



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]

Quarterly Monitoring Report for the [REDACTED] R [REDACTED] for September to  
November 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 [REDACTED] R [REDACTED] before the Judiciary of the Republic of Rwanda.
2. The report activities include interactions with various stakeholders between September 2022 and November 2022 ("the Reporting Period").
3. During the Reporting Period, the Monitor undertook four monitoring missions to Rwanda to monitor the [REDACTED] R [REDACTED] 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 [REDACTED] R [REDACTED] in March 2019. This followed a request by Rwanda authorities for the extradition of [REDACTED] R [REDACTED]
6. The Hague District Court ruled on 23 May 2019 that there were no grounds to decline the extradition request by [REDACTED] R [REDACTED] 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. [REDACTED] R [REDACTED] appealed this decision, but the Hague District Court decided on 23 December 2020 that the extradition of [REDACTED] R [REDACTED] to Rwanda was granted. The Hague Court of Appeal confirmed this decision on 4 May 2021.
8. On 26 July 2021, [REDACTED] R [REDACTED] was extradited to Rwanda for trial.
9. Upon his arrival, duty counsel, [REDACTED] was assigned to him by the Rwanda Bar Association (RBA). [REDACTED] is now the Accused's Defense Counsel.
10. The investigators had five days from the day the Accused arrived to conduct investigations, and after that, 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:
  - a) Crime of Genocide: R [REDACTED] is alleged to have ordered the killing of two employees of [REDACTED] a government institution he headed as a director-general.
  - b) Complicity in Genocide: R [REDACTED] is alleged to have participated in a meeting. He ordered the storekeeper of [REDACTED] to open the store and distribute machetes and other tools used to kill Tutsis. He is also alleged to transport "gendarmes" in [REDACTED]'s official vehicle to help kill Tutsis.
  - c) 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 the allegations against the Accused, the Prosecution requested that the Accused be detained for thirty more days to allow for further investigations. He explained that if the Accused was granted bail, he could interfere with investigations, especially since most witnesses were under his leadership at [REDACTED]  
[REDACTED]
14. The Accused denied the charges asserting that he did not commit any of the alleged crimes
15. On 17 August 2021, the Court found that there are compelling reasons to charge 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 given the gravity of the crimes.
16. 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.
17. The hearings at the International Crimes Division of the High Court began on 23 March 2022.

## Hearing Held on 19 September 2022 at the High Court in Nyanza

18. The hearing commenced at 8:42 am, and all parties were present. Prosecutor [REDACTED] represented the Prosecution, while Defence Counsels [REDACTED] and [REDACTED] represented the Accused.
19. The President of the Court began the hearing by stating that it would resume with Defence and asked them to clarify any concerns regarding the minutes of the previous hearing.
20. Defence Counsel [REDACTED] in responding to the Court, stated that they received minutes of the hearing late and had not had time to put the corrections in the IECMS. Still, there were no errors of substance, only typing errors. Therefore, instead of delaying the hearing, he requested the Court to rectify the system. The Court directed the corrections to be inputted and the Prosecution to check if anything was forgotten in the minutes. The Court then invited the Defence to proceed with their submissions on the allegations against the Accused.
21. Defence Counsel [REDACTED] revised the three crimes, starting from the crime of Genocide which consists of five elements, including the death of [REDACTED] and the refugees who were in GAKERA, and asserted that the witness pieces of evidence were all contradictory.
22. To demonstrate defense assertions, he highlighted the statement by the prosecution witness in paragraphs 352-354 of the submissions, who says that he saw the Accused but did not know well what was happening and that Tutsis and Hutus all together were fighting attackers in that area.
23. That the witness was also asked about R [REDACTED] role in the Genocide and replied that R [REDACTED] did not know what was happening, however, he went to Butare, and he did not go with him. Therefore he could only speak about what happened in Butare; the Accused could respond to including the meetings that took place there and the fact of bringing the gendarmes from Butare.
24. The witness stated that on 26/4/1994, there was an exterminating attack while a leader called R [REDACTED] had gone to the Prefecture to look for assistance. The

defense's witness statement collaborates with what R [REDACTED] said: when he returned from Butare, he found that his house was destroyed, which showed that he was a victim and did not participate in the Genocide.

25. The Court sought clarification on whether the defense was talking about this testimony or testimonies in general, as they had indicated earlier during their opening statement.

26. The Defence Counsel clarified and would elaborate on each testimony but afterward comment on the similarities of the witnesses' evidence. The two witnesses he had mentioned were only examples of the similarities in their testimonies.

27. Defence Counsel proceeded to state that the two witnesses spoke about the same thing, that Hutus and Tutsis were fighting and preventing the attacks at that time. Again, this witness in paragraph 334, the key Prosecution witness said before the Genocide, Tutsis and Hutus were united and that the attacks came from outside of [REDACTED]. The third witness also stated that the attacks came from [REDACTED] and [REDACTED]. He said that what could be asked of leaders is why they did not rescue the Tutsis who were targeted and that R [REDACTED] was one of those leaders.

28. Regarding [REDACTED] death, the witness said he was a watchman at [REDACTED] and that R [REDACTED] played a role in his death. He added that after the gendarmes flushed him out, they took him to R [REDACTED] who was with [REDACTED]. But this contradicts what he said in paragraph 335, where he did not mention that the gendarmes flushed him out. These two statements were contradictory. In the first place, he said that the gendarmes flushed [REDACTED] out and took him to R [REDACTED] who was with [REDACTED].

29. In contrast, in the second, he said that after the gendarmes flushed him out, they took him to the attacking group of Interahamwe who had come from [REDACTED] though R [REDACTED] was also present. The witness failed to elaborate on the Accused's role in that attack. In those attacks, many people were present but powerless to do anything.

30. The Court interjected, seeking clarity on what happened when they flushed [REDACTED] out and took him to R [REDACTED]. Responding to this, the Defence Counsel stated that the witnesses did not say what happened after he was handed over to [REDACTED] R [REDACTED] [REDACTED].

31. Further, the Court asked the Defense Counsel to clarify the similarities between the witnesses he spoke about.
32. In responding to the question, the defense stated, at the investigation level, the witness said that [REDACTED] was arrested and was beaten the whole night by the gendarmes who, in the morning, handled him to R [REDACTED]. But in the statement to the Prosecution, the witness neither spoke again about handling [REDACTED] to the Accused nor his role in that killing.
33. The Court observed that the statements from the witnesses seemed to complement each other rather than contradict each other. The Defense Counsel reasserted that they disagreed with the Court, maintaining that the witnesses contradicted each other.
34. Further, referring to another witness who was asked about the Accused's role in the death of [REDACTED] where he said that he was taken to Periro hall, where R [REDACTED] and [REDACTED] found them. The witness's testimony was contradictory because one had said that [REDACTED] was killed at the office of the general management of [REDACTED]. In contrast, the other says that he was killed in a gutter.
35. At this juncture, the Prosecution interjected and requested that the defense read the witnesses' statements as they were and not add anything to their analyses. In response, the Defence Counsel stated that the two witnesses use one word, "a gutter"; he does not see the difference in their testimonies. He asserted that they considered the differences and not the similarities in their submissions, including those that contained hearsay.
36. In response, the Court asked Defence Counsel whether they suggested that what the witness heard could not be considered shreds of evidence before the Court. The Defense Counsel responded in the affirmative that what the witness heard should not be considered unless supported by collaborating pieces of evidence.
37. The Defence Counsel proceeded with its submissions and highlighted a witness who was asked about [REDACTED] death. The witness said he saw him in front of the canteen, where a fire was lit, then a gendarme said that this Inyenzi must die; he even added that they came knowing all the Inyenzi who were in [REDACTED].

38. A few moments later, they heard the sound of the rifle; then he saw [REDACTED] passing by, wet from the rain, and heard a gendarme saying, *"I thought that I had shot this man, so is he resurrected?"* They then took him to open the safe box, and later they learned that [REDACTED] was killed.
39. The Defence submitted that this witness testimony spoke as an eyewitness, and nowhere did he mention that [REDACTED] was flushed out and brought to R [REDACTED] on this, he differed from the others. The witness did not speak about where [REDACTED] was killed, in the office or the gutter, as other witnesses specified. He did not make any reference to the Accused.
40. When submitting on [REDACTED] death, the defense referred to a witness who said that days before 20 April 1994, soldiers came to pick R [REDACTED] from his home. On their way, they met [REDACTED] they went aside and whispered to each other, then a soldier hit him in the side with a metal, and he died.
41. The Defense Counsel elaborated that it was common knowledge that in former Butare, the Genocide started after 20 April 1994 because the Prefect of Butare was dismissed from his position on 19 April 1994. And asserted that it would demonstrate this evidence and produce it to the Court, which would demonstrate that before 20 April 1994, the killings had not yet started as well as the link with the dismissal of the Prefect of Butare.
42. The President of the Court asked the Defence to clarify when the Genocide started. Answering this, the Defence said that the Genocide started on 1 October 1990 but shall demonstrate that it had not yet started in Butare on 19 April 1994.
43. The Defence proceeded to submit witnesses who stated that before the attacks, Tutsis and Hutu worked together patrolling the streets. However, that day, they killed [REDACTED] and [REDACTED] and wounded [REDACTED] which triggered the conflict. The Defence pointed out that the witness did not show the role of [REDACTED] and they talked about different versions of events.
44. The Court asked whether the second witness showed the role of R [REDACTED] in the killings, but Defence replied witness did not, as their testimony did not link the Accused to the killing.
45. The Court also mentioned that from the testimonies, the witness said that the Accused was with the gendarmes, and they went aside, whispered, and one of them hit him



with a metal. Does the defense mean that R [REDACTED] had no role? In response, the defense stated that the Genocide had not started in former Butare. Even if it had started, the witnesses still no demonstrate R [REDACTED]'s role.

46. The Defence Co-counsel proceeded by reasserting the same position that these witnesses contradict each other on who played a role in the death of [REDACTED]. Before 20 April 1994, the killings had not started in [REDACTED]. Documentation shows that some of the Tutsi who left [REDACTED] fled to [REDACTED] and there was no way they could have fled to [REDACTED] if the killings had already started there. Therefore, the real version is one of the second witnesses.
47. In concluding on the witnesses, the Defence Counsel stated that the first witness affirmed that [REDACTED] held a meeting and appointed people to go and look for [REDACTED]. In contrast, the second witness who hid [REDACTED] affirmed that [REDACTED] was taken from his home (the witness' home) by other people different from those mentioned by the first witness. In addition, the first witness said that between 21 April 1994 and July 1994, he was no longer in [REDACTED]. Yet, in his testimony, he spoke as if he was an eyewitness when talking about what happened in [REDACTED] during that period. In summary, the Defence reasserted that the prosecution witnesses had provided contradictory statements.
48. The Accused also submitted and clarified that one needed a contract to work at the [REDACTED]. That [REDACTED] was an institution, not a garden, where everyone could come and dig. [REDACTED] was someone who used to come to [REDACTED] to get some help to survive.
49. Further, the Defence, in summary, stated that to go on a mission, one required a mission order. The Prosecution had not provided evidence that R [REDACTED] went on such a mission as stated by the witnesses.
50. Further, some witnesses stated that if R [REDACTED] had not brought the gendarmes, the Tutsis who had taken refuge in [REDACTED] could not have been killed. However, like any other person, the Accused was terrified by the attacks at [REDACTED] and the majority said that until then, Tutsis and Hutus were fighting each other.
51. Therefore, the Accused could not have been involved in planning the Genocide since he was among those who protected [REDACTED] against external attacks.

52. The Defence Counsel further submitted that based on the testimonies, which were laced with contradictions, there is no way the Accused could have planned the Genocide and have his house destroyed.
53. To clarify the meetings mentioned by the witnesses, the Defence Counsel questioned how a layperson could know what was discussed in a meeting of leaders. Unless they precisely mention a meeting that was held and after which they name bad actions which followed as a consequence.
54. The Defence stated that R [REDACTED] was unaware of any meeting and did not participate in any planning meetings. But even if he participated in those meetings, he was invited by the government, and after attending, he would go back home and take no action, which could lead to being accused of being a killer.
55. In finalizing their submissions, Defence Co-Counsel [REDACTED] stated that the leader to whom the Accused went to get the gendarmes to protect the people was indeed the Prefect [REDACTED]. If the Accused had asked those gendarmes, knowing they were going to kill people, there is no way the Prefect would have been found not guilty of killing the Tutsis.
56. The Court sought clarity on [REDACTED] conviction, and Defence Counsel responded that it was the crime of omission because, as a leader, he did nothing to rescue the people who were being killed. On whether he was accused of giving the gendarmes to the Accused, the defense stated that he was not. However, the Prosecution gave the indictment and did not accuse him of giving the gendarmes to go to [REDACTED].
57. At this juncture, the hearing ended, and Court informed the parties that it would proceed with the hearings upon notice to the parties.

**Meeting with Defense Counsel, [REDACTED] held on 20 September 2022.**

58. The Monitor and the interpreter met with Defence Counsel [REDACTED] [REDACTED] who informed the Monitor that the defense had already prepared its submissions.
59. He said the Accused had approved the submissions and had his input factored in before they filed them, but the Court denied them.

60. The Defence Counsel said they had received feedback from the Court on the submissions indicating that the Court had not understood the submissions as filed by the Defence and had since reviewed the submissions with the Accused, which the Court had now accepted.
61. He said that he appreciated the gesture of the Court in allowing them to speak about the challenges they were having in locating the exact physical location of the witnesses in Canada and Switzerland.
62. They had already contacted the witness based in Switzerland through an intermediary, but the witness requested that he could only meet with them in a location in Europe. However, he refused to disclose his current location.
63. In locating him, the Defence Counsel used his resources because he was unsure whether the government had a budget for his logistics. However, they were considering adducing evidence through skype but only subject to whether the witness would be willing to testify.
64. As a result, the Defence Counsel informed the Monitor that they had convinced the Accused to consider local witnesses based in Rwanda. However, the Accused had shown reluctance citing reasons that the witnesses might be compromised; he was not ready to put their lives at risk.
65. On that, the Defence Counsel advised the Accused that local witnesses would form a better defense which he eventually accepted. He had held follow-up conversations with Defence Co-Counsel [REDACTED]

**Meeting with [REDACTED] F [REDACTED] at Mpanga prison in Nyanza held on 21 September 2022.**

66. The Monitor and the interpreter met the Accused at Mpanga prison in Nyanza.
67. The Monitor informed the Accused that he had met his Defence Counsel the previous day to discuss the case's progress.
68. The Accused appreciated the Monitor's efforts in following up on the progress of his case and appreciated the reports.
69. [REDACTED]  
[REDACTED]

He said he was settling and integrating well in the new prison after his transfer from Mageregere prison. He observed that his expectations of the prison standards had not been met. For example, the means to transport him [REDACTED] were inappropriate. It was an uncomfortable lorry, and he is usually handcuffed, making it difficult to hold himself from falling, which has caused him back pains.

70. He said he was concerned about prisoner's safety in case there was an emergency; there was no exit as the emergency doors are permanently closed

71. He also mentioned that since his transfer from Mageregere, the prison authorities had sent a representative to see him, [REDACTED]

72. He informed the Monitor that he is working with his Defence Counsels to get local witnesses in Rwanda. However, they are having some challenges contacting the witnesses because he has been away from Rwanda for a long time and did not know their whereabouts.

73. He also mentioned that after having discussions with his Defence Counsels, they agreed not to rely on witnesses outside of Rwanda because tracing them had proved difficult.

74. As a result, they have considered witnesses in Rwanda, some of whom are in prison, but he was not sure whether they would be willing to testify.

75. The Accused said he had shared the witness names with the Defence Counsel, who would start locating them to convince them to appear as his witnesses.

76. He also told the Monitor that he had other evidence that he feels will be relevant to his case and would present them in Court and forward them to his Defence Counsel.

#### **Hearing held on 17 October 2022 at the High Court, Nyanza**

77. The hearing started late (at 1:31 pm) because the Prosecutors had a problem with their vehicle, and it took them time to solve it.

78. All the parties were present; [REDACTED] and [REDACTED] represented the Prosecution. Defence Counsel [REDACTED] represented the Accused. Lead Defence Counsel [REDACTED] had notified the Court that he was unavailable because he had another case at the Court of Appeal.

79. At the invitation of the Court, the Accused and Defence Counsel resumed their submissions on the second charge of COMPLICITY IN GENOCIDE.
80. The Defence reiterated the Prosecution's arguments regarding the alleged actions by the Accused that constituted elements of the crime as follows;
- The action of giving orders and handing over the tools by the Accused that were used in [REDACTED] work and to be used in the killing of Tutsis.
  - Secondly, the action that provided support and assistance by the Accused contributed to making the killings possible, such as bringing the Gendarmes that resulted in the killings.
  - Thirdly, the act by the Accused promised the killers rewards in collaboration with other leaders, and supposedly the reward was given to the killers after killing [REDACTED]
81. Defence Counsel proceeded to analyse the witness testimonies in connection with the alleged instructions, including the weapons described in the testimonies. The Defence denied that the Accused had given the weapons.
82. The Defence Counsel further stated that if the Accused had the power, as it was alleged, and the intention to exterminate the Tutsis, he would not have asked for a meeting in the first place.
83. The Defence Counsel referred to witness testimonies on allegations of rewarding the killers. He poked holes in the testimony asserting that the witness neither proved how the Accused made the promises to reward nor explained any action or acts. Moreover, in the alleged killings, the role of the Accused was not explained.
84. The Defence Counsel further submitted that the witness provided contradictory testimonies. To demonstrate this, the Defence Counsel referred to the witness who said in [REDACTED] trial. He was the leader of the massacre in [REDACTED] and he was the one who told the Interahamwe that if they brought him [REDACTED] he would give them a cow, but what he said about [REDACTED] now being wholly attributed to the Accused. The Defence Counsel gave the case reference no. *RP 76/2/2000 on paragraphs 389-398.*
85. Turning to the third crime of extermination against humanity, the Defence Counsel referred to the allegations that the Accused brought gendarmes to kill the Tutsis who

had fled to GAKERA hill. He asserted that the Accused did not intend to bring the gendarmes to kill the Tutsis because of reasons stated in the first crime.

86. The Defence Counsel further asserted that they did not deny the action of bringing the gendarmes, and neither did the Accused. However, Defence said it would demonstrate that he brought them to protect the people in [REDACTED]
87. The Defence Counsel further argued that the Accused is charged with many different crimes, but they find that the actions are the same. They wondered why the Prosecution did not charge him with the same crime. Additionally, they did not understand how one could be an offender in one crime and still be accused as a co-offender in the same crime.
88. Responding to the question by the Court on whether the Accused did not have the power to stop the attacks, the Defense Counsel stated that the Accused did not have the requisite powers; that a person who failed to defend himself had no way to defend others.
89. Defence Counsel further asserted that the Prosecution had alleged that the Accused himself admitted that the meetings took place, which meant that he attended them. However, the Accused had rebutted this assertion that there were security meetings, but he did not attend them because he was not a council member.
90. Even if he attended these meetings, it did not mean he participated in the Genocide because a person can go to a meeting and live it without doing anything. In any case, the Accused accepted that these meetings took place, but he did not participate or attend them because he was not among those allowed to attend them.
91. The Defence Counsel highlighted the testimony of the second last witness, which he asserted contradicted other witnesses. The witness said that the meeting that the Accused allegedly led on 20 April was aimed at making lists of Tutsis who would be killed, but in the *case RP 76/2/2000*, they clearly explained who made the lists of people who were to be killed. The Accused was not included.
92. In closing their submissions, the Defence Counsel stated that for all the reasons they had explained, all the witnesses presented by the Prosecution were contradictory, and the benefit of the doubt should be given to the Accused as stated in article 111 of the Penal Code.

93. Regarding the crime of co-offence, Defence found that a person cannot commit a crime and at the same time be a co-offender. On the elements of the crime, there must be an act, the law that governs it, and the intention to do it. The defense submitted that they did not find that the Accused intended to kill the Tutsis when he went to bring the gendarmes.
94. Regarding the Butare killings, the Defence asserted that it had demonstrated and shown that no killings were committed in Butare. However, the Court directed the Defence to read the [REDACTED] case, which contained more information about the matter.
95. Turning to the admissibility of testimonies in Court, the Defence Counsel stated that it must have been found acceptably. Most importantly, the witness has to come to Court and testify about it, not based on hearsay.
96. The Accused, at this juncture, interjected and asked the Court to consider with discretion whether there was non-compliance with articles 3, 24, 29, 43, 95, 167, and 170 of the constitution of 2003, amended in 2015 and of 6 and 14 of the Transfer Law of 2013.
97. The Accused further invited the Court to examine the prosecution allegation that he was a member of the MRND party until 30/6/1991. He wondered if the objectives of that party were bad, especially since he saw the same goals duplicated in the current Rwandan constitution, re-incorporated into the constitution's preamble.
98. Responding to the question by the Court on whether the charges against him included being a member of the MRND party. The Accused stated that the charges that brought him from the Netherlands were part of the allegations and that the Prosecutor's office said he was a member of the MRND party.
99. The Defence Counsel, in support of the Accused, stated that the charges against him were three and had not changed; in accusing someone of committing Genocide, it was based on the fact that someone was a member of the MRND party and other political parties. Also, on provisions of the law, he reiterated the position of Defence that the Court considers, as the case progressed in the hearing, the question of non-compliance with the law.
100. The Prosecution asked the Accused to clarify the allegations of violations in the ten (10) articles he had listed in the constitution, which he believes had been violated.

101. The Defence Counsel stated they were not prepared to answer and asked the Court to give them time to prepare and respond later.

102. At this juncture, the Court ended and would proceed the following day.

#### **Hearing held on 18 October 2022 at the High Court, Nyanza**

103. The trial began at 8:30, and the parties were in attendance. [REDACTED] and [REDACTED] represented the Prosecution.

104. The Accused was present and represented by Defence Counsel [REDACTED] as Defence Counsel [REDACTED] was not available – he had another matter in a separate Court.

105. At the invitation of the Court, the Accused and Defence Counsel had the opportunity to make further submissions from the previous day's hearing. Still, the Defence stated they had nothing and that the Court could proceed with the next issue.

106. The Court then invited the Prosecution to speak about the witnesses who had complete identification so that the Court could contact them.

107. The Prosecution stated it had finalized the list of witnesses. They had a list of eighteen (18) witnesses, thirteen of whom wished to testify under protective measures and five (5) without protective measures. The Prosecution then requested court guidance on how to go about submitting the list with reasons that it included those who required protective measures.

108. The Court directed the Prosecution to submit the list of the witness they had prepared, and in return, the Court would submit the list to the Defence and the Accused.

109. The Court proceeded to remind the parties that the list's contents remain confidential, especially those who would testify under protective or unprotected measures. The information would strictly remain between the Court and the parties only.

110. The Court further directed that it examine the submitted list and advise the witnesses to be removed or retained. Thus, it requested that the Prosecution explain the list briefly on the relevance of the witnesses.

111. The Prosecution stated that the first list is for witnesses who want to testify without protection;



- The first witness demonstrates how the refugees in Gakera initially defended themselves, the death of [REDACTED] and that of [REDACTED] and explain the rewards by the Perpetrators.
- The second witness would explain the link in the relationship between the Accused and the death of [REDACTED]
- A third witness would testify about the Accused's involvement in the deaths.
- The fourth witness would also elaborate on how refugees in Gakera defended themselves, the three death of [REDACTED] and [REDACTED]

112. For those who will testify under protection, the Prosecution stated as follows:

- The first witness would testify about the death of [REDACTED]  
[REDACTED]
- The second witness would testify about the relationship between the Tutsis and the Accused during the Genocide, on the meetings held in [REDACTED] the arrival of the gendarmes, and their role in the killing of the Tutsis.
- The third witness would testify about the killing of Tutsis in Gakera, the killing of [REDACTED] and [REDACTED]
- The fourth would testify about the killing of refugees who had fled to Gakera and the meetings held in the compound.
- The fifth would testify about the massacre of refugees who had fled to Gakera in [REDACTED]
- The sixth witness would testify what he knows about the killing of the refugees who fled to [REDACTED]
- The seventh witness would also elaborate on the killing of these refugees.
- The eighth witness would tell the Court about the killing of the refugees who fled to Gakera and the killing of [REDACTED]
- The ninth witness would also testify about the killing of these refugees.
- The tenth witness would testify about the killing of the refugees who fled to Gakera.

- The eleventh witness would testify about the refugees who fled to Gakera and also talk about the meetings held in [REDACTED] the gendarmes who killed people, and the killing of [REDACTED]
- The twelfth witness would testify on three things: Accused conduct during the Genocide, how the Crisis Committees were managed, and how the killing of the refugees in Gakera happened.
- The thirteenth witness would demonstrate how the Genocide happened in [REDACTED] the death of [REDACTED] and the killing of the refugees who fled to Gakera.

113. The Prosecution explained that in instances where witnesses would testify about similar facts, it was informed by the categories of these witnesses and their proximity to the Accused; some had worked with the Accused and those who carried out attacks in [REDACTED]

114. The Court inquired whether the witnesses on the list submitted by the Prosecution were all those who were interrogated during the investigations or they were not included- in responding to the question, the Prosecution stated that not all of them because there are some whose identifications are not easily available and that those presented were those that were easily identified.

115. Further, the Court requested the Prosecution to explain their meaning by saying "the relationship between R [REDACTED] and Tutsis." The Prosecution stated that they meant the hatred the Accused had expressed overtly about Tutsis.

116. Defence Counsel [REDACTED] interjected on the Prosecution's response and sought clarification on whether the Prosecution's list of witnesses submitted in Court had all been interrogated during the investigation or were there those who had not been interrogated.

117. The Prosecution confirmed that the witnesses listed had all been interrogated during the investigation.

118. Further, the Prosecution stated that the list provided did not include all the witnesses to be brought before the Court. On the contrary, if they were required to submit a supplementary list, they would seek direction from the Court.

119. Turning to the Defence, Defence Counsel submitted that they have prepared a list of witnesses, some of whom we are still waiting for their identification to be confirmed.

120. Defence Counsel stated they had a list of seven ( 7) witnesses, and only one had requested protective measures.
121. The Defence Counsel further submitted that four witnesses were in Nyanza prison and wished to testify in Court and explained that two of their witnesses were in touch with the Prosecutor's office, including one requesting to be protected.
122. The Defence explained that there were three others whom the defense did not know their whereabouts, and they were still doubtful about whether they would testify as they had not given their consent.
123. Further, the Defence submitted that there was video evidence that the Accused would wish to present during the hearing about the commemoration of the Genocide, where persons stated that the Accused had treated and been good to them.
124. The Accused would also submit his scientific publications showing that he got along well with the Tutsis he worked with, including those he lent some money.
125. At this juncture, the Accused interjected and requested the Court to give more weight to documentary evidence and not oral testimony stating that human beings were prone to betrayal.
126. In response, the Court assured the Accused that it would consider all the evidence and was well aware of the weakness of some of the witnesses. The Court also said it would admit the video evidence the accused spoke about for the Court to watch.
127. The Defense Counsel further submitted that the list of witnesses provided included additional documents not related to the list and hence requested the Court to bear with them
128. Defence Counsel [REDACTED] explained that all the defense witnesses would testify on what they know about the Accused, his conduct, and character. In particular, the first witness, requesting protective measures, would explain that the Accused bore no hatred for Tutsis- he would explain that he was the one who sheltered the Accused from arrival until he left; he knew the Accused well.
129. The second witness would explain what he knew about the supply of weapons that the Accused is alleged to have instructed the guards to use to kill Tutsis, as well as testify about the Accused's conduct generally during the Genocide.
130. The third witness would testify about the Accused's relationship with other employees at [REDACTED] but especially the guards. The Defence explained that the

relevance of this was because the guards allegedly gave the weapons as tools to kill the Tutsis and would testify about the cow that was given to reward the killers and the conduct of the Accused during the Genocide.

131. The fourth witness would testify about the attacks at [REDACTED] and those who were involved in the attacks.

132. The fifth witness would testify about the character of the Accused and what he knew about the Accused's behavior and his role in the attacks in [REDACTED]

133. The Prosecution and Defence shared the remaining two witnesses. The Defence intended to ask them about the death of [REDACTED] and [REDACTED] how the Genocide was carried out in [REDACTED] and how the refugees on Mount Gakera were killed.

134. The Accused clarified that these two 'shared' witnesses had requested protective measures. The Defense Counsel affirmed that the two witnesses had requested protection. However, another three witnesses were yet to complete their full identifications. That defense would inform both the Prosecution and the Court in writing once they concluded and identified them.

135. The President of the Court observed that the Court found that it was not necessary to go and deliberate privately and assess those who remain removed from the list of witnesses provided. Therefore, the Court directed that all the witnesses provided by both sides should be summoned to testify. If it found that the parties needed to include supplementary witnesses after approving this list, the Court will consider such a request.

136. At this juncture, the hearing was adjourned to the 14<sup>th</sup> and 15<sup>th</sup> of November 2022, respectively, when the witness would appear and testify in Court.

**Meeting with [REDACTED] R [REDACTED] at Mpanga prison in Nyanza held on 20 October 2022**

137. The Monitor met with the Accused in the presence of an interpreter at Mpanga prison in Nyanza.

138. [REDACTED]  
[REDACTED]  
[REDACTED]

139. [REDACTED]

140. At the hearing, he expressed his disappointment that the Court did not take his biblical example of betrayal seriously, which as a result, he feels the Court did not get what he wanted to communicate.

141. He said he gave some articles to the Court for consideration because he felt the Prosecution had compromised his case. However, he felt that the Court did not give a conclusive response to the articles, which made him wonder whether the Court was invested in rendering him justice through a fair trial.

142. During his transfer case, the Prosecution had said that he was a member of the MRND political party, which the current ruling party in Rwanda later abolished.

143. He informed the Monitor that he was a member of the political party up to the year 1991 when multiparty was introduced in Rwanda. Since then, he had quit any association with any party.

144. The Accused said he intended to present video evidence in Court, which was online but has since disappeared since his case began; however, he has other evidence to produce in Court.

145. He also mentioned that he has confidence in his defense team, and they are working very well together to assert his rights and obtain a fair trial.

**Meeting with the Defense Counsel [REDACTED] held on 20 October 2022.**

146. The Monitor met with the Defence Counsel in Kigali.

147. Defence Counsel stated that the case was moving to a critical stage, and they were working with the Accused to ensure that they had all the relevant witnesses in place and ready.

148. He observed that the Defense Counsels had established a good working relationship with the Accused, which had assisted them in progressing their case.

149. Defence Counsel said he was happy with his Co-Defence Counsel, who complimented him in the case, and they had also created a good relationship with the Accused.

150. He concluded the meeting by saying they would produce all the available evidence before the Court and were confident they would get a fair hearing.

**Meeting with the President of the Rwandan Bar Association on 10 November 2022.**

151. Accompanied by the Chair, Council Member and Executive Director, the Monitor met with the President of the Rwanda Bar Association in his office.

152. In the meeting, discussions centered on the continued delay in getting hearing dates at the Court of Appeal.

153. The President mentioned the backlog of cases at the Court of Appeal registry. However, he promised to reach out to the President of the Court of Appeal to express concern about the delay in hearing appeals in the transfer cases.

154. The President also noted that he would follow up with the relevant Defence Counsels better to understand the root and cause of the long delays.

155. Finally, the President mentioned that on the remuneration of advocates, he talked with the Minister of Justice, who said there are limited resources but are working on it. However, he said to support the Defence Counsels in making a case for an increase in the legal fees; he was working with the advocates to prepare a breakdown of the expenses incurred during the trial process, which he will use as evidence to convince the Ministry to increase the resource allocation.

**Hearing Scheduled on 14<sup>th</sup> and 15<sup>th</sup> November 2022, International Crimes Division, Nyanza**

156. The hearings did not proceed as scheduled because the President of the Court was attending training. For the above reason, the hearing was adjourned, and new dates were set for the 29<sup>th</sup> and 30<sup>th</sup> of November 2022.

**Meeting with [REDACTED] at Mpanga prison in Nyanza held on 15 November 2022**

157. The Monitor met the Accused in the presence of an interpreter.

158. The Accused told the Monitor that the Defence Counsels had informed him about the postponement of the hearings and attendant reasons.

159. The Accused observed that the hearing was getting into the substantive phase of adducing the Prosecution witnesses' evidence.
160. The Accused observed that, in his view, he suspected that the Prosecution witnesses' testimonies were fabricated and therefore was disappointed.
161. He said that the Defence had approached witnesses who expressed fear to testify. He found this to be questionable and concerning.
162. He also told the Monitor that they had trouble getting witnesses in Rwanda. For example, they had looked for one who used to work at the BPR bank until 2008, so when his Defence Counsel went there to look for him, he could not get any leads as to his whereabouts, and they thought this was suspicious.
163. Regarding the witness based in Switzerland, the Accused explained that they no longer thought he would be useful because they had found a different way to prove what he would testify. The witness had some businesses in Rwanda; therefore did not want them to be affected or interfered with by the authorities.
164. He explained that they also had a potential witness, the wife of one of the workers with [REDACTED] in the field when he was killed. Her husband was acquitted of the murder of [REDACTED]. She was working in [REDACTED]. However, the Defence Counsel inquired and was told that she had left and they could not trace her.
165. The Accused is concerned that his witnesses are concealed or being hidden.
166. He also mentioned that he found four witnesses detained in Mpanga. However, they seemed a little scared of testifying, but they had promised to testify.
167. He hoped the Court would not rely on fabricated evidence, as was the case during the Gacaca courts.
168. Turning to detention conditions, he said the prison officials respond to requests, and he had no complaints. They have the goodwill to resolve issues.
169. However, he said he was unhappy with the detainee van that took them [REDACTED]. [REDACTED] Has communicated this to many organs, including the Prosecution and the Director of the prison, who responded that they did not currently have the financial

means to change the vehicle. [REDACTED]  
[REDACTED]

170. [REDACTED]  
[REDACTED]  
[REDACTED]

**Meeting with the Defense Counsel, [REDACTED] on 16 November 2022**

171. The Monitor met with the Defence Counsel in the presence of an interpreter.

172. He said the Accused needed personal items such as clothes, and the Prosecution stated that if his family could provide the money, they could buy them.

173. The Defence Counsel had spoken to the family intermediary in the Netherlands, who then asked Defence Counsel to buy them, which he would deliver to NPPA to give him.

174. He explained that so far, they had obtained five witnesses who are currently detained in Mpanga. They had also gotten two more witnesses, one from the USA and the other from Belgium. However, he was challenged with what they would testify about because they felt there was no justice in Rwanda, which would help his case.

175. He explained that they intended to testify on his character since they knew the Accused was a good researcher. They also want to testify physically in Rwanda between the 1st and 15<sup>th</sup> of December. He maintained that he would request the Court if they could testify during that period.

**Conclusion**

The Monitor remains available to provide any additional information or clarifications

**Submitted on 31<sup>st</sup> December 2022**