



To:   
The Minister of Security and Justice  
The Netherlands

From:   
ICJ Kenya Monitor for the Mr.  Case

Monitoring Report for the   Case  
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] [REDACTED] (Mr. [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 ("reporting period").

## II. DETAILED REPORT

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

3. At about 20:30 hours (Central African Time) on 12 November 2016, Mr. [REDACTED] arrived at the Kigali International Airport on board a KLM airplane. At the arrival runway and upon disembarking from the airplane, Mr. [REDACTED] was handcuffed and walked to a detainees van by Rwandese police officers.
4. Mr. [REDACTED], the Head of Genocide Fugitives Tracking Unit at the National Public Prosecution Authority (NPPA), Mr. [REDACTED], the Prosecution 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 for the immigration office.
5. Duty Counsel [REDACTED] assigned to Mr. [REDACTED] during the initial process of the transfer, including the handing over process to the Rwandan officials and the pre-trial detention hearing was present in the room.
6. Mr. [REDACTED] was then ushered to a room near the immigration boardroom at the Kigali International Airport for statement taking by the NPPA. While the statement taking was going on, a press briefing was being conducted before a group of journalists at the immigration's boardroom. Just before the press briefing had begun, Mr. [REDACTED] was paraded in front of the boardroom for journalists to take photos. He was later returned to the adjacent room for statement taking by the NPPA officials in the presence of Counsel [REDACTED]
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. [ ] emphasized that Mr. [ ] 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. [ ]. Mr. [ ] concluded the press briefing by explaining the role of the Monitor and that of the duty counsel assigned to Mr. [ ].
9. The journalists were curious to know why Mr. [ ] 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 period of time, as due process had to be followed. In addition the arrest of the fugitive had also taken a while.
11. After the press briefing, The Monitor joined the Prosecution and Mr. [ ] in the interrogation room, where he introduced himself to Mr. [ ] 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 with Mr. [ ] on 14 November 2016

12. On 14 November 2016, the Monitor visited Mr. [ ] at Kigali Central Prison. He was assisted by an interpreter during the meeting.
13. The Monitor was welcomed to the prison by Mr. [ ] the Director of the Prison. The Director mentioned to him that they had contacted three sisters of Mr. [ ] who visited him that morning. They were able to reach the sisters through Mr. [ ] wife who resided in the Netherlands.
14. The Monitor enquired from Mr. [ ] the languages that he was comfortable communicating in, which he said were Kinyarwanda, Kiswahili and French languages. The Monitor explained to Mr. [ ] the role of ICJ Kenya, and the Monitors in his case and the agreement between the Dutch and the Rwandan government to monitor his trial. The Monitor assured Mr. [ ] that the meeting(s) between him and the Monitor(s) would be will shared with the and The Dutch government officials. If he needed to share confidential information he needed to specify so that the monitor would classify the information as such.
15. From the outset, Mr. [ ] was happy to note that his case will be monitored. He informed the Monitor that his preference was to be tried in the Netherlands as opposed to before Rwandan courts. This was because his defense lawyers were in the Netherlands, and he had created a good working relationship with them. He also felt that he would have testified freely and in a neutral environment in The Netherlands.

16. Regarding the handing over process at the airport, Mr. [ ] informed the Monitor that he was tired upon arrival at the airport in Rwanda because of the long flight. In fact, he requested the NPPA official taking his statements to postpone the statement taking process to the following day due to fatigue. He stated that he did not like how he was handcuffed and whisked away to the detainees van. He was also not comfortable with the huge media presence at the airport.
17. He appreciated the fact that he was given a duty counsel by the Rwandan government to assist him with the initial handing over processes including pretrial detention hearing. However, he was not certain about the lawyer's experience and was contended with the fact that he could replace him in due course of his trial.
18. He informed the Monitor that his lawyers in the Netherlands (Messrs. [ ] and [ ] were still keen to follow up with his case, but it would be a challenge for them to be present during trial in Rwanda due to the huge financial resources needed.
19. Mr. [ ] requested the Monitor to inform the Dutch Embassy about his lawyers in the Netherlands and enquire whether the Dutch Embassy would consider facilitating at least one of his lawyers to travel to Rwanda to assist him in his case.
20. Concerning the detention facilities, Mr. [ ] mentioned that he was okay with the conditions, but was quick to mention that he had only been there for three days and it was too early to give a complete assessment of the facilities, and how the prison officials treated him. He was happy that the Prison Director helped him to contact three of his sisters. He hoped that the Director would continue helping him to contact his family and lawyers in The Netherlands.
21. Mr. [ ] mentioned that he would like ICJ Kenya to monitor all the hearings and if possible keep in touch with his Dutch defense lawyers. He also hoped that the Rwandan system would be independent and transparent in handling his case.
22. The Monitor visited the special prison block where Mr. [ ] and other transferred accused were detained. The area was clean and the room neatly organized.

### C. Initial Meeting at the Dutch Embassy on 14 November 2016

23. On 14 November 2016, the Monitor met with the Dutch Ambassador to Rwanda, Hon. [ ] 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 suspects<sup>1</sup> disembarked from the airplane, and the meeting he held with Mr. M [redacted]

24. The Monitor appraised the Ambassador on Mr. I [redacted] views about the detention facilities and concerns he had raised about his legal representation by The Dutch lawyers.
25. The Ambassador reiterated the importance of the trial monitoring and the need for proper flow of information between ICJ Kenya and the Dutch Government.
26. The Embassy committed to follow up on the request by Mr. I [redacted] to be represented by the lawyers from the Netherlands. They also indicated they would meet Mr. M [redacted] and Mr. I [redacted] in Prison.
27. The meeting ended with commitments from both Parties to ensure proper flow of information.

D. Mr. I [redacted] Initial Appearance before the Primary Court on 21 November 2016

28. On 21 November 2016, Mr. I [redacted] was arraigned in Court for the first time before Judge [redacted] the President of the primary court of Nyarugunga. Mr. [redacted] [redacted] represented the Prosecution, while the assigned Defence Counsel for Mr. [redacted] Mr. [redacted] was also present.
29. The proceedings opened with the reading of the charges against Mr. I [redacted] by the Registrar of the Court.
30. At the invitation of the Court, Mr. I [redacted] explained he need more time before taking his plea because he had been served with the documents containing the charges on the morning of the hearing. He explained to the judge that, given the gravity of the alleged offences, he needed more time to go through the documents and prepare.
31. At the invitation of the Court, Mr. Mr. [redacted] requested to be given more time so that he could go through the document containing the charges.
32. At the invitation of the Court, the Prosecutor said that he did not have any objection to the requests made by Mr. I [redacted] and his Defence lawyer.
33. The hearing was adjourned to 22 November 2016 at 1400hrs to allow Mr. [redacted] and his Counsel to read through the documents related to the charges.

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<sup>1</sup> The monitoring agreement between the Dutch government and ICJ Kenya was for two cases [redacted] M [redacted] and [redacted] [redacted]

#### E. Pretrial Detention and Provisional Release Hearing at Nyarugenge Primary Court on 22 November 2016

34. The hearing of the pretrial detention and release of Mr. [ ] resumed on 22<sup>nd</sup> November 2016 before Justice [ ]. The Prosecution was represented by Mr. [ ] Mr. [ ] designated Duty Counsel, Mr. [ ] [ ] was also present.
35. The Court read out the charges to Mr. [ ] and he pleaded not guilty.
36. At the invitation of the Court, the Prosecutor 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. [ ] committed the crimes he had been charged with.
37. At the invitation of the Court, Mr. [ ] stated that he would prove his case contrary to the accusations leveled against him. He further stated that there were no reasons to keep him in detention because he had been detained in the Netherlands since 9<sup>th</sup> July 2013 and since he was back in his country, he expected to be set free and work on his defense. He pledged to respect all the conditions that would be attached to his release.
38. At the invitation of the Court, Mr. [ ] Defence Counsel prayed to the Court to set Mr. [ ] free because the Rwandan Code of Criminal Procedure<sup>2</sup> provided detention as the exception and freedom as the rule.
39. At the invitation of the Court, the Prosecutor reiterated the fact that they had sufficient evidence to sustain a conviction.
40. The Court announced that a decision would be issued on 23 November 2016 at 16:30 hrs.

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

41. The decision to place Mr. [ ] on pre-trial detention was delivered by Judge [ ] on 23 November 2016. The Prosecution was represented by Mr. [ ] Mr. [ ] designated Duty Counsel, Mr. [ ] [ ] was also present.
42. The Court placed Mr. [ ] under provisional detention for a 30 days period.

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<sup>2</sup> The Rwandan Criminal Code of Procedure, Law N° 30/2013 of 24/5/2013.

43. The Court ruled that there were serious grounds to suspect that Mr. [ ] had committed the alleged crimes.
44. The Court ruled that Mr. [ ] could lodge an appeal within five (5) days from date of order for detention.

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

45. The appeal hearing of decision to place Mr. [ ] of detention was heard on 30 December 2016 at Nyarugenge Intermediate court. The hearing was before Judge [ ] Mr. [ ] was present in Court, assisted by his Defence Counsel, Mr. [ ] Prosecution Counsel was also present.
46. At the invitation of the Court, Mr. [ ] said that there were no serious reasons to justify his pre-trial detention. Further to that, the main evidence adduced by Prosecution was based on witness evidence but to him those witnesses were not truthful and they colluded to lie because they knew him personally. They were neighbors and he knew some of them because they came to his family's house in 1994 and that he did his best to assist them. He was surprised that they gave statements incriminating him.
47. Mr. [ ] further stated that he was being accused of transporting Tutsis to where they were killed but according to him, he transported people to safe areas. In conclusion, he said the Prosecution had been given enough time to gather evidence while he was in detention. He prayed to the Court to release him from prison so that he could prepare effectively to mount a proper defense to counter the Prosecution case.
48. At the invitation of the Court, Mr. [ ] said that there were no serious reasons to put Mr. [ ] in detention and pleaded with the Court to release him based on article 106 and 105 of the Rwanda Criminal Code of Procedure (CCP).

*Article 105 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”.*

*Article 106 provides that, “If the judge finds that there are serious grounds for suspecting the person of an offence, he/she may order provisional detention of the suspect in accordance with the provisions of Articles 96 and 98 of this Law. If the judge finds that there are no serious grounds for provisional detention, the suspect shall be immediately released”.*

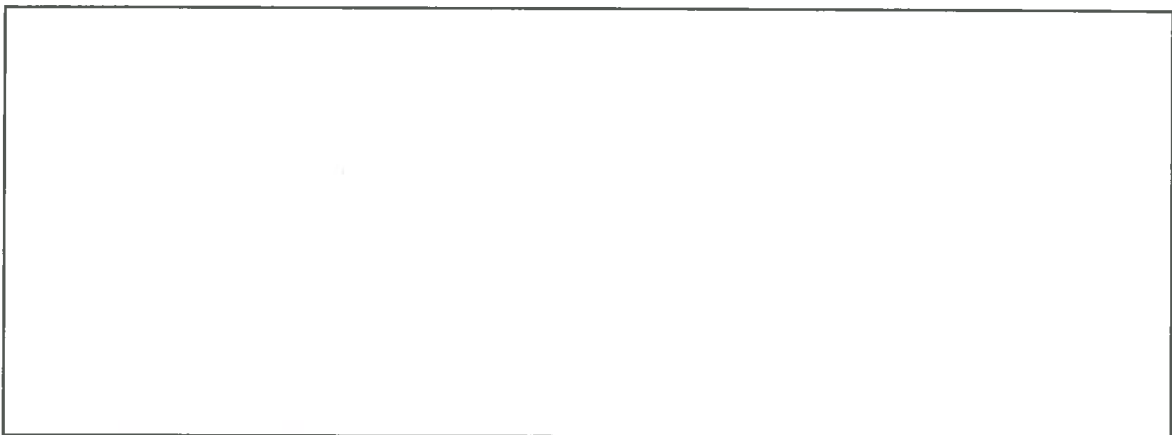
49. At the invitation of the Court, the Prosecutor submitted that he did not agree with the Accused because he was repeating the argument he made in the Primary Court and that

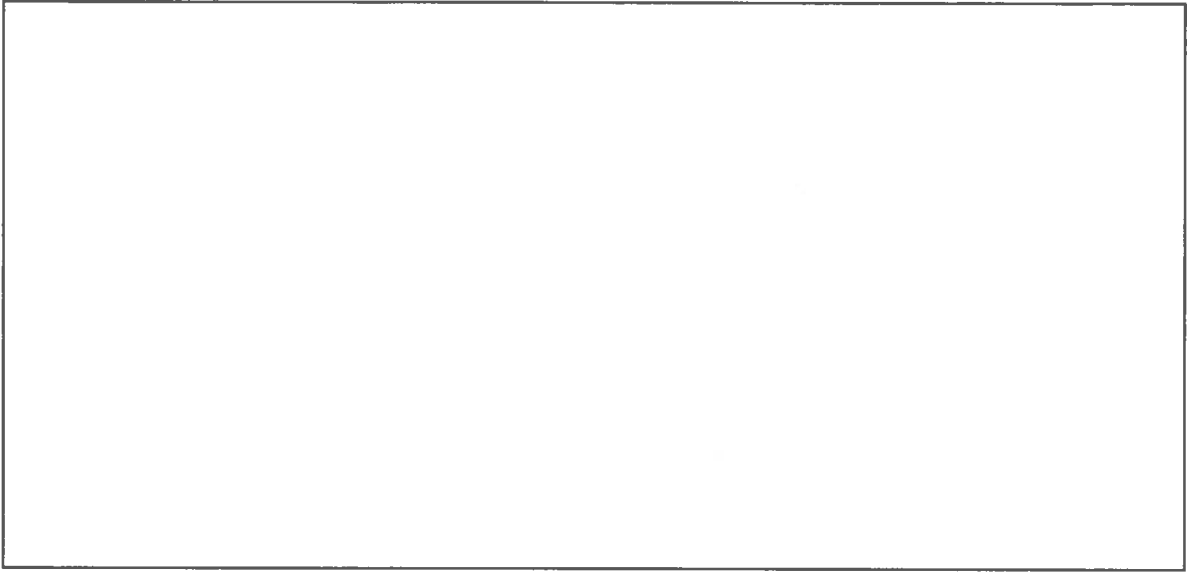


- his defense lawyer was interpreting article 105 and 106 erroneously. The Prosecution asked the Court to uphold the Primary Court decision and uphold the detention order.
50. At the Invitation of the Court, Mr. [ ] pleaded with the Court to check the level of importance given to hearsay information and release him so that he could prepare his defense.
51. At the invitation of the Court, Defence Counsel argued that Mr. [ ] was at a disadvantage because the Prosecution had more time to prepare, while his client was in prison and to him this proved that the principle of equality of arms was not respected in this case.
52. At the invitation of the Court, the Prosecutor argued that the Prosecution had the mandate to gather incriminating evidence and if they didn't get enough evidence against him, they would request for his release from detention.
53. The Court concluded the hearing and set a date for issuing a decision on 5<sup>th</sup> December at 1600hrs.

#### H. Meeting with Mr. [ ] on 5 December 2016 at Nyarugenge Prison

54. Mr. [ ] informed the Monitor that he did not have any faith in his Defense Counsel. He felt that he was working for the Rwandan Government. He noted that his defense lawyer had worked as a Prosecutor for eleven (11) years and he could tell he was a good friend of the Primary Court Prosecutor, from the way they related with each other cordially in Court.
55. Mr. [ ] further stated that Defense Counsel had on several occasions advised him to plead guilty, so that his sentence could be reduced but he refused. Mr. [ ] added that the Defence Counsel had also approached his three sisters requesting them to convince him to plead guilty. Mr. [ ] stated that he could not plead guilty for an offence he had not committed.





60. Mr. [ ] informed the Monitor that he needed to get the documents relating to his case that were in The Hague. He would also like one of the Dutch lawyers to visit him because they knew the case in depth.
61. Mr. [ ] expressed concern that he had been in detention for a long period of time and he would like the prison officials to facilitate constant communication with his family. He informed the Monitor that he was only allowed 15 minutes to speak with his family, and he was not allowed to speak in any other language apart from Kinyarwanda or French.
62. Concerning his legal representation, Mr. [ ] informed the Monitor that he had not yet received the list of 68 lawyers he was meant to choose Counsel to represent him from. He questioned why the 68 lawyers were selected whereas there were more than 1000 lawyers in Rwanda.
- I. Delivery of the Decision on the Appeal by Mr. [ ] on his Pre-trial Detention on 6 December 2016
63. The decision on the appeal by Mr. [ ] was delivered on 6 December 2016. The hearing was held before Justice [ ] Mr. [ ] was in Court, assisted by his Defence Counsel. Prosecution Counsel was also present.
64. The Court recalled the charges against Mr. [ ] and said the main reason of appeal was that there were no serious reasons to believe he had committed the crimes alleged and that he based his defense on the fact that the witness evidence considered were contradictory and not consistent.

65. The Court said that the intermediate court had found in the file witness evidence that constituted serious reasons to believe that the accused committed crimes alleged against him. According to articles 96<sup>3</sup>, 97<sup>4</sup>, 98<sup>5</sup> of the CCP the Primary Court had only to check if there were serious reasons to suspect that the accused committed the crimes alleged against him. The Primary Court applied the law correctly and that the Intermediate Court had not found any reason to reverse the Primary Court decision and upheld the Primary Court decision.
66. The Court ordered Mr. [ ] to remain in detention as it was decided by the primary court.
67. All parties were invited by the Court to sign the Court transcripts.

#### J. Hearing of the Extension on Pre-trial Detention Order Hearing on 22 December 2016

68. The hearing was before Justice [ ] and the Prosecution was represented by Mr. [ ], Mr. [ ] was in Court and he was assisted by his Defence Counsel Mr. [ ]
69. At the invitation of the Court, the Prosecutor requested for extension of the pretrial detention order, arguing that he needed more time to finalize investigation. He argued that he needed more time to interview the witnesses because since the crimes were committed over 20 years had lapsed. Some of the witnesses had moved hence they had to be located and interviewed. The Prosecution feared that if he was released he could evade justice. The Prosecutor asked the Court to extend the order for an additional 30 days.
70. At the invitation of the Court, Mr. [ ] submitted that the reasons advanced by the Prosecution were baseless because the Prosecution had enough time to finalize investigation. He had noted that in the file requesting his extradition the Prosecution had relied on statements made by 5 witnesses in April 2007 and 5 more witness statements given to the Prosecution since 2011. This implied that the Prosecution had more than enough time to investigate and should not use investigations as a ground for requesting the Court to extend the pretrial detention order for investigation.

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<sup>3</sup> 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".

<sup>4</sup> Article 97 of the CCP provides that, "In this Law, serious grounds for suspecting a person of an offense shall not be considered evidence but rather as plausible investigation".

<sup>5</sup> Article 98 of the CCP 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"

71. Mr. [ ] requested the Court to ignore reasons advanced by Prosecution and release him and he promised that he would not go anywhere and he would use his freedom to prepare for his defense.
72. At the invitation of the Court, Defence Counsel informed the Court that the Prosecution communicated its brief to the Defence at the last minute, denying them the opportunity to prepare before appearing in Court. On the issue of extension of the pretrial detention order, Counsel submitted that the Prosecution had more than 10 years to prepare the case and it seems they had not found enough evidence against the Accused. Therefore, the Prosecution should request the Court to release Mr. [ ] as it continues with its investigation if it deemed it necessary.
73. At the invitation of the Court, the Prosecutor undertook to serve documents to the Defense Counsel and Mr. [ ] in good time in the future. He reiterated that the Prosecution still needed more time to finalize the investigations.
74. At the invitation of the Court, the Defense Counsel concluded by urging the Court to release his client since the Prosecution had not gathered enough evidence to sustain a conviction.
75. The Judge closed the hearing informing the Parties that the decision would be delivered on 23 December at 1300 hrs.

K. Meeting with Mr. [ ] at Nyarugunga Principal Court on 22<sup>nd</sup> December 2016

76. On 22 December 2016, the Monitor held a meeting with Mr. [ ] at Nyarugunga Primary Court. Mr. [ ] informed the Monitor that he received a computer from NPPA. He had noticed that the computers had a software that could allow a second user to access the laptop. He further said that the laptop still contained confidential documents from NPPA. This to him was suspicious and it would hamper their defense preparation. He informed the Monitor that he suggested to the NPPA whether his friends could give him a laptop but the NPPA refused. He also noticed that his laptop was much smaller compared to the other detainees.
77. Mr. [ ] was also concerned about preparation for his defense. When he last met with the lawyer, he noticed that he was not comfortable because he had not been paid. He was concerned that they were moving to a crucial stage in the trial where the lawyer was required to prepare for his defense.
78. Mr. [ ] informed the Monitor that at the last meeting with officials from the Netherlands Embassy in Rwanda, he requested if they could have a lawyer to work on

volunteer basis on his case, and the Ministry of Justice agreed. The challenge had been that the volunteer lawyers were not allowed access to the prison. The Prison Director only allowed the lawyer assigned to him to access the detention facilities. He informed the Monitor that there were lawyers who wanted to assist them on pro bono basis but they were also not allowed access to the detention facilities.

79. Mr. [ ] was concerned that the place where he met with their lawyer at the detention facility was not secure. On one occasion he noticed a police officer hiding behind a door and was listening to their conversations. They had not raised the issue with the Prison Director and he said he would do so after the meeting.
80. Mr. [ ] requested the Monitor to ask the Dutch Embassy to furnish them with books such as dictionaries.

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

81. On 22 December 2016, the Monitor held a meeting with Ms. [ ] to follow up on a few issues touching on Mr. M [ ] and Mr. [ ] 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 lawyers. She added that the payment usually doesn't take more than three weeks to process.
82. Ms. [ ] explained that the Bar Association had signed an MOU with the Ministry of Justice where Defence Counsel would be paid Rwf 15,000,000 to represent transferred Accused persons.
83. 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 Tracking Unit on 22 December 2016

84. The Monitor met with Ms. [ ] from the Genocide Fugitives Tracking Unit who informed the Monitor that when the Tracking Unit visited Mr. [ ] and Mr. M [ ] in prison, they raised two 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.

85. Ms. [ ] informed the Monitor that the lawyers needed to meet the conditions set by the Bar Association for Counsel, specifically, they had to be members of the Bar association in their countries 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.
86. The Monitor also met with Mr. [ ] 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. Meeting with [ ] on 22 December 2016

87. The Monitor met with [ ], the defense lawyer for Mr. [ ]. He said that Mr. [ ] mentioned to him about Dutch lawyers that he would like him to work with. He also wanted to get one lawyer from Rwanda to work with him.
88. When Counsel approached the Rwanda Bar Association regarding his payment, they told him that they were waiting on the Ministry of Justice to disburse finding. He said that he ought to have begun his investigations.

#### O. Judgement on the Pre-trial Detention Order Hearing on 23 December 2016

89. The Judge recalled the identity of accused and charges leveled against him. He also read the facts of the case by recalling the reasons advanced by prosecution for extension of the pretrial detention order. The Court recalled the defense mounted by the accused and his lawyer who among other things said the reasons for his detention were baseless
90. The Court ordered Mr. [ ] to remain under detention for a month starting 23 December 2016
91. The Court noted that the judgement was issued in the presence of prosecution representative, Mr. [ ] lawyer and in the absence of Mr. [ ]

### III. CONCLUSION

92. The Monitor remains available to provide and additional information upon request.

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