



To: [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 June and July 2022

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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 ██████████ R ██████████ before the Judiciary of the Republic of Rwanda.
2. The report activities include interactions with various stakeholders between June 2022 and July 2022 ("Reporting period").
3. During the Reporting Period, the Monitor undertook three missions to Rwanda to monitor the ██████████ R ██████████ case (hereinafter referred to as the Accused).
4. Therefore, this report covers hearings at the High Court, meetings with the Accused, his Defense Counsel, and the President of the Rwanda Bar Association.

Detailed Report

Background

5. The International Crime Unit of the Dutch National Police arrested ██████████ R ██████████ in March 2019. This followed a request by Rwanda authorities for the extradition of ██████████ R ██████████
6. The Hague District Court ruled on 23 May 2019 that there were no grounds to decline the extradition request by ██████████ R ██████████ to Rwanda, which led to an appeal of 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 the Accused arrived to conduct investigations, and thereafter the Prosecution was also allowed five days to conduct investigations.
11. On 12 August 2021, the Accused was arraigned at Kagarama Primary Court for a hearing on his provisional detention.
12. 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] [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] official vehicle to help kill 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.
13. 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
14. 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.
15. The Accused's provisional detention was not extended by an additional thirty days after the lapse of the second batch of thirty days that expired on 23 October 2021. The case was filed at the International Crimes Division of the High Court on 21 October 2021.
16. The hearings at the International Crimes Division of the High Court began on 23 March 2022.

Hearing held on 7 June 2022 at the High Court chamber for the International and cross-border crimes based in Nyanza.

17. The Accused was present in Court.
18. [REDACTED] the Accused person's Defence Counsel and the Prosecution represented by Prosecutor [REDACTED] and Prosecutor [REDACTED] were also present in Court.
19. The Court began by notifying the parties that one of the Judges constituting the Bench had been transferred to another Court and the Judge appointed to replace him was yet to be sworn in. They added that the said Judge had to read the case file before resuming hearings.
20. Thus, the Court notified the parties present that all the hearings scheduled for 14 and 15 June 2022 could not proceed as planned. The Court further directed that the parties agree on a date on which the hearings would resume.
21. The Defence Counsel stated they had no objection to the adjournment of the hearing. He further mentioned that he had informed the President of the Bar Association of his intention to appoint an assistant Defense Counsel in this case, who will need sufficient time to read the file; thus, the adjournment would be of good use to him.
22. The Prosecution also informed the Court that they did not object to the adjournment and proposed the date of 5 July 2022.
23. The Court adjourned the case hearing to 5 July 2022 at 8:30 am to allow the new Judge and new Defense Counsel sufficient time to read the case file.

Meeting with the Accused at Mageregere Prison held on 8 June 2022

24. The Monitor met the Accused at Mageregere prison with the assistance of an interpreter.
25. The Accused informed the Monitor that he felt his right to privacy was infringed when the prison authorities allowed journalists into the prison who took photos of him and other prisoners without their consent. He added that despite warning the media not to take his photos, they continued to do so.
26. The Accused stated that he had raised the concern about the journalists with the prison authorities, who apologised to him and promised that it was an isolated incident. They also assured him that the media would not publish the photos.

27. The Accused stated that he had information that the photos were published on different media platforms.
28. Regarding the hearing held on 7 June 2022, the Accused stated that Defence was ready to proceed and present its case on the day of the adjourned hearing. However, he had no complaints about the adjournment because the reason was reasonable.
29. The Accused updated the Monitor that the Defense Counsel would visit the site, where his house during the genocide was burnt, to collect any evidence that could beef up his case.
30. The Accused informed the Monitor that he has a good relationship with his Defence Counsel. He also cited that he has instructed him to gather as much evidence as possible to strengthen his Defence and case.

Meeting with Defence Counsel, [REDACTED] held on 9 June 2022

31. The Monitor met with the Defence Counsel in the presence of an interpreter.
32. The Defense Counsel informed the Monitor that he was happy with how the Court had conducted the hearings thus far. He pointed out that the Court accords all parties adequate time to submit.
33. On the adjournment of the hearing to 5 July 2022, he informed the Monitor that he was satisfied with the reasons given by Court.
34. He further informed the Monitor that he intends to bring on board another Defence Counsel to support him with the case, particularly on research and collection of evidence, etc. He added that he had the consent of the President of the RBA to onboard another Defence Counsel in the case at his own expense.
35. That Defence Counsel reiterated that he would use the adjournment period to onboard the Co-counsel by allowing him to peruse and understand the case.
36. The Defence Counsel indicated that he is ready to proceed with the case once hearings resume.
37. In conclusion, he informed the Monitor that his only challenge was getting witnesses, but he is in conversation with the Accused on the issue.

Meeting with the Accused at Mpanga Prison held on 6 July 2022

38. The Monitor met the Accused person in Mpanga prison with the assistance of an interpreter.
39. The Accused informed the Monitor that the Prosecution had many inconsistencies when detailing the charges, i.e. genocide, complicity in genocide and extermination as a crime against humanity.

40. The Accused stated that he was having challenges in getting witnesses because many Rwandans treat these cases with suspicion.
41. The Accused pointed out that the Delta wing at Mpanga prison does not meet international standards because it does not have an emergency exit.
42. The Accused complained that they were only given two pocket tissues, and all detainees could not get other sandals and underwear. In this regard, he wrote a letter to the director about the reduced personal supplies.

43. [REDACTED]
[REDACTED]

Meeting with the Prison Director, [REDACTED] of Mpanga Prison held on 6 July

44. The Monitor met with the Prison Director to discuss the issues raised by the Accused.
45. [REDACTED]
[REDACTED]
46. The director informed the Monitor that the Accused had given him the letter that morning and he had not yet read it; however, he stated would advise him on the way forward once he read it

Hearing held on 7 July 2022 at the High Court chamber for the International and cross-border crimes based in Nyanza.

47. The hearing was held on 7 July 2022 before Justice [REDACTED] Justice [REDACTED] and Justice [REDACTED]
48. The Accused was present in Court. Defence Counsels [REDACTED] and [REDACTED] were also present.
49. The Prosecution, represented by Prosecutor [REDACTED] and Prosecutor [REDACTED] were present in Court.
50. The purpose of the hearing was for the Prosecution to detail the charges against the Accused.
51. At the invitation of the Court, the Prosecution stated that they would like to explain complicity in genocide and to give clarifications about prosecuting a person for the crime of genocide while being an accomplice at the same time.
52. They pointed out that Article 2 of the Rwanda Penal Code defines an accomplice as someone who has aided and abetted an offender. From their understanding, Rwandan law does not prevent a person from being the perpetrator of a crime and an accomplice for the same offence. Still, the person cannot be punished for both offences, and the Court decides on the Accused culpability.

53. The Court inquired whether the Prosecution would charge the Accused with genocide and complicity in genocide.
54. In response, the Prosecution said they would charge him for both and let the Court decide on criminal culpability. They cited that the indictment submitted to the Court shows that the Accused committed genocide and complicity in genocide as he supplied tools, including machetes, to be used to kill Tutsis. Moreover, he used a vehicle of the institution to pick up gendarmes. The same gendarmes killed people in the Kagera camp, and he rewarded them with a bull.
55. The Court asked the Prosecution whether an offence is punishable only when there is a punishable act.
56. In response, the Prosecution stated that there is a punishable act in what they are alleging because the genocide was committed on the premises of [REDACTED] [REDACTED] and other persons who had taken refuge there were killed by Interahamwe militia and gendarmes.
57. This offence is punishable by Rwandan law, and the Accused aided and abetted to make this action possible in [REDACTED]. They alleged that the Accused handed out machetes and hoes used to kill Tutsis and that he knew what was happening. They further alleged that Tutsis had sought refuge at Gakera and managed to defend themselves in the beginning by using stones. However, when the Accused noticed those refugees were defending themselves, he went to the Prefecture Office to look for reinforcements. He then went back with gendarmes, who shot at the refugees who died on the spot. They emphasised that this description matched the definition of an accomplice in Rwandan law.
58. The Court inquired what role the Accused played in handing the tools, and in response, the Prosecution stated that the Accused instructed the storekeeper to hand tools used to kill people.
59. The Court queried whether a person prosecuted for complicity in genocide must have the intention to commit genocide.
60. In their rejoinder, the Prosecution stated that this issue was also argued in other cases like the case of Akayezu Jean-Paul. They explained that it requires a person to know their role and the importance of their contribution in commissioning the offence. They specified that what is required is to know if there was a plan, but the person does not need to have the intention to commit genocide; instead, what is regarded as their contribution to genocide.
61. At this juncture, the Prosecution referred to the statements of witnesses:
- i. In paragraphs 331 and 334, the witness was an [REDACTED] staff member and was not targeted during the genocide. He stated that the Accused instructed [REDACTED] to give tools to

assailants for an attack in Maraba Commune. Some of the assailants were [REDACTED]. This witness further stated that when F [REDACTED] noticed that this attack could be overcome, he went to bring gendarmes. The Accused went with Gendarmes, who killed the family of [REDACTED] and other Tutsis.

- ii. Another witness stated that [REDACTED] sent them for a meeting held on the premises, and he noticed that the Accused significantly supported those attacks on Tutsis.
 - iii. The fourth witness states that F [REDACTED] plotted with [REDACTED] of Ruhashya Commune called [REDACTED] to kill Tutsis. He heard [REDACTED] say that the gendarmes were not working, and the Accused went and picked them up.
 - iv. The fifth witness stated that they doubtlessly knew that it was the Accused who went and brought gendarmes who killed [REDACTED] and that those gendarmes did not protect the refugees who were on [REDACTED] premises but instead killed them.
 - v. The sixth witness stated that he saw people pass near his residence seeking refuge, and they attacked Tutsis at Rubona hill. He added that the refugees managed to defend themselves till the fourth day when the Accused brought gendarmes.
62. The Court questioned whether the sixth witness's evidence was hearsay.
63. The Prosecution averred that it was hearsay evidence. However, they pointed out that in the Accused's statement, he confirmed that meetings were held in his institution, that he chaired some of them, and that he went to requisition gendarmes from [REDACTED].
64. The Accused indicated in his statement that 10 – 15 gendarmes killed [REDACTED] and that things did not go as he wished. The Prosecution asserted that the Accused did nothing to protect [REDACTED] he must have been aware of the planned attack on [REDACTED].
65. At the invitation of the Court, the Defence Counsel asked the Prosecution to explain the categories of Soldiers mentioned in the witness statements.
66. In response, the Prosecution asserted that the Accused had first requested police officers to go to the [REDACTED] premises, but they did nothing wrong. He added that soldiers were also deployed in the [REDACTED] premises to protect the leaders. The Accused brought the gendarmes from Butare on 26 April 1994, and it is the same gendarmes who killed people.
67. At this juncture, the Prosecution began to detail the crime of extermination as a crime against humanity. They elaborated that the crime of extermination as a crime against humanity is provided under Article 92 of the Penal Code and Article 1 of the Law Governing Non-Prescription of Crimes.

68. They further expounded that the crimes against humanity are described in laws like Article 3 of the Statute of International Crimes and Crimes Against Humanity, in paragraph B, where extermination is explained. The law provides that the crime is committed when there is a general and systematic attack on civilians.
69. About the acts committed by the Accused, the Prosecution stated that he took gendarmes who shot at the refugees at Gakera. They added that the gendarmes were involved in killing [REDACTED] and other Tutsis who had taken refuge at Gakera and Rubona hill. In addition, some witness testimonies stated that the Accused paid people who collected and threw the dead bodies in pits on [REDACTED] premises.
70. The Court inquired whether the crime against humanity requires special knowledge.
71. In response, the Prosecution stated that it is not mandatory to have any special knowledge; simple knowledge is enough. They explained that after the dismissal of [REDACTED] [REDACTED] was appointed, and the Accused attended the induction ceremony. They added that the Accused took gendarmes to the [REDACTED] premises. At the same time, he was aware that genocide was occurring all over the country, thus showing his intention to commit an offence. They asserted that no law prevents him from being prosecuted for genocide and the crime against humanity.
72. The Court queried whether an Accused can be convicted of genocide and the crime against humanity. The Prosecution stated it was ideal for concurrence offences when a single criminal act is split into two or more offences. They added that it is provided under Article 62 of the Penal Code.
73. The Court asked why they are prosecuting the Accused as an accomplice instead of prosecuting him as responsible.
74. The Prosecution averred that some people took refuge in [REDACTED] as they fled from massacres and had managed to overpower the Interahamwe militia several times. They further stated that the Accused was aware of this, and after assessing the situation, he went and brought gendarmes. When they arrived, the gendarmes said they would survey the place, but they killed the refugees instead.
75. The Court inquired why they were prosecuting the Accused instead of the gendarmes.
76. The Prosecution asserted that they are prosecuting the Accused for aiding and abetting by bringing gendarmes. This is because if the Accused had not brought gendarmes, the Tutsis who sought refuge at [REDACTED] would not have died. Moreover, after the killings, the Accused went to the

crime scene and ordered that the bodies be buried. They reiterated that he was aware that the gendarmes were deployed to kill Tutsis because he paid the killers and the assailants always consulted the Accused on what they were going to do. In this regard, they requested the Court to assess the evidence that they would produce in upcoming hearings and convict the Accused of the three charges that he is currently being prosecuted for and convict him.

77. At this juncture, the Court invited the Defence to respond to the Prosecution. They further pointed out that the Accused used inappropriate language in his submissions.
78. The Prosecution requested the Court to tell the Accused to be respectful and to desist from using disrespectful language such as referring to the Prosecution as 'the RPF Prosecution', etc. They also said they were surprised that Counsel [REDACTED] is a professional, yet he signed the submissions without correcting the language.
79. Defence Counsel [REDACTED] said they prepared their submissions while the Accused was in pre-trial detention. However, the Accused has since become less suspicious of the justice system. In this regard, he added that the Accused was in a good mood that day, and they would prepare additional submissions that do not contradict the first ones. He also stated that the Defence got an assistant Defence Counsel and that they would both collaborate with the Accused efficiently.
80. The Accused asserted that he did not commit any of the offences he is charged with and that his Defence Counsels would assist him in changing the inappropriate language in his submissions. He defended himself as follows concerning the crime of genocide:
 - a) Regarding the crime of genocide, the Prosecution base it on three facts. The first is the meetings at Butare Prefecture Office. However, since his appointment in [REDACTED] in 1976, he had never been a member of the Prefectural Committee. He only attended the technical meetings as a leader of an institution in Butare. Still, he did not attend any other kind of meeting.
 - b) Regarding the crisis committee meeting, he affirmed that this committee had existed. Still, the Station Manager chaired it as the [REDACTED] comprised of three stations: Rubona Station, Ruhande Station and Songa Station. Each station had a Station Manager. He did not attend security meetings, but as a leader, he had to attend security meetings because it was mandatory, and he had to give reports of his institution. However, during the war, he could go there to get some fuel and meet others who had come for the same purpose.
 - c) He asserted that nothing special was discussed during those meetings apart from the Government programmes. [REDACTED] chaired those meetings until his dismissal on 19 April 1994.

██████████ replaced him, and the dates (24th – 26th April 1994) that the Prosecutor refers to came six days after his appointment, and no technical meeting was held in between.

81. The Court asked the Accused to comment on the documents about meetings referred to by the Prosecution.
82. The Accused stated that the letter they refer to was written in May 1994 and was about all staff members. He added that nothing about the military training was on the agenda of the meeting because people were planning to flee, and he was not in Ngoma to interfere in their business; if it had happened, it would have been done by the Ngoma Station Manager. He stated that the Prosecution could not link the meeting with the atrocities, considering they did not even have the meeting minutes in their file. He also pointed out that the *Prefet* did not convene; the Sous-Prefet convened it.
83. Concerning the crisis committee and security committee, the Accused explained that after the crash of the plane of President Habyarimana, an announcement was broadcast by Radio Rwanda ordering people to remain where they were or to go to safe places. The army declared this curfew on 7 April 1994; thus, they remained inside the institution until 9 April 1994, when people started to steal crops from ████████ fields. Then, they requested passes from Commune authorities for employees who provided emergency services like guards and farm workers to resume their duties.
84. The Court inquired whether he requested permission in writing or verbally.
85. In response, the Accused stated that the mayor gave them a written notice stating that some of their employees were allowed to go to work. After 10 April 1994, they held a general meeting of all people inside the station, including Hutus and Tutsis. They discussed how guards were overpowered and decided to request police officers from the commune authorities. The communal police officers arrived and reinforced the guards.
86. The Court asked if he could remember any names of the guards.
87. The Accused named one called ██████████ and stated that he was compromised to give false testimonies against him.
88. The Prosecution inquired how the witness was compromised.
89. The Accused stated that while he was abroad, he followed Genocide Commemorative Ceremonies at Rubona between 2014 and 2016; one of the participants asked him: "██████████ can you help us find facts to accuse former leaders of ██████████ who are abroad? If you find them, we will give you a cow." He said that he thought that they gave him that

cow to induce him to give false testimonies against the Accused because they emphasised that if he helped them find charges, they would give him a cow.

90. The Court asked the Accused whether he could remember the number of police officers who went to support the guards.
91. The Accused stated that he did not remember the number. He asserted that during the general meeting, he appointed representatives of the three quarters, [REDACTED] under the Station Manager. [REDACTED] lived in Ikirundi, leaders lived in Ikizungu, and lower-level employees lived in Igisharite. Those representatives were assigned to assess the needs to get support. [REDACTED] was their overall coordinator and was done in other [REDACTED] stations, Ruhande and Songa. The Station Manager led the Crisis Committee until its abolition between 24 and 26 April 1994, when the situation went beyond our control. The security committee was created in 1991 while the crisis committee was created in 1994.
92. The Court asked how the committees collaborated.
93. He stated that they collaborated as there were two people in each quarter, and the Crisis Committee stopped its activities just after the arrival of the attacks. He added that other people from [REDACTED] told the same story as [REDACTED] who told it to the Court of Appeals of Nyanza and was acquitted.
94. The Court asked whether the Accused could remember the representatives of Kirundi, Sharite and Kizungu.
95. In response, he mentioned one representative name [REDACTED]. He stated that the committee did not have any bad intentions; it helped [REDACTED] to remain calm, hence why people went there to seek safety. He denied killing his colleagues [REDACTED] and [REDACTED]. He stated that he was not present when [REDACTED] was killed and had no involvement with the people who killed him.
96. The Accused stated that he was sitting in his house, and people who were moving around told him that people, including gendarmes, had arrested [REDACTED]. Still, he could not know if those people were employees as he did not know the lower-level employees. He stated that he knew some at the time but could not identify them today because of the lapsed time.
97. The Court queried how they informed him while they were walking around.
98. The Accused stated that a story of death is always emotional. He added that they met on the road as his house had also been demolished and told him that [REDACTED] had been arrested. He also stated that they recognised him as a leader of the institution.

99. The Court asked if the Accused could identify those gendarmes; he averred that he did not know any of them, and he pointed out that the Prosecution falsely accused him of taking the gendarmes under his care, yet they came in their car.
100. The Court asked whether he could remember the date when [REDACTED] was killed. In response, the Accused stated that when he read affidavits, he found that witnesses gave different dates. He could not remember the exact date, but he thought it was between 26 and 27 April 1994.
101. The Court asked whether he continued to live in [REDACTED] after the death of [REDACTED]. The Accused stated that he lived in [REDACTED] until 27 June 1994, when we fled to Butare. He added that the statement of the Prosecutor that he roasted the cow meat and we gave some to [REDACTED] as a way of mocking him is entirely false, for he could not slaughter refugees' cows while [REDACTED] had its own. He also stated that the witness, [REDACTED] never said she saw him roast meat. He emphasised that roasting meat at that time was truly impossible.
102. The Court asked what he knew about [REDACTED] death. The Accused claimed that he learnt it from people who told him that [REDACTED] was killed on 9 May 1994.
103. The Court asked who told him. The Accused stated that many people went to his home in [REDACTED] and told him that he had been killed by Interahamwe militia and there were no gendarmes present at the time because they had already left. He added that the Accused was buried in [REDACTED].
104. The Court queried whether the Accused knew [REDACTED] personally. In response, the Accused stated that he knew him because he was also a researcher like the Accused and lived in Kizungu.
105. The Court asked whether the witness mentioned the Accused in his statement. The Accused stated that the witness did not mention him. In addition, he added that people who killed him are mentioned in cases tried by Butare and Nyanza Courts. He also stated that everyone who was abroad had been involved in that killing was mentioned.
106. The Court asked the Accused to specify what was said about him. He stated that he was mentioned with regards to bringing gendarmes. He added that in the Butare case of 2001, it was stated that the bull was slaughtered at two different places. They also stated that [REDACTED] was killed by a man called [REDACTED] and a young man called [REDACTED] (he might be dead).
107. The Court asked him to explain the incident regarding the bull. The Accused stated that the bull belonged to [REDACTED] and was not the only one that was slaughtered; they also slaughtered goats and sheep. He added that the witness, [REDACTED] explained that he did not know a person who told those people to go to claim a bull. He claimed that he was not involved in providing that bull, that

he had no rights to distribute the [REDACTED] property in that way and that those slaughtered had been stolen.

108. The Court queried how the Accused can affirm that the death of [REDACTED] must not be attributed to gendarmes. The Accused stated that the gendarmes had already left by 9 May 1994. He did not sign a contract about the duration of their mission, and when they noticed that the calm was restored, they left. Furthermore, he stated that [REDACTED] and his wife [REDACTED] were his friends.

109. The Court asked the Accused why the witnesses say [REDACTED] death should be attributed to intellectuals such as the Accused. The Accused stated that when they say intellectuals, they refer to [REDACTED] because the Accused was not the only person who had gone to school.

110. The Court adjourned the hearing to 8 July 2022 at 8:30 am.

Meeting with Defence Counsel, [REDACTED] held on 8 July 2022

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

112. The Defence Counsel stated they are facing challenges in getting witnesses as they only have one possible witness based in [REDACTED]

113. He stated that they are currently searching for more witnesses based in Rwanda and also looking for video evidence.

Hearing held on 18 July 2022 at the High Court chamber for the International and cross-border crimes based in Nyanza.

114. The hearing was held on 18 July 2022 before Justice [REDACTED] Justice [REDACTED]

115. The Accused was present in Court. Defence Counsels Mr [REDACTED] and [REDACTED] were also present.

116. The Prosecution, represented by Prosecutor [REDACTED] and Prosecutor [REDACTED] were also present in Court

117. The Court stated they would resume the hearing from where they had stopped. The Defence was invited to resume responding to the charges by the Prosecution.

118. The Defence Counsel stated that the Accused had instructed him to rectify several points in the submissions, including structure errors and mistakes made by the court Clerk. He, therefore, asked if he could upload them to the Integrated Electronic Case Management System (IECMS) and assess them during another hearing.

119. The Court stated that he could upload them to the IECMS, which will be assessed during the next hearing.

120. At the Invitation of the Court, the Accused stated that he was not involved in complicity in the genocide, which was the second charge against him. The Prosecution refers to the allegations that supplied traditional tools; however, neither the Accused nor [REDACTED] employees supplied those tools though [REDACTED] possessed them.
121. He pointed out that the Prosecution witness [REDACTED] alleged that the Accused, [REDACTED] and [REDACTED] held a meeting in [REDACTED] between the 25th and the 26th between 7:00 and 9:00 am. At the end of it, the Accused went to supply tools before asking for help from the Prefet. He asserted that this could not be possible because [REDACTED] lived in Kigali, and video conference technology did not exist then.
122. The Court inquired if living in Kigali was a hindrance to someone attending a meeting in [REDACTED]
123. In response, the Accused stated that [REDACTED] was living in Kigali unless he had come to reside near [REDACTED]. He added that [REDACTED] had been sent away from [REDACTED] and he could not set his foot there again, and the Court confirmed it in 2001 and 2002. The Defence stated that they would expound more on this point in the next hearing when they would have uploaded the updated submissions.
124. The Accused indicated that a prosecution witness said cleaners carried traditional tools except for Tutsis. He explained to the Court that those employees lived in different communes, and they left their places early morning, arrived in [REDACTED] between 7:00 and 8:00 and worked 8 hours per day. The supervisor gave them tools. He claimed the attack on [REDACTED] happened at 10 am, and the Prosecution had confirmed it. Referring to [REDACTED] statement, he stated that the tools could not be supplied at 7 am, intending to use them to reinforce attackers of [REDACTED] between 10 – 11 am.
125. The Court asked if [REDACTED] worked at the mentioned time.
126. In response, the Accused stated that he was a storekeeper and lived inside [REDACTED]. Witnesses quoted in the Defence submissions affirm that the assailants who attacked [REDACTED] were armed with weapons. The Accused claimed that [REDACTED] gave a different testimony because he was promised t a cow. The Accused also pointed out that a witness who called himself Secretary of the Accused's department told various stories to the Prosecutor, among others, that he was hiding in [REDACTED] while he was not because he gave a different testimony to the Butare Court.
127. The Court asked the Accused to explain the different testimony that he gave.

128. The Accused stated that the witness explained that from the 21st, he was hiding in his house; therefore, it was impossible to see everything happening at Rubona.

129. The Accused responded to the second accusation that he allegedly took gendarmes to kill Tutsis at this juncture. He indicated that [REDACTED] who was in charge of security organs that he called for help, was acquitted by the ICTR in 2014 of this charge of bringing gendarmes. He further gave the following three reasons why he could not have been an accomplice:

- a) His residence had been attacked before killing or harming anybody else in Isar;
- b) His house was demolished and his property looted; and
- c) This attack was conducted by the assailants who had attacked [REDACTED] to kill people, and he had gone to seek help.

130. The Court asked the Accused what he had to say about the accusation that she hated Tutsis. The Accused asserted that his institution employed the highest number of Tutsis. He stated that he even approved a paid mission for [REDACTED] (a Tutsi employee); if he hated him, he would not have approved that mission. He added that during a wedding party of one of the staff members, a relative to [REDACTED] news circulated that a family member of the groom had committed suicide. Due to his respect for cultural values, he accommodated the new couple in his house. He asserted that he could not have done it if he hated them. Moreover, he indicated that Isar covered an area of 675ha, but they were no roadblocks, except a non-operational one mentioned above.

131. The Court inquired whether anybody was killed at that roadblock. In response, the Accused said that nobody was killed at the roadblocks. He added that the Prosecution compared [REDACTED] to imply that they did not have to call security organs. The Accused stated that [REDACTED] should not be compared with [REDACTED] because [REDACTED] is made of open fields while [REDACTED] was a government institution. Therefore, he did not want people to fight in the government institution as they did in the field. He asserted that he informed the government that had entrusted the institution to him.

132. The Court asked the Accused to comment on the issue of remunerating people who buried the bodies. The Accused averred that they went to them and demanded remuneration, and as they did not have money, they gave him foodstuffs. He went to seek help before the attackers arrived, and when he returned with the gendarmes, he found that [REDACTED] had been attacked. There were around 10 – 15 gendarmes, while the assailants increased to around 5,000.

133. The Court inquired how the situation was before you went to seek help.

134. The Accused stated that the attack was imminent. The gendarmes tried to restore security, but the assailants increased (around 5,000), and the *Prefet* brought soldiers.

135. The Court queried whether killings had started at Gakera when he went to seek help

136. In response, the Accused stated that he went to seek help for the entire institution, not a part of it; when he returned, he found that [REDACTED] had been attacked and the refugees at Gakera were fighting to defend themselves. He added that they all went to welcome the *Prefet* when he arrived and addressed people telling them to go back home and those who had been attacked to remain in [REDACTED]. He stated that the *prefet* also told the refugees to go to Butare for their protection but doubted whether all of them left because [REDACTED] was extensive. He mentioned that a woman carrying a wounded child went to [REDACTED] and he looked for a car to take them to the hospital.

137. The Court inquired whether some people had been killed before the arrival of the *prefet*. They also inquired about the estimated number of assailants that attacked Butare.

138. The Accused asserted that some people might have been killed as they could hear fighting in the compound. He further stated that he could not estimate the number, but they were many. He referred to the Prosecutions utterances that Tutsis at Gakera would have defended themselves if the Accused did not bring gendarmes and that they were killed by Interahamwe militia. He maintained that if he had not gone for help, they would have been killed by the Interahamwe militia, and he would be responsible for those killings.

139. The Accused contended that some witnesses gave false evidence, such as the one that stated that gendarmes went shooting in coffee fields and forests. In contrast, others said that gendarmes went with the Accused in his car, alighted at [REDACTED] and started shooting. He also stated that none of the witnesses mentioned that his house was burnt, and this was important to prove that he was not as powerful as the Prosecution claims.

140. At this point, the Accused moved to the third accusation that he allegedly remunerated killers, and the Prosecution outlined some of the rewards like beer. However, he stated that [REDACTED] had no banana plantations and the bars were not operational then.

141. The Court inquired what proof they had that there were no banana fields and that the bars were not operational.

142. In response, the Accused stated that bars were closed due to the curfew. He added that they had some banana and sorghum fields in [REDACTED] for research, but there was nobody to brew the beer. Regarding the cow offered to killers who had killed [REDACTED] in the cases tried by Butare and Nyanza Courts, the Accused was not mentioned. The Accused told the Court that his accountant was a Tutsi called [REDACTED] and survived the genocide but has never accused him of distributing that money on the issue of money given to the assailants.

143. The Court asked the Accused whether they could regard what he had said so far as enough; therefore, there was no need not to comment on the Prosecutor's submissions regarding the crimes against humanity.

144. The Accused asserted that he had already said enough and therefore cannot speak only for the sake of it. However, he indicated that he would make an overall summary and stated as follows:

- [REDACTED] was like a small island floating on water in need of help. He was falsely charged with different things, including membership in political parties that he never joined, but his department employed the biggest number of Tutsis.
- The [REDACTED] was attacked, and he called for help, and he was also a victim because his house was destroyed and his property was looted.
- The prosecution witnesses were not smart, and he will explain how they are not smart through the Defence submissions.
- Perpetual offences existed in the past; the trespasser was punished, and their descendants were also punished for the same offence. One king abolished this practice and would like the king to act as a mediator between him and the Prosecution.

145. The Court asked whether the Defence Counsels are ready to Defend the Accused.

146. In response, the Defence Counsel said they would give a short introduction and go deeper in the next hearing. He stated the following:

- The Accused was charged with three crimes, and he pleaded not guilty to all the charges and explained his innocence; and he has been accused simply because of his high position in Isar.
- In the first charge, he is accused of the killings of [REDACTED] and the killings of Tutsis at Gakera.

- In the second charge, he is accused of distribution of tools used to kill Tutsis, requisitioning of gendarmes who killed Tutsis and remuneration of Interahamwe militia that killed Tutsis and
- In the third charge, he is accused of collaborating with gendarmes that killed Tutsis.
- The Prosecution should not show the elements constituting the charges in general but instead the Accused specific acts.
- Regarding the death of [REDACTED] the Prosecution explains that the Accused accompanied him to a mission in Cyangugu, where he was killed. However, the Accused explained that he did not go with him, and some witnesses confirmed it. The Prosecution accused R [REDACTED] of the death of [REDACTED] simply because he sent him to the mission and did not return.
- With regards to the death of [REDACTED] all the Accused witnesses affirm that he never set his foot where [REDACTED] was found and killed.
- The Accused explained that he saw Interahamwe militia from Mbazi and Rusatira communes preparing to attack [REDACTED]. The looting of Tutsi's properties was the causing an increase in the intensity of the genocide. Isar had the property that attracted the assailants. The Accused was concerned that his employees would be killed and the institution's property looted. He went to requisition for gendarmes to protect the institution. He was accompanied by [REDACTED] [REDACTED] who he had given a lift. The *Prefet* deployed gendarmes supposed to protect Isar and the people who were inside.
- The Accused was unaware that the gendarmes would kill people they were supposed to protect. The Prosecution bases this accusation on the fact that the former Tutsi *Prefet* had been replaced by a Hutu one and inferred that the *Prefet* deployed gendarmes to kill Tutsis.
- The Prosecution failed to produce evidence that the Accused requisitioned those gendarmes to use them to kill Tutsis. The Prosecution cannot show any single action that the Accused did with those gendarmes.
- The Accused stated that he saw the gendarmes for the first time at Rubona, and the *Prefet* didn't give him any particular message about the deployment of the gendarmes.
- In paragraphs, 352 – 353 of the Prosecution's submissions, one of the cancelled witnesses said that he does not know anything wrong with the Accused regarding the deaths of [REDACTED] [REDACTED] and the killings committed in [REDACTED] in general. He adds that R [REDACTED] should be accountable for what happened when he returned from Butare, but he does not substantiate the allegation.

- The Defence will adduce statements of witnesses showing that the Accused was never involved in the genocide.

147. The Court queried whether a manager who takes gendarmes to protect his institution has de facto authority over them if they disregard de jure authority.

148. The Defence confirmed that the Accused had no involvement because he was unaware of what they would do.

149. The Court inquired whether the intention to exterminate Tutsis who were there could be inferred from the actions, including bringing gendarmes.

150. The Defence Counsel averred that some witnesses confirmed that a meeting was held in the morning, and it was decided to seek help. As the Accused was the manager of the institution, it was up to him to go to seek help. That Hutus and Tutsis in the institution co-existed peacefully, and both needed protection, for they were all threatened. He added that by assessing the Prosecution submissions, there are no facts that make him responsible for committing genocide. He is also prosecuted for being responsible, complicit and an accomplice. He expounded that complicity and being an accomplice are explained clearly in the cases of ██████████ He indicated that the Prosecution did not provide evidence to show that the gendarmes came intending to kill Tutsis. He concluded by stating that he would analyse the Prosecution witness statements to bring out the contradiction.

151. The Court adjourned the hearing to 19 September 2022.

Meeting with Defence Counsel, ██████████ held on 19 July 2022

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

153. The Defence Counsel stated that the Prosecution detailed the charges. The Accused replied to the first charge of genocide in the hearing on 5 July 2022 and replied to the other two charges during the hearing on 18 July 2022. He stated that the Defence counsels also replied, referring to the law.

154. The Defence Counsel pointed out some contradictions in the Prosecutions submissions, such as the allegation that the gendarmes came in the Accused car and others stated that they came in their car.

155. The Defence Counsel asserted that it is impossible to charge the Accused with the three charges because, in his view, the Accused should either be charged with participating in the killings or being an accomplice, but he could not be both.

156. The Defence Counsel informed the Monitor that they asked the Prosecution to prove in the coming hearings that the Accused went with the gendarmes and soldiers intending to kill the Tutsi.

157. The Defence Counsel updated the Monitor that he would amend the submissions to improve them.

158. The Defence Counsel cited that they are experiencing difficulties in getting witnesses.

Meeting with the Accused at Mpanga Prison held on 20 July 2022

159. The Monitor met with the Accused with the assistance of an interpreter.

160. The Accused complained to the Monitor about going [REDACTED] with the prisoner van, which is open, thus causing him to get the flu.

162. The Accused informed the Monitor that he fell while handcuffed in the prisoner van due to his old age; therefore, he does not have balance. He added that the guard laughed when he fell.

163. The Accused complained about the delay in all the transfer cases.

164. The Accused informed the Monitor that he informed the Court that he called the head of the Prefecture to protect them when the militia invaded [REDACTED] but the Court took it lightly.

Meeting with the Prison Director, [REDACTED] of Mpanga Prison held on 6 July

165. The Monitor met with the Prison Director to discuss the complaints raised by the Accused.

166. On the issue of using the prisoner van [REDACTED] the Prison Director stated that he advised the Accused to [REDACTED] excluding him from using the prisoner van. He stated that he could not make that decision based on the Accused complaints only because it would be perceived as discrimination by the other detainees.

Meeting with the President of the Rwanda Bar Association, [REDACTED] held on 22 July 2022

167. The purpose of the meeting was to discuss the complaints made by several Defence Counsels regarding their pay by the Rwanda Bar Association.

168. [REDACTED] advised that the Defence Counsels write a joint letter explaining why their current pay is insufficient. He stated that he would use the letter to discuss with the Ministry of Justice the possibility of increasing the pay.

Conclusion

169. The Prosecution has completed detailing the charges, and the Defence is now responding to the charges. The next step will be for the Prosecution to begin to call witnesses.

170. The Monitor remains available to share any information regarding this case.

Date of Submission: August 15, 2022