringing them to ICTR, knowing well that there was an order to kill the Tutsis. That is an indication that that was an indication he had the intention to commit genocide.
75. Further, the Accused's role in the genocide was providing fundamental support; however, they mentioned that the Accused should be held liable for the death of [REDACTED] by giving instructions for him to be killed.
76. The Court also sought to understand who gave instructions and the Accused's role in the genocide. The Prosecution stated that for purposes of genocide, the Accused was the perpetrator. However, the Prosecution charged him as an accomplice to those killed in his absence by the gendarmes.
77. The Prosecution informed the Court that the Accused is charged with the genocide as a perpetrator. Despite the law providing for the crime, other provisions emanate from the previous cases in the ICTR and ICTY. Further, he stated that the Accused's crimes do not imply that he took a machete and killed a Tutsi; the Prosecution can follow the actions and rulings of cases judged by International Criminal Tribunals and accuse him of that crime. They cited the case of ***Ferdinand Nahimana and Ngeze Hassan***; *it was mentioned that, even though they didn't reach the site of the genocide crimes, they provided fundamental support for the genocide to take place and can be accused of the crime of genocide.*
78. The Prosecution submitted that the Accused should also be punished for the death of [REDACTED]. According to the driver who had traveled with them, the Accused went with [REDACTED], and he never returned.
79. The Prosecution also informed the Court that the Accused had planned to exterminate the Tutsi. The Prosecution would produce a witness that heard the Accused say that "*the issue of Tutsis will be solved if they all die and that life was not easy because of giving an easy life to the Tutsi.*"

80. The Prosecution submitted that the Intentions of the Accused were evident, having played a role in killing his colleagues. The Prosecution submitted that the Accused had prior knowledge of Tutsi displaced persons in Gakera and that they could defend themselves, bringing in the gendarmes (police) to kill them.
81. The Prosecution referred to the case of [REDACTED], who was attacked by the Interahamwe (militia) in the camp and was later killed with the knowledge of the Accused. Thus, the holding that there was intent to commit genocide in this case.
82. The Prosecution stated that on the intent to commit the crime of genocide, they relied on article 43,83 of the criminal procedure, saying that there are acts that are punished in the crime of genocide.
83. Article 2 of the criminal procedure describes the intent to commit the crime, an accomplice in the crime of genocide. It requires that the perpetrator has to have supported the crime, knows what he is doing, plot, and the act of extermination to accomplish that plan.
84. The Prosecution submitted that the Accused knew what was happening in the whole country; he was a leader in [REDACTED] and gave tools, including machetes and hoes used to kill Tutsis. The Prosecution further cited the case of *Semanza*, that one shouldn't be punished for what he destroyed but also for being an accomplice.

Evidence-based on witnesses

85. The Court asked the Prosecution to speak on witnesses they would rely on during the case. The Prosecution led the Court on the evidence-based on the witness as follows:
 - The first witness would testify of the role of the Accused in the death of [REDACTED] and narrates how it happened.
 - The second witness would testify on [REDACTED] death and [REDACTED].
 - The third witness worked in Administration at [REDACTED], during the genocide. The witness would testify how the Accused and [REDACTED] gave instructions to search for Tutsi colleagues and had them killed.
 - The witness further explained how the Accused buried these bodies, calling them "dirt" that shouldn't intoxicate their cows.
 - The fourth witness would tell the Court between 26-30/04/1994, the Tutsis who managed to defend themselves when attacked by the Interahamwe were killed under the instructions of the Accused. He also would narrate how the Accused incited them to dig pits to bury dead bodies so they would not intoxicate their cows.

- The fifth witness was a staff member of [REDACTED] who said the Accused attended many meetings, even those held by the crisis committee attended by one ethnicity.
- The sixth witness would testify on the speeches of the Accused when attending security meetings that took place, receiving the gendarmes.
- The seventh witness saw the Accused with the gendarmes when people fled from [REDACTED].
- The eighth witness states that there was a meeting of veterinary doctors on 20/04/1994 in which the Accused was in attendance. During the meeting, they planned how they would kill the Tutsis.

86. At this juncture, the Court adjourned and would resume the hearing on the 7th June, 2022.

Meeting with [REDACTED] R [REDACTED] [REDACTED] Mageregere Prison held on 28 April 2022

87. The Monitor met with the Accused in the presence of an interpreter.
88. The Accused informed the Monitor that he was happy that the Gacaca ruling was set aside by the High Court.
89. The Accused told the Monitor that the Prosecution was detailing the accusation claims against him during the hearing. Still, they did not finish going through the crimes against humanity and complicity in genocide. He observed that the Prosecution appeared unprepared for the Court because the allegations were vague.
90. The Accused further told the Monitor that he was concerned that there was insufficient evidence in all the transfer cases
91. The Accused mentioned that the Bench did its best to be professional by asking the prosecution questions for their clarification.
92. The Accused also informed the Monitor that his Defense Counsel would visit Rubona to gather evidence.

Meeting with the Rwanda Bar Association (RBA) President [REDACTED], was held on 29 April 2022.

93. The Monitor met with the President of the RBA in the presence of an interpreter.
94. The purpose of the meeting was to discuss the insufficient fees paid to lawyers in the transfer cases.
95. The President of the RBA stated that would require a breakdown of why the fees are insufficient for the lawyers in the transfer cases.

96. This information would assist the RBA in making a compelling case for review before the Ministry of Justice.

**Meeting with [REDACTED], Head of International Justice and Judicial Cooperation
Department at the Ministry of Justice, held on 29 April 2022.**

97. The Monitor met with the Ministry of Justice in the presence of an interpreter.

98. The purpose of the meeting was to discuss the unreasonable delay in the transfer cases.

99. She stated that she would follow up on the delay in the transfer cases.

100. She also stated that there is a backlog in the Court of appeal; however, they will give priority to the transfer cases

Conclusion.

101. The case is on trial at the International Crimes Division of the High Court. The next hearing is scheduled for the 7th of June 2022, during which the court will interrogate the evidence to be relied upon by the defense.

102. The Monitor remains available to provide any information regarding this case.

Dated 16 June 2022