

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-14-75

Date: 4 February 2022

Original: English

BEFORE THE DUTY JUDGE

Before: Judge Joseph E. Chiondo Masanche
Registrar: Mr. Abubacarr Tambaou
Decision of: 4 February 2022

**IN THE MATTER OF
JÉRÔME-CLÉMENT BICAMUMPAKA**

PUBLIC

**DECISION ON MOTION FOR JUDICIAL REVIEW OF
THE REGISTRAR'S DECISION OF 8 DECEMBER 2021**

Counsel for Mr. Jérôme-Clément Bicamumpaka

Mr. Philippe Larochelle

I, **JOSEPH E. CHIONDO MASANCHE**, Duty Judge for the Arusha Branch of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) for the month of December 2021 and assigned to this case;¹

RECALLING that Mr. Jérôme-Clément Bicomumpaka, who was an accused before the International Criminal Tribunal for Rwanda (“ICTR”) on the basis of an indictment confirmed on 12 May 1999,² was acquitted of all charges by Trial Chamber II of the ICTR on 30 September 2011³ and, since his acquittal, has remained in a safe house in Arusha, United Republic of Tanzania, awaiting relocation to another State;⁴

RECALLING that the ICTR and the Mechanism have made continuous diplomatic efforts to relocate him and other persons, either acquitted by the ICTR or released after having served their sentence, and that the United Nations Security Council has on several occasions called upon all States to cooperate with and render all necessary assistance to the Mechanism;⁵

NOTING the relocation agreement signed on 15 November 2021 between the United Nations and the Republic of Niger (“Relocation Agreement”) regarding nine individuals, including Bicomumpaka, who had been acquitted or released from custody and were under the Mechanism’s care at the Arusha branch;⁶

NOTING that, on 18 November 2021, the Registrar of the Mechanism informed Bicomumpaka of this Relocation Agreement⁷ and that by letters dated 18, 19, and 24 November 2021, and 2 and 4 December 2021, Bicomumpaka refused the offer of relocation to Niger and raised concerns pertaining, *inter alia*, to his health situation;⁸

¹ See Case No. MICT-12-01, Order Assigning a Duty Judge for the Arusha Branch for July 2021 Through December 2021, 29 June 2021, p. 1; Order Assigning a Motion to the Duty Judge in Arusha, 21 December 2021 (confidential and *ex parte*), p. 1. The President of the Mechanism found to be in the interests of justice to recuse himself from adjudicating this matter. See Decision, 21 December 2021 (confidential and *ex parte*), p. 2. See also Request for Recusal or Disqualification of the President of the IRMCT, 16 December 2021, paras. 5, 10-27.

² *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-I, Indictment, 12 May 1999.

³ *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Judgement and Sentence, para. 1988.

⁴ See, e.g., Order on Provisional Measures, 20 December 2021 (confidential and *ex parte*) (“Order on Provisional Measures”), p. 1.

⁵ See, e.g., Security Council Resolution, S/RES/2422 (2018), para. 3; Security Council Resolution, S/RES/2529 (2020), para. 4.

⁶ 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, Article 1, p. 7.

⁷ See Motion for Judicial Review of the Decision of the Registrar of 8 December 2021 [and] Urgent Request for Provisional Measures, 16 December 2021 (public; reclassified as confidential and *ex parte* on 20 December 2021) (“Motion”), Annex E, Annex H, Annex I.

⁸ See Motion, Annex B, Annex C, Annex D, Annex F, Annex H.

NOTING that, on 1 and 3 December 2021, the Registrar informed Bicumumpaka that his refusal to relocate to Niger would result in the cessation of all support and immunity in Tanzania⁹ and that, on 8 December 2021, the Registrar notified him that he should vacate the safe house where he was living in Arusha and that all forms of support being provided to him would be terminated as of 22 December 2021 (“Impugned Decision”);¹⁰

BEING SEISED OF a motion filed by Bicumumpaka on 16 December 2021, wherein he requests judicial review of the Impugned Decision, as well as provisional measures pending its adjudication,¹¹ and submits that the decision of the Registrar: (i) violates his fair trial rights;¹² (ii) is premised on a precipitated offer of relocation, which does not constitute a valid “opportunity of leaving” under the terms of the Headquarters Agreement with Tanzania and was unilaterally imposed on him without prior consultation;¹³ (iii) will worsen his conditions of living and quality of life, the conditions of the relocation offer to Niger being disproportionate compared to the existing support in Tanzania;¹⁴ and (iv) fails to take into account his health situation;¹⁵

RECALLING that, on 20 December 2021, the President of the Mechanism ordered the Registrar to stay the Impugned Decision until further order;¹⁶

NOTING that, on 27 December 2021, the authorities of Niger issued an expulsion order requiring eight other acquitted or released individuals, who had recently been relocated pursuant to the Relocation Agreement, to leave the territory of Niger within seven days;¹⁷

⁹ See Motion, Annex E, Annex G.

¹⁰ See Motion, Annex A.

¹¹ Motion, paras. 5, 7, 18, 55, Annex A. Bicumumpaka therefore requests that the Registrar maintain the assistance that has been provided to him in Tanzania since his acquittal, pending his relocation to a “safe third country”. See Motion, para. 55.

¹² Motion, paras. 18, 19, 29-37.

¹³ Motion, paras. 18, 19, 21-28. See also Agreement Between the United Nations and the United Republic of Tanzania Concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals, 26 November 2013 (“Headquarters Agreement”).

¹⁴ Motion, paras. 19, 38-45, 53. Bicumumpaka further submits that he was put in a position of vulnerability and dependency towards the Mechanism. See Motion, para. 41.

¹⁵ Motion, paras. 19, 46-54, Annex K, Annex L. Bicumumpaka notably submits that his medical treatments at the Nairobi Hospital are incomplete and that he lacks information regarding the availability, quality, and cost of such treatments in Niger. See, e.g., Motion, paras. 47, 49, 50.

¹⁶ Order on Provisional Measures, p. 1.

¹⁷ See Order for Submissions, 31 December 2021 (“Order for Submissions”), p. 1. See also *In the Matter of François-Xavier Nzuwonemeye et al.*, Case Nos. MICT-13-43, MICT-14-75, MICT-12-27, MICT-12-26, MICT-15-90 & MICT-19-119, Order to the Republic of Niger to Stay the Expulsion Order of Relocated Persons and Order for Submissions, 31 December 2021, pp. 1-3; *In the Matter of François-Xavier Nzuwonemeye et al.*, Case No. MICT-22-124, Further Order to the Republic of Niger and to the Registrar, 14 January 2022, paras. 4, 13-22.

RECALLING that, on 31 December 2021, I instructed the Registrar to file submissions regarding this new information and its consequences, if any, on the Impugned Decision and on the situation of Bicamumpaka;¹⁸

NOTING the confidential and *ex parte* submissions filed by the Registrar on the same day, affirming that the Motion should be dismissed as: (i) judicial review of decisions concerning a released or acquitted person is not applicable in the absence of regulatory framework; (ii) the Impugned Decision was legally sound since Bicamumpaka was provided an opportunity to leave and was no longer entitled to remain in Tanzania; and (iii) the Impugned Decision was reasonable and complied with the basic rules of natural justice;¹⁹

NOTING the confidential and *ex parte* submissions filed by the Registrar on 28 January 2022, reiterating, *inter alia*, that the Impugned Decision was based on the prevailing circumstances and information available to him at the relevant time and that Niger's subsequent actions do not undermine the soundness, legality, nor the reasonableness of the Impugned Decision;²⁰

RECALLING that judicial review of an administrative decision made by the Registrar is initially concerned with the propriety of the procedure by which the decision was made and that the decision may be quashed if the Registrar: (i) failed to comply with the legal requirements; (ii) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision; (iii) took into account irrelevant material or failed to take into account relevant material; or (iv) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached;²¹

CONSIDERING that Bicamumpaka will not be prejudiced by the issuance of the present Decision without awaiting a reply;

CONSIDERING that, in the present case, the circumstances which have led the Registrar to take the Impugned Decision with regard to Bicamumpaka fundamentally changed after the issuance by Niger of the expulsion order of the acquitted or released individuals relocated on its territory;

¹⁸ Order for Submissions, p. 2.

¹⁹ Registrar's Submission in Relation to Bicamumpaka's Motion for Judicial Review of the Registrar's Decision of 8 December 2021, 31 December 2021 (confidential and *ex parte*), paras. 23-48. Following informal consultations, the Registrar clarified that this submission was not in response to the order for submissions filed on the same date. *See* Email from the Chambers Senior Legal Officer to Counsel, 4 January 2022.

²⁰ Registrar's Submission in Relation to the "Order for Submissions" of 31 December 2021, 28 January 2022 (confidential and *ex parte*) ("Registrar's Submission of 28 January 2022"), paras. 13-14, 16. The Registrar underlines that Bicamumpaka remains under the care of the Mechanism until further order. *See* Registrar's Submission of 28 January 2022, paras. 15, 16.

CONSIDERING that the Impugned Decision cannot be reviewed in isolation without having due regard to the fact that, at present, the relocation of Bicomumpaka to Niger in the context of the present crisis is neither feasible nor realistic;

CONSIDERING that, in view of these exceptional and unforeseen circumstances, the entire matter will have to be assessed anew by the Registrar if and when appropriate;

FINDING, therefore, that it is not necessary to address in details the arguments raised in the Motion regarding the propriety of the procedure by which the decision was made, and the Registrar’s responses thereto, which do not take into account the present circumstances in Niger, and that it is presently appropriate and just to vacate the Impugned Decision;

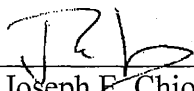
FOR THE FOREGOING REASONS,

PURSUANT TO Rule 55 of the Rules of Procedure and Evidence of the Mechanism,

HEREBY VACATE the Impugned Decision.

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

Done this 4th day of February 2022,
At Arusha,
Tanzania



Judge Joseph E. Chiondo Masanche
Duty Judge

[Seal of the Mechanism]

²¹ See, e.g., *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Motion for Review of the Registrar’s Decision on Indigence, 24 June 2016, p. 3 and references cited therein.



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