



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-23-127

Date: 4 August 2023

Original: English

IN THE APPEALS CHAMBER

Before: Judge Graciela Gatti Santana, Presiding
Judge Seon Ki Park
Judge Seymour Panton

Registrar: Mr. Abubacarr M. Tambaou

Decision of: 4 August 2023

**IN THE MATTER OF
FERDINAND NAHIMANA**

PUBLIC

**CORRIGENDUM TO “DECISION ON AN APPEAL OF A DECISION
ON REQUEST FOR TEMPORARY HUMANITARIAN AID” ISSUED
ON 2 AUGUST 2023**

Counsel for Mr. Ferdinand Nahimana:

Mr. Jean-Mari Biju-Duval
Ms. Diana Ellis
Ms. Joanna Evans

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively)¹ is seised of an appeal filed by Mr. Ferdinand Nahimana on 27 April 2023.² The Appeal is against the decision issued by a Single Judge of the Mechanism (“Single Judge”) on 20 April 2023 denying Nahimana’s request for additional financial support.³ On 30 June 2023, Nahimana filed a confidential addendum to the Appeal.⁴

I. BACKGROUND

2. On 3 December 2003, Trial Chamber I of the International Criminal Tribunal for Rwanda (“ICTR”) convicted Nahimana of genocide, conspiracy and direct and public incitement to commit genocide, and persecution and extermination as crimes against humanity, sentencing him to life imprisonment.⁵ On 28 November 2007, the ICTR Appeals Chamber reversed, in part, Nahimana’s convictions, while affirming his conviction for direct and public incitement to commit genocide and persecution as crimes against humanity, in respect of *Radio télévision libre des mille collines* broadcasts, and reduced his sentence to 30 years of imprisonment.⁶

3. On 30 December 2008, Nahimana was transferred to the Republic of Mali (“Mali”) to serve the remainder of his sentence⁷ and, on 22 September 2016, he was granted early release.⁸ Following his release, the Mechanism provided Nahimana with a lump sum of 1,000 United States Dollars (“USD”) to facilitate his temporary stay in Mali, pending repatriation to the Republic of Rwanda or relocation to another State.⁹ Nahimana has since remained in Mali.¹⁰

¹ See Order Assigning Judges to a Bench of the Appeals Chamber, 2 May 2023, p. 1.

² Appeal of the Decision of 20 April 2023 Issued by the Single Judge in the Matter of Ferdinand Nahimana: Request for the MICT to Provide Temporary Humanitarian Aid, 27 April 2023 (original filed in French; English translation filed on 2 May 2023) (“Appeal”).

³ See Decision on Ferdinand Nahimana’s Request for Temporary Humanitarian Aid, 20 April 2023 (“Impugned Decision”), paras. 4, 9-11, 15.

⁴ Addendum to the Appeal of the Decision of 20 April 2023 Issued by the Single Judge in the Matter of Ferdinand Nahimana’s “Request for the MICT to Provide Humanitarian Aid”, 30 June 2023 (confidential) (“Addendum”).

⁵ *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-T, Judgement and Sentence, 3 December 2003 (“*Nahimana et al.* Trial Judgement”), paras. 1092, 1105.

⁶ *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, paras. 1051, 1052, p. 345.

⁷ *Prosecutor v. Ferdinand Nahimana*, Case No. MICT-13-37-ES.1, Decision of the President on the Early Release of Ferdinand Nahimana, 22 September 2016 (confidential) (“Decision on Early Release”), para. 4. See Agreement Between the United Nations and the Government of the Republic of Mali on the Enforcement of Sentences Pronounced by the International Criminal Tribunal for Rwanda or the International Residual Mechanism for Criminal Tribunals, 30 June 2016 (“Mali Enforcement Agreement”). See also *Nahimana et al.* Trial Judgement, para. 13 (indicating that Nahimana was arrested in the Republic of Cameroon on 27 March 1996 and, on 23 January 1997, he was transferred to the United Nations Detention Facility in Arusha, United Republic of Tanzania).

⁸ Decision on Early Release, para. 36.

⁹ Impugned Decision, para. 3.

¹⁰ Impugned Decision, para. 3.

4. Both prior to and following his release in Mali, Nahimana requested in various communications that the Mechanism provide him with the same level of support that was provided to the persons acquitted or released in Arusha, which included the direct provision of housing and a monthly allowance.¹¹ The former Registrar and the President of the Mechanism responded to Nahimana that, given the presence of one of the Mechanism’s branches in Arusha, the Mechanism was “differently placed” with respect to persons released in Arusha than those released in enforcement States and that it was not feasible to implement in Mali a similar scope of arrangements.¹² Nahimana was also informed that any financial assistance provided by the Mechanism to persons released in enforcement States is not indefinite and, in fact, is limited to a one-time lump sum and that the Mechanism was not in a position to provide any additional financial assistance other than to cover the expenses associated with their future relocations.¹³

5. On 23 January 2023, Nahimana filed a motion requesting an order to the Registrar of the Mechanism (“Registrar”) to provide him with additional financial support, namely a subsistence allowance of 10,000 USD, accommodation expenses of 1,560 USD, and funds to cover medical expenses, as well as diplomatic assistance with his visa application for family reunification in the Kingdom of Belgium (“Belgium”).¹⁴ After the Single Judge had determined that it would be beneficial to receive the Registrar’s submissions,¹⁵ the Registrar, on 9 February 2023, filed a response to Nahimana’s motion to which Nahimana replied on 17 February 2023.¹⁶

6. On 20 April 2023, the Single Judge issued the Impugned Decision, in which he denied Nahimana’s request for additional financial support.¹⁷ In reaching this determination, the Single Judge considered, *inter alia*, the Mechanism’s duty to ensure the welfare of released persons pending their relocation to another State, the Mechanism’s legal framework, the Mali Enforcement Agreement, and the *Nzuwonemeye et al.* Decision of 12 January 2023, which was issued by a Single Judge in another matter.¹⁸ Notwithstanding, the Single Judge granted, in part, Nahimana’s motion and requested the Registrar to engage with the authorities of Mali with the view of facilitating

¹¹ Impugned Decision, para. 3.

¹² Impugned Decision, para. 3.

¹³ Impugned Decision, paras. 3, 10.

¹⁴ Impugned Decision, paras. 1, 4. *See also* Request for the MICT to Provide Temporary Humanitarian Aid, 23 January 2023 (original filed in French; English translation filed on 26 January 2023).

¹⁵ *See* Order for Submissions, 27 January 2023, p. 1.

¹⁶ Impugned Decision, para. 1. *See* Registrar’s Submissions in Relation to the “Order for Submissions” of 27 January 2023, 9 February 2023 (confidential with confidential Annex A and confidential and *ex parte* Annex B); Submissions in Response to the Submissions of the MICT Registrar Filed on 9 February 2023, 17 February 2023 (original filed in French; English translation filed on 27 February 2023) (“Nahimana Reply”).

¹⁷ Impugned Decision, paras. 9-11, 15.

Nahimana’s temporary stay, pending his relocation, and to keep Nahimana informed of these efforts and to support, as appropriate, Nahimana’s relocation efforts.¹⁹

7. On 27 April 2023, Nahimana filed the Appeal and, on 30 June 2023, he filed the Addendum to the Appeal. Raising three grounds of appeal, Nahimana requests that the Impugned Decision be vacated to the extent that it denies him “temporary humanitarian aid”, and the Registrar be ordered to grant him living expenses of 10,000 USD, housing expenses of 1,560 USD, and medical expenses, pending receipt of a visa for family reunification in Belgium.²⁰

II. DISCUSSION

A. Jurisdiction

8. As a preliminary matter, neither the Statute nor the Rules of the Mechanism (“Statute” and “Rules”, respectively) expressly provides for an appeal as of right against a decision issued by a Single Judge on a matter concerning financial assistance to a convicted person released pending his relocation. Nonetheless, the Appeals Chamber considers that the matter before it relates to the Mechanism’s duty to ensure the welfare of released persons pending their relocation.²¹ Further, the Appeals Chamber notes that it has considered appeals of decisions rendered by a Single Judge in matters that dispose of discrete litigation after the close of trial and appeal proceedings.²² Accordingly, the Appeals Chamber finds that the present matter raises issues over which the Appeals Chamber may exercise jurisdiction and will consider the Appeal.

B. Standard of Review

9. To succeed on appeal, Nahimana must demonstrate that the Single Judge committed a discernible error in his decision in that: (i) it was based on an incorrect interpretation of the

¹⁸ Impugned Decision, paras. 9-11, *referring, inter alia, to In the Matter of François-Xavier Nzuwonemeye et al.* Case No. MICT-22-124, Decision on Motions for an Order for Subsistence Funds, 12 January 2023 (“*Nzuwonemeye et al.* Decision of 12 January 2023”).

¹⁹ Impugned Decision, para. 15.

²⁰ Appeal, p. 7.

²¹ *See In the Matter of François-Xavier Nzuwonemeye et al.*, Case No. MICT-22-124, Decision on Motions to Appeal Decision of 8 March 2022, For Reconsideration of Decision of 15 March 2022, and to Appear as *Amicus Curiae*, 27 May 2022 (“*Nzuwonemeye et al.* Decision of 27 May 2022”), paras. 14, 24 and references cited therein.

²² *See, e.g., Prosecutor v. François-Xavier Nzuwonemeye*, Case No. MICT-13-43, Decision on the Appeal of the Single Judge’s Decision of 22 October 2018, 17 April 2019 (“*Nzuwonemeye* Decision of 17 April 2019”); *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Appeal of Decision Declining to Rescind Protective Measures for a Deceased Witness, 14 November 2016, para. 6.

governing law; (ii) it was based on a patently incorrect conclusion of fact; or (iii) it was so unfair or unreasonable to constitute an abuse of discretion.²³

C. Grounds of Appeal

10. In his first ground of appeal, Nahimana submits that the Single Judge erred in “completely disregard[ing]” the former President of the Mechanism’s report of May 2016 to the United Nations Security Council (“May 2016 Progress Report”), emphasizing that the Impugned Decision makes no mention of it.²⁴ He further contends that the Single Judge failed to acknowledge that the Report was the basis for the aid granted to the acquitted or released persons in Arusha and that it “stipulates very clearly that the assistance to be provided to the acquitted or released persons must be the same irrespective of the State in which they have served their sentence”.²⁵ Viewed in this context, Nahimana argues, in essence, that the Single Judge therefore erred in not concluding that it was improper and unfair for Nahimana to be provided a one-time lump sum payment of 1,000 USD in light of the greater financial support provided to the acquitted or released persons in Arusha.²⁶

11. The Appeals Chamber observes that the May 2016 Progress Report informs the Security Council of the Mechanism’s activities between the six month period of 16 November 2015 and 15 May 2016,²⁷ covering a broad area of topics that include, *inter alia*, the Mechanism’s judicial activities,²⁸ fugitives and trial and appeal readiness,²⁹ enforcement of sentences,³⁰ archives and records,³¹ assistance to national jurisdictions,³² and external relations.³³ Under the topic of ‘relocation of acquitted and released persons’, the Report refers to the challenges of finding a comprehensive solution for all acquitted and released persons.³⁴ It further reports that the humanitarian challenge related to their relocation efforts will subsist until such time as all are appropriately relocated.³⁵

12. The Appeals Chamber further observes that paragraphs 66 and 67 of the May 2016 Progress Report, to which Nahimana specifically refers in arguing that the financial support he had received

²³ See *Nzuwonemeye et al.* Decision of 27 May 2022, para. 17 and references cited therein.

²⁴ Appeal, para. 15, *referring to* Letter Dated 17 May 2016 from the President of the International Residual Mechanism for Criminal Tribunals, addressed to the President of the Security Council, 17 May 2016 (S/2016/453), Annex 1.

²⁵ Appeal, paras. 15, 16, 18, 20-23.

²⁶ Appeal, para. 22. *See also* Appeal, paras. 35, 37.

²⁷ May 2016 Progress Report, p. 2.

²⁸ May 2016 Progress Report, paras. 29-37.

²⁹ May 2016 Progress Report, paras. 44-47.

³⁰ May 2016 Progress Report, paras. 55-63.

³¹ May 2016 Progress Report, paras. 68-76.

³² May 2016 Progress Report, paras. 80-82.

³³ May 2016 Progress Report, paras. 83-89.

³⁴ May 2016 Progress Report, para. 65.

was unfair and improper,³⁶ highlight that “the Mechanism is limited in the amount of assistance it may provide to acquitted and released individuals”.³⁷ While the Report indicates that the Mechanism is “undertaking a process to review the level of support [...] so as to achieve greater efficiencies and cost effectiveness, as well as more comparable levels of support irrespective of the State in which such persons may have been released”,³⁸ this statement does not equate to the legal obligation that Nahimana imbues in this text – *i.e.*, that the Mechanism is required to provide him additional financial assistance, besides the one-time lump sum of 1,000 USD, in view of the assistance provided to those acquitted and released in Arusha. The Report is one of a series of progress reports that are submitted every six months to the Security Council as part of a twice yearly assessment on the Mechanism’s work³⁹ and is not a legally binding document comparable to the Statute or Rules nor does it have the effect of a binding judicial order.

13. Moreover, a Single Judge is not required to articulate every step of his or her reasoning and to discuss each submission.⁴⁰ Therefore, the mere absence of reference to the May 2016 Progress Report does not in itself demonstrate error.⁴¹ Notably, in the Impugned Decision, the Single Judge held that Nahimana had not demonstrated that “the Mechanism has the duty either imposed by its legal framework, by the Mali Enforcement Agreement, *or on any other basis*, to provide him with additional or continuous financial support, beyond the one-time lump sum payment that he received following his release”.⁴² In view of the foregoing, the Appeals Chamber concludes that Nahimana fails to demonstrate that the Single Judge erred in relation to the May 2016 Progress Report as argued in his first ground of appeal.

³⁵ May 2016 Progress Report, para. 67.

³⁶ *See* Appeal, paras. 15, 18, 20-23.

³⁷ May 2016 Progress Report, para. 66.

³⁸ May 2016 Progress Report, para. 66.

³⁹ The Appeals Chamber notes that in a subsequent report of the former President of the Mechanism to the Security Council in November of 2016 (*see* Letter Dated 17 November 2016 from the President of the International Residual Mechanism for Criminal Tribunals, addressed to the President of the Security Council, 17 November 2016 (S/2016/975), Annex 1) the assessment and progress on the financial assistance for the acquitted or released persons in Arusha were explicitly reported as follows:

78. Given its mandate to operate as a small and lean institution, the Mechanism is limited in the amount of assistance it may provide to acquitted and released individuals. As of 1 July 2016, the Mechanism adopted a revised and more efficient approach to the upkeep of acquitted and released persons in Arusha, where a branch of the Mechanism is located. This approach provides an appropriate standard of living and additional independence to acquitted and released persons, while also offering significant cost savings. In other enforcement States, the Mechanism is seeking to strengthen the applicable legal framework with respect to persons released following service of sentence.

⁴⁰ *Prosecutor v. Marie Rose Fatuma et al.*, Case No. MICT-18-116-A, Judgement, 29 June 2022, para. 53 and references cited therein.

14. Under his second ground of appeal, Nahimana contends that the Single Judge erred by failing to consider the correspondence between the former President of the Mechanism and convicted persons released in Mali, which demonstrate that the Mechanism had not granted him aid beyond the one-time lump sum of 1,000 USD on the sole basis that he was released in Mali rather than Arusha.⁴³ Consequently, Nahimana argues that the Single Judge erred by not finding that his release in Mali should not constitute a basis for not giving him the same financial assistance as that received by the acquitted or released persons in Arusha.⁴⁴ In this respect, Nahimana submits that, had the Registrar come to Mali, he would have concluded that similar arrangements could be made in Mali as those granted to persons acquitted and released in Arusha.⁴⁵ Nahimana further contends that since the acquitted or released persons in Arusha are now receiving financial assistance following their transfer to Niger, there is no reason that he should not receive the same financial assistance in Mali, adding that the differences in the governing agreements cannot be a factor in denying him this additional assistance.⁴⁶

15. The Appeals Chamber finds that Nahimana fails to substantiate that the correspondence demonstrates that the Mechanism did not grant him additional aid on the sole basis that he was released in Mali rather than Arusha and that the Single Judge erred in failing to consider the correspondence to conclude that the denial of additional financial assistance was unfair.⁴⁷ Moreover, the Appeals Chamber considers that the Single Judge correctly assessed, as the relevant factors, the applicable legal framework and the enforcement agreement that governed Nahimana's specific circumstances, bearing in mind the Mechanism's overall duty of care.⁴⁸ In this regard, Nahimana does not show error in the Single Judge's finding that there is nothing in the Mechanism's legal framework, including in the Appeals Chamber's binding jurisprudence on the matter, or in the provisions in the Mali Enforcement Agreement that requires the Mechanism to

⁴¹ The Appeals Chamber notes that Nahimana's submissions before the Single Judge on the May 2016 Progress Report were included in his reply to the Registrar's response (*see* Nahimana Reply, para. 3) and that the Single Judge referred to these submissions. *See* Impugned Decision, nn. 29, 30.

⁴² Impugned Decision, para. 10 (emphasis added).

⁴³ Appeal, paras. 24, 25.

⁴⁴ Appeal, paras. 24-26, 29.

⁴⁵ Appeal, paras. 27, 28.

⁴⁶ Appeal, para. 30.

⁴⁷ The Appeals Chamber notes that the Single Judge summarized the relevant correspondence in the Impugned Decision. *See* Impugned Decision, para. 3.

⁴⁸ Impugned Decision, paras. 9, 10. *See also* Impugned Decision, para. 11 ("In contrast, the Mechanism has never assumed such financial responsibility under the Mali Enforcement Agreement, which is the agreement that governs the conditions of Nahimana's presence in Mali.").

provide financial assistance to a convicted person who has completed serving his or her sentence and has been released on the territory of the enforcement State.⁴⁹

16. With respect to Nahimana’s argument that the Registrar would have concluded that similar arrangements could be made in Mali as those granted to persons acquitted and released in Arusha, the Appeals Chamber dismisses this contention as unsubstantiated and speculative and that he does not demonstrate any discernible error in the Impugned Decision.

17. Similarly, and in light of the analysis above, Nahimana fails to show any error in the Impugned Decision based on his contention that the Mechanism’s financial assistance to acquitted and released persons presently in Niger required it to provide him with the same assistance in Mali.⁵⁰ In this respect, the Single Judge expounded on the different circumstances between the persons in Niger and Nahimana.⁵¹ Specifically, the additional support for the persons in Niger flows from the Niger Relocation Agreement and the fact that their relocation appears not to have been fully effectuated in accordance to that agreement.⁵² In contrast, the Mechanism has never assumed such responsibility under the Mali Enforcement Agreement.⁵³ Nahimana demonstrates no error in this reasoning. In view of the foregoing, the Appeals Chamber therefore concludes that Nahimana fails to demonstrate that the Single Judge erred as argued under his second ground of appeal.

18. In his third ground of appeal, Nahimana submits that the Single Judge erred by not ordering the Registrar - if the Registrar were to determine that the temporary residence permit does not allow Nahimana to obtain gainful employment in Mali - to grant Nahimana the same temporary humanitarian aid as that granted to the persons acquitted and released in Arusha who are now in Niger.⁵⁴ Nahimana further submits that for various reasons beyond his control, including the limits of his temporary residence permit and his health, he is unable to seek gainful employment in Mali.⁵⁵

19. The Appeals Chamber observes that the Single Judge noted with concern that Nahimana’s submissions on the limitations of the temporary residence permit, if confirmed, “potentially affect [his] ability to support himself and pursue other opportunities for income, pending relocation”.⁵⁶ He concluded, nonetheless, that it does not “justify the issuance of a judicial order requiring the

⁴⁹ Impugned Decision, paras. 9, 10.

⁵⁰ Impugned Decision, paras. 10, 11, *referring, inter alia, to Nzuwonemeye et al.* Decision of 12 January 2023.

⁵¹ Impugned Decision, para. 11.

⁵² Impugned Decision, para. 11, *referring to* Agreement Between the Government of the Republic of Niger and the United Nations on the Relocation of Persons Released or Acquitted by the International Criminal Tribunal for Rwanda or the International Residual Mechanism for Criminal Tribunals, 15 November 2021 (“Niger Relocation Agreement”).

⁵³ Impugned Decision, para. 11.

⁵⁴ Appeal, paras. 34, 36.

⁵⁵ Addendum, paras. 3-7.

Mechanism to provide [Nahimana] with financial assistance beyond the one-time lump sum already given to him”, explicitly indicating that such limitations, if any, are administrative issues for the Registrar to be engaged in.⁵⁷ Accordingly, the Single Judge requested the Registrar to engage with the authorities of Mali with the view of facilitating Nahimana’s temporary stay, pending his relocation, while denying Nahimana’s request for additional financial assistance.⁵⁸ Nahimana identifies no error in this regard or substantiate that the Single Judge was required to provide any relief other than what was granted in the Impugned Decision. The Appeals Chamber therefore dismisses Nahimana’s arguments presented under his third ground of appeal.

20. In closing, the Appeals Chamber recalls that the Mechanism has the duty to ensure the welfare of acquitted or released persons pending their relocation, and to that extent enquire whether their life or liberty would be at risk upon relocation.⁵⁹ The Appeals Chamber, however, emphasizes that this duty neither continues indefinitely nor dictates what the obligation entails – the extent of the enquiry is limited to the circumstances at hand and the applicable legal framework.⁶⁰ In the present case, Nahimana has not shown that this duty mandates the relief that was denied in the Impugned Decision.

III. DISPOSITION

21. For the foregoing reasons, the Appeals Chamber **DENIES** the Appeal in its entirety.

Done in English and French, the English version being authoritative.

Done this 4th day of August 2023
At Arusha,
Tanzania



Judge Graciela Gatti Santana
Presiding Judge

[Seal of the Mechanism]

⁵⁶ Impugned Decision, para. 13.

⁵⁷ Impugned Decision, para. 13.

⁵⁸ Impugned Decision, para. 15. *See supra* para. 6.

⁵⁹ *Nzuwonemeye et al.* Decision of 27 May 2022, para. 24.

⁶⁰ *Nzuwonemeye et al.* Decision of 27 May 2022, para. 24. *Cf. Nzuwonemeye* Decision of 17 April 2019, para. 29 (“Domestic jurisdictions or other international institutions tasked with adjudicating claims of violations of human rights must evaluate such claims in their full context and are better suited to address the issues raised by *Nzuwonemeye*, including alleged violations to his human right to family life.”).