

**UNITED  
NATIONS**



International Residual Mechanism for  
Criminal Tribunals

Case No. MICT-13-38-PT

Date: 15 March 2021

Original: English

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**BEFORE THE TRIAL CHAMBER**

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

**Registrar:** Abubacarr Tambadou

**PROSECUTOR**

**v.**

**FÉLICIEN KABUGA**

**PUBLIC**

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**SUBMISSIONS FOR MARCH 2021 STATUS CONFERENCE**

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**The Office of the Prosecutor**

Serge Brammertz

**Counsel for Félicien Kabuga**

Emmanuel Altit

1. Pursuant to the 9 March 2021 order concerning the modified procedure in lieu of a status conference,<sup>1</sup> the following submissions may assist the Trial Chamber in planning the pre-trial process.
2. The Prosecution reaffirms its commitment to the conduct of a fair and expeditious trial notwithstanding the challenges faced by the parties and the Mechanism due to the difficulties and restrictions associated with the COVID-19 pandemic.
3. The Prosecution requests that pre-trial deadlines be staggered. This would avoid overburdening the small OTP case management team and would allow for better coordination between the filings and disclosures.
4. In addition, the Prosecution asks that the parties be afforded the opportunity to comment on a draft pre-trial work plan prior to its finalisation.

#### **A. Rule 70(E) filings**

5. At the Initial Appearance, the Prosecutor indicated that he would be ready to submit Rule 70(E) filings within six months from confirmation of a revised Indictment.<sup>2</sup> The Trial Chamber confirmed the Second Amended Indictment on 24 February 2021. Accordingly, the Prosecution reaffirms its readiness to submit the Rule 70(E) filings according to that timescale, in the understanding that trial proceedings would follow shortly thereafter.
6. Having regard to the importance of the Rule 70(E) materials (including the Prosecution's Pre-trial Brief), the Prosecution notes that the six-month mark from 24 February 2021 falls during the likely court recess, a period when a number of staff may be expected relocate between branches of the Mechanism for the purposes of trial. To avoid a situation where relevant individuals—not only OTP staff, but potentially also Registry services including WISP, ITSS, Court Records, etc.—are less available around the filing deadline, a deadline of 15 September 2021 would be preferable.
7. However, in case the Trial Chamber should set a trial date much later in 2021, or a date in 2022, the pre-trial deadlines should be set by reference to that later date (sufficiently in

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<sup>1</sup> Order Regarding Commencement and Conduct of the Status Conference, 9 March 2021 (public with public and confidential annexes).

<sup>2</sup> Initial Appearance, 11 November 2020, T.40-42.

advance to allow appropriate notice to the Defence), rather than by reference to the earliest date by which the Prosecution will be ready to make those filings.

### **B. Rule 116 expert evidence**

8. The Prosecution proposes a deadline of one week after the date set for the Rule 70(E) filings for disclosure of Rule 116 expert witness statements or reports.

9. The Prosecution intends to propose expert evidence concerning a number of subjects directly relevant to the case. In order to ensure that this expert evidence is tailored to the relevant issues, the Prosecution has made initial contact with, and is in the process of selecting, several expert witnesses who are to be commissioned to produce statements or reports. While the expert witnesses will be requested to undertake their work expeditiously, suitably-qualified experts are expected to have pre-existing commitments, notably in relation to academic duties, and may need to wait until the northern hemisphere summer vacation period to finalise their reports.

10. Expert evidence from Dr. Alison Des Forges (deceased) provided significant assistance to ICTR Trial Chambers in understanding the background and context of the Rwandan genocide. In view of Dr. Des Forges' unparalleled subject-matter expertise and the fact that she was subject to extensive cross-examination concerning her evidence in prior cases, the Prosecution intends to request the admission of her most relevant evidence pursuant to Rule 116/Rule 112. Should the Defence consider that portions of Dr. Des Forges' evidentiary record would assist in the presentation of their case, it may be efficient for the parties to make a joint submission to provide the Trial Chamber with a single, comprehensive selection of her evidence.

### **C. Rule 115(B) Adjudicated Facts Motion(s)**

11. The Prosecution proposes a deadline of two weeks after the date set for the Rule 70(E) filings for any adjudicated facts motion(s).

### **D. Rule 71(A)(ii) disclosure of witnesses' prior evidence**

12. The Prosecution proposes a deadline of three weeks after the date set for the Rule 70(E) filings for Rule 71(A)(ii) disclosure to be completed.

13. Disclosure of Rule 71(A)(ii) materials shall be made in a language that the Accused understands. If it is determined that all Rule 71(A)(ii) materials will need to be provided in Kinyarwanda, the Mechanism's translation capacity may be a limiting factor. However, in order to afford the Defence the opportunity to receive materials at the earliest opportunity, the Prosecution may be in a position to provide materials of key or early witnesses in English or French in advance of this deadline, and also, provide Kinyarwanda materials on a rolling basis prior to the final deadline, as they are received from the translators.

#### **E. Rule 73 exculpatory disclosure**

14. The Prosecution will be disclosing a batch documents under Rule 73 this week. The batch consists primarily of RTLTM broadcasts, media and other public reports for which no confidentiality is required or statements of witnesses covered by extant witness protection orders.

15. The Prosecution has identified a number of additional documents that contain potentially exculpatory information. Prior to disclosure, the Prosecution must carefully assess on a document-by-document basis whether there are any risks if the document were to be made public by the Defence. This process is underway. Disclosure of this information to the Defence for the purposes of the preparation of the case is not at issue; disclosure to the public is. With no bar on publication once the materials are out of the Prosecution's hands, disclosure of these documents to the Defence will necessarily be delayed until the Prosecution can determine whether redactions or specific orders are necessary.

16. Some of the documents are witness statements taken decades ago by ICTR investigators. These statements have always been treated as confidential because they reveal private information about the witnesses and their relatives including: personal data, details of crimes against them, allegations against other perpetrators, and the fact that they once cooperated with the Prosecution. Where no prior measures apply, the Prosecution must determine whether new witness protection measures are needed to protect privacy and security. In many instances, this may require locating and contacting the witness.

15. Other types of documents are posing similar challenges. The Prosecution has identified a number of potentially exculpatory documents that originate from national investigative files. The Prosecution is in the process of determining whether specific confidentiality motions will be required in order to ensure that they cannot be made public.

17. In addition, the Prosecution has determined that it is not possible to make collections of relevant materials available to the Defence on a non-confidential basis. Collections of relevant materials have shown to be a very useful resource for Defence teams in prior cases because they enable the Defence to search for materials directly without having to make requests for materials through the Prosecution. The non-public nature of many of the documents in the Prosecution's possession makes it impossible to disclose relevant collections without an enforceable commitment that the materials will be used exclusively for the purposes of case preparation.

**F. Any other impediments to the pre-trial process: assessment of the COVID-19 situation**

18. Since the beginning of the pandemic the Prosecution has significantly adapted its working practices in order to achieve the greatest possible efficiency despite the complex and changing restrictions imposed in response to the COVID-19 pandemic. Some areas of work necessary for pre-trial preparations—notably, contact with witnesses for whatever reason (e.g., evidence-gathering; confirmation of prior statements; undertaking witness management and security assessments)—are hampered by such restrictions. In addition to the impact of official restrictions on activities, other precautions taken to minimise the risks posed both to third parties and to Prosecution staff have an impact on the speed at which certain work can be completed.

19. As throughout the COVID-19 pandemic, the restrictions regimes imposed by national authorities, in particular in Rwanda (which is the working location of the majority of OTP staff assigned to the Kabuga case), have changed over time. For example:

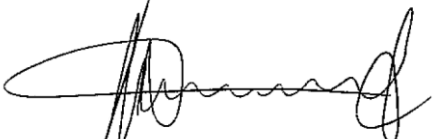
- At the time of the Accused's initial appearance in November 2020, OTP operations in Rwanda were impacted by an overnight curfew from 10pm – 4am as well as the obvious need for vigilance in personal contacts with interlocutors and amongst staff;
- With a rise in Covid-19 cases in December, additional restrictions imposed. Notably, the hours of the curfew were extended. By 5 January 2021, an 8pm – 4am was in place and internal travel restrictions were imposed, including a general prohibition on travel to destinations outside Kigali;

- On 18 January, a lockdown was imposed in Kigali, restricting staff to remain at home other than to go out (with a police permit) for essential supplies. All meetings – including with witnesses – were prohibited;
- The lockdown was lifted on 8 February, however a 7pm – 4am curfew remained in place until 22 February;
- Since 22 February, curfew hours have been 8pm – 4am, while the internal travel restrictions imposed on 5 January have remained in place. OTP staff have been required to obtain permits from the authorities to meet with detainees and to travel outside Kigali, which has required additional planning and coordination;
- An announcement from the Rwandan authorities on any changes to the COVID-19 measures is expected today, however at the time of filing these submissions, no further information was available.

20. Other international restrictions on travel, the imposition of quarantine periods and requirements governing the safe conduct of in-person meetings have also had an impact on the Prosecution's work, particularly in relation to witnesses in Belgium and France where the COVID-19 pandemic has caused significant disruption.

21. The Prosecution will continue to work within the national and international restrictions. If any of these challenges become insurmountable or impact the Prosecution's preparation estimates, the Prosecution will alert the Chamber and Defence at the earliest opportunity.

Word Count: 1631



Serge Brammertz  
Prosecutor

Dated this 15<sup>th</sup> day of March 2021  
The Hague, The Netherlands



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