



To:
The Minister of Security and Justice
The Netherlands

From: Mr.
ICJ Kenya Monitor for the M Case

Monitoring Report for the Case of M
Monitoring Period: November - December 2016

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I. INTRODUCTION

1. This Monitoring Report ("Report") is submitted by Mr. [REDACTED] a Monitor appointed to observe the transfer case of Mr. [REDACTED] M [REDACTED] ("Mr. M [REDACTED]") before the Judiciary of the Republic of Rwanda.
2. This report pertains to the monitoring activities the Monitor undertook before the Judiciary of Rwanda, and his interactions with various stakeholders during the period between November 2016 and December 2016 (the "reporting period").

II. DETAILED REPORT

A. Mr. M [REDACTED] Arrival in Rwanda on 12 November 2016

3. At about 20:30 hours (Central African Time) on 12 November 2016, Mr. M [REDACTED] arrived at the Kigali International Airport on board a KLM airplane. At the arrival runway and upon disembarking from the airplane, Mr. M [REDACTED] was handcuffed and walked to a detainees van by Rwandese police officers.
4. Mr. [REDACTED] the Head of the Genocide Fugitives Tracking Unit at the National Public Prosecution Authority (NPPA), Mr. [REDACTED], the Spokesman for the NPPA, a group of journalists and an interpreter, assisting the Monitor stood about 100 meters from the airplane observing as Mr. [REDACTED] was moved to a room located near the boardroom of the immigration office.
5. Duty Counsel [REDACTED] assigned to assist Mr. M [REDACTED] during the initial processes of the transfer, including the handing over process by the Dutch officials to the Rwandan officials and the pre- trial detention hearing, was present in the room.
6. Mr. M [REDACTED] was ushered to a room near the immigration boardroom at the Kigali International Airport for statement taking by officials of the National Public Prosecution Authority. A press briefing was held inside the boardroom before a group of journalists. The press briefing was co-chaired by Mr. [REDACTED] and Mr. [REDACTED]. However, just before the press briefing begun, Mr. M [REDACTED] was paraded in front of the boardroom for journalists to take photos. Mr. M [REDACTED] was then returned to the adjacent room where the officials of the National Public Prosecution Authority in the presence of assigned Counsel [REDACTED] recorded his statement.
7. At the press briefing, Mr. [REDACTED] updated journalists on how the extradition was conducted and the legal process that was followed by Rwanda and The Netherlands. He expressed satisfaction that the extradition was successful, terming it as a sign of good cooperation between the two Governments.
8. Mr. [REDACTED] emphasized that Mr. M [REDACTED] was still a suspect, and due process would be followed to investigate the allegations against him. He then read out the criminal charges

against Mr. M [] Mr. [] concluded the press briefing by explaining the role of the Monitor and the duty Counsel assigned to Mr. M [].

9. The journalists were curious to know why Mr. M [] case was being monitored and why the extradition process had taken a long period to be effected. They also enquired about the period that Mr. [] was in detention in the Netherlands.
10. In their responses, Mr. [] and Mr. [] explained that the monitoring was an agreement between the Dutch Government and the Government of Rwanda. Further, they explained that the extradition had taken long because extradition processes ordinarily take long periods of time, as due process had to be followed and the arrest of the fugitives had also taken a while.
11. The Monitor joined the Prosecution and Mr. M [] in the interrogation room, where he introduced himself to Mr. M [] and informed him that he planned to meet him at Kigali Central Prison where he was to be detained, for further discussions.

B. Initial Meeting at the Dutch Embassy on 14 November 2016

12. On 14 November 2016, the Monitor met with the Dutch Ambassador to Rwanda, Hon. Frederique Maria De Man and Mr. [] the First Secretary, at the Embassy offices in Kigali, Rwanda. Mr. [] and the Ambassador were keen to hear about the initial transfer process. The Monitor explained to them what he had observed from the time the two transferred suspects¹ disembarked from the airplane, and the meeting held with Mr. M [].
13. The Monitor also appraised the Ambassador on Mr. M [] views about the detention facilities and concerns he had raised about legal representation by the Dutch lawyers.
14. The Ambassador reiterated the importance of the trial monitoring and the need for proper flow of information between ICJ Kenya and the Dutch Government.
15. The Embassy officials committed to follow up on the request by Mr. M [] to be represented by the lawyers from the Netherlands. They also indicated they would meet Mr. M [] in Prison.
16. The meeting ended with commitments from both Parties to ensure proper flow of information.

¹ The monitoring agreement between the Dutch government and ICJ Kenya relates to the cases of Mr. []

[] M [] and Mr. [] []

C. Mr. M [] Initial Appearance before the Primary Court on 21 November 2016

17. On 21 November 2016, Mr. M [] was arraigned in Court for the first time before Judge [] the President of the primary court of Nyarugunga. Mr. [] represented the Prosecution, the designated Defence Counsel, Mr. [] was also present. The hearing was conducted in Kinyarwanda Language.
18. The proceedings opened with the reading of the charges against Mr. M [] by the Registrar of the Court.
19. At the invitation of the Court, Mr. M [] explained that he was not ready to take his plea, because he had been served with the documents containing the charges on the morning of the hearing. He explained to the Court that given the gravity of the alleged offences, he needed more time to go through the documents and prepare.
20. At the invitation of the Court, Mr. [] reiterated that the documents containing charges were served to them on the morning of the hearing, therefore he requested for more time for him and Mr. M [] to acquaint themselves with the document.
21. At the invitation of the Court, the Prosecutor confirmed that the document containing the charges was delivered to Mr. M [] on the morning before the hearing. He explained that the Prosecution had no objection, to the request for time made by Mr. M [] and his Defence Counsel.
22. The Court adjourned to 22 November 2016, at 14:00 hours, to allow Mr. M [] and Defence Counsel read through the documents related to the charges.

D. Pretrial Detention and Provisional Release Hearing at Nyarugunga Primary Court on 22 November 2016

23. The hearing of the pretrial detention and release of Mr. M [] resumed on 22 November 2016, at 14:30 hours before Justice []. The Prosecution was represented by Mr. [] Mr. M [] and Defence Counsel, Mr. [] were also present.
24. The charges were read to Mr. M [] and he pleaded not guilty.
25. At the invitation of the Court, the Prosecution submitted that given the facts of the case and the available evidence, they believed that there were reasonable and serious grounds to believe that Mr. M [] committed the crimes of genocide, conspiracy to commit genocide, complicity in genocide, murder as a crime against humanity and extermination as a crime against humanity and the creation and training of a criminal gang, public and direct incitement to commit genocide.

26. At the invitation of the Court Mr. M [] submitted that he was being prosecuted based on false accusations, simply because he was the secretary general of CDA political party. He told the Court that he would not go into the details of the case, because the appropriate time would come for him to explain his assertions.
27. At the invitation of the Court, the Defence Counsel submitted that the charges against Mr. M [] were baseless because they focused on positions that he held during the genocide, which was not a crime. He requested the Court to set Mr. M [] free based on article 105 of the Rwandan Code of Criminal Procedure (CCP).²
28. At the invitation of the Court the Prosecution submitted that the Court should apply the provisions of article 96 of the CCP³ and order detention.
29. After listening to the Parties the Court concluded the hearing and the Parties were invited to sign the court transcripts.

E. Initial Meeting with Mr. M [] on 23 November 2016

30. On 23 November 2016, the Monitor visited Mr. M [] at Kigali Central Prison. The meeting was conducted with the assistance of an interpreter.
31. The Monitor began by explaining to Mr. M [] the role of ICJ Kenya Monitor's in following up his case.
32. Mr. M [] did not have much to say about the transfer process save for the fact that he did not experience any aggression from the Rwandan authorities upon arrival.
33. Concerning the detention facilities, Mr. M [] informed the Monitor that the conditions were good and the prison authorities were well prepared to receive him when he arrived.
34. Regarding his legal representation, Mr. M [] stated that he appreciated the fact that the Rwandan Government had afforded him with a lawyer to represent him. However, he expressed skepticism on whether the lawyer could represent him impartially, as he considered the lawyer to be part of the Government that was seeking to prosecute and jail him.

² Article 105 of the Code of Criminal Procedure of Rwanda provides that, "For any offence, a suspect or his/her legal counsel may, depending on the stage of the proceedings, ask the Prosecutor handling the case or the judge to grant him/her provisional release".

³ Article 96 of the CCP provides that, "A suspect shall not be subject to provisional detention unless there are serious grounds for suspecting him/her of an offence and the offense alleged against him/her is punishable with imprisonment of at least two (2) years".

35. Mr. M[] expressed that that he would observe how the lawyer conducted himself in his case then he would decide if he needed to request that another lawyer to be assigned to his case.

F. Decision on the Pre-trial and Provisional Release of Mr. M[] on 23 November 2016

36. The decision on the pre-trial and provisional release of Mr. M[] was delivered at Nyarugunga Primary Court on 23 November 2016. The hearing was presided over by Judge [] Mr. [] represented the Prosecution. Mr. M[] was present in Court but Defence Counsel; Mr. [] was absent.
37. The Court decision placed Mr. M[] under provisional detention for a period of 30 days.
38. The Court ruled that there were serious grounds to suspect that Mr. M[] had committed the alleged crimes.
39. The Court ruled that Mr. M[] could lodge an appeal within five (5) days from the date of order for detention.
40. Mr. M[] refused to sign the Court transcripts because his lawyer was not present in Court to assist him.

G. Appeal Hearing of Decision to Place Mr. M[] on Detention on 30 November 2016

41. Mr. M[] appeal against the decision of the Primary Court to place him in detention was heard on 30 December 2016, at Nyarugenge Intermediate Court. The hearing was held before Judge [] The Accused was present in Court and was assisted by Counsel []. Prosecution Counsel was also present.
42. At the invitation of the Court, Mr. M[] argued that his appeal was based on the grounds that the Primary Court did not consider all the arguments he had raised, to prove that the Prosecution did not have sufficient evidence to sustain a conviction. The evidence adduced by the Prosecution was also contradictory.
43. At the invitation of the Court, Defense Counsel submitted that there were no serious reasons to justify Mr. M[] detention. He argued the Accused should be released to enable him focus on preparing the defence for his trial.

44. The Court adjourned indicating the decision would be delivered on 5 December 2016, at 14.00 hours.

H. Meeting with Mr. M [redacted] held on 5 December 2016

45. The Monitor met with Mr. M [redacted] on 5 December 2016, at Kigali Central Prison. The meeting was conducted with the assistance of an interpreter.

46. Mr. M [redacted] inquired on whether the Monitor was following the Court arguments keenly and whether they would be documented in the monitoring report. Which the Monitor confirmed.

47. Regarding his representation in Court, Mr. M [redacted] informed the Monitor that he was keenly observing whether his lawyer would follow his line of defence.

48. Other issues that Mr. M [redacted] raised during the meeting included his desire to be provided with the original Court transcripts, as well as the need to contact his lawyers in The Netherlands.

49. Mr. M [redacted] informed the Monitor that he was expecting officials from the Dutch Embassy to visit him in prison, he however expressed that his preference would be a visit by his Dutch lawyers first.

I. Delivery of the Decision on the Appeal by Mr. M [redacted] on his Pre-trial Detention on 5 December 2016

50. The decision on the appeal by Mr. M [redacted] was delivered on 5th December 2016 at Nyarugenge Intermediate Court on 5th December 2016. The hearing was held before Judge [redacted]. The Accused was present in Court and was assisted by Counsel [redacted]. Prosecution Counsel was also present.

51. The Court summarized the grounds contained in Mr. M [redacted] appeal as follows:

- i. That the Primary Court judge used facts not discussed during hearing to render his decision and;
- ii. That the conditions used to order his pretrial detention were not serious enough to warrant a pretrial detention.

52. The Court indicated that having read the decision of the Primary Court, it had noted that the Primary Court had based its decision, on the facts of the case and on the request made by Prosecution. The Prosecution had submitted that it needed time to complete the investigation and the conditions underlined in article 98 of CCP which provides that;

“A suspect may be subject to provisional detention if there are serious grounds for suspecting that he/she has committed an offence even if the alleged offense is punishable with imprisonment of less than two (2) years but more than three (3) months, if there is reason to believe that he/she may evade justice and his/her identity is unknown or doubtful”.

53. The Court reiterated the arguments made by the Accused and the Prosecution in the appeal hearing.

54. The Court upheld the decision of the Primary Court and indicated that the Accused had not convinced the Court that the decision of the Primary Court needed to be reversed.

J. Hearing of the Extension on the Pre-trial Detention Order at Nyarugunga Primary Court on 22 December 2016

55. The hearing on the extension of the Pre-trial detention order was heard at Nyarugunga Primary Court on 22 December 2016. The case was heard before Justice [REDACTED] [REDACTED] Mr. [REDACTED] represented the Prosecution. Mr. M [REDACTED] and his Counsel, Mr. [REDACTED] were also present.

56. At the invitation of the Court, Mr. M [REDACTED] informed the Court that the documents at the Intermediate Court detailing his identity were erroneous because new elements were added to his identity which included, a phone number and email that he did not recognize. The Presiding Judge inquired as to whether the identity in the Primary Court documents were correct.

57. In his response, Mr. M [REDACTED] submitted that they were correct, the Court directed the Prosecution to have the identity of Mr. M [REDACTED] corrected in the affected documents.

58. At the invitation of the Court, the Prosecution submitted that their request at that hearing was for the pretrial order for Mr. M [REDACTED] be extended for 30 days pursuant to article 104 of CPC which provides that;

“The provisional detention order against a suspect shall be valid for one (1) month including the date on which it is rendered. After the expiry date, it may be renewed for one (1) month on a continuing basis.”

59. The Prosecution submitted further that they needed more time to finalize their investigations and some of the witnesses had changed location. Furthermore, the Accused was alleged to have committed serious crimes, the Prosecution feared that if he was released before trial he might evade justice.

60. At the invitation of the Court, the Prosecutor urged the Court to consider that the Prosecution required sufficient time to conduct investigations because all the charges had to be proven before Court.
61. At the invitation of the Court Mr. M [] submitted that he did not understand the process by which the Prosecution was conducting its work, because it was as if the Prosecution was prosecuting a case to halt genocide, instead of prosecuting an individual who was suspected of committing genocide. In Mr. M [] view, by the time the Prosecution issued an international arrest warrant against him, they ought to have finalized their investigations. Mr. M [] did not understand why the Prosecution was asking for more time to conduct investigations that they ought to have finished.
62. Mr. M [] submitted further that the most important witnesses the Prosecution was relying on, were witnesses who had been sentenced to life imprisonment and the CCP provided that such people lose their civil rights including testifying in Court. He concluded by saying the Prosecution didn't have any evidence.
63. At the invitation of the Court, the Defence Counsel submitted that the Court should apply article 89 of CCP which provides that;
- "A suspect shall normally remain free during investigation. However, the suspect may be held in provisional detention if the conditions provided for under Articles 96 and 97 of this Law are met".
64. He urged the Court to order provisional release for his client, because even if Mr. M [] was accused of serious crimes, article 105 of CCP provides that;
- "For any offence, a suspect or his/her legal counsel may, depending on the stage of the proceedings, ask the Prosecutor handling the case or the judge to grant him/her provisional release".
65. At the invitation of the Court, Mr. M [] requested the Court to interpret the law correctly noting that witnesses facing life imprisonment should not be allowed to present evidence in Court.
66. The Court adjourned the hearing having informed the Parties that it would deliver its decision on 23 December 2016, at 1300 hours.

**K. Meeting with Mr. M [] at Nyarugunga Primary Court on 22
December 2016**

67. After the hearing the monitor met briefly with Mr. M [] at the Court premises. The meeting was conducted with the assistance of an interpreter.

68. Mr. M [] expressed concern about the incorrect information contained in the transcripts for the appeal highlighting that the email address was incorrect. He wondered why the Appeal Court did not use the details contained in the earlier decision by the Primary Court, which he had appealed.
69. Mr. M [] asked the Monitor to transmit a request to the Dutch Embassy to furnish him with books such as a dictionary.

L. Meeting with Ms. [] Head of Department of International Justice and Judicial Cooperation at the Ministry of Justice held on 22 December 2016

70. On 22 December 2016, the Monitor met with Ms. [] to follow up on a few issues touching on the M [] and I [] cases. One of the issues discussed was the payment of Defence Counsel. Ms. [] informed the Monitor that a letter had been sent to the Bar Association approving payment for the assigned lawyers. She added that payments usually don't take more than three weeks to process.
71. Ms. [] explained that the Bar Association had signed an MOU with the Ministry Justice where Defence Counsel would be paid Rwf 15,000,000 to represent transferred Accused persons.
72. On the issue of securing pro bono lawyers for Mr. M [] and Mr. [] Ms. [] indicated that the Accused had a right to choose a lawyer, provided such Counsel met the conditions set out by the Bar Association. Counsel who did not meet the conditions could still represent the Accused, but they would not be eligible to receiving funds from the Legal Aid fund through Bar Association.

M. Meeting with officials of the Genocide Fugitives Tracking Unit on 22 December 2016

73. The Monitor met with Ms. [] from the Genocide Fugitives Tracking Unit, who informed him that when the Tracking Unit visited Mr. [] and Mr. M [] in prison, they had raised three issues;
- I. That there were documents in The Netherlands that they wanted included in their case files.
 - II. That they wanted their Dutch lawyers involved in their cases in Rwanda.
 - III. That they wanted to be given phones to take photos and send to their children back in The Netherlands.
74. Ms. [] informed the Monitor that the lawyers needed to meet the conditions set by the Rwanda Bar Association for Counsel, specifically, they had to be members of the

Bar association in their countries and eligible to practice in their country. They were also required to seek authorization through writing to the Rwanda Bar association in order to be allowed to represent accused persons in Rwanda.

75. The Monitor also met with Mr. [REDACTED] the Head of the Genocide Fugitives Tracking Unit, who reiterated that the laid down procedures had to be followed if the Accused are to be considered indigent and therefore assigned Lawyers to represent them.

N. Hearing for the delivery of the decision on the extension of the Pre-trial Detention Order held at Nyarugunga Primary Court on 23rd December 2016

76. The hearing was held before Judge [REDACTED]. Mr. [REDACTED] represented the Prosecution. Mr. M [REDACTED] and his Counsel, Mr. [REDACTED] were both absent during the hearing.
77. The Judge recalled the identity of Mr. M [REDACTED] and the charges leveled against him and defence that Mr. M [REDACTED] had mounted.
78. The Judge extended the pretrial detention for one month as requested by the Prosecution.
79. The Judge noted that the decision was issued in the presence of the Prosecution Counsel and in the absence of Accused and his Counsel.

III. CONCLUSION

80. The Monitor remains available to provide any additional information upon request.

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