

To: [REDACTED]  
The Minister of Security and Justice  
The Netherlands



From: The Kenyan Section of the international Commission of Jurists (ICJ Kenya)

Monitoring Report for the Jean Baptiste M [REDACTED] Case for September 2017

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## I. INTRODUCTION

1. This Monitoring Report pertains to the monitoring activities of the ICJ Kenya monitor appointed to observe the transfer case of Mr. Jean Baptiste M [REDACTED] (Mr. M [REDACTED]) before the Judiciary of the Republic of Rwanda, during the month of September 2017 ("the Reporting Period").
2. During the Reporting Period, the Monitor undertook two missions to Rwanda on 13<sup>th</sup> to 15<sup>th</sup> September 2017 and 17<sup>th</sup> to 21<sup>st</sup> September 2017, to monitor the Jean Baptiste M [REDACTED] case. This report therefore covers two Court hearings, as well as a meeting with Mr. M [REDACTED] held at the Kigali Central Prison.

## II. DETAILED REPORT

### A. Monitoring Mission from 13<sup>th</sup> September to 15<sup>th</sup> September 2017

First High Court hearing for Mr. M [REDACTED] held on 14 September 2017.

3. This hearing marked the beginning of the trial of Mr. M [REDACTED]. It was the first time the Accused was appearing before the High Court, after the Prosecution completed its investigations and filed the indictment with the High Court.
4. The hearing was held before Justice [REDACTED], Justice [REDACTED] and Justice [REDACTED] on 14<sup>th</sup> September 2017. The Prosecution was represented by the Prosecutor General, Mr. [REDACTED]. Mr. M [REDACTED] was present in Court assisted by the lead Defense Counsel Mr. [REDACTED] and assisting Counsel [REDACTED].
5. The Court Clerk read out to the Accused the charges against him, being the crimes of: genocide, conspiracy to commit genocide, complicity in genocide and incitement to commit genocide.
6. The Court then sought to know how the Accused would plead to the crimes he was accused of. To which the Accused pleaded not guilty.
7. The Court invited the Parties to indicate if they had any preliminary issues that needed to be addressed before the commencement of the trial.

- 8 In response, the Prosecution submitted that according to Law No. 04/12 dated 5th June 2012, in its Article 8 <sup>1</sup>the Court should first nullify a Gacaca decision taken against Mr. M [REDACTED] before proceeding with the hearing. The Prosecution explained that the Gacaca decision involved a compensation case, although it was a not a criminal decision relating to a criminal case, the law that requires nullification of Gacaca court decisions against extradited accused persons does not make a distinction between civil and criminal decisions from Gacaca Courts.
- 9 Mr. M [REDACTED] addressed the Court indicating that he was pleased with the request made by the Prosecution. Defense Counsel [REDACTED] submitted that the Defense was satisfied by the Prosecution's request, but urged the Court to go further to identify the implication of the request on the Accused's case.
- 10 Defense Counsel [REDACTED] - submitted further that during the extradition proceedings against the Accused, the government of The Netherlands relied heavily on the decision by the Gacaca Court. As such, if the Court was to decide to grant the Prosecution its request to nullify the decision by the Gacaca Court, it would necessitate the re-visiting of the indictment. The Defense would also have to amend its brief depending on the decision taken by the Court.
- 11 The Prosecution in response stated that the request it had made was based on a requirement of the law and it was too early to discuss its implication in the case, as the intention of the nullification was to safeguard the rights of the Accused against double jeopardy.
- 12 Following the submissions by the Parties, the Court ruled that a decision on the request by the Prosecution would be issued on 18<sup>th</sup> September 2017.

#### B. Monitoring Mission from 17<sup>th</sup> to 21<sup>st</sup> September 2017

Delivery of the decision of the Decision on nullification of the Gacaca Court decision again Mr. M [REDACTED] on 18<sup>th</sup> September 2017

- 13 The Court convened to issue a ruling on the request by the Prosecution to nullify the Gacaca Court decision against Mr. M [REDACTED].
- 14 The hearing was held before Justice [REDACTED], Justice [REDACTED] and Justice [REDACTED] on 18<sup>th</sup> September 2017. The Prosecution was represented by Mr. [REDACTED]. Mr. M [REDACTED] was present in Court with assisted by lead Counsel Mr. [REDACTED] and Counsel [REDACTED].

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<sup>1</sup> Article 8 states that all Gacaca Court decisions taken previously against all extradited Accused persons will be nullified before any formal trial.

- 15 The Court -reminded the Accused that he was sentenced by a Gacaca Court on 31/12/10 to pay compensation because he was found guilty of looting property. Taking this into account, the High Court ruling granted the request by the Prosecution and nullified the decision rendered by the Gacaca Court on 31/12/10. The Court went on to note that the fears expressed by the Defense on the implication of the nullification of the Gacaca Court decision on the trial were pre-mature.
- 16 The case was adjourned to 13<sup>th</sup> November 2017, when the trial would continue.

Meeting with Mr. M [REDACTED] at the Kigali Central Prison 19<sup>th</sup> September 2017

17. The Monitor met with Mr. M [REDACTED] at the Kigali Central Prison. The meeting was held with the assistance of an interpreter.
18. Mr. M [REDACTED] informed the Monitor that he had noted that the Monitor's did not share their draft reports with him before they are published. He also noted that the reports cannot be accessed by any of his family members, and suggested that the Monitor's should give him a copy of their notes after every visit.
19. Mr. M [REDACTED] informed the Monitor that he had learnt that there was new team at the Dutch Embassy after the departure of Mr. [REDACTED] and Mr. [REDACTED], whom he was familiar with. He proceeded to note that officials from the Embassy had not visited him since their last visit in 2016 immediately after his extradition, yet during his extradition proceedings in the Netherlands, he was assured that the Embassy in Kigali would visit him regularly, he indicated there was a document that contained this undertaking.
20. Mr. M [REDACTED] informed the Monitor that he had appeared before the High Court twice, and his first impression was that the High Court respected legal procedure in comparison to the lower Courts that in his experience often flouted legal procedure.
21. Mr. M [REDACTED] opined that with the decision by the High Court to nullify of the decision of the Gacaca Court meant that his property that had been taken away would be returned to his family.
22. Mr. M [REDACTED] informed the Monitor that he had engaged a new assisting Counsel, Mr. [REDACTED]  
[REDACTED].

23. Turning to the conditions of detention, Mr. M [REDACTED] informed the Monitor that visiting hours at the Prison had been reduced from two to three hours to thirty minutes and the prison management had not responded to the issue after it was raised.

#### CONCLUSION

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

DATED 7<sup>th</sup> October 2017