

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-38-PT

Date: 24 February 2021

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Graciela Susana Gatti Santana
Judge Elizabeth Ibanda-Nahamya

Registrar: Mr. Abubacarr Tambadou

Decision of: 24 February 2021

PROSECUTOR

v.

FÉLICIEN KABUGA

PUBLIC

**DECISION ON PROSECUTION MOTION TO AMEND
THE INDICTMENT**

Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for Mr. Félicien Kabuga:

Mr. Emmanuel Altit

1. The Trial Chamber of the International Residual Mechanism for Criminal Tribunals (“Trial Chamber” and “Mechanism”, respectively)¹ is seised of a Prosecution motion filed on 15 January 2021 seeking to amend the operative indictment in this case.² Mr. Félicien Kabuga did not file a response, and, instead, his counsel indicated that all relevant challenges to the indictment would be made once all amendments have been completed in connection with the Defence’s forthcoming preliminary motion.³

I. BACKGROUND

2. Kabuga is an accused before the Mechanism based on an amended indictment filed before the International Criminal Tribunal for Rwanda (“ICTR”) on 14 April 2011.⁴ The Operative Indictment charges Kabuga – alleged to formerly have been an influential business man, President of the *Comité provisoire* of the *Fonds de défense nationale* (“FDN”), and President and founding member of the *Radio télévision libre des mille collines* (“RTL”)⁵ – with seven counts: (i) genocide; (ii) complicity in genocide; (iii) direct and public incitement to commit genocide; (iv) attempt to commit genocide; (v) conspiracy to commit genocide; (vi) persecution as a crime against humanity; and (vii) extermination as a crime against humanity.⁶ It alleges that he is responsible for these crimes pursuant to Article 6(1) of the ICTR Statute for committing – including pursuant to the first and third forms of joint criminal enterprise (“JCE I” and “JCE III”, respectively)⁷ – ordering,⁸ instigating,⁹ planning,¹⁰ and/or aiding and abetting.¹¹ The Operative

¹ See Order Assigning a Trial Chamber, 1 October 2020, p. 1. Judge Ibanda-Nahamya did not participate in the consideration of this decision due to her unavailability for personal reasons. The remaining judges on the bench are satisfied that it is in the interests of justice to issue this decision in light of the principle reflected in Rule 19(A)(ii) of the Rules of Procedure and Evidence (“Rules”) given the urgency in providing clarity with respect to the indictment in this case, Kabuga’s right to fair and expeditious proceedings, and given that further challenges before the full Trial Chamber may be made in connection with preliminary motions.

² Prosecution Motion Seeking Leave to Amend the Indictment, 15 January 2021 (confidential) (“Motion”), paras. 1, 32. See also Motion, Registry pagination (“RP.”) 795-781 (“Proposed Indictment”).

³ See *infra* para. 6.

⁴ 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 (“Operative Indictment”). 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, paras. 2, 3.

⁵ Operative Indictment, paras. 9, 16.

⁶ Operative Indictment, para. 1.

⁷ Operative Indictment, paras. 30-34, 40, 55, 56, 62, 73, 74, 78, 85.

⁸ Operative Indictment, paras. 35, 57.

⁹ Operative Indictment, paras. 36, 58, 75.

¹⁰ Operative Indictment, paras. 37, 59.

¹¹ Operative Indictment, paras. 38, 60, 76.

Indictment also charges Kabuga with superior responsibility pursuant to Article 6(3) of the ICTR Statute.¹²

3. Kabuga's alleged responsibility is set forth in the Operative Indictment based on four narrative sections: (i) RTLM broadcasts;¹³ (ii) his support to *génocidaires* and his involvement in the FDN;¹⁴ (iii) his support for *interahamwe* based in Kimironko sector of Kigali prefecture known as "Kabuga's *interahamwe*";¹⁵ and (iv) his participation in meetings where he instigated or incited genocide or made persecutory statements.¹⁶

4. A plea of not guilty was entered on Kabuga's behalf at the initial appearance held on 11 November 2020.¹⁷ During Kabuga's initial appearance, the Prosecution indicated that it would seek leave to amend the Operative Indictment by streamlining the charges, providing more particulars, as well as updating it in light of new pleading requirements and ongoing investigations.¹⁸ The Prosecution stated that the proposed amended indictment could be submitted by 15 January 2021.¹⁹

5. On 25 November 2020, the Prosecution was ordered to file any motion to amend the Operative Indictment by 15 January 2021.²⁰ In view of this proposed course of action, the Defence requested and was granted an extension to file any preliminary motions under Rule 79 of the Rules within 30 days after any decision rendered on the anticipated motion to amend the Operative Indictment.²¹

6. The Prosecution filed the Motion on 15 January 2021, including an annex highlighting information in support of the proposed amendments, as well as a CD that included the supporting material upon which the annex and amendments rely upon.²² On 5 February 2021, Counsel for Kabuga informally informed the Trial Chamber by way of email to its Senior Legal Officer that the Defence would not be responding to the Motion but would, *inter alia*, file any necessary objections,

¹² Operative Indictment, paras. 43, 65, 80.

¹³ Operative Indictment, paras. 16-43.

¹⁴ Operative Indictment, paras. 44-65.

¹⁵ Operative Indictment, paras. 66-80.

¹⁶ Operative Indictment, paras. 81-85.

¹⁷ T. 11 November 2020 p. 39.

¹⁸ T. 11 November 2020 p. 40.

¹⁹ T. 11 November 2020 pp. 41, 42.

²⁰ See Order Following Initial Appearance, 25 November 2020, p. 3.

²¹ See Decision on Defence Motion for Extension of Time to File Preliminary Motions, 23 December 2020 ("Decision of 23 December 2020"), pp. 1, 2.

²² See Motion, para. 30, RP. 777-519 ("Annex"). See also Certificate, 25 January 2021 (confidential) ("Certificate of 25 January 2021"). Counsel for Kabuga informally informed the Trial Chamber by way of email to its Senior Legal Officer that the supporting material was received on 3 February 2021.

if the Motion were granted, with any anticipated preliminary motions pursuant to Rule 79 of the Rules.

II. DISCUSSION

7. The Prosecution argues that the Proposed Indictment: (i) streamlines the charges; (ii) provides more particulars; (iii) updates charges in line with developments in case law and available evidence;²³ and (iv) will increase efficiency of the proceedings and will not cause unfair prejudice to Kabuga.²⁴ It further contends that the supporting material attached to the Motion provides the necessary *prima facie* support for the proposed amendments.²⁵

A. Amendment of the Indictment

8. The amendment of an indictment is governed by Rule 50 of the Rules. While wide discretion exists to allow amendments, it must not result in unfair prejudice to the accused when viewed in light of the circumstances of the case as a whole.²⁶ Thus, three overlapping factors are weighed in determining whether to grant leave to amend the indictment: (i) the ameliorating effect of the changes on the clarity and precision of the case to be met; (ii) the diligence of the Prosecution in making the amendment in a timely manner that avoids creating an unfair tactical advantage; and (iii) the likely delay or other possible prejudice to the Defence, if any, caused by the amendment.²⁷ Furthermore, Rule 50(A)(ii) of the Rules requires that leave to amend shall not be granted unless the Prosecutor has established a *prima facie* case in support of the proposed amendments.²⁸

1. Ameliorating Effect of the Amendments on the Clarity and Precision of the Case

9. An amendment to an indictment can have an ameliorating effect if it, *inter alia*, clarifies the charges against the accused, enables him or her to adequately prepare his or her defence, or helps ensure a full consideration of the relevant issues, even if it results in some prejudice to the

²³ Motion, paras. 2, 4-25.

²⁴ Motion, paras. 3, 26-28.

²⁵ Motion, paras. 29, 30. *See also* Certificate of 25 January 2021, RP. 839 (noting that the Registry distributed physical copies of CDs containing supporting material to the Proposed Indictment).

²⁶ *See, e.g., Prosecutor v. Vujadin Popović et al. and Prosecutor v. Milorad Trbić*, Case Nos. IT-05-88-PT and IT-05-88/1-PT, Decision on Further Amendments and Challenges to the Indictment, 13 July 2006 (“*Popović et al.* Decision of 13 July 2006”), para. 8.

²⁷ *See Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-PT, Decision on Prosecution Motion to Amend the Indictment, 17 October 2019 (“*Turinabo et al.* Decision of 17 October 2019”), para. 6. *See also The Prosecutor v. Ildephonse Nizeyimana*, Case No. ICTR-2001-55-PT, Decision on Prosecutor’s Request for Leave to File an Amended Indictment, 22 September 2010, para. 5; *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-44-T, Decision on Prosecution Motion for Leave to Amend the Indictment, 29 January 2009, para. 20.

accused.²⁹ The possibility of delay in proceedings must be weighed against the benefits that the amendment may bring, such as the simplification of proceedings, a more complete understanding of the Prosecution's case, and the avoidance of possible challenges to the indictment or evidence presented at trial.³⁰

10. A number of changes in the Proposed Indictment undeniably have an ameliorating effect on the clarity and precision of the case for Kabuga to meet. The reduction and consolidation of the four narrative sections in the Operative Indictment into two sections in the Proposed Indictment provides a more cohesive and coherent narrative to the charging instrument.³¹ The Prosecution has also removed two counts – complicity in genocide and attempt to commit genocide – and dropped JCE III, planning, ordering, instigating, and superior responsibility as bases for liability.³² The Proposed Indictment has materially reduced the scope of Kabuga's alleged liability through JCE I³³ and limited the factual underpinnings of the charge of conspiracy to commit genocide.³⁴ These reductions will necessarily assist Kabuga in understanding the nature of the case against him and focus his defence preparations accordingly. Likewise, the Proposed Indictment makes pleading adjustments relating to the crimes of genocide³⁵ and persecution as a crime against humanity³⁶ that also provide further clarity in line with the legal requirements for the crimes and may pre-empt possible challenges to the indictment in this respect.

²⁸ See also *Turinabo et al.* Decision of 17 October 2019, para. 6 and reference cited therein.

²⁹ See, e.g., *Turinabo et al.* Decision of 17 October 2019, para. 10. See also *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-I, Decision on Prosecution Motion for Leave to Amend the Indictment, 19 July 2011, para. 14; *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-PT, Written Reasons for Decision on Prosecution Motion to Amend the Second Amended Indictment, 16 December 2009 (“*Tolimir* Decision of 16 December 2009”), paras. 23, 30, 37.

³⁰ See, e.g., *Turinabo et al.* Decision of 17 October 2019, para. 10. See also *Tolimir* Decision of 16 December 2009, para. 23.

³¹ See Motion, para. 4.

³² See Motion, paras. 6, 7.

³³ Compare Proposed Indictment, paras. 21-25 with Operative Indictment, paras. 31-33, 56, 74. The Proposed Indictment both clarifies and limits the duration of the JCE I that has been retained from the Operative Indictment. Compare Proposed Indictment, para. 11 with Operative Indictment, para. 16. See also Motion, para. 22.

³⁴ Compare Proposed Indictment, paras. 36, 67 with Operative Indictment, paras. 41, 42, 63, 64, 79. Certain allegations charged in the Operative Indictment in support of direct and public incitement to commit genocide and persecution as a crime against humanity based on violations of rights to security and dignity – including a political rally in Musave primary school in Kigali prefecture in February or March 1994 and a meeting at Ruhengeri stadium in April or May 1994 – have been removed from the Proposed Indictment. See Operative Indictment, paras. 81, 84. Other events – including meetings at the Méridien Hotel and Gisenyi Prefecture Hall – are no longer pleaded in support of those specific crimes but appear to be retained in relation to other crimes. Compare Proposed Indictment, paras. 8-19, 50-52, 55 with Operative Indictment, paras. 46, 82, 83.

³⁵ The victim group of the genocide is now pleaded as the “Tutsi ethnic group” rather than “persons identified as Tutsis”. Compare Proposed Indictment, paras. 6, 20, 64 with Operative Indictment, para. 11. See also Motion, para. 13.

³⁶ In light of recent Appeals Chamber jurisprudence that persecution pursuant to Article 3(h) of the ICTR Statute cannot be based on ethnic grounds, the Proposed Indictment also pleads discriminatory intent for the crime of persecution on the basis of political grounds rather than ethnic grounds and expands the *chapeau* elements pleaded for crimes against humanity generally to include political grounds. See, e.g., Proposed Indictment, paras. 7, 20, 64; Motion, para. 16. See also *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Judgement, 14 December 2015, paras. 2135-2137.

11. As discussed in detail below, there are new bases for criminal responsibility in terms of the crimes charged and factual allegations, as well as greater specificity in the Proposed Indictment.³⁷ However, these changes have the effect of increasing the specificity within the charging document and facilitating a better understanding of the Prosecution's case. The amendments, proposed early in the pre-trial phase, will ensure more complete consideration of the case the Prosecution seeks to establish based on the information in its possession without unfairly prejudicing Kabuga.

2. Diligence of the Prosecution and Timeliness of the Motion

12. The timeliness of a request for leave to amend an indictment must be assessed within the Chamber's obligation to ensure that the trial is fair and expeditious, and the fact that the application is brought while the case is still in its pre-trial phase can weigh in favour of allowing the amendments.³⁸ A substantial delay will be considered undue if it occurs because of any improper tactical advantage sought.³⁹

13. The Prosecution indicated that it would seek leave to amend the Operative Indictment during Kabuga's initial appearance in November 2020 and shortly after his transfer into the custody of the Mechanism. The record reflects that the Prosecution has acted with sufficient diligence in investigating the proposed amendments⁴⁰ and it complied with the judicial deadline in filing the Motion.⁴¹ Nothing on the record suggests substantial delay in filing the Motion or that the Prosecution has sought an improper tactical advantage by seeking leave to amend the Operative Indictment at this early stage of the pre-trial phase. Indeed, the Prosecution's early notification of its intention to amend the Operative Indictment allowed the Defence to avoid filing preliminary challenges to the Operative Indictment and preserve its resources in this regard until a decision on the Proposed Indictment is rendered.⁴²

³⁷ See *infra* paras. 15-17.

³⁸ See *Turinabo et al.* Decision of 17 October 2019, para. 19 and reference cited therein.

³⁹ See, e.g., *Turinabo et al.* Decision of 17 October 2019, para. 19. See also *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment, 19 December 2003 ("*Karemera et al.* Decision of 19 December 2003"), para. 20. The Prosecution might under some circumstances justifiably wait to file an amendment while it continues its investigation, so as to determine whether further evidence either strengthens its case or weakens it. See, e.g., *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-AR73, Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005, 12 May 2005, para. 51.

⁴⁰ From the point of Kabuga's arrest on 16 May 2020, the Prosecution has had to review its case file and conduct follow-up investigations in the context of a global pandemic. See, e.g., T. 11 November 2020 pp. 40, 41.

⁴¹ See *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-90-50-AR50, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment, 12 February 2004, para. 16.

⁴² See Decision of 23 December 2020, pp. 1, 2.

3. Potential Unfair Prejudice to the Accused

14. In assessing whether an amendment would cause unfair prejudice to an accused, two factors of critical importance are these: (i) the amendment must not deprive the accused of an adequate opportunity to prepare an effective defence,⁴³ and (ii) the amendment must not adversely affect the accused's right to be tried without undue delay.⁴⁴

15. As addressed above, the changes in the Proposed Indictment that have the effect of streamlining and reducing the nature of the case against Kabuga will not cause unfair prejudice to him.⁴⁵ In addition, the Proposed Indictment now includes particular events pleaded in support of crimes that were not set forth in detail in the Operative Indictment.⁴⁶ However, these particulars largely fall within the scope of the Operative Indictment and reflect detail that might otherwise be provided in the Prosecution's pre-trial brief. Consequently, these new particulars, being introduced at the very early phase of the pre-trial proceedings, bring further clarity to the scope of Kabuga's alleged liability and assist him in preparing his defence. They will not deprive Kabuga of an adequate opportunity to prepare an effective defence or adversely impact his right to be tried without undue delay. To the contrary, they provide greater specificity and notice to Kabuga of the case he must meet.

16. A few charging changes in the Proposed Indictment, however, augment Kabuga's potential liability when compared with the Operative Indictment. For example, the Proposed Indictment expands the basis of the charge of persecution as a crime against humanity to include killings and other serious bodily and mental harm (already referred to in the operative indictment) as violations of the rights to life and/or physical and mental integrity.⁴⁷ The Prosecution has also introduced the count of murder as a crime against humanity should it not be able to prove the "massiveness" requirement for extermination as a crime against humanity.⁴⁸ While these changes increase Kabuga's potential exposure for liability, they rely largely on allegations already charged in the

⁴³ See, e.g., *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-PT, Decision on Motion for Leave to Amend the First Amended Indictment, 14 March 2012 ("Hadžić Decision of 14 March 2012"), para. 9. Where an amendment clarifies the Prosecution's case and provides further notice to the accused of the charges against him or her, a Trial Chamber is more likely to hold that the accused has not been deprived of an adequate opportunity to prepare his or her defence. See *Popović et al.* Decision of 13 July 2006, para. 9.

⁴⁴ See, e.g., *Hadžić* Decision of 14 March 2012, para. 9; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-I, Decision on Amendment of Indictment, 27 May 2011, para. 13. The possibility of delay in proceedings must be weighed against the benefits to the accused and the Trial Chamber that the amendment may bring, such as the simplification of proceedings, a more complete understanding of the Prosecution's case, and the avoidance of possible challenges to the indictment or evidence presented at trial. See *Popović et al.* Decision of 13 July 2006, para. 10.

⁴⁵ See *supra* para. 10. See also *Karemera et al.* Decision of 19 December 2003, para. 25.

⁴⁶ Compare, in particular, Proposed Indictment, paras. 19(a)-19(o) with Operative Indictment, paras. 19, 23; Proposed Indictment, paras. 43(a)-(d), 43(g), 43(i), 43(k), 43(l), 45, 47 with Operative Indictment, paras. 45, 67.

⁴⁷ Compare Proposed Indictment, paras. 20, 32, 64 with Operative Indictment, paras. 29, 85. See also Motion, para. 17.

Operative Indictment. These changes, introduced at a very early stage of the proceedings, assist Kabuga and the Trial Chamber in understanding the Prosecution's case and will ensure a more comprehensive consideration of the relevant issues.⁴⁹ They will not deprive Kabuga of an adequate opportunity to prepare an effective defence or impact on his right to be tried without undue delay.⁵⁰

17. In addition, sexual violence is now expressly alleged as a basis in support of the counts of genocide and persecution as a crime against humanity.⁵¹ Furthermore, the Proposed Indictment expands the types of perpetrators underpinning Kabuga's potential liability, alleging that RTLM broadcasts and Kabuga contributed not just to crimes of the *interahamwe* but other listeners of RTLM broadcasts who were called upon and did attack Tutsis and other perceived "accomplices" or allies of the Rwandan Patriotic Front ("RPF") following the broadcasts.⁵² Relatedly, the Proposed Indictment alleges that perceived "accomplices" or allies of the RPF – and not just persons identified as Tutsis – are victims of crimes against humanity, thereby expanding the type and number victims upon which Kabuga may be convicted for such crimes.⁵³ The Proposed Indictment also adds new locations of weapons distributions,⁵⁴ and events related to Kabuga's support to crimes committed by *interahamwe*.⁵⁵ These particulars largely relate to allegations in the Operative Indictment and additional investigations that might be required because of them would appear to be modest in scope when compared with the original charges. As noted above, the material supporting the amendments has been provided to Kabuga, and these changes will not deprive Kabuga of an adequate opportunity to prepare an effective defence or impact on his right to be tried without undue delay.

18. Ultimately, and even when considering possible expansions to the case, the changes reflected in the Proposed Indictment have the effect of clarifying and focusing the case against the Accused and will assist in tailoring his defence.⁵⁶ While allowing the amendments will trigger the procedures set forth in Rules 50(B) and (C) of the Rules, that will not cause undue delay at this early stage of the pre-trial phase.

⁴⁸ Compare Proposed Indictment, p. 2 with Operative Indictment, para. 1. See also Motion, para. 14.

⁴⁹ Cf. *Karemera et al.* Decision of 19 December 2003, paras. 15, 27.

⁵⁰ Kabuga may not be convicted for murder and extermination as crimes against humanity on the same factual basis as the former does not contain a materially distinct element from the latter. See *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004, para. 542.

⁵¹ See Proposed Indictment, paras. 2, 13, 15, 19(l), 20, 45(b), 47(c), 47(d), 64. See also Motion, para. 18.

⁵² Compare Proposed Indictment, paras. 15, 33 with Operative Indictment, paras. 19-23. See also Motion, para. 20.

⁵³ Compare, e.g., Proposed Indictment, paras. 11, 13, 15, 19, 20, 23, 31, 33, 35, 38, 39, 43, 47, 49-51, 53-56, 60, 61, 63-66 with Operative Indictment, paras. 13, 19, 29, 46, 49, 60, 66, 67, 76, 85. See also Motion, para. 19.

⁵⁴ See Motion, para. 23, referring to Proposed Indictment, paras. 44, 59.

4. Prima Facie Case in Support of the Amendments

19. As noted above, Rule 50(A)(ii) of the Rules provides that leave to amend shall not be granted unless the Prosecutor has established a *prima facie* case in support of the proposed amendments. This requirement has been interpreted to apply to “material amendments”.⁵⁷ The *prima facie* standard requires that the supporting material provide “a credible case which would (if not contradicted by the Defence) be a sufficient basis to convict the accused on the charge.”⁵⁸ This evaluation does not involve a process of fully verifying the evidence or the alleged facts.⁵⁹

20. Having reviewed the Annex to the Motion as well as the supporting documents upon which the Annex was generated and the amendments are based, the Trial Chamber is satisfied that the Prosecution has established a *prima facie* case in support of the proposed amendments.⁶⁰ Nonetheless, certain deficiencies in the supporting material have been identified and, if uncorrected, may be the basis for further challenges.⁶¹ In so finding, the Trial Chamber is mindful that the Accused has not responded to the Motion. The Trial Chamber notes, however, that Kabuga may raise objections to the sufficiency of the supporting material by way of preliminary motion alleging defects in the form of the relevant indictment under Rule 79 of the Rules.⁶²

B. Further Appearance

21. Rule 50(B) of the Rules provides that if the amended indictment includes new charges and the accused has already appeared before a Trial Chamber in accordance with Rule 64 of the Rules, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the

⁵⁵ Compare Proposed Indictment, paras. 53, 56-58 with Operative Indictment, paras. 44, 46-50. See also Motion, paras. 23, 24.

⁵⁶ Cf. *Karemera et al.* Decision of 19 December 2003, para. 15.

⁵⁷ See *Popović et al.* Decision of 13 July 2006, para. 8, n. 17 and references cited therein.

⁵⁸ See, e.g., *Hadžić* Decision of 14 March 2012, para. 8 and references cited therein.

⁵⁹ See *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006, para. 42.

⁶⁰ Where the Prosecution has only provided Kinyarwanda originals, the Trial Chamber has relied on the translations provided in the Annex. See SMDOC3.4, SMDOC8.7, SMDOC13.22, SMDOC13.23, SMDOC13.30, SMDOC13.53, SMDOC13.60, SMDOC15.10, SMDOC15.16, SMDOC15.24, SMDOC15.25, SMDOC16.7, SMDOC19a.4, SMDOC19i.3, SMDOC19i.4, SMDOC19p.1, SMDOC58.2.

⁶¹ Parts or all of the documents referred to in some instances in the Annex are missing from the CD containing the supporting material provided by the Prosecution. See SMDOC8.10, SMDOC17.4, SMDOC19o.6, SMDOC19o.8, SMDOC19p.4, SMDOC45e.9, SMDOC61d.2. The quote in the Annex corresponding to SMDOC42.3 also appears incomplete. Some parts of the transcripts quoted in the Annex are not in the disclosed material or found at the page references given in the Annex. This applies to SMDOC10.6, SMDOC17.3, SMDOC43e.3, SMDOC49.2, SMDOC53.2, and SMDOC53.4. Transcripts of 14 RTLM broadcasts bear no date on their face to confirm the date indicated in the Annex. See SMDOC3.4, SMDOC8.7, SMDOC13.3, SMDOC13.9, SMDOC13.15, SMDOC13.22, SMDOC13.23, SMDOC13.24, SMDOC13.44, SMDOC13.47, SMDOC13.53, SMDOC13.60, SMDOC15.8, SMDOC15.9, SMDOC15.10, SMDOC15.11, SMDOC15.16, SMDOC15.24, SMDOC15.27, SMDOC16.6, SMDOC16.7, SMDOC19a.4, SMDOC19h.3.

⁶² See, e.g., *Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75-AR72(C), Decision on Defence Appeal Against the Decision Denying Motion Alleging Defects in the Indictment, 16 November 2011, paras. 50-55.

new charges. As conceded by the Motion, new charges are introduced through many of the proposed amendments.⁶³ Nevertheless, it follows from the discussion above that the essential elements of the Proposed Indictment do not radically depart from the core charges in the Operative Indictment. Bearing this in mind and to avoid unnecessary risk associated with a further appearance, the Trial Chamber maintains Kabuga’s plea of not guilty entered on his behalf at the initial appearance held on 11 November 2020.⁶⁴ The Trial Chamber will confirm this plea in conjunction with the next status conference.

III. DISPOSITION

22. For the foregoing reasons, the Trial Chamber **HEREBY**:

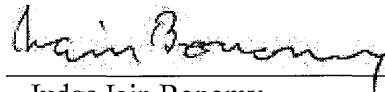
GRANTS the Motion;

ORDERS the Prosecution to file the Proposed Indictment; and

MAINTAINS the not guilty plea entered subject to further confirmation from Kabuga during the next status conference.

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

Done this 24th day of February 2021,
At Arusha,
Tanzania



Judge Iain Bonomy
Presiding Judge

[Seal of the Mechanism]

⁶³ See Motion, paras. 3, 12, 15, 17, 20, 23, 28.

⁶⁴ See T. 11 November 2020 p. 39.



I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

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	<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 : (Word version of the document is attached/ La version Word est jointe)</i>
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<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>
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Translation/ Traduction en <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/ <i>Autre</i> (specify/préciser) :
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<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/ <i>Autre</i> (specify/préciser) :

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