

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-22-124

Date: 27 May 2022

Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Carmel Agius, Presiding  
Judge Seon Ki Park  
Judge Margaret M. deGuzman

**Registrar:** Mr. Abubacarr Tambaou

**Decision of:** 27 May 2022

**IN THE MATTER OF**

**FRANÇOIS-XAVIER NZUWONEMEYE  
PROSPER MUGIRANEZA  
PROTAIS ZIGIRANYIRAZO  
ANATOLE NSENGIYUMVA  
ALPHONSE NTEZIRYAYO  
ANDRÉ NTAGERURA  
THARCISSE MUVUNYI  
INNOCENT SAGAHUTU**

***PUBLIC***

**DECISION ON MOTIONS  
TO APPEAL DECISION OF 8 MARCH 2022,  
FOR RECONSIDERATION OF DECISION OF 15 MARCH 2022,  
AND TO APPEAR AS *AMICUS CURIAE***

**Government of the United Republic of Tanzania**

**Government of the Republic of Niger**

**Government of the Kingdom of the Netherlands**

**Association of Defence Counsel - ICT**

**Counsel for the Relocated Persons:**

Mr. Peter Robinson for Mr. François-Xavier Nzuwonemeye  
Ms. Kate Gibson for Mr. Prosper Mugiraneza  
Mr. John Philpot for Mr. Protais Zigiranyirazo  
Ms. Allison Turner for Mr. Anatole Nsengiyumva  
Mr. Iain Edwards for Mr. Alphonse Nteziryayo  
Ms. Barbara van Straaten for Mr. André Ntagerura  
Ms. Abbe Jolles for Mr. Tharcisse Muvunyi  
Mr. Jean Flamme for Mr. Innocent Sagahutu

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively),<sup>1</sup> is seized of a joint motion filed by Mr. François-Xavier Nzuwonemeye (“Nzuwonemeye”) and Mr. Prosper Mugiraneza (“Mugiraneza”),<sup>2</sup> and motions filed by Mr. Anatole Nsengiyumva (“Nsengiyumva”),<sup>3</sup> Mr. Alphonse Nteziryayo (“Nteziryayo”),<sup>4</sup> Mr. André Ntagerura (“Ntagerura”),<sup>5</sup> and Mr. Innocent Sagahutu (“Sagahutu”)<sup>6</sup> seeking to appeal the “Further Decision Regarding the Relocated Persons in Niger” issued by the Duty Judge for the Arusha branch of the Mechanism (“Duty Judge”) on 8 March 2022 (“Impugned Decision”). The Appeals Chamber is also seized of motions filed by Nzuwonemeye, Mugiraneza, and Ntagerura seeking reconsideration of the “Decision on Joint Request for Assignment of Counsel, Extension of Time to File an Appeal, and Scheduling a Status Conference” issued by the Appeals Chamber on 15 March 2022 (“Decision of 15 March 2022”),<sup>7</sup> and a related request by the Association of Defence Counsel Practising Before the International Courts and Tribunals (“Association of Defence Counsel”) to appear as *amicus curiae*.<sup>8</sup>

## I. BACKGROUND

2. On 5 December 2021, Nzuwonemeye, Mugiraneza, Nsengiyumva, Nteziryayo, Ntagerura, and Sagahutu, who were released on the territory of the United Republic of Tanzania (“Tanzania”), having been acquitted by the International Criminal Tribunal for Rwanda (“ICTR”) or having

<sup>1</sup> Order Assigning Judges to a Bench of the Appeals Chamber, 15 March 2022, p. 1.

<sup>2</sup> Nzuwonemeye and Mugiraneza Appeal and Motion for Appeals Hearing, 21 March 2022 (“Nzuwonemeye and Mugiraneza Appeal”). *See also* Nzuwonemeye and Mugiraneza Notice of Appeal and Related Motions, 9 March 2022, paras. 1, 20, 32. The Appeals Chamber notes that Zigiranyirazo did not make further submissions beyond indicating that he joined the “Nzuwonemeye and Mugiraneza Notice of Appeal and Related Motions” filed on 9 March 2022. *See* Joinder by Protais Zigiranyirazo to Nzuwonemeye and Mugiraneza Notice of Appeal and Relation Motions, 11 March 2022 (originally filed in French; English translation filed on 4 April 2022), paras. 1, 3.

<sup>3</sup> Request for Leave and Appeal of 8 March 2022 Decision, 15 March 2022 (“Nsengiyumva Appeal”).

<sup>4</sup> Alphonse Nteziryayo Appeal Against “Further Decision Regarding the Relocated Persons in Niger”, 23 March 2022 (“Nteziryayo Appeal”). *See also* Alphonse Nteziryayo Joinder to Nzuwonemeye and Mugiraneza Notice of Appeal and Related Motions, 9 March 2022, paras. 1, 4.

<sup>5</sup> Ntagerura’s Appeal Brief (public with confidential annex), 22 March 2022 (“Ntagerura Appeal”). *See also* Notice of Appeal and Joinder to Motions, 10 March 2022, (confidential), paras. 7, 10-11.

<sup>6</sup> Appeal on Behalf of Mr. Innocent Sagahutu, 14 March 2022 (confidential) (originally filed in French; English translation filed on 18 March 2022) (“Sagahutu Appeal”). The Appeals Chamber shall refer to the Nzuwonemeye and Mugiraneza Appeal, Nsengiyumva Appeal, Nteziryayo Appeal, Ntagerura Appeal, and Sagahutu Appeal collectively as the “Appeals”.

<sup>7</sup> Nzuwonemeye and Mugiraneza Motion for Reconsideration, 21 March 2022 (“Nzuwonemeye and Mugiraneza Reconsideration Request”); Joinder to Motion for Reconsideration, 22 March 2022 (“Ntagerura Reconsideration Request”) (collectively, “Reconsideration Requests”).

<sup>8</sup> Association of Defence Counsel Practising Before the International Courts and Tribunals (ADC-ICT) Motion for Leave to Appear as Amicus Curiae, 31 March 2022 (“Request to Appear as *Amicus Curiae*”).

served their sentences, were relocated to the Republic of Niger (“Niger”) with their consent pursuant to an agreement between the United Nations (“UN”) and Niger.<sup>9</sup>

3. On 27 December 2021, the authorities of Niger issued an order that required the Relocated Persons to leave the territory of Niger within seven days (“Expulsion Order”), confiscated their identity documents, and placed them under house arrest.<sup>10</sup>

4. On 30 December 2021, the President of the Mechanism (“President”) instructed the Registrar of the Mechanism (“Registrar”) to continue to engage with Niger and take all necessary actions to ensure that the Expulsion Order does not cause any prejudice to the fundamental rights of the Relocated Persons.<sup>11</sup> In so doing, the President considered, *inter alia*, that Article 11 of the Relocation Agreement provides that any dispute, controversy, or claim arising out of, or relating to, the agreement shall be settled by negotiation or by a mutually agreed mode of settlement.<sup>12</sup>

5. On 31 December 2021, the Duty Judge, pursuant to Article 28 of the Statute of the Mechanism (“Statute”) and Rule 55 of the Rules of Procedure and Evidence of the Mechanism (“Rules”): (i) invited Niger to provide written submissions regarding the validity of the Expulsion Order and its compliance with the Relocation Agreement; and (ii) ordered Niger to stay the Expulsion Order and to allow the Relocated Persons to remain on its territory, in accordance with the terms of the Relocation Agreement, pending the final adjudication of the matter.<sup>13</sup>

6. By a *note verbale*, dated 4 January 2022, Niger informed the Mechanism that it had decided to grant an additional 30 days to the Relocated Persons to leave its territory in order to allow the Mechanism to find another country for their relocation.<sup>14</sup>

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<sup>9</sup> See Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch, 7 February 2022 (“Decision of 7 February 2022”), para. 2. See also 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 (“Relocation Agreement”). The Appeals Chamber notes that in addition to Nzuwonemeye, Mugiraneza, Nsengiyumva, Nteziryayo, Ntagerura, and Sagahutu, Zigiranyirazo and Mr. Tharcisse Muvunyi (collectively, “Relocated Persons”) were also relocated to Niger. See Decision of 7 February 2022, para. 2.

<sup>10</sup> Decision of 7 February 2022, para. 4.

<sup>11</sup> *In the Matter of François-Xavier Nzuwonemeye et al.*, Case Nos. MICT-13-43, MICT-14-75 & MICT-12-27, Instruction to the Registrar, 30 December 2021 (“Instructions of 30 December 2021”), p. 2.

<sup>12</sup> Instructions of 30 December 2021, p. 2.

<sup>13</sup> *In the Matter of François-Xavier Nzuwonemeye et al.*, Case Nos. MICT-14-43, 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 (“Order of 31 December 2021”), pp. 2-3.

<sup>14</sup> *In the Matter of François-Xavier Nzuwonemeye et al.*, Case Nos. MICT-14-43, MICT-14-75, MICT-12-27, MICT-22-123, MICT-15-90 & MICT-19-119, Registrar’s Submission Pursuant to “Order to the Republic of Niger to Stay the Expulsion Order of Relocated Persons and Order for Submissions” of 31 December 2021, 4 January 2022 (confidential and *ex parte* with confidential and *ex parte* annex), para. 5, Annex.

7. On 14 January 2022, the Duty Judge issued a further order to Niger, pursuant to Article 28 of the Statute and Rule 55 of the Rules, to continue to execute and apply the Relocation Agreement, to ensure the safety and welfare of the Relocated Persons, and to ensure that the Relocated Persons have their identification documents returned and enjoy freedom of movement on the territory of Niger, pending final adjudication of the dispute concerning Niger's compliance with the Relocation Agreement.<sup>15</sup> The Duty Judge reiterated that his earlier order to Niger to stay the Expulsion Order should apply until final adjudication of the dispute concerning Niger's compliance with the Relocation Agreement, and instructed the Registrar to continue to engage with the authorities of Niger to ensure the respect of the Relocated Persons' fundamental rights.<sup>16</sup>

8. On 19 January 2022, in a letter to the UN Security Council, the President raised the situation of the Relocated Persons and sought the UN Security Council's support in "impressing upon [...] Niger the need to adhere fully to both the letter and spirit of the [Relocation] Agreement".<sup>17</sup> The President expressed his concern with the "circumstances and their potentially severe impact on the fundamental human rights of the [R]elocated [P]ersons, as well as on the rule of law more generally" and with the notion that a member State would seek to disregard a recently concluded agreement with the UN.<sup>18</sup> On 31 January 2022, the Registrar reaffirmed the Registry's commitment to exerting all possible efforts towards finding a viable solution to this matter.<sup>19</sup>

9. On 3 February 2022, Niger filed submissions before the Duty Judge indicating its position that: (i) the Duty Judge's order to Niger to stay the Expulsion Order was based on an incorrect application of Article 28 of the Statute and that, therefore, it should be revoked; and (ii) the Expulsion Order was justified in view of Article 6(3) of the Relocation Agreement, which entitles Niger to request the Relocated Persons to leave the country when their presence on its territory constitutes harm and a threat to public order and national security.<sup>20</sup>

10. On 7 February 2022, having considered that Niger's submissions did not "indicate any intention to abide by the letter or spirit of its commitments under the Relocation Agreement", the Duty Judge instructed the Registrar to make the necessary arrangements for the Relocated Persons

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<sup>15</sup> Further Order to the Republic of Niger and to the Registrar, 14 January 2022 ("Further Order of 14 January 2022"), para. 22.

<sup>16</sup> Further Order of 14 January 2022, para. 22.

<sup>17</sup> Letter dated 19 January 2022 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council, S/2022/36, 19 January 2022 ("President's Letter of 19 January 2022"), pp. 1-3.

<sup>18</sup> President's Letter of 19 January 2022, p. 3.

<sup>19</sup> Registrar's Submission In Relation to the "Order to the Republic of Niger to Stay the Expulsion Order of Relocated Persons and Order for Submissions" of 31 December 2021, 31 January 2022 (confidential and *ex parte*), para. 30.

<sup>20</sup> Submissions, 3 February 2022 (originally filed in French; English translation filed on 9 February 2022), pp. 2-4.

to be returned to the Arusha branch of the Mechanism on a temporary basis, in line with Articles 23, 30, and 39 of the Arusha Headquarters Agreement, until their transfer to another State.<sup>21</sup> In the same decision, the Duty Judge dismissed as moot requests by Nzuwonemeye, Ntagerura, Mugiraneza, and Zigiranyirazo for an oral hearing and for advising the President to report Niger's non-compliance to the UN Security Council.<sup>22</sup>

11. On 24 February 2022, Tanzania informed the Mechanism of its position that the Arusha Headquarters Agreement does not support allowing the Relocated Persons to return to Tanzania and that, therefore, it was not in a position to facilitate their return to its territory.<sup>23</sup>

12. On 8 March 2022, the Duty Judge issued the Impugned Decision, in which he dismissed the requests of: (i) Nzuwonemeye, Nteziryayo, Mugiraneza, and Ntagerura for reconsideration of the Decision of 7 February 2022, in view of Niger's continuing violation of the Relocation Agreement; (ii) Nsengiyumva for a further order to Tanzania to facilitate the return of the Relocated Persons to its territory pursuant to Article 28 of the Statute and in accordance with the Arusha Headquarters Agreement; and (iii) Nzuwonemeye, Nteziryayo, Mugiraneza, Ntagerura, and Nsengiyumva for an oral hearing at either branch of the Mechanism, in the presence of the Relocated Persons, on whether Niger's non-compliance should be reported to the UN Security Council.<sup>24</sup>

13. On 15 March 2022, the Appeals Chamber granted Nzuwonemeye, Mugiraneza, Nteziryayo, Ntagerura, and Zigiranyirazo an extension of time to file an appeal against the Impugned Decision, and dismissed their requests for assignment of counsel, at the Mechanism's expense, to assist them with the preparation of the appeal and for scheduling of a status conference, pursuant to Rule 69(B) of the Rules, at the Hague branch of the Mechanism.<sup>25</sup>

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<sup>21</sup> Decision of 7 February 2022, paras. 28-30. *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 ("Arusha Headquarters Agreement").

<sup>22</sup> *See* Decision 7 February 2022, paras. 12, 14, 30.

<sup>23</sup> Registrar's Submission Pursuant to "Decision on Motions Regarding the Relocation Agreement with Niger and Order for Transfer of the Relocated Persons to the Arusha Branch" of 7 February 2022, 28 February 2022 (public with confidential annex), para. 4, Annex ("Host State Submission"), Registry Pagination ("RP.") 236-235.

<sup>24</sup> *See* Impugned Decision, pp. 3-4 and references cited therein.

<sup>25</sup> Decision of 15 March 2022, pp. 2-4.

## II. DISCUSSION

### A. Appeals Against the Impugned Decision

#### 1. Jurisdiction

14. Nzuwonemeye, Mugiraneza, Ntagerura, and Nteziryayo submit that, consistent with past practice and in the interests of justice, the Appeals Chamber should hear the appeals against the Impugned Decision.<sup>26</sup> The Appeals Chamber observes that neither the Statute nor the Rules provide for an appeal as of right against a decision of a single judge related to the proper interpretation of Article 28 of the Statute and Rule 8(A) of the Rules. Notwithstanding, the Appeals Chamber has previously found that these are issues that concern the proper functioning of the Mechanism and the Mechanism's duty to ensure the welfare of acquitted or released persons pending their relocation.<sup>27</sup> The Appeals Chamber, therefore, may exercise jurisdiction over such issues and will consider the appeals of the Impugned Decision.

#### 2. Request for an Oral Hearing

15. Nzuwonemeye, Mugiraneza, Ntagerura, and Sagahutu request that the Appeals Chamber hear oral arguments on the merits of their respective appeals.<sup>28</sup>

16. The Appeals Chamber considers that the information before it is sufficient to reach an informed decision and that, therefore, it is not necessary to invite oral submissions on the present appeals. Accordingly, the Appeals Chamber dismisses the appellants' request to hold an oral hearing.<sup>29</sup>

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<sup>26</sup> Nzuwonemeye and Mugiraneza Appeal, paras. 3, 33-37; Ntagerura Appeal, paras. 33-35; Nteziryayo Appeal, paras. 3, 6-7.

<sup>27</sup> See *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 ("Nzuwonemeye Decision of 17 April 2019"), para. 7; *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 ("Ntagerura Decision of 18 November 2008"), para. 19. See also *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Decision on Prosecution Appeal of the Acting President's Decision of 13 September 2018, 4 December 2018, para. 12.

<sup>28</sup> Nzuwonemeye and Mugiraneza Appeal, paras. 3, 87-93; Ntagerura Appeal, paras. 2, 67-68, 70; Sagahutu Appeal, para. 21, p. 9.

<sup>29</sup> See *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Decision on a Motion to Initiate Contempt Proceedings, 26 April 2017, pp. 3-4. See also *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-AR73.1, Decision on Request for Oral Argument, 16 March 2011, p. 2 and references cited therein.

3. Standard of Review on Appeal

17. The appellants contend that, in the Impugned Decision, the Duty Judge committed both errors of law and fact.<sup>30</sup> To succeed on appeal, the appellants must demonstrate that the Duty Judge committed a discernible error in his decision because it was based on an incorrect interpretation of the governing law, a patently incorrect conclusion of fact, or because it was so unfair or unreasonable as to constitute an abuse of discretion.<sup>31</sup>

4. Alleged Error in Denying the Request to Report Niger’s Non-Compliance to the UN Security Council

18. In the Impugned Decision, the Duty Judge denied motions by Nzuwonemeye, Mugiraneza, Ntagerura, and Nteziryayo to reconsider the Decision of 7 February 2022 and to request the President to report Niger’s non-compliance to the UN Security Council, reiterating that, in view of the President’s Letter of 19 January 2022, “the matter [...] has already been referred to the [UN] Security Council, obviating the need for a further order to do so [...]”.<sup>32</sup> As a consequence, the Duty Judge also declined to reconsider his prior decision not to hold an oral hearing to address this issue.<sup>33</sup>

19. Nzuwonemeye, Mugiraneza, Ntagerura, and Nteziryayo contend that the Duty Judge erred in law in denying their request for Niger’s non-compliance to be reported to the UN Security Council on the sole basis that the President had already done so in his Letter of 19 January 2022.<sup>34</sup> They submit that, pursuant to Rule 8(A) of the Rules, where a Judge concludes that a State has failed to comply without undue delay with a judicial order, as required by Article 28 of the Statute,

<sup>30</sup> See Nzuwonemeye and Mugiraneza Appeal, paras. 41-86; Ntagerura Appeal, paras. 36-53; Nteziryayo Appeal, paras. 8-31; Nsengiyumva Appeal, paras. 13-21; Sagahutu Appeal, paras. 2, 16-19.

<sup>31</sup> *Prosecutor v. Naser Orić*, Case No. MICT-14-79, Decision on an Application for Leave to Appeal the Single Judge’s Decision of 10 December 2015, 17 February 2016, para. 9, referring, *inter alia*, to *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.5, Decision on Interlocutory Appeal Against the 27 March 2015 Trial Chamber Decision on Modality for Prosecution Re-Opening, 22 May 2015, para. 6, *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R75, Decision on Motion for Clarification, 20 June 2008, para. 14.

<sup>32</sup> Impugned Decision, pp. 2-4.

<sup>33</sup> Impugned Decision, p. 4.

<sup>34</sup> Nzuwonemeye and Mugiraneza Appeal, paras. 41, 49; Ntagerura Appeal, paras. 36, 38; Nteziryayo Appeal, paras. 8(i), 23. Nzuwonemeye and Mugiraneza submit that the Duty Judge’s error resulted in: (i) not holding Niger fully accountable for the unlawful detention of the Relocated Persons, the confiscation of their identity documents, and the issuance of the Expulsion Order; (ii) forfeiting an opportunity to further engage with Niger by holding an oral hearing; and (iii) failing to put an end to the Relocated Persons’ detention by ordering an oral hearing to be held in their presence, at either branch of the Mechanism. See Nzuwonemeye and Mugiraneza Appeal, paras. 51-54. See also Nteziryayo Appeal, para. 22.

the Judge may request the President to report the matter to the UN Security Council.<sup>35</sup> According to the appellants, the Duty Judge in this case did not follow the procedure set out in Rule 8(A) of the Rules and thus the President's Letter of 19 January 2022, which made no reference to the applicable provisions, did not constitute a formal report of Niger's non-compliance to the UN Security Council.<sup>36</sup> Ntagerura further submits that the Duty Judge erred in denying his request to hold an oral hearing.<sup>37</sup>

20. Nzuwonemeye, Mugiraneza, and Ntagerura request that the Impugned Decision be reversed and the matter remanded to the Duty Judge.<sup>38</sup> Nteziryayo further requests that the Appeals Chamber hold an oral hearing, in the presence of the appellants, to receive arguments on whether Niger's non-compliance should be reported to the UN Security Council pursuant to Article 28 of the Statute and Rule 8(A) of the Rules.<sup>39</sup>

21. The Appeals Chamber recalls that, under Article 28(2) of the Statute, States have the duty to comply, without undue delay, with an order issued by a single judge.<sup>40</sup> Pursuant to Rule 8(A) of the Rules, where a single judge is satisfied that a State has failed to comply with an obligation under Article 28 of the Statute, he may request the President to report the matter to the UN Security Council. The President then has the duty to transmit to the UN Security Council the judicial finding of the single judge.<sup>41</sup>

22. It is well established that a State's obligation to cooperate with the Mechanism under Article 28 of the Statute pertains to the investigation and prosecution of persons accused of serious violations of international humanitarian law, contempt, or false testimony, and does not extend to the relocation of acquitted persons and convicted persons who have completed serving their sentences.<sup>42</sup> There is no duty under Article 28 of the Statute for States to cooperate in the relocation

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<sup>35</sup> Nzuwonemeye and Mugiraneza Appeal, paras. 42-46; Nteziryayo Appeal, paras. 9, 16-20. Ntagerura further submits that, in the Impugned Decision, the Duty Judge failed to take into account significant developments that had taken place since the President's Letter of 19 January 2022. *See* Ntagerura Appeal, para. 42.

<sup>36</sup> Nzuwonemeye and Mugiraneza Appeal, paras. 47-49; Ntagerura Appeal, paras. 38-41; Nteziryayo Appeal, paras. 10-15, 21. Nzuwonemeye, Mugiraneza, and Ntagerura further submit that, even if the President's Letter of 19 January 2022 constituted a report of Niger's non-compliance to the UN Security Council under Rule 8(A) of the Rules, the letter was written at an early stage of the crisis and did not account for later developments. *See* Nzuwonemeye and Mugiraneza Appeal, para. 50; Ntagerura Appeal, para. 44.

<sup>37</sup> Ntagerura Appeal, paras. 36(C), 54-58.

<sup>38</sup> Nzuwonemeye and Mugiraneza Appeal, paras. 55, 93; Ntagerura Appeal, paras. 45, 69.

<sup>39</sup> Nteziryayo Appeal, para. 23.

<sup>40</sup> *See Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Decision on Republic of Turkey's Non-Compliance with its Obligation to Cooperate with the Mechanism, 6 March 2017, p. 1.

<sup>41</sup> *See Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-AR108 *bis*, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 October 1997, paras. 33-37.

<sup>42</sup> *See* Statute, Articles 1, 28; *Nzuwonemeye* Decision of 17 April 2019, para. 17; *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Protais Zigiranyirazo's Request to Appeal Trial Chamber III's



of such persons.<sup>43</sup> Rather, the Mechanism must rely in this regard on the voluntary cooperation of States, as reflected in the UN Security Council’s numerous calls upon member States to voluntarily cooperate and render all necessary assistance to the ICTR and the Mechanism in the relocation of acquitted persons and convicted persons who have completed serving their sentences and have been released on the territory of Tanzania.<sup>44</sup> Since the Mechanism lacks the authority to compel the cooperation of Niger under Article 28 of the Statute to accept acquitted and released persons, it similarly lacks the authority to compel Niger to allow the Relocated Persons to remain on its territory.

23. The Appeals Chamber observes that the appellants were relocated to Niger pursuant to the Relocation Agreement concluded between Niger and the UN, not pursuant to any order invoking a State’s duty to cooperate with the Mechanism under Article 28 of the Statute. Accordingly, any claim of non-compliance with the terms of the Relocation Agreement is to be resolved by the mechanism prescribed in the Relocation Agreement. As correctly stated by the Duty Judge, Article 11 of the Relocation Agreement provides that “[a]ny dispute, controversy, or claim arising out of, or relating to, [the Relocation Agreement] shall be settled by negotiation or by a mutually agreed mode of settlement”.<sup>45</sup> Accordingly, the Appeals Chamber finds no merit in the appellants’ arguments that the Duty Judge erred in law in not requesting the President to report the matter to the UN Security Council.

24. As correctly observed by the Duty Judge, the Mechanism has the duty to ensure the welfare of acquitted or released persons pending their relocation, and to that extent to enquire whether their life or liberty would be at risk upon relocation.<sup>46</sup> While the Mechanism’s duty of care towards acquitted or released persons does not continue indefinitely following their relocation, in the particular circumstance of the present case, where the relocation appears not to have been carried out in accordance with the full terms of the Relocation Agreement, the duty of care continues. Mindful of the Mechanism’s obligations in this regard, earlier in the proceedings, the Duty Judge invited submissions from Niger and instructed the Registrar to continue to engage with the authorities of Niger to ensure the respect of the fundamental rights of the Relocated Persons,

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Decision of 18 June 2012, 26 February 2013 (“*Zigiranyirazo* Decision of 26 February 2013”), para. 11; *Ntagerura* Decision of 18 November 2008, para. 15.

<sup>43</sup> *Zigiranyirazo* Decision of 26 February 2013, para. 11; *Ntagerura* Decision of 18 November 2008, para. 15.

<sup>44</sup> *Nzuwonemeye* Decision of 17 April 2019, para. 17, referring to numerous UN Security Council Resolutions. See also President’s Letter of 19 January 2022, p. 1.

<sup>45</sup> Decision of 7 February 2022, para. 24, referring to Relocation Agreement, Article 11. See also President’s Letter of 19 January 2022, pp. 1-2, referring to, *inter alia*, Relocation Agreement, Article 11.

<sup>46</sup> See Decision of 7 February 2022, para. 22, referring to *Ntagerura* Decision of 18 November 2008, para. 19.

including in relation to their freedom of movement on the territory of Niger and the return of their identity documents.<sup>47</sup>

25. The Duty Judge was also cognizant that, in his Letter of 19 January 2022, the President brought to the attention of the UN Security Council the issue of the Expulsion Order and that the Nigerien authorities had placed the Relocated Persons under house arrest and had confiscated their identity documents.<sup>48</sup> The Duty Judge further noted that the President had sought the UN Security Council’s support in “impressing upon the Republic of Niger the need to adhere fully to both the letter and spirit of the [Relocation] Agreement”, stressing the “potentially severe impact” of its unilateral actions “on the fundamental human rights of the [R]elocated [P]ersons, as well as on the rule of law more generally”.<sup>49</sup> In the context of the Mechanism’s duty to enquire into the welfare of the Relocated Persons, the Appeals Chamber sees no error in the Duty Judge’s conclusion in the Impugned Decision that the matter of Niger’s non-compliance has already been referred to the UN Security Council.<sup>50</sup>

26. In view of the above considerations, the appellants fail to show that the Duty Judge erred in deciding not to request the President to report Niger’s non-compliance to the UN Security Council or to hold an oral hearing to address this matter. The Appeals Chamber therefore need not consider the appellants’ remaining arguments in this regard.

5. Alleged Error in Finding that the Differences in the Interpretation of the Headquarters Agreement Cannot be Resolved by Judicial Order

27. In the Decision of 7 February 2022, the Duty Judge ordered the Registrar “to immediately take all necessary measures and make the appropriate arrangement for the Relocated Persons to be returned to the Arusha branch of the Mechanism on a temporary basis”, in accordance with Articles 23, 30, and 39 of the Arusha Headquarters Agreement.<sup>51</sup> On 24 February 2022, Tanzania informed the Mechanism of its position that the relevant provisions of the Headquarters Agreement “do not support the argument of allowing [the Relocated Persons] back into [Tanzania]” and that, therefore, it was not in a position to facilitate their return.<sup>52</sup> In the Impugned Decision, the Duty Judge found that, in view of Article 44 of the Arusha Headquarters Agreement, which governs the

<sup>47</sup> Order of 31 December 2021, p. 3; Further Order of 14 January 2022, paras. 18, 22.

<sup>48</sup> Decision of 7 February 2022, para. 12. *See also* President’s Letter of 19 January 2022, p. 2.

<sup>49</sup> Decision of 7 February 2022, para. 12, *citing* President’s Letter of 19 January 2022, pp. 1-3.

<sup>50</sup> *See* Impugned Decision, pp. 3-4.

<sup>51</sup> Decision of 7 February 2022, para. 30.

<sup>52</sup> Host State Submission, RP. 236-235.

settlement of disputes arising from the interpretation of the agreement, the difference between his interpretation and that of Tanzania could not be resolved by a further judicial order.<sup>53</sup>

28. Nzuwonemeye, Mugiraneza, Ntagerura, Nteziryayo, Nsengiyumva, and Sagahutu contend that the Duty Judge erred in law in finding that Tanzania’s refusal to comply with the order that they be transferred back to Arusha could not be addressed by a further judicial order.<sup>54</sup> They submit that, once a single judge is satisfied that a State has failed to comply with an obligation under Article 28 of the Statute, the procedure to be followed is not a dispute resolution mechanism but a request to the President to report the matter to the UN Security Council, as provided for in Rule 8(A) of the Rules.<sup>55</sup> According to Nzuwonemeye and Mugiraneza, the Arusha Headquarters Agreement could not derogate from the powers given to the Mechanism’s Judges by the Statute.<sup>56</sup> Ntagerura further submits that, if the dispute settlement outlined in Article 44 of the Arusha Headquarters Agreement is the only available option, it would prevent any judicial intervention on the part of the Mechanism, which in turn would be contrary to the Mechanism’s duty of care towards the Relocated Persons.<sup>57</sup>

29. Nzuwonemeye and Mugiraneza request that the Appeals Chamber remand the matter to the Duty Judge and direct him to consider scheduling an oral hearing and issuing a further order to Tanzania pursuant to Article 28 of the Statute.<sup>58</sup> Nsengiyumva requests that the Appeals Chamber overturn the Impugned Decision, grant his motions requesting Tanzania’s cooperation and schedule “an emergency in-person hearing” at the Hague branch of the Mechanism.<sup>59</sup> Sagahutu requests that the appellants be given an opportunity to respond to the submissions filed by Niger and Tanzania

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<sup>53</sup> Impugned Decision, p. 4.

<sup>54</sup> See Nzuwonemeye and Mugiraneza Appeal, paras. 38, 59-68; Ntagerura Appeal, paras. 36, 51-53; Nteziryayo Appeal, paras. 8(ii), 26-28; Nsengiyumva Appeal, paras. 17-21; Sagahutu Appeal, para. 16. Nsengiyumva further alleges that the Duty Judge erred in failing to address the merits of his motions, requesting an order to Tanzania to facilitate the implementation of the Further Order of 7 February 2022 and an emergency in-person evidentiary hearing at the Hague branch of the Mechanism, and in confounding them. See Nsengiyumva Appeal, paras. 5, 7, 13-15. Sagahutu further contends that the Duty Judge ordered the temporary return of the Relocated Persons to the Arusha branch of the Mechanism, while Tanzania considered this to likely amount to a permanent return. See Sagahutu Appeal, para. 16. See also Nteziryayo Appeal, paras. 29-30.

<sup>55</sup> See Nzuwonemeye and Mugiraneza Appeal, paras. 59-63; Ntagerura Appeal, paras. 46-50; Nteziryayo Appeal, para. 27.

<sup>56</sup> Nzuwonemeye and Mugiraneza Appeal, paras. 64-67. Nzuwonemeye and Mugiraneza add that, while the Duty Judge indicated that the appellants’ stay in Tanzania was not intended to be permanent, he failed to comply with the requirement of Article 23(2) of the Headquarters Agreement that there be a “document certifying that their presence is required at the seat of the Mechanism and specifying a time period during which such presence is necessary”. See Nzuwonemeye and Mugiraneza Appeal, paras. 69-71. See also Nteziryayo Appeal, paras. 29-30.

<sup>57</sup> Ntagerura Appeal, para. 51.

<sup>58</sup> Nzuwonemeye and Mugiraneza Appeal, paras. 72-73, 93. See also Ntagerura Appeal, para. 69; Nteziryayo Appeal, para. 31 (wherein Nteziryayo requests that the Appeals Chamber correct the alleged errors by entering new findings on appeal).

<sup>59</sup> Nsengiyumva Appeal, para. 22.

and that the Appeals Chamber order Tanzania to receive Sagahutu on its territory and the Registrar to report on his efforts and the States that he had contacted about his relocation.<sup>60</sup>

30. The Appeals Chamber notes that, pursuant to Article 23 of the Arusha Headquarters Agreement, persons, other than those specifically listed in the agreement, whose presence is required at the seat of the Mechanism shall be accorded certain privileges, immunities, and facilities and shall not be subject by the Host State to any measures, which may affect their presence at the seat of the Mechanism.<sup>61</sup> Specifically in relation to persons who have been released from the custody of the Mechanism, Article 39 of the Arusha Headquarters Agreement provides for the Host State's obligation to facilitate the temporary stay of such persons on its territory, until their transfer to another State.

31. The Appeals Chamber recalls that, on 5 December 2021, the appellants were transferred from Tanzania to Niger in accordance with the terms of the Relocation Agreement. Having found that further enforcement of the Relocation Agreement appeared to be no longer possible, the Duty Judge considered it necessary to instruct the Registrar to arrange for the return of the Relocated Persons to the Arusha branch of the Mechanism on a temporary basis, until their transfer to another State.<sup>62</sup> The Appeals Chamber observes that the Duty Judge, in so doing, did not issue any order to Tanzania, let alone an order to accept the Relocated Persons on its territory under Article 28 of the Statute.<sup>63</sup> In the specific circumstances of the present case, and absent any other justification as to why their presence was required at the seat of the Mechanism, the transfer of the Relocated Persons to the Arusha branch of the Mechanism would have effectively constituted a temporary relocation, pending a permanent resolution of the matter. As recalled above, there is no duty under Article 28 of the Statute for States, including the Host State, to cooperate in the relocation of acquitted persons and convicted persons who have completed serving their sentences.<sup>64</sup> Accordingly, and as correctly observed by the Duty Judge, any differences arising from the interpretation of the Arusha Headquarters Agreement are to be resolved in accordance with Article 44 of the agreement, and not through the legal remedy provided in Rule 8(A) of the Rules in the event of a State's non-compliance with its duty under Article 28 of the Statute.

32. The Appeals Chamber is not persuaded by Ntagerura's argument that the above conclusion runs contrary to the Mechanism's duty of care towards the Relocated Persons. Notwithstanding the

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<sup>60</sup> Sagahutu Appeal, p. 9.

<sup>61</sup> See Arusha Headquarters Agreement, Article 23(1) and (5).

<sup>62</sup> Decision of 7 February 2022, paras. 28-29.

<sup>63</sup> See Decision of 7 February 2022, para. 30.

<sup>64</sup> See *supra* para. 22.

limitations on the Mechanism's capacity to secure the relocation of the appellants, in the Impugned Decision the Duty Judge considered that the Registrar should intensify his efforts and ordered him to engage with Niger and other possible relocation States until an acceptable resolution of this matter is found, in order to ensure the respect of the fundamental rights of the Relocated Persons.<sup>65</sup> He also reiterated that Niger should adhere to the rule of law in relation to the situation of the Relocated Persons and ensure their safety and welfare until the matter is resolved.<sup>66</sup>

33. In view of the foregoing, the appellants fail to show that the Duty Judge erred in finding that Tanzania's refusal to accept the return of the Relocated Persons to its territory could not be resolved by a further judicial order. The Appeals Chamber therefore need not consider the appellants' remaining arguments in this regard.

#### 6. Alleged Error in Refusing to Take Further Judicial Action

34. In the Impugned Decision, the Duty Judge considered that:

at present, all appropriate and available judicial relief has been extended to the Relocated Persons and that the primary avenue for redressing this crisis lies in political, diplomatic, and administrative efforts undertaken by the Registrar under the supervision of the President and with the President's referral of this matter to the [UN] Security Council.<sup>67</sup>

35. Nzuwonemeye, Mugiraneza, Ntagerura, Nteziryayo, and Sagahutu submit that the Duty Judge erred in refusing to take further judicial action to ensure the welfare of the appellants and put an end to their detention in Niger.<sup>68</sup> In particular, the appellants submit that the Duty Judge could have: (i) requested the President to report Niger to the UN Security Council, which may have been sufficient to encourage Niger to comply with the terms of the Relocation Agreement; (ii) held a hearing at either seat of the Mechanism, requiring the presence of the appellants; or (iii) reasoned that the temporary presence of the appellants at the Arusha branch of the Mechanism was necessary, regardless of whether or not a hearing was held, and ordered Tanzania to accept them onto its territory.<sup>69</sup>

36. The Appeals Chamber recalls that it has found no error in the Duty Judge's decision not to request the President to report Niger to the UN Security Council or to hold an oral hearing in this regard.<sup>70</sup> Similarly, the Appeals Chamber has found no error in the Duty Judge's finding that the

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<sup>65</sup> Impugned Decision, p. 4.

<sup>66</sup> Impugned Decision, p. 4.

<sup>67</sup> Impugned Decision, p. 4.

<sup>68</sup> Nzuwonemeye and Mugiraneza Appeal, paras. 74-76, 81, 84-86; Ntagerura Appeal, paras. 36, 59-62, 64-65; Nteziryayo Appeal, paras. 8(iii), 32, 36; Sagahutu Appeal, paras. 18-22.

<sup>69</sup> Nzuwonemeye and Mugiraneza Appeal, paras. 82-83; Ntagerura Appeal, para. 63; Nteziryayo Appeal, paras. 32-35.

<sup>70</sup> See *supra* para. 26.

Host State's refusal to accept the return of the Relocated Persons could not be resolved by a further judicial order.<sup>71</sup> The appellants, therefore, fail to show that these were avenues available to the Duty Judge to address the situation.

37. The Appeals Chamber considers that, in view of the limitations on the Mechanism's jurisdiction to invoke the cooperation of States on matters concerning the relocation of acquitted persons and persons who have completed serving their sentences, it was reasonable for the Duty Judge to conclude that the matter before him could not be resolved by a further judicial order. As the Duty Judge correctly observed, the Mechanism is continuing its efforts to ensure the welfare of the Relocated Persons, such as through the Registrar's ongoing efforts to find a solution to the present situation and the President's proactive action in apprising the UN Security Council of the "potentially severe impact" of Niger's actions "on the fundamental human rights of the [R]elocated [P]ersons, as well as on the rule of law more generally".<sup>72</sup>

## 7. Conclusion

38. For the reasons stated above, the Appeals Chamber is unable to grant the appeals against the Impugned Decision. The Mechanism does not have the jurisdiction to compel States to accept, or to allow to remain on their territory, acquitted persons and convicted persons who have completed serving their sentences. The Appeals Chamber observes that the Duty Judge exercised his power to pursue every available avenue to ensure the welfare of the Relocated Persons within the constraints of the Mechanism's mandate.

39. As the Appeals Chamber has stated on a previous occasion, the international community's commitment to ending impunity should not stop with rendering justice, but should also extend to those who have completed serving their sentences or have been acquitted.<sup>73</sup> The Mechanism continues to rely on the support of the UN Security Council in impressing upon Member States the need to provide the Mechanism with all necessary assistance in resolving a matter that is, with States' cooperation, surmountable. In this context, the Appeals Chamber emphatically and unequivocally encourages Niger to abide by the terms of the Relocation Agreement and the commitment that it made, at the time when it was President of the UN Security Council, to support the Mechanism in fulfilling its mandate.

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<sup>71</sup> See *supra* para. 33.

<sup>72</sup> See Impugned Decision, pp. 3-4; Decision of 7 February 2022, paras. 12, 28. See *supra* paras. 4, 7-8, 25. See also *Ntagerura* Decision of 18 November 2008, para. 19.

<sup>73</sup> See *Nzuwonemeye* Decision of 17 April 2019, para. 27.

**B. Requests for Reconsideration and to Appear as *Amicus Curiae***

40. The Appeals Chamber recalls that, on 15 March 2022, it dismissed requests by Nzuwonemeye, Mugiraneza, Nteziryayo, Ntagerura, and Zigiranyirazo for assignment of counsel at the Mechanism's expense to assist them with the preparation of an appeal against the Impugned Decision and for scheduling of a status conference, pursuant to Rule 69(B) of the Rules, at the Hague branch of the Mechanism.<sup>74</sup> Having considered that the matters anticipated to be raised in the prospective appeals had been subject to extensive litigation before the Duty Judge and were neither novel nor particularly complex, the Appeals Chamber found that the applicants had failed to demonstrate the existence of exceptional circumstances warranting the assignment of counsel at the Mechanism's expense.<sup>75</sup> The Appeals Chamber also found that Rule 69(B) of the Rules, which governs the convening of status conferences, did not apply given that none of the applicants was in the custody of the Mechanism.<sup>76</sup>

41. In the Reconsideration Requests, Nzuwonemeye, Mugiraneza, and Ntagerura seek reconsideration of the Decision of 15 March 2022, arguing that the Appeals Chamber's ruling denying counsel remuneration on appeal contains a clear error of reasoning, in view of the novelty and complexity of the issues raised in their respective appeals against the Impugned Decision.<sup>77</sup> In addition, they emphasise the number of hours of *pro bono* legal assistance extended to them, arguing that "to use the fact of their *pro bono* litigation before the [Duty Judge] to deny [counsel] compensation on appeal is unfair and discourages this kind of assistance".<sup>78</sup> In relation to the Appeals Chamber's decision not to hold a status conference, the applicants contend that reconsideration is warranted in order to "avoid the injustice of their ongoing detention in Niger or potential expulsion to Rwanda", and because it would offer a "simple way to resolve this crisis and render the appeal moot", and would present an opportunity for the applicants to apply for asylum while on the territory of the Host State.<sup>79</sup>

42. The Association of Defence Counsel requests leave to submit observations as *amicus curiae* on the matter of the "importance of remuneration of defence counsel practicing before international

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<sup>74</sup> Decision of 15 March 2022, pp. 2-4.

<sup>75</sup> Decision of 15 March 2022, p. 3.

<sup>76</sup> Decision of 15 March 2022, p. 4.

<sup>77</sup> Nzuwonemeye and Mugiraneza Reconsideration Request, paras. 1, 5-9, 20; Ntagerura Reconsideration Request, paras. 1, 3-4, 7.

<sup>78</sup> Nzuwonemeye and Mugiraneza Reconsideration Request, paras. 10-12; Ntagerura Reconsideration Request, paras. 5, 7.

<sup>79</sup> Nzuwonemeye and Mugiraneza Reconsideration Request, paras. 14, 16-19. *See* Ntagerura Reconsideration Request, paras. 6-7.

criminal tribunals”.<sup>80</sup> It submits that the Decision of 15 March 2022 goes to one of the core functions of the Association of Defence Counsel and that it is well qualified to offer submissions of assistance in relation to the matter at issue.<sup>81</sup>

43. The Appeals Chamber recalls that, pursuant to Rule 83 of the Rules, it may, if it considers it desirable for the proper determination of a case, invite or grant leave to a State, organisation, or person to appear before it and make submissions on any issue specified by the Chamber. The primary criterion in determining whether to grant leave to an *amicus curiae* to make submissions is whether this would assist the Appeals Chamber in its consideration of the matter before it.<sup>82</sup>

44. In the present instance, the Appeals Chamber considers that the issue at hand is not the importance of remuneration of defence counsel, as identified by the Association of Defence Counsel, but whether there are grounds for reconsideration of the Appeals Chamber’s determination that no exceptional circumstances, which warrant the assignment of counsel at the Mechanism’s expense, were demonstrated by the applicants. Accordingly, the Appeals Chamber finds that granting leave to the Association of Defence Counsel to make submissions would not assist it in the determination of the matter before it.

45. Turning to the merits of the Requests for Reconsideration, the Appeals Chamber recalls that a party requesting reconsideration of a decision must satisfy the chamber of the existence of a clear error of reasoning in the impugned decision, or of particular circumstances justifying reconsideration in order to avoid injustice, such as any new facts.<sup>83</sup> The Appeals Chamber finds that the applicants fail to meet this standard. As discussed above, the jurisprudence on the applicability of Article 28 of the Statute in relation to matters of relocation of acquitted persons and persons who have completed serving their sentences is well established.<sup>84</sup> Given that this is the crux of the appeals filed against the Impugned Decision, the matter is neither novel nor particularly complex and the submissions on the merits of the appeals do not persuade the Appeals Chamber otherwise.

46. The applicant’s request for reconsideration of the Appeals Chamber’s decision not to hold a status conference is equally without merit. Nzuwonemeye, Mugiraneza, and Ntagerura merely

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<sup>80</sup> Request to Appear as *Amicus Curiae*, paras. 1, 3, 5, 12.

<sup>81</sup> Request to Appear as *Amicus Curiae*, paras. 5-12.

<sup>82</sup> *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Request for Leave to Make Submissions as *Amicus Curiae*, 28 March 2018, p. 2. See *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Request for Leave to Make Submissions as *Amicus Curiae*, 25 September 2017, p. 1 and references cited therein.

<sup>83</sup> *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Decision on a Motion to Reconsider the “Decision on Motions for Hospitalization”, 28 August 2020, p. 2; *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Decision on Prosecution Motion for Reconsideration of Decision on Ngirabatware’s Motion for Review, 7 September 2018 (confidential; made public pursuant to an order dated 25 September 2019), p. 2.



repeat arguments that were already considered and rejected by the Appeals Chamber without showing any error of reasoning or particular circumstances justifying reconsideration in order to avoid injustice.<sup>85</sup> The Appeals Chamber recalls that, in the absence of an express requirement in the Rules, a status conference may be held if it is in the interests of justice or required for the proper preparation of a hearing.<sup>86</sup> The Appeals Chamber considers, however, that this is not the case in the present instance, particularly given that the situation of the Relocated Persons is being addressed through other avenues by the President and the Registrar.<sup>87</sup> Moreover, the Appeals Chamber cannot support the suggestion that a status conference should be used as a mechanism to circumvent proper procedures.

47. Finally, the Appeals Chamber emphasises that *pro bono* representation of a convicted person in post-conviction proceedings is, in principle, not remunerated by the Mechanism.<sup>88</sup> Accordingly, the Appeals Chamber denies, in their entirety, the Reconsideration Requests.

### III. DISPOSITION

48. For the foregoing reasons, the Appeals Chamber:

**DISMISSES** the Appeals;

**DENIES** the Reconsideration Requests and the Request to Appear as *Amicus Curiae*; and

**URGES** the United Nations to actively continue its efforts towards resolving the matter concerning the Relocated Persons.

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<sup>84</sup> See *supra* para. 22.

<sup>85</sup> The Appeals Chamber recalls that the “Rules require the holding of a status conference [...] *only* at the pre-trial stage of the proceeding [...] and pending appeal if a convicted person is in custody following the filing of a notice of appeal”. See *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Decision on Request for Status Conference, 3 October 2017 (“*Ngirabatware* Decision of 3 October 2017”), p. 1 (emphasis in original), referring, *inter alia*, to Rule 69(A) and (B) of the Rules.

<sup>86</sup> *Ngirabatware* Decision of 3 October 2017, p. 1.

<sup>87</sup> See *supra* paras. 4, 8.

<sup>88</sup> Decision on Motions to Appeal Decision Denying Assignment of Counsel, 27 May 2022, p. 4 and references cited therein.

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

Done this 27th day of May 2022  
At Arusha,  
Tanzania



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Judge Carmel Agius  
Presiding Judge

**[Seal of the Mechanism]**



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