



INTERNATIONAL RESIDUAL
MECHANISM FOR CRIMINAL TRIBUNALS

MÉCANISME INTERNATIONAL
APPELÉ À EXERCER LES FONCTIONS
RÉSIDUELLES DES TRIBUNAUX
PÉNAUX

MICT-13-38-PT
D1221-D1219
06 April 2021

AA

Case No. MICT-13-38-PT
Prosecutor v. Félicien Kabuga

PUBLIC

DECISION

THE REGISTRAR,

NOTING the Statute of the International Residual Mechanism for Criminal Tribunals (“Statute” and “Mechanism”, respectively) as adopted by the Security Council under Resolution 1966 (2010), and in particular Article 19 thereof;

NOTING the Rules of Procedure and Evidence as adopted by the Mechanism on 8 June 2012 and amended on 4 December 2020 (“Rules”), and in particular Rules 42 and 43 thereof;

NOTING the Directive on the Assignment of Defence Counsel, as adopted by the Mechanism on 14 November 2012 (“Directive”), and in particular Articles 7, 8, 11(B), and 14 thereof;

NOTING the Code of Professional Conduct for Defence Counsel appearing before the Mechanism, as adopted by the Mechanism on 14 November 2012 (“Code of Conduct”), and in particular Article 11 thereof;

CONSIDERING that the Mechanism is mandated to continue the “jurisdiction, rights and obligations and essential functions” of the International Criminal Tribunal for Rwanda (“ICTR”) and the International Criminal Tribunal for the former Yugoslavia;¹

CONSIDERING that, on 13 April 2011, a Confirming Judge of the ICTR confirmed an Amended Indictment against Mr. Félicien Kabuga (“Accused”), charging him with genocide, crimes against humanity, and related charges;

NOTING that the Amended Indictment was made publically available on 14 April 2011;²

RECALLING that the Accused was arrested on 16 May 2020 in France, and that his transfer into the custody of the Mechanism was authorised by the French judiciary on 30 September 2020;³

¹ Security Council resolution 1966, Statute of the International Residual Mechanism for Criminal Tribunals, S/RES/1966 (2010), 22 December 2010, para. 4.

² *Prosecutor v. Félicien Kabuga*, Case No. ICTR-98-44B-I, Amended Indictment, public, 14 April 2011.

³ *Arrêt n°1802* of the *Cour de cassation*, Criminal Division, 30 September 2020.

RECALLING that, on 2 October 2020, Maître Emmanuel Altit was assigned as Duty Counsel to represent the Accused at his initial appearance before the Mechanism, and in such other matters as were necessary until a permanent counsel was appointed or assigned;

NOTING that, on 26 October 2020, the Accused was transferred into the custody of the Mechanism, and that he is presently detained at the United Nations Detention Unit at the Hague branch;⁴

NOTING that, on 11 November 2020, the initial appearance of the Accused was held before the Mechanism;

CONSIDERING that, on 12 November 2020, the Accused applied for Mechanism legal aid pursuant to Article 7 of the Directive, on the basis that he does not have means to remunerate counsel, and requested that the Registry assign Maître Altit as his permanent counsel (“Request”);

RECALLING that the Request was accompanied by a Declaration of Means form (“Declaration”), intended to support the Accused’s claim that he is unable to remunerate counsel, but that the Declaration does not enable the Registry to properly assess his ability to remunerate counsel, and therefore represents a failure to comply with Article 8(A) of the Directive;⁵

NOTING that, due to the foregoing, the Registry has not yet determined whether or to what extent the Accused is able to remunerate counsel, while an inquiry into the means of the Accused pursuant to Article 9 of the Directive has not been initiated as yet;

RECALLING that Article 11(B) of the Directive provides that the Registrar may temporarily assign counsel to an accused for a period not exceeding one hundred twenty (120) days, to ensure that an accused’s right to counsel is not affected while the Registry examines their ability to remunerate counsel;

RECALLING that Maître Altit previously indicated his willingness to be assigned to an indigent accused, and that he is admitted to the Mechanism’s list of counsel in accordance with Rule 43 of the Rules;

NOTING that, based on the foregoing, the Registry temporarily assigned Maître Altit as Counsel on 6 January 2021, to represent the Accused before the Mechanism for a period not to exceed ninety (90) days, pursuant to Article 11(B) of the Directive (“6 January 2021 Decision”);⁶

NOTING the Trial Chamber’s decision of 1 April 2021, which considers that continuity in representation is paramount to the fair and expeditious continuation of the case, particularly at this

⁴ *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, public, 21 October 2020.

⁵ Pursuant to Article 8(C) of the Directive, and where a suspect or accused fails to comply with his obligations under Articles 8(A) and (B), a request for the assignment of counsel may be denied, after the suspect or accused has been warned and given an opportunity to respond.

⁶ *Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38-PT (“*Kabuga*”), Decision, public, 6 January 2021. The 6 January 2021 Decision warned the Accused, for the third time, that the Declaration was insufficient as submitted, and that the Request may be denied if he does not meet his burden of proof.

sensitive stage in the pre-trial proceedings, and the related instruction to assign Maître Altit as Counsel to the Accused until further order (“Decision of 1 April 2021”);⁷

NOTING that Maître Altit has been encouraged to make his best efforts to rebuild trust between himself and the Accused,⁸ that communication between client and Counsel is a pivotal aspect of legal representation,⁹ and that Counsel before the Mechanism shall diligently represent a client unless and until the representation is terminated or withdrawn;¹⁰

HEREBY DECIDES to extend Maître Altit’s assignment as Counsel to represent the Accused before the Mechanism, pursuant to the Decision of 1 April 2021 and until further order of the Trial Chamber.



Abubacar Tambadou
Registrar

Dated this 6th day of April 2021.
At Arusha,
Tanzania.

⁷ *Kabuga*, Decision on Matters Related to Félicien Kabuga’s Representation, public, 1 April 2021, paras. 13, 18. See also, para. 17 (stating that Maître Altit and his team “should be compensated for the work they have done, subject to their compliance with the relevant policies and regulations regarding remuneration within the Mechanism’s legal aid scheme”).

⁸ Decision of 1 April 2021, para. 12.

⁹ See *e.g.*, Code of Conduct, Article 12.

¹⁰ Code of Conduct, Article 11.



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