



UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

The International Residual Mechanism for Criminal Tribunals ("Mechanism") was established on 22 December 2010 by the United Nations Security Council to continue the jurisdiction, rights, obligations and essential functions of the International Criminal Tribunal for Rwanda ("ICTR") and the International Criminal Tribunal for the former Yugoslavia ("ICTY"), which closed in 2015 and 2017, respectively.

CASE INFORMATION SHEET

MICT-13-38

FÉLICIEN KABUGA



Félicien Kabuga was the President of the *Comité d'initiative* of *Radio Télévision Libre des Mille Collines* ("RTLM") during the time of the crimes pleaded in the indictment and President of the *Comité provisoire* of the *Fonds de défense nationale* ("National Defence Fund") from about 25 April 1994 to July 1994.

Year and place of birth

1935, Muniga secteur, Mukarange commune, Byumba préfecture, Rwanda

Indictment

Operative indictment filed on 1 March 2021

Arrest

Arrested on 16 May 2020 in Asnières-sur-Seine, France

Mechanism Trial Chamber

Judge Iain Bonomy, Presiding
Judge Mustapha El Baaj
Judge Margaret M. deGuzman

Status of the Case

Trial *

PROCEEDINGS BEFORE THE MECHANISM

Upon commencing operations on 1 July 2012, the Mechanism assumed jurisdiction over this case from the ICTR.

On 29 April 2013, a Single Judge, Judge Vagn Joensen, issued a warrant of arrest and an order for transfer requesting all Member States of the United Nations to search for, arrest, and transfer Mr. Félicien Kabuga ("Kabuga") to the custody of the Arusha branch of the Mechanism.

On 16 May 2020, Kabuga was arrested near Paris by French authorities as the result of a joint investigation with the Mechanism Office of the Prosecutor.

* The trial has been indefinitely stayed in view of the health condition of the accused.



On 30 September 2020, the French *Cour de cassation* rejected Kabuga's appeal against the lower court's decision authorising his transfer to the custody of the Mechanism.

On 1 October 2020, then-President Carmel Agius assigned this case to a Trial Chamber composed of Judge Iain Bonomy, Presiding, Judge Graciela Susana Gatti Santana, and Judge Elizabeth Ibanda-Nahamya, effective upon the transfer of Kabuga to the seat of the relevant branch of the Mechanism.

On 21 October 2020, Judge Iain Bonomy amended the warrant of arrest and order for transfer, and ordered that Kabuga be transferred to the Hague branch of the Mechanism based on a request from the Defence, which was supported by the Prosecutor and the Registrar, to allow for further medical assessments to determine whether Kabuga may be safely transferred to the Arusha branch of the Mechanism for trial. Kabuga was transferred to the Mechanism's custody at the Hague branch on 26 October 2020.

Kabuga's initial appearance took place on 11 November 2020, during which a plea of not guilty was entered on his behalf with respect to the charges in the indictment.

Since Kabuga's initial appearance, the Pre-Trial Judge or the Trial Chamber held regular status conferences. In view of Covid-19 restrictions, the first status conference was held by way of written procedure, commencing by an order of the Trial Chamber issued on 9 March 2021 and concluding by an order of the Trial Chamber filed on 6 April 2021. Subsequent in-person status conferences were held on 1 June 2021, 6 October 2021, 3 February 2022, 11 May 2022, and 18 August 2022.

Pursuant to the Trial Chamber's Decision on Prosecution Motion to Amend the Indictment, issued on 24 February 2021, the Prosecution filed its Second Amended Indictment on 1 March 2021 ("Indictment"). Moreover, the Trial Chamber took judicial notice of 45 adjudicated facts and facts of common knowledge, and it has issued decisions related to the admission of evidence of approximately 70 Prosecution witnesses pursuant to Rules 110, 111, or 112 of the Rules of Procedure and Evidence of the Mechanism ("Rules").

Since shortly after Kabuga's transfer to the Hague branch, the Trial Chamber has also been receiving twice-monthly medical reports from the United Nations Detention Unit's Medical Officer related to Kabuga's health, in order to determine his fitness to travel to and be detained at the Arusha branch of the Mechanism. In view of a Defence request for the appointment of medical experts to assess Kabuga's fitness to stand trial, the Trial Chamber appointed three independent medical experts, one Prosecution medical expert, and one Defence medical expert. The Trial Chamber held hearings on 31 May, 1 June, and 7 June 2022 to allow for the examination of three of the medical experts and submissions of the parties on Kabuga's fitness to stand trial and to be detained in Arusha.

In the Decision on Félicien Kabuga's Fitness to Stand Trial and to be Transferred to and Detained in Arusha, issued on 13 June 2022, the Trial Chamber found that the Defence had not established that Kabuga is presently unfit for trial. In the same decision, the Trial Chamber, nonetheless, noted that Kabuga suffers from cognitive impairment, is in a vulnerable and fragile state, and requires intensive medical care and monitoring. The Trial Chamber further considered uniform medical expert evidence that transfer to Arusha presents risks of disruption to Kabuga's familiar surroundings, which may materially and adversely impact the ability to swiftly commence and conclude his trial. In view of Kabuga's age and fragile health, as well as his fundamental right to fair and expeditious proceedings without undue delay, the Trial Chamber decided that Kabuga shall remain detained at the Hague branch of the Mechanism and that his trial shall commence there until otherwise decided. The Trial Chamber did not foreclose that proceedings might take place in Arusha should Kabuga's condition improve.

On 20 June 2022, Kabuga filed a motion for certification to appeal the Trial Chamber's finding in the decision of 13 June 2022 that Kabuga was fit to stand trial. On 23 June 2022, the Trial Chamber certified for appeal the issue of Kabuga's fitness to stand trial, and informed the parties that proceedings shall continue while the interlocutory appeal was pending. Kabuga filed his appeal on 30 June 2022 and, by order of the same date, the then-President assigned the appeal to a Bench of the Appeals Chamber composed of Judge Carmel Agius, Presiding, Judge Burton Hall, Judge Liu Daqun, Judge Aminatta Lois Runeni N'gum, and Judge José Ricardo de Prada Solaesa. On 12 August 2022, the Appeals Chamber dismissed the appeal in its entirety.

The Pre-Trial Conference was held at the Hague branch of the Mechanism on 18 August 2022.

On 26 August 2022, President Graciela Gatti Santana issued the Order Replacing a Judge and Assigning a Reserve Judge. The President assigned Judge Mustapha El Baaj to replace her on the Bench and Judge Margaret M. deGuzman to serve as the Reserve Judge in this case.



The Opening Statements were heard on 29 and 30 September 2022 and the Prosecution commenced presenting evidence on 5 October 2022. As a result of Kabuga's health condition and based on medical advice, the Trial Chamber decided to hold court sessions three days per week (Tuesday, Wednesday, and Thursday) for two hours per day (10.00 a.m. to 12.00 p.m. Hague time).

On 10 January 2023, the Trial Chamber issued a decision noting that, in view of Rule 19(E) of the Rules and the passing of Judge Elizabeth Ibanda-Nahamya on 5 January 2023, the trial would continue with Judge Margaret M. deGuzman replacing Judge Ibanda-Nahamya. On 16 January 2023, President Graciela Gatti Santana issued an order assigning Judge Ivo Nelson de Caires Batista Rosa as the Reserve Judge in this case.

On 6 June 2023, the Trial Chamber held, by majority, that, on the basis of the unanimous opinion of the three medical experts, Mr. Kabuga was not fit for trial and was very unlikely to regain fitness. Judge El Baaj dissented and considered that Kabuga was fit for trial and that the trial proceedings should resume. Furthermore, the Trial Chamber, by majority, decided that, because Kabuga was unlikely to regain fitness, it should conduct an alternative finding procedure. The Trial Chamber considered that respect for Kabuga's rights supported adopting an alternative procedure, rather than staying the proceedings without providing him any opportunity for exoneration and unconditional release. It noted that, due principally to risks of arbitrary detention, the Committee on the Convention of Rights of Persons with Disabilities has urged States Parties to provide disabled accused with procedures that are as close as possible to those generally afforded to an accused.

Additionally, the Trial Chamber considered that staying proceedings in this case was not the best way to effectuate the goals of the Mechanism, including combating impunity and contributing to the restoration and maintenance of peace in Rwanda. It added that such a stay would leave victims and survivors without any findings in relation to allegations of conduct attributed to Kabuga. Finally, the Trial Chamber noted that Kabuga's decision to evade justice for more than two decades resulted in the present situation, making it particularly unfair to privilege his preference for termination or stay of proceedings over the needs of victims and survivors.

The Trial Chamber further maintained the temporary stay of the hearing of the Prosecution evidence until the expiration of the period for the parties to seek certification to appeal or the resolution of any such appeal. It also maintained the medical monitoring regime by the panel of independent experts put in place in the Decision of 13 June 2022, with the next report being due 180 days from the report filed on 6 March 2023.

Both the Prosecution and the Defence filed appeals against the Trial Chamber's decision and, as the trial proceedings had been suspended since March 2023, a status conference was held in July 2023.

In August 2023, after the Appeals Chamber affirmed the Trial Chamber's finding that Kabuga was unfit for trial, but determined that the alternative finding procedure was not compatible with the Statue and Rules of the Mechanism, and ordered the Trial Chamber to impose an indefinite stay of proceedings. Following this, the President of the Mechanism modified the composition of the Trial Chamber, finding that it was no longer necessary to have a Reserve Judge, Judge Rosa, to ensure the expeditious conduct of the trial.

On 31 August 2023, the Trial Chamber received the medical monitoring report filed by the panel of independent experts, in which the experts maintained their view that Kabuga lacked four capacities necessary for meaningful participation in a trial and that, on the balance of probabilities, his mental capacities would not improve to the extent that he could be fit for trial.

On 8 September 2023, after hearing the parties and following the Appeals Chamber decision of 7 August 2023, the Trial Chamber issued a decision indefinitely staying the proceedings, ordering that Kabuga remain in detention at the United Nations Detention Unit, pending the resolution of the issue of his provisional release, and maintaining his medical monitoring regime. The Trial Chamber further ordered the Registry to use its good offices to provide all possible support in facilitating contact and communication between the Defence and the appropriate authorities of national jurisdictions in which Kabuga would be seeking provisional release. The Defence was thereafter ordered to file regular reports regarding progress made in identifying an appropriate State willing to accept Kabuga on provisional release.

On 13 December 2023, the Trial Chamber held a status conference, in particular to discuss the efforts of the Defence in relation to Mr. Kabuga's provisional release. On 26 February 2024, the Trial Chamber received a further joint expert monitoring report, in which the experts maintained their view that Kabuga remains unfit to stand trial and is unlikely to regain fitness to stand trial. The experts further noted that Kabuga is receiving care and treatment of a high quality, which is appropriate to his high level of need. The Trial Chamber held a further status conference on 26 March 2024.

In relation to possible provisional release, the Trial Chamber has received regular reports from the Defence on its efforts to identify a suitable state. On 15 February, the Trial Chamber issued an order in the interests of transparency to file on the record a submission received by the Registry from the Ministry of Justice of Rwanda indicating that Rwanda is a willing and appropriate



destination for Kabuga's provisional release. In issuing this order, the Trial Chamber noted that it would not presently consider the submission since Kabuga's provisional release to Rwanda is not currently a live issue before the Trial Chamber and the Rwandan Government is not a party to these proceedings. The Trial Chamber noted that Rwanda would be heard at the appropriate time if and when the matter properly arises. On 29 February 2024, the Trial Chamber issued a confidential decision, in which it denied Kabuga's request to order a State to accept him onto its territory as a provisionally released accused pursuant to article 28 of the statute.

Concerning a different aspect of the proceedings, in October 2023, the Registrar concluded his investigation regarding Kabuga's means and deemed the Accused non-indigent and capable of fully funding his entire defence before the Mechanism. The Registrar, however, deferred seeking an order from the Trial Chamber for reimbursement for ongoing legal aid funding until a moment when access to frozen assets could be realized. The Defence did not seek review of this determination before the Trial Chamber. With respect to the recovery of legal aid funds following the Registrar's October 2023 decision, the Trial Chamber issued a confidential Order for Submissions on 26 February 2024, in which it requested that the Registrar file a submission responding to several questions that will, hopefully, assist in determining the realistic feasibility and the most effective method of recovering the substantial cost of Kabuga's legal expenses from the assets attributed to him.

CASE BACKGROUND INFORMATION

INDICTMENT

Kabuga is charged with genocide, direct and public incitement to commit genocide, conspiracy to commit genocide, and persecution on political grounds, extermination, and murder as crimes against humanity, committed in Rwanda in 1994.

The Indictment states that between 6 April 1994 and 17 July 1994, genocide against the Tutsi ethnic group occurred in Rwanda, and that, throughout Rwanda, there were widespread and/or systematic attacks against the civilian population based on Tutsi ethnic identification and/or political grounds.

According to the Indictment, Kabuga, a founder of the radio station RTLM, operated it with others in a manner that furthered hatred and violence against Tutsi and others and that he and others agreed to disseminate an anti-Tutsi message with the goal to eliminate the Tutsi ethnic group in Rwanda. Specifically, the Indictment alleges that RTLM directly and publicly incited the commission of genocide and persecution through denigrating and threatening broadcasts. These broadcasts expressly identified persons as Tutsi or as "accomplices" or "allies" of the Rwandan Patriotic Front and, in some instances, provided locations and other information that encouraged or facilitated their killing. The Indictment alleges that Kabuga is liable for these crimes based on his participation in a joint criminal enterprise with others involved in RTLM's operations, as well as aiding and abetting the criminal conduct of RTLM journalists, *Interahamwe*, and others whose crimes were assisted or instigated by RTLM broadcasts.

Kabuga is further charged with aiding and abetting *Interahamwe* who killed and harmed Tutsi and others in Kigali-Ville, Gisenyi, and Kibuye prefectures by having provided material, logistical, financial, and moral support to them. As an example, the Indictment alleges that Kabuga supported a core group of *Interahamwe* in Kimironko, Kigali, known as "Kabuga's *Interahamwe*" in numerous ways and that this group participated in attacks, killing and harming Tutsi and others in Kigali-Ville prefecture at roadblocks, places of refuge, and houses. Kabuga is further alleged to have raised funds to purchase weapons and ammunition and to have played a role in importing arms and ammunition which were distributed to *Interahamwe* in Gisenyi prefecture. The Indictment alleges that these supplies were used for committing crimes in Gisenyi, Kibuye, and Kigali-Ville prefectures.

The charges in the Indictment are the following:

One count of Genocide (Count 1)

One count of Direct and Public Incitement to Commit Genocide (Count 2)

One count of Conspiracy to Commit Genocide (Count 3)

Three counts of Crimes Against Humanity

- Persecution on political grounds (Count 4)
- Extermination (Count 5)
- Murder (Count 6)



For more information, please visit the Mechanism website www.irmct.org.
For press inquiries, email mict-press@un.org.