

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-23-128
Date: 15 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: 15 August 2023

**IN THE MATTER OF
EMMANUEL RUKUNDO**

PUBLIC

**DECISION ON AN APPEAL OF A DECISION ON REQUEST FOR
TEMPORARY HUMANITARIAN AID**

Mr. Emmanuel Rukundo

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively)¹ is seized of an appeal filed confidentially by Mr. Emmanuel Rukundo on 5 May 2023.² The Appeal is against the decision issued confidentially by a Single Judge of the Mechanism (“Single Judge”) on 20 April 2023 denying Rukundo’s request for additional financial assistance.³

I. BACKGROUND

2. 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.⁴ On 20 October 2010, the ICTR Appeals Chamber reversed, in part, Rukundo’s convictions and reduced his sentence to 23 years of imprisonment.⁵

3. On 27 July 2011, Rukundo was transferred to the Republic of Mali (“Mali”) to serve the remainder of his sentence.⁶ On 5 December 2016, he was granted early release.⁷ Following his release, the Mechanism provided Rukundo with a lump sum payment 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.⁸ Rukundo has since remained in Mali.⁹

4. Following his release in Mali, Rukundo 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.¹⁰ The former Registrar and the President of the Mechanism responded to Rukundo that, given the

¹ See Order Assigning Judges to a Bench of the Appeals Chamber, 17 May 2023, p. 1.

² Appeal of the Decision of 20 April 2023 Issued by the Single Judge in the Matter of Emmanuel Rukundo, 5 May 2023 (original filed in French; English translation filed on 15 May 2023) (confidential) (“Appeal”).

³ Decision on Emmanuel Rukundo’s Request for Temporary Humanitarian Aid, 20 April 2023 (confidential) (“Impugned Decision”), paras. 9-11, 14. Pursuant to Rules 92 and 131 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), all proceedings before the Mechanism shall be public unless exceptional reasons require keeping them confidential. Although the Appeal and Impugned Decision were filed confidentially, nothing in the present decision requires that it be filed confidentially. Accordingly, the Appeals Chamber renders this decision publicly.

⁴ *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Judgement, 27 February 2009 (filed in writing on 13 March 2009), paras. 591, 608.

⁵ *Emmanuel Rukundo v. The Prosecutor*, Case No. ICTR-2001-70-A, Judgement, 20 October 2010, paras. 269, 270.

⁶ *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”).

⁷ Decision on Early Release, para. 34.

⁸ Impugned Decision, para. 3.

⁹ Impugned Decision, para. 3.

¹⁰ Impugned Decision, para. 3.

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.¹¹ Rukundo was also informed that any financial assistance provided by the Mechanism to persons released in enforcement States is limited to a one-time lump sum payment and the costs associated with their eventual relocation and that the Mechanism would support, to the extent possible, his efforts to relocate to another State.¹²

5. On 24 February 2023, Rukundo filed a motion requesting an order to the Registrar of the Mechanism (“Registrar”) to provide him with financial support and diplomatic assistance in finding a State where he could be relocated.¹³ After the Single Judge had determined that it would be beneficial to receive the Registrar’s submissions, the Registrar, on 13 March 2023, filed a response to Rukundo’s motion to which Rukundo replied on 31 March 2023.¹⁴

6. On 20 April 2023, the Single Judge issued the Impugned Decision denying Rukundo’s request with respect to the additional financial support.¹⁵ 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.¹⁶ Notwithstanding, the Single Judge granted, in part, Rukundo’s motion and requested the Registrar to 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 to support, as appropriate, Rukundo’s relocation efforts.¹⁷

7. On 15 May 2023, Rukundo filed the Appeal. Raising three grounds of appeal, Rukundo requests that the Single Judge’s decision be vacated, to the extent that it denies him financial aid,

¹¹ Impugned Decision, para. 3.

¹² Impugned Decision, paras. 3, 10.

¹³ Impugned Decision, paras. 1, 4.

¹⁴ Impugned Decision, para. 1. *See* Order for Submissions, 24 February 2023, p. 1; Registrar’s Submissions 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); Response to the MICT Registrar’s Submission Filed on 13 March 2023, 31 March 2023 (confidential) (original filed in French; English translation filed on 12 April 2023).

¹⁵ Impugned Decision, paras. 9-11, 14.

¹⁶ 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”).

¹⁷ Impugned Decision, para. 14.

and the Registrar be ordered to grant him the aid pending the “outcome of actions taken to find opportunities to take care of [himself]”, which include finding a “host country”.¹⁸

II. DISCUSSION

A. Preliminary Matters

8. The Appeals Chamber notes that the Appeal was filed out of time pursuant to Rule 132 of the Rules, which provides that an appeal shall be filed within seven days of the filing of the impugned decision.¹⁹ The Appeals Chamber emphasizes that the Mechanism’s deadlines, as provided for in the Rules, are essential to ensure that appeal proceedings are conducted in a fair and expeditious manner.²⁰ However, given that Rukundo is *pro se* and in order to ensure the closure of the present matter, the Appeals Chamber will exceptionally accept the Appeal as validly filed pursuant to Rule 154(A)(ii) of the Rules.

9. Turning to jurisdiction, neither the Statute of the Mechanism nor the Rules, 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 has exercised its discretion in a similar matter and therefore will consider the Appeal.²¹

B. Standard of Review

10. To succeed on appeal, Rukundo 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 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.²²

C. Grounds of Appeal

11. Rukundo submits that his first ground of appeal is based on his “right to lead a dignified life” pursuant to Articles 22 and 25 of the Universal Declaration of Human Rights and Article 34(3)

¹⁸ Appeal, paras. 7, 9, 19, 23. *See also* Impugned Decision, paras. 3, 4, 12, 13.

¹⁹ The Appeals Chamber notes that the Appeal was filed 15 days after the filing of the Impugned Decision. *See supra* para. 1.

²⁰ *See, e.g., Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-A, Decision on Prosecution Motion for Extension of Time to File Reply Briefs, 4 February 2022, p. 2.

²¹ *See In the Matter of Ferdinand Nahimana*, Case No. MICT-23-127, Corrigendum to “Decision on an Appeal of a Decision on a Request for Temporary Humanitarian Aid” Issued on 2 August 2023, 4 August 2023 (“*Nahimana* Decision of 4 August 2023”), para. 8 and references cited therein.

²² *Nahimana* Decision of 4 August 2023, para. 9 and references cited therein.

of the Charter of Fundamental Rights of the European Union.²³ According to Rukundo, the Single Judge erred by misinterpreting his request for “temporary humanitarian aid” as a request for “continued and indefinite aid”.²⁴

12. To the extent that Rukundo argues that the Single Judge incorrectly interpreted the governing law by not considering Rukundo’s rights under various human rights conventions, the Appeals Chamber finds no merit in this contention. The Appeals Chamber observes that the Single Judge, having considered the submissions, which included Rukundo’s reference to Article 25 of the Universal Declaration of Human Rights,²⁵ found that there is nothing in the Mechanism’s legal framework, including in the Appeals Chamber’s binding jurisprudence, or in the provisions in 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.²⁶ In particular, the Appeals Chamber observes that the Single Judge found that Rukundo has 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”.²⁷ Rukundo identifies no error in these regards.

13. The Appeals Chamber further finds that Rukundo fails to substantiate that the Single Judge erred in understanding Rukundo’s request for financial assistance, particularly as Rukundo does not provide any support or references to the Impugned Decision, which demonstrate that the Single Judge committed a discernible error. The Appeals Chamber notes that the terms “continuous or indefinite aid” are included in the Impugned Decision when referring to the Mechanism’s general responsibility.²⁸ The use of these terms, however, should not be taken out of context and a decision must be read as a whole.²⁹ Therefore, even setting aside the title of the Impugned Decision itself referring to Rukundo’s request as a request for “temporary humanitarian aid”,³⁰ the Appeals Chamber is not persuaded that the Single Judge erred in his understanding of Rukundo’s request for

²³ Appeal, para. 8, *referring to* Universal Declaration of Human Rights, 10 December 1948; Charter of Fundamental Rights of the European Union (2000/C 364/01), 18 December 2000 (“EU Charter”). The Appeals Chamber notes that Rukundo incorrectly references Article 43(3) of the EU Charter.

²⁴ Appeal, para. 9.

²⁵ *See* Impugned Decision, para. 5, n. 24.

²⁶ Impugned Decision, para. 9.

²⁷ Impugned Decision, para. 10 (emphasis added).

²⁸ Impugned Decision, para. 10 (wherein the Single Judge states “[...] 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 [...]).

²⁹ *See, e.g., Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-A, Judgement, 31 May 2023 (public redacted), para. 91, 151, 163, 205, 228, 314, 341, 347, 413, 425, 602, 621.

³⁰ *See supra* n. 3.

financial assistance. In view of the foregoing, the Appeals Chamber finds that Rukundo fails to demonstrate that the Single Judge erred as argued under his first ground of appeal.

14. Under his second ground of appeal, Rukundo argues that the Single Judge erred by disregarding the legal principles established by the *Nzuwonemeye et al.* Decision of 12 January 2023 and the May 2016 Progress Report from the former President of the Mechanism to the United Nations Security Council, in particular paragraphs 66 and 67 therein.³¹ He contends that these documents provide “a legal basis to claim the legal right for equal treatment of persons released and acquitted by the ICTR pending their appropriate relocation”.³² In essence, Rukundo argues that the Single Judge erred in not granting him additional financial assistance in view of these two documents.

15. The Appeals Chamber observes that, in the *Nzuwonemeye et al.* Decision of 12 January 2023, a Single Judge ordered the Registrar to provide an additional lump sum payment of 10,000 USD to each of the acquitted or released persons who had been relocated from Arusha to Niger (“Relocated Persons”), while efforts continue to find a safe third State for their relocation as well as to explore other options for additional support and funding.³³ The Single Judge in that decision had considered, *inter alia*, that “where the relocation appears not have been carried out in accordance with the full terms of the [Niger] Relocation Agreement, the Mechanism’s duty of care continues and should encompass financial assistance, to the extent that the Relocated Persons have not been given the opportunity to identify opportunities to support themselves in line with the original terms of the Relocation Agreement.”³⁴

16. With respect to the May 2016 Progress Report, the Appeals Chamber recalls its observations in a decision on a similar matter, where it was contended that the legally binding nature of the Report, in particular paragraphs 66 and 67 therein, required the Mechanism to provide additional financial assistance to persons released in enforcement States in view of the financial support provided to persons acquitted or released in Arusha.³⁵ The Appeals Chamber recalls that the Report, which covers a broad area of topics to inform the Security Council of the Mechanism’s

³¹ Appeal, paras. 10-13, *referring, inter alia, 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 (“May 2016 Progress Report”).

³² Appeal, para. 13.

³³ *Nzuwonemeye et al.* Decision of 12 January 2023, p. 3.

³⁴ *Nzuwonemeye et al.* Decision of 12 January 2023, p. 3, *referring, inter alia, 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”).

³⁵ *See Nahimana* Decision of 4 August 2023, paras. 10, 12.

activities between the six month period of 16 November 2015 and 15 May 2016, refers, *inter alia*, to the humanitarian challenge related to relocation efforts for all acquitted and released persons.³⁶

17. Having considered Rukundo's contention regarding these documents, the Appeals Chamber finds that Rukundo fails to demonstrate that the Single Judge committed a discernible error in denying Rukundo's request for additional financial assistance. In relation to the *Nzuwonemeye et al.* Decision of 12 January 2023, the Single Judge expounded on the different circumstances between Rukundo and persons in Niger.³⁷ Specifically, and as articulated in a previous decision of the Appeals Chamber, 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 carried out in accordance with that agreement.³⁸ In contrast, the Mechanism has never assumed such financial responsibility under the Mali Enforcement Agreement.³⁹ Rukundo demonstrates no error in this reasoning of the Single Judge. Further, the Appeals Chamber observes that paragraphs 66 and 67 of the May 2016 Progress Report, to which Rukundo specifically points in support of his contention, highlight the limitation in the amount of assistance that the Mechanism can provide to acquitted and released individuals.⁴⁰ The Appeals Chamber reiterates that this Report, including paragraphs 66 and 67 therein, does not support the contention that the Mechanism has a legal obligation to provide additional financial assistance to persons released in enforcement States, including Rukundo, besides the one-time lump sum payment of 1,000 USD.⁴¹ In view of the foregoing, the Appeals Chamber concludes that Rukundo fails to demonstrate that the Single Judge erred as argued under his second ground of appeal.

18. In his third ground of appeal, Rukundo argues that the Single Judge erred by applying the Mali Enforcement Agreement in a "partial and tendentious" manner by relying only on Article 12(3), while failing to consider Article 11(2)(c) of the Agreement, which provides that Rukundo remains the responsibility of the Mechanism.⁴² Rukundo further submits that the Single Judge erred by not considering that the fact that Rukundo was released in Mali cannot be justification for the refusal of additional financial assistance and by not ordering that the assistance

³⁶ See *Nahimana* Decision of 4 August 2023, para. 11.

³⁷ Impugned Decision, para. 11.

³⁸ See *Nahimana* Decision of 4 August 2023, para. 17.

³⁹ See *Nahimana* Decision of 4 August 2023, para. 17.

⁴⁰ May 2016 Progress Report, para. 66. See Appeal, para. 11. See also *Nahimana* Decision of 4 August 2023, para. 12.

⁴¹ See *Nahimana* Decision of 4 August 2023, para. 12.

⁴² Appeal, paras. 15, 17-19.

be given, despite the Single Judge having expressed his concern about the temporary residence permit and its limitations.⁴³

19. The Appeals Chamber observes that Article 12(3) of the Mali Enforcement Agreement provides that “[t]he requested State undertakes to facilitate the stay in the requested State of the convicted person until the transfer or extradition takes place”, while Article 11(2)(c) of the Agreement provides that “[i]n line with the Mechanism’s guidelines and policies, the Mechanism shall bear the expenses related to: [...] maintenance of the convicted person for the duration of the enforcement of the sentence, including food, telephone calls, incidental expense and medical care, as agreed in writing by the Mechanism and the requested State. Any expenses exceeding the agreed amount may only be incurred with the prior authorization of the Mechanism.”

20. The Appeals Chamber finds that Rukundo fails to identify any errors in the Single Judge’s finding in relation to the Mali Enforcement Agreement. In particular, the Appeals Chamber notes that Article 11(2)(c) to which Rukundo refers, pertains to convicted persons for the “duration of the enforcement of the sentence” whereas Rukundo has been released and is no longer serving his sentence. Moreover, and as found above, the Appeals Chamber considers that the Single Judge correctly assessed the relevant factors, including the Mali Enforcement Agreement, that governed Rukundo’s specific circumstances.⁴⁴ Similarly, Rukundo fails to show any error in the Impugned Decision based on his contention that the Single Judge erred by not considering that the fact that Rukundo was released in Mali cannot be justification for the refusal of additional financial assistance. In this regard, the Appeals Chamber recalls its finding above that Rukundo demonstrates no error in the reasoning of the Single Judge when he expounded on the different circumstances between Rukundo and persons in Niger.⁴⁵

21. Turning to Rukundo’s contentions that the Single Judge erred by not ordering financial assistance despite having expressed his concern about Rukundo’s temporary residence permit, the Appeals Chamber observes that the Single Judge noted with concern that Rukundo’s submissions on the limitations of the permit, if confirmed, “potentially affect [his] ability to support himself and pursue other opportunities for income, pending his settlement or relocation”.⁴⁶ He concluded, nonetheless, that it does not “justify the issuance of a judicial order requiring the Mechanism to provide [Rukundo] 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

⁴³ Appeal, paras. 20-22.

⁴⁴ See *supra* para. 12.

⁴⁵ See *supra* para. 17.

engaged in.⁴⁷ Accordingly, the Single Judge requested the Registrar to engage with the authorities of Mali with the view of facilitating Rukundo’s temporary stay, pending his relocation, while denying Rukundo’s request for additional financial assistance.⁴⁸ In these regards, Rukundo neither identifies an error nor substantiates that the Single Judge was required to provide relief other than what was granted in the Impugned Decision. The Appeals Chamber, therefore, dismisses Rukundo’s arguments presented under his third ground of appeal.

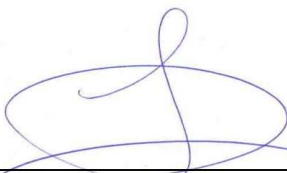
22. In closing, the Appeals Chamber recalls that the Mechanism has the duty to ensure the welfare of acquitted or released persons pending their relocation, and to that extent enquire whether their life or liberty would be at risk upon relocation.⁴⁹ The Appeals Chamber, however, emphasizes that this 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.⁵⁰ In the present case, Rukundo has not shown that this duty mandates the relief that was denied in the Impugned Decision.

III. DISPOSITION

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

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

Done this 15th day of August 2023
At Arusha,
Tanzania



Judge Graciela Gatti Santana
Presiding Judge

[Seal of the Mechanism]

⁴⁶ Impugned Decision, para. 12.

⁴⁷ Impugned Decision, para. 12.

⁴⁸ Impugned Decision, para. 14. *See supra* para. 6.

⁴⁹ *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 a Decision of 15 March 2022, and to Appear as *Amicus Curiae*, 27 May 2022 (“*Nzuwonemeye et al.* Decision of 27 May 2022”), para. 24.

⁵⁰ *Nzuwonemeye et al.* Decision of 27 May 2022, para. 24. *Cf. 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, 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.”).



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