

Case No. :ICTR-96-11-T

ICTR-99-52-T
11-02-2003
(30990-30987)



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzania
Tel: 255 27 2504207-11 2504367-72 or 1 212 963 2850 Fax: 1 212 963 2848/49

30990

S. Mussa

Office of the President
Bureau du Président

Before: Judge Navanethem Pillay, President

Original: English

Registrar: Mr. Adama Dieng

Decision of: 10 February 2003

THE PROSECUTOR

VERSUS

FERDINAND NAHIMANA

ICTR-96-11-T

JUDICIAL RECORDS ARCHIVES
ICTR
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S. Mussa

**THE PRESIDENT'S DECISION ON FERDINAND NAHIMANA'S APPEAL
AGAINST THE DISCIPLINARY MEASURES IMPOSED ON HIM BY THE UNDF**

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal")

SITTING in the person of Judge Navanethem Pillay, Acting President;

CONSIDERING an appeal by Ferdinand Nahimana (the "Detainee), filed on 28 January 2003, for an annulment of the disciplinary measures imposed on him and for the restoration of his suspended privileges (the "Appeal");

CONSIDERING that the aforementioned disciplinary measures entailed a suspension of the Detainee's telephone privileges for a period of two weeks, from 16 January 2003 to 30 January 2003, and that the said privileges have since been restored;

CONSIDERING the Registrar's response of 4 February 2003;

CONSIDERING:

(i) Rule 35 of the Rules of Detention¹, which states:

Discipline and order shall be maintained by the staff of the Detention Unit in the interests of safe custody and the well-ordered running of the Detention Unit;

(ii) Rule 36 of the Rules of Detention, which states:

The Commanding Officer, in consultation with the Registrar, shall issue regulations:

- a. Defining conduct constituting a disciplinary offence;
- b. Regulating the type of punishment that can be imposed;
- c. Specifying the authority that can impose such punishment;
- d. Providing for a right of appeal to the President;

(iii) Paragraph 2 of the Regulations², which states:

The following conduct shall constitute a disciplinary offence:

- failure to obey an order or instruction given by a member of the staff of [the] detention unit;
- verbal abuse directed against a member of the staff of the detention unit, another detainee or any lawful visitor to the detention unit;
- violent behaviour or aggression towards a member of the staff of the detention unit another detainee or any lawful visitor to the detention unit;
- possession of any illegal object or substance;
- repeated misconduct after a warning has been given pursuant to paragraph 7 of these Regulations;
- conduct to the prejudice of good order and discipline in the detention facility;

¹ Rules Covering the Detention of Persons Awaiting Trial or Appeal before the Tribunal or otherwise Detained on the Authority of the Tribunal (Rules of Detention).

² Regulations for the Establishment of Disciplinary Procedure for Detainees, issued by the Registrar in June 1996 (the "Regulations").

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(iv) Paragraph 7 of the Regulations, which states:

The Commanding Officer may impose any of the following punishments, or all or any combination thereof, as he thinks fit:

- confiscation of any offending item;
- removal or reduction of privileges or use of personal possessions, eg. television, radio, books, for a period not extending two weeks;
- loss of visits and letters for a period not exceeding two weeks;
- oral or written warning;
- written notice of suspended punishment to come into effect immediately upon a further breach of these regulations within a period of not more than two weeks from the date of the initial offence;
- confinement in isolation, subject to the express provisions of Rules 43-47 of the Rules of Detention;
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(v) Paragraph 9 of the Regulations, which states:

A detainee may appeal to the President of the Tribunal against the punishment imposed. The detainee must advise the Commanding Officer of his wish to appeal within twenty-four hours of the punishment being imposed. Such notice may be given orally and the Commanding Officer shall record the request and notify the Registrar immediately. The Registrar shall forward details of the appeal to the President within twenty-four hours. The appeal proceedings may be conducted orally or in writing, as the President may determine.

AFTER HAVING DELIBERATED,

1. The Appeal was filed with the Registry on 28 January 2003, two days before the completion of the Detainee's punishment. It appears, from the date and receipt stamp on the Detainee's papers, that the Authorities at the UNDF received the Appeal on 20 January 2003, four days into the Detainee's two-week punishment. It is therefore inexcusable that the Appeal was only filed with the Registry on 28 January 2003.
2. In accordance with Paragraph 9 of the Regulations, an Appeal of this nature may be conducted either by way of oral proceedings or on brief. I have decided to consider this Appeal on brief.
3. The Commanding Officer and staff at the UNDF have the responsibility of maintaining discipline and order in the UNDF, in the interests of the safe custody of all detainees and the well-ordered running of the UNDF. In carrying out this responsibility, the Commanding Officer of the UNDF (the "Commanding Officer") has the discretion to punish detainees, provided their conduct constitute a disciplinary offence and is an infringement on any or both of these interests. The Commanding Officer must impose any one or a combination of punishments provided in Paragraph 7 of the Regulations.
4. It appears from a reading of Paragraph 9 of the Regulations, that a detainee may only appeal against the punishment imposed by the Commanding Officer and not on the

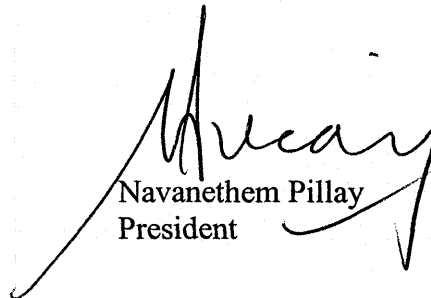
question of whether his alleged conduct constituted a disciplinary offence. In this case, I will therefore accept the Commanding Officer's finding, namely, that the Detainee's conduct constituted a disciplinary offence pursuant to Paragraph 2 of the Regulations and proceed to consider the Detainee's Appeal on the punishment imposed.

5. According to the Commanding Officer, on 15 January 2003, the Detainee refused to obey an instruction to get ready to go to court, which resulted in a delay in the departure of the court convoy. Further, the Detainee spoke to the Officer-in-Charge in a disrespectful manner. Having found that the Detainee's conduct constituted 'a disciplinary offence', the Commanding Officer punished the Detainee by suspending his telephone privileges for two weeks, a punishment envisaged in Paragraph 7 of the Regulations.
6. I find that the punishment imposed by the Commanding Officer, namely, a suspension of the Detainee's telephone privileges for two weeks, to be reasonable, justifiable and commensurate with the disciplinary offence committed by the Detainee.

In light of the above, I affirm the Commanding Officer's decision in respect of the punishment he had imposed on the Detainee and accordingly,

DISMISS the Appeal.

Arusha, 10 February 2003


Navanethem Pillay
President

(Seal of the Tribunal)

