

**UNITED
NATIONS**



International Residual Mechanism for
Criminal Tribunals

Case No. MICT-13-38-I

Date: 6 October 2020

Original: English

BEFORE THE PRESIDENT

Before: Judge Carmel Agius

Registrar: Abubacarr Tambadou

PROSECUTOR

v.

FÉLICIEN KABUGA

PUBLIC

**PROSECUTION RESPONSE TO “REQUÊTE URGENTE DE LA
DÉFENSE AFIN QUE FÉLICIEN KABUGA SOIT TRANSFÉRÉ
À LA HAYE ET NON À ARUSHA”**

The Office of the Prosecutor

Serge Brammertz

Counsel for Félicien Kabuga

Emmanuel Altit

1. The Prosecution supports the Defence Motion¹ to the extent that—in an initial phase—Kabuga should be transferred to The Hague to undergo an independent medical examination.
2. According to the IRMCT Statute, the Arusha Branch of the Mechanism is competent to continue the jurisdiction of the ICTR,² and thus to deal with the proceedings in relation to accused indicted by the ICTR.³
3. However, before transferring an aging accused with alleged underlying health conditions to a different continent for detention—in particular during a pandemic—it should be determined whether and when this would be compatible with his state of health.
4. The Defence medical report⁴ provides sufficient reasons to request an independent and detailed medical examination to determine whether Kabuga’s state of health is compatible with an immediate transfer to and detention in Arusha. While the report categorically⁵ states that transfer is not very compatible (*peu compatible*) with his state of health,⁶ it does not analyse the health care available in Arusha specifically, nor does it take into account the medical care available at the detention facility of the Arusha Branch of the Mechanism.
5. The COVID-19 pandemic is an additional reason for an independent medical examination prior to an intercontinental flight. The Defence correctly points out that an intercontinental flight during the COVID-19 pandemic bears additional risks for Kabuga,⁷ who falls into a COVID-19 risk group due to his advanced age alone.⁸
6. For these reasons, the Prosecution supports the request to the extent that the Arrest Warrant should be urgently amended by ordering that Kabuga should initially be transferred to The Hague so that an independent determination can be made whether and when his state of health would be compatible with transfer to and detention in Arusha.

¹ Requête urgente de la Défense afin que Félicien Kabuga soit transféré à La Haye et non à Arusha, 5 October 2020 (confidential) (“Motion”), p.9. *See also* Version publique expurgée de la «Requête urgente de la Défense afin que Félicien Kabuga soit transféré à La Haye et non à Arusha», 5 October 2020.

² Statute, Articles 1(1) and 3.

³ Kabuga’s right to family life is not incompatible with proceedings in Arusha. The right to family life may be subject to restrictions, and the IRMCT Detention Rules provide for the right to receive visits from and to communicate with family, friends and others. IRMCT Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Mechanism or Otherwise Detained on the Authority of the Mechanism, 5 November 2018, Rules 70(1) and 71. *Contra* Motion, paras.36-40.

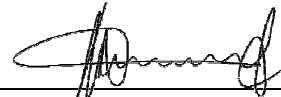
⁴ Motion, Annex A, in particular pp.13, 14.

⁵ Motion, para.20; Motion, Annex A, p.13, second to last bullet point.

⁶ Motion, para.18; Motion Annex A, p.13.

7. Should the President determine that he is not competent to deal with the Motion, the matter should be referred on an urgent basis to the Trial Chamber assigned to the case or to a Judge of that Chamber. While the assignment is only effective upon transfer,⁹ judicial economy speaks in favour of assigning the Motion to the Chamber which will ultimately be dealing with the case or to one of its members.

Word Count: 539



Serge Brammertz
Prosecutor

Dated this 6th day of October 2020
Arusha, Tanzania

⁷ Motion, paras.24-35; Motion, Annex A, p.13.

⁸ *E.g.* <https://www.who.int/westernpacific/emergencies/covid-19/information/high-risk-groups>.

⁹ Order Assigning a Trial Chamber, 1 October 2020, p.1.



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To/ À :	IRMCT Registry/ <i>Greffe du MIFRTP</i>	<input checked="" type="checkbox"/> Arusha/ <i>Arusha</i>	<input type="checkbox"/> The Hague/ <i>La Haye</i>
From/ De :	<input type="checkbox"/> Chambers/ <i>Chambre</i>	<input type="checkbox"/> Defence/ <i>Défense</i>	<input checked="" type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
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Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>
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