

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No: MICT-22-124

Date: 29 January 2021

Original: English

BEFORE THE SINGLE JUDGE

Before: Judge Joseph E. Chiondo Masanche

Registrar: Mr Abubacarr Tambadou

IN THE MATTER OF

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

Public

**MOTION TO REPORT THE GOVERNMENT OF THE NIGER
TO THE UNITED NATIONS SECURITY COUNCIL
AND FOR AN ORAL HEARING**

Counsel for the Applicant Nzuwonemeye

Peter Robinson

Government of The Republic of The Niger

Counsel for the Other Relocated Persons

Kate Gibson for Prosper Mugiraneza

John Philpot for Protais Zigiranyirazo

Allison Turner for Anatole Nsengiyumva

Iain Edwards for Alphonse Nteziryayo

Barbara van Straaten for Andre Ntagerura

Abbe Jolles for Tharcisse Muvunyi

Jean Flamme for Innocent Sagahutu

Introduction

1. Francois-Xavier Nzuwonemeye hereby moves, pursuant to Rule 8(a) of the Rules of Procedure and Evidence, that the Single Judge request the President of the Mechanism to report to the United Nations Security Council that the Government of the Republic of The Niger (“Niger”) has failed to comply with its obligations under Article 28 of the Statute by failing to ensure his fundamental human rights, failing to comply with its obligations under the Relocation Agreement, failure to return his identification documents, refusing to allow him freedom of movement, and failing to extend the stay of the expulsion order, as ordered in the *Further Order to the Republic of Niger and to the Registrar* (14 January 2022).

2. Major Nzuwonemeye requests that an oral hearing be scheduled on this motion to give Niger a full opportunity to be heard before a report of its non-compliance is made to the United Nations Security Council, and that the Registrar be ordered to take all steps necessary to ensure that Major Nzuwonemeye be present at such a hearing.

Procedural History

3. Major Francois-Xavier Nzuwonemeye was acquitted by the International Criminal Tribunal for Rwanda (“ICTR”) on 11 February 2014, after spending 14 years in detention.¹

4. Following his acquittal, Major Nzuwonemeye was released to live in a safe house in Tanzania with the financial and diplomatic assistance of the ICTR, and later the Residual Mechanism. Since then, he has been engaged in a years-long effort to reunite with his family, who are citizens and residents of France.²

5. On 18 November 2021, Major Nzuwonemeye was informed for the first time about his possible relocation to Niger pursuant to an agreement between the Government of Niger and the Mechanism (“Relocation Agreement”) entered into three days earlier. In the agreement, Niger accepted to relocate him within its territory and committed to granting him residence documents and permanent residence status.³

6. Major Nzuwonemeye agreed to the terms of the relocation. On 5 December 2021, he was transferred to Niger by the Mechanism along with seven other acquitted or released persons.

¹ *Ndindiliyimana v Prosecutor*, No. ICTR-00-56-A, *Judgement* (11 February 2014)

² See *Prosecutor v. Nzuwonemeye*, MICT-13-43, *Decision on the Appeal of the Single Judge’s Decision of 22 October 2018* (17 April 2019).

³ *In the Matter of Nzuwonemeye et al*, MICT-13-43, *Order to the Republic of Niger to Stay the Expulsion Order of Relocated Persons and Order for Submissions* (31 December 2021), p. 2

7. Upon his arrival, he was provided with an identity document by the government of Niger. However, the government subsequently requested that he return that document, telling him that corrections needed to be made to it.

8. On 22 December 2021, the Government of Niger posted armed policemen at the residence where he and the other acquitted or released persons were living and prevented them from leaving the residence.

9. On 27 December 2021, Major Nzuwonemeye was served with a “definitive expulsion order” issued by the authorities of Niger, formally requiring he and the other seven acquitted and released persons to leave the territory of Niger within 7 days, on or before 3 January 2022 for “diplomatic reasons”.⁴

10. On 29 December 2021, Major Nzuwonemeye filed his *Urgent Request for an Order of Cooperation to the Government of the Republic of The Niger* (29 December 2021) in case no. MICT-13-43. He requested that the government of Niger be ordered to permit his continued presence on its territory until the Mechanism’s Registrar has arranged for his relocation to another safe State, or the Expulsion Order is reversed.

11. On 30 December 2021, the President assigned the request to Judge Joseph Masanche.⁵ On that same day, the President, noting that the expulsion order appeared to be in violation of both the spirit and letter of the Relocation Agreement, issued an instruction to the Registrar to, *inter alia*, engage with the Government of Niger and to “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.”⁶

12. On 31 December 2021, Judge Joseph Masanche ordered 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 the matter. Niger was further ordered to file written submissions within 30 days.⁷

13. On 4 January 2022, the Registrar filed a confidential and *ex parte* submission to the Single Judge indicating that he was informed, by a note verbale dated 4 January 2022, that the Government of Niger had decided to grant an additional 30 days to the Relocated

⁴ Arrêt 001258 – MI/D/DOPN/DS du 27 décembre 2021 portant expulsion définitive du territoire de la République du Niger de huit (08) ressortissants rwandais (“Expulsion Order”). This document was Annex A to his *Urgent Request for an Order of Cooperation to the Government of the Republic of The Niger* (29 December 2021) filed in MICT-13-43.

⁵ *In the Matter of Nzuwonemeye et al*, MICT-13-43, *Order Assigning Motions to the Duty Judge of the Arusha Branch* (30 December 2021).

⁶ *In the Matter of Nzuwonemeye et al*, MICT-13-43, *Instruction to the Registrar* (30 December 2021).

⁷ *In the Matter of Nzuwonemeye et al*, MICT-13-43, *Order to the Republic of Niger to Stay the Expulsion Order of Relocated Persons and Order for Submissions* (31 December 2021)

Persons to leave the territory of Niger in order to allow the Mechanism to find another relocation country.⁸

14. On 14 January 2021, Judge Masanche, after having been informed that Niger had placed the acquitted and released persons under house arrest since 22 December 2021 and had not returned their identification documents,⁹ issued another order to Niger. He ordered 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” and “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.” He further indicated that Niger was obligated not to limit its stay of the expulsion order to 30 days, but until final resolution of the dispute.¹⁰

15. On 25 January 2022, the courts of Niger dismissed an application brought by the acquitted and released persons for restoration of their freedom of movement and identification documents, finding the application to be moot in light of Judge Masanche’s *Further Order*.¹¹

16. As of the date of the filing of this motion, Major Nzuwonemeye and his fellow acquitted and released persons have not been able to leave their house since 22 December 2021 and have not had their identification documents returned to them. Niger has not extended the stay on its expulsion order past 30 days, which expire on 2 February 2022.¹²

17. Since the expulsion order was issued, the Registrar has been working hard to find another State to receive Major Nzuwonemeye and his fellow acquitted and released persons. As of the date of the filing of this motion, no State appears to have been found.

18. Major Nzuwonemeye fears that he will be expelled to Rwanda when the stay of the expulsion order expires on 2 February 2022. He has a genuine fear of persecution in Rwanda as a result of his position in the Rwandan Armed Forces during the genocide and the attitude of the Rwandan government towards leaders of those armed forces and other leaders of the regime of President Juvenal Habyarimana.

⁸ *Further Order to the Republic of Niger and to the Registrar* (14 January 2022), para. 11

⁹ *In the Matter of Protais Zigiranyirazo*, No. MICT-12-27, *Urgent Motion by Protais Zigiranyirazo Concerning Flagrant Violations by Niger of the Mechanism Order and Related Requests* (6 January 2022), paras. 3.4

¹⁰ *Further Order to the Republic of Niger and to the Registrar* (14 January 2022), pp. 5,7.

¹¹ The order from the court in Niger is attached as Annex A(1) to this motion.

¹² See Declaration of Francois-Xavier Nzuwonemeye attached as Annex A to this motion.

Relevant Provisions

19. Article 28(2) of the Mechanism Statute provides that:

1. States shall cooperate with the Mechanism in the investigation and prosecution of persons covered by Article 1 of this Statute.
2. States shall comply without undue delay with any request for assistance or an order issued by a Single Judge or Trial Chamber in relation to cases involving persons covered by Article 1 of this Statute, including, but not limited to:
 - (a) the identification and location of persons;
 - (b) the taking of testimony and the production of evidence;
 - (c) the service of documents;
 - (d) the arrest or detention of persons;
 - (e) the surrender or the transfer of the accused to the Mechanism.
3. The Mechanism shall respond to requests for assistance from national authorities in relation to investigation, prosecution and trial of those responsible for serious violations of international humanitarian law in the countries of former Yugoslavia and Rwanda, including, where appropriate, providing assistance in tracking fugitives whose cases have been referred to national authorities by the ICTY, the ICTR, or the Mechanism.

20. Rule 8 of the Mechanism' Rules of Procedure and Evidence provides that:

- (A) Except in cases to which Rules 13, 16, 61, or 63 apply, where the Trial Chamber is satisfied that a State has failed to comply with an obligation under Article 28 of the Statute relating to any proceedings before that Trial Chamber, the Trial Chamber may request the President to report the matter to the Security Council, who shall notify the Security Council thereof.
- (B) If the Prosecutor satisfies the President that a State has failed to comply with an obligation under Article 28 of the Statute in respect of a request by the Prosecutor under Rules 9, 36, or 37, the President shall notify the Security Council thereof.

21. Article 31 of the *Agreement between the United Nations and the Kingdom of The Netherlands concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals* (23 February 2015) and Article 30 of the *Agreement between the United Nations and the United Republic of Tanzania concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals* (26 November 2013) obligates the governments of The Netherlands and Tanzania to allow entry into its territory of all persons required to be present at the seat of the Mechanism.

22. Article 31(1) of the Netherlands agreement provides:

All persons referred to in Articles 21, 23, and 24 of this Agreement,¹³ as notified as such by the Registrar, or an official designated by him or her to the host State, shall have the right of unimpeded entry into, exit from, and subject to paragraph 3

¹³ Article 24 refers to persons required to be present at the seat of the Mechanism.

of this Article, movement within the host State, as appropriate and for the purposes of the Mechanism.

23. Article 30(1) of the Tanzania agreement provides:

Officials of the Mechanism, defence counsel and persons assisting defence counsel, witnesses and persons accompanying them, experts on mission for the Mechanism, suspects or accused, interns, legal researchers, and other persons required to be present at the seat of the Mechanism as notified as such by the Registrar, or an official designated by him or her to the host State, shall have the right of unimpeded entry into, exit from, and movement within the host State, including unimpeded access to the premises of the Mechanism.

Argument

I. Niger has Failed to Comply with its Obligations Under Article 28

24. As set forth in the attached declaration of Major Nzuwonemeye, and as has already been found by the Single Judge, Niger has failed to comply with the Single Judge's *Further Order* by continuing to refuse to allow Major Nzuwonemeye and the other acquitted and released persons to leave their residence refusing to return their identification documents, and failing to extend the stay of its expulsion order beyond 30 days.

25. That violation of the order continues to the present day.

II. An Oral Hearing Should be Held

26. It has been the practice of the Mechanism, as well as the ICTY, to hold an oral hearing at which the State can be heard, prior to issuing a binding order or reporting the State to the United Nations Security Council. Major Nzuwonemeye requests that this practice be followed here.

27. The most recent occasion in which this practice has been followed was in the *Ngirabatware* case, where the Government of Turkey was invited to appear at an oral hearing to explain its refusal to release Judge Aydin Sefa Akay after having arrested him in violation of his immunity as a United Nations judge.¹⁴

28. Other occasions in which States have been given the opportunity to be heard at an oral hearing at the ICTY include a request directed at NATO and its Member States,¹⁵ a

¹⁴ *Prosecutor v. Ngirabatware*, MICT-12-29-R, *Order for Oral Hearing* (21 December 2016).

¹⁵ *Prosecutor v. Milutinovic et al.*, No. IT-05-87-PT, *Scheduling Order for Hearing on General Ojdanic's Second Application for Orders to NATO and States for Production of Information* (7 September 2005)

group of States including Germany and France,¹⁶ Venezuela,¹⁷ and Bosnia and Herzegovina.¹⁸

29. Major Nzuwonemeye contends that an oral hearing in this case should be held due to the seriousness of the consequences flowing from Niger's failure to comply with the *Further Order* and, as in the case of Judge Akay, the deprivation of his liberty which resulted and continues to result from that failure to comply, as well as the need to ensure that Niger has a full opportunity to present its views before it is reported to the United Nations Security Council.

30. Major Nzuwonemeye further contends that as a party to the proceedings, he has a right to attend any oral hearing, and that his presence is necessary to rebut any factual assertions that may be made at the hearing by Niger.

31. Major Nzuwonemeye further requests that the Single Judge ensure his presence at any hearing by including provisions in the oral hearing order for his travel to and admission to the State in which the hearing is held pursuant to the applicable Headquarters Agreements. While the venue of the hearing is solely within the discretion of the Single Judge, Major Nzuwonemeye prefers that the hearing be held at the seat of the Mechanism in The Hague. His counsel, and any of the other seven counsel who may choose to join this motion, are all located in Europe or North America. They are working *pro bono* and may have to bear their own travel expenses. In addition, pandemic-related considerations make it safer for the Single Judge to travel to The Hague than to have the eight defence counsel travel to Arusha.

32. The presence of Major Nzuwonemeye and any of the other acquitted or released persons who may join this motion in The Hague would also alleviate the ongoing and unjust deprivation of liberty that they continue to endure in Niger and may provide better conditions for an ultimate resolution of their fate.

33. An urgent order for their transfer to the seat of the Mechanism before 2 February will also forestall any risk that Niger will expel Major Nzuwonemeye to Rwanda in the absence of the Mechanism having found another relocation country as provided for in Niger's *note verbale*.

¹⁶ *Prosecutor v Karadzic*, No. IT-95-5/18-T, *Order Scheduling a Hearing pursuant to Rule 54 bis* (29 January 2010)

¹⁷ *Prosecutor v Karadzic*, No. IT-95-5/18-T, *Order Scheduling a Hearing pursuant to Rule 54 bis (Bolivarian Republic of Venezuela)*(22 March 2011)

¹⁸ *Prosecutor v Karadzic*, No. IT-95-5/18-T, *Order Scheduling a Hearing pursuant to Rule 54 bis (Bosnia and Herzegovina)*(7 September 2010)

Conclusion

34. For all of the above reasons, it is respectfully requested that the Single Judge (1) schedule an oral hearing on this motion; (2) direct the Registrar to transport Major Nzuwonemeye and any other acquitted or relocated persons joining in this motion to the applicable seat of the Mechanism on or before 2 February 2022, and (3) ultimately find that Niger has failed to comply with the *Further Order*, warranting a report of Niger's noncompliance being made by the President of the Mechanism to the United Nations Security Council.

Word Count: 2754

Respectfully submitted,

A handwritten signature in black ink that reads "Peter Robinson". The signature is written in a cursive style with large, flowing loops.

PETER ROBINSON

Counsel for Francois-Xavier Nzuwonemeye

ANNEX A

DECLARATION OF FRANCOIS-XAVIER NZUWONEMEYE

I, Francois-Xavier Nzuwonemeye, do hereby declare under penalty of perjury, that the following is true and correct:

1. I was acquitted by the International Criminal Tribunal for Rwanda (“ICTR”) on 11 February 2014, after spending 14 years in detention.

2. Following my acquittal, I was released to live in a safe house in Tanzania with the financial and diplomatic assistance of the ICTR, and later the International Residual Mechanism for the Criminal Tribunals (“IRMCT”). Since then, I have been engaged in a years-long effort to reunite with my family, who are citizens and residents of France.

3. On 18 November 2021, I was informed for the first time about a possible relocation to Niger pursuant to an agreement between the Government of Niger and the IRMCT entered into three days earlier. In the agreement, Niger accepted to relocate me within its territory and committed to granting me residence documents and permanent residence status.

4. I agreed to the terms of the relocation. On 5 December 2021, I was transferred to Niger by the IRMCT along with seven other acquitted or released persons.

5. Upon my arrival, I was provided with an identity document by the government of Niger. However, the government subsequently requested that I return that document, telling me that corrections needed to be made to it.

6. On 22 December 2021, the Government of Niger posted armed policemen at the residence where I and the other acquitted or released persons were living and prevented us from leaving the residence.

7. On 27 December 2021, I was served with a “definitive expulsion order” issued by the authorities of Niger, formally requiring me and the other seven acquitted and released persons to leave the territory of Niger within 7 days, on or before 3 January 2022 for “diplomatic reasons”.

8. On 25 January 2022, the courts of Niger dismissed an application brought by my fellow acquitted and released persons and I for restoration of our freedom of movement and identification documents.¹⁹

¹⁹ The order from the court in Niger is attached as Annex (1) to this declaration.

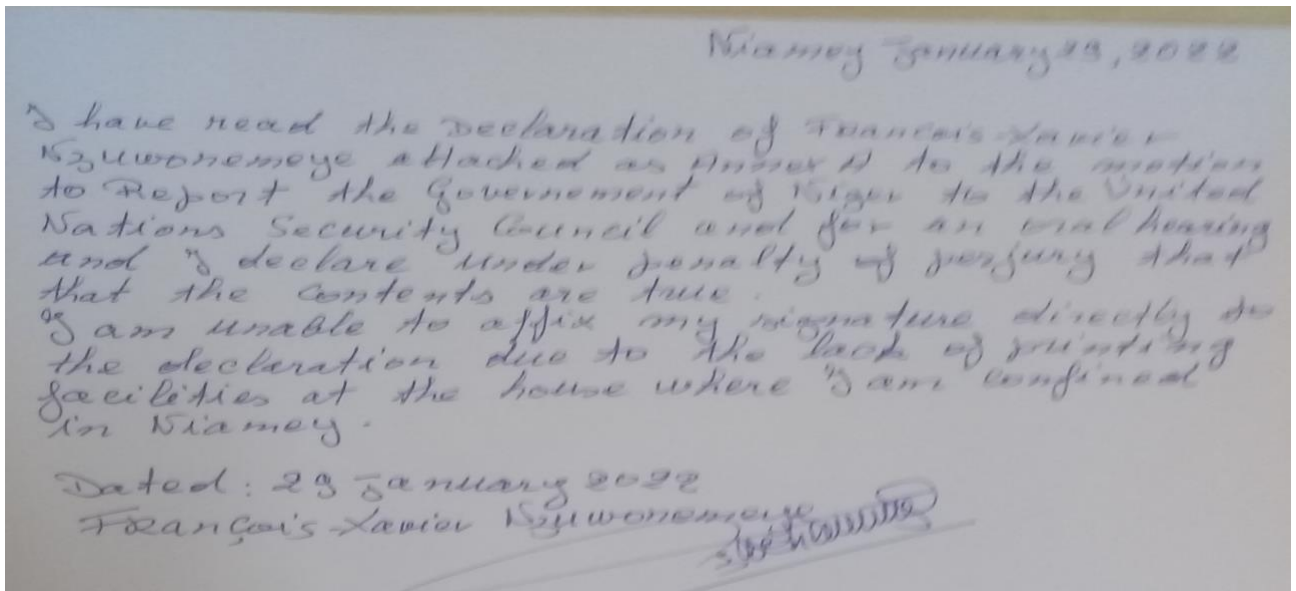
9. As of the date of the signing of this declaration, I and my fellow acquitted and released persons have not been able to leave the house in Niamey since 22 December 2021 and have not had our identification documents returned to us.

10. I fear that I and my fellow acquitted and released persons will be expelled to Rwanda when the stay of the expulsion order expires on 2 February 2022. I have a genuine fear of persecution in Rwanda as a result of my position in the Rwandan Armed Forces during the genocide and the attitude of the Rwandan government towards leaders of those armed forces and other leaders of the regime of President Juvenal Habyarimana.

11. I am willing to testify to any and all of these facts, as well as to answer any questions of the Single Judge, at an oral hearing on this motion. I would like to be present at any such hearing and believe my presence is essential for my counsel to adequately represent me.

12. I greatly appreciate all the efforts that the Registrar of the Mechanism, Abubacarr Tambadou, and his staff, have made to solve this crisis. However, absent the relief sought in this motion by 2 February 2022, I fear being expelled to Rwanda.

DATED: 29 January 2022 at Niamey, Niger.



Niamey January 29, 2022

I have read the declaration of Francois-Xavier Nywonemeye attached as Annex A to the motion to Report the Government of Niger to the United Nations Security Council and for an oral hearing and I declare under penalty of perjury that that the contents are true.

I am unable to affix my signature directly to the declaration due to the lack of printing facilities at the house where I am confined in Niamey.

Dated: 29 January 2022
Francois-Xavier Nywonemeye
[Signature]

ANNEX 1

REPUBLIQUE DU NIGER
COUR D'APPEL DE NIAMEY
TRIBUNAL DE GRANDE INSTANCE
HORS CLASSE DE NIAMEY

ATTESTATION D'ORDONNANCE RENDUE

Je soussigné Greffier en chef du Tribunal de Grande Instance Hors Classe de Niamey, atteste par la présente que ledit Tribunal en son audience de référé du 25 janvier 2022 a rendu l'ordonnance n° 21/22 dont la teneur suit dans l'affaire :

ZIGIRONYIRAZO PROTAIS
 NZUWONEMEYE FRANÇOIS
 NTEZIRYAYO ALPHONSE
 MUVUNYI THARCISSE
 NTAGERURA ANDRE
 NSENGIYUMVA ANATOLE
 MUGIRANEZA PROSPER
 SAGAHUTU INNOCENT
 CONTRE
 ETAT DU NIGER

LE JUGE DES REFERES

Statuant publiquement, contradictoirement en matière de référé et en premier ressort :

- Constate que le juge de permanence du mécanisme international résiduel des tribunaux pénaux des Nations Unies a, par décision MICT-22-124 du 14 janvier 2022, tranché le litige entre les parties ;
- Dit en conséquence que la présente procédure est devenue sans objet ;
- Condamne les demandeurs aux dépens ;
- Avise les parties qu'elles disposent d'un délai de 15 jours pour faire appel de la présente décision, à compter de son prononcé, par exploit d'huissier devant la Cour d'Appel de Niamey.

En foi de quoi la présente attestation a été délivrée à Maitre HAMADOU Kadidiatou, sur sa requête, pour servir et valoir ce que de droit.

Niamey, le 25 janvier 2022

LE GREFFIER EN CHEF





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Date Created/ Daté du :	29 January 2021	Date transmitted/ Transmis le :	29 January 2021
		No. of Pages/ Nombre de pages :	13
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