

**UNITED  
NATIONS**



International Residual Mechanism for  
Criminal Tribunals

Case No. MICT-13-38-I

Date: 20 May 2020

Original: English

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**BEFORE THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Carmel Agius, President

**Registrar:** Mr. Olufemi Elias

**PROSECUTOR**

v.

**FÉLICIEN KABUGA**

**PUBLIC**

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**URGENT MOTION FOR  
AMENDMENT OF ORDER FOR TRANSFER**

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**The Office of the Prosecutor**

**Félicien Kabuga**

Mr. Serge Brammertz

1. Pursuant to Articles 11 and 12 of the Mechanism Statute and Rules 23(A) and 57 of the Mechanism Rules of Procedure and Evidence, the Prosecution requests the President<sup>1</sup> to urgently amend the Warrant of Arrest and Order for Transfer<sup>2</sup> of Félicien Kabuga to provide for temporary transfer to The Hague Branch of the Mechanism instead of the Arusha Branch, in light of the current COVID-19 pandemic.
2. Kabuga was arrested in France on 16 May 2020, after evading justice for more than 22 years.<sup>3</sup> He is charged with genocide, complicity in genocide (in the alternative to genocide), direct and public incitement to commit genocide, attempt to commit genocide, conspiracy to commit genocide and crimes against humanity (persecution and extermination).<sup>4</sup>
3. The current Arrest Warrant provides for transfer to the Arusha Branch of the Mechanism upon arrest.<sup>5</sup> However, in light of the COVID-19 pandemic, a transfer from France to Tanzania, if even possible, bears a number of practical challenges due to pandemic-related restrictions in both France<sup>6</sup> and Tanzania.<sup>7</sup>
4. In contrast, transfer to The Hague Branch remains possible despite the current travel restrictions.<sup>8</sup>
5. To avoid any uncertainty created by the pandemic, the Arrest Warrant should be amended to provide for temporary transfer to The Hague. This would ensure that Kabuga can be immediately transferred to the Mechanism's custody, following appropriate procedures in France. It would also mitigate any delay arising from potential litigation before French courts<sup>9</sup> challenging the feasibility of transferring Kabuga to Arusha during the pandemic.<sup>10</sup>

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<sup>1</sup> The Prosecution has seized the President with this matter because it involves coordination of judicial functions and resources across both Branches of the Mechanism. It also requires a familiarity with the pandemic situation in both Arusha and The Hague. Should the President deem it necessary, this matter could be referred on an urgent basis to the Duty Judge in Arusha.

<sup>2</sup> *Prosecutor v. Félicien Kabuga*, Case No.MICT-13-38, Warrant of Arrest and Order for Transfer Addressed to All States, 29 April 2013 ("Arrest Warrant").

<sup>3</sup> See *Prosecutor v. Félicien Kabuga*, Case No.ICTR-97-22-I, Indictment, 24 November 1997 and Decision Confirming the Indictment, 26 November 1997.

<sup>4</sup> *Prosecutor v. Félicien Kabuga*, Case No.ICTR-98-44B-I, Amended Indictment, 17 March 2011.  
<sup>5</sup> Arrest Warrant, p.2.

<sup>6</sup> See [https://www.ejn-crimjust.europa.eu/ejn/EJN\\_DynamicPage/EN/86](https://www.ejn-crimjust.europa.eu/ejn/EJN_DynamicPage/EN/86).

<sup>7</sup> See e.g. <https://www.fr.tzembassy.go.tz/resources/view/travel-advisory-no.-2-of-4th-april-2020>.

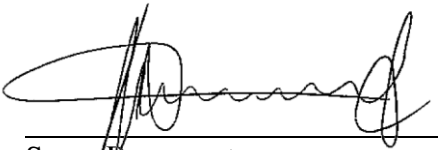
<sup>8</sup> See [https://ec.europa.eu/transport/coronavirus-response\\_en](https://ec.europa.eu/transport/coronavirus-response_en).

<sup>9</sup> See *Loi n° 95-1 du 2 janvier 1995 portant adaptation de la législation française aux dispositions de la résolution 827 du Conseil de sécurité des Nations Unies instituant un tribunal international en vue de juger les personnes présumées responsables de violations graves du droit international humanitaire commises sur le territoire de l'ex-Yougoslavie depuis 1991*, Articles 10-15, applicable to the Mechanism pursuant to *Loi n° 96-432 du 22 mai 1996 portant adaptation de la législation française aux dispositions de la*

6. As soon as the circumstances permit, the Mechanism can then order his transfer to the Arusha Branch.

7. The Prosecution therefore requests the President to urgently amend the Arrest Warrant by ordering that Kabuga should be transferred to The Hague Branch.

Word Count: 676



Serge Brammertz  
Prosecutor

Dated this 20<sup>th</sup> day of May 2020  
The Hague, The Netherlands

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*résolution 955 du Conseil de sécurité des Nations unies instituant un tribunal international en vue de juger les personnes présumées responsables d'actes de génocide ou d'autres violations graves du droit international humanitaire commis en 1994 sur le territoire du Rwanda et, s'agissant des citoyens rwandais, sur le territoire d'Etats voisins and Loi n° 2013-711 du 5 août 2013 portant diverses dispositions d'adaptation dans le domaine de la justice en application du droit de l'Union européenne et des engagements internationaux de la France.*

<sup>10</sup> The amendment of the Arrest Warrant would also ensure that the Mechanism, rather than a domestic court, is in control of the eventual timing of his transfer to the Arusha Branch.



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