

UNITED
NATIONS



Mechanism for
International Tribunals

Case No.: MICT-13-38-T

Date: 22 September 2025

Original: French

BEFORE THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Mustafa El Baaj
Judge Margaret deGuzman

Registrar: Mr Abubacarr Tambadou

THE PROSECUTOR

v.

FÉLICIEN KABUGA

PUBLIC DOCUMENT

Public Redacted Version of the “Defence Reply to the “Prosecution Submission Concerning Kabuga’s Provisional Release to Rwanda” of 9 September 2025”

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1. The Prosecutor “requests” that the Chamber “decide on Kabuga’s provisional release” and that it consider “whether to provisionally release Félicien Kabuga to Rwanda” since, according to him, “if Kabuga is ever to be released from detention, it will only be to Rwanda”.¹
2. It is telling that without having been invited to do so, the Prosecutor has filed a public submission requesting Kabuga’s transfer to Rwanda, thereby echoing the Rwandan Authorities who have continuously demanded his return. This move comes as Kigali is under intense international pressure to abandon its support for M23 and to end the human rights violations committed² by M23 and the Rwandan forces in the DRC. Calling for Kabuga’s “return” thus serves a diversionary political purpose. In such circumstances, the Prosecutor’s intervention gives the appearance of political alignment.³
3. Furthermore, the premise that Kabuga could only be released in Rwanda is erroneous:
 - i. Proceedings are underway in European countries;
 - ii. The three independent experts who have been monitoring Kabuga for four years (“Experts”) as well as the independent expert on aeromedical transfers (“Aeromedical Expert”) do not consider Kabuga’s transfer to Rwanda to be an option;
 - iii. According to the Prosecutor, this is a matter of handing Kabuga over to Rwanda without considering either the conditions of his stay or his medical treatment. The Prosecutor appears to be leaving it up to Rwanda to determine Kabuga’s fate. The Prosecutor’s request amounts to agreeing

¹ *Prosecution Submission*, 9 September 2025, paras. 1 and 4.

² Many credible sources highlight Rwanda’s direct involvement in the conflict in the DRC: *Council on Foreign Relations*, [Global Conflict Tracker – Conflict in the Democratic Republic of Congo](#), 9 June 2025; *HCHR*, [“HC Türk on DRC: ‘The risk of escalation throughout the sub-region has never been higher.’”](#), 9 September 2025; *Al Jazeera*, [A guide to the decades-long conflict in DR Congo](#), 13 February 2025.

³ Statute, Article 14(2).

in advance to imprisonment or house arrest, if that were the wish of the Rwandan Authorities, and to waiving all guarantees with respect to Kabuga's freedom, enshrined in the decision of 7 August 2023;

iv. A transfer to Rwanda, a country under dictatorship with no independent court system, where Kabuga would be unable to receive appropriate care and where his rights could not be protected, is, from a legal and humanitarian point of view, inconceivable.

i. **Proceedings Underway**

6. Proceedings are underway [REDACTED].⁴ It is therefore premature to consider other options.

ii. **Rwanda is not an option**

7. a) The physicians and specialists consulted concluded **unanimously** that Kabuga's transfer to Rwanda **was not an option** taking into account [REDACTED] and the lack of appropriate medical facilities in this country.⁵

— Position of the Three Experts:⁶

8. In their **latest report of 13 August 2025**, they are **unanimous** in their opinion that Kabuga “**is not fit to travel to Rwanda**” and “**is not fit to be released in Rwanda**”.⁷

9. It is telling that the Prosecutor makes no mention of these medical and expert opinions that have been filed on the record.

⁴ [REDACTED]

⁵ *Sixth Joint Report*, 17 February 2025; *Extended Advise on Fitness to Fly*, 18 April 2025. (“*Expert Report*”)

⁶ *Order for Submissions*, 22 July 2024, p.2.

⁷ *Seventh Joint Report*, 13 August 2025, para. 3.0. (“*Report no. 7*”)

10. Professor [REDACTED] notes:

“[T]ransferring Mr Kabuga to Rwanda **would be ill advised, and potentially dangerous**, [REDACTED] [...] Mr Kabuga would also be very socially isolated were he to leave the Hague, where he currently has regular contacts and visits from family members.”⁸

11. Professor [REDACTED]: “Mr. Kabuga is a frail, elderly person who **would be unable to tolerate travelling for long distances.**”⁹

12. Professor [REDACTED]:

“Kabuga **remains medically unfit to travel to Rwanda** or any adjacent setting. In my opinion **such a move would not be in his best interests owing to his dependence on the emotional support and social support of his immediate family** who are able to visit him in his present placement.”¹⁰

These Experts have been monitoring Kabuga for years: no one knows him better than they do.

— Position of the Aeromedical Expert:

13. In order to circumvent the opposition of the three Experts, the Prosecutor suggests that this expert would have approved the transfer.

14. Nothing could be more inaccurate:

“Besides the direct medical risks of flying for this elderly [REDACTED] person, **I see a high chance of delayed negative effects** of a long range flight occurring within the first 10 days after flying. With all comorbidities and recent health problems needing professional care and cure, **I can not support bringing Mr. Kabuga from a country with a very good health standard to a country with a low health standard.** Contact to family members is important for older persons to stay

⁸ *Ibid.*, p.7148.

⁹ *Ibid.*, p.7156.

¹⁰ *Ibid.*, p.7161.

mentally as fit as possible. [REDACTED]. **From an official point of view, one can not declare Mr. Kabuga being generally fit to fly.”¹¹**

15. In his second report,¹² the Aeromedical Expert expands on his initial findings (Kabuga is not fit to travel).¹³ He explains that regardless of the technical or logistical arrangements, travel would always pose serious medical risks for Kabuga and, in particular, that there may be delayed effects.¹⁴
16. In other words, when the Aeromedical Expert makes reference to “mitigation”, he specifies that it is possible to reduce certain risks **in theory**, statistically. However, the risks remain very real, particularly for someone as vulnerable as Kabuga.¹⁵ Travel of this kind cannot therefore be neutral and would inevitably have harmful consequences. The question that the Chamber must answer if not whether the journey will be fatal immediately – it may be, it may not be, and no one can predict that – but rather why such risks should be imposed on Kabuga, someone who is presumed innocent and to whom the Appeals Chamber has granted provisional release.
17. Kabuga’s medical history [REDACTED] render him vulnerable to considerable risks: [REDACTED]¹⁶ and the **precautions cited by the Aeromedical Expert remain purely theoretical, with no guarantee of his surviving the journey.**¹⁷
18. Furthermore, the Aeromedical Expert’s practical recommendations (a family member being present, thorough examination upon arrival) are not feasible:

¹¹ *Expert Report*, p.7046.

¹² *Registrar’s Submission in Relation to the “Order for Further Submissions from the Independent Medical Expert” of 2 June 2025, 23 June 2025. (Response)*

¹³ *Supra*, fn. 11.

¹⁴ *Response*, p.7107, 7109 and 7111. (“All the named negative effects **will take place**, but the severity can not be predicted. There is not any profound examination to calculate the risk.”)

¹⁵ *Expert Report*, p.7047. (“Flying him to Rwanda puts him at severe risks of medical deterioration”).

¹⁶ [REDACTED]

¹⁷ *Ibid.*, p.7111.

- i. Given that family members would run the risk of being arrested and threatened upon arrival in Rwanda (*see below*), no one will accompany him;
- ii. Rwanda does not have suitable high-level medical facilities;
- iii. Each stage of the transfer would increase the risk to Kabuga's life, to such an extent that the real question remains: why put Kabuga at such risk?

19. Moreover, the Aeromedical Expert's reports were written [REDACTED].

20. **b)** [REDACTED]

21. Professor [REDACTED] says:

“[REDACTED]”¹⁸

22. Professor [REDACTED] notes:

“[REDACTED].”¹⁹

23. Professor [REDACTED] concludes:

“[REDACTED]”²⁰

24. [REDACTED]²¹

Professor [REDACTED] summed up the position of the [REDACTED] medical officers:

“[REDACTED].”²²

25. [REDACTED] Kabuga's health makes any transport by air particularly dangerous in vascular and neurological terms.

¹⁸ Report no. 7, p.7148.

¹⁹ [REDACTED]

²⁰ [REDACTED]

²¹ [REDACTED]

²² Report no. 7, p.7153.

26. The reality is this: not only can Kabuga not be transferred to Rwanda, [REDACTED]²³

27. [REDACTED].²⁴

28. c) Acceding to the Prosecutor would deprive Kabuga of his family.

29. The physicians and experts consider the **presence of Kabuga's family** at his side to be **necessary**.²⁵

30. For example, the [REDACTED] medical officer notes:

“From a care-oriented and humanitarian point of view, **it is expected that daily family support will be physically and psychologically beneficial for the patient**. A stable environment where family and loved ones are continually present and motivated to deliver assistance will provide the necessary continuity of care for a vulnerable elderly patient, [REDACTED]”²⁶

31. Since Kabuga no longer has any family in Rwanda, his children would need to be able to come regularly to Rwanda and stay there. However, (i) his children [REDACTED]. Moreover, (ii) their safety would not be guaranteed there: Kabuga's property has been seized by members of the regime's inner circle. If those who seized Kabuga's property are unable to force him to sign documents legitimising the transfer of ownership, there would be a great temptation for them to force Kabuga's children to sign them.

²³ *Ibid.*, paras. 21.7 and 25.6.

²⁴ *Ibid.*, p.7156 (Professor [REDACTED]: “[REDACTED]”).

²⁵ *Ibid.*, p.7161.

²⁶ [REDACTED]

32. Furthermore, Article 8 of the ECHR protects the right to family life. And yet, sending Kabuga back to Rwanda would result in depriving him of any chance of living surrounded by his family.

iii. The Prosecutor did not take into consideration the logistical arrangements necessary for Kabuga's admission to and treatment in Rwanda as part of his release, appearing to consider that it would be sufficient to hand him over to the Rwandan Authorities and then wash his hands of the matter.

33. The Prosecutor does not appear to consider this to be a release, giving the impression of wishing to organise a transfer to detention or house arrest in Rwanda. This explains why he makes no mention of the logistical arrangements necessary to receive Kabuga.

34. He does not specify the location of any accommodation, nor who would care for Kabuga on a regular basis, how the staff would be neutral, who would be responsible for monitoring, what the costs of this kind of care would be, who would cover them, and who would cover any possible repatriation to The Hague, should the need arise.

35. Yet Kabuga's state of health [REDACTED].²⁷

36. Professor [REDACTED]:

“[REDACTED].”²⁸

37. The Prosecutor does not explain which hospitals or which specialists could monitor and treat Kabuga for his many conditions, noting that the expert indicated that Rwanda is ranked in class 4, the lowest category.²⁹

²⁷ Report no. 7, p.7153, paras. 21.7 and 25.6, p.7161-7162, para. 5.5, p.7172; Medical Report, 21 August 2025, para. 8.

²⁸ [REDACTED]

38. Nor does the Prosecutor say anything about any hospital equipment, information which is essential in order to verify his assertion of the equivalence of care in Kigali and The Hague.

39. Last, the Aeromedical Expert emphasises Kabuga could not receive appropriate care without qualified staff being available.³⁰

iv. The Rwandan Regime: a Violent Dictatorship

40. A transfer to Rwanda, a country without an independent judicial system,³¹ would expose Kabuga to certain violations of his rights, contrary to the Mechanism's Statute.

41. Since the RPF took power in 1994, groundless arrests, arbitrary detention and assassinations of political opponents have been a permanent feature, initially against officials from opposition political parties, but then against any critic of the regime.³² There have also been assassinations abroad.

42. Opponents, Hutu or Tutsi, are detained arbitrarily and tortured.³³

43. According to the HCHR's **9 September 2025** report, in July 2025, hundreds of Hutu civilians were massacred in Rutshuru by M23 supported by Rwanda. The High Commissioner called on Rwanda to withdraw its forces from the DRC.³⁴

²⁹ *Expert Report*, p.7047. (“ICU treatment like in the Netherlands is not available [...] Class 4: Countries with low health standard”)

³⁰ *Ibid.*, p.7047.

³¹ *Defence Response to the “Prosecution Submission pursuant to the Chamber’s 14 October 2024”*, 4 November 2024, paras. 34-55. (“Defence Response”); *HRW*, [“World Report 2025: Rwanda”](#), 9 January 2025; *Amnesty International*, [“The State of the World’s Human Rights: April 2025”](#) DRC and Rwanda chapters, April 2025.

³² *Defence Response*, paras. 36-40.

³³ *Ibid.*, paras. 48-51, 55; *HCHR*, [“Rwanda must provide answers on fate of abducted brothers Jean Nsengimana and Antoine Zihabamwe: UN experts”](#), 4 October 2024.

³⁴ *Supra*, fn. 2.

44. It is in this context that the Council of the European Union adopted sanctions against high-ranking members of the Rwandan military.³⁵

45. Rwanda is directly involved in violence targeted against members of the Hutu community, which constitutes a risk for Kabuga, all the more since legal proceedings are underway in Rwanda aiming to seize his property. Those behind this action seem to want to demonstrate Kabuga's fitness and his guilt in the context of these proceedings.³⁶

Conclusion:

46. Transferring Kabuga to Rwanda would equate to sending him to his death. The Mechanism, responsible for his safety and protecting his rights cannot impose a transfer to a country where his life would be threatened. The "interests of justice" demand that the Rwanda option be disregarded and that priority be given to a solution that guarantees care and safety, in keeping with the 7 August 2023 decision on provisional release.

47. [REDACTED]

Number of words /in the original/: 2,292.

/signed/

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Done on 22 September 2025 in Paris, France

³⁵ Council of the European Union, ["Democratic Republic of the Congo: EU lists further nine individuals and one entity"](#), 17 March 2025; Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation, ["Belgium reacts to Rwanda's disproportionate decision to cut diplomatic ties and declare Belgian diplomats persona non grata in Kigali"](#), 17 March 2025.

³⁶ IGIHE, ["Les rebondissements du procès de Félicien Kabuga"](#), 9 April 2025 (Arrest welcomed, condemnation of declaration of unfitness to stand trial); IGIHE, ["IBUKA introduit une demande d'indemnisation contre Kabuga en faveur des rescapés du génocide"](#), 9 June 2023; IGIHE, ["L'Affaire Félicien Kabuga, entre droit à la révision et saisie de ses biens"](#), 18 June 2023; (civil suit for more than 34 millions USD and application to seize property. IBUKA challenges Kabuga's unfitness to stand trial). See also *Defence Response*, para. 27 and fn. 14.

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ANNEX

[REDACTED]