

# Eight unanswered questions on Kabuga’s impending release

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**Kabuga faces a 50 million dollars lawsuit in Rwanda, where survivors are seeking compensation.**

Following the recent decision by the International Residual Mechanism for Criminal Tribunals (IRMCT)’s appeal chamber on Monday, August 7, to release Genocide suspect Felicien Kabuga from detention due to his “*unfitness to stand trial*,” several significant questions arise, some of which remain unanswered.

As the release of the 90-year-old primary suspect in the Genocide against the Tutsi becomes imminent, here are eight thought-provoking questions pertaining to the matter:

## What does “indefinite stay of proceedings” mean?

In its resolution regarding the trial, the IRMCT appeals chamber “*decided to remand the matter to the trial chamber with an instruction to impose an indefinite stay of proceedings in view of Mr. Kabuga’s lack of fitness to stand trial.*”

The decision by the appeals chamber did not mean that the trial was terminated, but rather put on an indefinite hold because the suspect has been found unfit to stand trial.

Jean-Damascene Ndabirora Kalinda, an International Criminal Justice specialist who has occasionally been consulted by the Permanent Mission of Rwanda to the United Nations on different international Criminal Justice issues, explained to The New Times that the decision is not a dismissal of the case and does not mean that Kabuga is free.

He noted that it is rather a suspension of the proceedings due to his health.

“*The case is not closed. Usually, a suspect is only free when the case is closed,*” he said.

“*As of now, he will be provisionally released, but at a given time, when found necessary, the case can be reopened if he regains his mind,*” he added.

## When can he be released?

The IRMCT’s plans for Kabuga’s next steps remain elusive. While efforts by The New

Times to glean information from the IRMCT proved fruitless, indications suggest that he may be released from the UN detention facility in The Hague if a willing country steps forward to receive him.

## **What are the conditions for the country that receives him?**

Any hosting country is likely to be subject to specific conditions, including monitoring his movements and providing regular updates to the IRMCT.

The appeals chamber acknowledged that identifying a state that will accept Kabuga on its territory may present obstacles, but such should not be the basis for his continuous detention on remand. Here, without divulging much details, the appeals chamber asked the trial chamber to “*expeditiously consider the appropriate modalities and conditions for his release.*”

## **How will his health be monitored?**

Despite the medical opinion that Kabuga’s dementia may be irreversible, the IRMCT will persist in monitoring his health.

According to the IRMCT, a medical monitoring regime was put in place by the trial chamber in view of Kabuga’s health condition. Though all details are not known regarding how this regime will work, it is un-

derstood that the country which accepts to receive Kabuga is obligated to continuously give a report concerning his health to the IRMCT.

This will be important in knowing whether he got better, which would allow the rare possibility of resuming the trial.

## **What is going to happen to his assets?**

Although Kabuga is reputed to possess substantial wealth; many of his assets across different countries have been frozen under the UN court’s directives. As he remains indefinitely accused by the IRMCT, his assets are expected to remain under continuous freeze.

Simultaneously, he faces a significant 50 million dollars lawsuit in Rwanda, where survivors are seeking compensation.

The intermediate court of Gasabo is already overseeing the case, with ongoing efforts to establish Kabuga’s awareness of the lawsuit.

## **Did his collaborators surrender him for arrest well aware that he would not stand trial anyway?**

Considering the fact that efforts to arrest Kabuga had not yielded results for the past two decades, a key question comes up: Did those who were hiding him give him up know-

ing that he would be released anyway due to the state of his health?

Since his arrest, health issues were an important factor that his lawyers flaunted.

In fact, in light of his health condition, the prosecutors reduced the indictment and the number of witnesses so that it would not take a lot of time to present the case.

Asked about the possibility of the claim that those who collaborated in hiding him might have surrendered him to the courts of law after knowing that he was not going to stand justice, Genocide scholar Tom Ndahiro told *The New Times*:

*“I can’t rule out anything to do with Kabuga evading justice. He wasn’t an invisible man. How did he survive in Kenya? How did he enter Europe and enjoy his stay there (Germany and France)?”*

## **Are there any channels through which victims can still seek compensation?**

Kalinda explained to *The New Times* that IRMCT’s stay of criminal proceedings does not affect the possibility of lawsuits for compensation.

*“The international tribunals have never explored any avenues for compensation for survivors. This issue was left for national jurisdictions. So, the survivors’ associations are allowed to follow up on compensations in national jurisdictions where Kabuga has assets, including Rwanda,”* he said.

He highlighted that a criminal conviction is not a prerequisite for paying compensation. He further explained that there is a procedure where the survivors can prove to courts in national jurisdictions that the suspect played a certain role in the crimes, and should give compensations to them.

## **What precedent does Kabuga’s case set?**

*“Every case stands a chance to be a precedent, and it can either be a good or bad one. This Kabuga case is going to be a bad precedent,”* he said. He noted that old age is one of the reasons that are said to have contributed to his memory loss, and thus, such arguments may come up again in the cases of elderly genocide suspects who will be tried in future.

Kabuga, a former businessman during the genocide, faces seven charges, including genocide, complicity in genocide, incitement to commit genocide, attempted genocide, conspiracy to commit genocide, persecution, and extermination as crimes against humanity.

Known as the *“financer of the genocide,”* Kabuga is alleged to have played a pivotal role in supporting the genocide through financial aid, logistical support, and media influence. His alleged contributions include providing resources to the Interahamwe militia and using his media outlet, Radio RTLM, to propagate anti-Tutsi sentiments and incite violence against them.