

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case Nos.: MICT-13-43
MICT-14-75
MICT-12-27
MICT-12-26
MICT-15-90
MICT-19-119

Date: 31 December 2021

Original: English

BEFORE THE DUTY JUDGE

Before: Judge Joseph E. Chiondo Masanche
Registrar: Mr. Abubacarr Tambadou
Order of: 31 December 2021

IN THE MATTER OF

**FRANÇOIS-XAVIER NZUWONEMEYE
PROSPER MUGIRANEZA
PROTAIS ZIGIRANYIRAZO
ANATOLE NSENGIYUMVA
ALPHONSE NTEZIRYAYO
ANDRÉ NTAGERURA**

PUBLIC

**ORDER TO THE REPUBLIC OF NIGER TO STAY
THE EXPULSION ORDER OF RELOCATED PERSONS
AND ORDER FOR SUBMISSIONS**

Government of the Republic of Niger

Counsel for Mr. Protais Zigiranyirazo
Mr. John Philpot

Counsel for Mr. André Ntagerura
Ms. Barbara van Straaten
Mr. Göran Sluiter
Mr. Michiel Pestman

Counsel for Mr. Francois-Xavier Nzuwonemeye
Mr. Peter Robinson

Counsel for Mr. Prosper Mugiraneza
Ms. Kate Gibson

Mr. Anatole Nsengiyumva

Mr. Alphonse Nteziryayo

I, JOSEPH E. CHIONDO MASANCHE, Duty Judge for the Arusha Branch of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) for the month of December 2021 and assigned to this case;¹

NOTING that Mr. François-Xavier Nzuwonemeye, Mr. Prosper Mugiraneza, Mr. Protais Zigiranyirazo, Mr. Anatole Nsengiyumva, Mr. Alphonse Nteziryayo, Mr. Tharcisse Muvunyi, Mr. André Ntagerura, and Mr. Innocent Sagahutu, who were acquitted by the International Criminal Tribunal for Rwanda or released having served their sentences, were relocated to the Republic of Niger on 5 December 2021 pursuant to an agreement signed on 15 November 2021 between the Mechanism and Niger (“Relocated Persons” and “Relocation Agreement”, respectively);²

NOTING the expulsion order issued by the authorities of Niger on 27 December 2021, requiring, for diplomatic reasons, that the Relocated Persons leave the territory of Niger within seven days of notification of this order (“Expulsion Order”);³

BEING SEISED of a motion filed by Nzuwonemeye on 29 December 2021 seeking an order from the Mechanism to Niger, pursuant to Article 28 of the Statute of the Mechanism, to permit the continued presence of Nzuwonemeye on its territory until the Registrar of the Mechanism has made arrangements for his relocation to another safe State or until the Expulsion Order is reversed;⁴

BEING FURTHER SEISED of motions in joinder filed by Mugiraneza on 29 December 2021 and by Zigiranyirazo, Nsengiyumva, and Nteziryayo on 30 December 2021;⁵

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; *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-12-26 & MICT-15-90, Order Assigning Motions to the Duty Judge for the Arusha Branch, 31 December 2021, p. 1.

² 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. See also *Prosecutor v. François-Xavier Nzuwonemeye*, Case No. MICT-13-43, Urgent Request for an Order for Cooperation to the Government of the Republic of Niger, 29 December 2021 (“Nzuwonemeye’s Motion”), paras. 3, 4.

³ See Nzuwonemeye’s Motion, para. 5, Annex A, Registry Pagination 350, 349.

⁴ See Nzuwonemeye’s Motion, paras. 6, 8-12.

⁵ *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 Niger”, 29 December 2021, para. 1; *Prosecutor v. Anatole Nsengiyumva*, Case No. MICT-12-26, Joinder to Urgent Request for an Order for Cooperation to the Government of the Republic of Niger, 30 December 2021, para. 1; *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 Niger, 30 December 2021, para. 1; *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 Niger, 30 December 2021, para. 1.

BEING FURTHER SEISED of a confidential and *ex parte* motion filed by Ntagerura on 30 December 2021, wherein he requests 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;⁶

RECALLING that, pursuant to Article 28 of the Statute of the Mechanism, States shall cooperate with the Mechanism and comply without undue delay with any order issued by a Judge or Chamber;

NOTING that, pursuant to the Relocation Agreement signed with the Mechanism and entered into force on 15 November 2021,⁷ Niger has accepted the relocation within its territory of the Relocated Persons⁸ and committed to granting them permanent residence status;⁹

NOTING FURTHER that the Relocation Agreement envisaged that the Relocated Persons stay in Niger for at least one year following relocation, with financial assistance from the Mechanism;¹⁰

CONSIDERING that the Expulsion Order may be in breach of the Relocation Agreement¹¹ and that it is necessary to order the stay of the execution of the Expulsion Order pending the adjudication of the present matter;

CONSIDERING that the Relocation Agreement provides that any dispute, controversy, or claim relating to it shall be settled by negotiation or a mutually agreed mode of settlement,¹² and that it is appropriate to give the Government of Niger an opportunity to be heard, prior to the issuance of any decision pursuant to Article 28 of the Statute of the Mechanism, in relation to the validity of the Expulsion Order and its compliance with the Relocation Agreement;

FINDING, in light of the above, that it is in the interests of justice to order Niger, pursuant to Article 28 of the Statute of the Mechanism, to stay the execution of the Expulsion Order and to allow the Relocated Persons to remain on its territory until final adjudication of the present matter, and to invite submissions from Niger and from the Registrar;

⁶ *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*), paras. 1, 6-31, p. 9.

⁷ Relocation Agreement, Article 9, p. 7.

⁸ Relocation Agreement, p. 2, Article 1.

⁹ Relocation Agreement, Article 5.

¹⁰ Relocation Agreement, Article 4.

¹¹ *See also 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 (wherein the President of the Mechanism notes that “the Expulsion Order appears to be in violation of both the spirit and letter of the [Relocation] Agreement” and instructs the Registrar to continue to engage with the authorities of Niger and take all necessary actions in order to ensure that the Expulsion Order does not cause any prejudice to the fundamental rights of the Relocated Persons).

¹² Relocation Agreement, Article 11.

FINDING FURTHER that the present Order shall have equal effect for all the Relocated Persons, including Muvunyi and Sagahutu;

FOR THE FOREGOING REASONS,

PURSUANT TO Article 28 of the Statute and Rules 31(B) and 55 of the Rules of Procedure and Evidence of the Mechanism,

HEREBY INSTRUCT the Registry to serve the present Order on Niger;

INVITE the Government of Niger to provide, within 30 days of service of the present Order, written submissions regarding the validity of the Expulsion Order and its compliance with the Relocation Agreement;

ORDER 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 this matter;

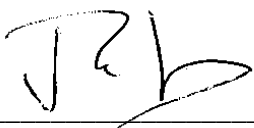
INSTRUCT the Registry to serve the present Order on all the Relocated Persons, including Muvunyi and Sagahutu, and on all counsel recognised as currently representing them;

INSTRUCT the Registrar to file submissions, within 30 days of the present Order; and

REMAIN SEISED of the matter.

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

Done this 31st day of December 2021,
At Arusha,
Tanzania



Judge Joseph E. Chiondo Masanche
Duty Judge

[Seal of the Mechanism]



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