

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-23-128

Date: 20 April 2023

Original: English

BEFORE A SINGLE JUDGE

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

**IN THE MATTER OF
EMMANUEL RUKUNDO**

CONFIDENTIAL

**DECISION ON EMMANUEL RUKUNDO'S REQUEST FOR
TEMPORARY HUMANITARIAN AID**

Mr. Emmanuel Rukundo

1. I, Carmel Agius, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this matter,¹ am seized of a motion, filed by Mr. Emmanuel Rukundo (“Rukundo”) on 12 February 2023, seeking financial and diplomatic assistance from the Mechanism.² On 24 February 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 Rukundo to be provided with an opportunity to reply.³ The Registrar filed a response on 13 March 2023,⁴ and Rukundo filed a reply on 31 March 2023.⁵

I. BACKGROUND

2. Rukundo was arrested on 12 July 2001 in Geneva, the Swiss Confederation (“Switzerland”), and was transferred to the United Nations Detention Facility in Arusha, United Republic of Tanzania, on 20 September 2001.⁶ On 27 February 2009, Trial Chamber II of the International Criminal Tribunal for Rwanda (“ICTR”) convicted Rukundo of genocide, and murder and extermination as crimes against humanity, sentencing him to 25 years of imprisonment.⁷ On 20 October 2010, the ICTR Appeals Chamber reversed, in part, Rukundo’s convictions and reduced his sentence to 23 years of imprisonment.⁸

3. On 27 July 2011, Rukundo was transferred to the Republic of Mali (“Mali”) to serve the remainder of his sentence.⁹ On 5 December 2016, Rukundo was granted early release,¹⁰ and he has

¹ Order Assigning a Single Judge to Consider a Motion, 22 February 2023 (confidential) (“Order of 22 February 2023”), p. 1.

² Request for the [International Residual Mechanism for Criminal Tribunals] to Provide Temporary Humanitarian Aid, 12 February 2023 (original filed in French; English translation filed on 16 February 2023) (confidential) (“Motion”), paras. 17, 23. I note that the Motion was filed under Case No. MICT-13-35 and was re-filed on 22 February 2023, under the present case number, pursuant to the instruction from the President of the Mechanism. *See* Order of 22 February 2023, p. 1.

³ Order for Submissions, 24 February 2023 (confidential) (“Order of 24 February 2023”), p. 1.

⁴ Registrar’s Submission in Relation to the “Order for Submissions” of 24 February 2023, 13 March 2023 (confidential, with confidential Annex A and confidential and *ex parte* Annex B) (“Registrar’s Response”).

⁵ Response to the [International Residual Mechanism for Criminal Tribunals] Registrar’s Submission Filed on 13 March 2023, 31 March 2023 (confidential) (original filed in French; English translation filed on 12 April 2023) (“Reply”). While the Reply was filed after the deadline set in the Order of 24 February 2023, in view of Rukundo’s submission that he read the Registrar’s Response on 16 March 2023, which I interpret as the date that he became aware of it (*see* Reply, para. 2), I consider the Reply to be validly filed.

⁶ *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Judgement, 27 February 2009 (filed in writing on 13 March 2009) (“*Rukundo* Trial Judgement”), para. 6, Annex A, para. 1.

⁷ *Rukundo* Trial Judgement, paras. 591, 608.

⁸ *Emmanuel Rukundo v. The Prosecutor*, Case No. ICTR-2001-70-A, Judgement, 20 October 2010, paras. 269, 270.

⁹ *Prosecutor v. Emmanuel Rukundo*, Case No. MICT-13-35-ES, Public Redacted Version of the 19 July 2016 Decision of the President on the Early Release of Emmanuel Rukundo, 5 December 2016 (public redacted) (“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”).

¹⁰ Decision on Early Release, para. 34.

since remained in Mali.¹¹ Following his release, in line with the procedure established by the ICTR, Rukundo 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.¹² In subsequent letters addressed to the Mechanism, the United Nations Secretary-General, and the United Nations Security Council, Rukundo 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.¹³ In response, the former Registrar and President of the Mechanism informed Rukundo 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.¹⁴ During that time, the former Registrar also informed Rukundo that the Mechanism would support, to the extent possible, his efforts to relocate to Switzerland.¹⁵

4. In the Motion, Rukundo requests that the Registrar be instructed to provide him with a subsistence allowance and diplomatic assistance in finding a State where he could be relocated,¹⁶ as well as assistance in obtaining a permanent residence permit in Mali or Malian nationality.¹⁷ In support of his request, Rukundo identifies the steps he has taken to “find a host country” for his relocation, notably Switzerland,¹⁸ and explains that, while his current residence permit allows him freedom of movement within the territory of Mali, it does not confer on him any other rights, such as a right to work, to receive assistance, or to obtain an identity card.¹⁹ Rukundo further states that, after Switzerland denied his request to return to its territory, he submitted an application for naturalization before the Government of Mali, which is still pending.²⁰ According to Rukundo, “without the papers required for settling in and holding a stable job in Mali”, the Catholic Church in

¹¹ Motion, paras. 1-3; Registrar’s Response, para. 4.

¹² Motion, para. 6; Registrar’s Response, paras. 5, 10, 13.

¹³ Motion, paras. 11, 13, Annexes II-V; Reply, paras. 9, 10.

¹⁴ Registrar’s Response, Annex A, Registry Pagination (“RP.”) 47, 37.

¹⁵ Registrar’s Response, Annex A, RP. 41. *See also* Motion, para. 14; Registrar’s Response, para. 4.

¹⁶ Motion, para. 23.

¹⁷ Motion, para. 17.

¹⁸ Motion, para. 14. Rukundo submits that the United Nations High Commissioner for Refugees also refused to register his request for assistance. *See* Motion, para. 15.

¹⁹ Motion, paras. 4, 5, 7, 21; Reply, paras. 16-21. I note Rukundo’s submission that he is unable to fully exercise his right to travel freely within the territory of Mali not only due to a lack of means, but also because his residence permit is only valid upon presentation of an identity card and valid passport. *See* Reply, paras. 20, 21. *See also* Motion, Annex I.

²⁰ Motion, paras. 14, 16.

the Archdiocese of Bamako, which had in the meantime offered him free accommodation, may not assign him a ministry and support him further.²¹

5. In support of his request for financial assistance, Rukundo 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 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),²² while efforts continued to find a safe third State for their further relocation.²³ Relying primarily on this jurisprudence, Rukundo argues that his situation is identical to that of the Relocated Persons and that, therefore, the Mechanism should provide him with the same subsistence allowance as provided to the Relocated Persons.²⁴

6. The Registrar responds that, following his release and in accordance with the established practice, Rukundo was provided with a one-time lump sum payment to facilitate his temporary stay in Mali,²⁵ and argues that Rukundo fails to justify a departure from this practice, especially considering the Mechanism’s downsizing posture and commensurate budget limitations.²⁶ The Registrar further submits that Rukundo’s reliance on jurisprudence in the *Nzuwonemeye et al. Matter* is misplaced, given that the said jurisprudence is case-specific and Rukundo’s circumstances are distinguishable from those of the Relocated Persons.²⁷ The Registrar points to the fact that, upon his release and in accordance with the Mali Enforcement Agreement, Rukundo 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,²⁸ and that the Malian authorities have not provided any indication that Rukundo, under his current status, is unable to seek opportunities for gainful employment.²⁹ The Registrar adds that the Relocated Persons, whose situation is

²¹ Motion, paras. 18, 19.

²² 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”).

²³ Motion, paras. 21, 22, 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.

²⁴ Motion, paras. 21-23; Reply, paras. 6, 14, 16. Rukundo further refers to Article 25 of the Universal Declaration of Human Rights. See Motion, para. 20.

²⁵ Registrar’s Response, paras. 5, 10, 13, 19.

²⁶ Registrar’s Response, paras. 14, 19.

²⁷ Registrar’s Response, paras. 11, 12, 15-17, 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.

²⁸ Registrar’s Response, para. 16.

²⁹ Registrar’s Response, n. 31.

governed by the Niger Relocation Agreement, lack identification documents and have movement restrictions, which prevent them from identifying opportunities to support themselves, and that these limitations are in contravention of the terms of the Niger Relocation Agreement.³⁰ In relation to Rukundo’s request for diplomatic assistance, the Registrar submits that he is prepared to use his good offices to assist Rukundo’s efforts to relocate to Switzerland or to obtain permanent residence in Mali, and confirms the Mechanism’s commitment to cover the costs associated with his relocation, once ascertained.³¹

7. In reply, Rukundo submits that the legal principles enunciated in the *Nzuwonemeye et al.* Matter are equally applicable to all persons who have been acquitted or released by the Mechanism and who are unable to support themselves while their relocation is pending.³² He further argues that, under both the Mali Enforcement Agreement and the Niger Relocation Agreement, persons were transferred under the responsibility of the United Nations, with the sole difference being that the transfer to Mali was for the purpose of sentence enforcement, while the transfer to Niger was for the purpose of relocation.³³ Rukundo, therefore, contends that the agreements do not justify a differential treatment of persons whose status is the same and who are living under the same conditions.³⁴ Rukundo maintains that his request should be granted, given the precarious situation he has been living in ever since he was released.³⁵

II. DISCUSSION

8. The record before me demonstrates that, following his release and in accordance with established practice, Rukundo received a one-time lump sum payment of 1,000 USD to facilitate his temporary stay in Mali, while awaiting repatriation or relocation.³⁶ The record also demonstrates that, aside from this one-time payment, Rukundo has not received any additional financial assistance from the Mechanism.

9. In considering Rukundo’s request for further 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

³⁰ Registrar’s Response, para. 16.

³¹ Registrar’s Response, para. 18.

³² Reply, paras. 5, 6, 9, *referring, inter alia, to Nzuwonemeye et al.* Appeal Decision of 27 May 2022, para. 24.

³³ Reply, paras. 12, 13, 15.

³⁴ Reply, para. 15.

³⁵ Reply, paras. 22, 23.

³⁶ *See* Motion, para. 6; Registrar’s Response, paras. 5, 10, 13, 19.

right to liberty and freedom of movement.³⁷ 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.³⁸

10. I recall 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.³⁹ Indeed, Rukundo was informed on several occasions of the Mechanism’s consistent practice that any financial assistance it provides to persons released in enforcement States is limited to a one-time lump sum and the costs associated with their eventual relocation.⁴⁰ 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.⁴¹ Accordingly, I am not satisfied that Rukundo 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 Rukundo’s reliance on jurisprudence in the *Nzuwonemeye et al.* Matter, which interprets the Mechanism’s duty of care towards the Relocated Persons to encompass the provision of financial assistance,⁴² 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 Niger Relocation Agreement,⁴³ 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

³⁷ See *In The Matter of Ferdinand Nahimana*, Case No. MICT-23-127, Decision on Ferdinand Nahimana’s Request for Temporary Humanitarian Aid, 20 April 2023 (“*Nahimana* Decision of 20 April 2023”), para. 9, referring to *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.

³⁸ See *Nahimana* Decision of 20 April 2023, para. 9. Rukundo similarly fails to substantiate his submission that other binding international legal instruments impose such an obligation on the Mechanism.

³⁹ See *Nahimana* Decision of 20 April 2023, para. 10.

⁴⁰ Registrar’s Response, Annex A, RP. 47, 41, 39, 37.

⁴¹ See *Nahimana* Decision of 20 April 2023, para. 10.

⁴² See *Nzuwonemeye et al.* Decision of 12 January 2023, p. 3.

Niger Relocation Agreement.⁴⁴ In contrast, the Mechanism has never assumed such financial responsibility under the Mali Enforcement Agreement, which is the agreement that governs the conditions of Rukundo’s presence in Mali. Therefore, Rukundo’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.

12. However, I note with concern Rukundo’s submission that the temporary residence permit does not confer on him other rights, such as a right to work, to receive assistance, or to obtain an identity card, which would allow him greater freedom of movement.⁴⁵ These limitations, if confirmed, potentially affect Rukundo’s ability to support himself and pursue other opportunities for income, pending his settlement or relocation. In view of the specifically identified administrative issues that Rukundo is facing, I find it appropriate to request the Registrar to engage with the authorities of Mali, with the view of facilitating Rukundo’s temporary stay, and to keep Rukundo informed of these efforts. Rukundo’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.

13. As to Rukundo’s request for diplomatic assistance with his efforts to seek permanent residence in Mali and/or his relocation efforts to Switzerland, I note that the Registrar has already expressed his willingness to use his good offices to assist Rukundo, and has confirmed the Mechanism’s commitment to cover the costs associated with his potential relocation.⁴⁶ I welcome the Registrar’s position in this regard.

III. DISPOSITION

14. For the foregoing reasons, I hereby:

GRANT the Motion, in part;

⁴³ See *Nzuwonemeye et al.* Appeal Decision of 27 May 2022, para. 24.

⁴⁴ 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 (wherein it is stated that 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”).

⁴⁵ Motion, paras. 4, 5, 7, 21; Reply, paras. 17-21.


⁴⁶ Registrar’s Response, para. 18.

REQUEST the Registrar to: (i) engage with the authorities of Mali with the view of facilitating Rukundo's temporary stay, pending his relocation, and to keep Rukundo informed of these efforts; and (ii) support, as appropriate, Rukundo's relocation efforts and/or his efforts to obtain a permanent residence in Mali; 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



Judge Carmel Agius
Single Judge

[Seal of the Mechanism]



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