

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-23-127

Date: 20 April 2023

Original: English

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**BEFORE A SINGLE JUDGE**

**Before:** Judge Carmel Agius  
**Registrar:** Mr. Abubacarr M. Tambadou  
**Decision of:** 20 April 2023

**IN THE MATTER OF  
FERDINAND NAHIMANA**

*PUBLIC*

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**DECISION ON FERDINAND NAHIMANA'S REQUEST FOR  
TEMPORARY HUMANITARIAN AID**

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**Counsel for Mr. Ferdinand Nahimana:**

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

1. I, Carmel Agius, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this matter,<sup>1</sup> am seized of a motion, filed by Mr. Ferdinand Nahimana (“Nahimana”) on 23 January 2023, seeking financial and diplomatic assistance from the Mechanism, pending his relocation.<sup>2</sup> On 27 January 2023, I determined that it would be beneficial to receive submissions from the Registrar of the Mechanism (“Registrar”) in response to the Motion, and for Nahimana to be provided with an opportunity to reply.<sup>3</sup> The Registrar filed a response on 9 February 2023,<sup>4</sup> and Nahimana filed a reply on 17 February 2023.<sup>5</sup>

## I. BACKGROUND

2. Nahimana was arrested in the Republic of Cameroon on 27 March 1996 and was transferred to the United Nations Detention Facility in Arusha, United Republic of Tanzania, on 23 January 1997.<sup>6</sup> 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.<sup>7</sup> On 28 November 2007, the ICTR Appeals Chamber reversed, in part, Nahimana’s convictions and reduced his sentence to 30 years of imprisonment.<sup>8</sup>

3. On 3 December 2008, Nahimana was transferred to the Republic of Mali (“Mali”) to serve the remainder of his sentence.<sup>9</sup> On 22 September 2016, Nahimana was granted early release,<sup>10</sup> and

<sup>1</sup> Order Assigning a Single Judge to Consider a Motion, 26 January 2023 (“Order of 26 January 2023”), p. 1.

<sup>2</sup> Request for the [International Residual Mechanism for Criminal Tribunals] to Provide Temporary Humanitarian Aid, 23 January 2023 (original filed in French; English translation filed on 26 January 2023) (“Motion”), p. 10. I note that the Motion was filed under Case No. MICT-13-37 and was re-filed on 26 January 2023, under the present case number, pursuant to the instruction from the President of the Mechanism (“President”). See Order of 26 January 2023, p. 1.

<sup>3</sup> Order for Submissions, 27 January 2023, p. 1

<sup>4</sup> Registrar’s Submission 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) (“Registrar’s Response”). I note that the Registrar has no objection to the Registrar’s Response or its corresponding Annex A being made public. See Registrar’s Response, n. 2.

<sup>5</sup> Submissions in Response to the Submissions of the [International Residual Mechanism for Criminal Tribunals] Registrar Filed on 9 February 2023, 17 February 2023 (confidential) (original filed in French; English translation filed on 27 February 2023) (“Reply”). I note Nahimana’s request that the entirety of the Registrar’s Response and the Reply be made public. See Reply, n. 1.

<sup>6</sup> *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-T, Judgement and Sentence, 3 December 2003 (“*Nahimana et al.* Trial Judgement”), para. 13.

<sup>7</sup> *Nahimana et al.* Trial Judgement, paras. 1092, 1105.

<sup>8</sup> *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, paras. 1051, 1052, p. 345.

<sup>9</sup> *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”).

<sup>10</sup> Decision on Early Release, para. 36.

he has since remained in Mali.<sup>11</sup> Following his release, in line with procedure established by the ICTR, Nahimana was provided with a lump sum of 1,000 United States Dollars (“USD”) by the Mechanism, to facilitate his temporary stay in Mali, pending repatriation to the Republic of Rwanda or relocation to another State.<sup>12</sup> In various communications with the Mechanism, both prior to and following his release, Nahimana requested to be provided with the same level of support as that provided by the Mechanism to persons acquitted or released in Arusha, which included the direct provision of housing and, at the time of his release, a monthly allowance.<sup>13</sup> In response to these communications, the former Registrar and President of the Mechanism informed 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 to those in place for released persons in Arusha.<sup>14</sup> The former Registrar and President further informed Nahimana that the Mechanism was not in a position to provide any additional financial assistance to persons released in enforcement States, other than to cover the expenses associated with their future relocation.<sup>15</sup>

4. In the Motion, Nahimana requests that the Registrar be instructed to provide him with a subsistence allowance of 10,000 USD, a yearly sum of 1,560 USD for accommodation expenses, and funds to cover medical expenses, as well as diplomatic assistance with his visa application for family reunification in the Kingdom of Belgium (“Belgium”).<sup>16</sup> According to Nahimana, the aforementioned financial assistance is “temporary and humanitarian” and should be provided until a family reunion visa for Belgium is obtained.<sup>17</sup> Nahimana reiterates that, while he was provided a one-time lump sum by the Mechanism, his repeated requests for further financial assistance, namely to be provided with the same level of assistance granted to the acquitted and released persons in Arusha, were denied.<sup>18</sup>

5. In support of his request, Nahimana refers to a recent decision *In The Matter of François-Xavier Nzuwonemeye et al.*, Case No. MICT-22-124 (“*Nzuwonemeye et al. Matter*”), in which a Single Judge of the Mechanism instructed the Registrar to provide an additional lump sum payment

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<sup>11</sup> Motion, paras. 1, 4, 21.

<sup>12</sup> Motion, para. 6; Registrar’s Response, paras. 4, 9.

<sup>13</sup> Motion, paras. 5, 7-9, 18, 19; Registrar’s Response, Annex A, Registry Pagination (“RP.”) 41, 40, 37, 36, 33; Reply, RP. 67, 66.

<sup>14</sup> Registrar’s Response, Annex A, RP. 41, 37, 31.

<sup>15</sup> Registrar’s Response, Annex A, RP. 33, 30. *See also* Registrar’s Response, RP. 36.

<sup>16</sup> Motion, para. 21, p. 10.

<sup>17</sup> Motion, para. 21.

<sup>18</sup> Motion, paras. 5-9, 18, 19.

of 10,000 USD to each of the acquitted or released persons who, in the meantime, had been relocated from Arusha to the Republic of Niger (“Relocated Persons” and “Niger”, respectively), while efforts continued to find a safe third State for their further relocation.<sup>19</sup> Nahimana states that he has taken the necessary steps to obtain a family reunion visa for Belgium and argues that, pending his relocation, his situation is identical to that of the Relocated Persons.<sup>20</sup> Nahimana, therefore, contends that, until he obtains a visa, he should be provided with, at the very least, a subsistence allowance that is identical to the one paid to the Relocated Persons in Niger, funds for accommodation expenses, and funds to cover medical expenses.<sup>21</sup>

6. The Registrar submits that, following his release and in accordance with the established practice, Nahimana was provided with a one-time lump sum payment to facilitate his temporary stay in Mali,<sup>22</sup> and argues that Nahimana fails to justify a departure from this practice, especially considering the Mechanism’s downsizing posture and commensurate budget limitations.<sup>23</sup> The Registrar further submits that Nahimana’s reliance on recent jurisprudence in the *Nzuwonemeye et al.* Matter is misplaced given that Nahimana’s circumstances are distinguishable from those of the Relocated Persons and that the said jurisprudence is case-specific.<sup>24</sup> In this regard, the Registrar submits that, upon his release and in accordance with the Mali Enforcement Agreement, Nahimana was granted a residence permit that allows him to temporarily reside in Mali, enjoying freedom of movement and other rights that are not available to the Relocated Persons.<sup>25</sup> According to the Registrar, he has also not received any information from Nahimana or from the Malian authorities that Nahimana is not able to seek opportunities for gainful employment in Mali.<sup>26</sup> In relation to Nahimana’s request for diplomatic assistance, the Registrar submits that he is prepared to use his good offices to assist Nahimana’s relocation efforts, and confirms the Mechanism’s commitment to cover the costs associated with such relocation.<sup>27</sup>

7. In reply, Nahimana submits that his temporary residence permit does not grant him the right to work, to receive aid, to carry out administrative or banking transactions, or to obtain a travel

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<sup>19</sup> Motion, para. 20, citing *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”), p. 3.

<sup>20</sup> Motion, paras. 10-16, 21; Reply, para. 5.

<sup>21</sup> Motion, para. 21.

<sup>22</sup> Registrar’s Response, paras. 4, 9, 12, 19.

<sup>23</sup> Registrar’s Response, paras. 13, 19.

<sup>24</sup> Registrar’s Response, paras. 10, 11, 14, 17, 19, referring to *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.* Appeal Decision of 27 May 2022”), para. 24; *Nzuwonemeye et al.* Decision of 12 January 2023, p. 3.

<sup>25</sup> Registrar’s Response, paras. 15-17.

<sup>26</sup> Registrar’s Response, para. 16.

document.<sup>28</sup> He further argues that, with the transfer of the Relocated Persons to Niger, the main reason for the disparity in the treatment between persons released in Arusha and those released in Mali, namely the physical presence of the former in the vicinity of the Arusha branch of the Mechanism, no longer exists.<sup>29</sup> Nahimana maintains that, consequently, he is in a situation identical to that of the Relocated Persons and is entitled to the same level of direct assistance by the Mechanism.<sup>30</sup>

## II. DISCUSSION

8. The record before me demonstrates that the Mechanism has continued the practice of the ICTR in providing convicted persons, who have completed serving their sentences and have subsequently been released in enforcement States, a one-time lump sum payment of 1,000 USD to facilitate their temporary stay in the enforcement State, while awaiting repatriation or relocation.<sup>31</sup> It is undisputed that, in accordance with this practice, Nahimana received this one-time lump sum payment following his release from prison to facilitate his temporary stay in Mali. It is equally undisputed that, aside from this one-time payment, Nahimana has received no further financial assistance from the Mechanism.

9. In considering Nahimana's request for additional financial support, I am cognizant that the Mechanism has the duty to ensure the welfare of released persons pending their relocation to another State, for example through ensuring respect for their fundamental rights, including their right to liberty and freedom of movement.<sup>32</sup> However, there is nothing in the Mechanism's legal framework, including in the Appeals Chamber's binding jurisprudence on the matter, or in the provisions of the Mali Enforcement Agreement that requires the Mechanism to 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.

10. I note that, absent such a requirement, the Mechanism has nevertheless assumed, as a matter of good practice, the responsibility to provide persons released in enforcement States with limited financial assistance, pending their repatriation or relocation. From as early as 2016, Nahimana has been informed of the Mechanism's consistent practice that any financial assistance it provides to

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<sup>27</sup> Registrar's Response, para. 18.

<sup>28</sup> Reply, paras. 6, 7.

<sup>29</sup> Reply, paras. 3, 5.

<sup>30</sup> Reply, paras. 3-5, 8.

<sup>31</sup> Registrar's Response, paras. 4, 9, 12, 19.

persons released in enforcement States is not indefinite and, in fact, is limited to a one-time lump sum and the costs associated with their eventual relocation.<sup>33</sup> While the Mechanism's practice with respect to the scope of financial assistance provided to persons acquitted or released in Arusha, compared to those released in enforcement States, may have differed, such difference in and of itself is insufficient to demonstrate that the Mechanism has assumed a general responsibility to provide continuous or indefinite financial support to acquitted or released persons, pending their repatriation or relocation, unless such support is judicially ordered or otherwise authorized. Accordingly, I am not satisfied that Nahimana has 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.

11. I further find Nahimana's reliance on the *Nzuwonemeye et al.* Decision of 12 January 2023, which interprets the Mechanism's duty of care towards the Relocated Persons to encompass the provision of financial assistance,<sup>34</sup> to be inapposite. In the particular circumstances of the *Nzuwonemeye et al.* Matter, where the relocation appeared not to have been carried out in accordance with the full terms of the relevant agreement between the United Nations and Niger,<sup>35</sup> the Mechanism's duty of care remained and, as such, the Mechanism continued to bear a financial responsibility that it had previously assumed under the Niger Relocation Agreement.<sup>36</sup> 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. Therefore, Nahimana's arguments, comparing his circumstances to those of the Relocated Persons, are insufficient to demonstrate that the Mechanism has the responsibility to provide him with additional financial assistance akin to that extended to the Relocated Persons.

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<sup>32</sup> *Nzuwonemeye et al.* Appeal Decision of 27 May 2022, para. 24; *In Re. André Ntagerura*, Case No, ICTR-99-46-A28, Decision on Motion to Appeal the President's Decision of 31 March 2008 and the Decision of Trial Chamber III of 15 May 2008, 18 November 2008, para. 19.

<sup>33</sup> See Registrar's Response, Annex A, RP. 41, 36, 33, 30. See also Reply (French version), RP. 52.

<sup>34</sup> *Nzuwonemeye et al.* Decision of 12 January 2023, p. 3.

<sup>35</sup> See 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").

<sup>36</sup> See *Nzuwonemeye et al.* Appeal Decision of 27 May 2022, para. 24; *Nzuwonemeye et al.* Decision of 12 January 2023, pp. 2, 3 (*referring to* Article 4 of the Niger Relocation Agreement, pursuant to which the Mechanism provided each relocated person with a one-time payment of 10,000 USD as an installation grant and accommodation for a year in Niger, and that, prior to the end of the first year following relocation, the Mechanism was expected to conduct with the authorities of Niger a joint assessment of the living conditions and ability of the Relocated Persons to take care of themselves and, should the need arise, "explore possibilities of assistance with other stakeholders").

12. In addition, unlike the Relocated Persons, whose identity documents have been confiscated and freedom of movement restricted following their relocation to Niger,<sup>37</sup> in accordance with Article 12(3) of the Mali Enforcement Agreement, following his early release, Nahimana was allowed to remain in Mali and was issued a temporary residence permit, pending his relocation. Nahimana does not claim that, following his early release, his right to liberty or freedom of movement in Mali has been restricted.

13. However, I note with concern Nahimana's submission that the temporary residence permit appears not to confer on him other rights, such as the right to work, to perform administrative and bank transactions, or to obtain a travel document.<sup>38</sup> These limitations, if confirmed, potentially affect Nahimana's ability to support himself and pursue other opportunities for income, pending his relocation. In view of the specifically identified administrative issues that Nahimana is facing, I find it appropriate to request the Registrar to engage with the authorities of Mali, with the view of facilitating Nahimana's temporary stay, and to keep Nahimana informed of these efforts. Nahimana's arguments, however, do not justify the issuance of a judicial order requiring the Mechanism to provide him with financial assistance beyond the one-time lump sum already given to him.

14. As to Nahimana's request for diplomatic assistance with his visa application, I note that the Registrar has already expressed his willingness to use his good offices to assist Nahimana's relocation efforts, and has confirmed the Mechanism's commitment to cover the costs associated with such relocation.<sup>39</sup> I welcome the Registrar's position in this regard.

### III. DISPOSITION

15. For the foregoing reasons, I hereby:

**GRANT** the Motion, in part;

**REQUEST** the Registrar to: (i) engage with the authorities of Mali with the view of facilitating Nahimana's temporary stay, pending his relocation, and to keep Nahimana informed of these

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<sup>37</sup> *Nzuwonemeye et al.* Decision of 12 January 2023, p. 3. See Assessment and Progress Report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Graciela Gatti Santana, for the period from 19 May to 15 November 2022, 17 November 2022 (S/2022/866), para. 99.

<sup>38</sup> Reply, para. 6 (*citing* a letter, dated 19 March 2017, addressed to the President, in which Nahimana states that "It seems that this residence permit does not give us the right to [work] or the right to any sort of aid that would make our temporary stay easier, or the possibility to carry out any banking or administrative transactions, or the possibility of obtaining a travel document").

<sup>39</sup> Registrar's Response, para. 18.

efforts; (ii) support, as appropriate, Nahimana's relocation efforts; and (iii) lift the confidential status of the Registrar's Response and the Reply, excluding any annexes thereto; and

**DENY** the Motion in all other respects.

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

Done this 20th day of April 2023  
At Arusha,  
Tanzania



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Judge Carmel Agius  
Single Judge

**[Seal of the Mechanism]**





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