

PROSECUTOR V FÉLICIEN KABUGA

MICT-13-38

October 19, 2022

The trial of Félicien KABUGA started on September 29th 2022 in The Hague courtroom of the Residual Mechanism for the International Criminal Tribunals. The accused is charged with six counts: One count of Genocide, One count of Direct and Public Incitement to Commit Genocide, One count of Conspiracy to Commit Genocide and Three counts of Crimes Against Humanity, namely Persecution on political grounds, Extermination, Murder.

Direct and Cross examination of Jean-Francois Dupaquier, an expert witness.

The accused has again chosen to not be present during the hearing.

The Prosecution chose not to conduct an examination, so the Defence was given floor to proceed with cross examination.

Ms MATHE first asked the witness about his own experience and expertise. Mr DUPAQUIER has studied at political sciences at Sciences Po Paris and worked as a journalist for multiple newspapers and magazines. He had already been an expert at the ICTR in the *Nahimana* case (media case) alongside Mr Jean-Pierre CHRETIEN and Mr Marcel KABANDA. He is currently a pensioner but sometimes writes articles on a voluntary basis. Responding to Ms MARTHE's questions about his research principles when making a report for an international tribunal, he states that his reports are based on tangible evidence, on authentic documents and on the truth of the facts. He further states that an expert must be independent, without working under the influence of an influential group or person with power. However, he says, "*one cannot remain totally neutral when faced with a genocide.*"

The defence produced exhibit D-1, which is a video clip from a *Netflix* documentary called "Most wanted Fugitives". In the clip, the witness is seen talking about the grave of Jean Bosco BARAYAGWIZA, walking around on a cemetery. He explains that he secretly followed Mr BARAYAGWIZA's funeral near Paris, in Val-d'Oise in 2010, because he hoped Mr KABUGA would be there. He was in disguise and in contact with the Police. Mr KABUGA did not participate, but Dr. Eugène RWAMUCYO did and got arrested there.

Further, the defence wanted to know more about the report Mr DUPAQUIER had produced for the ICTR together with Mr CHRETIEN and Mr KABANDA, more specifically how they obtained recordings of the relevant RTLTM broadcasts. After the genocide, Mr DUPAQUIER and CHRETIEN were asked by *Reporteurs sans Frontières (RSF)* to make a report on journalists assassinated during

the genocide. Mr DUPAQUIER explained that it was very complex, since Kigali was chaotic, looted and destroyed when they got to Rwanda in September 1994. They immediately started searching elements like recordings of the broadcasts or extremist newspaper articles. They found some cassettes with RTLM broadcasts and the investigative team of the ICTR also contributed some cassettes. They soon had over 200 cassettes that were relevant to the report. The witness explained that the quality of the cassettes was not very good since they were not digital but analog recordings and they had to be transcribed in Kinyarwanda and then translated into French and English. Clara Del Ponte, the chief prosecutor of the ICTR at that time was not satisfied with the work the investigative team did, that's why the witness and his team were asked to take stock of the work that had already been done. They arrived in 1998 to consult with the team working on the cassettes and despite all the time and resources that went into it, only up to 35 cassettes were transcribed in Kinyarwanda and then translated. The problem was also that some were transcribed twice and that the transcription of one cassette demanded 50h of work. The defence then asked whether the tapes on the cassettes had been authenticated, but the witness stated that no one during the media trial had ever questioned the authenticity of the cassettes.

Moving on, Ms MATHE inquired which elements Mr DUPAQUIER has used to update his initial report for the ICTR admitted on 15 December 2001. The witness explained that the more time has gone by since the genocide, the more you can learn about it because of all the research being done, with new statements of stakeholders from all sides. To give an example, the witness told the Court how the ICTR used the wording of "conspiracy" to genocide, although he considers it today rather a genocide mafia that is headed by a secret clan that wants to take over the administration and civil society. He added that they now have statements from members of RTLM and the Interahamwe national committee, something they did not have when producing the report for the Media trial. Mr DUPAQUIER further explained that he also used element from Andrew WALLIS' book (Stepp'd in Blood: Akazu and the Architects of the Rwandan Genocide Against the Tutsi, 2019) and had looked at presidential letters that showed how Mr KABUGA tried to get into the presidential circle. He added that it is very interesting that someone like Mr KABUGA who was not part of the elite circles ended up with a very influential role within the Akazu, especially by marrying his daughters into the presidential family. The witness likened these structures to the Mafia again, explaining that "*such matrimonial strategies are very important in the Mafia, just like births, weddings and funerals are crucial.*" These are always events where members of the Mafia gather, that is why he expected Mr KABUGA at Jean Bosco BARAYAGWIZA's funeral.

According to the defence, a large part of the expert report is an analysis of causes of the genocide. Ms MATHE therefore asked the witness whether there is a consensus among academics on the causes. Mr DUPAQUIER explained that there are two camps. One that is convinced that the genocide was the result of a spontaneous anger following the plane crash and one that considers the genocide as planned. Otherwise, he asked, how would it be possible that in Gisenyi in the morning of the April 8th 1994, there were no more living Tutsis? The witness is convinced that the genocide, since it was so radical, can only be part of a plot and secret planning. He points out that this is not only his personal opinion but the result of a reasonable assessment of the events that took place in Rwanda. He explained that neither RTLM, nor the Kangura newspaper believed that the Arusha agreements were a peaceful solution. According to the witness, they called it a "treason of the Rwandan people" and were obsessed with the war between Hutus and Tutsis, persuading the public that there is a war between races, a recurring theme in their publications. He continues to explain that RTLM and the newspaper spend most of their time trying to convince their audience that RPF had a secret agenda, and that war is impending. For that, they provided false evidence and testimonies, something we would today call "fake news", and propagated that there was a conspiracy to kill Hutus, so they must

take up arms. Mr DUPAQUIER likened this discourse to the Third Reich, where Julius STREICHER, the creator of the notorious Nazi magazine “*Stürmer*” spoke about war of the races. He added that it is even more surprising, since we know today that “*race is a social and political construct*” without any biological grounding.

The defence proceeded to ask how the witness could know for sure that the information RTLM published was false. Mr DUPAQUIER explained that there were instances where, in a broadcast, RTLM talked about the occurrence of an incident, but the information would later be proven false. The witness stated: “*These people wanted to burn Rwanda down*”. He further told the Court that RTLM was complicating the work of peacekeepers by inciting chaos when new roadblocks were built.

The defence inquired about a website called francegenocidetutsi.org the witness has used as a source in his report several times. The witness explained that it is an important database for references of that time, since there are scanned authenticated documents. The documents are mainly produced by Professor André GUICHAOUA who published a list of all of Kabuga's children and reminded that nearly all of his daughters married prominent people, including president's relatives, secret services and Interahamwe.

The defence then desired more information on Andrew WALLIS’ book and why it had been used for the report. Mr DUPAQUIER replied that the book explained that President HABYARIMANA’s son and French President MITTERAND's son were involved, “*living millionaires’ lives*”, managing a nightclub (*Kigali Night*) for Belgian and French soldiers, politicians, prostitutes and drug dealers. Further, the book explains that the president’s wife did not want their son to marry an Ethiopian girl because of her “*tutsilike*” figure.

The attention of the defence then turned to an information in the report given by the Ambassador of Belgium, Johan SWINNEN, in a diplomatic telegram. According to the ambassador, a secret staff in charge of extermination of Tutsis gathered in Mr KABUGA’s building in 1992. The witness confirmed the information and explains that MR SWINNEN had excellent knowledge of the events. The Defence then proceeded to ask whether this telegram by the ambassador expressed his own opinion or if someone else wrote it. Mr DUPAQUIER replied that he thinks that this information came from an encounter between Jean BIRARA and SWINNEN and BIRARA gave him a document that could have come from BIRARA but the witness could not say with all certainty.

Ms MATHE then questioned the authenticity of the sources given by the expert witness, saying that this was the first document she had read of the report and had directly fallen on an anonymous source.

In the end, Mr DUPAQUIER wanted to give additional information on the video clip that was shown in the beginning and why he wanted to catch Mr KABUGA. He explained that William MUHUHE, a journalist and so a colleague of Mr DUPAQUIER, was tortured and killed after wanting to expose Mr KABUGA.

Then the judges came forward with some additional questions. Judge NAHAMYA wanted to know who Joseph SERUGENDO is, mentioned in the report and what he did at RTLM. The witness replied that he was a high-level technician who managed all technical issues that had to do with radio broadcasting. He later became member of Interahamwe and a militia man. He also was an RTLM board member and was a member of the initiative committee. Additionally, he owned a restaurant in a district in Kigali that was a meeting point for people who were part of the Mafia the witness

mentioned earlier. Judge NAHAMYA then asked about Mr KABUGA's role as operations director. Witness started to expand on how Mr KABUGA came to be part of the inner circle: He desired to be part of the inner circle of the president, and it was difficult for him to get into this world since he was modest and lived in a poor locality. He became rich, is an intelligent and hardworking man. A self-made man who generates sympathy. He does not speak French, though which is kind of a handicap if you want to become a member of the high ranks. Once he got into the inner circle he was called upon because of his financial power (richest man in Rwanda) and was asked to create a private radio.

Judge EL-BAAJ proceeded to put some questions to the witness. He inquired about the establishment of the secret staff that took place in 1991 or 1992. Witness said that during the civil war the Rwandan army did not have a military doctrine and that a French Colonel was sent there to help, his name was CONOVAS. In December 1991, HABYARIMANA gave the mandate to a committee made up of 10 high ranking officials. They were supposed to define a plan without defining an enemy. Mr CONOVAS submitted a report in 1992, 1 ½ years after the Civil War broke out. In the report he explained that there was indeed an enemy, the Tutsi. The witness concludes that the genocide was not a racial act, but, rather, a political plan.

Judge EL-BAAJ then asked for clarification on the concrete powers of Mr KABUGA. Witness stated that Mr KABUGA provided the largest capital and that this radio station was supposed to be profitable. They didn't know at the time that it would become the main body of propaganda. According to the witness, Mr KABUGA could order journalists not to broadcast a specific program. He did not only have a financial influence but also on the editorial line.

This note is a communication from the "Justice and Memory" program which aims to strengthen the involvement of affected populations and local actors, in international and national trials related to the genocide perpetrated against the Tutsi, treated on the basis of the universal jurisdiction, in order to consolidate unity, reconciliation, the perpetuation of the memory of the genocide and social cohesion in Rwanda.

The program is implemented by RCN Justice & Democracy, PAX PRESS, Haguruka and *Association Modeste et Innocent (AMI)*. The program follows the course of the proceedings in the trials of genocide cases based on the universal jurisdiction and informs impacted populations on the progress of the cases.

The program receives financial support from the government of Belgium through the Directorate General for Development (DGD). The program also receives occasional support from the Embassy of France in Rwanda. Program communications do not engage the responsibility of the DGD or the Embassy of France.