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**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No. MICT-13-43

Date: 19 May 2015

Original: English

SINGLE JUDGE

Before: Judge Vagn Joensen, Single Judge

Registrar: Mr. John Hocking

THE PROSECUTOR

v.

FRANÇOIS-XAVIER NZUWONEMEYE

PUBLIC

**DECISION ON REQUEST FOR LEAVE TO EXCEED THE WORD LIMITS FOR
MOTION FOR COMPENSATION AND DAMAGES FOR VIOLATIONS OF THE
FUNDAMENTAL RIGHTS OF F.X. NZUWONEMEYE AND INVITATION TO MAKE
FURTHER SUBMISSIONS**

The Office of the Prosecutor

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Chief Charles Taku
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**Received by the Registry
Mechanism for International Criminal Tribunals
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INTRODUCTION

1. On 17 May 2011, Trial Chamber II convicted François-Xavier Nzuwonemeye (“Nzuwonemeye”) of ordering and aiding and abetting murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II in relation to the killing of Prime Minister Agathe Uwilingiyimana.¹ It further concluded that Nzuwonemeye was liable as a superior for murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II with respect to the killing of Belgian peacekeepers who were part of the UNAMIR peacekeeping mission.² The Trial Chamber sentenced Nzuwonemeye to a single term of 20 years of imprisonment.³
2. On 11 February 2014, the Appeals Chamber reversed Nzuwonemeye’s two convictions and entered a verdict of acquittal.⁴
3. On 18 February 2015, Nzuwonemeye simultaneously filed a Motion with the Mechanism for International Criminal Tribunals (“Mechanism”) for compensation and damages for violation of his fair trial rights (“Motion”)⁵ and a request to exceed the word limit for the Motion (“Application”).⁶
4. On 4 March 2015, I was designated as Mechanism Single Judge to rule on the Motion and the related Application.⁷
5. On 4 March 2015, the Prosecutor filed a consolidated response (“Response”) and requested that both the Motion and the Application be dismissed.⁸
6. On 9 March 2015, Nzuwonemeye filed a reply to the Response.⁹

¹ *The Prosecutor v. Augustin Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Judgement and Sentence, 17 May 2011, paras. 47, 74-75, 2092-2094, 2106, 2145, 2153, 2162, 2243.

² *Id.*, paras. 49, 74-75, 1888, 2097, 2106, 2145, 2147, 2148, 2154, 2162, 2244.

³ *Id.*, para. 2267.

⁴ *Augustin Ndindiliyimana et al. v. The Prosecutor*, Case No. ICTR-00-56-A, Judgement, 11 February 2014, paras. 190, 241, 254, 312-313, 319, 321-322, 418, 449.

⁵ *The Prosecutor v. F.X. Nzuwonemeye* (“Nzuwonemeye”), Case No. MICT-13-43, Motion for Compensation and Damages for Violations of the Fundamental Rights of F.X. Nzuwonemeye, Pursuant to Security Council Resolution 1966 (2010), 18 February 2015, Section I, para. 9, Section IV, para. 4 (“Motion”).

⁶ Nzuwonemeye, Case No. MICT-13-43, Request for Leave to Exceed the Word Limits for Motion for Compensation and Damages for Violations of the Fundamental Rights of F.X. Nzuwonemeye, Pursuant to Security Council Resolution 1966 (2010), 18 February 2015, paras. 1, 11 (“Application”).

⁷ Nzuwonemeye, Case No. MICT-13-43, Order Assigning a Single Judge to Consider a Motion and a Related Application, 4 March 2015.

⁸ Nzuwonemeye, Case No. MICT-13-43, Prosecutor’s Consolidated Response to Motion for Compensation and Damages for Violations of the Fundamental Rights of F.X. Nzuwonemeye and Request for Leave to Exceed the Word Limits for Motion for Compensation and Damages for Violations of the Fundamental Rights of F.X. Nzuwonemeye, 4 March 2015, paras. 6-7, 17 (“Response”).

DELIBERATIONS

Preliminary Matter

7. While neither Party made substantial arguments regarding the Mechanism's competence to adjudicate matters related to compensation and damages arising from completed cases before the International Criminal Tribunal for Rwanda ("ICTR" or "Tribunal"), I find it necessary to make a determination in this respect prior to addressing the arguments raised in the submissions.¹⁰
8. Security Council Resolution 1966 (2010) ("Resolution"), the corresponding provisions of the transitional arrangements annexed to the Resolution ("Transitional Arrangements") and the Statute of the Mechanism are all silent about the Mechanism's jurisdiction to determine whether or not to award compensation or damages to persons indicted and, in this case, acquitted by the ICTR. However, the aforementioned instruments are instructive as to how the Security Council intended for the Mechanism to resolve jurisdictional questions between the ICTR and Mechanism after the commencement date of the Arusha branch of the Mechanism.
9. The Resolution states that as of the commencement date of the Arusha branch of the Mechanism, 1 July 2012, the Mechanism shall continue the jurisdiction, rights and obligations and essential functions of the ICTR subject to the provisions of the Resolution and the Statute of the Mechanism.¹¹
10. The Statute of the Mechanism further provides that the Mechanism shall continue the material, territorial, temporal and personal jurisdiction of the ICTR as set out in Articles 1 to 7 of the ICTR Statute, as well as the rights and obligations, of the ICTR, subject to the provisions of the Statute.¹² More specifically, Article 2 states that the Mechanism shall continue the functions of the ICTR as set out in the Statute.
11. The Transitional Arrangements, which regulate the duties and powers of both the ICTR and Mechanism in the transitional phase, provide that trials and matters that arise out of trials such as appeals, review proceedings and contempt and false testimony cases which were not pending before 1 July 2012 shall be handled by the Mechanism and that all other matters shall as soon as possible be transferred to the Mechanism.¹³ Therefore, I agree that the Mechanism is the proper organ to deal with the present matter.

Request to Exceed the Word Limit

⁹ Nzuwonemeye, Case No. MICT-13-43, Reply to Prosecutor's Consolidated Response to Request for Leave to Exceed the Word Limits and Motion for Compensation and Damages for Violations of the Fundamental Rights of F.X. Nzuwonemeye, Pursuant to Security Council Resolution 1966(2010), 9 March 2015.

¹⁰ Motion, Section II, paras. 1-3. I note that the Motion does make reference to the issue of the Mechanism's jurisdiction and competence in the present matter. However, I find that a more thorough analysis is required.

¹¹ S/RES/1966 (2010), para. 4.

¹² S/RES/1966 (2010), Annex 1, Statute of the Mechanism, Article 1.

¹³ S/RES/1966 (2010), Annex 2, Transitional Arrangements, Article 1, paras. 3-4, Article 2, para. 2, Article 3, para. 2, Article 4, para. 2, Article 6.



12. The Practice Direction on Lengths of Briefs and Motions (“Practice Direction”) states that “other motions, responses and replies filed before a Chamber, or, as applicable, a Judge shall not exceed 3,000 words” and that “a party must seek authorization in advance to exceed the word limits in this Practice Direction and must provide an explanation of the exceptional circumstances that necessitate the oversized filing”.¹⁴
13. Nzuwonemeye did not seek prior authorisation to exceed the word limit and instead simultaneously filed the Application, in which he requested authorisation to exceed the word limit set out in the Practice Direction, and the Motion.¹⁵ The Motion is 4,507 words and Nzuwonemeye points to five factors that allegedly demonstrate the exceptional circumstances that necessitate the oversized filing.¹⁶
14. At the outset, I find that Nzuwonemeye has not provided any explanation about why he did not seek advance authorisation to exceed the word limit as outlined in the Practice Direction. As the Application cites the Practice Direction and provides an explanation as to the exceptional circumstances warranting a word extension it cannot be argued that he was not aware of the clear instruction to seek prior authorisation.
15. However, I consider that a motion for compensation related to a prior trial and appeal requires an explanation as to the background of the claim beyond what is ordinarily necessary for “other motions” filed in relation to pending trials or appeals, and, thus, find that extraordinary circumstances warrant a word extension in the present case of about 50% of the word limit prescribed for in the Practice Direction.¹⁷
16. Furthermore, the Prosecution has already responded to the merits of the Motion¹⁸ and, as such, I will in the interest of the expeditious administration of justice decide on the Motion despite the fact that Nzuwonemeye did not apply for permission to exceed the word limit prior to filing his Motion.¹⁹

Compensation

Authority to Make a Determination on the Merits of the Motion

¹⁴ Practice Direction on Lengths of Briefs and Motions, MICT/11, 6 August 2013, paras. 15, 17.

¹⁵ Application, para. 1.

¹⁶ *Id.*, paras. 1-9. Nzuwonemeye submits that (1) a grave wrong was committed and must be rectified and that his fundamental rights were violated; (2) that he was acquitted based on violations to his right to a fair trial; (3) that the Mechanism is provided with the opportunity to “right a wrong” in respect to fair trial and the increased word limit protects the Applicant’s rights in the record; (4) that since there is limited jurisprudence on the issue of compensation, a more complete pleading offers the Mechanism the opportunity to make a ruling on an issue of great significance in the international justice arena; and (5) it is in the interests of justice as well as the legacy of the Tribunal to grant this request for leave to exceed the word limits in order to permit a full discussion by the Defence of its position.

¹⁷ Practice Direction on Lengths of Briefs and Motions, MICT/11, 6 August 2013, para. 15.

¹⁸ Response, paras. 7-17.

¹⁹ See *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Decision on Nyiramasuhuko’s Motion for Extension of Word Limit, 28 November 2013, pg. 2.

17. Nzuwonemeye contends that he should be afforded compensation and damages based on a violation of his fundamental rights due to the fact that (1) his detention for 14 years was unlawful because the indictment was defective as it did not give notice of the charges for which he was convicted by the Trial Chamber, and (2) that he was denied his right to a trial without undue delay.²⁰ In the Motion, Nzuwonemeye provides an account of the procedural history of his case, from his arrest to subsequent acquittal, and his conclusion is that the criminal proceedings against him represent a violation of his fair trial rights.²¹ He, therefore, invites me to award him compensation, which he argues is the appropriate remedy for violations of fundamental rights.²² The Response argues the merits of the Motion and, as such, it appears that the Prosecution agrees that I am authorised to render a decision on the issue of compensation as presented in the instance case.²³
18. As the Motion correctly acknowledges, both the ICTR and Mechanism Statutes and corresponding Rules of Procedure and Evidence do not provide for compensation for violations of fair trial rights and do not contain any provision for special proceedings to be conducted to deal with such matters.²⁴
19. In the context of criminal proceedings, claims arising from violations of fair trial rights have been addressed by both the ICTR Trial and Appeals Chamber and, where such violations have taken place, the Appeals Chamber has granted an appropriate remedy. In *Barayagwiza* and *Semanza* the Appeals Chamber took into account the violation of the accused's rights and as a remedy provided a reduction of sentence while indicating that, in the event of an acquittal, financial compensation would be an appropriate remedy.²⁵
20. Only in two cases have subsequent compensation proceedings taken place at the ICTR. However, in the first, *Rwamakuba*, the trial judgement explicitly authorised the filing of an application for an appropriate remedy after the Trial Chamber determined that *Rwamakuba's* right to legal assistance was violated.²⁶
21. In the Second case, *Zigiranyirazo*, the specially assigned Trial Chamber addressed the motion for damages on its merits but recalled the Appeals Chamber finding that "[i]f a party raises no objection to a particular issue before the Trial Chamber (though all things considered could reasonably have done so), in the absence of special circumstances, the

²⁰ Motion, Section I, para. 9, Section IV, para. 4.

²¹ *Id.*, Section I, para. 1-3, 7-9, Section III, paras. 1-9, Section IV, para. 4, Section V(a), para. 7.

²² *Id.*, Section VI, para. 5, Section VII, para. 2(a).

²³ Response, para. 7.

²⁴ Motion, Section IV, para. 1.

²⁵ *Jean Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-17-AR72, Decision (Prosecutor's Request for Review or Reconsideration), 31 March 2000, para. 75(iii). The disposition states, in part, "that for the violation of his rights the Appellant is entitled to a remedy, to be fixed at the time of judgement at first instance, as follows: a) If the Appellant is found not guilty, he shall receive financial compensation; b) If the Appellant is found guilty, his sentence shall be reduced to take account of the violation of his rights"; *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision, 31 May 2000, paras. 127-128. The disposition states, in part, "that for the violation of his rights, the Appellant is entitled to a remedy which shall be given judgement is rendered by the Trial Chamber, as follows: (a) If he is found not guilty, the Appellant shall be entitled to financial compensation".

²⁶ *The Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-T, Judgement, 20 September 2006, paras. 217-220 and Order III.


Appeals Chamber will find that the party has waived his right to adduce the use as a valid ground [later]²⁷ and dismissed the motion for damages in its entirety.

22. The Appeals Chamber, on the other hand, when addressing Zigiranyirazo's request to appeal that decision, stated that "had the Appeals Chamber considered it appropriate to grant another remedy other than a reversal of Mr. Zigiranyirazo's convictions, the Appeals Chamber would have expressly provided for it".²⁸
23. Considering the background provided, and noting that I as specially assigned single judge cannot review Nzuwonemeye's criminal judgement, I invite the Parties to make submissions on whether a claim for compensation for an alleged violation of a fair trial right may be raised after the criminal proceedings have been completed by a trial or appeal judgement which does not specifically authorise that the matter be raised.
24. I further invite the Registrar, if he so wishes, to provide submissions.

FOR THE FOREGOING REASONS, I

- I. **GRANT** François-Xavier Nzuwonemeye's Request for Leave to Exceed the Word Limits for the Motion for Compensation and Damages;
- II. **INVITE** François-Xavier Nzuwonemeye to file a submission as identified in paragraph 23 by 19 June 2015;
- III. **INVITE** the Prosecution to file a submission as identified in paragraph 23 by 19 June 2015; and
- IV. **INVITE** the Registrar to provide his submission, if any, by 19 June 2015.

Arusha, 19 May 2015, done in English and French, the English being authoritative.


 Judge Vagn Joensen
 Single Judge

[Seal of the Mechanism]

²⁷ *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-2001-01-073, Decision on Protais Zigiranyirazo's Motion for Damages, 18 June 2012, para. 15.

²⁸ *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Protais Zigiranyirazo's Request to Appeal Trial Chamber III's Decision of 18 June 2012, 26 February 2013, para. 8.