

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No. MICT-13-38-PT

Date: 25 November 2020

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Pre-Trial Judge
Registrar: Mr. Abubacarr Tambadou
Order of: 25 November 2020

PROSECUTOR

v.

FÉLICIEN KABUGA

PUBLIC

ORDER FOLLOWING INITIAL APPEARANCE

Office of the Prosecutor:

Mr. Serge Brammertz

Duty Counsel for Mr. Félicien Kabuga:

Mr. Emmanuel Altit

I, IAIN BONOMOY, Presiding Judge of the Trial Chamber of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and the Pre-Trial Judge in this case;¹

NOTING that Mr. Félicien Kabuga was first indicted by the International Criminal Tribunal for Rwanda (“ICTR”) on 26 November 1997,² that his indictment was amended on 12 October 2005,³ and that, following further amendments, the operative indictment was confirmed on 13 April 2011 (“Indictment”);⁴

RECALLING that Kabuga was arrested on 16 May 2020 in France⁵ and that, following my Decision of 21 October 2020 amending the Arrest Warrant and Order for Transfer,⁶ he was transferred on 26 October 2020 to the United Nations Detention Unit at the Hague Branch of the Mechanism for a detailed medical assessment;⁷

NOTING that the initial appearance of Kabuga took place on 11 November 2020;⁸

NOTING the Prosecution’s submissions at the initial appearance that: (i) it intends to request leave to amend the Indictment in order to streamline the charges, to bring it in line with pleading requirements, and to reflect necessary changes based on results of on-going investigations; and (ii) it should be able to submit an amended indictment for my consideration by mid-January 2021;⁹

¹ See *Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38-I, Order Assigning a Trial Chamber, 1 October 2020, p. 1; *Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38-I, Order Designating a Pre-Trial Judge, 29 October 2020 (“Order of 29 October 2020”), p. 1.

² *The Prosecutor v. Félicien Kabuga*, Case No. ICTR-97-22-I, Decision Confirming the Indictment, 26 November 1997.

³ *The Prosecutor v. Félicien Kabuga*, Case No. ICTR-98-44B-PT, Decision on the Amended Indictment, 12 October 2005.

⁴ *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) (“Decision of 13 April 2011”); *The Prosecutor v. Félicien Kabuga*, Case No. ICTR-98-44B-I, Amended Indictment, 14 April 2011. For a detailed procedural history related to the prior ICTR indictments charging Kabuga, see *Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38-I, 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.

⁵ See *Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38-I, Decision on Félicien Kabuga’s Motion to Amend the Arrest Warrant and Order for Transfer, 21 October 2020 (“Decision of 21 October 2020”), paras. 2, 3. See also Decision of 27 May 2020, para. 2.

⁶ Decision of 21 October 2020, paras. 11-18; *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.

⁷ Order of 29 October 2020, p. 1.

⁸ See *Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38-I, Order Scheduling an Initial Appearance, 8 November 2020, p. 3; Transcript (“T.”) 11 November 2020 pp. 1-47.

⁹ T. 11 November 2020 pp. 40, 41.

CONSIDERING the submissions of the Prosecution regarding the steps they consider necessary and the difficulties it faces in addressing them;¹⁰

CONSIDERING that a nine week delay to amend the Indictment appears excessive in view of the more than 20 years since the Indictment was first confirmed, the five months that intervened between Kabuga’s arrest and transfer to the Mechanism, and the fact that the amendment process in 2011 was already done for the purpose of “bring[ing] the current indictment in line with the jurisprudence of the Tribunal and the current charging practices”;¹¹

CONSIDERING, however, that it is in the interests of sound judicial case management and the interests of justice that any further amendment of the Indictment should be comprehensive and final, and that I am prepared, albeit reluctantly, to assent to the Prosecution’s proposed timeline on the clear understanding that the proposed amended indictment which will be the subject of the Prosecution motion for leave to amend will in fact be streamlined, contain all the amendments the Prosecution intends to make, and will be the final version on which it intends to proceed to trial;

NOTING that, in parallel, the Trial Chamber will conduct its own assessment of the Indictment and may provide guidance to the Prosecution in its effort to streamline the Indictment either in advance or at the time leave for the amendments is sought;

FINDING, therefore, that it is appropriate to order the Prosecution to submit its request for leave to amend the Indictment and the proposed final indictment by 12.00 p.m. on Friday, 15 January 2021;

CONSIDERING FURTHER that, to facilitate the Defence’s preparation for trial, it is in the interest of proper case management for the Prosecution to submit an update on the disclosure it has done to date in relation to exculpatory evidence and other relevant material in accordance with Rule 73 of the Rules of Procedure and Evidence (“Rules”) and its proposal for future disclosures of this material in a manner that clearly identifies it as Rule 73 material;

RECALLING that, on 29 October 2020, I ordered that the Mechanism’s Medical Officer conduct a medical examination of Kabuga and submit a report¹² and that, at the initial appearance, I reiterated that a final medical report should be provided to the Trial Chamber as soon as it is completed;¹³

¹⁰ T. 11 November 2020 pp. 40, 41 (in particular, the Prosecution noted the difficulties in contacting witnesses in view of the COVID-19 pandemic).

¹¹ Decision of 13 April 2011, para. 8.

¹² See *Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38-I, Preliminary Order Regarding Medical Examination of Félicien Kabuga, 29 October 2020, pp. 1, 2.

¹³ T. 11 November 2020 p. 4.

NOTING the medical reports submitted on 5 November 2020 and on 18 November 2020, reflecting that “the evaluation of Mr. Kabuga’s fitness remains an evolving picture based on the outcomes of further diagnostic assessment and observation in the detention unit” and that the restrictions in place to minimize risks in relation to COVID-19 may impact access to some specialists;¹⁴

CONSIDERING that the Registrar should continue to regularly submit reports on Kabuga’s on-going medical examinations in order to facilitate the expeditious scheduling of pre-trial preparations, and, in particular, provide the information necessary to evaluate the Accused’s fitness to travel to the Arusha Branch of the Mechanism;

CONSIDERING that the Defence has also underlined at the initial appearance the importance of moving forward quickly on these issues, in the interests of justice, and further indicated its intent to file an application related to Kabuga’s health;¹⁵

FINDING, therefore, that it is appropriate to order the Registrar, pursuant to Rules 55 and 84(A) of the Rules, to submit to the Trial Chamber medical reports regarding Kabuga’s health and on-going medical assessment every 14 days, and to order the Defence to file applications on matters relating to Kabuga’s health, if any, by Friday, 22 January 2021;

CONSIDERING FURTHER that a status conference will be scheduled in due course for early next year on a date between 18 January and 5 February 2021 to facilitate preparation of the case for trial and address any related issues;

FOR THE FOREGOING REASONS,

HEREBY ORDER the Prosecution to submit its request for leave to amend the Indictment and the proposed final indictment by 12.00 p.m. on Friday, 15 January 2021;

ORDER the Prosecution to submit an update and proposal in relation to its disclosure of Rule 73 material as set forth above within 14 days;

ORDER the Registrar to submit medical reports regarding Kabuga’s health and on-going medical assessment every 14 days;

¹⁴ See *Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38-I, Registrar’s Submission in Relation to the “Preliminary Order Regarding Medical Examination of Félicien Kabuga” of 29 October 2020, 5 November 2020 (public, with confidential Annex), Annex, Registry pagination (“RP.”) 194, 193; Registrar’s Submission in Relation to the “Preliminary Order Regarding Medical Examination of Félicien Kabuga” of 29 October 2020, and the Judge’s Oral Order of 11 November 2020, 18 November 2020 (confidential, with confidential Annex), Annex, RP. 264-262.

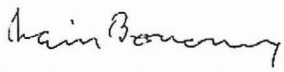
¹⁵ T. 11 November 2020 pp. 45, 46.

ORDER the Defence to file applications on matters relating to Kabuga's health, if any, by Friday, 22 January 2021; and

INFORM the parties that a scheduling order for a status conference in early 2021 will be issued in due course.

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

Done this 25th day of November 2020,
At Arusha,
Tanzania



Judge Iain Bonomy
Pre-Trial Judge

[Seal of the Mechanism]



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