

UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

Case No : MICT-22-124

BEFORE THE SINGLE JUDGE

Before: Judge Joseph E. Chiondo Masanche
Registrar: Abubacarr Tambadou
Motion of: 28 January 2022

IN THE MATTER OF

**François-Xavier Nzuwonemeye
Prosper Mugiraneza
Protais Zigiranyirazo
Anatole Nsengiyumva
Alphonse Nteziryayo
André Ntagerura
Tharcisse Muvunyi
Innocent Sagahutu**

Public

EXTREMELY URGENT MOTION FOR EMERGENCY EVACUATION AND RELOCATION

Government of the Republic of Niger

Counsel for Relocated Persons

Mr. François-Xavier Nzuwonemeye

Mr. Peter Robinson

Prosper Mugiraneza

Ms. Kate Gibson

Mr. Protais Zigiranyirazo

Mr. John Philpot

Mr. Anatole Nsengiyumva

Ms. Allison Turner

Mr. Tharcisse Muvunyi

Ms. Abbe Jolles

Mr. Alphonse Nteziryayo

Mr. Iain Edwards

Mr. André Ntagerura

Ms. Barbara van Straaten

1. The IRMCT (“ICTR/IRMCT”) and the United Nations are responsible for ensuring the safety and welfare of Anatole Nsengiyumva, inquiring whether his life or liberty would be at risk upon relocation, and for his transfer from quarters under surveillance in Arusha, Tanzania to Niamey on 5-6 December 2021 with 7 others similarly situated pursuant to the Relocation Agreement.¹ The 8 men are acquitted or released persons the ICTR/IRMCT did not relocate to a Safe State for many years.
2. Since 23 December 2021 Niger is in violation of the Relocation Agreement for taking back the identification card it issue Mr. Nsengiyumva, an indigent refugee, and dispatching armed policemen to place him and the other men under house arrest. On 27 December Niger ordered the 8 men expelled by 3 January 2022 for “diplomatic reasons” (Order #1258) and the Registrar was informed that Niger stayed execution of #1258 by 30 days or until 2 February 2022, i.e. five (5) days from the date of filing of this Emergency Motion.²
3. Since 31 December 2021 Niger has not complied with the IRMCT Orders to ensure Mr. Nsengiyumva’s security and freedom of movement.³
4. Mr. Nsengiyumva is forcibly confined under house arrest with the 7 other men and in imminent danger of being sent to Rwanda and yet despite his repeated requests no one – not the IRMCT President, not the IRMCT Registrar nor any other IRMCT official, nor any official or other representative from the UN – has assured, ensured, confirmed, and/or guaranteed his security and/or that he will not be sent to Rwanda (Strictly Confidential and Ex Parte Annex A).

¹ 14 January 2022 Further Order citing Ntagerura Decision of 18 November 2008.

² 14 January 2022 Further Order citing Ntagerura Decision of 18 November 2008.

² 14 January 2022 Further Order citing Ntagerura Decision of 18 November 2008.

³ *Order to the Republic of Niger to Stay the Expulsion Order of Relocated Persons and Order for Submissions*, 31

³ *Order to the Republic of Niger to Stay the Expulsion Order of Relocated Persons and Order for Submissions*, 31 December 2021 and *Further Order to the Republic of Niger and to the Registrar*, 14 January 2022.

5. In January 2021, the Registrar met with Mr Nsengiyumva and the other men to present relocation possibilities: countries of choice, other countries, and sending them to Rwanda. Mr Nsengiyumva immediately objected to what he heard and told the Registrar not to consider sending him to Rwanda under any circumstances whatsoever.
6. *Avocats sans frontières Canada* (ASFC) recalled in a letter to Niger of 17 January 2022 (copying IRMCT Registrar, UN Under-Secretary-General for Legal Affairs and Legal Counsel, and Canada's Justice Minister) that as party to the UN *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* it could not expel a person to a country where the risk of torture exists (**Public** Annex B); U.S. State Department Human Rights country reports confirm that risk exists in Rwanda.⁴
7. Order #1258 is to be executed in five (5) days (or less), the Registrar has not assured or guaranteed Mr. Nsengiyumva's security, the Registrar has not agreed not to send him to Rwanda, the Registrar has not confirmed the existence of a plan to relocate him to a Safe State, and it is imperative that Mr. Nsengiyumva not be sent to Rwanda where it is highly foreseeable that he will be tortured and killed.
8. The IRMCT and the UN must ensure and guarantee Mr. Nsengiyumva's security, that he will not be sent to Rwanda, and they must urgently and immediately evacuate him from Niamey to a Safe State.
9. Mr. Nsengiyumva requests the Single Judge on emergency basis to order the Registrar and the President to urgently and immediately:

⁴ UN Convention No. 24841. The United States 2020 Human Rights Report for Rwanda qualified « torture by the government » as a « significant human rights issue », p.2-5. 28 January 2022 (accessed : <https://www.state.gov/wp-content/uploads/2021/03/RWANDA-2020-HUMAN-RIGHTS-REPORT.pdf>)

- Ensure and guarantee Mr. Nsengiyumva will not be sent to Rwanda;
- Ensure and guarantee the IRMCT will not permit or facilitate the transfer of Mr. Nsengiyumva to Rwanda;
- Take all necessary steps for Mr. Nsengiyumva's immediate evacuation to a Safe State;
- Ensure and guarantee Mr. Nsengiyumva's welfare and security; and,
- Ensure and guarantee an IRMCT official will immediately be dispatched to Niamey to ensure Mr. Nsengiyumva's security until his evacuation and relocation to a Safe State.

10. Mr. Nsengiyumva further requests the Single Judge on emergency basis to order the United Nations to urgently and immediately:

- Ensure and guarantee Mr. Nsengiyumva will not be sent to Rwanda;
- Ensure and guarantee the United Nations will not permit or facilitate the transfer of Mr. Nsengiyumva to Rwanda;
- Take all necessary steps for Mr. Nsengiyumva's immediate evacuation;
- Ensure and guarantee Mr. Nsengiyumva's welfare and security.

11. Article 28(2) of the IRMCT Statute requires States to “comply without undue delay” with any request or order issued by a Single Judge, and gives a non-exhaustive list of areas of cooperation; the 15 members of the UN Security Council have been informed that Mr. Nsengiyumva's life is in imminent danger they have been requested to fully and immediately cooperate with the IRMCT to ensure his “urgent and immediate evacuation from Niger and his safe relocation.” (**Public Annex C**).

12. All States are obligated to cooperate with the IRMCT and the IRMCT President or Single Judge is empowered to invoke Article 28 to ensure that Mr. Nsengiyumva is not sent to Rwanda and to ensure his immediate relocation to a Safe State.⁵

⁵ *Prosecutor v. Ngirabatware*, 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.

13. The Single Judge is therefore respectfully requested to:

ORDER the IRMCT Registrar and President to immediately ensure and guarantee that Anatole Nsengiyumva will not be sent to Rwanda, to immediately ensure and guarantee Mr. Nsengiyumva's security, and to immediately ensure and guarantee that Mr. Nsengiyumva is urgently and immediately evacuated and relocated to a Safe State;

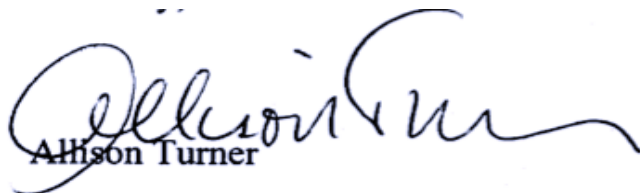
ORDER the United Nations to immediately ensure and guarantee that Anatole Nsengiyumva will not be sent to Rwanda, to immediately ensure and guarantee Mr. Nsengiyumva's security, and to immediately ensure and guarantee that Mr. Nsengiyumva is urgently and immediately evacuated and relocated to a Safe State;

And,

ORDER the Governments of Albania, Brazil, China, France, Gabon, Ghana, India, Ireland, Kenya, Mexico, Norway, Russian Federation, United Arab Emirates, the United Kingdom, and the United States to fully and immediately cooperate with the IRMCT pursuant to Article 28 of the IRMCT Statute to immediately ensure and guarantee that Anatole Nsengiyumva will not be sent to Rwanda, to immediately ensure and guarantee Mr. Nsengiyumva's security, and to immediately ensure and guarantee that Mr. Nsengiyumva is urgently and immediately evacuated and relocated to a Safe State;

Word Count: 1075 words

Respectfully submitted,



Allison Turner

Counsel for Anatole NSENGIYUMVA



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