



## Security Council

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### **Letter dated 19 January 2022 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council**

I have the honour, as well as the duty, to draw your attention to the imminent situation of the eight acquitted persons and convicted persons who have completed serving their sentence and, in December 2021, were relocated to the Republic of Niger. Since my recent briefing to the Security Council on 13 December 2021 regarding the progress of our work, there has been a major turn of events with respect to the implementation of the “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”.

The potential challenges in relocating acquitted or released persons have been evident for many years to all actors engaged in international peace, security and justice. In this regard, you will recall that, for the persons in this situation, which outlasted the closure of the International Criminal Tribunal for Rwanda, it has fallen upon its successor body, the International Residual Mechanism for Criminal Tribunals, to help to resolve this issue under the guidance of the Security Council.

The Security Council itself has expended considerable focus and energy on finding a sustainable solution for the relocation of these persons. Indeed, the importance of resolving this issue has featured in no less than 10 decisions by the Council stretching back more than a decade, namely, resolutions [1995 \(2011\)](#), [2029 \(2011\)](#), [2054 \(2012\)](#), [2080 \(2012\)](#), [2194 \(2014\)](#), [2256 \(2015\)](#), [2422 \(2018\)](#) and [2529 \(2020\)](#), and the statements by the President of the Security Council dated 19 March 2018 and 28 February 2020. The Council has consistently and unequivocally called upon Member States to cooperate with and render all necessary assistance to the Mechanism in relation to this serious and intractable question.

At long last, near the completion of its own two-year term as a member of the Security Council and with the benefit of having first-hand experience of the international community’s efforts to settle this matter, the Government of the Niger answered the Council’s repeated calls to Member States. On 15 November 2021, the Niger and the United Nations concluded the Agreement, signed for the Government of the Niger by the Minister of State and Minister for Foreign Affairs and Cooperation and for the United Nations by the Registrar of the Mechanism, Abubacarr Tambadou. Among its binding provisions are that the Niger shall grant the relocated persons permanent residence status and issue them relevant identity documents within three months of their entry into its territory (art. 5). The Agreement also stipulates that any official communications between the Niger and the Mechanism relating to matters



provided for in the Agreement shall be directed to the Registrar and the Minister for Foreign Affairs and Cooperation of the Niger (art. 2), and that any dispute, controversy or claim arising out of or relating to the Agreement shall be settled by negotiation or by a mutually agreed mode of settlement (art. 11).

During the Security Council debate on 13 December 2021, I reported that eight of the nine acquitted persons and convicted persons who had completed serving their sentence had already been relocated to the Niger pursuant to the Agreement. In particular, I lionized the willingness of the Niger to take meaningful action as “epitomiz[ing] the type of State cooperation that will prove critical to the Mechanism’s ability to fulfill [its] mandated functions”. The Niger, as President of the Security Council, intervened in its national capacity to welcome the completion of the Agreement and express support for the Mechanism and its work.

Inexplicably, a couple of weeks later, on 27 December 2021, the authorities of the Niger reportedly confiscated from the relocated persons their recently acquired identity documents, placed them under house arrest and served the relocated persons with an expulsion order requiring that they leave the territory of the Niger within seven days “for diplomatic reasons”. Notably, the expulsion order makes no reference to the Agreement or to the obligation of the Niger to abide by its terms.

Unfortunately, the Mechanism was not informed by the Niger of the expulsion order and only learned about its existence following the receipt of multiple motions from the relocated persons starting on 29 December 2021. Immediately on 30 December 2021, I assigned those motions to the duty judge for the Arusha branch of the Mechanism, Joseph E. Chiondo Masanche, who, on 31 December 2021, issued an order to the Niger to stay the expulsion order and allow the relocated persons to remain on its territory, in accordance with the terms of the Agreement, pending the final adjudication of the matter. The Arusha duty judge also invited the Government of the Niger to provide, within 30 days of service of that order, written submissions regarding the validity of the expulsion order and its compliance with the Agreement.

In my capacity as President of the Mechanism, I also issued an order instructing the Registrar to take all necessary action to ensure that the expulsion order does not cause any prejudice to the fundamental rights of the relocated persons. I further instructed the Registrar to engage with the relevant authorities of the Niger, including in line with the procedures provided for in articles 2 and 11 of the Agreement.

As a result of the Mechanism’s judicial orders, as well as ongoing interventions of a diplomatic nature, on 4 January 2022 the Government of the Niger transmitted to the Mechanism a note verbale indicating its decision to suspend the execution of the expulsion order for 30 days as of 3 January 2022, in order to allow the Mechanism to find another Member State that would accept the relocated persons into its territory. This extension expires on 2 February 2022.

In the light of this note verbale, as well as additional motions alleging further violations of the Agreement, the Arusha duty judge reiterated that the order to stay the expulsion order “should apply until final adjudication of the dispute concerning Niger’s compliance with the Relocation Agreement”. Moreover, he considered it necessary to “FIND that Niger should adhere to the rule of law in relation to the Relocated Persons and ensure their fundamental human rights”, and accordingly ordered the Niger “to continue to execute and apply all dispositions of the Relocation Agreement, in full compliance with their letter and spirit, and to ensure the safety and welfare of the Relocated Persons pending final adjudication of the matter”. To this end, the Arusha duty judge also ordered the Niger “to ensure that the Relocated Persons have their identification documents returned and enjoy freedom of movement on its territory, in accordance with Article 5 of the Relocation Agreement, pending final adjudication of the matter”.

At present, the Arusha duty judge, the Mechanism, the United Nations, the international community as a whole and the relocated persons are awaiting indication from the Niger as to whether it will abide by the terms of the recently concluded Agreement.

I am deeply troubled by the present circumstances and their potentially severe impact on the fundamental human rights of the relocated persons, as well as on the rule of law more generally. The notion that a State Member of the Organization could seek to disregard a recently concluded agreement with the United Nations is distressing and cannot be allowed to stand as a precedent, especially on a matter that the Security Council has persistently been seized of and over which it has repeatedly called for the necessary cooperation from Member States.

I therefore respectfully seek the support of the Security Council in impressing upon the Republic of Niger the need to adhere fully to both the letter and spirit of the Agreement.

In closing, I would be most grateful if, in your capacity as President of the Security Council, you could have the present letter circulated as an official document of the Council.

*(Signed)* Carmel **Agius**  
President

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