

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No. MICT-13-38-PT

Date: 4 December 2020

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Pre-Trial Judge

Registrar: Mr. Abubacarr Tambadou

Decision of: 4 December 2020

PROSECUTOR

v.

FÉLICIEN KABUGA

PUBLIC

**DECISION ON DEFENCE REQUEST TO BE INVITED
TO FILE RULE 84 SUBMISSIONS**

Office of the Prosecutor:

Mr. Serge Brammertz

Duty Counsel for Mr. Félicien Kabuga:

Mr. Emmanuel Altit

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

RECALLING that, during Mr. Félicien Kabuga’s initial appearance, I ordered that a final medical report on the Accused’s medical condition be filed by 18 November 2020, or that the Registrar explain why it has not been completed and provide an indication when it will, and indicated that once a final report is available the Defence can raise any issues of additional testing pursuant to Rule 84 of the Rules of Procedure and Evidence (“Rules”);²

RECALLING the Registrar’s submission of 18 November 2020 with the relevant medical report 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 restrictions to minimize risks in relation to COVID-19 may impact access to some specialists;³

RECALLING that, on 25 November 2020, I ordered the Registrar, pursuant to Rules 55 and 84(A) of the Rules, to submit medical reports regarding Kabuga’s health and on-going medical assessment every 14 days, and that I ordered the Defence to file applications on matters relating to the Accused’s health, if any, by 22 January 2021;⁴

BEING SEISED OF a confidential motion filed by the Defence on 25 November 2020 requesting an invitation to file submissions concerning Kabuga’s health pursuant to Rule 84 of the Rules without awaiting a final medical report from the Mechanism’s Medical Officer;⁵

NOTING that the Motion was submitted prior to the circulation of my Order of 25 November 2020;

NOTING Defence submissions that: (i) the Medical Officer’s delay in providing a final report has an impact on the proceedings, in that it precludes Kabuga from receiving appropriate medical treatment and the Defence from filing requests in relation to the Accused’s health;⁶ (ii) the preliminary medical report fails to provide a full picture of Kabuga’s health, shows errors of

¹ See Order Assigning a Trial Chamber, 1 October 2020, p. 1; Order Designating a Pre-Trial Judge, 29 October 2020, p. 1.

² Transcript (“T.”) 11 November 2020 p. 4. See also T. 11 November 2020 p. 46.

³ See 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, Registry pagination (“RP.”) 262.

⁴ Order Following Initial Appearance, 25 November 2020 (“Order of 25 November 2020”), p. 3.

⁵ Defence Request to Be Invited to File [a] Motion Pursuant to Rule 84 of the Rules of Procedure and Evidence Without Waiting for Final Preliminary Report from Detention Unit Medical Officer, 30 November 2020 (confidential, with confidential Annex; original French version filed on 25 November 2020) (“Motion”), para. 37, p. 9.

⁶ Motion, paras. 8-11.

methodology, and fails to take sufficient consideration of the Accused’s French medical records;⁷ and (iii) it would be in the interests of justice to order independent medical expertise to determine Kabuga’s fitness for trial now;⁸

NOTING the informal communication received from the Prosecution on 27 November 2020 that it will not file a response to the Motion;

CONSIDERING that, pursuant to Rule 84(A) of the Rules, a party may request an order for medical, psychiatric, or psychological examination of the accused without being invited to do so;

CONSIDERING that it would be advisable and consistent with the fair and expeditious advancement of proceedings for the Defence to evaluate and consider the additional medical assessments to be submitted by the Registry before filing any application for further medical assessments under Rule 84 of the Rules;

OBSERVING, however, that the Defence may file such an application sooner than the 22 January 2021 deadline set in my Order of 25 November 2020 if it wishes;

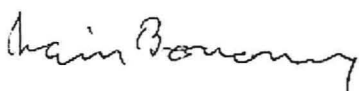
FINDING that the Motion is moot;

FOR THE FOREGOING REASONS,

HEREBY DISMISS the Motion.

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

Done this 4th day of December 2020,
At Arusha,
Tanzania



Judge Iain Bonyony
Pre-Trial Judge

[Seal of the Mechanism]

⁷ Motion, paras. 14-33, Annex, RP. 360-293.

⁸ Motion, paras. 34-38.



I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	IRMCT Registry/ <i>Greffe du MIFRTP</i>	<input checked="" type="checkbox"/> Arusha/ <i>Arusha</i>	<input type="checkbox"/> The Hague/ <i>La Haye</i>
From/ De :	<input checked="" type="checkbox"/> Chambers/ <i>Chambre</i>	<input type="checkbox"/> Defence/ <i>Défense</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
Case Name/ Affaire :	Prosecutor v. Félicien Kabuga	Case Number/ Affaire n° :	MICT-13-38-PT
Date Created/ Daté du :	4 December 2020	Date transmitted/ Transmis le :	4 December 2020
		No. of Pages/ Nombre de pages :	3
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda / <i>B/C/S</i>
		<input type="checkbox"/> Other/Autre (specify/préciser) :	
Title of Document/ Titre du document :	Decision on Defence Request to Be Invited to File Rule 84 Submissions		
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>
	<input type="checkbox"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i>	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i>	<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :	
Document type/ Type de document :	<input type="checkbox"/> Motion/ <i>Requête</i> <input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i> <input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i> <input type="checkbox"/> Warrant/ <i>Mandat</i> <input checked="" type="checkbox"/> Decision/ <i>Décision</i> <input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i> <input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i> <input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i> <input type="checkbox"/> Order/ <i>Ordonnance</i> <input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i> <input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>		

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i>)
<input type="checkbox"/> English/ <i>Anglais</i> <input checked="" type="checkbox"/> French/ <i>Français</i> <input checked="" type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre(specify/préciser) :
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>
Original/ Original en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda / <i>B/C/S</i> <input type="checkbox"/> Other/Autre (specify/préciser) :
Translation/ Traduction en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda / <i>B/C/S</i> <input type="checkbox"/> Other/Autre (specify/préciser) :
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>
<input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser) :

Send completed transmission sheet to/ *Veuillez soumettre cette fiche dûment remplie à :*

JudicialFilingsArusha@un.org OR/ *OU* JudicialFilingsHague@un.org

Rev: July 2018/ *Rév. : juillet 2018*