

**UNITED
NATIONS**



International Residual Mechanism for
Criminal Tribunals

Case No. MICT-13-38-
AR80.4

Date: 9 January 2026

Original: English

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

**PROSECUTOR
v.
FÉLICIEN KABUGA**

PUBLIC WITH CONFIDENTIAL ANNEX

**PROSECUTION REPLY ON MOTION FOR
RECONSIDERATION CONCERNING KABUGA’S RELEASE**

The Office of the Prosecutor

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Félicien Kabuga

Mr. Emmanuel Altit

1. Kabuga's Response¹ mischaracterises the Prosecution's Motion,² as well as the existing record. The Motion was the only avenue³ available to the Prosecution in response to the Trial Chamber foreclosing any further consideration of the only realistic option uncovered since the Appeals Chamber ordered the Trial Chamber to "expeditiously" address Kabuga's continued detention more than two years ago.⁴ Far from insisting on transfer to any particular state, the Prosecution's position is that against the backdrop of the Appeals Chamber's order, Kabuga cannot remain in custody indefinitely, drawing on Mechanism funds to maintain his "high quality"⁵ medical and round-the-clock personal care—as well as his privileged proximity to his relatives⁶—while maintaining his appeals for admission into only two European countries. Remaining in pre-trial custody indefinitely may be Kabuga's preference, but it is neither his right nor required to conform to the Mechanism's duty of care.

2. Contrary to Kabuga's unsupported assertions suggesting the Motion should be rejected *in limine*,⁷ the Prosecution has neither violated the Mechanism Rules nor the relevant Practice Direction.⁸ The Practice Direction expressly excludes appendices from the word count provided they do not contain legal or factual arguments,⁹ and glossaries are routinely used to define short forms for full citations, which are not expressly required. The Confidential Annex, which contains a table listing confidential citations, was appended separately to facilitate the Motion's public filing¹⁰ in an efficient manner. While for each citation, the third column presents verbatim quotations and/or neutral paraphrasing, the ICTY and ICTR

¹ *Réponse de la Défense à la "Prosecution Appeal or Motion for Reconsideration Concerning Kabuga's Release"*, 2 January 2026 (confidential; public redacted version filed on 2 January 2026) ("Response").

² Prosecution Appeal or Motion for Reconsideration Concerning Kabuga's Release, 28 November 2025 ("Motion").

³ Certification under Rule 80(B) of the Mechanism Rules of Procedure and Evidence is not available because "the proceedings" have been stayed indefinitely and therefore cannot be "advanced", as required by the Rule. *See* Motion, fn.6. *Contra* Response, para.26. In preparing this reply, the Prosecution noted that Motion fn 6 is missing the word "certified". It should read: "Exercising its inherent jurisdiction is appropriate because there is no possibility of appellate intervention in a *certified* interlocutory appeal or post-judgement appeal."

⁴ 2023 Decision, para.79.

⁵ *See* 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, 15 August 2025, Annex: Joint Report of the Panel of Three Independent Medical Experts, 13 August 2025 (confidential) ("August 2025 Medical Expert Report"), Registry Pagination ("RP.") 7148.

⁶ August 2025 Medical Expert Report, RP.7148 (confidential).

⁷ *See* Response, paras.19-23.

⁸ Practice Direction on Lengths of Briefs and Motions, MICT/11/Rev.1, 20 February 2019 ("Practice Direction"). At 2759 words, the Prosecution was within both the 3,000 word limit for a motion on appeal and the 9,000 word limit for an interlocutory appeal. *See* Practice Direction, paras.9, 15.

⁹ Practice Direction, para.16.

Appeals Chambers have both held that the mere inclusion of a description for some references “does not necessarily lead to the conclusion that the annex has argumentative content”.¹¹ Moreover, both Appeals Chambers determined that the interests of justice may permit a party to include a “very limited amount of argumentative material in an annex”, so long as such discretion is not abused, which is determined on a case-by-case basis.¹² Kabuga has not shown such abuse of discretion.¹³

3. Kabuga’s claim that the Prosecution has never complained about “*une approche irréaliste*”¹⁴ before the Trial Chamber is factually incorrect. Already in March 2024, the Prosecution explicitly noted the need for a “realistic” approach to provisional release, stressing that the process could not continue indefinitely without concrete results.¹⁵ Later that year, the Prosecution highlighted that continuing to pursue the two European options Kabuga had been exploring was no longer realistic because the efforts had not yielded concrete results after a year of exploration.¹⁶ In May 2025, the Prosecution reaffirmed that, absent a viable alternative, Rwanda remained the only realistic option for provisional release.¹⁷ Most recently, in September 2025, the Prosecution asserted that “if Kabuga is ever to be released from detention, it will only be to Rwanda”.¹⁸

4. Kabuga’s assertion that the Prosecution relies on aeromedical transfer expert Scott with the aim of creating a “*controverse médico-théorique*”¹⁹ distorts the evidence. Like the Trial Chamber, Kabuga misapprehends the conclusions of aeromedical transfer expert

¹⁰ See *Prosecutor v. Halilović*, Case No.IT-01-48-A, Decision on Prosecution’s Motion to Strike Annexes to the Respondent’s Brief, 6 September 2006, para.11.

¹¹ *Prosecutor v. Nizeyimana*, Case No. ICTR-00-55C-A, Decision on Prosecution’s Motion to Strike “Ildéphonse Nizeyimana’s Confidential Brief on Appeal” or for Alternative Relief, 22 August 2013 (“*Nizeyimana Decision*”), para.16, citing *Prosecutor v. Gotovina et al.*, Case No.IT-06-90-A, Decision on Prosecution’s Motion to Strike Ante Gotovina’s Reply Brief, 18 October 2011 (“*Gotovina et al. Decision*”), p.2, referring to *Prosecutor v. Orić*, Case No.IT-03-68-A, Decision on the Motion to Strike Annexes A, C, D and E of the Prosecution’s Appeal Brief, 18 May 2007 (“*Orić Decision*”), para.7.

¹² *Nizeyimana Decision*, para.16, citing, *inter alia*, *Gotovina et al. Decision*, p.2. Also *Orić Decision*, para.7.

¹³ Should the Appeals Chamber find it preferable, the Prosecution appends to this Reply an amended version of the Confidential Annex to the Motion, wherein the third column has been replaced with a column containing only a short form for the citation. The word count on the third column, representing the short forms that would have appeared in a confidential version of the Motion, can be added to the Motion’s word count within the lower word limit for interlocutory motions. See Practice Direction, para.15.

¹⁴ Response, para.17(c). Also Response, paras.14-16.

¹⁵ Status Conference, 26 March 2024, T.19-21.

¹⁶ Prosecution Response to Kabuga Motion for Modification of Conditions of Detention, 5 August 2024 (confidential), paras.1-2.

¹⁷ Status Conference, 1 May 2025, T.11-12, 23.

¹⁸ Prosecution Submission Concerning Kabuga’s Provisional Release to Rwanda, 9 September 2025, para.1.

Muurling,²⁰ including his statement that Kabuga is not “*generally fit to fly*”.²¹ As Scott explained, that terminology relates to the feasibility of flying on commercial flights,²² which is not at issue. When answering the only question that asked specifically about the feasibility of transport in an air ambulance,²³ Muurling agreed that a low-level-cabin or sea-level-cabin long range flight would be possible.²⁴ The Trial Chamber declined to consider Scott’s evidence²⁵—which provides crucial context for Muurling’s analysis and conclusions—on the basis that it was submitted at a “late stage”²⁶ and because of Scott’s lack of access to Kabuga’s medical file,²⁷ overlooking that such access was not required to make these overarching points.

5. Rather than considering Muurling’s report in the broader context provided by Scott and the tendered academic scholarship,²⁸ the Trial Chamber instead primarily based its conclusion on the appropriateness of a long range flight²⁹ on the opinions of the dementia experts, whose medical expertise lies elsewhere.³⁰ Notably, neither the Trial Chamber nor Kabuga has pointed to any specific aspect of Kabuga’s clinical presentation that would make him an unsuitable candidate for transfer on a long range flight *in an air ambulance*. An appropriate expert appraisal of the feasibility of such travel must be based on specific consideration of travel in an air ambulance with all available mitigation, not on vague references to a “chartered airplane”³¹ or recommendations regarding Kabuga’s medical “best interests”³² relating to the proximity of his relatives.

¹⁹ Response, para.25.

²⁰ See Response, para.12.

²¹ Muurling Initial Report, p.4 (confidential) (emphasis added).

²² Scott Report, para.3.

²³ Order for Further Submissions from the Independent Medical Expert, 2 June 2025, Annex, Part A(v).

²⁴ Muurling Further Report, RP.7110, Section A(v) (confidential). The remainder of Muurling’s Further Report recommending means to reduce the risks of air travel does not appear to pertain to air ambulance transportation, because it addresses commercial flight risks like reduced cabin pressure. See Muurling Further Report, RP.7111-7109, Parts A(i)-(iv), B (confidential).

²⁵ *Contra* Response, para.25 (suggesting that Scott’s report “*n’est pas porté au dossier*”). While the Trial Chamber may not have considered Scott’s report, it is indeed part of the record.

²⁶ Trial Decision, para.20. Scott’s expert opinion was sought and submitted once the lack of clarity regarding the meaning of Muurling’s report became apparent during the September 2025 status conference. Status Conference, 25 September 2025, T.3-4, 17-19.

²⁷ Trial Decision, para.20.

²⁸ Annexes A and B to 28 October 2024 Prosecution Submission (confidential).

²⁹ Trial Decision, paras.24-26.

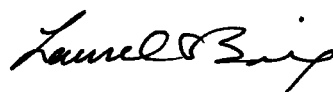
³⁰ See Joint Report, RP.6645, para.4.1 (confidential).

³¹ Joint Report, RP.6645, para.4.3 (confidential).

³² August 2025 Medical Expert Report, RP.7161, para.4 (confidential).

6. More than two years ago, the Appeals Chamber foresaw that “identifying a State that will accept Kabuga on its territory may present obstacles” but observed that “such a consideration may not be the basis for Kabuga’s continuous detention on remand”.³³ The Appeals Chamber need not perpetuate the status quo. It should resolve the matter of Kabuga’s release itself or refer the issue to the President.

Word Count: 1498



Laurel Baig
Senior Appeals Counsel

Dated this 9th day of January 2026,
At Arusha, Tanzania

³³ 2023 Decision, para.76.



I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

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