

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-22-124

Date: 6 August 2024

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Joseph E. Chiondo Masanche

Registrar: Mr. Abubacarr M. Tambaou

Decision of: 6 August 2024

IN THE MATTER OF

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

PUBLIC

**DECISION ON JOINT MOTION FOR ASSIGNMENT OF
COUNSEL AND TO STAY THE ORDER TO SHOW CAUSE**

Counsel for the Relocated Persons

Mr. François-Xavier Nzuwonemeye

Mr. Peter Robinson

Mr. Protais Zigiranyirazo

Mr. John Philpot

Mr. Alphonse Nteziryayo

Mr. Iain Edwards

Mr. Prosper Mugiraneza

Ms. Kate Gibson

Mr. André Ntagerura

Mr. Philippe Larochelle

Mr. Innocent Sagahutu

Mr. Jean Flamme

I, JOSEPH E. CHIONDO MASANCHE, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;¹

RECALLING the Order to Show Cause, issued on 24 July 2024, wherein I considered that there is no indication that the general situation of the acquitted and released persons relocated on the territory of Niger (“Relocated Persons”) while under house arrest has changed since the issuance of the Decision of 4 January 2024,² or that their situation will evolve positively in the near future, and that it is, therefore, necessary to address: (i) the legal and factual appropriateness of whether they are able to relocate to Rwanda; and (ii) if relocation in Rwanda proves to be a safe and durable solution for the Relocated Persons, whether the duty of care of the Mechanism towards them, encompassing financial assistance in Niger, shall continue in 2025;³

RECALLING that, in view of the above considerations, I invited: (i) the Relocated Persons to file submissions showing cause as to why they cannot relocate to Rwanda potentially with appropriate guarantees of safety to alleviate any concerns they may have regarding fears of being put on trial or otherwise harmed, and why I should not terminate the Mechanism’s financial assistance to them in Niger, if relocation in Rwanda appears to be a safe and durable solution; and (ii) the Registrar to make preliminary enquiries with the Government of Rwanda and file submissions regarding the relevant arrangements that could be made with the Rwandan authorities to secure the return of the Relocated Persons onto their territory and provide them with appropriate guarantees of safety, as well as any other submissions relevant to the determination of the present matter;⁴

BEING SEISED OF a motion filed on 29 July 2024, wherein Mr. André Ntagerura, Mr. Alphonse Nteziryayo, Mr. François-Xavier Nzuwonemeye, and Mr. Prosper Mugiraneza request: (i) the assignment of counsel at the expense of the Mechanism for the purpose of assisting them in their response to the Order to Show Cause; (ii) a stay of the Order to Show Cause until the Relocated Persons are provided with the necessary legal aid resources and time to engage with the Rwandan authorities and the Registry on the issues raised in the Order to Show Cause, as well as a stay until a

¹ See Order Assigning a Single Judge to Consider a Request and Its Joinder, 27 June 2024, p. 1.

² Further Decision on Motions for an Order for Subsistence Funds, 4 January 2024 (“Decision of 4 January 2024”), p. 3. See also Decision on Motions for an Order for Subsistence Funds, 12 January 2023, p. 3.

³ Order to Show Cause, 24 July 2024 (“Order to Show Cause”), p. 3.

⁴ Order to Show Cause, p. 3. I note that the Relocated Persons and Registrar were further invited to file a written response, if any, within 14 days of the filing of their respective submissions. See Order to Show Cause, p. 4.

final decision has been issued on a separate motion filed by Mr. Ntagerura; and (iii) that a status conference be organized to discuss the issues raised in the Motion and in the Order to Show Cause;⁵

NOTING the motion in joinder filed by Mr. Protais Zigiranyirazo on 29 July 2024;⁶

NOTING the submissions from the Applicants that: (i) there are exceptional circumstances warranting the assignment of counsel at the expense of the Mechanism given that the matters raised in the Order to Show Cause far exceed, in terms of complexity, other matters in which legal aid was granted and that the denial of these resources would severely and negatively impact the fairness of the proceedings; (ii) it is “non-negotiable” that their counsel engage directly with the Rwandan authorities to discuss purported “guarantees of safety” and resources the Rwandan authorities may or may not be prepared to provide; and (iii) the Motion of 23 July 2024 must be resolved to determine whether an offer of relocation from another State exists, as such an offer would render the whole exercise contemplated by the Order to Show Cause moot;⁷

NOTING FURTHER the Applicants submission that the transfer of the Relocated Persons can only happen with their consent, and that they repeat that they do not consent to being transferred to Rwanda;⁸

CONSIDERING that *pro bono* counsel representing acquitted or released persons are, in principle, not remunerated by the Mechanism;⁹

CONSIDERING that, as a matter of principle, an acquitted or released person whose case has reached finality is not entitled to legal assistance at the Mechanism’s expense, and that legal aid may only be granted in exceptional circumstances and pursuant to a judicial order;¹⁰

⁵ Joint Motion for Assignment of Counsel and to Stay the 24 July 2024 “Order to Show Cause”, 29 July 2024 (“Motion”), paras. 9, 30. *See also* Ntagerura Motion for Judicial Review of the Decision of the Registrar of the IRMCT dated 19 July 2024 and Issuance of a *Mandamus* Order, 23 July 2024 (“Motion of 23 July 2024”); Joinder by Protais Zigiranyirazo to Ntagerura Motion for Judicial Review of the Decision of the Registrar of the IRMCT dated 19 July 2024 and Issuance of a *Mandamus* Order, 24 July 2024.

⁶ Joinder by Protais Zigiranyirazo to Joint Motion for Assignment of Counsel and to Stay the 24 July 2024 “Order to Show Cause”, 29 July 2024 (“Joinder Motion”). I note that, in the Joinder Motion, filed by Mr. Zigiranyirazo, he submits certain clarifications to the arguments raised by Mr. Ntagerura, Mr. Nteziyayo, Mr. Nzuwonemeye, and Mr. Mugiraneza (collectively, the “Applicants”) in relation to an alleged offer of relocation from another State and, as such, states that the Order to Show Cause should be stayed until this issue is resolved. *See* Joinder Motion, paras. 1-9; Motion, paras. 5, 6, 25-30.

⁷ Motion, paras. 12-20, 22-29.

⁸ Motion, paras. 10, 11.

⁹ Decision on Motion by François-Xavier Nzuwonemeye for Assignment of Counsel and Extension of Time to File an Appeal, 4 June 2024 (“Appeal Decision of 4 June 2024”), p. 2, *referring to* Decision on Motion to Appeal Decision Denying Assignment of Counsel, 27 May 2022, p. 4 (“Appeal Decision of 27 May 2022”).

¹⁰ Appeal Decision of 4 June 2024, p. 2, *referring to* Appeal Decision of 27 May 2022, p. 4 and references cited therein.

NOTING that, at this time, the Applicants have been invited to show cause as to why they cannot relocate to Rwanda, potentially with guarantees of safety to alleviate any concerns they may have regarding fears of being put on trial or otherwise harmed, as well as why financial assistance should not be terminated if relocation in Rwanda appears to be a safe and durable solution;

CONSIDERING that the submission sought in the Order to Show Cause is a preliminary enquiry designed to gather information to aid in determining whether further financial or other support should be provided to the Relocated Persons in the event that there is a safe State available for their relocation – not whether the Relocated Persons should be ordered by the Mechanism to return to Rwanda;

CONSIDERING that, contrary to the submission from the Applicants, the present situation is not comparable to referral proceedings, a provision that was specifically provided for in the Rules of Procedure and Evidence at the International Criminal Tribunal for Rwanda (“ICTR”),¹¹ and, instead, fundamentally concerns the continued enforcement of a relocation agreement between Niger and the United Nations, with regard to individuals who have been convicted and released having served their sentence and who are no longer accused before the Mechanism, and for which legal assistance is not, in principle, applicable;¹²

CONSIDERING FURTHER that to give effect to the instruction from the United Nations Security Council and to ensure that efforts continue to be made to find an acceptable State of relocation for the Relocated Persons,¹³ the Applicants have been requested to provide specific submissions, none of which require them to scrutinize any guarantees offered by the Rwandan authorities at this time,¹⁴ or, in my view, involve novel or particularly complex submissions at this initial stage;¹⁵

NOTING that the Order to Show Cause does not instruct counsel for the Applicants to engage directly with the Rwandan authorities, which is not a “pre-requisite” to providing the submissions requested in the Order to Show Cause and is premature at this time,¹⁶ and that the Registrar has only been invited to make preliminary enquiries with the Government of Rwanda, with the Relocated Persons invited to file a written response to that submission;¹⁷

NOTING FURTHER that the Order to Show Cause specifically states that submissions from Rwanda may be sought at the appropriate time, if necessary, for the proper adjudication of this

¹¹ See Motion, para. 15. See also Rule 11*bis* of the Rules of Procedure and Evidence of the ICTR.

¹² See also Decision on Innocent Sagahutu’s and Anatole Nsengiyumva’s Requests for Assignment of Legal Aid Counsel, 16 February 2022, pp. 2, 3.

¹³ Order to Show Cause, pp. 2, 3.

¹⁴ Motion, paras. 17, 18.

¹⁵ Appeal Decision of 4 June 2024, p. 2 and references cited therein.

¹⁶ Motion, paras. 20-24.

¹⁷ Order to Show Cause, pp. 3, 4.

matter,¹⁸ and that, if necessary, the Relocated Persons will be provided with an opportunity, again at the appropriate time, to address and supplement that submission and make other factual and legal arguments in relation to the appropriateness of whether they are able to relocate to Rwanda;

CONSIDERING that, after the completion of the preliminary enquiries identified in the Order to Show Cause, it cannot be excluded that the complexity of the issues arising from the submissions received from the Relocated Persons and the Registrar, as well as Rwanda, if necessary, may give rise to exceptional circumstances warranting the assignment of counsel;

CONSIDERING that I am also unpersuaded that the information solicited from the Relocated Persons and the Registry in any way prejudices the adjudication of the Motion of 23 July 2024, which was filed before the issuance of the Order to Show Cause, and, instead, ensures that all possible efforts are being explored and considered to find a State to accept the Relocated Persons;

FINDING, therefore, that the Applicants have failed to demonstrate that exceptional circumstances currently exist warranting the assignment of counsel at the Mechanism's expense or that the Order to Show Cause should be stayed;

CONSIDERING that, aside from proposing to discuss the various issues raised in the Motion and in the Order to Show Cause, the Applicants have failed to demonstrate that holding a status conference is either appropriate or necessary;¹⁹

FOR THE FOREGOING REASONS,

DISMISS the Motion and Joinder Motion.

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

Done this 6th day of August 2024,
At Arusha,
Tanzania



Judge Joseph E. Chiondo Masanche
Single Judge

[Seal of the Mechanism]

¹⁸ Order to Show Cause, p. 3.

¹⁹ Motion, para. 30.



I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	IRMCT Registry/ Greffe du MIFRTP	<input checked="" type="checkbox"/> Arusha/ Arusha	<input type="checkbox"/> The Hague/ La Haye			
From/ De :	<input type="checkbox"/> President/ Président	<input checked="" type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Prosecution/ Bureau du Procureur	<input type="checkbox"/> Defence/ Défense	<input type="checkbox"/> Registrar/ Greffier	<input type="checkbox"/> Other/ Autre
Case Name/ Affaire :	In the Matter of François-Xavier Nzuwonemeye et al.		Case Number/ Affaire n° :	MICT-22-124		
Date Created/ Daté du :	6 August 2024	Date transmitted/ Transmis le :	6 August 2024	Number of Pages/ Nombre de pages :	5	
Original Language/ Langue de l'original :	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/ préciser):	
Title of Document/ Titre du document :	Decision on Joint Motion for Assignment of Counsel and to Stay the Order to Show Cause					
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Public/ Document public	<input type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue	<input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu	<input type="checkbox"/> Ex Parte Rule 86 applicant excluded/ Article 86 requérant exclu	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ Amicus curiae exclu
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