

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-38-T

Date: 2 June 2025

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Mustapha El Baaj
Judge Margaret M. deGuzman

Registrar: Mr. Abubacarr M. Tambadou

Order of: 2 June 2025

PROSECUTOR

v.

FÉLICIEN KABUGA

PUBLIC

**ORDER FOR FURTHER SUBMISSIONS FROM THE
INDEPENDENT MEDICAL EXPERT**

Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Rashid S. Rashid
Mr. Rupert Elderkin

Counsel for Mr. Félicien Kabuga:

Mr. Emmanuel Altit

THE TRIAL CHAMBER of the International Residual Mechanism for Criminal Tribunals (“Trial Chamber” and “Mechanism”, respectively) seised of this case;¹

RECALLING that the proceedings against Mr. Félicien Kabuga were stayed indefinitely on 8 September 2023 following the affirmation of the Trial Chamber’s decision that he was not fit to stand trial and very unlikely to regain fitness and that, pending the resolution of the issue of his provisional release, Mr. Kabuga has remained in detention at the United Nations Detention Unit subject to a medical monitoring regime;²

RECALLING that, on 16 December 2024, the Trial Chamber issued an order, in which it instructed the Registrar to appoint a further independent medical expert in the field of critical care medicine and medical transfers with experience in aeromedical transport or “fit-to-fly” assessments to file a written report that addresses any risks to Mr. Kabuga’s physical and mental health associated with transporting him by air, including to the Republic of Rwanda;³

NOTING that, on 29 January 2025, the Registrar appointed Dr. Gert Muurling (“Expert”), and requested that he provide a written report addressing the information requested in the Order of 16 December 2024;⁴

NOTING that, on 18 February 2025, the Registrar filed the confidential Sixth Monitoring Report, in which the panel of court-appointed independent medical experts agree that Mr. Kabuga remains medically unfit to travel to Rwanda;⁵

¹ See Order on Composition of Trial Chamber, 15 August 2023, p. 2. See also Order Assigning a Trial Chamber, 1 October 2020, p. 1; Order Replacing a Judge and Assigning a Reserve Judge, 26 August 2022, pp. 1, 2; Decision Under Rule 19(E), 10 January 2023, p. 1; Order Assigning a Reserve Judge, 16 January 2023, pp. 1, 2.

² Decision Imposing an Indefinite Stay of Proceedings, 8 September 2023, pp. 2, 5. See also Further Decision on Félicien Kabuga’s Fitness to Stand Trial, 6 June 2023; *Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38-AR80.3, Decision on Appeals of Further Decision on Félicien Kabuga’s Fitness to Stand Trial, 7 August 2023 (“Appeal Decision of 7 August 2023”).

³ Order for Further Independent Medical Expert Evaluation, 16 December 2024 (confidential) (“Order of 16 December 2024”), pp. 3, 4. See also Rule 84(A) of the Rules of Procedure and Evidence (“Rules”).

⁴ Registrar’s Submission in Relation to the “Order for Further Independent Medical Expert Evaluation” of 16 December 2024, 4 February 2025 (confidential, with confidential Annex), para. 3.

⁵ Registrar’s Submission in Relation to the “Decision on Félicien Kabuga’s Fitness to Stand Trial and to be Transferred to and Detained in Arusha” of 13 June 2022, the “Further Decision on Félicien Kabuga’s Fitness to Stand Trial” of 6 June 2023, the “Decision Imposing an Indefinite Stay of Proceedings” of 8 September 2023, and the “Order for Submissions” of 22 July 2024, 18 February 2025 (confidential, with confidential Annex), Annex (“Sixth Monitoring Report”), Registry Pagination (“RP.”) 6972, 6971. See also Registrar’s Submission in Relation to the “Decision on Félicien Kabuga’s Fitness to Stand Trial and to be Transferred to and Detained in Arusha” of 13 June 2022, the “Further Decision on Félicien Kabuga’s Fitness to Stand Trial” of 6 June 2023, the “Decision Imposing an Indefinite Stay of Proceedings” of 8 September 2023, and the “Order for Submissions” of 22 July 2024, 23 August 2024 (confidential, with confidential Annex), Annex, RP. 6645, 6644 (wherein the experts agree that Mr. Kabuga is not fit to travel to Rwanda, and that he is not fit to be released in Rwanda).

NOTING that, on 22 April 2025, the Registrar filed the confidential report from the Expert,⁶ in which the Expert concludes that “from an official point of view, one [cannot] declare Mr. Kabuga being generally fit to fly”;⁷

NOTING FURTHER that, notwithstanding his conclusion, the Expert states that, should it be the specific wish of Mr. Kabuga (or of his designated next of kin) to fly out of the Netherlands, there are several measures that are necessary to “reduce the overall risk” and ensure the flight is as safe as possible;⁸

NOTING that, on 1 May 2025, the Trial Chamber held a status conference,⁹ during which it heard preliminary submissions from the parties on the Expert Report and whether further inquiries should be addressed to the Expert;¹⁰

FINDING that, in order to expeditiously address the issue of Mr. Kabuga’s release and how such release can be effectuated,¹¹ it would be beneficial for the Trial Chamber to receive further information and clarifications from the Expert in response to the questions posed by the Trial Chamber,¹² which are annexed to the present Order;

FOR THE FOREGOING REASONS,

PURSUANT to Rules 55 and 84(A) of the Rules,

⁶ Registrar’s Submission in Relation to the “Decision on Registrar’s Second Submission in Relation to the Order of 16 December 2024” Dated 7 March 2025, 22 April 2025 (confidential, with confidential Annex), para. 8, Annex (“Expert Report”). *See also* Decision on Registrar’s Second Submission in Relation to the Order of 16 December 2024, 7 March 2025 (confidential); Registrar’s Notice of Compliance with the “Decision on Registrar’s Second Submission in Relation to the Order of 16 December 2024” Dated 7 March 2025, 24 March 2025 (confidential).

⁷ Expert Report, RP. 7046.

⁸ Expert Report, RP. 7046, 7045.

⁹ *See* Order Scheduling a Status Conference, 11 April 2025.

¹⁰ T. 1 May 2025 pp. 15-18. *See also* T. 1 May 2025 pp. 19-24. During the status conference, the Trial Chamber heard preliminary submissions regarding the Expert Report, including on: (i) whether the Expert could indicate why he did not find it necessary to conduct an in-person physical assessment of Mr. Kabuga and whether it would be appropriate and useful to do so; (ii) specific recommendations on travel parameters and conditions of travel in an air ambulance; (iii) additional information regarding the type of medical care that Mr. Kabuga would require if provisionally released in Rwanda, particularly the care required on arrival in terms of the necessary medical checks and specific health care services; and (iv) specific information regarding the general classification of the healthcare standard in Kigali, including the treatments and facilities that are available in Kigali. *See* T. 1 May 2025 pp. 15-18. The Trial Chamber notes that the Defence did not find that the Expert Report required any further clarifications. *See* T. 1 May 2025 pp. 25-28.

¹¹ *See* Appeal Decision of 7 August 2023, paras. 76, 79.

¹² The parties were provided with an opportunity to provide comments, if any, on the list of questions posed by the Trial Chamber, which the Prosecution provided on 20 May 2025. While the Defence did not provide any comments, the Defence did object to those comments provided by the Prosecution on 23 May 2025. *See Informal Communication*, 19 May 2025.

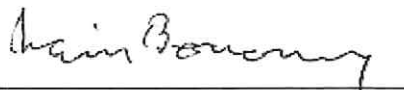
INSTRUCTS the Expert to provide the further information and clarifications requested in the questions posed by the Trial Chamber, which are annexed to this Order, within 21 days of the issuance of the present Order;

INSTRUCTS the Expert to inform the Trial Chamber, as soon as possible, if there are any impediments that prevent him from providing a meaningful and detailed response to the questions posed by the Trial Chamber; and

ALLOWS the parties to file: (i) responses, if any, within 14 days of the filing of the submission from the Expert; and (ii) replies, if any, within 7 days of the filing of any respective responses.

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

Done this 2nd day of June 2025,
At The Hague,
The Netherlands



Judge Iain Bonomy
Presiding Judge

[Seal of the Mechanism]

ANNEX

A. NATURE OF THE RISK ASSOCIATED WITH A LONG-RANGE FLIGHT

In his report, Dr. Gert Muurling concluded that “one [cannot] declare Mr. Kabuga being generally fit to fly”, which is followed by a list of several points that are included, should it be the specific wish of Mr. Kabuga (or his designated next of kin) to take a flight out of the Netherlands “to reduce the overall risk.”

- i. Regardless of the destination, could Dr. Muurling confirm that, in his opinion, Mr. Kabuga is not fit to fly on any long-range flight and, if that is his conclusion, could he provide a more detailed explanation of why that is the case?
- ii. Could Dr. Muurling specify what is meant by a long-range flight and what is meant by a short-range flight? Can the risks associated with a long-range flight be mitigated by a series of short-range flights?
- iii. Could Dr. Muurling provide any additional details regarding the kind of medical care he would expect Mr. Kabuga to require upon arrival after a long-range flight, both in terms of medical checks and specific healthcare services related to the most likely medical conditions that might arise?
- iv. Dr. Muurling identifies certain criteria that should be put in place should it be the specific wish of Mr. Kabuga (or his designated next of kin) to take a flight out of the Netherlands. While Mr. Kabuga (and his designated next of kin) do not consent to taking such a flight to Rwanda, the Trial Chamber may nonetheless order him to do so. In such a situation, would any of the criteria identified in the report to mitigate the overall risks associated with taking such a flight need to be changed to make the flight as safe as possible for Mr. Kabuga? These might include, for instance, that Mr. Kabuga be accompanied by a trusted person, such as a family member.
- v. The report suggests Dr. Muurling assumes that any flight would take place on a commercial or United Nations plane. Would any of the opinions or recommendations in the report be different if Mr. Kabuga were to be transported by air ambulance?

B. QUANTIFICATION OF THE RISK ASSOCIATED WITH A LONG-RANGE FLIGHT

In his report, Dr. Muurling stated that, considering Mr. Kabuga's health problems, flying him to Rwanda puts "him at severe risk of medical deterioration", and, more generally, that there is a "high chance of delayed negative effects" of a long-range flight occurring within the first 10 days after flying.

- vi. Can Dr. Muurling be more specific in quantifying the risks associated with a long-range flight on Mr. Kabuga's health, and elaborate on what he means when he states that Mr. Kabuga may face a "severe risk of medical deterioration" and "high chance of delayed negative effect" from a long-range flight?
- vii. If Dr. Muurling's opinion is based on his experience with comparable case(s) involving people with similar health conditions, could he describe those cases, including the consequences of flying for those patients?

C. HEALTHCARE SYSTEM IN RWANDA

- viii. Could Dr. Muurling specify what source/s or official healthcare information he is relying on regarding the classification of healthcare systems and the comparison he provides between the Netherlands and Rwanda?
- ix. Has Dr. Muurling considered information regarding the highest standard of healthcare facilities and medical expenses available in Kigali specifically?
- x. Might Dr. Muurling's assessment concerning the risks of flying for Mr. Kabuga change if he received specific information about the nature of the facilities in Kigali that would be made available to Mr. Kabuga on his arrival? If so, what specific information would Dr. Muurling require?
- xi. Would Dr. Muurling's assessment concerning risks of flying for Mr. Kabuga change if the medical arrangements currently in place for him in The Hague could be replicated in Kigali?

D. IN-PERSON EXAMINATION OF MR. KABUGA

In the Trial Chamber's Order for Further Independent Medical Expert Evaluation, issued on 16 December 2024, the Registrar was instructed, inter alia, to allow Dr. Muurling to examine Mr. Kabuga, "if necessary".

- xii. Could Dr. Muurling clarify why he did not deem it necessary to proceed with such an in-person examination of Mr. Kabuga?
- xiii. Would an in-person physical assessment of Mr. Kabuga be appropriate and useful (even if not necessary) for Dr. Muurling to further confirm and/or elaborate on his recommendation regarding Mr. Kabuga's fitness to fly?



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Case Name/ Affaire :	Prosecutor v. Félicien Kabuga		Case Number/ Affaire n° :	MICT-13-38-T
Date Created/ Daté du :	2 June 2025		Date transmitted/ Transmis le :	2 June 2025
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