

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-13-38-I  
Date: 13 October 2020  
Original: English

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**BEFORE A SINGLE JUDGE**

**Before:** Judge Iain Bonomy  
**Registrar:** Mr. Abubacarr Tambadou  
**Order of:** 13 October 2020

**PROSECUTOR**

**v.**

**FÉLICIEN KABUGA**

***PUBLIC***

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**ORDER FOR SUBMISSIONS**

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**Office of the Prosecutor:**

Mr. Serge Brammertz

**Duty Counsel for Mr. Félicien Kabuga:**

Mr. Emmanuel Altit

**I, JUDGE IAIN BONOMOY**, Judge of the International Residual Mechanism for Criminal Tribunals and the Single Judge assigned to this matter;<sup>1</sup>

**RECALLING** that Mr. Félicien Kabuga is an Accused before the Mechanism based on an amended indictment filed before the International Criminal Tribunal for Rwanda (“ICTR”) on 13 April 2011<sup>2</sup> and is the subject of an international arrest warrant issued by the Mechanism on 29 April 2013, which directs his transfer to the Arusha Branch of the Mechanism to be remanded into the custody of the United Nations Detention Facility;<sup>3</sup>

**RECALLING** that French authorities, acting on the basis of the Arrest Warrant and Order for Transfer, arrested Kabuga on 16 May 2020 in France;<sup>4</sup>

**RECALLING** that, on 27 May 2020, Judge William H. Sekule, acting in his capacity as the Duty Judge for the Arusha Branch of the Mechanism, dismissed a Prosecution request for the Arrest Warrant and Order for Transfer to be modified to allow for Kabuga’s temporary transfer to the Hague Branch of the Mechanism;<sup>5</sup>

**NOTING** that, on 30 September 2020, the French *Cour de cassation* affirmed the decision of the lower court, which, *inter alia*, found that no medical or legal grounds prevented the transfer of Kabuga to the Mechanism;<sup>6</sup>

**BEING SEISED OF** an urgent, confidential motion filed by Kabuga on 5 October 2020 requesting that: (i) the Arrest Warrant and Order for Transfer be amended and that he be transferred to the

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<sup>1</sup> See Order Assigning a Single Judge, 6 October 2020, p. 1. See also Order Assigning a Trial Chamber, 1 October 2020, p. 1 (assigning the Trial Chamber to this case effective upon Mr. Félicien Kabuga’s transfer to the seat of the relevant branch of the Mechanism).

<sup>2</sup> See *The Prosecutor v. Félicien Kabuga*, Case No. ICTR-98-44B-PT, Decision on the Prosecutor’s Request for Leave to File an Amended Indictment, 13 April 2011 (confidential); *The Prosecutor v. Félicien Kabuga*, Case No. ICTR-98-44B-I, Amended Indictment, 14 April 2011. A detailed procedural history related to the prior ICTR indictments charging Kabuga can be seen in a prior decision in this case. See Decision on Prosecutor’s Request to Amend the Arrest Warrant and Order for Transfer, 27 May 2020 (“Decision of 27 May 2020”), paras. 2, 3.

<sup>3</sup> *Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38, Warrant of Arrest and Order for Transfer Addressed to All States, 29 April 2013 (“Arrest Warrant and Order for Transfer”), pp. 1-3.

<sup>4</sup> See Decision of 27 May 2020, para. 2.

<sup>5</sup> See Decision of 27 May 2020, paras. 1, 5-10.

<sup>6</sup> *Arrêt n° 1802* of the *Cour de cassation*, Criminal Division, 30 September 2020. See also Case No. 2020/04110, *Avis sur la demande d’arrestation et de remise de Kabuga Félicien* of the *Cour d’appel de Paris*, Seventh Division, Fifth Investigating Chamber, 3 June 2020.

Hague Branch of the Mechanism; and (ii) his transfer be suspended until a decision is issued on his present request;<sup>7</sup>

**NOTING** Kabuga's contentions that his transfer to the Arusha Branch of the Mechanism would violate his fundamental rights and the interests of justice in that it would, *inter alia*, pose considerable risks to his health and safety in view of his age, medical pathologies, and the COVID-19 global pandemic;<sup>8</sup>

**NOTING**, in particular, the specific medical conditions and findings identified in the medical report dated 1 October 2020 and attached as Annex A to the Motion;<sup>9</sup>

**NOTING** the response filed by the Prosecution on 6 October 2020 supporting the Motion in so far as it provides for Kabuga to be transferred to the Hague Branch of the Mechanism initially to allow for an independent medical examination to determine if his state of health would be compatible with transfer to and detention at the Arusha Branch of the Mechanism;<sup>10</sup>

**NOTING** the submission from the Registrar filed on 8 October 2020 which, *inter alia*, supports Kabuga's temporary transfer to the Hague Branch of the Mechanism to allow the Mechanism to review Kabuga's medical file and conduct its own assessment as to his fitness to travel to Arusha;<sup>11</sup>

**NOTING FURTHER** the Registrar's submission that, despite several requests, the Registry of the Mechanism has been unable to obtain Kabuga's medical file from the French authorities;<sup>12</sup>

**CONSIDERING** that the Motion presents new information relating to Kabuga's health that was not before Judge Sekule or the French courts;<sup>13</sup>

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<sup>7</sup> Urgent Defence Motion for Félicien Kabuga's Transfer to The Hague and Not to Arusha, 9 October 2020 (original French version filed on 5 October 2020) (confidential, with confidential Annex A; public redacted version filed on 5 October 2020) ("Motion"), p. 10.

<sup>8</sup> Motion, paras. 17-35, 41-43.

<sup>9</sup> See, *in particular*, Motion paras. 19, 20, 22, Annex A, Registry pagination ("RP.") 3/61 BIS-1/61 BIS.

<sup>10</sup> Prosecution Response to "*Requête urgente de la Défense afin que Félicien Kabuga soit transféré à La Haye et non à Arusha*", 6 October 2020, paras. 1-6.

<sup>11</sup> Registrar's Submission in Relation to the "*Requête urgente de la Défense afin que Félicien Kabuga soit transféré à La Haye et non à Arusha*" of 5 October 2020, 8 October 2020 (confidential) ("Registrar's Submission"), paras. 12-16.

<sup>12</sup> See Registrar's Submission, para. 14.

<sup>13</sup> The Motion presents a medical evaluation of Kabuga dated 1 October 2020 that was commissioned by his Duty Counsel before the Mechanism on 23 September 2020. See Motion, Annex A, RP. 14/61 BIS-1/61 BIS. Moreover, Judge Sekule's Decision of 27 May 2020 denying the initial request to have Kabuga transferred to The Hague emphasized the dearth of information supporting the requested relief and noted that appropriate relief may be sought later if transfer to the Arusha Branch of the Mechanism is not possible at the relevant time. See Decision of 27 May 2020, paras. 7, 9.

**CONSIDERING** that, in order to assess the merits of the Motion, it is necessary for the Registry to provide:

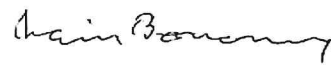
- (i) Information about the following circumstances at the Hague and Arusha branches of the Mechanism and, so far as possible, how they compare:
  - a. Conditions in the detention facilities;
  - b. The medical facilities accessible in light of Kabuga's medical requirements and in the event of the occurrence of any risks mentioned in the medical report attached as Annex A to the Motion;
  - c. The prevalence of COVID-19 in the region of the United Republic of Tanzania of which Arusha forms a part and in the region of the Netherlands of which The Hague forms a part; and
  - d. The availability of local facilities for treating the effects of COVID-19 in elderly patients with underlying health problems;
- (ii) An assessment of the Mechanism's ability to safely transport Kabuga to Arusha and hold him in detention there, and advise what further investigation, if any, is considered necessary to provide an assessment; and
- (iii) Any additional information considered relevant to the objective of avoiding circumstances compromising the health and life of Kabuga in the course of his transit and detention;

**FOR THE FOREGOING REASONS,**

**HEREBY INSTRUCT** the Registrar to file written submissions pursuant to Rule 31(B) of the Rules of Procedure and Evidence in respect of the issues identified above by Friday, 16 October 2020.

Done in English and French, the English version being authoritative.

Done this 13th day of October 2020,  
At Arusha,  
Tanzania



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Judge Iain Bonomy  
Single Judge

**[Seal of the Mechanism]**



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