

Timeline: Kabuga’s arrest, trial

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Top Genocide suspect Felicien Kabuga is set to be released from detention after the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (IRMCT) ruled that his health condition does not allow him to stand trial.

In addition to this, the Appeals Chamber quashed the “*trial-of-facts*” procedure which was established by the lower chamber as an alternative for the case.

In this article, The New Times takes a look at the timeline of events since Kabuga’s arrest until the Appeals Chamber’s decision to release him.

1. May 16, 2020: Kabuga’s arrest is announced

On Saturday, May 16, 2020, the IRMCT issued a statement announcing the arrest of Kabuga, a development that ended a more than two decades-long hunt for the man thought to be the top financier of the 1994 Genocide against the Tutsi in Rwanda.

He was arrested in Paris by French authorities as the result of a joint investigation with the IRMCT’s Office of the Prosecutor. Serge Brammertz, the IRMCT’s chief prosecutor described the arrest as “*a reminder that those responsible for genocide can be brought to account, even twenty-six years after their crimes.*”

2. May 17, 2020: French court rejects Kabuga’s appeal for bail

After his arrest, Kabuga and his lawyers applied for bail at a court in Paris, as the initial judicial process got underway.

His lawyers told the court that he was too old and needed more medical examination given his age and frailty.

Their request was rejected. As such, he remained in detention at La Santé prison in the French capital.

3. June 1, 2020: UN Court rejects Kabuga’s bail plea too

At the beginning of June 2020, the defence lawyers presented a motion to the IRMCT’s trial cham-

ber, seeking the provisional release of Kabuga.

They asked for a stay of proceedings on the basis of their client's health and a provisional release on humanitarian grounds to an appropriate facility in The Hague. The defence claimed that there were medical reports that showed that Kabuga was not fit to stand trial.

The prosecutors also filed a motion requesting that the defence's motion be denied on the basis that: the request for a stay of proceedings, whether temporary or permanent, is premature; and that the requirements for provisional release are not met.

The court denied the defence's request due to reasons including the fact that the trial chamber was not satisfied by Kabuga's guarantees that, when necessary, he would appear for trial and surrender when required.

It was further considered that, despite his age and condition, Kabuga remained a fugitive for over two decades after the confirmation of his initial indictment.

4. September 29, 2022: Trial in substance gets underway, prosecutors pin Kabuga on key role in genocide

At the end of September 2022, the IRMCT commenced hearing the case as the prosecutors charged Kabuga with genocide, complicity in genocide, direct and public incitement to

commit genocide, attempt to commit genocide, conspiracy to commit genocide, persecution and extermination – both as crimes against humanity.

During the first hearing, the prosecutors told the court how Kabuga provided weapons, financial and moral support towards the genocide against the Tutsi. Prosecutor Rashid S. Rashid told the court how Kabuga's radio RTLM propagated hate towards the Tutsi before and during the Genocide.

Rashid noted that the radio broadcasted anti-Tutsi material including the Hutu 10 commandments as well as the infamous speech by Leon Mugesera in which he called for the throwing of the Tutsi in River Nyabarongo so that they can go back to where they came from.

5. December 14, 2022: Witnesses pin Kabuga on genocide crimes

As 2022 was near end, the IRMCT's trial chamber heard from witnesses who told it about Kabuga's role in the genocide.

Among these, for instance, a witness code-named KAB045 accused the former businessman of inciting the Interahamwe to "*clear the bushes*" – meaning to kill the Tutsi.

Another witness code-named KAB009 told the UN court about how Kabuga used his own truck to transport and distribute weapons to over 400 Interahamwe militia so that

they could massacre Tutsi.

Many more witnesses were heard by the court.

6. March 10, 2023: Kabuga’s trial temporarily suspended over his health

A UN court on Friday, March 10, temporarily suspended the hearing of the prosecution’s evidence, following a medical report that stated that he was too ill to stand trial.

The IRMCT decided that it was appropriate to first suspend the evidentiary hearings “*pending the resolution of the issue of Kabuga’s fitness*” to stand trial.

“*Considering further that the trial Chamber will benefit from an examination in a court of Independent medical experts to guide its decision on the future course of this trial,*” read part of the IRMCT’s statement.

7. March 23, 2023: Independent experts examine Kabuga, present findings

Three medical experts commissioned by the IRMCT carried out examinations on Kabuga and presented their findings to the court, beginning in March 2023.

They told judges that Kabuga was affected by significant physical illnesses and had vascular damage to his brain.

While they agreed on many factors, there was disagreement between two of them – Professors Henry Kennedy and Gillian Mezey, in re-

gard to the extent of his cognitive impairment and capacity to understand the proceedings and evidence details.

Kennedy believed that Kabuga’s cognitive decline was limited and that he did not exhibit signs of dementia. He maintained that Kabuga could meaningfully participate in the trial with appropriate assistance, but Mezey concluded that Kabuga suffered from moderate to severe dementia, which is progressive in nature. She deemed him unfit for trial and anticipated further cognitive decline.

8. June 7, 2023: Court rules that Kabuga is ‘unfit’ for trial

On Tuesday, June 7, the IRMCT’s trial chamber ruled that Kabuga was unfit to participate meaningfully in his trial and was very unlikely to “*regain*” fitness in the future.

In a split decision, Judge Mustapha El Baaj, one of the three judges disagreed with the majority’s determination that Kabuga was unfit to stand trial.

“*I respectfully disagree with the majority’s finding that Kabuga is unfit to stand trial. I believe that Kabuga has not demonstrated his unfitness to stand trial, and the medical evidence on the record does not support such a claim. On the contrary, I am convinced that Kabuga possesses several capacities that meet the legal standard set out in our jurisprudence,*” he wrote.

The majority prevailed. Thus, the court said it wanted to “*adopt an alternative finding procedure that resembles a trial as closely as possible, but without the possibility of a conviction,*” known as the trial of facts.

9. June 2023: Prosecutors, defence lawyers file appeals

In June, both the prosecutors and defence lawyers involved in the case appealed against the court’s decision to change the format of the trial.

The prosecutors’ appeal was based on their assertion that the trial chamber lacked unanimity regarding Kabuga’s unfitness to stand trial and his unlikely chance of regaining fitness in the future.

The defence lawyers’ appeal sought to put an end to all kinds of proceedings including the “*trial of facts.*”

10. August 7, 2023: Appeals chamber quashes trial of facts, Kabuga expected to be released

On Monday, August 7, the appeals chamber quashed the “*trial*

of facts” procedure that was prescribed as an alternative for Felicien Kabuga’s trial.

Issuing the verdict, the bench composed of judges Carmel Agius, Burton Hall, Liu Daqun, Aminatta Lois Runeni N’gum, and José Ricardo de Prada Solaesa, dismissed the prosecutors’ appeal.

“*In its decision today, the Appeals Chamber unanimously dismissed the Prosecution’s appeal, finding that the Prosecution failed to show that the Trial Chamber applied an incorrect legal standard or erred in evaluating the evidence when determining that Mr. Kabuga is not fit to stand trial,*” read a statement from the IRMCT.

The judges also ruled in favour of the defence’s appeal, because “*neither the statute nor the jurisprudence of the mechanism and its predecessor tribunals allows for an alternative finding procedure in lieu of a trial.*”

As such, Kabuga is expected to be released.