

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No. MICT-13-38-I

Date: 8 November 2020

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Pre-Trial Judge

Registrar: Mr. Abubacarr Tambadou

Order of: 8 November 2020

PROSECUTOR

v.

FÉLICIEN KABUGA

PUBLIC

ORDER SCHEDULING AN INITIAL APPEARANCE

Office of the Prosecutor:

Mr. Serge Brammertz

Duty Counsel for Mr. Félicien Kabuga:

Mr. Emmanuel Altit

I, IAIN BONOMOY, Presiding Judge of the Trial Chamber of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Pre-Trial Judge in this case;¹

NOTING that Mr. Félicien Kabuga (“Kabuga”) was first indicted by the International Criminal Tribunal for Rwanda (“ICTR”) on 26 November 1997² and that the operative ICTR indictment was confirmed on 13 April 2011;³

RECALLING Article 1(4) of the Transitional Arrangements, which provides, *inter alia*, that the Mechanism shall have competence over a person indicted by the ICTR and arrested on or after the commencement date of the respective branch of the Mechanism;⁴

NOTING the international arrest warrant issued by the Mechanism on 29 April 2013, directing Kabuga’s transfer to the Arusha Branch of the Mechanism to be remanded into the custody of the United Nations Detention Facility;⁵

RECALLING that Kabuga was arrested on 16 May 2020 in France and that his transfer into the custody of the Mechanism was authorized by the French judiciary on 30 September 2020 on the basis of the Arrest Warrant and Order for Transfer;⁶

RECALLING that, on 21 October 2020, I determined that exceptional circumstances and the interests of justice justified amending Kabuga’s Arrest Warrant and Order for Transfer, which directed that he be transferred to the Arusha Branch, and I ordered that he be transferred temporarily to the United Nations Detention Unit (“UNDU”) at the Hague Branch of the Mechanism for a detailed medical assessment;⁷

RECALLING FURTHER that the Decision of 21 October 2020 observed that Kabuga’s initial appearance may be impacted in view of COVID-19 pandemic related protocols requiring Kabuga to

¹ See Order Assigning a Trial Chamber, 1 October 2020, p. 1; Order Designating a Pre-Trial Judge, 29 October 2020 (“Order of 29 October 2020”), p. 1.

² *The Prosecutor v. Félicien Kabuga*, Case No. ICTR-97-22-I, Decision Confirming the Indictment, 26 November 1997.

³ *The Prosecutor v. Félicien Kabuga*, Case No. ICTR-98-44B-PT, Decision on the Prosecutor’s Request for Leave to File an Amended Indictment, 13 April 2011 (confidential); *The Prosecutor v. Félicien Kabuga*, Case No. ICTR-98-44B-I, Amended Indictment, 14 April 2011. For a detailed procedural history related to the prior ICTR indictments charging Kabuga, see Decision on Prosecutor’s Request to Amend the Arrest Warrant and Order for Transfer, 27 May 2020 (“Decision of 27 May 2020”), paras. 2, 3.

⁴ U.N. Security Council Resolution 1966, U.N. Doc. S/Res/1966, 22 December 2010 (“Resolution 1966”), Annex 2 (“Transitional Arrangements”), Article 1(4). See also Resolution 1966, paras. 1, 2, Annex 1, Article 1.

⁵ *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 and Order for Transfer”), pp. 1-3.

⁶ See Decision on Félicien Kabuga’s Motion to Amend the Arrest Warrant and Order for Transfer, 21 October 2020 (“Decision of 21 October 2020”), paras. 2, 3. See also Decision of 27 May 2020, para. 2.

⁷ Decision of 21 October 2020, paras. 11-18.

quarantine for ten days upon arrival and the need for him to undergo preliminary medical assessments;⁸

NOTING that, on 26 October 2020, the French authorities transferred Kabuga into the custody of the Mechanism and that he is presently detained at the UNDU;⁹

RECALLING that, on 29 October 2020, I ordered that a medical examination and/or assessment of Kabuga be conducted by the Mechanism's Medical Officer and other appropriate medically qualified personnel the Medical Officer deems necessary to, *inter alia*, facilitate Kabuga's initial appearance and that a medical report be prepared based on the assessment and submitted to me by the Registrar;¹⁰

NOTING that, on 5 November 2020, the Registrar submitted the medical report¹¹ reflecting the Medical Officer's view that several aspects of Kabuga's health require further examination and that he is not in a position to provide advice on any special measures which would be required should Kabuga attend the initial appearance;¹²

NOTING that the Medical Report recommends that the initial appearance be conducted via video-teleconference link based on general concerns related to the COVID-19 pandemic rather than Kabuga's specific condition;¹³

CONSIDERING that Kabuga normally should be present in court for his initial appearance, in particular in order to give him an opportunity to meet with his counsel in-person, but that he may opt to participate via video-teleconference from the UNDU if that is his preference;

CONSIDERING FURTHER that, in view of the more than 20 years since Kabuga's indictment was first confirmed in 1997 as well as the several months that intervened between his arrest and transfer to the Mechanism, the Prosecution should be in a position during the initial appearance to provide details concerning its trial readiness, including, in particular, the earliest possible date by which it will complete the required disclosures under Rules 71(A) and 116(A) of the Rules of Procedure and Evidence of the Mechanism ("Rules") and submit filings required under Rule 70(E)

⁸ Decision of 21 October 2020, para. 16.

⁹ See Order of 29 October 2020, p. 1.

¹⁰ Preliminary Order Regarding Medical Examination of Félicien Kabuga, 29 October 2020, pp. 1, 2.

¹¹ Registrar's Submission in Relation to the "Preliminary Order Regarding Medical Examination of Félicien Kabuga" of 29 October 2020, 5 November 2020 (public, with confidential Annex) ("Medical Report").

¹² Medical Report, Annex, Registry pagination ("RP.") 194, 193. The Medical Officer expects that if specialists meet with Kabuga as he plans and share their findings, the Medical Officer will be able to provide more detailed information about Kabuga's health this coming week. See Medical Report, Annex, RP. 193.

¹³ See Medical Report, Annex, RP. 193.

of the Rules as well as its proposals for dealing with the disclosure of exculpatory material under Rule 73 of the Rules;

PURSUANT to Rules 64 and 70(B) of the Rules;

HEREBY SCHEDULE the initial appearance of Kabuga before me for Wednesday, 11 November 2020 at 2.00 p.m. in the Courtroom of the Hague Branch of the Mechanism;

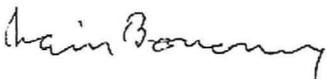
ALLOW Kabuga to either participate in the initial appearance in-person in the Courtroom of the Hague Branch or via video-teleconference link from the UNDU;

REMINDE the Registrar to facilitate confidential and in-person consultation between Kabuga and his duty counsel on the date of the initial appearance, consistent with my Decision of 4 November 2020;¹⁴ and

INSTRUCT the Prosecution to be prepared to provide information related to its trial readiness in light of the observations above.

Done in English and French, the English version being authoritative.

Done this 8th day of November 2020,
At Arusha,
Tanzania



Judge Iain Bonomy
Pre-Trial Judge

[Seal of the Mechanism]

¹⁴ See Decision on Urgent Motion for In-Person Visits Between Félicien Kabuga and His Defence Counsel, 4 November 2020, p. 3.



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