

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-38-PT

Date: 15 December 2020

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Pre-Trial Judge

Registrar: Mr. Abubacarr Tambadou

Date: 15 December 2020

PROSECUTOR

v.

FÉLICIEN KABUGA

PUBLIC

**REGISTRAR'S SUBMISSION IN RELATION TO "FURTHER
DECISION CONCERNING IN-PERSON VISITS BETWEEN
FÉLICIEN KABUGA AND HIS DEFENCE TEAM" OF
30 NOVEMBER 2020**

Office of the Prosecutor

Mr. Serge Brammertz

Duty Counsel

Mr. Emmanuel Altit

1. Pursuant to Rule 31(B) of the Rules of Procedure and Evidence of the International Residual Mechanism for Criminal Tribunals (“Rules” and “Mechanism”, respectively), I respectfully file this submission in relation to the “Further Decision Concerning In-Person Visits between Félicien Kabuga and His Defence Team” of 30 November 2020 (“Decision”).¹
2. In the Decision, the Pre-Trial Judge authorised an in-person consultation between Mr. Kabuga and his Counsel subject to appropriate health and safety measures at the United Nations Detention Unit (“UNDU”) or the Mechanism’s premises, if necessary, “in the first two weeks of December 2020”.² The Pre-Trial Judge instructed the Registrar to “monitor continuously the situation and identify solutions that will allow periodic in-person consultations between Kabuga and his Counsel on a planned basis, subject to any appropriate safety protocols and health measures”, and to (i) provide an interim report on any matters of concern arising out of the aforementioned in-person consultation, by 15 December 2020; and (ii) file a submission with a proposal [on] ongoing in-person consultations by 18 January 2021.³
3. In compliance with the Decision, I hereby inform the Pre-Trial Judge that an in-person consultation between Mr. Kabuga and his Counsel is scheduled to take place on 15 December 2020 at the UNDU. Counsel requested this date.⁴ The visit will take place following Counsel’s adherence to the required 10-day quarantine, as per the measures currently in place as imposed by the Government of the Netherlands, and enforced at the entrance of the Host Prison and at the entrance of the UNDU.⁵
4. Following consultation with the UNDU Commanding Officer and UNDU Medical Officer, and in an effort to minimise the key factors in transmission of COVID-19 – namely frequency, intensity, viral load combined with ventilation – the in-person consultation between Mr. Kabuga and his Counsel at the UNDU will take place in abidance of the following restrictions:
 - a) A maximum of two visitors will be permitted, as the available facilities do not permit for social distancing of more participants. Should there be more than one

¹ *Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38-PT, “Further Decision Concerning In-Person Visits Between Félicien Kabuga and his Defence Team”, public, 30 November 2020.

² Decision, p. 3.

³ Decision, pp. 3-4.

⁴ E-mail correspondence from Defence Team to Head of OLAD, dated 3 December 2020.

⁵ While the Decision authorised an in-person visit between Mr. Kabuga and his Counsel “in the first two weeks of December 2020”, Counsel proposed to hold the meeting on 15 December 2020.

visitor, the visitors shall be separated from each other by a plexiglass screen in the visit room;

- b) Each visitor will be screened at the entrance to the Host Prison and the UNDU. At the entrance of the UNDU, each visitor will have to complete a health screening form and have their temperature measured. Forms will be retained by the UNDU Medical Service and destroyed 30 days thereafter;
- c) Each visitor will be required to wear a face mask while in the UNDU, but may remove it in the visit room;
- d) Each visitor will be required to thoroughly wash their hands at the entrance, prior to entering the UNDU proper;
- e) Mr. Kabuga will be installed in the visit room before the visitor(s) are escorted to the adjacent visit room;
- f) Mr. Kabuga and the visitor(s) will be separated by a glass window;
- g) There will be no physical contact or exchange of material. Communication will be possible through a direct telephone link and documents may be displayed through the glass;
- h) Visitor(s) will be encouraged to use the toilet prior to or at the conclusion of the visit, as the only facilities available in the immediate vicinity of the visit rooms will be reserved for use by Mr. Kabuga only;
- i) The duration of each visit will be restricted to two hours;⁶ and
- j) The conduct of the visit will be visually, but not orally, supervised by UNDU staff, pursuant to Regulation 19(B) of the Regulations on the Supervision of Visits to and Communication with Detainees.⁷

5. Notwithstanding the above, I am obliged to convey that the UNDU Medical Officer continues to strongly advise against such a visit, taking the position that while the measures specified above are envisioned to minimise the key factors in transmission,

⁶ The two-hour visits norm in the UNDU is intended to avoid requirements such as refreshments and the use of the toilets in the course of consultations, as this would require either contact with the detainee or the visitors being given access to other areas within the building (where there are vending machines), which could increase the risk of transmission of COVID-19 within the UNDU.

⁷ Regulations on the Supervision of Visits to and Communication with Detainees (MICT/23) issued by the Registrar on 5 December 2018, Regulation 19(B): “[a]ll visits must be conducted within the sight of Detention Unit staff, except for conjugal visits with the Detainee’s spouse or nominated partner. The Commanding Officer, in consultation with the Registrar, may issue guidelines on the management of conjugal visits.”

no solution can assuredly exclude or guarantee the safe implementation of the Decision. In this respect, the UNDU Commanding Officer has notified me of his intention to submit a report before me pursuant to Rule 46(3) of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Mechanism or Otherwise Detained on the Authority of the Mechanism, should the in-person meeting take place as scheduled.⁸

6. Should any additional matters of concern arise out of the in-person consultation, I intend to file a supplemental submission before the Pre-Trial Judge by 17 December 2020.
7. I remain available should the Pre-Trial Judge require further information.

Respectfully submitted,



Abubacarr Tambadou
Registrar

Done this 15th day of December 2020,
At Arusha,
Tanzania.

⁸ Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Mechanism or Otherwise Detained on the Authority of the Mechanism, issued on 5 November 2018, Rule 46(3): “[a]ny recommendation made by the Medical Officer relating to a Detainee’s physical or mental health should be given due consideration by the Commanding Officer. If the Commanding Officer does not implement a recommendation of the Medical Officer, he or she shall report this to the Registrar who shall report to the President.”



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