

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-22-124

Date: 14 January 2022

Original: English

BEFORE THE DUTY JUDGE

Before: Judge Joseph E. Chiondo Masanche
Registrar: Mr. Abubacarr Tambadou
Order of: 14 January 2022

IN THE MATTER OF

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

PUBLIC

**FURTHER ORDER TO THE REPUBLIC OF NIGER
AND TO THE REGISTRAR**

Government of the Republic of Niger

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. Göran Sluiter
Mr. Michiel Pestman
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

1. I, Joseph E. Chiondo Masanche, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and the Duty Judge seised of this matter,¹ note the motions filed, respectively, by Mr. François-Xavier Nzuwonemeye and Mr. Prosper Mugiraneza on 29 December 2021, by Mr. Protais Zigiranyirazo, Mr. Anatole Nsengiyumva, Mr. Alphonse Nteziryayo, and Mr. André Ntagerura on 30 December 2021, by Mr. Tharcisse Muvunyi on 31 December 2021, by Mr. Innocent Sagahutu, on 1 January 2022, by Nsengiyumva on 4 January 2022, by Zigiranyirazo on 7 January 2022, and by Nteziryayo on 10 January 2022,² in relation to the relocation agreement signed on 15 November 2021 between the United Nations and the Republic of Niger (“Relocation Agreement”).³

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.

² See *Prosecutor v. François-Xavier Nzuwonemeye*, Case No. MICT-13-43, Urgent Request for an Order for Cooperation to the Government of the Republic of The Niger, 29 December 2021 (“Nzuwonemeye’s Motion”); *Prosecutor v. Prosper Mugiraneza*, Case No. MICT-14-75, Joinder to “Urgent Request for an Order for Cooperation to the Government of the Republic of The Niger”, 29 December 2021 (“Mugiraneza’s Joinder to Nzuwonemeye’s Motion”); *Prosecutor v. Anatole Nsengiyumva*, Case No. MICT-22-123, Joinder to Urgent Request for an Order for Cooperation to the Government of the Republic of The Niger, 30 December 2021 (“Nsengiyumva’s Joinder to Nzuwonemeye’s Motion”); *Prosecutor v. Alphonse Nteziryayo*, Case No. MICT-15-90, Joinder to Urgent Request for an Order for Cooperation to the Government of the Republic of The Niger, 30 December 2021 (“Nteziryayo’s Joinder to Nzuwonemeye’s Motion”); *Prosecutor v. Protais Zigiranyirazo*, Case No. MICT-12-27, Joinder to Urgent Request for an Order for Cooperation to the Government of the Republic of The Niger, 30 December 2021 (“Zigiranyirazo’s Joinder to Nzuwonemeye’s Motion”); *In the Matter of André Ntagerura*, Case No. MICT-19-119, Extremely Urgent Motion Seeking the MICT’s Intervention Regarding the Upcoming Expulsion of André Ntagerura from Niger, 30 December 2021 (confidential and *ex parte*) (“Ntagerura’s Motion”); *In the Matter of Tharcisse Muvunyi*, Case No. MICT-19-117, Emergency Intervention/Evacuation Demand, 31 December 2021 (confidential and *ex parte*; public redacted version filed on 2 January 2022) (“Muvunyi’s Motion”); *In the Matter of Innocent Sagahutu*, Case No. MICT-13-43, Request for Immediate and Urgent Evacuation, 7 January 2022 (original French version filed on 1 January 2022) (“Sagahutu’s Motion”); *In the Matter of Anatole Nsengiyumva*, Case No. MICT-22-123, Urgent Motion to Order the Cooperation of the Governments of the Members of the United Nations Security Council and to Direct the IRMCT President to Request Security Council Assistance, 4 January 2022 (“Nsengiyumva’s Motion”); *In the Matter of Protais Zigiranyirazo*, Case No. MICT-12-27, Urgent Motion by Protais Zigiranyirazo Concerning Flagrant Violations by Niger of the Mechanism Order and Related Requests [and] Motion for Habeas Corpus, 7 January 2022 (“Zigiranyirazo’s Motion”); *In the Matter of Alphonse Nteziryayo*, Case No. MICT-15-90, Alphonse Nteziryayo Joinder to “Urgent Motion by Protais Zigiranyirazo Concerning Flagrant Violations by Niger of the Mechanism Order and Related Requests [and] Motion for Habeas Corpus”, 10 January 2022 (“Nteziryayo’s Joinder to Zigiranyirazo’s Motion”). See also *In the Matter of François-Xavier Nzuwonemeye et al.*, Case Nos. MICT-13-43, MICT-14-75 & MICT-12-27, Order Assigning Motions to the Duty Judge for the Arusha Branch, 30 December 2021, p. 1; *In the Matter of André Ntagerura*, Case No. MICT-19-119, Order Assigning a Motion to the Duty Judge for the Arusha Branch, 31 December 2021 (confidential and *ex parte*), p. 1; *In the Matter of Anatole Nsengiyumva and Alphonse Nteziryayo*, Case Nos. MICT-22-123 & MICT-15-90, Order Assigning Motions to the Duty Judge for the Arusha Branch, 31 December 2021, p. 1 (collectively, “Assignment Orders”). I find that it is in the interests of justice and expediency to consider myself duly seised of related motions and joinders filed by after the issuance of the Assignment Orders, to the extent that they are intrinsically linked to the subject matter. See also *In the Matter of François-Xavier Nzuwonemeye et al.*, Case Nos. MICT-13-43, MICT-14-75, MICT-12-27, MICT-22-123, MICT-15-90, MICT-19-119, MICT-19-117 & MICT-13-43, Order to the Registrar, 14 January 2022, pp. 1, 2.

³ 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.

I. BACKGROUND

2. On 5 December 2021, pursuant to the Relocation Agreement, Nzuwonemeye, Mugiraneza, Zigiranyirazo, Nsengiyumva, Nteziryayo, Ntagerura, Muvunyi, and Sagahutu (“Relocated Persons”), who had been acquitted by the International Criminal Tribunal for Rwanda (“ICTR”) or released having served their sentences, were relocated to Niger.⁴

3. On 13 December 2021, the President of the Mechanism reported to the United Nations Security Council on the relocation to Niger of eight of the nine individuals who had been acquitted or released from custody by the ICTR or the Mechanism and were in the Mechanism’s care at the Arusha branch.⁵ Before the Security Council, chaired by Niger as the President, the President of the Mechanism highlighted a “major breakthrough” in the situation relating to the nine acquitted or released persons living in a safe house in Arusha, United Republic of Tanzania, thanks to the “exemplary cooperation” of Niger, which culminated in the signing of a “milestone agreement” through which Niger “has accepted for relocation on its territory all nine persons acquitted or released.”⁶ In response, Niger’s delegate, as President of the Security Council, speaking in his national capacity, welcomed the signing of the Relocation Agreement and called on the Security Council, in coordination with the General Assembly, “to allocate sufficient resources to enable [the Mechanism] to fulfil its mission.”⁷

4. On 27 December 2021, the authorities of Niger issued an order requiring, for diplomatic reasons, that the Relocated Persons leave the territory of Niger within seven days of notification of this order (“Expulsion Order”).⁸

5. On 29 December 2021, Nzuwonemeye filed a motion seeking an order from the Mechanism to Niger, pursuant to Article 28 of the Statute of the Mechanism, to permit his continued presence on the territory of Niger until the Mechanism has made arrangements for his relocation to another

⁴ See, e.g., *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 (“President’s Order of 30 December 2021”), p. 1; *In the Matter of François-Xavier Nzuwonemeye et al.*, Case Nos. MICT-13-43, MICT-14-75, MICT-12-27, MICT-22-123, 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 (“Order of 31 December 2021”), p. 1.

⁵ See Security Council, 8927th Meeting S/PV.8927, 13 December 2021 (“Record of the Security Council Meeting”). See also *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.

⁶ See Record of the Security Council Meeting, pp. 3, 4.

⁷ See Record of the Security Council Meeting, p. 3.

⁸ See, e.g., Order of 31 December 2021, p. 1; Nzuwonemeye’s Motion, para. 5, Annex A, Registry Pagination (“RP.”) 350, 349.

safe State or until the Expulsion Order is reversed.⁹ Mugiraneza, Zigiranyirazo, Nsengiyumva, and Nteziryayo filed motions in joinder on 29 and 30 December 2021, respectively.¹⁰

6. On 30 December 2021, Ntagerura filed a confidential and *ex parte* motion requesting, *inter alia*, that the Mechanism issue an order to Niger not to expel him to any country and provide him with the necessary assistance to be relocated to a safe country or back to Tanzania or the Kingdom of the Netherlands, as host States of the Mechanism.¹¹

7. On 30 December 2021, the President of the Mechanism, noting that the Expulsion Order appears to be in violation of both the spirit and letter of the Relocation Agreement, instructed the Registrar to continue to engage with Niger and to take all necessary actions to ensure that the Expulsion Order does not cause any prejudice to the fundamental rights of the Relocated Persons.¹²

8. On 31 December 2021, I issued an order stating, *inter alia*, that the Expulsion Order may be in breach of the Relocation Agreement and ordering the stay of the execution of the Expulsion Order pending the final adjudication of the matter.¹³ I further invited Niger to provide within 30 days, in line with Article 11 of the Relocation Agreement, written submissions regarding the validity of the Expulsion Order and its compliance with the Relocation Agreement.¹⁴

9. On 31 December 2021 and 1 January 2022, respectively, Muvunyi and Sagahutu filed motions requesting to be immediately evacuated from Niger and relocated to a safe country.¹⁵

10. On 4 January 2022, Nsengiyumva filed a motion requesting that the States with seats on the Security Council be ordered, pursuant to Article 28 of the Statute, to decide on an urgent basis which safe State will “promptly and sustainably” relocate him to its territory.¹⁶

11. On 4 January 2022, the Registrar filed a confidential and *ex parte* submission indicating that he was informed, by a *note verbale* dated 4 January 2022, that the Government of Niger has decided

⁹ See Nzuwonemeye’s Motion, paras. 6, 8-12.

¹⁰ See Mugiraneza’s Joinder to Nzuwonemeye’s Motion, para. 1; Nsengiyumva’s Joinder to Nzuwonemeye’s Motion, para. 1; Nteziryayo’s Joinder to Nzuwonemeye’s Motion, para. 1; Zigiranyirazo’s Joinder to Nzuwonemeye’s Motion, para. 1.

¹¹ Ntagerura’s Motion, paras. 1, 6-31, p. 9.

¹² President’s Order of 30 December 2021, p. 2.

¹³ Order of 31 December 2021, pp. 2, 3.

¹⁴ Order of 31 December 2021, pp. 2, 3.

¹⁵ See Muvunyi’s Motion, para. 7; Sagahutu’s Motion, para. 8.

¹⁶ See Nsengiyumva’s Motion, paras. 9, 25, 27, 28.

to grant an additional 30 days to the Relocated Persons to leave the territory of Niger in order to allow the Mechanism to find another relocation country.¹⁷

12. On 7 January 2022, Zigiranyirazo filed a motion, wherein he submits that his fundamental rights have been violated and requests that the Relocation Agreement applies fully pending final adjudication,¹⁸ and in particular that: (i) Niger cease his detention, restore seized identity documents, and ensure his freedom of movement;¹⁹ (ii) Niger provide a written commitment that it will respect the Order of 31 December 2021;²⁰ and (iii) the Registrar or his representative travel to Niger immediately and remain present until final resolution of the matter.²¹ Nteziryayo filed a motion in joinder on 10 January 2022²² stressing, amongst other, that the suspension by Niger of the Expulsion Order for a period of 30 days does not equate to a stay until final adjudication of this matter, in the sense of the Order of 31 December 2021.²³

II. DISCUSSION

13. Article 28 of the Statute mandates that States shall cooperate with the Mechanism and comply without undue delay with any order issued by a Judge or Chamber. Security Council Resolution 1966, adopted under Chapter VII of the United Nations Charter on 22 December 2010, requires that all States comply with such orders²⁴ and the United Nations Security Council has on several occasions called upon all States to cooperate with and render all necessary assistance to the Mechanism in relation to the relocation of acquitted and released persons.²⁵ The Mechanism further

¹⁷ *In the Matter of François-Xavier Nzuwonemeye et al.*, Case Nos. MICT-13-43, 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) ("Registrar's Submission of 4 January 2022"), para. 5, Annex, RP. 383. *See also 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*, with confidential and *ex parte* Annex), para. 4, Annex, RP. 286.

¹⁸ Zigiranyirazo's Motion, paras. 2, 19, 21, 24.

¹⁹ Zigiranyirazo's Motion, paras. 11, 28. *See also* Zigiranyirazo's Motion, paras. 3, 4 (indicating that, since 27 December 2021, he and the other Relocated Persons have been under house arrest in Niger, with armed guards preventing them from leaving, and that their residence permits have been confiscated).

²⁰ Zigiranyirazo's Motion, paras. 15, 28.

²¹ Zigiranyirazo's Motion, paras. 16, 22, 28.

²² Nteziryayo's Joinder to Zigiranyirazo's Motion, paras. 1, 6, 8 (requesting an order to Niger to cease his detention, to return his residence permit and any other seized identity documents, to allow his freedom of movement, and to provide a written undertaking that it will respect the Order of 31 December 2021).

²³ *See* Nteziryayo's Joinder to Zigiranyirazo's Motion, para. 7.

²⁴ *See* Security Council Resolution, S/RES/1966 (2010), Article 9. *See also, e.g., Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay, 31 January 2017, para. 16.

²⁵ *See, e.g.,* Security Council Resolution, S/RES/2422 (2018), para. 3; Security Council Resolution, S/RES/2529 (2020), para. 4.

has a duty to ensure the welfare of the acquitted persons and to enquire whether their life or liberty would be at risk upon relocation.²⁶ I am therefore properly seized of the matter before me.

14. As a preliminary matter, I recall that, in my Order of 31 December 2021, I ordered Niger, pursuant to Article 28 of the Statute and Rule 55 of the Rules of Procedure and Evidence (“Rules”), to stay the execution of the Expulsion Order and to allow the Relocated Persons to remain on the territory of Niger *in accordance with the terms of the Relocation Agreement*,²⁷ which entered into force on 15 November 2021.²⁸ I emphasize that such order to stay the Expulsion Order shall apply until final adjudication of the dispute concerning the compliance of Niger with the binding Relocation Agreement²⁹ and shall not be limited to a period of 30 days to allow the Mechanism to find another host country for the Relocated Persons, as suggested in the *note verbale* received from Niger on 4 January 2022.³⁰

A. Residence and Freedom of Movement in Niger

15. The Relocated Persons, who received residence permits upon arrival in Niger, reportedly had their identity documents confiscated by the authorities of Niger and have been placed upon house arrest, with armed guards posted outside their residence, since at least 27 December 2021.³¹ Ntagerura, Zigiranyirazo, and Nteziryayo submit that this constitutes violations of the Relocation Agreement and request that the Mechanism urgently intervenes to ensure that Niger respects its obligations.³² Zigiranyirazo and Nteziryayo further submit that the Registrar, being responsible for the resolution of the present dispute and for the respect of the Order of 31 December 2021, should travel to Niger or send a representative to actively protect their rights.³³

16. The Relocation Agreement entered into force on 15 November 2021³⁴ and sets out the general conditions under which the relocation of the released or acquitted persons, whom Niger has accepted on its territory, shall be executed.³⁵ The Relocation Agreement notably provides that Niger shall grant the Relocated Persons permanent residence status and other relevant associated

²⁶ Ntagerura Decision of 18 November 2008, para. 19.

²⁷ Order of 31 December 2021, pp. 2, 3.

²⁸ Relocation Agreement, Article 9, p. 7.

²⁹ Order of 31 December 2021, pp. 2, 3.

³⁰ See Registrar’s Submission of 4 January 2022, Annex, RP. 383.

³¹ See, e.g., Ntagerura’s Motion, paras. 13-15; Muvunyi’s Motion, para. 4; Sagahutu’s Motion, para. 2; Nsengiyumva’s Motion, para. 7; Zigiranyirazo’s Motion, paras. 3, 4, 6, 7, Annex, RP. 292; Nteziryayo’s Joinder to Zigiranyirazo’s Motion, para. 5.

³² See Ntagerura’s Motion, paras. 16, 30, 31, p. 9; Zigiranyirazo’s Motion, paras. 2, 11, 28; Nteziryayo’s Joinder to Zigiranyirazo’s Motion, paras. 5, 6.

³³ Zigiranyirazo’s Motion, paras. 16-24, 28; Nteziryayo’s Joinder to Zigiranyirazo’s Motion, para. 1.

³⁴ Relocation Agreement, Article 9, p. 7.

³⁵ Relocation Agreement, p. 2.

identification documents within three months of their relocation.³⁶ It further provides that Niger shall take all necessary measures to ensure the efficient execution of the Relocation Agreement,³⁷ that the parties shall designate focal points for its practical implementation,³⁸ and that any dispute, controversy, or claim shall be settled by negotiation or a mutually agreed mode of settlement.³⁹

17. I reiterate that Niger shall continue to execute and apply all dispositions of the Relocation Agreement, in full compliance with their letter and spirit, and to ensure the safety and welfare of the Relocated Persons pending final adjudication of the matter.⁴⁰ In particular, Niger should ensure that the Relocated Persons have their identification documents returned and enjoy freedom of movement on its territory, in accordance with Article 5 of the Relocation Agreement, until this dispute is resolved.

18. The Registrar shall also continue to actively engage with the authorities of Niger to ensure the respect of the fundamental rights of the Relocated Persons, as ordered by the President of the Mechanism,⁴¹ including in relation to their freedom of movement onto the territory of Niger and to the provision of identification documents. This may, if needed, require the presence of a United Nations official on the ground to assist and be a liaison for the Relocated Persons during this dispute. The Registrar should designate a contact on the ground in Niger or if appropriate at the Arusha Branch for the Relocated Persons to contact in case of an emergency. This order may be revisited to issue a mandate of a presence in Niger if necessary.

B. Requests for Immediate Evacuation and Relocation

19. Ntagerura, Sagahutu, Muvunyi, and Nsengiyumva further request to be immediately evacuated from Niger and/or relocated to another safe country or a country of their choice.⁴² As recalled above, the Expulsion Order has been stayed and the Relocated Persons shall be entitled to remain on the territory of Niger pending the final adjudication of the matter, in accordance with the terms of the Relocation Agreement⁴³ and in full compliance with their letter and spirit.

³⁶ Relocation Agreement, Article 5.

³⁷ Relocation Agreement, Article 8(1).

³⁸ Relocation Agreement, Article 8(2).

³⁹ Relocation Agreement, Article 11.

⁴⁰ See Order of 31 December 2021, pp. 2, 3. In view of its obligations to the United Nations Security Council, I do not find it necessary to order Niger to provide written guarantees. See Zigiranyirazo's Motion, paras. 15, 28; Nteziryayo's Joinder to Zigiranyirazo's Motion, para. 8.

⁴¹ President's Order of 30 December 2021, p. 2.

⁴² See Ntagerura's Motion, paras. 6, 30, p. 9; Muvunyi's Motion, para. 7; Sagahutu's Motion, para. 8 (expressing his preference to be relocated in Denmark); Nsengiyumva's Motion, paras. 9, 25, 27, 28.

⁴³ See Order of 31 December 2021, pp. 2, 3.

20. Accordingly, I find that there is no basis, at this stage, to order the immediate evacuation of the Relocated Persons from Niger and/or their relocation to another country. Likewise, I do not find it necessary to address contentions regarding potential violations of Article 7(1) of the Statute and Article 7 of the Relocation Agreement, according to which the Relocated Persons shall not be extradited in breach of the *non bis in idem* principle.⁴⁴

21. I therefore dismiss these requests as premature, without prejudice.

III. DISPOSITION

22. For the foregoing reasons, pursuant to Article 28 of the Statute and Rule 55 of the Rules, I hereby:

REITERATE that the order to stay the Expulsion Order should apply until final adjudication of the dispute concerning Niger's compliance with the Relocation Agreement;

FIND that Niger should adhere to the rule of law in relation to the Relocated Persons and ensure their fundamental human rights;

ORDER Niger to continue to execute and apply all dispositions of the Relocation Agreement, in full compliance with their letter and spirit, and to ensure the safety and welfare of the Relocated Persons pending final adjudication of the matter;

ORDER Niger to ensure that the Relocated Persons have their identification documents returned and enjoy freedom of movement on its territory, in accordance with Article 5 of the Relocation Agreement, pending final adjudication of the matter;

INSTRUCT the Registrar to continue to actively engage with the authorities of Niger to ensure the respect of the fundamental rights of the Relocated Persons, including in relation to their freedom of movement onto the territory of Niger and to the provision of identification documents;

AWAIT Niger's submissions on the expulsion of the Relocated Persons;

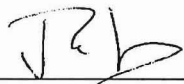
DISMISS the requests for immediate evacuation and relocation as premature, without prejudice; and

REMAIN SEISED of the matter.

⁴⁴ See Ntagerura's Motion, paras. 3, 20-23; Zigiranyirazo's Motion, para. 26.

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

Done this 14th day of January 2022,
At Arusha,
Tanzania



Judge Joseph E. Chiondo Masanche
Duty Judge

[Seal of the Mechanism]



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☐ English/ *Anglais* ☐ French/ *Français* ☐ Kinyarwanda ☐ B/C/S ☐ Other/ *Autre* (specify/ *préciser*) :