

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No: MICT-13-43

Date: 29 December 2021

Original: English

BEFORE THE PRESIDENT

Before: Judge Carmel Agius

Registrar: Mr Abubacarr Tambadou

THE PROSECUTOR

v.

FRANÇOIS-XAVIER NZUWONEMEYE

Public

**URGENT REQUEST FOR AN ORDER FOR COOPERATION
TO THE GOVERNMENT OF THE REPUBLIC OF THE NIGER**

Counsel for the Applicant

Peter Robinson

Government of The Republic of The Niger

I. INTRODUCTION

1. 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
2. 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 International Residual Mechanism for the Criminal Tribunals (“IRMCT”). Since then has been engaged in a years-long effort to reunite with his family, who are citizens and residents of France.²
3. On 18 November 2021, Major Nzuwonemeye was informed for the first time about his possible relocation to the Republic of the Niger (“Niger”), pursuant to an agreement between the Government of Niger and the IRMCT entered into three days earlier. He agreed to the terms of the relocation.
4. On 5 December 2021, he was transferred to Niger by the IRMCT along with seven other acquitted or released persons.
5. On 27 December 2021, he 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”. (Annex A).³
6. For the reasons set out below, Major Nzuwonemeye requests that the IRMCT President, or a Single Judge designated by him, urgently issue an Order to the Government of Niger, pursuant to Article 28 of the IRMCT Statute (“Statute”) to permit his continued presence on its territory until the IRMCT Registrar is able to make arrangements for his relocation to another safe State, or the Expulsion Order is reversed.

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 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”).

II. APPLICABLE LAW

7. Article 28 of the IRMCT Statute mandates State cooperation with the IRMCT in the investigation and prosecution of accused. Article 28(2) of the Statute requires States to “comply without undue delay” with any request or order issued by a Single Judge, and gives a non-exhaustive list of areas of cooperation.

III. SUBMISSIONS

8. All States are obligated to cooperate with the IRMCT.⁴ This is particularly true for States that, like Niger, have entered into specific agreements with the IRMCT. Pursuant to Article 28(2) of the Statute, “States shall comply without undue delay with any order issued by a Single Judge or Trial Chamber in relation to cases involving persons covered by Article 1 of this Statute”. Major Nzuwonemeye, having been indicted by the ICTR, is a person covered by Article 1 of the Statute.
9. In such circumstances, the IRMCT President, or a Single Judge, is empowered to invoke Article 28 of the Statute to ensure that Major Nzuwonemeye is not sent back to Rwanda or rendered stateless by the Expulsion Order. Major Nzuwonemeye is particularly concerned that he not be sent back to Rwanda, where he will be at risk.⁵
10. The ICTR Appeals Chamber has recognised that it has a duty to ensure the welfare of acquitted persons.⁶ While the IRMCT Appeals Chamber, in a previous case brought by Major Nzuwonemeye, has held that Article 28 of the Statute does not include the power to order a State to accept an acquitted person on to its territory,⁷ that decision is distinguishable from the Applicants’ situation because of the existence of an agreement with the Government of Niger that would be breached if the Expulsion Order were enforced,⁸ and because the remedy sought is not an order for the permanent settlement of Major Nzuwonemeye on the territory of Niger, but rather a delay.

⁴ *Prosecutor v. Ngirabatware*, MICT-12-29-R, Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay, 31 January 2017, para. 16.

⁵ See, e.g. The New Times, ‘*Niger expels Genocide convicts transferred by UN Court*’, 28 December 2021, describing the Applicants as “widely considered to be among the masterminds of the 1994 Genocide against the Tutsi”, available at: <https://www.newtimes.co.rw/news/niger-expels-genocide-convicts-transferred-un-court>.

⁶ *In Re Andre Ntagerura*, 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, para. 19.

⁷ *Prosecutor v. Nzuwonemeye*, MICT-13-43, Decision on the Appeal of the Single Judge’s Decision of 22 October 2018, 17 April 2019, para. 13.

⁸ Nothing in the agreement allows the Government of Niger to unilaterally expel an acquitted or released person transferred to its territory pursuant to the Agreement.

11. Where a State proposes to, or acts unlawfully, the IRMCT has the power to order the State to comply with its international obligations.⁹ Here, the Government of Niger proposes to expel Major Nzuwonemeye in violation of its contractual obligations with the IRMCT. While Major Nzuwonemeye is willing to leave Niger should the Expulsion Order stay in place, it is necessary that the Registrar be given time to find him a safe State in which to reside. An order to the Government of Niger not to enforce its Expulsion Order until such arrangements can be made is both necessary and appropriate in the circumstances.¹⁰

IV. RELIEF REQUESTED

12. The President, or a Single Judge, is respectfully requested to **urgently, and before 3 January 2022,**

ORDER the Government of the Republic of the Niger, pursuant to Article 28 of the Statute, to permit the continued presence of Major Nzuwonemeye on its territory until the IRMCT Registrar has made arrangements for his relocation to another safe State, or the Expulsion Order is reversed.

Word Count: 1103 words

Respectfully submitted,



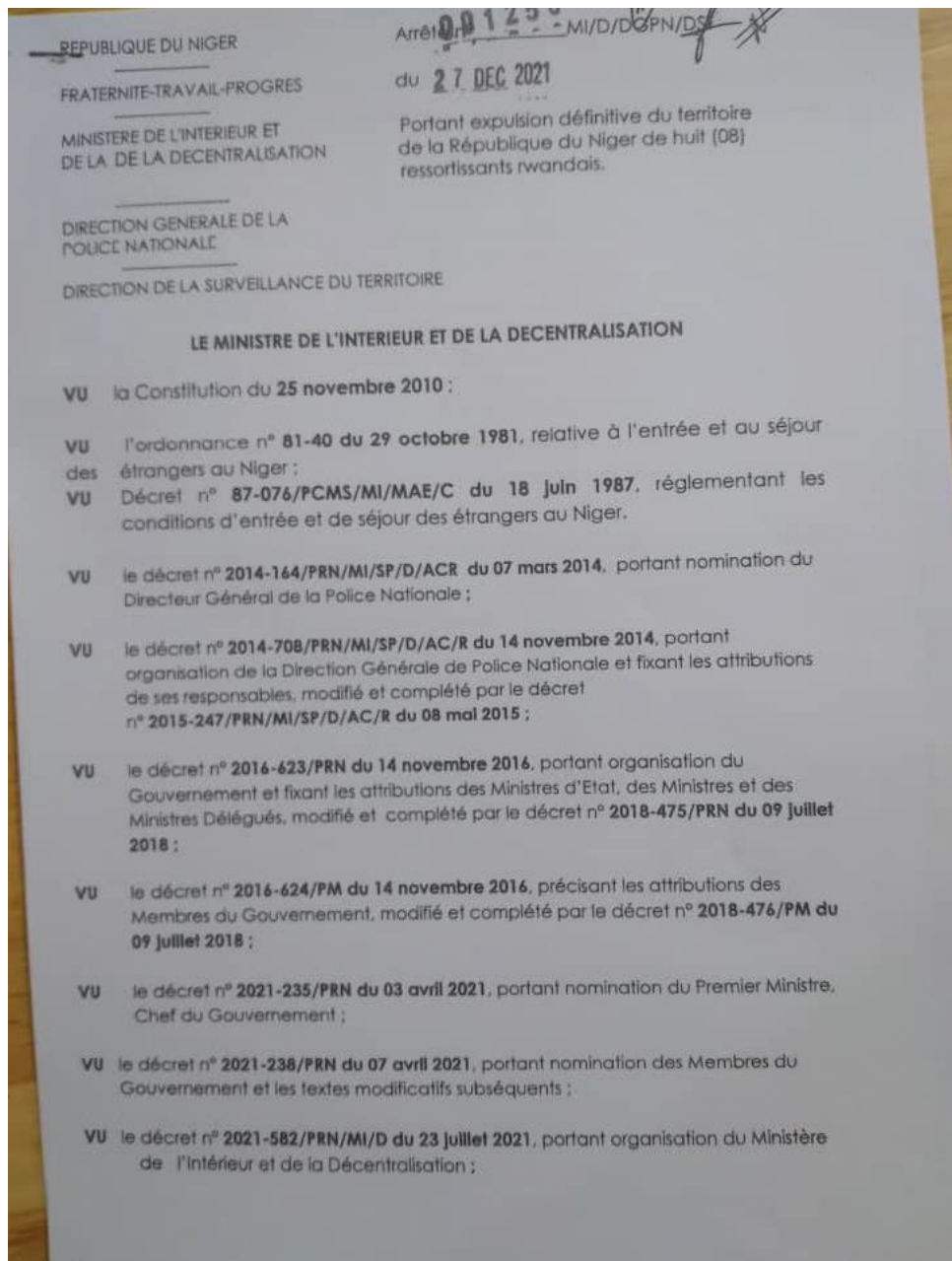
PETER ROBINSON

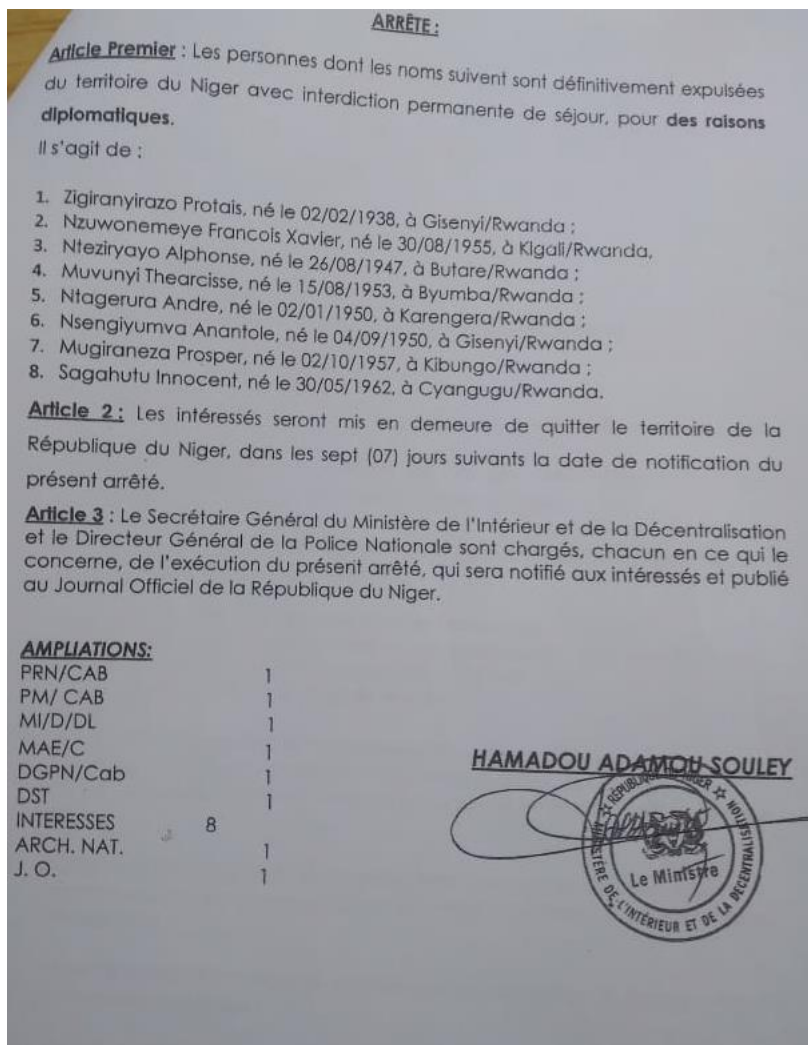
Counsel for Francois-Xavier Nzuwonemeye

⁹ *Prosecutor v. Ngirabatware*, MICT-12-29-R, Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay, 31 January 2017.

¹⁰ Major Nzuwonemeye is engaging directly with the authorities in Niger, but given the short time frame and suddenness of the decision, with no advance notice to the IRMCT or the Applicants, this motion is being filed at the earliest time to give the President or Single Judge as much time as possible to act.

ANNEX A







I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

| | | | |
|---|---|---|--|
| To/ À : | IRMCT Registry/ <i>Greffe du MIFRTP</i> | <input checked="" type="checkbox"/> Arusha/ <i>Arusha</i> | <input type="checkbox"/> The Hague/ <i>La Haye</i> |
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| Case Name/ Affaire : | Prosecutor v Nzuwonemeye | Case Number/ Affaire n° : | MICT-13-43 |
| Date Created/ Daté du : | 29 December 2021 | Date transmitted/ Transmis le : | 29 December 2021 |
| | | No. of Pages/ Nombre de pages : | 6 |
| Original Language / Langue de l'original : | <input checked="" type="checkbox"/> English/ <i>Anglais</i> | <input type="checkbox"/> French/ <i>Français</i> | <input type="checkbox"/> Kinyarwanda / <i>B/C/S</i> |
| | | <input type="checkbox"/> Other/Autre (specify/préciser) : | |
| Title of Document/ Titre du document : | URGENT REQUEST FOR AN ORDER FOR COOPERATION TO THE GOVERNMENT OF THE REPUBLIC OF THE NIGER | | |
| Classification Level/ Catégories de classification : | <input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i> | <input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i> | <input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i> |
| | <input type="checkbox"/> Confidential/ <i>Confidentiel</i> | <input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i> | <input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i> |
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| <input checked="" type="checkbox"/> Motion/ <i>Requête</i> | <input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i> | <input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i> | <input type="checkbox"/> Warrant/ <i>Mandat</i> |
| <input type="checkbox"/> Decision/ <i>Décision</i> | <input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i> | <input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i> | <input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i> |
| <input type="checkbox"/> Order/ <i>Ordonnance</i> | <input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i> | <input type="checkbox"/> Indictment/ <i>Acte d'accusation</i> | |

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

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