

PROSECUTOR V FÉLICIEN KABUGA

MICT-13-38

September 30th, 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.

OPENING STATEMENT OF THE DEFENSE

Mr. Félicien KABUGA waived his right to attend today's hearing [September 30th, 2022]. He was represented by his Defense Lawyers: Me Emmanuel ALTIT and Me Jacobs

The defense began its Opening Statement by stressing the need to seek the truth, recalling that seeking the truth requires to look reality in the eyes, and understand the painful complexity of human life. Me ALTIT said it was important to leave behind hearsay, oversimplification, approximations and vagueness.

He emphasized that the accusations that initially described Kabuga as the financier of the genocide had evolved overtime. He therefore deplored the lack of consideration of the said evolution by the Prosecution, "as if [KABUGA] has to be accused at any cost". Me ALTIT refuted the existence of a case against his client, questioned the silence of the Prosecution on the motives of Félicien KABUGA, and its unwillingness to understand the personality of the man charged. The defense said the evidence collection was done hastily in order to make the accused "the ideal culprit whose existence would explain the inexplicable" and assured that a narrative was built ex post facto around his client, making it a weak case, lacking to take into account the human factor, the personal animosities.

The defense recalled Mr. KABUGA's personal history, his wife from a mixed Hutu-Tutsi family, his path as a businessman, his friendships with Hutu and Tutsi in the Rwandan elite. The Defense Lawyer also talked about Kabuga's actions and investments into the RTLM opposing the prosecution's claim that they are evidence of conspiracy or premeditation. Me ALTIT described the creation of RTLM as a step in the democratization of the country, explaining that the radio became successful thanks to the quality of its programs and mostly music shows. The defense further explained that the increasing threats of invasion, the increasingly rising tensions in late 1993 and early 1994, led Rwandan Journalists and Media to criticize the Government, to warn against the Arusha Accords, and some Journalists to voice extremist views; observing that, on the other side, Radio RPF was extremely virulent, and Journalists on both sides would crash on air. The defense Lawyer ruled out the idea that

Mr. KABUGA had control over the contents of the broadcasts or had a say in what the journalists wrote.

The Defense did not dispute the role of Mr. KABUGA in the “*Comite d’Initiative*”, but it made a point of specifying that the object of this committee was the creation of the RTLM without interfering in its functioning. Me ALTIT underlined that the functioning of RTLM could not engage the criminal responsibility of the accused as if he were the editor-in-chief.

Me ALTIT questioned the supposed transformation in one night of April of KABUGA from a businessman into a warlord. He notes that the evidence for KABUGA’s presence at roadblocks, during the transport of weapons and as a key actor is contradictory and does not withstand analysis. He also spoke the twisting of the facts by the Prosecution in order to fit this retroactive narrative created to charge his client. He undertook to illustrate the defense’s point on the creation of the *Fonds de Défense Nationale* FDN, which he said, was in no way meant to contribute to the genocide, but, rather to allow the population and local groups to defend themselves against the RPF which was "sweeping across the country since the death of president HABYARIMANA". He also denied that the genocide was planned with instructions coming from the highest-level, he held that the genocide was a grass-root movement, composed of a myriad of events which he qualified as a "spontaneous, non-structured genocide". The Defense also called for an unbiased assessment of the events that restores humanity to the protagonists and honors the memory of the victims.

Describing the context of the war in 1994, the Defense affirms that Mr. KABUGA was not a warlord but a businessman caught up the prevailing chaos.

Me Jacobs on his part, told the court that the Prosecution based its case on two weak pillars, one narrative, one probative, one disconnected from the reality of what truly happened in RWANDA in 1994, and the weak and circumstantial evidence based on hearsay that has not been authenticated or verified. He then evoked the old and established principle of *testis unus, testis nullus*, and the lax approach of prosecution regarding said principle which raises questions as to the strength of the case and the capacity of the Prosecution to establish proof beyond reasonable doubt, highlighting the use of one singular source for many of their claims and the lack of corroboration of their allegations. He also questioned the credibility of certain witnesses, contradicting each other or themselves as the Defense will show throughout the trial.

Using the pre-trial brief of the Prosecution, the Defense deplored the absence of a causal link between the broadcasts mentioned by the Prosecution and the killings of the people whose names were mentioned on RTLM as the Prosecution has not produced proof that the broadcasts happened in the first place, using only proof by hearsay. Additionally, the defense claims that, in certain cases the persons mentioned died months after the broadcast raising the question of the existence of the said causal link between the two. It also criticized the lack of demonstration of causal link between the cause of the death and the alleged behavior of the accused.

"*Building a demonstration on hearsay is like building a sandcastle, a sandcastle that will not sustain the debate*". The Defense accused the Prosecution of going into extrapolation because of the lack of a demonstrated causal link between the accused’s actions and the crimes committed.

The Defense then criticized the Prosecution’s stance on witnesses, challenging the use of pre-recorded testimonies, the demand to not submit many witness to real examination during an adversarial debate.

It also regretted that the opacity of the Prosecution's case makes it incomprehensible for the public, making the trial opaque.

Finally, the Defense suggested that the evidence brought up by the Prosecution would not stand the "rigorous standard of international justice that is supposed to be exemplary." as it is based on speculation and a narrative not representing reality.

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.