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Rwanda: what's at stake in the trial of Félicien Kabuga

On 16 May 16, Kabuga was arrested [outside of Paris](#), where he had been living for over ten years under a false identity. One of the presumed last leaders of the genocide still at large, he has been wanted for over twenty years by the International Criminal Tribunal for Rwanda (ICTR) and, after it folded, the Mechanism for International Criminal Tribunals (MICT).

The [ICTR indictment](#) include the most serious charges of genocide, committed during his time as President of the Management Committee of Radiotélévision Libre des Mille collines (RTLM) from 1993, and as President of the National Defense Fund since it was established in April 1994.

This arrest marks the beginning of a long legal process. In spite of Kabuga's advancing years (he's 85), his first appearance in court will not take place for several weeks (see below) and a verdict is not expected for at least three years. Despite the high likelihood of a conviction, doubt remains as to how much of the truth will be revealed in a case that has already suffered repeated interference from political, legal and even economic spheres, both nationally and abroad.

Challenges for the prosecution

First of all, the prosecution faces the challenge posed by the many mysteries still clouding the 26 years the accused spent [in hiding](#).

For Rwandans wishing to avoid prosecution or investigation, the choice of host country would depend on the security guarantees offered or traded, and the support that could be garnered locally.

This support could come from the countries or individuals who disavowed the attack of 1 October 1990 by [the Rwandan Patriotic Army \(APR\)](#), which pitched the country into war. On 6 April 1994, when the attack against the Presidential plane left both the Rwandan State and army leaderless, these very countries or individuals expected to see an agreement setting up transitional institutions, as per those that had recently been signed in Dar es Salaam. Following the insurgents' victory and the installation of an [autocratic government](#), these countries helped thousands of self-exiled Rwandans, who benefited from the goodwill of State powers and influential individuals still attached to the "former Rwanda".

Generalized political instability has made exile in countries of the Global South, especially in Africa, an uncertain proposition, while the work of the ICTR and national judiciaries has gradually dismantled or weakened activist networks.

Therefore, moving to Europe (and especially to France), not too far from family, could ironically be less dangerous and remained affordable for those with depleted resources. In any case, the last stage of Kabuga's flight was only made possible because he restricted contact to his inner family circle.



Beyond that, it will be difficult to retrace his journey and networks, and [to identify those who](#) granted him protection, since they will not willingly come forward in the quest for truth and justice.

Allegations and evidence

Kabuga's arrest brought up the [same accusation](#) as those laid out in 1999, when his indictment was first published; he has been described, again, as the "richest man in the country", one who imported machetes to arm genocidal killers, with family ties to the presidential couple, a high-ranking position at RTLM; he is said to have been responsible for funding and organizing militia and vigilante groups. The two latter points have been detailed in substantiated judgements at several trials, but a great deal of work remains to be done, particularly concerning the funding of the genocide.

As early as 1995, the ICTR prosecutor undertook numerous financial investigations seeking to establish the guilt of the ministers for Finance (E. Ndingabahizi) and Planning (A. Ndirabatware), and that of Félicien Kabuga (Ndirabatware's father-in-law), along with others. The prosecutor's office believed that there must have been verifiable financial transactions to the "genocidal conspiracy". Potential evidence included the ["Galand-Chossudovsky report"](#), which purports to show the "planning of genocidal killings" via the import of large quantities of machetes by Kabuga.

But the ICTR was soon thwarted by a lack of tangible evidence. Records kept by the ministries, including military expenditure, did not enable them to establish links with the genocide. The "machetes hypothesis" proved highly uncertain. It was almost impossible to establish the direct, personal responsibility of the accused or to [prove that the machetes were imported with the intention to kill](#).

In 1999, the prosecutor redirected financial investigations to the accounting and staff management records of public and private companies. These helped reveal the funding mechanisms and networks that enabled the creation of the youth groups of the National Republican Movement for Democracy and Development (MRND), [the Interahamwe](#), and those of other parties. Formed when the multi-party system was established in 1991, the youth movements amplified parties' reach and power and reinforced their activist base. When war broke out, they morphed into youth militia serving the politicians that funded, housed (as did Kabuga in Kigali) or armed them. Investigations also demonstrated the role of public companies in the civil war, although most transactions took place in cash.

Investigations made significant progress in 2001, with access to the bank accounts of individuals and organizations suspected of pillaging parastatal companies and the budgets of large government ministries. Analysis of these documents helped investigators retrace the massive misappropriation of funds from developing projects, parastatal institutions and ministries, for personal gain and to strengthen crony and partisan networks, and revealed the names of shell companies created to funnel money and make transfers abroad when defeat became certain.

Decisive evidence in key cases was submitted to the ICTR and other foreign jurisdictions. The atmosphere of impunity had been so great that the bulk of the transfers were sent directly to dignitaries' personal accounts. Therefore, there was great concern in various circles that investigations linked to the genocide would reveal both old and recent cases of misappropriation of public and private funds for personal or political gain caused.

In May 2001, the prosecutor's office tried to extend its search to the highest levels of power. A working program was sent to the Ministry of Justice, with a list of names and institutions. The requests included operations carried out after the war with the accounts and property of figures from the old regime, either dead, under prosecution or "recycled" by the new authorities.

But on the day the request was submitted, a wave of panic washed across the banking world, particularly in Belgium, where banks voiced their total opposition to [the highest levels of the Rwandan State](#). The investigations were refused on the basis that they might harm "national reconciliation" and the "country's reconstruction" since they elicited concern from economic organizations now protected from scrutiny.

What will happen when prosecutor's office investigators seek such evidence in the future, not only in Rwanda, but also in Belgium, Switzerland, France, and elsewhere? Can we hope that it has been preserved?

Witness credibility

A third issue is witness credibility.

Rwandan investigators should be congratulated in this matter for their skills in organizing intensive sessions with selected witnesses to contrive evidence that is difficult to refute since only the Rwandan authorities have complete control over access to individuals and information.

Rwanda has never shied from using false witnesses, or even introducing implausible evidence. It remains to be seen if the *National Public Prosecution Authority* will dare call on former RTLM presenter Valérie Bemeriki. Sentenced for life in Rwanda, she has become the Rwandan authorities' go-to witness in [numerous cases](#), in spite of the fact that her entire testimony was thrown out and characterized as "deplorable" by the ICTR judges in the trial of Rwandan media (p.180-89).



Yet this did not prevent prosecutor Théogène Rwabahizi, from the *Genocide Fugitive Tracking Unit*, from drawing up a long statement with her on 6 April 2016, in support of the application for the arrest of Enoch Ruhigira, Juvénal Habyarimana's former chief of staff. In the statement, Bemeriki claims that on '9 or 10 April,' M. Ruhigira came out of the office of the director of RTLM and asked two soldiers to kill two young passers-by on the spot, whom he had identified as Tutsi men. However, Ruhigira had been in hiding at the residence of the Belgian ambassador since 7 April (he was exfiltrated to Europe on 12 April). The same dossier from the Rwandan prosecutor included the accounts of various witnesses who claimed they had seen the accused during the three-month genocide.

Because of these reservations, the disappearance over time of many witnesses and the likely destruction of crucial records, witness credibility is one of the key issues of the Kabuga trial, along with the solidity of the evidence submitted to the judges.

In 1999, in order to bolster investigations, Belgian magistrate Damien Vandermeersch recommended [“increased prosecutor supervision”](#) and the introduction of adversarial principles, which would grant the defence access to the case from the investigative stage. Such a move would be in the interest of all parties, ensuring that this final trial would bring to light the truth on key outstanding questions surrounding the people who instigated or supported the genocide, and how it unfolded – questions for which Mechanism is certainly answerable.

But does this goal conflict with Rwandan expectations, given the work it entails and the slow pace of an international tribunal?

Truth vs. rewriting history

Since relations between the ICTR and Kigali have been plagued by a series of crises, and because the credibility of international justice is often called into question in Africa, the MICT is facing a significant challenge.

For those wanting to know what happened in Rwanda, it would be unimaginable to forgo investigations of large swathes of the decision-making, organization and operation of the war and genocide.

For Rwanda, the goal is to obtain formal recognition of the 'planning of the genocide against the Tutsis several years in advance,' which the ICTR has never been able to establish. The theory of 'genocidal conspiracy' (thought to be the work of Agathe Kanziga, the widow of President Habyarimana; her brother, Protais Zigiranyirazo; Félicien Kabuga; Colonel Bagosora; and others) put forward by the ICTR's initial prosecutors, was quickly abandoned due to lack of sufficient evidence, in spite of accusations from Rwanda. This failure was confirmed by judges in the [Bagosora trial](#), and again when [Zigiranyirazo was acquitted](#) following his appeal. Because Kanziga was never prosecuted by the ICTR, Kabuga became the prosecutor's number one target in 2001.

While a conviction on the grounds of ‘conspiracy’ for his role at RTLM remains uncertain, given the precedent set at the media trial, it may be possible to prosecute the inner presidential circle via the Kabuga case, which could extend the [sentence of his son-in-law, A. Ndirabatware, who acted as an advisor to the presidential clan.

After Kanziga left for France on 9 April 1994, the remaining members of the presidential family withdrew to Gisenyi two days later, where they were joined by Kabuga, among others. According to our sources, from her Parisian exile, in liaison with the headquarters at the “Méri dien Izuba hotel” in Gisenyi, Kanziga carried out negotiations with several African heads of State in order to bolster the diplomatic position of the intermediary government (IG).

On 3 July 2020, the Paris court of appeals dismissed the case against members of the Rwandan Patriotic Front for the 6 April 1994 attack. For Rwandan authorities, this decision implies that the President’s plane was shot down by Hutu extremists, apparently headed up by Kanziga. She is also suspected of ordering the killings committed by the presidential guard on the night of 6 April, as well as the mass murders committed by the *Interahamwe*, before appointing Colonel Bagosora to form the IG.

Whatever the outcome, the Kabuga trial will enable Kigali to again campaign for Kanziga, who still resides in France, to be tried in Rwanda. This would be a key trial, representing a final, outstanding political and judicial victory for Rwandan authorities.

With these final trials, the Rwandan government’s main goal remains the same: consolidate their rewritten version of the tragedy, which is now the official history of the war and genocide and, as such, is protected by laws against denialism and revisionism.

Nevertheless, attempts to try Kanziga in Rwanda would run up against obstacles of the kind mentioned in several interviews with President Paul Kagame. When asked by *Jeune Afrique*, on 1 April 2019, if he thought he would one day be granted her extradition, [he said](#):

‘I don’t know. But even if our request is not taken into consideration, for one reason or another, why hasn’t this woman been investigated by the ICTR or the French judiciary? Why has she never been subject to investigation in the country where she took refuge? The facts speak for themselves.’

It is true that Kanziga was never prosecuted by the ICTR. But how could prosecutors go after the widow of Juvénal Habyarimana, when it refused to investigate the attack and granted RPF total impunity by halting investigations into its crimes?

In another statement to [Jeune Afrique, on 2 July 2020](#), Kagame opposed reopening the case of the attack during the final appeal before the Court of Cassation. It appears he does not feel necessary to know who committed the attack. Official history is not written from evidence; it is a matter of power.

It is one thing to orchestrate the moral vilification of the presidential family, and quite another to call for a proper trial. Such a trial would open up adversarial hearings on the 6 April attack, international complicity and the [war crimes and crimes against humanity that came with the RPF’s victory](#).

The question of Arusha

Given that there seems little hope of obtaining specific information regarding Kabuga's escape, there are hundreds of Rwandan witnesses to the crimes he is charged with. Therefore, authorities in Kigali may well request that the MICT hand the case over to them, after confirmation of its transfer from the French justice system to the Mechanism.

On 28 May, [Judge Sekule](#) of the MICT recommended waiting until pandemic restrictions were lifted before making travel arrangements to [Arusha](#), but added that 'an appropriate alternative could be sought.'

A transfer to Arusha does indeed raise certain questions, concerning the accused physical state, the availability of Covid treatment centres, staff recruitment, etc.

So, after the vote, on 20 April, by the Assembly of UN Member States of the [resolution](#) which "calls upon all states to cooperate with the Government of Rwanda to investigate, arrest, prosecute or extradite all remaining fugitives", Rwanda could then be considered as an "appropriate alternative", given that a high court has been established there for this purpose – the country has been internationally recognized for its rigorous management of the [Covid crisis](#), and the EU has reinstated direct flights to and from Kigali.

Such a move would be in line with [arguments made by the survivors' association Ibuka](#) : according to its president, 'If he is handed over to Rwanda, the question of reparations could be introduced,' keeping in mind that 'the international justice system has not provided for the question of reparations to be examined'

Arusha? The Hague? Kigali? It remains to be seen, and however the question is answered, it will not end competition between the MICT and Rwanda. However, another surprising possibility would be a guilty plea. It could only be accepted by the judges after a comprehensive and detailed hearing of the accused, in which he would be forced to tell the truth on the basis of proven facts. Should this option be accepted by [prosecutor Serge Brammertz](#), it could lead to highly simplified proceedings.

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A version of this article in French can be downloaded here:
<https://theconversation.com/rwanda-les-enjeux-du-proces-de-felicien-kabuga-144987>

The additional article "Did machete imports to Rwanda prove that the genocide against the Tutsi was planned?" (A. Guichaoua, R. Tissot) can be downloaded here:
<https://theconversation.com/did-machete-imports-to-rwanda-prove-that-the-genocide-against-the-tutsi-was-planned-145374>

A long version of this article in French and a version in Kinyarwanda can be downloaded here
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