

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-22-124

Date: 12 January 2023

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Joseph E. Chiondo Masanche

Registrar: Mr. Abubacarr M. Tambahou

Decision of: 12 January 2023

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 FOR AN ORDER
FOR SUBSISTENCE FUNDS**

Counsel for the Relocated Persons

Mr. François-Xavier Nzuwonemeye

Mr. Peter Robinson

Mr. Protais Zigiranyirazo

Mr. John Philpot

Mr. André Ntagerura

Ms. Barbara van Straaten

Mr. Alphonse Nteziryayo

Mr. Iain Edwards

Mr. Prosper Mugiraneza

Ms. Kate Gibson

Mr. Anatole Nsengiyumva

Ms. Allison Turner

Mr. Tharcisse Muvunyi

Ms. Abbe Jolles

Mr. Innocent Sagahutu

Mr. Jean Flamme

I, JOSEPH E. CHIONDO MASANCHE, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;¹

RECALLING the Decisions of 7 February 2022 and 8 March 2022, wherein, as the Duty Judge previously seised of the present matter, I found the Republic of Niger to be in breach of the relocation agreement signed with the United Nations and ordered the Registrar to continue to actively engage with Niger and other possible relocation States to ensure the respect of the fundamental rights of the eight acquitted and released persons relocated on the territory of Niger (“Relocated Persons”);²

BEING SEISED OF a motion filed on 17 November 2022, wherein Mr. Prosper Mugiraneza and Mr. François-Xavier Nzuwonemeye request an order to the Registrar to provide them with an additional lump sum payment of \$10,000 each, to cover the cost of living in Niger under house arrest while efforts continue to find a safe third State for their relocation;³

NOTING Mugiraneza’s and Nzuwonemeye’s submissions that: (i) the installation grant paid for their first year in Niger, pursuant to the Relocation Agreement, has been exhausted and they now have no independent means of earning money, being confined to their residence without official documents;⁴ and (ii) the Mechanism has an on-going duty of care towards them, given that the relocation has not occurred in accordance with the Relocation Agreement, which would reasonably extend to providing them with the means of accessing food and other basic necessities of life;⁵

BEING FURTHER SEISED OF motions in joinder filed by Mr. Protais Zigiranyirazo and Mr. André Ntagerura on 18 and 23 November 2022, respectively, and by Mr. Alphonse Nteziryayo on 13 December 2022, submitting that additional funds from the existing budget should be allocated to ensure that they have access to basic necessities, as part of the duty of care of the Mechanism;⁶

¹ See Order Assigning a Single Judge to Consider a Motion, 21 November 2022, p. 1.

² 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”), paras. 20-30; Further Decision Regarding the Relocated Persons in Niger, 8 March 2022 (“Decision of 8 March 2022”), pp. 1-4. See also 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 (“Appeal Decision of 27 May 2022”), para. 48. 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”). A detailed procedural history can be seen in the Decision of 7 February 2022. See Decision of 7 February 2022, paras. 1-19.

³ Motion for an Order for Subsistence Funds, 17 November 2022 (“Motion”), paras. 1, 4, 20, 25.

⁴ Motion, paras. 3, 4, 19.

⁵ Motion, para. 21.

⁶ Joinder by André Ntagerura to Mugiraneza and Nzuwonemeye Motion for an Order for Subsistence Funds, 23 November 2022, paras. 1-5; Protais Zigiranyirazo Joinder to Nzuwonemeye and Mugiraneza Motion for an Order for

NOTING the confidential submission filed on 28 December 2022, wherein the Registrar submits that: (i) the limited duty of care of the Mechanism, which should be understood in the context of ensuring that the life and liberty of released or acquitted persons are not at risk upon relocation, has been met and does not extend to an obligation of continued and indefinite financial assistance, unless judicially ordered or otherwise authorised;⁷ (ii) the Registry continues to engage in extensive political and diplomatic efforts to encourage the authorities of Niger to abide by the Relocation Agreement as well as to identify other third potential relocation States;⁸ and (iii) other options for additional support and funding have yet to be explored and remain outstanding;⁹

NOTING the confidential responses filed on 4 and 9 January 2023, respectively,¹⁰ wherein Mugiraneza, Nzuwonemeye, and Nteziryayo reiterate that a judicial order is necessary and submit, *inter alia*, that: (i) the Registrar recognised in the past, when the Relocated Persons were in Tanzania, that the duty of care encompasses funds for basic necessities but fails to explain why it should be less now that they are deprived of their liberty in Niger; (ii) the efforts undertaken by the Registrar to secure funding from Member States imply that an ongoing duty of care translating to financial assistance exists; and (iii) the Registrar mischaracterises the Motion as seeking continuous and indefinite assistance, while it seeks only a temporary solution pending the resolution of this matter, and misrepresents the current living conditions of the Relocated Persons in Niger;¹¹

CONSIDERING that, pursuant to Article 4 of the Relocation Agreement, the Mechanism provided each relocated person with a one-time lump payment of \$10,000 as an installation grant and accommodation for a year in Niger, and that, prior to the end of the first year following relocation, the Mechanism was expected to conduct with the authorities of Niger a joint assessment of the

Subsistence Funds, 25 November 2022 (original French version filed on 18 November 2022), para. 1; Nteziryayo Joinder to the Mugiraneza and Nzuwonemeye “Motion for an Order for Subsistence Funds”, 13 December 2022, paras. 1-3 (collectively, “Joinders”).

⁷ Registrar’s Submission in Relation to Motions for Additional Funds of 17, 18 and 23 November and 13 December 2022, 28 December 2022 (confidential, with confidential annexes) (“Registrar Submission”), paras. 14-16, 20, 21, 23 *referring to, inter alia, 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, para. 19. The Registrar indicated that the Mechanism already exceptionally renewed the lease on the furnished residence of the Relocated Persons for an additional year, pending negotiations with the authorities of Niger. *See* Registrar Submission, paras. 9, 20.

⁸ Registrar Submission, paras. 17-19. *See also* Registrar Submission, paras. 8, 11.

⁹ Registrar Submission, para. 22. The Registrar stressed that the International Committee of the Red Cross also provided assistance to the relocated persons, including in relation to medical care. *See* Registrar Submission, paras. 8, 19, 22.

¹⁰ Mugiraneza and Nzuwonemeye Request for Leave to Respond to Registrar’s Submission in Relation to Motion for Additional Funds, 4 January 2023 (confidential, with confidential annexes) (“Mugiraneza and Nzuwonemeye Response”); Nteziryayo Request for Leave to Respond to Registrar’s Submission in Relation to Motion for Additional Funds, 9 January 2023 (confidential) (“Nteziryayo Response”). I consider that it is in the interests of justice to grant Mugiraneza’s, Nzuwonemeye’s, and Nteziryayo’s requests for leave to file a response to the Registrar Submission. *See* Mugiraneza and Nzuwonemeye Response, paras. 1-3; Nteziryayo Response, para. 1.

¹¹ Mugiraneza and Nzuwonemeye Response, paras. 4-20; Nteziryayo Response, paras. 2-9.

living conditions and ability of the Relocated Persons to take care of themselves and, should the need arise, “explore possibilities of assistance with other stakeholders”;

CONSIDERING that the Registrar indicated that he met representatives of the authorities of Niger to, *inter alia*, urge them to ease restrictions imposed on the Relocated Persons and return their identity documents to allow them to receive financial remittances from their respective families and that “other options for additional support and funding have yet to be explored”;¹²

CONSIDERING that the Mechanism has the duty to ensure the welfare of acquitted or released persons pending their relocation and that, while such duty of care 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 Mechanism’s duty of care continues and should encompass financial assistance, to the extent that the Relocated Persons have not been given the opportunity to identify opportunities to support themselves in line with the original terms of the Relocation Agreement;¹³

FINDING, in light of the above, that it is appropriate to order the Registrar to provide an additional lump sum payment of \$10,000 to each relocated person, while efforts continue to find a safe third State for their relocation as well as to explore other options for additional support and funding, in order to ensure the respect of the fundamental rights of the Relocated Persons;


FOR THE FOREGOING REASONS,

GRANT the Motion and the Joinders; and

ORDER the Registry to provide an additional lump sum payment of \$10,000 to each relocated person, while efforts continue to find a safe third State for their relocation as well as to explore other options for additional support and funding.

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

Done this 12th day of January 2023,
At Arusha,
Tanzania



Judge Joseph E. Chiondo Masanche
Single Judge

[Seal of the Mechanism]

¹² See Registrar Submission, paras. 8, 19, 22.

¹³ See, e.g., Appeal Decision of 27 May 2022, para. 24. See also Decision of 7 February 2022, para. 22; Decision of 8 March 2022, p. 4.



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