

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-22-124

Date: 19 December 2022

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President

Registrar: Mr. Abubacarr M. Tambadou

Order of: 19 December 2022

IN THE MATTER OF

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

PUBLIC

FURTHER INSTRUCTION TO THE REGISTRAR

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

I, GRACIELA GATTI SANTANA, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively);

NOTING the “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”, dated 15 November 2021 (“Agreement”);

NOTING that, following the signing of the Agreement, eight persons who had been acquitted by the International Criminal Tribunal for Rwanda or had completed serving their sentence were relocated to the territory of the Republic of Niger (“Relocated Persons” and “Niger”, respectively);¹

NOTING that, on 27 December 2021, the Nigerien authorities issued an order requiring the Relocated Persons to leave Nigerien territory within seven days, confiscated their identity documents, and placed them under “house arrest”;²

NOTING that, on 30 December 2021, my predecessor instructed the Registrar of the Mechanism (“Registrar”), *inter alia*, to provide him with frequent updates on the situation as it unfolds, including through public filings pursuant to Rule 31(B) of the Rules of Procedure and Evidence of the Mechanism (“Rules”) as appropriate (“2021 Instruction”);³

NOTING that, on 7 February 2022, the duty Judge for the Arusha branch of the Mechanism (“Duty Judge”) instructed the Registrar to make the necessary arrangements for the Relocated Persons to be returned to the Arusha branch of the Mechanism on a temporary basis until their transfer to another State;⁴

NOTING that, on 8 March 2022, after the Mechanism had been informed by the United Republic of Tanzania that it could not facilitate the Relocated Persons’ return to its territory,⁵ the Duty Judge found that the matter could not be resolved by a further judicial order 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”;⁶

¹ 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.

² Decision of 7 February 2022, para. 4.

³ *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, p. 2.

⁴ Decision of 7 February 2022, paras. 29-30.

⁵ See Further Decision Regarding the Relocated Persons in Niger, 8 March 2022 (“Decision of 8 March 2022”), p. 2.

⁶ Decision of 8 March 2022, p. 4.

NOTING that, on 27 May 2022, the Appeals Chamber, *inter alia*: (i) dismissed appeals filed by some of the Relocated Persons challenging the Decision of 8 March 2022;⁷ (ii) urged the United Nations to “actively continue its efforts towards resolving the matter concerning the Relocated Persons”;⁸ and (iii) clarified that “[w]hile 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 [...] Agreement, the duty of care continues”;⁹

RECALLING that, on 22 June 2022, the United Nations Security Council, *inter alia*, noted with concern that “despite reaching an earlier agreement, the Mechanism continues to face problems in the relocation of acquitted persons and convicted persons who have completed serving their sentence”, emphasised “the importance of finding expeditious and durable solutions to these problems, including as part of a reconciliation process”, reiterated “its call upon all States to cooperate with and render all necessary assistance to the Mechanism”, and noted that “decisions on the relocation of persons who have been acquitted or completed their sentences should take into account *inter alia* the readiness of the state of origin to accept its nationals, the consent or any objections raised by the individuals to be relocated and the availability of other relocation states”;¹⁰

CONSIDERING that the Registrar is engaged in seeking a durable solution to the present, untenable situation;¹¹

CONSIDERING, however, that the Relocated Persons have, since 27 December 2021, remained under *de facto* house arrest in Niger;

CONSIDERING that, in this unprecedented situation, it is appropriate for the Relocated Persons to be made aware of the efforts that have been, and continue to be, extended to find a durable solution as expeditiously as possible;

CONSIDERING, in addition, that in order for the Relocated Persons to be able to properly indicate their consent or to raise objections to any proposed solution, they must be informed of all developments to the maximum extent appropriate under the circumstances;

⁷ Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of Decision of 15 March 2022, and to Appear as *Amicus Curiae*, 27 May 2022 (“Decision of 27 May 2022”), paras. 1, 48.

⁸ Decision of 27 May 2022, para. 48.

⁹ Decision of 27 May 2022, para. 24.

¹⁰ Security Council Resolution 2637 (2022), 22 June 2022, paras. 4-5.

¹¹ See Registrar’s Submission on “Nzuwonemeye Motion for Order Transferring Him to the Seat of the Mechanism” of 4 July 2022, 2 August 2022, para. 16.

CONSIDERING further that while the Registrar has provided certain updates to me and my predecessor over the past year, the Registrar has only filed on the judicial record one update pursuant to the 2021 Instruction, which dates back to 4 January 2022 and which was not made available to the Relocated Persons as it was filed confidentially and *ex parte*;¹²

RECALLING that, in accordance with Rules 23(A) and 31(A) of the Rules, the Registrar acts under the authority and supervision of the President;

PURSUANT TO Rules 23(A) and 31(A) of the Rules;

HEREBY INSTRUCT the Registrar to:

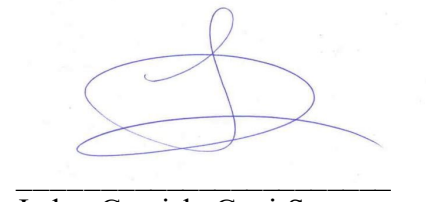
- i. continue his efforts to find a durable solution to the situation of the Relocated Persons, in accordance with paragraphs 4 and 5 of Security Council resolution 2637 (2022);
- ii. file confidentially¹³ on the judicial record, no later than 4 January 2023, an overview of the steps taken by him and the Registry of the Mechanism in 2022 in addressing the situation of the Relocated Persons;
- iii. file confidentially¹⁴ on the judicial record, every 60 days thereafter, reports on his efforts to find a solution for the Relocated Persons in line with the Mechanism's duty of care towards them; and
- iv. provide a copy of this instruction to the authorities of Niger.

¹² *In the Matter of François-Xavier Nzuwonemeye et al.*, Case Nos. MICT-13-43, MICT-14-75, & MICT-12-27, Registrar's Submission pursuant to "Instruction to the Registrar" of 30 December 2021, 4 January 2022 (confidential and *ex parte*). See also Decision of 7 February 2022, para. 9.

¹³ Should the Registrar determine that certain information is too sensitive to be shared with the Relocated Persons, such information can be appended in a confidential and *ex parte* annex.

¹⁴ Should the Registrar determine that certain information is too sensitive to be shared with the Relocated Persons, such information can be appended in a confidential and *ex parte* annex.

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

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end.

Done this 19th day of December 2022,
At Arusha,
Tanzania.

Judge Graciela Gatti Santana
President

[Seal of the Mechanism]



I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	IRMCT Registry/ <i>Greffé du MIFRTP</i>	<input checked="" type="checkbox"/> Arusha/ <i>Arusha</i>	<input type="checkbox"/> The Hague/ <i>La Haye</i>
From/ De :	<input checked="" type="checkbox"/> President / <i>Président</i>	<input type="checkbox"/> Chambers / <i>Chambre</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
	<input type="checkbox"/> Registrar / <i>Greffier</i>	<input type="checkbox"/> Other/ <i>Autre</i>	<input type="checkbox"/> Defence / <i>Défense</i>
Case Name/ Affaire :	In the matter of François-Xavier Nzuwonemeye et al.	Case Number/ Affaire n° :	MICT-22-124
Date Created/ Daté du :	19 December 2022	Date transmitted/ Transmis le :	19 December 2022
			No. of Pages/ Nombre de pages : 5
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda / <i>B/C/S</i>
			<input type="checkbox"/> Other/ <i>Autre (specify/préciser) :</i>
Title of Document/ Titre du document :	Further instruction to the Registrar		
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>
	<input type="checkbox"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i>	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>
	<input type="checkbox"/> Strictly Confidential/ <i>Strictelement confidentiel</i>	<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s) (specify/préciser) :</i>	
Document type/ Type de document :			
<input type="checkbox"/> Motion/ <i>Requête</i>	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>
<input type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>
<input checked="" type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>	

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffé prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i>)
<input type="checkbox"/> English/ <i>Anglais</i> <input checked="" type="checkbox"/> French/ <i>Français</i> <input checked="" type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre (specify/préciser) :</i>
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>
Original/ Original en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda / <i>B/C/S</i> <input type="checkbox"/> Other/ <i>Autre (specify/préciser) :</i>
Translation/ Traduction en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda / <i>B/C/S</i> <input type="checkbox"/> Other/ <i>Autre (specify/préciser) :</i>
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>
<input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre (specify/préciser) :</i>

Send completed transmission sheet to/ *Veillez soumettre cette fiche dûment remplie à :*

JudicialFilingsArusha@un.org OR/ *OU* JudicialFilingsHague@un.org

Rev: August 2019/ Rév.: Août 2019