

**UNITED
NATIONS**

International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-22-124

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana

Registrar: Abubacarr Tambadou

Submission of: 21 November 2023

IN THE MATTER OF

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

Public

**ANATOLE NSENGIYUMVA'S RESPONSE TO REGISTRAR'S
FOURTH AND FIFTH BI-MONTHLY SUBMISSION**

Counsel for Anatole Nsengiyumva

Allison Turner

Counsel for Relocated Persons

Peter Robinson François-Xavier Nzuwonemeye

Kate Gibson for Prosper Mugiraneza

John Philpot for Protais Zigiranyirazo

Iain Edwards for Alphonse Nteziryayo

Philippe Larochelle for André Ntagerura

Jean Flamme for Innocent Sagahutu

1. Anatole Nsengiyumva, one of the seven remaining Relocated Persons who have been living in exceedingly dire circumstances under illegal house arrest in Niamey for the past two years, and particularly since the July 2023 military *coup d'état*, respectfully files this response to the Registrar's Fourth and Fifth Bi-Monthly Submissions of 11 September 2023 and 10 November 2023 ("Report 4" and "Report 5")¹ for the two reporting periods ("Reporting Periods").
2. Twenty (20) months ago the Single Judge ordered the Registrar to actively engage with "possible relocation States until an acceptable resolution of this matter is found in order to ensure the respect of the fundamental rights of [Mr. Nsengiyumva and the other Relocated Persons]" ("Court Order").²
3. *Refoulement* is not an acceptable resolution because it is fundamentally incompatible with the respect of the fundamental rights of Mr. Nsengiyumva and the other Relocated Persons. And yet, the transfer to Niamey and minimal Registrar effort deployed to safely resettle Mr. Nsengiyumva appear designed to have resulted in this unacceptable situation and his possible *refoulement* to Rwanda.
4. The Reporting Periods illustrate this extraordinary dereliction of responsibility: the Registrar refused to correct the false information in Mr. Nsengiyumva's profile, a document intended to share his personal information with potential relocation States ("Profile"); the Registrar announced he was winding down, instead of ramping up, the effort to safely relocate the Relocated Persons; and, while attributing the delay to safely relocate Mr. Nsengiyumva to Rwandan government political interference, the Registrar then points to this interference to justify his own *de minimis* efforts to comply with the Court Order.

¹ Nzuwonemeye *et al*, Registrar's Fourth Bi-Monthly Submission in Relation to the "Further Instruction to the Registrar" of 19 December 2022, 11 September 2023; Nzuwonemeye *et al*, Registrar's Fifth Bi-Monthly Submission in Relation to the "Further Instruction to the Registrar" of 19 December 2022, 10 November 2023;

² In re François-Xavier Nzuwonemeye *et al*, Further Decision Regarding the Relocated Persons in Niger, 8 March 2022, Conclusions. (Emphasis added.) The Registrar did not appeal this decision.

5. Reports 4 and 5 purport to set out the Registrar’s ongoing efforts to safely relocate the Relocated Persons in collaboration with their counsel. While a veneer of cooperation was observed last May, the Registrar is not collaborating with Counsel for Mr. Nsengiyumva (“Counsel”).³

D) Refusal to Correct False Information or to Share Key Information

6. On 5 June 2023, Counsel provided the Registrar with corrections to false information contained in the Profile he has been sharing with potential relocation States, requested the “additional information” (beyond the Profile) the Mechanism shares with potential relocation States and requested for at least the third time information on the potential relocation States mentioned in reports to the United Nations Security Council since 2016.
7. On 9 September 2023, more than three months and a written follow-up later, the Registrar advised that he was refusing to incorporate important corrections into the Profile, the most critical of which is the following summary of the finding by the International Criminal Tribunal for Rwanda Appeals Chamber in M. Nsengiyumva’s case and its context:

All convictions overturned but one. The majority maintained one conviction based on an inference drawn from one finding of circumstantial evidence. Dissenting judges, including the Appeal Chamber President, found that no reasonable Trial Chamber could find the only reasonable inference to be drawn was that Mr. Nsengiyumva knew of actions of others who committed crimes. Convicting him for this, they wrote, came “dangerously close to imposing strict liability on military commanders for any and all crimes committed by subordinates simply in virtue of their superior-subordinate relationship.”

³ See Strictly Confidential and *ex parte* Annex A. In 2022, Counsel repeatedly requested the Registrar to speak, write and/or cooperate with her to facilitate the safe relocation of Mr. Nsengiyumva, all to no avail. The Registrar addressed a letter to Counsel in respect of Mr. Nsengiyumva’s Profile for the first time on 29 May 2023. Counsel replied on 5 June and followed up on 3 July 2023. On 8 September 2023, the Registrar replied to Counsel with a revised Profile and no fulsome response to the request for additional information. Counsel responded to this last letter on 30 October 2023.

8. The Registrar refused to incorporate the above-mentioned paragraph in the Profile, deciding instead to add a new paragraph that states the exact opposite of the Appeals Chamber’s majority conclusion.
9. The majority of the Appeals Chamber had overturned all but one conviction, i.e., for “ordering” killings by a subordinate in Gisenyi town on 7 April 1994, and replaced it with a conviction based on an inference that Mr. Nsengiyumva knew the subordinate was absent without leave on 7 April 1994 and did nothing to prevent the crime or to punish the subordinate.
10. The Registrar falsely described the Appeals Chamber majority finding as: “All convictions reversed except for Genocide (Count 2); Persecution (Count 8) and Extermination (Count 6) as Crimes Against Humanity; and Violence to Life as a Serious Violation of Article 3 Common to the Geneva Conventions and Additional Protocol II (Count 10) **for ordering the killings in Gisenyi town on 7 April 1994** (superior responsibility).” (Emphasis added.)
11. False statements mislead potential relocation States and hinder genuine efforts to safely relocate Mr. Nsengiyumva. Conveying clear and accurate information to potential relocation States about all Relocated Persons should have been the Mechanism’s priority since 2021.
12. In response to Counsel’s request for the “additional information” being shared with potential relocation States as referenced in the Registrar’s 8 May 2023 Submission, the Registrar expressed confusion, requiring Counsel to again point to the Registrar’s own Submission.⁴

⁴ Registrar letter dated 8 September 2023: “You further refer to my second bi-monthly submission dated 8 May 2023, stating that the submission indicated I am, or was, in the process of preparing additional information about your client. We would be grateful for your clarification of this statement, as the submission does not mention that we are in the process of preparing additional information about your client.” Counsel letter date 30 October 2023 points the Registrar to paragraphs 4, 12 and 14 of the Registrar’s 8 May 2023 submissions (Report 2) referencing “additional information” or “further information” to be shared with potential relocation States. (See Confidential and *ex parte* Annex A.)

13. As Counsel is the only legal representative of Mr. Nsengiyumva, only she or he can authorize the Registrar's sharing of information with potential relocation States and the Registrar is bound to respect and support the client-attorney relationship, i.e. not usurp Counsel's role by acting outside the bounds of his mandate.
14. To avoid usurping the role of Counsel, the Registrar needed and needs to clear with Counsel the information shared, he needs to cooperate with Counsel, and he needs to provide genuine Mechanism logistical and diplomatic support to safely relocate Mr. Nsengiyumva.
15. Lastly, the Registrar's refusal to identify which States expressed an interest in relocating Mr. Nsengiyumva and the other Relocated Persons, as reported in the Mechanism's semi-annual reports to the United Nations Security Council since 2016, demonstrates, at best, a lack of transparency and, at worst, that the Registrar has no genuine interest in fulfilling his duty.
16. This refusal is inconsistent with Principle 21 of the Basic Principles on the Role of Lawyers,⁵ which reads as follows:

It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.
17. Counsel requires the information the Registrar shares with States that expressed an interest in resettling the Relocated Persons and, in particular, the information that causes these States to change their position.

⁵ Universal Instrument adopted 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba.

II) Winding Down of Registrar Efforts

18. During the Reporting Periods, the Registrar’s unwillingness and/or inability to plan, deploy a strategy, or otherwise take the lead or initiative to safely relocate Mr. Nsengiyumva was more blatant than ever.
19. In 2022 and 2023, the Registrar sent a *note verbale*, the content of which remains unknown to Counsel for no valid reason, to approximately 40 States. Six (6) “declined” and four (4) States remain in communication with the Mechanism. The Registrar did not engage in a single follow-up for approximately 33 of these States, concluding prematurely for these States that the effort “did not bear fruit” and was “to no avail”.⁶ What happened to *the old college try*?
20. During the Reporting Periods, the Registrar said he would follow-up with only four (4) States and reported having done so. He also stated that he would and did follow up with “*all the potential relocation States that were last contacted in March 2023 and have not responded*” without specifying the number of States (10, 5, 1, none?) or their identities - rendering the claims unverifiable.
21. Contrary to this clear winding down of his efforts,⁷ the Court Order reasonably requires the Registrar to send urgent follow-up notes verbales to the 33 States referred to above with a request for a meeting and to send urgent notes verbales to the remaining 150 UN Member States also with a request for a meeting.

⁶ See Confidential and *ex parte* Annex B.

⁷ “In this context, the Registrar recalls that the ICTR’s previous efforts did not bear fruit and that the Mechanism has sent notes verbales to around 40 States since the expulsion order issued by the Nigerien authorities at the end of 2021, but to no avail. Under these circumstances, **the Registrar has decided not to continue sending follow-up notes verbales where there is insufficient indication that such further follow-ups would yield a positive outcome.** Instead, the Registry will enhance its communication efforts with States with which the Relocated Persons have ongoing family reunification requests.” (Emphasis added.)

22. The Court Order further reasonably requires urgent follow-ups to all the States referred to in the Mechanism reports to the UN Security Council since 2016 in relation to this matter,⁸ the contacts with which purportedly “did not bear fruit”.⁹

23. Failure to take these steps highlights the Registrar’s extraordinary dereliction of responsibility.

III) Rwandan Government Political Interference

24. The Rwandan government is reported to be the world leader for widespread and varied methods of transnational repression, including assassination, assault, credible threat and physical intimidation, unexplained disappearance, rendition, detention, unlawful deportation, Interpol abuse, passport and document controls, coercion by proxy, digital threats and spyware.¹⁰

25. In a recent chilling report entitled: “Join Us or Die: Rwanda’s Extraterritorial Repression”, Human Rights Watch reports:

These violent abuses are alarmingly frequent, particularly in African countries and in countries where the Rwandan government has an active presence, including a military presence, embassies, diaspora associations, or economic partnerships. In almost all cases, host government investigations have stalled or failed to result in any arrests or prosecutions. In some cases, the host country’s authorities appeared to have colluded with Rwanda – or at the very least to have turned a blind eye. This has left many Rwandans feeling unprotected; unless

⁸ 17 Nov 2016 - S/2016/975*, para 76; 17 May 2017 - S/2017/434 para 76; 01 Aug 2017 - A/72/261 - S/2017/661 para 78; 17 Nov 2017 - S/2017/971 para 78; 17 May 2018 - A/2018/471 para 93; 01 Aug 2018 - A/73/289 - S/2018/569 para 71; 19 Nov 2018 - S/2018/1033 para 92-4; 20 May 2019 - S/2019/417 para 102; 18 Nov 2019 - S/2019/888 para 97; 16 Apr 2020 - S/2020/309 para 164; 20 May 2021 - A/2021/487; 30 Jul 2021 - A/76/248- S/2021/694.

⁹ Report 4, para. 17. Because the Registrar refuses to provide Counsel with any evidence or reasons why that effort “did not bear fruit”, this claim is unverifiable.

¹⁰ Yana Gorokhovskaia, Nate Schenkkan and Grady Vaughan show in the table at page 4 of “Still Not Safe: Transnational Repression in 2022”, (Washington, DC: Freedom House, April 2023) that Rwanda leads the world in these tactics: (https://freedomhouse.org/sites/default/files/2023-04/FH_TransnationalRepression2023_0.pdf).

action is taken, these abuses are likely to worsen because of Rwanda's expanding influence across the African continent.

(...)

Many of the host countries cited in the report – such as the UK and the US – have close partnerships with, and are major donors to, Rwanda. These and other governments should use their close ties to pressure the Rwandan government to improve its human rights record both domestically and abroad; yet they rarely – if ever – raise human rights concerns publicly in their bilateral or multilateral engagement. The UN refugee agency, UNHCR, and host countries' authorities should fully investigate reports of abuse and ensure adequate protection of at-risk Rwandan asylum seekers, refugees, permanent residents, and naturalized citizens. Countries in East and South Africa, where Rwandans are most prone to state sponsored attacks and renditions, should investigate and prosecute officials who have facilitated Rwanda's extraterritorial abuse.

The failure of the UN and international community to recognize the severity and scope of the Rwandan government's human rights violations both domestically and abroad, as well as the ruling party's growing hostility toward those it perceives as challenging its nearly 30 years in power, have left many Rwandans with nowhere to turn. Holding Rwanda accountable for its dismal domestic human rights record is now a necessity to tackle the government's extraterritorial repression.¹¹ (Emphasis added.)

26. In paragraphs 13-15 of Report 4, the Registrar wrote:

The Officials [of a State in West Africa] indicated their readiness, in principle, to accept the Relocated Persons on their territory but that this can only happen with the Republic of Rwanda ("Rwanda")'s approval. It is equally important to note that similar sentiments have been expressed by several other diplomats in and outside the African continent.

¹¹ Human Rights Watch, "Join Us or Die: Rwanda's Extraterritorial Repression", at 9 and 10. (<https://www.hrw.org/report/2023/10/10/join-us-or-die/rwandas-extraterritorial-repression>)

On the other hand, Rwanda has consistently expressed its preference and readiness to accept the Relocated Persons back in Rwanda. The position of the Rwandan Government was reiterated to the Registrar by the Rwandan Minister of Justice during the Registrar's recent visit to Rwanda in April 2023.

Based on these circumstances, and based further on the Registrar's first-hand knowledge, experience and understanding of the workings of the Member States of the African Union, a pan-African organisation that strongly espouses the principle of African solidarity, it is unlikely that any African country will accept the Relocated Persons on their territory without Rwanda's tacit approval. Having regard to Rwanda's historical position on the Relocated Persons, it is unlikely to give such approval.

27. Submitting to the Rwandan government's political interference with the safe relocation of Mr. Nsengiyumva and the other Relocated Persons renders the United Nations International Residual Mechanism for Criminal Tribunals an enabler and facilitator of transnational repression.
28. Not only has the Registrar been acutely aware of "Rwanda's historical position on the Relocated Persons" he has long had the following information, *inter alia*, on the Rwandan government's ("Government") targeted persecution of Mr. Nsengiyumva:¹²
- a. Public accusations from notable RPF leaders including Tito Rutaremara that he is an "extremist";
 - b. False accusations in the Government "Mucyo Commission" report linking him with alleged crimes committed by French soldiers;
 - c. False accusations in the Government "Mutsinzi Commission" report blaming him and others for the 6 April 1994 assassination of President Habyarimana;
 - d. IBUKA, the genocide survivor group, regularly refers to him as the person responsible for the genocide in Gisenyi prefecture; IBUKA president Jean Pierre Dusingizemungu told media that IBUKA does not recognize UN International Criminal Tribunal for Rwanda (ICTR) judgments;

¹² See, Nzuwonemeye *et al*, Mr. Nsengiyumva's Extremely Urgent Motion for Emergency Evacuation and Relocation (Strictly Confidential and *ex parte* Annex A), 28 January 2022.

- e. The Executive secretary of the Commission nationale de lutte contre le génocide (CNLG) called for the resignation of ICTR Judge Theodore Meron and other ICTR judges for releasing him on rendering the appeal judgment;
 - f. On 15 November 2021, contrary to the ICTR judgment, the Government newspaper *The New Times* called him a mastermind of the 1994 genocide against the Tutsi.
29. The 26 July 2023 military *coup d'état* in Niger further destabilized the region and made civil or international war imminent. At this critical time, the Registrar is winding down the minimal effort to ensure Mr. Nsengiyumva's safety. This quintessential humanitarian emergency placed Mr. Nsengiyumva, whose freedom of movement is being violated, at extreme risk. He needs to be evacuated to a safe State immediately.

Additional Matters

30. Reports 4 and 5 make no reference to an inquiry into Mr. Nsengiyumva's well-being or to the sustenance funds at his disposal which are expected to be depleted in a matter of weeks.
31. At this time last year, the Registrar had twice refused to provide additional sustenance funds to ensure Mr. Nsengiyumva and the other Relocated Persons had the means to eat.
32. On 12 January 2023, noting that the first allocation of sustenance funds had been exhausted, the Single Judge further noted that the Relocated Persons had "no independent means of earning money, being confined to their residence without official documents", and that the Mechanism "has an on-going duty of care towards them, given that the relocation has not occurred in accordance with the Relocation Agreement, which would reasonably extend to providing them with the means of accessing food and other basic necessities of life."
33. The Judge added that:
- the Mechanism provided each relocated person with a one-time lump sum payment of \$10,000 as an installation grant and accommodation for a year in Niger, and that prior to the end of the first year following relocation, the Mechanism was expected to conduct with the

authorities of Niger a joint assessment of the living conditions and ability of the Relocated Persons to take care of themselves and, should the need arise, “explore possibilities of assistance with other stakeholders”.

34. He also held that the Mechanism

has the duty to ensure the welfare of acquitted and released persons pending their relocation and that, which such duty of care does not continue indefinitely following their relocation, in the particular circumstances of the present case, where relocation appears not to have been carried out in accordance with the full terms of the Relocation Agreement, the Mechanism’s duty of care continues and should encompass financial assistance, to the extent that the Relocated Persons have not been given the opportunity to identify opportunities to support themselves in line with the original terms of the Relocation Agreement.

35. The Single Judge ordered the Registry to provide an additional lump sum payment of \$10,000 to each Relocated Person while efforts continued to find a safe third State for their relocation to the men.¹³

36. As the second lump sum payment will soon be depleted, Mr. Nsengiyumva respectfully requests the President to order the Registry to provide an additional lump sum payment of \$10,000 to him, and the other Relocated Persons, while efforts continue to find a safe third State for their relocation.

37. At paragraph 18 of Report 4, the Registrar proposed that the President consider using her good office “*to encourage the United Nations General Assembly to issue a resolution tailored specifically to the plight of the Relocated Persons. Obtaining such a resolution would provide a better foundation for the Mechanism’s relocation efforts and reinvigorate the call to the Member States to find an expedited resolution to this crisis.*”

¹³ Nzuwonemeye *et al*, Decision on Motions for an Order for Subsistence Funds, 12 January 2023.

38. It is respectfully submitted that, rather than seeking UN General Assembly support, an effort the Rwandan government can be expected to impede, the Registrar must demonstrate that he is taking all necessary measures to safely relocate Mr. Nsengiyumva and the other Relocated Persons and that he is collaborating with Counsel to ensure, *inter alia*, that only the truth about Mr. Nsengiyumva is shared with potential relocation States.
39. In short, the Registrar needs to immediately comply with the Court Order by actively engaging potential relocation States in collaboration with Counsel, the only person legally authorized to communicate on behalf of her client and share information in his regard. Barring such active engagement by the Registrar, Counsel needs to take the lead, with the Registrar providing reliable diplomatic and logistics support.
40. There is every reason for, and no valid reason against this approach, which resulted in all ten (10) pre-2020 successful safe relocations.¹⁴
41. Mr. Nsengiyumva respectfully reiterates that under no circumstances will he consent to be sent to Rwanda and he roundly denounces any efforts by anyone to that end.

Mr. Nsengiyumva therefore respectfully requests the President to:

- 1) Order the Registrar to incorporate into his Profile all changes requested by Counsel;
- 2) Order the Registrar to share with Counsel all additional information concerning Mr. Nsengiyumva and regarding the facts and circumstances of his situation being shared with potential relocation States past, present and future;

¹⁴ All ten (10) ICTR/Mechanism successful safe relocations were the result of counsel's leadership with the diplomatic and logistical support of the Registrar: Ignace Bagilishema, Emmanuel Bagambiki, Gratien Kabiligi, Casimir Bizimungu, Justin Mugenzi, Jean Mpambara, André Rwamakuba, Augustin Ndindilyimana, Hormisdas Nsengimana and Sylvain Nsabimana.

- 3) Order the Registrar to send urgent follow-up *notes verbales* to the 33 States referred to herein at paragraph 22 requesting a meeting and to send an urgent *note verbale* to the remaining 150 UN Member States requesting a meeting;
- 4) Order the Registrar to
 - a) communicate with Counsel to i) arrange meetings with all potential relocation States that have not declined to resettle her client, ii) ensure Counsel clears all information regarding her client in communications with potential relocation States, and iii) ensure Counsel's participation in the meetings with potential relocation States, or
 - b) provide Counsel with all contact information and the content of exchanges with potential relocation States to enable Counsel to conduct the necessary follow-up and organize meetings with all necessary logistical and diplomatic assistance; and
- 5) Order the Registry to provide an additional lump sum payment of \$10,000 to Mr. Nsengiyumva, and the other Relocated Persons, while efforts continue to find a safe third State for their relocation.



Allison Turner

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**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
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Case Name/ Affaire :	In the Matter of François-Xavier Nzuwonemeye et als.		Case Number/ Affaire n° :	MICT-22-124	
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