



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 December 2021 to February 2022

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1.0 INTRODUCTION

1. This monitoring report contains ICJ Kenya Monitor's activities in the transfer case of ██████████ ██████████ M ██████████ (herein referred to as the Accused) from December 2021 to February 2022 (herein referred to as the Reporting Period).
2. This report covers Court hearings and meetings with the Accused, Defence Counsel, the Prison Director, the Prosecutor General, and the Rwanda Bar Association President.

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 ██████████ M ██████████ 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 ██████████ initial appearance before Judge President ██████████. 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 ██████████. 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. 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.
9. 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.
10. 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.
11. 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.
12. On November 9 2021, the Court held a hearing to clarify evidence issued earlier at the Gacaca Courts against the Accused person by witness [REDACTED] based on a document kept by the CNLG. During this hearing, the Court concluded the case and stated that the Judgement would be delivered on December 23, 2021.
13. The Judgement was not delivered on December 23 2021, because Justice [REDACTED] [REDACTED] was elevated to the Court of Appeal.

3.0 Hearing held on January 18, 2022, at the High Court of Rwanda

14. The hearing was held before The President of the Court, Justice [REDACTED] and Justice [REDACTED]. Also present was Mr [REDACTED] - the Registrar.
15. The Accused was present and represented by Defence Counsel Mr [REDACTED] [REDACTED] and [REDACTED]
16. Mr [REDACTED] represented the Prosecution.

17. The purpose of the hearing was for the Court to introduce the new Judge [REDACTED], to the parties in the case.
18. However, the hearing did not proceed as only two judges were present in Court; therefore, the bench was not fully constituted.
19. Justice [REDACTED] explained that the Court received a medical report stating that Judge [REDACTED] was [REDACTED]. The doctor told the Registrar that the Judge [REDACTED]. The medical report was circulated for both the Prosecution and the Defence to confirm the veracity of the information.
20. The President of the Court further explained that there had been several delays in the case attributed to various reasons; an investigation caused the delays that they had to carry out, on evidence issued earlier at the Gacaca Courts against the Accused person by witness [REDACTED] based on a document kept by the CNLG. It took them time to get the information.
21. He added that they would be ready to give the judgment when they got the information, but one Judge was appointed to the Court of appeal and was replaced by a new one who needed time to read the case file. He pointed out that the adjournment of this hearing was because Judge [REDACTED] was indisposed, and therefore, it was beyond the control of the Court.
22. The Court adjourned the hearing to March 24, 2022, and noted that if Judge [REDACTED] [REDACTED], the Court would summon the parties for a hearing.

4.0 Meeting with the Accused held on January 19, 2022, at Mpanga Prison

23. The Monitor held a meeting with the Accused at Mpanga Prison in Nyanza on January 19 2022. An interpreter assisted the Monitor.
24. The Accused recounted that the purpose of the hearing held on January 18 was to introduce the new Judge to the parties; however, the case did not proceed because Judge [REDACTED] [REDACTED] was [REDACTED]. The Accused expressed satisfaction with the Court explaining the circumstances for the adjournment and giving the parties the medical report to interrogate its contents.

25. The Accused, however, expressed frustration in the long period that his case has taken. Notably, he stated that the case concluded on October 13, 2020, before it was re-opened.
26. He opined that examination of the Gacaca proceedings from the CNLG confirmed there was no concrete evidence against him and was confident that the Court would find him innocent once they objectively reviewed all evidence on the table.

5.0 Meeting with the Defence Counsel held on January 20, 2022

27. The Monitor held a meeting with Mr [REDACTED], M [REDACTED] Defence Counsel, on January 20, 2022.
28. Mr [REDACTED] told the Monitor that the evidence produced in Court by the Prosecution was not strong enough to sustain a conviction. He added 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.
29. The Defence Counsel told the Monitor that they had made efforts in contesting the delay in the case. He further explained that they had appealed the decision to re-open the case; however, the decision from the Court of Appeal was not in their favour.
30. The Defence Counsel expressed dissatisfaction with the fees paid to him by the Rwanda Bar Association because there has been an unreasonable delay in the case. He noted that the funds disbursed to Defence Counsels in the genocide cases were limited. There had been previous discussions with the Rwanda Bar Association to review their contracts; however, this was not implemented. He expressed that this resulted in many financial constraints on his work.
31. The Monitor told Mr [REDACTED] that she would raise the issue of the contracts with the Rwanda Bar Association.

6.0 Hearing held on February 24 2022, at the International Crimes Chamber of the High Court

32. The hearing was held before Justice [REDACTED], Judge [REDACTED] and [REDACTED]. Also present was Mr [REDACTED] - the Registrar.

33. The Accused was present and represented by Defence Counsel Mr [REDACTED] and [REDACTED]

34. Mr [REDACTED] and Ms [REDACTED] represented the Prosecution.

35. The President of the Court stated that the new Judge on the bench, Justice [REDACTED], had been given ample time to study the case file. He informed the Court that the purpose of the hearing was for the Court to read a report of the trial for the parties to ascertain whether it was accurate.

36. The Court read the report of the case as follows:

- i. The Accused was charged with conspiracy to commit genocide and the crime of being an accomplice of Genocide perpetrators.
- ii. The Accused was a refugee in the Netherlands. In November 2012, the Rwandan Prosecution requested his arrest and extradition from the Netherlands to prosecute the crimes before the Rwandan Court.
- iii. Upon arrival in Rwanda, the Prosecution accused Mr M [REDACTED] of the following acts of genocide, genocide conspiracy, complicity in committing genocide, and inciting people to commit genocide:
 - a) for holding a meeting on 08/04/1994 in his home planning to kill Tutsis; In that meeting, they allegedly made lists of Tutsis discussed setting up roadblocks and where they would get guns to kill the Tutsis.
 - b) He was also accused of being among those that gave military training to the youth in the CDR political party, distributing weapons and leading attacks all around the Nyakabanda sector and in its surroundings; and
 - c) He allegedly encouraged and incited others to take part in the killings and founded RTLM radio that incited people to take part in the genocide.
- iv. The Prosecution explained the above acts of genocide, genocide conspiracy, complicity in committing genocide, and inciting people to commit genocide. The Prosecution only charged him with being a genocide accomplice and conspiracy to commit genocide during the trial. Still, the acts constituting the crimes did not change.
- v. At the beginning of the trial, the Court was requested by the Prosecution based on article 8 of the Organic Law No 04/2012/O.L of 15/06/2012 ending Gacaca courts and provisions on how to resolve cases that were within its jurisdiction quashed the decision of an appeal in the Gacaca court in Nyarugunga sector that had found the Accused guilty of the crime of

looting.

- vi. The Accused pleaded not guilty and denied all the charges against him. He said that it is proven by the fact that towards the end of 2012, he was given a passport-like any other Rwandan citizen and to obtain it, had to prove his good conduct and that he was not on the list of suspected genocide perpetrators that used to be published every year by the prosecutor general.
- vii. Additionally, he stated he never committed the crimes accused of because they were never brought forward in the Gacaca courts, and was not mentioned during the time of gathering of information of those who participated in killing the Tutsis at Nyakabanda sector where he lived because during the genocide he was not in Kigali.
- viii. Both sides were given adequate opportunity to provide evidence, including witnesses who testified against or favour one of the parties. Each party had a chance to cross-examine the witnesses publicly. Some of the witnesses who testified were under protection, others testified under aliases, their voices were modified, some testified in public, and the Court questioned others.
- ix. In refuting the testimonies of the Prosecution witnesses, the Accused stated that they were contradictory because, generally, they were coerced and begged to give false testimonies and that many of them indicated that they were not the authors of the written testimonies produced during the investigation.
- x. On the other hand, the Prosecution said that the Accused Defence witnesses' testimonies generally were characterised by contradictions and seemed not to know the things they testified about in Court regarding him not being present in Kigali when the genocide occurred. Therefore, in their view, the Defence witnesses failed to repudiate the evidence provided by the Prosecution proving that the Accused was in Kigali during the genocide.
- xi. The Court carried out an investigation regarding documents kept by the CNLG to find the information presented in the Gacaca courts of the Rwezamenyo/ Nyakabanda sector. The Prosecution and the Defence teams were given adequate opportunity to interpret the documents retrieved from the CNLG. This marked the end of the trial phase, but as the Court was planning to give its Judgement, one of the judges in the panel presiding over the case was transferred to carry out other functions and was replaced.

37. After reading the report, the Court invited the parties to comment.

38. The Prosecution stated that they agree with the report and have nothing to add.

39. At the invitation of the Court, the Accused stated that the report of the case was indeed

accurate. However, he wanted to clarify some information regarding the meeting of 08/04/1994. He pointed out that the Prosecution accused him of holding a meeting at his house. They also accused him of summoning a meeting of different conseillers (sectors leaders) in Kigali to plan the killings and set up roadblocks.

40. The Defence Counsels stated that the report demonstrates how the trial was carried out in detail. They further requested the Court to give a date for reading the judgment as soon as possible.
41. The Court concluded the trial and stated that the Judgement would be rendered on March 17, 2022, at 11 am.

7.0 Meeting with the Accused held on February 25, 2022, at Mpanga Prison

42. The Monitor held a meeting with the Accused at Mpanga Prison in Nyanza on February 25 2022. An interpreter assisted the Monitor.

43. The Accused informed the Monitor that [REDACTED]
[REDACTED]
[REDACTED]

44. The Accused said he has [REDACTED]
[REDACTED]

45. However, the Accused [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8.0 Meeting with Prison Director held on February 25, 2022, at Mpanga Prison

46. The Monitor held a meeting with the Prison Director at Mpanga Prison in Nyanza on February 25 2022, regarding the issues raised by the Accused about being picked from prison with the detainee van.

47. The Prison Director stated that the standard operating procedure transfers the prisoners with the detainee van. He emphasised that it is not safe for the prisoners to be transferred in the double cabin pick up. The Prison Director added that the double cabin pick up is for his use in his official capacity, but he sometimes allows it to transfer prisoners when he is not using it.

9.0 Meeting with the President of the Rwanda Bar Association held on February 25, 2022

48. The Monitor held a meeting with [REDACTED], the President of the Rwanda Bar Association.
49. The purpose of the meeting was to discuss a complaint raised by Mr [REDACTED] regarding his lawyer fees.
50. Mr [REDACTED] acknowledged that the amount initially indicated in the lawyers' contracts has never been revised despite fluctuations in the exchange rate as the amount was stated in dollars(USD).
51. He added that he would discuss the possibility of adding the lawyer fees with the Ministry of Justice.

10.0 Conclusion

52. The Court has concluded the case and will deliver the Judgement on March 17, 2022.
53. The Monitor remains available to share any information regarding this case.

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