

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-22-124

Date: 7 December 2023

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President

Registrar: Mr. Abubacarr M. Tambadou

Decision of: 7 December 2023

IN THE MATTER OF

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

PUBLIC

**DECISION IN RELATION TO REQUESTS BY
ANATOLE NSENGIYUMVA**

Counsel for the Relocated Persons:

Mr. Peter Robinson for Mr. François-Xavier Nzuwonemeye
Ms. Kate Gibson for Mr. Prosper Mugiraneza
Mr. John Philpot for Mr. Protais Zigiranyirazo
Ms. Allison Turner for Mr. Anatole Nsengiyumva
Mr. Iain Edwards for Mr. Alphonse Nteziryayo
Mr. Philippe Larochelle for Mr. André Ntagerura
Mr. Jean Flamme for Mr. Innocent Sagahutu

I, GRACIELA GATTI SANTANA, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively);

RECALLING that, on 19 December 2022, I instructed the Registrar of the Mechanism (“Registrar”) to, *inter alia*, file on the judicial record: (i) an overview of the steps taken by him and the Registry of the Mechanism in 2022 in addressing the situation of the acquitted or released persons who were relocated to the Republic of Niger (“Relocated Persons”); and (ii) every 60 days thereafter, a report on his efforts to find a solution for the Relocated Persons in line with the Mechanism’s duty of care towards them;¹

NOTING that on 3 January, 6 March, 9 May, 6 July, 11 September, and 10 November 2023, the Registrar filed reports in relation to the situation of the Relocated Persons;²

BEING SEISED OF a submission filed on 21 November 2023 by Mr. Anatole Nsengiyumva (“Nsengiyumva”), wherein he requests that I order the Registrar to: (i) correct false information in Nsengiyumva’s profile document, which is provided to potential relocation States; (ii) share with Nsengiyumva’s counsel all additional information that is conveyed to potential relocation States about Nsengiyumva; (iii) send urgent *notes verbales* to a number of States requesting meetings; (iv) communicate with Nsengiyumva’s counsel regarding past and future meetings with potential relocation States (all together, “Communication Requests”); and (v) provide an additional lump sum payment of 10,000 United States dollars to each of the Relocated Persons while efforts continue to find a safe third State for their relocation (“Lump Sum Request”);³

RECALLING that the reporting regime established in the Instruction was, *inter alia*, based on the consideration that “in order for the Relocated Persons to be able to properly indicate their consent

¹ Further Instruction to the Registrar, 19 December 2022 (“Instruction”), p. 3. *See* Decision on the Requests of Tharcisse Muvunyi and Innocent Sagahutu, 24 February 2023, p. 3 (in relation to the security classifications of the periodic reports).

² Registrar’s Submission in relation to the “Further Instruction to the Registrar” of 19 December 2022, 3 January 2023 (confidential) (public redacted version filed on 3 March 2023); Registrar’s First Bi-Monthly Submission in relation to the “Further Instruction to the Registrar” of 19 December 2022, 6 March 2023; Registrar’s Second Bi-Monthly Submission in relation to the “Further Instruction to the Registrar” of 19 December 2022, 9 May 2023; Registrar’s Third Bi-Monthly Submission in relation to the “Further Instruction to the Registrar” of 19 December 2022, 6 July 2023; Registrar’s Fourth Bi-Monthly Submission in relation to the “Further Instruction to the Registrar” of 19 December 2022, 11 September 2023; Registrar’s Fifth Bi-Monthly Submission in relation to the “Further Instruction to the Registrar” of 19 December 2022, 10 November 2023.

³ Anatole Nsengiyumva’s Response to Registrar’s Fourth and Fifth Bi-Monthly Submission, 21 November 2023, paras. 4, 6, pp. 11-12.

or to raise objections to any proposed solution, they must be informed of all developments to the maximum extent appropriate under the circumstances”;⁴

EMPHASISING that the Registrar is leading the Mechanism’s efforts to find a durable solution to the situation of the Relocated Persons;⁵

CONSIDERING that, although as President I am responsible for supervising the activities of the Registry, pursuant to Rule 23 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), having the Registrar lead efforts in this matter requires a degree of deference on my part, especially when it comes to specific issues such as when and how potential relocation States are contacted, which documents are shared with them, and what information can be shared with counsel for the Relocated Persons;

URGING the Registrar, nevertheless, to ensure that counsel of the Relocated Persons are involved, to the extent appropriate, in his various efforts to find a durable solution;

NOTING that, despite the pending Lump Sum Request, I was informed on 28 November 2023 that the Registrar had decided to “make additional lump sum payments to each of the Relocated Persons [...] for the year 2024”;⁶

RECALLING that the matter of providing subsistence funds in the form of lump sum payments to the Relocated Persons, following the one-time payment provided for in the Relocation Agreement,⁷ was litigated before and adjudicated by a Single Judge;⁸

RECALLING that, in the context of such litigation, the Registrar had previously submitted that “[i]n line with the Appeals Chamber jurisprudence, the duty of care that the Organization owes to the Relocated Persons is understood in the context of ensuring that the life and liberty of released or acquitted persons are not at risk upon relocation. It is the Registry’s understanding that this limited duty of care does not extend to an obligation of continued and indefinite financial assistance, unless

⁴ Decision in relation to Reporting Regime, 13 June 2023, p. 2; Instruction, p. 2 *referring to* Security Council Resolution 2637 (2022), 22 June 2022, para. 5.

⁵ Instruction, p. 3; Decision in relation to the Requests of François-Xavier Nzuwonemeye, 12 April 2023, p. 1.

⁶ Email communication from the Office of the Registrar to the Office of the President, dated 28 November 2023. The Registrar’s decision in this respect was transmitted to counsel for Mr. François-Xavier Nzuwonemeye and Mr. Prosper Mugiraneza, but there is no indication as to whether it was also communicated to Nsengiyumva’s counsel or to counsel for the other Relocated Persons.

⁷ *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, dated 15 November 2021, Art. 4(3).

⁸ Decision on Motions for an Order for Subsistence Funds, 12 January 2023, pp. 1-3.

judicially ordered or otherwise authorised by the Organization’s legislative and/or budgetary bodies”;⁹

CONSIDERING that the Registrar therefore lacked competence to decide on the dispensation of additional subsistence funds to the Relocated Persons;

CONSIDERING further that, by his actions, the Registrar pre-empted a judicial determination on the pending Lump Sum Request;

CONSIDERING that it is in the interests of justice and judicial economy to assign to the Lump Sum Request the same Single Judge who was assigned to previous motions for subsistence funds;

CONSIDERING Article 12(1) of the Statute of the Mechanism;

PURSUANT TO Rule 23(A) of the Rules;

HEREBY DISMISS the Communication Requests;

INSTRUCT the Registrar to refrain from dispensing any subsistence payments to the Relocated Persons, for the year 2024 or beyond, in the absence of a judicial order; and

ASSIGN Judge Joseph E. Chiondo Masanche to consider the Lump Sum Request.

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

Done this 7th day of December 2023,
At Arusha,
Tanzania.



Judge Graciela Gatti Santana
President

[Seal of the Mechanism]

⁹ Public Redacted Version of “Registrar’s Submission in relation to Motions for Additional Funds of 17, 18 and 23 November and 13 December 2022” of 28 December 2022, 11 May 2023, para. 16.



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