

UNITED
NATIONS



International Residual Mechanism for
Criminal Tribunals

Case no.: MICT-13-38-AR80.4

Date: 2 January 2026

Original: French

BEFORE THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
Judge Burton Hall
Judge Liu Daqun
Judge Aminatta Lois Runeni N'gum
Judge José Ricardo de Prada Solaesa

Registrar: **Mr Abubacarr M. Tambadou**

THE PROSECUTOR

v.

FÉLICIEN KABUGA

PUBLIC

Public Redacted Version of the Defence Response to the “Prosecution Appeal or Motion for Reconsideration Concerning Kabuga’s Release”

Office of the Prosecutor

Mr Serge Brammertz
Ms Laurel Baig

Defence Counsel for Félicien Kabuga

Mr Emmanuel Altit

I. Procedural History

1. On 7 August 2023, the Appeals Chamber (“AC”) considered that “the most appropriate way to proceed in the circumstances of the present case is to remand the matter to the Trial Chamber with an instruction to impose an indefinite stay of proceedings”.¹
2. The AC instructed the Chamber to give priority consideration to the issue of Kabuga’s release.²
3. On 8 September 2023, the Chamber found that:

“[...] the most expeditious manner to address the issue of Mr. Kabuga’s release consistent with the Appeal Decision of 7 August 2023 is to provide support for the Defence’s efforts to secure Mr. Kabuga’s provisional release into the States it has already identified”.³
4. On 9 September 2025, without having been invited to do so, the Prosecutor filed a request for the Chamber to consider “whether to provisionally release Félicien Kabuga to Rwanda”.⁴
5. On 22 September 2025, the Defence replied:

“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 [...] as well as the independent expert on aeromedical transfers [...] 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 in advance to imprisonment or house arrest, if that were the wish of the

¹ [Decision on appeals of further decision on Félicien Kabuga’s fitness to stand trial](#), 7 August 2023, para. 74.

² *Ibid.*, para. 75.

³ [Decision imposing an indefinite stay of proceedings](#), 8 September 2023, p. 4. (“AC Decision”).

⁴ [Prosecution submission concerning Kabuga’s provisional release to Rwanda](#), 9 September 2025, paras. 1 and 4.

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.”⁵

6. On 14 November 2025, the Chamber determined that Kabuga was not fit to travel to Rwanda.⁶

7. On 28 November 2025, the Prosecutor filed an “Appeal or Motion for Reconsideration” (“Appeal”).⁷

8. During the Status Conference of 17 December 2025, Presiding Judge Bonomy noted of the decision of 14 November 2025 (“Decision”) that:

“This decision was not taken lightly and comes following litigation that spanned over two years and was premised on evidence provided by four experts, including one specialised in aero-medical transfers as well as medical reports from the reporting medical officer the United Nations Detention Unit”.⁸

9. He added: “And as you know, the Tribunal itself has decided that the risk that he would be seriously damaged or killed by transporting him makes it inappropriate for that decision to be taken”.⁹

10. He further noted: “I'd like to reiterate for the absolute avoidance of any doubt that the Trial Chamber is continuing with its efforts to implement expeditiously the Appeals Chamber's instruction to address the release and liberty of Mr. Kabuga”.¹⁰

⁵ [Defence Reply](#), 22 September 2025, para. 3. (“Reply”)

⁶ [Decision on Félicien Kabuga's fitness to travel to Rwanda](#), 14 November 2025, paras. 20 and 32. (“Decision”)

⁷ [Appeal or Motion for Reconsideration](#), 28 November 2025. (“Appeal”)

⁸ Status Conference, 17 December 2025, p. 4, lines 3-17. (“Tr.”)

⁹ Tr., p. 15, lines 17-25.

¹⁰ Tr., p.17, lines 8-14.

II. Discussion

11. In his Appeal, the Prosecutor merely expresses his displeasure with the way in which proceedings were conducted by the Chamber.

12. He claims that the Chamber was:

-allowing the Defence to control the process: this impugns the Judges' motives. The Prosecutor seems unhappy that throughout proceedings, the Judges have respected Kabuga's rights.

-giving inappropriate deference to Kabuga's preferences in assessing the Mechanism's duty of care : here the Prosecutor is conflating two different claims: **a)** that the Chamber was "deferential" to Kabuga's wishes; the suggestion beggars belief. Should the Chamber have prevented any adversarial debate? Ought it to have ignored Kabuga's rights? And **b)** reproaching the Chamber for what it deemed more generally to be the Judges' "duty of care". The Prosecutor seems to think that recalling that the Judges performed their "duty of care" is a consequence of their excessive "deference" to the Defence.

-ignoring relevant expert opinion that Kabuga can safely fly to Rwanda: Yet not only did the Chamber rely on the successive reports of the three independent experts it had appointed to examine Kabuga regularly, and on the monthly reports of the Detention Unit Medical Officer, it also gave the Prosecutor complete freedom to question these experts, even accepting his proposal to hear an aero-medical expert and to question him a second time.¹¹ This expert's conclusion was unambiguous: "**one can not declare Mr. Kabuga being generally fit to fly**".¹²

13. An analysis of the Prosecutor's request reveals that he is not making any specific complaint about the Chamber. He merely retraces the procedural history to complain about the Judges' actions, arguing that they should have found in his

¹¹ *Prosecution Submission pursuant to the Chamber's 14 October 2024 Confidential Order for Submissions concerning the Possibility of Kabuga's Release to Rwanda*, 28 October 2024, paras. 5 and 14; *Decision*, paras. 10-12, 14-16, and 19

¹² *Extended advise on fitness to fly*, 18 April 2025, P.7046; *Decision*, para. 16.

favour and ordered Kabuga's forcible transfer to Rwanda. And yet at no point did he complain about the manner in which proceedings were conducted. In other words, the Prosecutor is here revisiting the way in which he managed this case.

14. Some observations:

- a. It is interesting to note that the Prosecutor's criticisms refer to past procedural matters, as he complains that: "*the Chamber decided in March 2024 that Kabuga's provisional release to Rwanda is not currently a live issue*".¹³

15. First, it should be noted that on several occasions the Chamber asked the parties to submit their views on all issues relating to Kabuga's release.¹⁴

16. Second, why did he not appeal in a timely manner against the decisions he is complaining about today?

17. In the Appeal, outside any appropriate legal framework, the Prosecutor is trying to reverse what the Chamber has done.

- b. It is telling that the Prosecutor is trying to challenge the entire proceedings in order to remove the medical matters as that the medical experts have always been unanimous in their opposing Kabuga's transfer to Rwanda because of his health.
- c. It is also interesting to note that rather than discuss the Chamber's possible mistakes, the Prosecutor claims that the options of France and [REDACTED] are "unrealistic": 1) This is factually untrue as proceedings are moving forward along with discussions with the French and [REDACTED] political authorities;¹⁵ 2) The Prosecutor has never complained before the Chamber of an unrealistic approach.

¹³ *Appeal*, para. 9.

¹⁴ *Decision*, paras. 9, 15, 19.

¹⁵ *Thirty-Fourth Progress Report*, 17 December 2025, paras. 14-63.

- d. Finally, it is interesting to note that, rather than discussing Kabuga's rights and the Mechanism's obligations towards him—which is the heart of the debate—the Prosecutor sidesteps these issues by arguing that since Kabuga put himself in this situation, he should not complain and should accept being taken to Rwanda.

18. Upon analysis, the Prosecutor's request serves only one purpose: to discredit the proceedings conducted by the Chamber following the Appeals Chamber's decision of 7 August 2023, and to this end, to attempt to "erase" everything that is of substance to them, in order to obtain Kabuga's transfer to Rwanda.

A. *In limine*: dismiss the Prosecutor's request

1- Failure to comply with the Rules of Procedure and Practice Directions

19. The Prosecutor filed a motion that clearly exceeds the permitted scope.

20. The Prosecutor refers to a glossary containing the full references from his footnotes.

21. In addition, the text of the motion has been compressed: conventional spacing has been systematically removed to reduce the number of words.

22. There are numerous examples of standard spacing being removed in quotations and legal references as well as repeated use of multi-word phrases and long dashes to merge syntactical segments (for example: "indictment—he also") which automatically reduces the word count.

23. The confidential annex to which the Prosecutor refers in his request contains elaboration of his arguments, legal qualifications and a biased presentation of the facts, all elements that should have been included in the motion itself.

2- The Prosecutor's attempt to construct an alternative case outside any appropriate legal framework

24. The Prosecutor's request appears to be an attempt to construct a new case by concealing or distorting what has actually been said over the past two years, while simultaneously providing the AC with new information.

25. In particular, the Prosecutor relies on the opinion of Dr Liam Scott to try to turn the argument into a medical-theoretical ("fit-to-fly") controversy limited to commercial flights, despite the fact that: **a)** Dr Scott's report has not been filed on the record; **b)** Dr Scott did not have access to or review Kabuga's medical file; and **c)** the Chamber ruled on the transportation issue based on expert opinions, including that of an aero-medical specialist.

3. Lack of Certification

26. The Decision can only be appealed if it has been certified by the Chamber¹⁶ as raising a question likely to compromise substantially the fairness or speed of the proceedings, or the outcome of the trial.

27. The Prosecutor cannot circumvent this requirement by reclassifying his "appeal" as a "reconsideration", by invoking "inherent jurisdiction" or by asking the AC to impose a substantive solution (release to Rwanda/referral to the President).

C. On the Appeal: No Identifiable Error

28. An appeal must target specific errors of law or fact.¹⁷ The Prosecutor's request already fails at this stage. It does not challenge the reasoning of the Decision and does not identify any allegedly erroneous paragraph. Instead, it develops a

¹⁶ Rule 80(B), *Rules of Procedure and Evidence*, 4 September 2025.

¹⁷ *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, *Judgement*, 23 October 2001, para. 22.

general narrative of institutional dysfunction, using the procedural history to contest it.

29. In reality, under the guise of an action directed against the Decision, the Prosecutor is attempting to challenge two years' worth of trial management. This is an attempt to broadly challenge issues that are already *res judicata* or are unrelated to the appeal review.
30. The Prosecutor's allegations are based on a sweeping and polemical reinterpretation of the case file, without identifying any errors in the appeal and without accurately reading the decisions and transcripts.

D. Misuse of the Reconsideration Concept

31. The Prosecutor is targeting the AC Decision of 7 August 2023.
32. At the outset, it should be noted that what the Prosecutor is challenging is not the decision itself but rather the process that led to the Decision.
33. If the Prosecutor had considered that a particular Chamber decision between 2023 and 2025 warranted appeal, he could have done so. But he did not. This means that he accepted the Chamber's decisions during those two years. It also means that it is precisely this Decision that he is now trying to challenge. In other words, this is a disguised appeal.
34. Let us now examine the conditions for reconsideration: it is an exceptional procedure, available only to prevent a miscarriage of justice resulting from a manifest error or genuinely new facts.¹⁸

¹⁸ Nahimana et al., Case No. ICTR-99-52-A, *Decision on Appellant Jean-Bosco Barayagwiza's Motion Requesting Examination of Defence Motion dated 28 July 2000 and Remedy for Abuse of Process*, 23 June 2006, para. 22.

35. The Prosecutor has not identified any new facts or manifest errors. The request for reconsideration is therefore inadmissible, especially since it aims to circumvent the rules on interlocutory appeals.

36. Furthermore, the request for reconsideration seeks to undermine decisions made by the Chamber over the past two years, thereby jeopardising legal certainty.

37. Finally, to accede to the Prosecutor's position would amount to challenging both the letter and the spirit of the AC decision of 7 August 2023 ordering Kabuga's release. The Prosecutor is using the reconsideration procedure to force Kabuga's return to Rwanda, in violation of his rights.

38. The request is therefore inadmissible, whether it is classified as an appeal or as a request for reconsideration.

E. The Grounds:

39. In order to convince the AC to permit the forcible transfer of Kabuga to Rwanda, the Prosecutor is trying to re-write the procedural history.

- a.** By basing it on false premises, notably the alleged “lack of options” in Europe, while procedures are underway and direct discussions are taking place with the competent authorities;
- b.** By distorting the debate, the Prosecutor criticises the Chamber for not authorising Kabuga's forcible transfer to Rwanda by disregarding the fact that:
 - According to experts, such a transfer would endanger his life;
 - Kabuga would not be genuinely released in Rwanda, contrary to the Chambers' decisions, but likely be placed in a form of detention;
 - His life and liberty would be threatened there;¹⁹

¹⁹ See [“Can We Celebrate Christmas Amid Injustice?”](#), 10 December 2025 (Statement from Minister Bizimana); *Response*, paras. 40-45.

- He could not receive adequate medical care there;
- His rights could not be respected there;
- He would be isolated there, without contact with his loved ones.

40. The Prosecutor goes as far as to claim that: “*Kabuga’s family could relocate, visit, [...] if Kabuga were repatriated*”, which is factually incorrect.²⁰

1- The Chamber has fully implemented the 2023 Decision:

41. The Prosecutor wrongly argues that the Chamber failed to implement the AC Decision of 7 August 2023. The record demonstrates precisely the opposite. The Chamber meticulously organised and structured the process, consulted numerous experts, regularly sought the parties’ views and opinions, and, in particular, accepted the Prosecutor’s requests for an aero-medical assessment and subsequently for a supplementary report from the aero-medical expert.

42. It is equally inaccurate to claim that the Chamber limited its efforts “exclusively” to Europe, or that no alternative was ordered: the Rwanda option was thoroughly examined.²¹

2- The Prosecutor is distorting the medical evidence:

a. Independent expert opinions in agreement

43. The medical evidence submitted to the Chamber is remarkably consistent, and the experts’ findings are always unanimous. The three independent medical experts and the aero-medical expert conclude that a transfer could prove fatal, whether due to the transport itself, the adverse effects at the destination, or the patient’s isolation and the absence of loved ones.²²

²⁰ *Ibid.*

²¹ *Decision*, paras. 6-21, 31-41.

²² *Ibid.*, paras. 8, 14, 24-29.

44. Faced with this, the Prosecutor merely makes general, theoretical statements that are pointless, since they disregard any individualised assessment as required by both law and medical ethics.

b. Inappropriate use of a medical opinion that is irrelevant and not filed on the record

45. The Prosecutor based his request on the opinion of Dr Scott, who has never examined Kabuga, did not have access to his file, and of whom the Chamber said: “the Trial Chamber will not consider Dr Scott’s report in rendering its decision”.²³

46. This opinion cannot be placed on an equal footing with the expert opinions filed on the record.

47. Moreover, Scott’s opinion is limited to general considerations.

III. Conclusion

48. In an attempt to convince the AC to reconsider the Decision, or rather everything that led the Chamber to make it, the Prosecutor had to distort what actually happened between 7 August 2023 and 11 November 2025 and misinterpret the meaning of the Chamber’s decisions.

49. For example, he argues that in order to make its finding, the Chamber “placed weight on the opinions of the panel of dementia experts”,²⁴ despite the fact that the Chamber actually relied in particular on the two reports from Dr Muurling.

50. The Prosecutor’s goal is to circumvent the Chamber at all costs.²⁵

²³ *Ibid.*, para. 20.

²⁴ *Appeal*, para. 13.

²⁵ *Ibid.*, para. 4.

51. It is interesting to listen to the Prosecutor trying to be convincing of the merits of transferring responsibility for the case to the President rather than to the Chamber:

52. The Prosecutor wants the President to be empowered to manage the case because she is vested with a “diplomatic role” and, as such, can make “pragmatic” decisions. Is there any better way of saying that the Prosecutor does not want to see the law applied but wants to impose a “diplomatic” solution?

For the foregoing reasons, may it please the Appeals Chamber to:

In limine:

53. Dismiss the request in its entirety.

In the alternative, if the Appeals Chamber has to consider the grounds,

54. Affirm the impugned Decision.

Number of words /in the original/: 2,996

/signed/

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Done on 2 January 2026, in Paris, France