

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-22-124

Date: 7 February 2022

Original: English

**BEFORE THE DUTY JUDGE**

**Before: Judge Joseph E. Chiondo Masanche**

**Registrar: Mr. Abubacarr Tambadou**

**Decision of: 7 February 2022**

**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 REGARDING THE RELOCATION  
AGREEMENT WITH NIGER AND ORDER FOR TRANSFER OF  
THE RELOCATED PERSONS TO THE ARUSHA BRANCH**

**Government of the United Republic of Tanzania**

**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. 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,<sup>1</sup> note the motions filed by Mr. François-Xavier Nzuwonemeye, Mr. Prosper Mugiraneza, Mr. Anatole Nsengiyumva, Mr. Protais Zigiranyirazo, Mr. Alphonse Nteziryayo, Mr. André Ntagerura, Mr. Tharcisse Muvunyi, and Mr. Innocent Sagahutu<sup>2</sup> in relation to the relocation agreement signed on 15 November 2021 between the United Nations and the Republic of Niger (“Relocation Agreement”).<sup>3</sup>

<sup>1</sup> 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.

<sup>2</sup> 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 First 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 First 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 First 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 First 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 First 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 First 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 First 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 (public, with confidential Annex) (“Zigiranyirazo’s First 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 First Motion”); *Demande d’évacuation immédiate et urgente*, 28 January 2022 (“Sagahutu’s Second Motion”); Extremely Urgent Motion for Emergency Evacuation and Relocation, 29 January 2022 (public, with strictly confidential and *ex parte* Annex A) (“Nsengiyumva’s Second Motion”); Motion to Report the Government of the Niger to the United Nations Security Council and for an Oral Hearing, 29 January 2022 (“Nzuwonemeye’s Second Motion”); André Ntagerura’s Joinder to “Motion to Report the Government of the Niger to the United Nations Security Council and for an Oral Hearing”, 31 January 2022 (“Ntagerura’s Joinder to Nzuwonemeye’s Second Motion”); Mugiraneza Joinder to “Motion to Report the Government of the Niger to the United Nations Security Council and for an Oral Hearing”, 31 January 2022 (public, with confidential and *ex parte* Annex A) (“Mugiraneza’s Joinder to Nzuwonemeye’s Second Motion”); Joinder by Protais Zigiranyirazo to Motion to Report the Government of the Niger to the United Nations Security Council and for an Oral Hearing filed by François-Xavier Nzuwonemeye, 1 February 2022 (“Zigiranyirazo’s Joinder to Nzuwonemeye’s Second Motion”); Extremely Urgent Motion for Emergency Protocol for Next 48 Hours and After, 1 February 2022 (“Nsengiyumva’s Third Motion”); Joinder by Protais Zigiranyirazo to Motion by Anatole Nsengiyumva Entitled Extremely Urgent Motion for Emergency Protocol for Next 48 Hours and After, 1 February 2022 (“Zigiranyirazo’s Joinder to Nsengiyumva’s Third Motion”); Urgent Motion for Non-Refoulement Order to Niger, 1 February 2022 (“Nsengiyumva’s Fourth Motion”); Urgent Motion by Protais Zigiranyirazo to Revisit Further Order to the Republic of Niger Rendered on 14 January 2022 by Ordering the Registrar to Be Present in Niger on a Permanent Basis, 7 February 2022 (“Zigiranyirazo’s Second Motion”) (collectively, “Motions”). 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-

## I. BACKGROUND

2. On 5 December 2021, 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 with their consent pursuant to the Relocation Agreement.<sup>4</sup>

3. On 13 December 2021, the President of the Mechanism commended before the United Nations Security Council the “exemplary cooperation” of Niger and the “major breakthrough” constituted by the signing of this Relocation Agreement and its implementation regarding 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.<sup>5</sup>

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”).<sup>6</sup> The Relocated Persons reportedly had their identity documents confiscated by the authorities of Niger and were placed under house arrest.<sup>7</sup>

5. On 29 and 30 December 2021, Nzuwonemeye, Mugiraneza, Zigiranyirazo, Nsengiyumva, Nteziryayo, and Ntagerura filed motions seeking, *inter alia*, that the Mechanism order Niger not to expel them to any country and that the Mechanism make arrangements for their relocation to another safe State.<sup>8</sup>

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

<sup>3</sup> 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.

<sup>4</sup> See, e.g., Further Order to the Republic of Niger and to the Registrar, 14 January 2022 (“Order of 14 January 2022”), para. 2 and references cited therein.

<sup>5</sup> Order of 14 January 2022, para. 3 and references cited therein.

<sup>6</sup> See, e.g., *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; Nzuwonemeye’s First Motion, para. 5, Annex A, Registry Pagination (“RP.”) 350, 349.

<sup>7</sup> See Order of 14 January 2022, para. 15 and references cited therein.

<sup>8</sup> See Nzuwonemeye’s First Motion, paras. 6, 8-12; Mugiraneza’s Joinder to Nzuwonemeye’s First Motion, para. 1; Nsengiyumva’s Joinder to Nzuwonemeye’s First Motion, para. 1; Nteziryayo’s Joinder to Nzuwonemeye’s First Motion, para. 1; Zigiranyirazo’s Joinder to Nzuwonemeye’s First Motion, para. 1; Ntagerura’s Motion, paras. 1, 6-31, p. 9.

6. On 30 December 2021, the President of the Mechanism 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.<sup>9</sup>
7. 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 this Expulsion Order pending the final adjudication of the matter.<sup>10</sup> 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.<sup>11</sup>
8. On 31 December 2021 and 1 January 2022, Muvunyi and Sagahutu filed motions requesting to be immediately evacuated from Niger and relocated to a safe country.<sup>12</sup> Nsengiyumva further filed, on 4 January 2022, a motion requesting that the States with seats on the Security Council be ordered to decide which safe State will relocate him to its territory.<sup>13</sup>
9. 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 to grant an additional 30 days from 3 January 2022 to the Relocated Persons to leave the territory of Niger, in order to allow the Mechanism to find another relocation country.<sup>14</sup>
10. On 7 January 2022, Zigiranyirazo filed a motion requesting that the Relocation Agreement applies fully pending final adjudication of the matter, and in particular that Niger cease his detention, restore seized identity documents, and ensure his freedom of movement.<sup>15</sup>
11. On 14 January 2022, I issued a further order to Niger to adhere to the rule of law and to execute and apply all dispositions of the Relocation Agreement, in full compliance with their letter

<sup>9</sup> *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.

<sup>10</sup> Order of 31 December 2021, pp. 2, 3.

<sup>11</sup> Order of 31 December 2021, pp. 2, 3.

<sup>12</sup> See Muvunyi's Motion, para. 7; Sagahutu's First Motion, para. 8.

<sup>13</sup> See Nsengiyumva's First Motion, paras. 9, 25, 27, 28.

<sup>14</sup> *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), 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.

<sup>15</sup> Zigiranyirazo's First Motion, paras. 2, 11, 19, 21, 24, 28. See also Zigiranyirazo's First Motion, paras. 16, 22, 28 (requesting that the Registrar or his representative travel to Niger immediately). Nteziryayo filed a motion in joinder on 10 January 2022. See Nteziryayo's Joinder to Zigiranyirazo's First Motion, paras. 1, 6, 8.

and spirit, pending final adjudication of the matter.<sup>16</sup> I also ordered Niger to ensure the safety and welfare of the Relocated Persons and to ensure that they have their identification documents returned and enjoy freedom of movement on its territory, and I further instructed the Registrar to continue to actively engage with the authorities of Niger to ensure the respect of the fundamental rights of the Relocated Persons.<sup>17</sup> Accordingly, I dismissed the Relocated Persons' requests for immediate evacuation and relocation as premature.<sup>18</sup>

12. On 19 January 2022, in a letter to the United Nations Security Council, President Carmel Agius highlighted the "imminent situation" of the Relocated Persons and sought the Security Council's support in "impressing upon the Republic of Niger the need to adhere fully to both the letter and spirit of the [Relocation] Agreement", stressing the potentially severe impact of its unilateral actions "on the fundamental human rights of the [R]elocated [P]ersons, as well as on the rule of law more generally".<sup>19</sup> For all practical purposes, by the President's proactive action, this matter has been referred to the Security Council, and no further order is necessary in this respect.

13. On 28 January 2022, Sagahutu and Nsengiyumva filed further requests for immediate evacuation and/or relocation, wherein they submit that Niger has not executed the Order of 14 January 2022 and that they are in a situation of grave and imminent danger, pointing in particular that their requests for immediate release and withdrawal of the Expulsion Order were dismissed by the *juge des référés* on 25 January 2022 and the *Conseil d'État* of Niger, respectively.<sup>20</sup>

14. On 29 January 2022, Nzuwonemeye filed a motion to report Niger to the United Nations Security Council, pointing to the Government of Niger's failures to, *inter alia*, comply with its obligations under the Relocation Agreement, extend the stay of the Expulsion Order beyond 30 days, and return identification documents and allow freedom of movement of the Relocated

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<sup>16</sup> See Order of 14 January 2022, paras. 17, 22. I also emphasized that the Order of 31 December 2021 to stay the Expulsion Order shall apply until final adjudication of the dispute concerning the compliance of Niger with the binding Relocation Agreement and shall not be limited to a period of 30 days to allow the Mechanism to find another host country for the Relocated Persons. See Order of 14 January 2022, paras. 14, 22.

<sup>17</sup> See Order of 14 January 2022, paras. 17, 18, 22.

<sup>18</sup> See Order of 14 January 2022, paras. 20-22.

<sup>19</sup> Letter from the President of the International Residual Mechanism for Criminal Tribunals Addressed to the President of the Security Council, S/2022/36, 19 January 2022, pp. 1-3.

<sup>20</sup> Sagahutu's Second Motion, paras. 4, 7-10, RP. 11; Nsengiyumva's Second Motion, paras. 3, 4, 7-13. See also Nzuwonemeye's Second Motion, Annex 1. Sagahutu reiterates the request that a representative of the United Nations be sent to Niger in order to ensure the respect of his fundamental rights and organise his evacuation. See Sagahutu's Second Motion, RP. 11. Nsengiyumva requests that the Mechanism, the United Nations, as well as the members States of the Security Council ensure and guarantee that he will not be sent to Rwanda, where he submits he is at risk of being tortured and killed. See Nsengiyumva's Second Motion, paras. 6, 7-13, Annexes B and C.

Persons pursuant to the Order of 14 January 2022.<sup>21</sup> Nzuwonemeye further requested that an oral hearing be held on or before 2 February 2022, to give Niger a full opportunity to be heard before a report of its non-compliance is made.<sup>22</sup> Ntagerura, Mugiraneza, and Zigiranyirazo filed motions in joinder on 31 January 2022 and 1 February 2022.<sup>23</sup>

15. On 31 January 2022, the Registrar filed submissions affirming its commitment to exerting all possible efforts in finding a viable solution to this matter, wherein he notably indicates that: (i) the Expulsion Order, as well as the Niger's decision to suspend it for 30 days, are in violation of the Relocation Agreement;<sup>24</sup> (ii) negotiations with Niger, the United Nations headquarters, and the United Nations Resident Coordinator's office in Niamey have been proceeding with a view to persuading Niger to respect its obligations in the Relocation Agreement;<sup>25</sup> (iii) diplomatic and political efforts have also been undertaken to identify other potential relocation States, in the event that Niger does not abide by its responsibilities;<sup>26</sup> and (iv) the Registrar is in close contact with the United Nations Resident Coordinator on the ground in Niger and a contact person at the Arusha branch of the Mechanism has been designated in case of an emergency.<sup>27</sup>

16. On 1 February 2022, Nsengiyumva filed a third urgent motion requesting that the Registrar be ordered to share with him the prospects of a solution with Niger and prospects regarding his safe relocation, and requesting that the Registrar confirm the Mechanism's "emergency security protocol" in the event the authorities of Niger expel him to Rwanda in the following 48 hours.<sup>28</sup> Zigiranyirazo filed a motion in joinder on 1 February 2022.<sup>29</sup>

17. On the same day, Nsengiyumva filed a fourth urgent motion requesting an order to Niger not to send him to Rwanda pursuant to the *non-refoulement* principle, on the basis that there are

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<sup>21</sup> Nzuwonemeye's Second Motion, paras. 1, 15, 16, 24, 25, 34. Nzuwonemeye underlines his fear to be expelled to Rwanda when the stay of the Expulsion Order expires. *See* Nzuwonemeye's Second Motion, para. 18, Annex A.

<sup>22</sup> Nzuwonemeye's Second Motion, paras. 2, 26-34.

<sup>23</sup> Ntagerura's Joinder to Nzuwonemeye's Second Motion, paras. 1, 17-20; Mugiraneza's Joinder to Nzuwonemeye's Second Motion, paras. 1, 9; Zigiranyirazo's Joinder to Nzuwonemeye's Second Motion, para. 1. Ntagerura, Mugiraneza, and Zigiranyirazo all express their fear to be expelled to Rwanda, where they submit they have a genuine fear of persecution, and generally request that all necessary steps be taken to resolve the matter. *See* Ntagerura's Joinder to Nzuwonemeye's Second Motion, para. 15; Mugiraneza's Joinder to Nzuwonemeye's Second Motion, paras. 2, 6, 8, 9, Annex A; Zigiranyirazo's Joinder to Nzuwonemeye's Second Motion, paras. 3-6.

<sup>24</sup> Registrar's Submission in Relation to the "Order to the Republic of Niger to Stay the Expulsion Order of Relocated Persons and Order for Submissions" of 31 December 2021, 31 January 2022 (confidential and *ex parte*) ("Registrar's Submission of 31 January 2022"), para. 15.

<sup>25</sup> Registrar's Submission of 31 January 2022, paras. 16-18, 30.

<sup>26</sup> Registrar's Submission of 31 January 2022, paras. 19-27, 30.

<sup>27</sup> Registrar's Submission of 31 January 2022, paras. 28, 29.

<sup>28</sup> Nsengiyumva's Third Motion, paras. 1-3.

<sup>29</sup> Zigiranyirazo's Joinder to Nsengiyumva's Third Motion, paras. 1-3.

substantial grounds for believing that he would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations.<sup>30</sup>

18. On 3 February 2022, a law firm based in Niamey filed submissions on behalf of the Government of Niger,<sup>31</sup> indicating that the position of Niger is as follows: (i) the Order of 31 December 2021 to stay the Expulsion Order should be quashed as it misapplies Article 28 of the Statute of the Mechanism; and (ii) the Expulsion Order duly complies with Article 6(3) of the Relocation Agreement and Niger was entitled to request the Relocated Persons to leave the country, since their presence on its territory is such as to constitute a threat to public order and national security.<sup>32</sup>

19. On 7 February 2022, Zigiranyirazo filed a motion reiterating the request that the Registrar or his representative travel to Niger and remain until final resolution of the matter, underlining that there has been no improvement of the situation of the Relocated Persons since the issuance of the Order of 14 January 2022.<sup>33</sup>

## II. DISCUSSION

20. The situation before me is a crisis. What seemed to be a good solution to a longstanding problem related to the acquitted and released persons – celebrated by both the Mechanism and Niger in the Security Council last December<sup>34</sup> – has now turned into a possible human rights violation and turned the rule of law and the norm where States adhere to treaties on its head. I must emphasize that this matter is not about whether or not the Relocated Persons should or could go to Rwanda. It cannot be excluded that they could, in particular in view of the ICTR's and the Mechanism's recognition of the viability of transferring cases there.<sup>35</sup> Individualized assessments on whether this is true for a particular individual may vary, but this is well beyond the scope of this

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<sup>30</sup> Nsengiyumva's Fourth Motion, paras. 1-3.

<sup>31</sup> *Observations*, 3 February 2022 ("Niger's Submissions"). These submissions were initially annexed to a confidential and *ex parte* submission filed by the Registrar on 2 February 2022, who indicated that he had received them from the United Nations Resident Coordinator in Niger, on 29 January 2022, and noted that they were not, at the time, accompanied by an authorization from the Government of Niger or a transmission sheet indicating the proposed security classification. See Registrar's Submission Transmitting a Document, 2 February 2022 (confidential and *ex parte*, with confidential and *ex parte* Annex), paras. 2, 3, Annex, RP. 124.

<sup>32</sup> Niger's Submissions, RP. 133-129.

<sup>33</sup> Zigiranyirazo's Second Motion, paras. 2-9.

<sup>34</sup> See *supra* para. 3.

<sup>35</sup> See, e.g., *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-05-89-R11bis, Decision on the Prosecutor's Request for Referral of the Case to the Republic of Rwanda, 6 June 2012; *The Prosecutor v. Ladislav Ntaganzwa*, Case No. ICTR-96-9-R11bis, Decision on the Prosecutor's Request for Referral of the Case to the Republic of Rwanda, 8 May 2012; *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 28 June 2011. See also *Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75-AR11bis, Decision on Uwinkindi's Appeal Against the Referral of His Case to Rwanda and Related Motions, 16 December 2011.

matter. This, in my view, can only happen with their consent or through a proper domestic or international legal process where their voices and views are heard and thoroughly considered in conformity with national and international norms.

21. This matter in its purest and simplest form is about States adhering to agreements and about not leaving the impression that the word of the United Nations and one of its Member States in an enforceable agreement is a mere ruse to trick individuals by offering them the prospect of building a new life in a new country, only to place them on house arrest and threaten consequences that they did not imagine. It did not go without notice that this crisis did not emerge when the agreement was celebrated in the Security Council, but during the end of year holidays. In any case, it now falls to me the unenviable task of finding what will most certainly be an imperfect solution, a temporary solution, to the continuation of an intractable problem. In doing so, I am guided by our jurisprudence, legal framework, the rule of law, human rights, what is possible, and what hopefully is fair.

22. The Mechanism has a duty to ensure the welfare of the acquitted or released persons pending their relocation and to enquire whether their life or liberty would be at risk upon relocation.<sup>36</sup> Normally, once an individual has been relocated, the Mechanism's obligations and duty of care towards that person would cease. However, in the present circumstances, the Relocated Persons consented to their relocation to Niger based on an agreement which stipulates, among other things, that the Mechanism would continue to provide for their support for at least one year following relocation and be consulted and involved in decision making in relation to any potentially adverse action taken against them.<sup>37</sup> Accordingly, the Mechanism's duty of care toward the Relocated Persons remains.

23. By its plain terms, the Relocation Agreement precludes Niger from taking unilateral action to order the expulsion of the Relocated Persons as it has taken in this instance. Even where the Relocated Persons may have violated the laws of Niger or "in the event of harm or a threat to public order", prior to taking any action, Niger must inform the Registrar in writing of the violation and may only take necessary measures in consultation with the Registrar.<sup>38</sup> This did not happen. Niger's unilateral action to order the expulsion of the Relocated Persons, to confiscate their identity documents, and to limit their freedom of movement is in flagrant violation of the terms of the

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<sup>36</sup> *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.

<sup>37</sup> See, e.g., Relocation Agreement, Articles 4, 6(3).

<sup>38</sup> Relocation Agreement, Article 6(3).



Relocation Agreement requiring the provision of permanent residence and identity documents and allowing it to take adverse action only in consultation with the Registrar.

24. As a general matter, the Relocation Agreement does not expressly envision intervention by the Mechanism’s judiciary in the execution and operation of the agreement. Indeed, Article 11 of the Relocation Agreement provides that “[a]ny dispute, controversy, or claim arising out of, or relating to, this Agreement shall be settled by negotiation or by a mutually agreed mode of settlement.”

25. In the particular circumstances of this case, where Niger is in breach of the Relocation Agreement – in particular its obligation to consult or negotiate prior to acting, where diplomatic efforts have not to date yielded results, and where there are real risks to individuals to whom the Mechanism owes a duty of care, judicial intervention is and was required, and the powers that flow from Article 28 of the Statute and Security Council Resolution 1966<sup>39</sup> may be and were invoked to prevent any further or future harm. In this respect, I note that Article 28 of the Statute is not exhaustive in terms of the type of cooperation required from States in relation to cases involving persons tried by the Mechanism or its predecessor Tribunals. Therefore, it is clear that I was well within my powers to insist that Niger stay the expulsion order and adhere to the terms of the Relocation Agreement.

26. This matter is *sui generis*. Indeed, the Mechanism does not as a matter of course maintain, as in this instance, some form of supervisory jurisdiction over the relocation of acquitted or released persons. The closest parallel is the Mechanism’s supervisory jurisdiction over the service of sentences. Specifically, Article 25(2) of the Statute and Rule 128 of the Rules of Procedure and Evidence (“Rules”) provide that the Mechanism has the power to supervise the enforcement of sentences pronounced by the Mechanism or its predecessor Tribunals, including the implementation of the relevant sentence enforcement agreements. The Headquarters Agreement signed between the United Nations and the United Republic of Tanzania expressly envisions that, in the event it is no longer possible or appropriate for them to continue servicing their sentence in the designated enforcement State, “the Mechanism may temporarily transfer such persons back to the Mechanism detention facilities pending transfer to a new enforcement State.”<sup>40</sup>

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<sup>39</sup> See Security Council Resolution, S/RES/1966 (2010).

<sup>40</sup> 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 (“Headquarters Agreement”), Article 40. See also, e.g., *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Order for the Transfer of Radoslav Brđanin to the United Nations Detention Unit on a Temporary Basis, 25 August 2021, pp. 1-3.

27. The absence of express language concerning the enforcement of relocation agreements in the Statute, Rules, or Headquarters Agreement, in the case of acquitted and released persons, markedly contrast with provisions concerning convicted persons. In order to give effect to the Mechanism's duty of care to the Relocated Persons,<sup>41</sup> I consider that the silence of the relevant texts does not mean that the Mechanism does not retain the authority to supervise the enforcement of the Relocation Agreement and to transfer the Relocated Persons back to the relevant branch of the Mechanism, should the need arise, pending their relocation to another State. In this respect, I am mindful that, pursuant to the Headquarters Agreement, the host State shall facilitate the temporary stay on its territory of the persons released from the custody of the Mechanism until their transfer to another State.<sup>42</sup> Persons "required to be present at the seat of the Mechanism", as determined by the Registrar, shall also be accorded privileges, immunities and facilities on the territory of Tanzania<sup>43</sup> and shall have the right of unimpeded entry into and movement within the host State.<sup>44</sup>

28. In the present matter, the information before me indicates that further enforcement of the Relocation Agreement may no longer be possible. The submissions filed on behalf of Niger urge that my orders to stay the expulsion be revoked rather than indicate any intention to abide by the letter or spirit of its commitments under the Relocation Agreement.<sup>45</sup> The Registrar presently appears to prioritize his diplomatic and political efforts with a view to transferring the Relocated Persons to another State.<sup>46</sup> However, these efforts must be viewed against the backdrop of a long history of the Mechanism and the ICTR trying to do so,<sup>47</sup> which suggests that further relocation may not be imminent. In the absence of convincing evidence to the contrary, the current conditions in Niger in which the Relocated Persons find themselves also do not appear conducive to maintaining the *status quo* until a solution is found.

29. Therefore, I consider it necessary to instruct the Registrar to immediately take all necessary measures and make the appropriate arrangement for the Relocated Persons to be returned to the Arusha branch, on a temporary basis until their transfer to another State, in line with Articles 23, 30, and 39 of the Headquarters Agreement. Should there be any impediment to implementing this Decision or should it become apparent, immediately after the issuance of this Decision, that Niger

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<sup>41</sup> *Ntagerura* Decision of 18 November 2008, para. 19.

<sup>42</sup> Headquarters Agreement, Article 39.

<sup>43</sup> Headquarters Agreement, Article 23.

<sup>44</sup> Headquarters Agreement, Article 30.

<sup>45</sup> Niger's Submissions, RP. 133-129.

<sup>46</sup> Registrar's Submission of 31 January 2022, paras. 19-27.

<sup>47</sup> See, e.g., Security Council Resolution, S/RES/2422 (2018), para. 3; Security Council Resolution, S/RES/2529 (2020), para. 4.

will adhere to the terms of the Relocation Agreement, the Registrar should immediately inform me. Otherwise, this Decision should be executed forthwith.

### III. DISPOSITION

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

**ORDER** the Registrar to immediately take all necessary measures and make the appropriate arrangement for the Relocated Persons to be returned to the Arusha branch of the Mechanism on a temporary basis, until their transfer to another State, in line with Articles 23, 30, and 39 of the Headquarters Agreement;

**ORDER** the Government of Niger to provide all necessary assistance in order to execute the terms of this Decision;

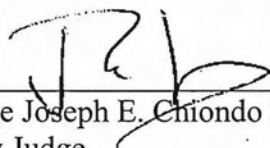
**INSTRUCT** the Registrar to file a submission within seven days to inform me of the actions taken in the execution of this Decision;

**INSTRUCT** the Registrar to transmit a copy of the present Decision to the Government of Niger and to the Government of Tanzania; and

**DISMISS** the remainder of the Motions as moot.

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

Done this 7th day of February 2022,  
At Arusha,  
Tanzania

  
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Judge Joseph E. Chiondo Masanche  
Duty Judge

[Seal of the Mechanism]



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<b>Date Created/ Daté du :</b>	7 February 2022	<b>Date transmitted/ Transmis le :</b>	7 February 2022
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