

Ook het ambtsbericht over Rwanda van augustus 2016 is onbetrouwbaar Waarom weer zo'n onjuiste voorstelling van zaken?

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Nederlands Juristen Blad 2021/983, nr.14, pp. 1074-1082, 9 april 2021

Bijlage 6 bij de lange on-line versie: Tekst van paragraaf 10 lange versie, met ingevoegd kopieën van de relevante paragrafen uit de monitoringrapporten m.b.t. het proces in Rwanda tegen de door Nederland op 12 november 2016 uitgeleverde Jean-Baptiste Mugimba

De Transfer Law en het monitoringsysteem helpen niet
het recht op een eerlijk proces te waarborgen

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8. Eén van de beschermde getuigen à charge zou getuige zijn in veel genocide zaken. Dit roept vraagtekens op m.b.t. de betrouwbaarheid van die getuige
9. Het aantal aanklachten tegen Mugimba is van oorspronkelijk zeven in mei 2020 teruggebracht tot twee. Dit roept twijfels op over de degelijkheid, en daarmee de motivatie, van de voorbereiding door de Rwandese overheid van het uitleveringsverzoek m.b.t. Mugimba
10. Bij het verlengen van het voorarrest van Mugimba zou de aanklager meerdere keren de termijn voor aanvraag van verlenging hebben laten verlopen zonder de rechtbank daar gevolgen aan gaf. Ook zou de rechtbank bij de verlenging vertrouwd hebben op verklaringen van getuigen die volgens de Rwandese wet vanwege hun eigen veroordeling niet tegen anderen mogen getuigen

10.3 *Inbreuk op het recht op een vonnis binnen een redelijke termijn*

11. In de eerste 36 maanden na uitlevering van Mugimba vonden in totaal maar tussen de 18 en 22 strafrechtzittingen plaats in zijn proces, elk van onbekende lengte maar nooit langer dan één dag, en bijna allemaal een maand of meer na de vorige zitting. Dit is niet efficiënt (o.a. steeds weer inlezen) en staat op gespannen voet met het recht op afronding van een strafproces en uitspraak binnen een redelijke termijn
12. Een analyse van een overzicht van 19 genocide-gerelateerde uitleveringszaken aan Rwanda laat o.a. zien dat zeven zaken in de beroepsfase gemiddeld al 7 jaar en 5 maanden liepen, exclusief voorarrest in het land dat uitleverde. Eén verdachte werd tenslotte voor iets anders veroordeeld dan waarvoor hij uitgeleverd was, hetgeen strijd

oplevert met het specialiteitsbeginsel.¹ Mugimba en Iyamuremye zaten in december 2020 al bijna zeven jaar in detentie waarvan drie jaar in Nederland, en hadden nog steeds geen eerste uitspraak

13. De aanklager kwam pas 10 maanden na uitlevering, in september 2017, met zijn aanklachten tegen Mugimba. Ook heeft hij in totaal vier of vijf keer een verdaging gekregen waardoor, bij tien zittingen per jaar, het proces tegen Mugimba nog weer een half jaar langer duurt

10.4 Blijken van publicitair belang van Rwandese overheid bij het proces tegen Mugimba

14. "Upon arrival from the Netherlands on 12 November 2016 ... just before the press briefing begun [sic], Mr. M. was paraded in front of the boardroom for journalists to take photos."
15. Op uitnodiging van het Hof mochten de media voorafgaand aan de zitting van 10 juli 2019 foto's nemen van de rechters, de beklaagde en de aanklager

10.5 Gebrekkige medische zorg van de Rwandese overheid aan Mugimba

16. Beperkte toegang tot het King Faizal Hospital; Eén van de vier medicijnen die Mugimba nodig heeft was niet beschikbaar voor elf maanden of langer; De gevangenis regelt de zorgverzekering van Mugimba en had die laten verlopen; daardoor had hij op moment van spreken al ongeveer drie dagen geen medicijnen meer

10.6 Kennelijk onwelgevallig monitoringrapport niet openbaar gemaakt

17. Volgens Justitie en Veiligheid bestaat er geen monitoringrapport voor Mugimba voor de maand mei 2019.² Dit is de maand waarin volgens zowel Mugimba als de monitor een zitting heeft plaats gevonden waarin (nog) twee getuigen à charge hun oorspronkelijke getuigenissen tegen Mugimba hebben ingetrokken
18. Ook voor jan-feb 2017 zou er geen monitoringrapport zijn
19. Om alle relevante informatie te vinden over het monitoren van het proces tegen Mugimba, waren drie zoekwoorden nodig op elk van twee websites

10.7 Het monitoringsysteem helpt niet het recht op een eerlijk proces te waarborgen

20. M.b.t. de wel gepubliceerde monitoringrapporten moet opgemerkt worden dat het ministerie van Justitie en Veiligheid ook namen, plaatsnamen, jaartallen en data e.d. heeft weggelakt die algemeen bekend zijn, en/of openbaar zijn door de openbare zittingen in het proces tegen Mugimba. Zelfs de codenamen van beschermde getuigen zijn geregeld weggelakt
21. De monitoringrapporten zelf vertonen ook belangrijke gebreken
22. Het ministerie van JenV lijkt nooit gevraagd te hebben om de informatie die overduidelijk miste in de monitoringrapporten
23. Zoals de monitoringrapporten aangeven heeft Mugimba tientallen keren geklaagd over zeer uiteenlopende zaken die van belang waren in verband met de uitleveringsovereenkomst tussen Nederland en Rwanda. Soms zelfs jaren lang. Op al die klachten is door het Nederlandse ministerie van J&V zeer beperkt of niet gereageerd

¹ <https://www.justiceinfo.net/en/tribunals/national-tribunals/40703-rwanda-suspect-transfers-signal-new-stage-in-genocide-trials.html> (link geopend 3 dec 2020)

² E-mail van het ministerie van Justitie en Veiligheid aan dr. J. Brouwer d.d. 9 oktober 2020, 15:08 uur.

10.2 Bewijzen en aanwijzingen bevooroordeeldheid Rwandese rechters en OM

1. Inbreuk op het universele 'ne bis in idem' rechtsprincipe.

In de eerste strafrechtzitting op 14 september 2017 verzocht de aanklager het Hof om, 'conform de wet' een eerdere Gacaca rechtbankuitspraak te vernietigen. Het Hof deed dit op 18 september 2017, om schending van 'ne bis in idem' principe ('double jeopardy') te voorkomen. Kennelijk is volgens aanklager en Hof Mugimba dus wèl al eerder berecht (maar niet veroordeeld) voor waar de Rwandese autoriteiten hem nogmaals om wilde berechten. (Rapport m.b.t. Mugimba 14 sep 2017 paragrafen 8-11; 18 sep 2017 paragraaf 15)

14 sep 2017:

- 8 In response, the Prosecution submitted that according to Law No. 04/12 dated 5th June 2012, in its Article 8³ 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.

18 sep 2017:

- 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.

2. De aanklager wil aanklachten tegen Mugimba die niet in het uitleveringsverzoek stonden toevoegen en handhaven.

Op 22 mei 2020 spoorde de aanklager het Hof aan de toegevoegde aanklachten die tegen Mugimba waren ingebracht in behandeling te nemen omdat de aanklager mandaat had [zou hebben] om additionele aanklachten op te nemen nadat Mugimba uitgeleverd was door

Nederland. (Rapport m.b.t. Mugimba 22 mei 2020 paragraaf 18)

18. The Prosecution then responded to queries raised on the document C242 from the Netherlands that had different charges against the Accused person from the ones he had been charged with in court. The Prosecution submitted the documents C255-268 featured seven counts, the fourth one being incitement to commit genocide. The Prosecution urged the court to consider the additional charges that had been brought before the Accused person because the Prosecution had the mandate to include additional charges after the Accused person's extradition from the Netherlands.

3. Waarschijnlijk drie getuigen à charge hebben voor het Hof hun eerdere schriftelijke verklaringen tegen Mugimba ingetrokken.

Op 29 jan 2019 zei getuige-3 dat hij bij de Prosecutor General een door anderen opgestelde verklaring tegen Mugimba had moeten ondertekenen, onder bedreiging met de dood. (Rapport m.b.t. Mugimba 29 jan 2019 paragraaf 64-70)

64. At the invitation of the Court the Prosecutor told the witness that he was going to repeat some of the questions he was asked when he wrote his witness statement on 9th Feb 2017 at the Prosecutor General's office.

65. At the invitation of the Court, the witness said that some of the things written in the statement he recorded at the Prosecutor General's office were right and others were wrong.

66. The Prosecutor asked him if he read everything in the statement before he signed.

67. The witness said yes.

68. The witness further said that at the prosecutor's office, he found a document that had already been prepared and he was asked to go through it and sign. He was informed by the Prosecutor that the document was prepared by [REDACTED], a witness in the genocide trials in ICTR

69. The Prosecutor asked the witness whether he was intimidated in the Prosecutor General's office.

70. The witness said that the Prosecutor told him that if he didn't sign the statement he would find him and kill him.

71. The hearing was adjourned to 12th March 2019.

Afgaande op de opmerking van Mugimba tegen de monitor op 1 oktober 2019 hebben in ... [weggelakt] meerdere getuigen à charge hun verklaringen tegen hem ingetrokken. Gezien de korthed van het weggelakte stuk ging het om de maand May, of wel mei 2019, want het horen van getuigen à charge begon pas in september 2018. Dus na getuige-3 in januari 2019 hebben in mei 2019 kennelijk nõg twee getuigen à charge hun verklaring introkken. (Rapport m.b.t. Mugimba 1 okt 2019 paragraaf 39 (in rapport van aug-sep 2019))

39. Mr. M [REDACTED] further informed the Monitor that he was relieved when the Prosecution witnesses recanted their testimonies in [REDACTED], and that the defense witnesses had demonstrated he did not live in [REDACTED] during the genocide.

Ook de monitor had het op 5 sep 2019 in een gesprek op het ministerie van Justitie over

getuigen [meervoud] à charge die hun eerdere getuigenissen voor het Hof hadden ingetrokken. (Rapport m.b.t. Mugimba, 5 sep 2019 paragraaf 3)

3. The monitor held a meeting with the Head of Department of International Justice and Judicial Cooperation and the Senior State Attorney International Justice and Judicial cooperation to discuss the prosecution witnesses who had recanted their evidence, and the issue of prosecution witnesses who were in detention.
4. The Ministry noted that the Prosecutor had brought up the issue of witnesses recanting their evidence, and cited witness interference by the defense as the key contributor to the recanted evidence.

In onderdeel 10.6 hieronder wordt ingegaan op het feit dat er niet verwezen kan worden naar een monitoringrapport over die zitting in mei 2019 waarop nog meer getuigen à charge hun getuigenissen introkken.

Dat getuigen, met gevaar voor lijf en leden, alsnog de waarheid spreken is natuurlijk positief, maar het roept wel ernstige twijfels op m.b.t. de betrouwbaarheid van de andere getuigen à charge. De onbetrouwbaarheid van het Rwandese OM is alleen hiermee al bewezen.

4. Gebruik door de aanklager en acceptatie door het Hof van getuigen die volgens het Hof conform de Rwandese wet niet mochten getuigen.

Deze getuigen waren veroordeeld en zaten in de gevangenis. Mugimba en zijn advocaat protesteerden al in een vroeg stadium bij het Hof tegen deze getuigen (Rapport m.b.t. Mugimba 18 jan 2018 paragraaf 10; 3 mei 2018 paragraaf 9; 19 dec 2018 paragraaf 5-7).

18 jan 2018:

10. M. [redacted] further raised the issue that according to the agreement between the Dutch government and the Rwandan government, the prosecution was only supposed to be charge him for crimes allegedly committed by him and not related to his position in a political party. He also raised an issue regarding the indictment. He had noticed the prosecution had relied on witnesses who were not allowed to testify because they had been convicted for committing grave crimes. He cited article 59 of the Rwanda Criminal Procedure Code which prevents anyone who had been convicted for grave crimes and sentenced to lengthy imprisonment including life imprisonment from testifying in court. He also said that he did not understand why the indictment contained the charges of genocide and complicity in genocide and he used an ICTR case law that involved an accused person called [redacted] where it was held that an accused cannot be his own accomplice.

3 mei 2018:

- 9 Mr. M. [redacted] addressed the Court indicating that the Prosecution had failed to clarify the legal background of its indictment and relied on the same evidence and fact for all the counts, while on the 4th count, incitement to commit genocide the Prosecution relied on a witness who had been convicted while the law does not allow such a person to testify in court.

19 dec 2018:

5. The Defense requested the Court to either adjourn the hearing to allow them to investigate the fresh details or direct the Prosecution not to guide the witness on the new details. The Defense also added that the witness in question had been sentenced to life imprisonment and thus should not testify.
6. The Prosecutor, ██████████ responded to the Defense by saying that they were relying on mere allegations and had no evidence to support these allegations.
7. The President of the Court interjected and assured the Defense that the issue regarding the sentencing of the witness can be raised and considered by the Court during the closing submissions. The witness took the stand to proceed with his testimony.

Deze getuigen mogen volgens het Hof en volgens het Rwandese ministerie van Justitie inderdaad niet getuigen maar zouden het Hof alleen maar informatie geven en mochten dus wel hun verhaal doen voor het Hof (Rapport m.b.t. Mugimba 10 juli 2019 paragraaf 81-83; 5 sep 2019 paragraaf 3 en 5). Wat is het verschil?

10 juli 2019:

81. The presiding judge asked the witness, who was in prison uniform, about the nature of her sentence.
82. The witness noted that she had been sentenced for life imprisonment.
83. The presiding judge informed the witness that because she had been sentenced for life imprisonment, she would not testify as an ordinary witness but as an individual who was giving information to the Court. This was as according to the Laws of Rwanda.

5 sep 2019:

3. The monitor held a meeting with the Head of Department of International Justice and Judicial Cooperation and the Senior State Attorney International Justice and Judicial cooperation to discuss the prosecution witnesses who had recanted their evidence, and the issue of prosecution witnesses who were in detention.
5. The Ministry further noted that the law disqualifies detained persons from testifying in Court, and those that appeared in Court were only giving information to the Court, and not testimonies.

De verdediging kon zijn bezwaar tegen de veroordeelde getuigen volgens het Hof noemen in zijn slotpleidooi (Rapport m.b.t. Mugimba 19 dec 2018 paragraaf 7).

7. The President of the Court interjected and assured the Defense that the issue regarding the sentencing of the witness can be raised and considered by the Court during the closing submissions. The witness took the stand to proceed with his testimony.

5. Het Hof buigt mee met de aanklager als die niet op tijd doet wat opgedragen is.

Het Hof instrueerde de aanklager bepaalde informatie uiterlijk 18 november 2019 digitaal in te dienen. Toen de verdediging er op 22 januari 2020 op wees dat dat nog niet gebeurd was zei

het Hof dat de aanklager zelf mocht kiezen of hij die informatie schriftelijk of mondeling indiende. (Rapport m.b.t. Mugimba 22 okt 2019 paragraaf 140-141; 21 jan 2020 paragraaf 35-39)

22 okt 2019:

140. The Court asked both Parties to write concluding observations and submissions in a manner that would be easy for the Court to understand;

141. The Court asked the Parties to upload the submissions in the online portal early enough.

21 jan 2020:

35. The Defence Counsel raised concern that the Prosecution had not responded adequately to the issues raised by the Court. The Prosecution was required to provide submissions in three parts, namely, submissions on the case generally, oral responses to questions raised by the Court and Defence, and the Prosecution's observations on the witnesses and their evidence. The Defence submitted that the Prosecution had only made submissions on the case generally but had not responded on the other two questions.

36. The Court asked the Prosecution to submit in more detail on the other questions that the Defence claimed had not been adequately submitted on.

37. The Prosecution requested the Court to allow them to conclude their submissions after which the Defence would also have the opportunity to respond with their submissions.

38. The Defence submitted that the Accused would not be able to properly prepare for his Defense since the Prosecution had only made oral submissions on the questions that had been raised by the Court, and on their observations on the witnesses. The Defence asked the Court to urge the Prosecution to file written submissions as opposed to making oral submissions.

39. The Court responded that the Prosecution had the option of making submissions in writing or orally and it was the Court to decide on the same. The Court remarked that it would not allow either party to delay the trial and that it would ensure that the Defense was not disadvantaged.

6. Aanklacht tegen Mugimba in strijd met uitleveringsvoorwaarden.

De Nederlandse rechtbank heeft de functie van Mugimba binnen organisaties expliciet als uitleveringsgrond verboden in zijn uitspraak van 11 juli 2014 (paragrafen 4 laatste zin, 6.3 en onder Beslissing).³

paragraaf 4 laatste zin:

³ ECLI_NL_RBDHA_2014_8484

- IX) Tussen april en juli 1994 is hij doelbewust met de toenmalige politieke partijen, leiders van de *Interahamwe* en andere civiele en militaire autoriteiten blijven samenwerken, ondanks zijn wetenschap van de voorzienbare gevolgen.

paragraaf 6.3:

6.3 Ook voor het overige voldoen de stukken aan artikel 18 van de Uitleveringswet, zij het dat het feitencomplex onder (IX) zodanig vaag is omschreven dat de rechtbank het uitsluitend kan kwalificeren als deelneming aan een organisatie die tot oogmerk heeft het plegen van misdrijven, zoals strafbaar gesteld bij artikel 140 van het Wetboek van Strafrecht.

De summierheid van de feitelijke omschrijving heeft derhalve tot gevolg dat er geen verdragsbasis bestaat voor uitlevering ten aanzien van het feitencomplex onder (IX) en daarmee feit 7, te weten de "formation, membership, leadership and participation in an association of a criminal gang whose purpose and existence is to do harm to people or their property". De ontbrekende verdragsbasis moet leiden tot de conclusie dat ten aanzien van dit onderdeel van de verdenking de uitlevering niet toelaatbaar kan worden verklaard. Ten overvloede kan worden opgemerkt dat dit feit in ieder geval naar Nederlands recht is verjaard.

Beslissing:

Beslissing.

De rechtbank,

- verklaart ontoelaatbaar de uitlevering aan de Republiek Rwanda van **[opgeëiste persoon]** voornoemd ter fine van strafvervolgung ter zake van het hiervoor onder **4.** genoemde feitencomplex IX, zoals omschreven in de hiervoor onder **2.** aangeduide documenten onder Count 7;

De vermeende rol destijds van Mugimba binnen de CDR politieke partij lijkt desalniettemin een (heel) belangrijke reden voor de aanklager om Mugimba te beschuldigen van medeplichtigheid aan genocide en samenzwering tot genocide: in bijna de helft van de zittingen tot en met mei 2020 ging het o.a. daarover. Zie de verslagen van de zittingen van 15 mei 2017; 18 jan, 14 feb, 9 okt en 19 dec 2018; 17 jan, 10 juli en 10 okt 2019; 6 jan, 22 mei en 26 mei 2020.

15 mei 2017, feitencomplex IX toch aangevoerd door aanklager-1:

9. Mr. M [] informed the Court that the Prosecutor had also lied to the Court by stating that the Accused used to be Secretary General of the Coalition for the Defence of the Republic (CDR)¹ while the truth was that he was an Interim Secretary General. He was acting Secretary General for a very short time.

18 jan 2018, feitencomplex IX toch aangevoerd door aanklager-2:

10. M [] further raised the issue that according to the agreement between the Dutch government and the Rwandan government, the prosecution was only supposed to be charge him for crimes allegedly committed by him and not related to his position in a political party. He also raised an issue regarding the indictment .He had noticed the prosecution had relied on witnesses who were not allowed to testify because they had been convicted for committing grave crimes. He cited article 59 of the Rwanda Criminal Procedure Code which prevents anyone who had been convicted for grave crimes and sentenced to lengthy imprisonment including life imprisonment from testifying in court. He also said that he did not understand why the indictment contained the charges of genocide and complicity in genocide and he used an ICTR case law that involved an accused person called [] where it was held that an accused cannot be his own accomplice.

14 feb 2018, , feitencomplex IX toch aangevoerd door aanklager-3:

6. At the invitation of the court, M [REDACTED] said that the court had read to him his identity without mentioning his position in the CDR political party. However, the document filed by the Prosecution indicated that he was the Secretary General of CDR political party. In reality he was the Secretary General in charge of this political party for a year from 22nd February 1992.
7. The court asked M [REDACTED] what he wanted reflected in the court document regarding his position.
8. M [REDACTED] said that he wanted it to reflect that he was the Secretary General of CDR party from February 1992 for a year only.

9 okt 2018, , feitencomplex IX toch aangevoerd door aanklager-4:

16. The Prosecution asked the witness to explain the type of people who had come to the said meeting. The witness said they were opinion leaders and leaders of sector political parties under the leadership of Mr. M [REDACTED].

19 dec 2018, feitencomplex IX toch aangevoerd door aanklager-5:

11. The witness proceeded to say that he remembered a meeting that Mr. M [REDACTED] called at the [REDACTED] in 199 [REDACTED] with other members of the [REDACTED] party and its youth called *impuzamugambis* during which meeting Mr. M [REDACTED] told the members that Rwanda's problems were caused by the Tutsi people. In addition there were rumours that Mr. M [REDACTED] participated in another meeting at a diplomat's hotel where weapons/fire arms were distributed to *Interahamwe and impuzamugambis*. The witness said he also saw military trucks that distributed these arms.

17 jan 2019, feitencomplex IX toch aangevoerd door aanklager-6:

38. The witness responded by saying that he could not remember the dates but since M [REDACTED] was among the founders of [REDACTED] party, he must have mentioned his name in the different testimonies that he had given before.
39. The Defense lawyer asked the witness whether he could differentiate M [REDACTED]'s actions from those of the [REDACTED] party.
40. The witness said he could not separate the two because M [REDACTED] was the [REDACTED] [REDACTED] of the [REDACTED] party and he was involved in all the activities.

10 jul 2019, , feitencomplex IX toch aangevoerd door aanklager-7:

32. During examination-in-chief, the witness said that he knew the accused and that he was M [REDACTED]. He knew that M [REDACTED] was a high-ranking person in the CDR political party and that he was his neighbor in Nyakabanda where this witness had a business. He noted that he participated in a CDR political party rally during which the president of the CDR said that Tutsis were the enemy of the country and that people should always look who was seated beside them to ensure that he or she was not the enemy.

10 okt 2019, , feitencomplex IX toch aangevoerd door aanklager-8:

11. The defence then inquired about the involvement of the witness DNN in the CDR party.
12. The witness noted that he was member of the CDR Party. He said that he had been elected during the 1993 Party elections and was [REDACTED]. He stated that he was based in Gisenyi - that he lived in [REDACTED] which was near the [REDACTED].

6 jan 2020, , feitencomplex IX toch aangevoerd door aanklager-9:

11. In presenting the submissions, the Prosecution asserted that the Accused had been involved in the genocide in his capacity as [REDACTED]. The Prosecutor expounded on the evidence that had been presented at trial that the Accused had been the [REDACTED] from the time it was established in 1992 until July 1994.

20 mei 2020, feitencomplex IX toch aangevoerd door aanklager-10:

12. The Prosecution submitted that the Accused Person had participated in a meeting held in Nyamirambo Regional Stadium on March 1992 where the Accused, together with other senior cadres of the party, spoke about the CDR Party Manifesto.
21. The Prosecution provided a highlight of the testimonies by some of the witnesses which demonstrated the Accused person's position in Rwandan society as the executive secretary of the CDR party. The Prosecution submitted that he had used his power and influence in the community to commit crimes. The witness testimonies they relied on included those of [REDACTED], and [REDACTED].

26 mei 2020, , feitencomplex IX toch aangevoerd door aanklager-11:

35. The Prosecution particularly pointed out to the witness statement by witness [REDACTED] who claimed that he/she knew M [REDACTED] since he/she was a child and that they were both members of the CDR Party. He/she claimed that in 1993, he/she had shown up to collect the CDR Party's materials but found out that M [REDACTED] was not available as he had fallen sick. The witness had claimed that another person had been hired to act in M [REDACTED] place in return for remuneration. However, [REDACTED] claimed he/she did not know the person who was allegedly acting in M [REDACTED] place.
36. The Prosecution questioned the veracity of this statement and whether an executive secretary of the CDR Party, elected to serve a specific term as per the Party's statutes, could be replaced by a non-elected person. The Prosecution submitted that the testimony of [REDACTED] was false as [REDACTED] had failed to provide the name of the person who he claimed had replaced the Accused person as the executive secretary at the time. Further, the Prosecutor asserted that the Accused person had not been replaced between 1992 and 1994.

7. **Volgens de aanklager is een gerucht wettelijk toegestaan [als bewijs] als de bron van het gerucht bekend is.** (Rapport m.b.t. Mugimba 21 jan 2020 paragraaf 45)

45. The Prosecution also addressed the issue of hearsay evidence by witness DFM. This had been raised by the Defence. The Prosecution stated that the law allowed for instances when hearsay could still be admissible as long as the witness identified the source of information. The Prosecution referred to the Case of *Prosecutor v. Kamuhanda*, ICTR/95/54/A and stated that the Court could examine the credibility of the evidence, and that it could be admissible and used by the Court even if the Court could not verify the source of that evidence.

8. **Eén van de beschermde getuigen à charge** [gehoord op 14 sep en 9 okt 2018] **zou getuige zijn in veel genocide zaken.** volgens de advocaat van Mugimba tegen de Monitor op 19 sep 2018. **Dit roept vraagtekens op m.b.t. de betrouwbaarheid van die getuige.** (Rapport m.b.t. Mugimba 19 sep paragraaf 68)

68. On the issue of witness protection, the lawyer informed the Monitor that the protection granted to the witness was not favorable to their case because it would be an easy way for the witness to lie. Regarding the allegations by the witness that bad things were happening to him as a result of the case, the lawyer noted that the he was a witness in many genocide cases and the threat could be emanating from a different case.

9. **Het aantal aanklachten tegen Mugimba is van oorspronkelijk zeven in mei 2020 teruggebracht tot twee. Dit roept twijfels op over de degelijkheid, en daarmee de motivatie, van de voorbereiding door de Rwandese overheid van het uitleveringsverzoek m.b.t. Mugimba.**

De oorspronkelijke aanklacht bevatte zeven punten, de uitlevering was toegestaan m.b.t. zes punten, en de aanklacht die bij het Hof was ingediend bevatte vier punten. (Rapport m.b.t. Mugimba 18 jan 2018 paragraaf 12) In de zitting van 26 mei 2020 bleek dit aantal verder te zijn teruggebracht tot twee punten. (Rapport m.b.t. Mugimba 26 mei 2020 paragraaf 30-32)

18 jan 2018:

12. At the invitation of the court, the prosecution said that the defence had not raised any proper objection and on the contrary the defence had embarked on a closing argument exercise and was asking the court to nullify an indictment that was filed with the court and not explained by the Prosecution. The prosecution further said that they had not violated any extradition agreement because the initial indictment contained 7 counts and the extradition was allowed on 6 counts and the indictment filed with the High Court retained only 4 counts.

26 mei 2020:

30. The Prosecution submitted that they had initially charged the Accused person with four crimes, namely; incitement to commit genocide, commission of genocide, complicity in genocide and conspiracy to commit genocide.

31. The Prosecution further submitted that they had made an application to amend the charges so as to now charge the Accused person with only two crimes: complicity in genocide and conspiracy to commit genocide.

32. The court asked the Accused person whether he had clearly understood the allegations by the Prosecution, to which the Accused person responded that he had no trouble understanding the allegations.

10. **Bij het verlengen van het voorarrest van Mugimba zou de aanklager meerdere keren de termijn voor aanvraag van verlenging hebben laten verlopen zonder de rechtbank daar gevolgen aan gaf. Ook zou de rechtbank bij de verlenging vertrouwd hebben op verklaringen van getuigen die volgens de Rwandese wet vanwege hun eigen veroordeling niet tegen anderen mogen getuigen (punt 4 hierboven).** (Rapport m.b.t. Mugimba 10 mrt 2017 paragraaf 7-9, 11-13; 11 mrt 2017 paragraaf 14-24; 12 apr 2017 paragraaf 25-31; 15 mei 2017 paragraaf 5-12, 19-22)

Let wel: wat er in de periode januari-februari 2017 m.b.t. verlenging van voorarrest gebeurd is kan niet worden gecontroleerd omdat er volgens Justitie & Veiligheid geen monitoringrapport is over die periode: zie de e-mail van het ministerie van 9 oktober 2020 aan het eind van **paragraaf 17** hieronder.

Ontmoeting Mugimba met Monitor 10 maart 2017, onregelmatigheden m.b.t. verlenging voorarrest:

7. Mr. M [] informed the Monitor that the Nyarugenge Primary Court made a decision to extend his pre-trial detention order and he had appealed that decision. Mr. M [] noted that on 10th February 2017, the Intermediate Court had rendered a decision dismissing Mr. M [] appeal and ordering that he remains in detention in violation of Article 117 and 104² of the Criminal Procedure Code.

² Article 177 provides that an appeal is lodged in a court that has Jurisdiction to try the substantive case. The court decides the case in accordance with the rules laid down under the Criminal Procedure Code.

Article 104: stipulates that when the Appeal has not been examined within the deadline, the detained accused person has to be released and the prosecution continues when he is out of prison

8. Mr. M [] informed the Monitor that he had observed that the Court did not have jurisdiction and did not respect the rule of law because it had used witness statements of individuals who had been sentenced to life imprisonment. This he added contravenes Article 66 and 68 of the Rwandese Organic Law number 01/2012/OL dated 2nd May 2012, establishing Rwanda's Penal Code.³

³ Article 66: Individuals who have been sentenced to life imprisonment cannot testify before court yet the two witnesses who testified against me have been sentenced to life imprisonment.

9. Mr. M [] informed the Monitor that every time he raised the issue of the Court relying on witnesses serving life imprisonment, he was told that he should raise the concerns when his trial commences at the High Court because he was accused for serious crimes and had to remain in detention.

Rechtszitting 10 maart 2017, onregelmatigheden m.b.t. verlenging voorarrest:

11. With the Court's permission, Mr. M [] submitted that he was not ready to respond to the Prosecution's request for extension because he had filed an application with the Court requesting that he be released as he was illegally detained. He therefore asserted that the Prosecution could not be allowed to request for an extension of an illegal detention. The Court ought therefore to hear his request first.
12. The Prosecution in responding maintained that the Court should dismiss Mr. M [] request and renew his detention order because he had been notified of the request to extend his detention since 5/04/2017, and such notice was sufficient for him to prepare for the hearing.
13. The Court intervened by stating that Mr. M [] might have filed his request with the Court but the President of the Court has not seen it yet, and would respond to Mr. M [] as soon as the request was seized by the Court. Further, on the Prosecution's request for an extension of the pre-trial detention order, the Court held that it would issue a decision the next day on 11/04/17.

Delivery of the decision of the Decision by the Nyarugenge Primary Court on 11/04/17

14. The Court convened to issue a decision on Mr. M [] objection to the Prosecution's request for the extension of the Pre-trial Detention Order.
15. The hearing was before Justice [] on the 11 April 2017. The Prosecution was represented by Mr. [] Mr. M [] was present in Court with his Defense Counsel Mr. []
16. Mr. M [] submitted to the Court that in Paragraph 15 of the Busasamana Primary Court's decision on extension of the pre-trial extension order, the pre-trial detention order of the Nyarugenge Primary Court was extended by thirty days and had expired on 25/02/17. He indicated that according to him, the Pre-trial detention order was extended until 24/02/17 and from that date, the Prosecution had the duty to request for extension of that order not later than 24/03/17. From 24/03/17 to 5/04/17 when the Prosecution filed an application for extension, Mr. M [] was illegally detained and the Court should have ordered his immediate release.
17. The Prosecution disagreed and urged the Court to dismiss the Accused's objection and proceed to hear the Prosecution's request on extension of the pretrial detention order for reasons:
 - The Accused did not raise this ground before the Huye Appeal Court⁴ when questioning the Busasamana Primary Court decision.
 - The current Court should only consider the Busasamana Court decision issued on 10/03/17 to check if the Accused is illegally detained. The starting point to count the 30 days should be 10/03/17 instead of 25/02/17 as alleged by the Accused.
18. The Court intervened by stating it would make a decision on the objections by Mr. M [] at the same time with the Prosecution's request for the extension of the pre-trial detention order.

⁴ The Accused had appealed the Busasamana Court decision at the Huye Intermediate Court in Nyanza Province. The Court in Huye had dismissed the appeal.

19. Mr. M [] submitted to the court that he had already made an application requesting he be released as he was illegally detained but the Court did not decide on it. He stated that if the Court postponed this decision and proceeded with the Prosecution's request, this would amount to prejudice.
20. In response the Prosecution submitted that the Court had made it clear it would issue its decision on the different requests together. This was procedural and a good approach to ensure proper administration of justice. The Prosecution argued that the reasons for the extension were valid as it was still carrying out its investigations that would lead to the final indictment being filed with the High Court.
21. Mr. [] told the Court that since the last decision on the extension of Mr. M [] detention order, the Prosecution had invited seven witnesses and only 2 had so far been interviewed, and they needed time to reach all the witnesses to verify their previous testimonies. In addition, the Prosecution had received documents from the relevant Court in The Netherlands which they needed time to review. The Prosecution was also still waiting for a response from the CNLG⁵ regarding Mr. M [] Gacaca records.
22. Mr. M [] indicated to the Court that he was a law abiding citizen, and even though the Court had taken a decision that he did not agree with, he would abide by it. He insisted that the Prosecution had not addressed any new ground to justify the extension of his detention order and if the Court respected the law, it should not extend an illegal detention. He observed that laws had been violated since the day he was arrested on false allegations claiming that he was a fugitive, while he was travelling with a valid passport issued by the Government of Rwanda.
23. Mr. M [] Counsel, Mr. [] added that the Court should dismiss the Prosecution's request and release Mr. M [] because the Prosecution had not respected the legal deadlines and had no serious grounds to detain Mr. M []
24. The Court indicated that it needed time to reflect on the proceedings against the applicable law and adjourned the hearing indicating it would issue its decision on 13/04/17.

Meeting with Mr. M [] at the Kigali Central Prison 12 April 2017

25. The Monitor met with Mr. M [] at the Kigali Central Prison. The meeting was held with the assistance of an interpreter.

⁵ National Commission for the Fight against Genocide

Ontmoeting Mugimba met Monitor 12 april, onregelmatigheden m.b.t. verlenging voorarrest::

26. Mr. M [] informed the Monitor that he had noted that there was a suspicious collaboration between the Prosecution, the Judges and the prison authorities, in the conduct of his case.
27. Mr. M [] informed the Monitor during the hearing on 12/04/17, it emerged that the pre-trial detention order that had kept him in prison expired on 24/03/17. On 27/03/17 he filed a case for illegal detention before the Nyarugenge Primary Court but the document had to be seen and authorized by the head of prison and he had not received any further information.
28. Mr. M [] informed the Monitor that on 5/04/17, noting that there was no reaction about his initial request to the Court be released, he had written a new request addressed to the Court against the Prison Director for illegal detention. The new application had been processed through the prison for dispatch to the Court.
29. Mr. M [] informed the Monitor that he suspected that when the application reached the Nyarugenge Primary Court, there was a collusion between the Prison Directors, the Prosecution and the Court, because the Court claimed it did not receive the application.
30. Mr. M [] further informed the Monitor that on 6/04/17 he was served with the Prosecution's application seeking to extend his pretrial detention order. It was his view the there was an agreement between the Court and the Prosecution to use the 10/03/17, the date which the Busasamana Primary Court issued the extension of pretrial detention order without reading the full content of the decision.
31. It was Mr. M [] view that there should not be any discussion to count the days for extending detention because the Busasamana Court decision specified that it was extending the Nyarugenge Primary Court decision of 24/02/17.

Rechtszitting 15 mei 2017, onregelmatigheden m.b.t. verlenging voorarrest:

5. Mr. M [] objected to the extension stating that his Detention Order expired on 12 May 2017 and so he was being detained illegally. He stated that he had been in detention for six months already and he was worried the situation would not change. He however added that he would trust that the Prosecutor was not lying about needing only one last extension.
6. Mr. M [] then drew the Court's attention to his security. He stated that in a previous hearing, the Prosecutor had warned him for using 'wrong language' and making dangerous claims which could negatively impact his trial. He said the Prosecutor had warned him that if not careful, he could face even more charges for his utterances. Mr. M [] stated that if what he said was an offence, he wanted the matter to be brought before the Court.
7. In his response, Mr [] informed the Court that Mr. M [] was referring to an Appeal hearing at the Intermediate Court where the Accused publicly accused Mr. [] head of the Genocide Fugitive Tracking Unit, for intimidating the sitting Judge and influencing his decision to extend Mr. M [] Detention Order.
8. The Prosecutor went on to say that the Judiciary is independent and so are the judges and so it was wrong for Mr. M [] to make such wild and insulting allegations which he cannot prove.
9. Mr. M [] informed the Court that the Prosecutor had also lied to the Court by stating that the Accused used to be Secretary General of the Coalition for the Defence of the Republic (CDR)¹ while the truth was that he was an Interim Secretary General. He was acting Secretary General for a very short time.
10. Mr. [] intervened and told the Court that his client had continued to be detained without sufficient justification. He urged the Court to review the first ever decision issued to extend Mr. M [] detention and to release the Accused. He added that his client has a passport and a physical address in Rwanda and so he was not a flight risk.
11. Mr. [] submitted that it was not necessary to discuss Mr. M [] role in the CDR during this particular hearing as it was not relevant with the discussions pertaining to his detention. He said that would be proven during the trial.
12. In his response, Mr. M [] questioned the Prosecutor's decision to postpone the discussion regarding his role in the CDR. He stated that failure to do so would negatively affect his trial because the Court would have an opinion on him before hearing his defence.

19. Mr. M [] submitted to the court that he had already made an application requesting he be released as he was illegally detained but the Court did not decide on it. He stated that if the Court postponed this decision and proceeded with the Prosecution's request, this would amount to prejudice.
20. In response the Prosecution submitted that the Court had made it clear it would issue its decision on the different requests together. This was procedural and a good approach to ensure proper administration of justice. The Prosecution argued that the reasons for the extension were valid as it was still carrying out its investigations that would lead to the final indictment being filed with the High Court.
21. Mr. [] told the Court that since the last decision on the extension of Mr. M [] detention order, the Prosecution had invited seven witnesses and only 2 had so far been interviewed, and they needed time to reach all the witnesses to verify their previous testimonies. In addition, the Prosecution had received documents from the relevant Court in The Netherlands which they needed time to review. The Prosecution was also still waiting for a response from the CNLG⁵ regarding Mr. M [] Gacaca records.
22. Mr. M [] indicated to the Court that he was a law abiding citizen, and even though the Court had taken a decision that he did not agree with, he would abide by it. He insisted that the Prosecution had not addressed any new ground to justify the extension of his detention order and if the Court respected the law, it should not extend an illegal detention. He observed that laws had been violated since the day he was arrested on false allegations claiming that he was a fugitive, while he was travelling with a valid passport issued by the Government of Rwanda.

10.3 Inbreuk op het recht op een vonnis binnen een redelijke termijn

- 11. In de eerste 36 maanden na uitlevering van Mugimba vonden in totaal maar tussen de 18 en 22 strafrechtzittingen plaats in zijn proces, elk van onbekende lengte maar nooit langer dan één dag, en bijna allemaal een maand of meer na de vorige zitting. Dit is niet efficiënt (o.a. steeds weer inlezen) en staat op gespannen voet met het recht op afronding van een strafproces en uitspraak binnen een redelijke termijn.**

In de monitoringrapporten m.b.t. Mugimba t/m mei 2020 staan verslagen van de volgende strafrechtzittingen:

2016-2017: 14 en 18 sep (2 zittingsdagen in eerste jaar)

2017-2018: 13 nov, 18 jan, 14 feb, 4 apr, 3 en 31 mei, 11 jun, 14 sep, 9 okt (9 in tweede jaar)

2018-2019: 19 dec, 17 en 29 jan, x mei, 10 jul, 30 sep, 10 en 22 okt (8 in derde jaar)

Let wel, er is in de monitoringrapporten geen verslag van een zitting tussen 29 jan en 10 jul 2019 terwijl die er wel geweest moet zijn; zie ook **punt 17** hieronder.

2019-2020: 6 en 21 jan, 22 en 26 mei

- 12. Een analyse van een overzicht van 19 genocide-gerelateerde uitleveringszaken aan Rwanda laat o.a. zien dat zeven zaken in de beroepsfase gemiddeld al 7 jaar en 5 maanden liepen, exclusief voorarrest in het land dat uitleverde. Eén verdachte werd tenslotte voor iets anders veroordeeld dan waarvoor hij uitgeleverd was, hetgeen strijd**

oplevert met het specialiteitsbeginsel.⁴ Mugimba en Iyamuremye zaten in december 2020 al bijna zeven jaar in detentie waarvan drie jaar in Nederland, en hadden nog steeds geen eerste uitspraak.

13. De aanklager kwam pas 10 maanden na uitlevering, in september 2017, met zijn aanklachten tegen Mugimba. Ook heeft hij in totaal vier of vijf keer een verdaging gekregen waardoor, bij tien zittingen per jaar, het proces tegen Mugimba nog weer een half jaar langer duurt. (Rapport m.b.t. Mugimba 14 sep 2017 paragraaf 3-5; 8 jan 2018 paragraaf 2-6; 14 sep 2018 paragraaf 53-54; 14 nov 2018 paragraaf 30; 7 juli 2019 paragraaf 7-10, 11-15; 22 okt 2019 paragraaf 145; 18 dec 2019 paragraaf 5)

14 september 2017, eerste strafrechtzitting, pas 10 maanden na uitlevering op 12 november 2016:

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 14th 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.

18 januari 2018, vertraging proces door toedoen van aanklager-1:

2. At the invitation of the court, the prosecution made an application for adjournment of the hearing so that they could amend the indictment.
3. At the invitation of the court, M [REDACTED] opposed the prosecution's application and pleaded to the court to dismiss it. He was of the opinion that the prosecution wanted to change the indictment after listening to the defence case.
4. At the invitation of the court, M [REDACTED]'s counsel also opposed the prosecution's application citing the reason that if the application was granted, it would delay the hearing. He prayed to the court to dismiss the application and order the hearing to continue.
5. The court retired to deliberate on the prosecution's application.
6. The hearing of the case resumed and the court ruled that the prosecution had not demonstrated any legal basis to support their application. The court dismissed the prosecution's application and directed the prosecution to adopt the indictment as it was.
7. At the invitation of the court, the defence counsel inquired the amount of time the prosecution would need to complete their case and the number of witnesses they were going to rely on.
8. At the invitation of the court, M [REDACTED] told the court that he did not understand why the identity of some of the witnesses was concealed.

⁴ <https://www.justiceinfo.net/en/tribunals/national-tribunals/40703-rwanda-suspect-transfers-signal-new-stage-in-genocide-trials.html>

14 september 2018, vertraging proces door toedoen van getuige van aanklager-2:

53. The witness requested the Court to adjourn the hearing because he was not prepared for the hearing and he was not feeling well due to his health condition of high blood pressure.

54. The Court ruled that by the mere fact that he sought an adjournment was enough to adjourn the case. The court understood why he wanted the hearing to be adjourned on medical grounds. The Court further said that the witness had been informed about the

14 november 2018, vertraging proces door toedoen van aanklager-3:

30. Mr. M [REDACTED] informed the Monitor that the he had been informed that there would be no hearing on 13th November due to the unavailability of Prosecutors.

15 november 2018, het ministerie van Justitie zou naar de vertraging kijken maar daar lijkt het te zijn blijven hangen:

37. The Monitor met [REDACTED] [REDACTED], the Head of Department International Justice at the Ministry of Justice.

38. The purpose of the meeting was to follow up on the reduced number of hearings for the Accused persons since their transition to Nyanza and secondly to gain clarity on Mr. M [REDACTED]'s medical file.

39. Ms. [REDACTED] informed the Monitor that the Ministry was tracking the progress of the cases and the Minister had requested for a chronology of the Dutch transfer cases hearings, which would be presented to the Chief Justice.

20 december 2018, nieuwe informatie van getuige à charge tijdens zitting, na twee eerdere schriftelijke verklaringen; vertraging proces door toedoen aanklager-4:

18. Mr. M [REDACTED] informed the Monitor that the witness who testified on 19 December 2018 had previously made two written statements that were communicated to the Defense during the pre-trial stage. He was therefore shocked when the Prosecution questioned the witness on fresh details that were not in the statements. In his opinion, if the prosecution continued with this trend, the Defense would keep responding to the new evidence, and this would delay justice, noting that he has already been in detention for five years without a conviction.

7 juli 2019, vertraging proces door toedoen van aanklager-5:

7. Mr. M [REDACTED] informed the monitor about two occurrences observed in the last hearing which he felt were peculiar.

8. Regarding the first incidence, Mr. M [REDACTED] observed that three of the prosecution witnesses who were to appear did not show up in Court.

9. Mr. M [REDACTED] noted that five prosecution witnesses had already testified. The three remaining witnesses were the last prosecution witnesses. However, they did not appear because there was no transportation from the Mageregere Prison to court.

10. According to Mr. M [REDACTED], there would be no reason as to why the prosecution would not ensure the attendance of witnesses because the prison was near the Rwanda Prison Headquarters.

22 oktober 2019, vertraging proces door toedoen van aanklager-6:

145. The Prosecutors also informed the Monitor that they had to request for an adjournment in the last hearing because of the workload and requirements expected including responses to written submissions as well as responses to issues pointed out by the Court.

18 december 2019, vertraging proces door toedoen van aanklager-7:

5. The purpose of the hearing was for the Prosecution to present its closing submissions. The Prosecution informed the Court that it was not ready to make the submissions because Prosecutor, [REDACTED], who was to make part of the closing submissions, was away on official duty. The Court adjourned the hearing to 6 January 2020.

10.4 Blijken van publicitair belang van Rwandese overheid bij het proces tegen Mugimba

14. "Upon arrival from the Netherlands on 12 November 2016 ... just before the press briefing begun [sic], Mr. M. was paraded in front of the boardroom for journalists to take photos." (Rapport m.b.t. Mugimba 12 nov 2016 paragraaf 6)

'Paraded in front of journalists', dat duidt op belang bij publiciteit en wekt niet de indruk dat de regering van mening is dat Mugimba onschuldig is tot het tegendeel bewezen is.

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.

15. **Op uitnodiging van het Hof mochten de media voorafgaand aan de zitting van 10 juli 2019 foto's nemen van de rechters, de beklaagde en de aanklager.** (Rapport m.b.t. Mugimba 21 jul 2019 paragraaf 21)

21. At the invitation of the Court, the media was allowed to take pictures of the bench, the accused and the prosecution before commencing the hearing.

10.5 Gebrekkige medische zorg van de Rwandese overheid aan Mugimba

16. Na de overplaatsing van Mugimba van Kigali naar Nyanza werden zijn bezoeken aan het ziekenhuis in Kigali bemoeilijkt en ging dit in elk geval één keer niet door. Eén van de vier medicijnen die Mugimba nodig heeft, bleek niet beschikbaar te zijn, kennelijk gedurende elf maanden of langer. De gevangenis regelt de zorgverzekering van Mugimba en had die laten verlopen. Daardoor had hij destijds op het moment van spreken al ongeveer drie dagen geen medicijnen meer. (Rapport m.b.t. Mugimba 22 aug 2018 paragraaf 22-29; 14 nov 2018 paragraaf 32-35; 15 nov 2018 paragraaf 38-40; 20 dec 2018 paragraaf 17; 20 dec 2018 paragraaf 19-20; 7 jul 2019 paragraaf 15-18; 10 okt 2019 paragraaf 122-123; 26 feb 2020 paragraaf 52-54)

Beperkte toegang tot het King Faizal Hospital:

22 augustus 2018, beperkte toegang tot het King Faizal Hospital:

Meeting with Rwanda Correctional Services Commissioner General, Mr. [REDACTED] on 22nd August 2018

22. The Monitor held a meeting with the Commissioner General of Rwanda Correctional Services on 22nd August 2018 accompanied by an Interpreter and two fellow Monitors.

27. On the issue of the new directive requiring the prisoners to be treated at the prison health facility first before being transferred to King Faizal hospital, he informed the Monitor that they had conducted a security assessment and concluded that it posed a security risk if the prisoners went straight to King Faizal Hospital on a regular basis. Moreover, some of the ailments could be treated at the prison.

28. They modified a van to take them to hospital and they are handcuffed for security reasons.

14 november 2018, beperkte toegang tot het King Faizal Hospital:

32. Mr. M [REDACTED] further informed the Monitor that when he was extradited, he came to Rwanda with a medical file, which was taken to King Faizal Hospital where he had been seeking medical attention since his arrival in Kigali.

33. Mr. M [REDACTED] informed the Monitor that since he was transferred to Nyanza, the Rwanda Correction Services (RCS) had stated that for a detainee to go to Kigali for medical treatment he had to go through a very long process, and this had affected his treatment at King Faizal Hospital. In fact, he had been warned by RCS during his last appointment that he would not be allowed to go to Kigali again.

34. Mr. M [REDACTED] informed the Monitor that he is required to see the Doctor once every three months, and that his health condition is delicate.

15 nov 2018, volgens het ministerie van Justitie zou er een uitzondering komen voor Mugimba:

40. Ms. [REDACTED] further informed the Monitor that there will be an exemption to Mr. M [REDACTED]'s case, and the ministry would follow up with the RCS to ensure he continues to receive medical attention at King Faizal Hospital in Kigali.

26 februari 2020, beperkte toegang tot het King Faizal Hospital:

52. The Accused handed the monitor a letter dated 25 February 2020 titled, *"Returning us to the Prison without meeting the doctors at the King Faisal Hospital in Kigali"*.

53. The letter was addressed to the Prison Director of ██████ Prison, and the contents of the letter indicated that the new security officer of the prison, ██████, had denied the Accused and other prisoners the opportunity to visit their doctors. The Accused and other prisoners had not been allowed to visit their doctors due to an argument between the said intelligence officer and some Sierra Leonian prisoners at ██████ Prison who had wanted their handcuffs removed while at the hospital. The intelligence officer had stated that he would not allow any prisoner to visit the hospital without their handcuffs on.

54. The Accused requested for urgent attention into this matter since he was unwell and had not been able to obtain the medical care and attention he needed.

Eén van de vier medicijnen die Mugimba nodig heeft was niet beschikbaar voor elf maanden of langer. Zie Rapporten m.b.t. Mugimba 14 nov 2018 paragraaf 35; 20 dec 2018 paragraaf 17 (medicijn nog steeds niet beschikbaar); 20 dec 2018 paragraaf 19-20 (medicijn mogelijk in de ban gedaan door overheid, gevangenisdirecteur zou gevangenisarts om vervangend middel vragen); 10 okt 2019 paragraaf 122-123 (medicijn in heel Kigali niet te krijgen).

14 november 2018, medicijn Mugimba niet beschikbaar

35. During his last appointment at King Faisal, the doctor prescribed four different prescriptions but the prison availed three of the prescribed tablets, and indicated that the fourth one was not available, and that he had been taking the drugs without the fourth one.

20 december 2018, medicijn volgens Mugimba nog steeds niet beschikbaar:

17. Mr. M ██████ continued to inform the Monitor that he still had not received his fourth prescription as he had previously raised during the previous meeting. The Monitor informed Mr. M ██████ that the issue had been raised with the Ministry of Justice during the previous monitoring mission and action was to be taken urgently. The Monitor committed to follow up with the Prison Director on this issue.

20 december 2018, medicijn volgens directeur Mpanga Prison mogelijk in ban gedaan door overheid:

19. The Monitor had a meeting with the Director of Mpanga Prison and his deputy Mr. ██████ ██████ to follow up on the issue raised by Mr. M ██████ about the prison failing to avail one of his prescribed drugs.

20. Mr. ██████ informed the Monitor that he was aware of Mr. M ██████'s health condition, and had approved his travel to King Faisal Hospital in Kigali the previous day. He continued to say that the government had banned some medicine from the market, and this could be the reason why Mr. M ██████'s fourth prescription was not available in the market. However, he promised to follow up with the prison doctor, to substitute the prescription with an alternative drug in the market.

10 oktober 2019, volgens Mugimba medicijn in heel Kigali niet te krijgen:

122. The Ambassador further inquired about Mr. M [REDACTED]'s health and his access to medication.
123. Mr. M [REDACTED] noted that he had been taken to [REDACTED] in Kigali but his particular medication was not available in the whole of Kigali. He acknowledged the efforts of the Prison Director at [REDACTED] to ensure that he gets medical attention.

De gevangenis regelt de zorgverzekering van Mugimba en had die laten verlopen. Daardoor had hij op moment van spreken al ongeveer drie dagen geen medicijnen meer. Zie 7 juli 2019 paragraaf 15-18.

15. Regarding detention conditions at the prison, Mr. M [REDACTED] had a particular issue regarding his health. He noted that the prison was responsible for getting him medical insurance which was valid for one year from June to June every year.
16. Mr. M [REDACTED] stated that the insurance had expired and therefore he could not get medical attention. He had been out of medication for about 3 days.
17. Mr. M [REDACTED] stated that he had attempted to have a meeting with the Prison Director to deliberate about the insurance issue although the director was in a meeting and therefore not available at the time.
18. Mr. M [REDACTED] stated that he would try to meet the director and update the monitor in the next meeting scheduled to take place on 10 July 2019.

10.6 Kennelijk onwettig monitoringrapport niet openbaar gemaakt

17. Volgens Justitie en Veiligheid bestaat er geen monitoringrapport voor Mugimba voor de maand mei 2019.⁵ Dit is de maand waarin volgens zowel Mugimba als de monitor een zitting heeft plaats gevonden waarin (nog) twee getuigen à charge hun oorspronkelijke getuigenissen tegen Mugimba hebben ingetrokken. Zie **paragraaf 3** in onderdeel 10.2 hierboven.

Als de openbaar gemaakte monitoringrapporten verslagen bevatten van alle strafrechtzittingen m.b.t. Mugimba, dan zou er geen zitting geweest zijn tussen 29 januari en 10 juli 2019. Het overzicht van zittingsdagen onder **paragraaf 11** hierboven laat echter een bijna maandelijkse frequentie van de zittingen zien elk zittingsjaar tussen september en juni. In juli-augustus is het jaarlijkse reces van de rechtbank. Als we de hier onderzochte eerste helft van 2019 buiten beschouwing laten was de langste periode tussen twee zittingen vier maanden in januari-mei 2020 vanwege corona, gevolgd door de bijna twee-en-een-halve maand tussen 9 oktober en 19 december 2018. Dat laatste kwam doordat er geen aanklager beschikbaar zou zijn geweest voor de geplande zitting van 13 november 2018 (zie **paragraaf 13** hierboven). Alles bij elkaar is zo'n beweerde periode van bijna een half jaar zonder zitting tussen 29 januari

⁵ E-mail van het ministerie van Justitie en Veiligheid aan dr. J. Brouwer d.d. 9 oktober 2020, 15:08 uur.

en 10 juli 2019 dus hoogst onwaarschijnlijk.

April-juli 2019 is óók de periode waarin een medewerker van de Nederlandse ambassade volgens Mugimba tegen hem zei dat niet al zijn verslagen openbaar gemaakt zouden worden. Zie monitoringrapport m.b.t. Mugimba 7 juli 2019 paragraaf 6.

6. Mr. M [REDACTED] also noted that the Embassy officials notified him that the monitoring reports will not be entirely shared with the public. He expressed his concerns about this stating that the reports should be shared fully with the public in order for them to know everything regarding his case.

Er moet geconcludeerd worden dat, zonder enige uitleg en tegen het advies van de rechtbank en de belofte van de minister aan de Kamer in,⁶ géén monitoring-rapport openbaar is gemaakt over de zitting of zittingen van het Rwandese Hof tussen 12 maart en 10 juli 2019, terwijl er kennelijk wel één of meer zittingen plaats gevonden hebben. Zittingen bovendien met informatie die aantoonde, nogmaals, dat de uitleveringsvoorwaarden m.b.t. een eerlijk proces werden geschonden.

18. **Ook voor jan-feb 2017 zou er geen monitoringrapport zijn.** Wel waren er loze links op de archief website van de overheid, o.a. voor een rapport over jan-feb 2017. Voor mrt-apr 2020 is er vermoedelijk geen monitoringrapport omdat er vanwege Covid-19 geen zittingen waren maar helemaal duidelijk is dat niet. In het rapport over mei 2020 wordt gesproken over zittingen via Skype.
19. **Verder moet vermeld worden dat, om alle relevante informatie te vinden over het monitoren van het proces tegen Mugimba, drie zoekwoorden nodig waren op elk van twee websites.⁷** En dan nog moest het rapport van mrt-apr 2017 opgevraagd worden bij Justitie en zouden er volgens Justitie dus geen rapport te zijn voor de periodes jan-feb 2017 en 12 april - 7 juli 2019.

10.7 *Het monitoringsysteem helpt niet het recht op een eerlijk proces te waarborgen*

20. **M.b.t. de wel gepubliceerde monitoringrapporten moet opgemerkt worden dat het ministerie van Justitie en Veiligheid ook namen, plaatsnamen, jaartallen en data e.d. heeft weggelakt die algemeen bekend zijn, en/of openbaar zijn door de openbare zittingen in het proces tegen Mugimba. Zelfs de codenamen van beschermde getuigen zijn geregeld weggelakt.** Dit is in tegenstelling tot wat de minister op 29 maart 2017 tegen de Kamer zei, namelijk dat alleen vertrouwelijke mededeling van de verdachten en de namen van betrokkenen weggelakt zouden worden.⁸

Bovendien maakt dit onnodig weglakken alleen al het onnodig moeilijk, en soms onmogelijk, om te volgen wie wat gedaan heeft en of dat wel voldeed aan de regels voor een eerlijk proces..

21. **De monitoringrapporten zelf vertonen ook belangrijke gebreken** omdat de monitor van ICJ Kenya

⁶ Brief van de minister van Veiligheid en Justitie aan de Tweede Kamer d.d. 29 maart 2017, kenmerk 2058834.

⁷ Zoekopdrachten Jean+Baptiste, Jean+Baptist en ICJ; op www.rijksoverheid.nl en op de daaraan gekoppelde archief website.

⁸ Brief van de minister van Veiligheid en Justitie aan de Tweede Kamer d.d. 29 maart 2017, kenmerk 2058834.

- niet aangeeft in welke taal de zittingen of onderdelen daarvan gehouden worden (Kinyarwanda, Engels, Frans) en of de monitor van dienst die taal machtig is of een (door de overheid verschaft) toek nodig heeft;
- niet aangeeft hoe lang de zittingen duren (geen begintijd, eindtijd, pauzetijden);
- lang niet altijd aangeeft voor welke dag de volgende zitting op de rol staat, wat mede leidt tot onduidelijkheid over het aantal zittingen dat heeft plaatsgevonden;⁹
- over veel zittingen veel te weinig schrijft om als lezer een goed oordeel te kunnen vormen over wat heeft plaats gevonden; bijv. hele zittingen samenvatten in enkele zinnen;¹⁰
- in het verslag over de strafrechtzitting van 14 september 2017 niet eens de gronden voor de aanklachten tegen Mugimba opnam, alleen de vier wetsovertredingen waarvan hij beschuldigd werd.

22. Het ministerie van JenV lijkt nooit gevraagd te hebben om de informatie die overduidelijk miste in de monitoringrapporten.

23. Zoals de monitoringrapporten aangeven heeft Mugimba tientallen keren geklaagd over zeer uiteenlopende zaken die van belang waren in verband met de uitleveringsovereenkomst tussen Nederland en Rwanda. Soms zelfs jaren lang, Niet alleen klachten over de hierboven genoemde gebreken in de procesvoering en rapportage, maar ook klachten over het niet openbaar maken van alle monitoringrapporten; de toegang voor hem en zijn familie tot de monitoringrapporten (31 jul 2017, 17 mei en 28 augustus 2018; en voor Mugimba zelf 10 okt en 20 dec 2018 en mogelijk 1 okt en 10 okt 2019); gebrek aan 'equality of arms'; de overplaatsing van Kigali naar een gewone gevangenis in Nyanza die ook contact met zijn advocaat bemoeilijkte; en zijn detentieomstandigheden. Op al die klachten is door het Nederlandse ministerie van J&V zeer beperkt of niet gereageerd.

⁹ Zie ook het uittreksel van monitoringrapporten m.b.t. de strafrechtzittingen in het proces tegen Mugimba, **Bijlage 14**.

¹⁰ **Ibid.**