

The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals delivers its decision in the Kabuga case

MICT, August 7, 2023

The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) composed of Judge Carmel Agius (Presiding), Judge Burton Hall, Judge Liu Daqun, Judge Aminatta Lois Runeni N’gum, and Judge José Ricardo de Prada So-laesa, delivered today its decision on the appeals filed by Mr. Félicien Kabuga and the Prosecution against the Trial Chamber’s decision issued on 6 June 2023 concerning Mr. Kabuga’s unfitness to stand trial and the consequences thereof.

On 6 June 2023, the Trial Chamber found, by majority, that Mr. Kabuga is not fit to stand trial and that it is very unlikely that he would regain fitness in the future. The Trial Chamber decided, by majority, to continue the proceedings against Mr. Kabuga in accordance with an “alternative finding procedure that resembles a trial as closely as possible, but without the possibility of a conviction”. Both parties appealed against the Trial Chamber’s decision. The Prosecution appealed the Trial Chamber’s determination

that Mr. Kabuga is not fit to stand trial and the Defence appealed the Trial Chamber’s decision to continue the proceedings in accordance with an “alternative finding procedure”.

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.

The Appeals Chamber unanimously granted the second ground of the Defence’s appeal, finding that neither the Statute nor the jurisprudence of the Mechanism and its predecessor tribunals allows for an “alternative finding procedure” in lieu of a trial. The Appeals Chamber observed, in this respect, that the elements of this procedure, as defined by the Trial Chamber, appear to circumvent statutory guarantees afforded to all accused before the Mechanism. Consequently, the Appeals Chamber

found that, in adopting this procedure, the Trial Chamber exercised discretion that was not conferred upon it by the Mechanism's statutory framework, which constitutes an error of law, invalidating the Trial Chamber's decision.

The 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 Appeals Chamber further instructed the Trial Chamber to expeditiously consider the issue of Mr. Kabuga's detention on remand.

The Appeals Chamber stated that, in reaching its decision, it was mindful that the essential interests of the international community to prosecute individuals charged with

serious violations of international humanitarian law must be balanced with the fundamental rights of the accused. The Appeals Chamber noted that this balance must be achieved within the scope of the Mechanism's mandate. The Appeals Chamber further stated that it was cognizant that victims and survivors of the crimes that Mr. Kabuga is charged with have waited long to see justice delivered, and that the inability to complete the trial proceedings in this case, due to Mr. Kabuga's lack of fitness to stand trial, must be disappointing. The Appeals Chamber noted, however, that justice can be delivered only by holding trials that are fair and conducted with full respect for the rights of the accused set out in the Statute.