

ICTR-98-44-T
11-3-2009
(45363-45354)

45363
HM



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

TRIAL CHAMBER III

**ENGLISH
Original: FRENCH**

Before: Judge Dennis C. M. Byron, presiding
Judge Gberdao Gustave Kam
Judge Vagn Joensen

Registrar: Adama Dieng

Date: 6 February 2009

THE PROSECUTOR

v.

**ÉDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA**

Case No. ICTR-98-44-T

JUDICIAL DEPT. 957/REHIVE
RECEIVED

2009 MAR 11 P 3:01

**DECISION ON THE VARIOUS MOTIONS RELATING TO
MATHIEU NGIRUMPATSE'S HEALTH**

Rules 54, 65 and 73 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
Iain Morley
Gerda Visser
Saidou N'Dow
Sunkarie Ballah-Conteh
Takeh Sendze

Counsel for Édouard Karemera:
Dior Diagne Mbaye and Félix Sow

Counsel for Mathieu Ngirumpatse:
Chantal Hounkpatin and Frédéric Weyl

Counsel for Joseph Nzirorera:
Peter Robinson and Patrick Nimy Mayidika Ngimbi

INTRODUCTION

1. Mathieu Ngirumpatse has not been able to attend hearings since 18 August 2008 due to health reasons. At the hearing of 6 November 2008, the Chamber decided that it would not consider severance of the proceedings at that stage. At that same hearing, conditions for Matthieu Ngirumpatse's agreement that the trial continues without him being physically present in court, but that arrangements be made for him to be able to participate fully in his defence while continuing to receive his medical treatment, were also discussed. The Chamber ordered an adjournment of the hearings until the beginning of February 2009 on account of Mathieu Ngirumpatse's ill health.

2. The Chamber is seized of several motions relating to Mathieu Ngirumpatse's health seeking, *inter alia*, orders of the Chamber for him to be provided with appropriate medical care, the release of his medical file to him as well as to a doctor of his choosing and his provisional release.¹ Mathieu Ngirumpatse further requests that he be transferred as a temporary precautionary measure pending a ruling on the conditions for his provisional release.²

¹ Ngirumpatse's Extremely Urgent Motion for the Provision of Appropriate Treatment for his Condition and for the Release of his Medical Records to a Doctor of his Choosing, filed on 22 September 2008; Prosecutor's Response to "*Requête en extrême urgence pour M. Ngirumpatse aux fins de prescrire toutes mesures médicales adaptées à son état, et de communication de son dossier médical au médecin de son choix*", filed on 24 September 2008; *Mémoire complémentaire en extrême urgence pour M. Ngirumpatse sur ses précédentes requêtes relatives à sa situation médicale et en l'état des observations du Greffier*, filed on 15 October 2008; Matthieu Ngirumpatse's Further Supplementary Brief on his Previous Submissions Relating to his Medical Condition, filed on 27 October 2008; Ngirumpatse's Motion for Provisional Release on Medical Grounds and Urgent Transfer Pending a Ruling on the Measures for his Release (Confidential), filed on 3 November 2008; *Réplique complémentaire pour M. Ngirumpatse sur la réponse du Procureur sur sa demande aux fins de mise en liberté provisoire pour motif médical*, filed on 6 November 2008; *Nouvelle réplique pour M. Ngirumpatse sur la deuxième réponse du Procureur sur sa demande aux fins de mise en liberté provisoire pour motif médical*, filed on 21 November 2008; *Deuxième réplique pour M. Ngirumpatse sur la deuxième réponse du Procureur sur sa demande aux fins de mise en liberté provisoire pour motif médical*, filed on 24 November 2008; *Nouveau mémoire complémentaire urgent pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicale*, filed on 21 November 2008; *Deuxième mémoire complémentaire urgent pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicale*, filed on 24 November 2008; Ngirumpatse's Third Urgent Supplementary Brief to his Previous Submissions on his Health Condition, filed on 18 December 2008; *Nouveau mémoire pour M. Ngirumpatse sur sa demande aux fins de mise en liberté provisoire pour motif médical*, filed on 18 December 2008; *Réplique pour M. Ngirumpatse sur la réponse du Procureur en date du 23 décembre 2008 à sa requête aux fins de mise en liberté provisoire*, filed on 31 December 2008.

² Ngirumpatse's Motion for Provisional Release on Medical Grounds and Urgent Transfer Pending a Ruling on the Measures for his Release (Confidential), filed on 3 November 2008; Interim Reply by Mr. Ngirumpatse to the Prosecutor's Response to the Former's Motion for Provisional Release on Medical Grounds (Confidential), filed on 5 November 2008; *Nouvelle réplique pour M. Ngirumpatse sur la deuxième réponse du Procureur sur sa demande aux fins de mise en liberté provisoire pour motif médical*, filed on 21 November 2008; *Deuxième réplique pour M. Ngirumpatse sur la deuxième réponse du Procureur sur sa demande aux fins de mise en liberté provisoire pour motif médical*, filed on 24 November 2008. Prosecutor's Response to Mathieu Ngirumpatse's Motion for Provisional Release (Confidential), filed on 4 November 2008, para. 4. The Prosecutor indicates that he could, nevertheless, change his position: "Such concern may even extend to supporting his application for provisional release if

3. Mathieu Ngirumpatse requests the Chamber to set a hearing date for his request for provisional release.³

DELIBERATIONS

4. The Chamber has been seized of diverse filings by the parties on Mathieu Ngirumpatse's health, many of which are repetitive. The Chamber considers that, for purposes of coherence, it must render a single decision on all the filings. The Chamber also points out to the parties that the successive filing of often identical requests has on several occasions delayed a decision by the Chamber, and requests the parties to refrain from such conduct.

5. With respect to Mathieu Ngirumpatse's motion for a hearing to be held on his request for provisional release,⁴ the Chamber is of the view that the written submissions filed by the parties are sufficient for it to decide the matters raised solely on that basis in accordance with Rule 73(A) of the Rules.

No need for a confidential decision

6. Although some of the filings on which this decision is based were filed confidentially, it is the Chamber's view that there is no justification, as matters stand, for this decision to be rendered confidentially. Nevertheless, the Chamber will ensure that information that it deems ought to be kept confidential is not disclosed to the public.

Prescription of appropriate measures for Mathieu Ngirumpatse's health situation and request for transfer to a specialist hospital as a precautionary measure

7. Mathieu Ngirumpatse contends that he has not been afforded the monitoring and care he is entitled to under Rule 13 of the Rules Covering the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal and has been deprived of care for a period of time. Mathieu Ngirumpatse also claims that the continued presence of guards in his room is detrimental to his recovery, and that his place of hospitalization is common knowledge, hence putting his security at risk.

independent, objectively verifiable, expert medical opinion was to establish conclusively that provisional release and treatment in the distant locations for which Ngirumpatse has a preference are the only means of ensuring his recovery.”; Prosecutor's Response to Mathieu Ngirumpatse's Motion for Provisional Release (Confidential), filed on 4 November 2008, paras. 3, 14; Prosecutor's Response to Mathieu Ngirumpatse's Motion for Provisional Release, filed on 23 December 2008; Prosecutor's Second Response to Mathieu Ngirumpatse's Motion for Provisional Release (confidential), filed on 10 November 2008; Prosecutor's Response to “*Requête en extrême urgence pour M. Ngirumpatse aux fins de prescrire toutes mesures médicales adaptées à son état, et de communication de son dossier médical au médecin de son choix*”, filed on 24 September 2008, para. 2.

³ *Nouveau mémoire pour M. Ngirumpatse sur sa demande aux fins de mise en liberté provisoire pour motif médical*, filed on 18 December 2008.

⁴ *Idem*.

8. The Chamber notes that Mathieu Ngirumpatse's health has improved since he filed his Motion of 22 September 2008.⁵ The Chamber has closely monitored Ngirumpatse's health situation since August 2008. It is the Chamber's view, based on the reports of the Tribunal's Chief Medical Officer,⁶ that Mathieu Ngirumpatse has enjoyed continuous and adequate medical attention. As soon as it became necessary, he was transferred to a specialized hospital equipped to operate to the highest medical standards⁷ where he has been receiving adequate treatment. Therefore, his request for a temporary precautionary transfer to a specialized hospital equipped to conduct the investigations and provide the care required by his medical condition⁸ is without merit. The Chamber also recalls that it has already amended its schedule, announced the adjournment of the trial to February 2009 and that measures have already been taken to enable Mathieu Ngirumpatse to have discussions with his Counsel and to have access to certain facilities so as to be able to participate in his defence.⁹ Consequently, Ngirumpatse's¹⁰ requests to this end are moot. However, the Chamber requests the Registry to ensure that adequate provision continues to be made for Mathieu Ngirumpatse to have discussions with his Counsel as well as access to all necessary and reasonable facilities to enable him to contribute to his defence.

9. With respect to the presence of guards, it should be recalled that Ngirumpatse remains an Accused in respect of whom security measures must be taken not only to ensure his appearance in court, but also to guarantee his safety against ill-intentioned third parties.

Disclosure to Mathieu Ngirumpatse of his medical file and other reports relating to his health

10. Mathieu Ngirumpatse requests that his entire medical file be released to him and that the same records and all medical reports relating to him that are in the possession of the Tribunal's medical services be transmitted to Dr. Bernard Dreyfus, a medical expert of his choosing and to his Counsel.¹¹ The Office of the Prosecutor does not object to this request.¹² Mathieu

⁵ Ngirumpatse's Extremely Urgent Motion for the Provision of Appropriate Treatment for his Condition and for the Release of his Medical Records to a Doctor of his Choosing, filed on 22 September 2008.

⁶ T. 28 October 2008; Registrar's Representations Following the Chamber's Order of 29 September 2008 on Ngirumpatse's State of Health, 1 October 2008 (Confidential); see also the subsequent written reports of the Tribunal's Chief Medical Officer (Confidential).

⁷ Registrar's Representations Following the Chamber's Order of 29 September 2008 on Ngirumpatse's State of Health, 1 October 2008, para. 6 (Confidential).

⁸ Ngirumpatse's Extremely Urgent Motion for the Provision of Appropriate Treatment for his Condition and for the Release of his Medical Records to a Doctor of his Choosing, filed on 22 September 2008; *Deuxième mémoire complémentaire urgent pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicale*, filed on 24 November, para. 8; *Deuxième mémoire complémentaire urgent pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicale*, filed on 24 November 2008.

⁹ See T. 6 November 2008.

¹⁰ *Mémoire complémentaire en extrême urgence pour M. Ngirumpatse sur ses précédentes requêtes relatives à sa situation médicale et en l'état des observations du Greffier*, filed on 15 October 2008, para. 29.

¹¹ *Mémoire complémentaire en extrême urgence pour M. Ngirumpatse sur ses précédentes requêtes relatives à sa situation médicale et en l'état des observations du Greffier*, filed on 15 October 2008, para. 26; *Nouvelle réplique pour M. Ngirumpatse sur la deuxième réponse du Procureur sur sa demande aux fins de mise en liberté provisoire pour motif médical*, filed on 21 November 2008, para. 27; *Nouveau mémoire complémentaire urgent pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicale*, filed on 21 November 2008;

Ngirumpatse points out that since filing his initial request, part of his medical records has been released to him, but that he seeks the release of the entire file.¹³

11. The Chamber, taking note of the Registrar's submissions on this point,¹⁴ advises that the detainee can request access to his medical file, and that he can report thereon or disclose it, at his own expense, to a doctor of his choosing. The Chamber notes that the said file has already been disclosed to Ngirumpatse, but requests the Registrar to ensure that Ngirumpatse continues to have access to his medical records.

Disclosure of the medical file and other reports relating to Mathieu Ngirumpatse's health to the parties

12. The Prosecutor posits that it has not received sufficient information on Mathieu Ngirumpatse's health. It therefore requests Mathieu Ngirumpatse to authorize disclosure of his entire medical file to the Prosecution so that it can be informed about the situation and, if need be, seek independent expert medical opinion. This way, the Prosecution could support Mathieu Ngirumpatse's request for provisional release if the independent specialist was of the opinion that only his release could ensure the Accused's recovery.¹⁵ Mathieu Ngirumpatse objects to this motion¹⁶ and reiterates his initial request.¹⁷ The Office of the Prosecutor, for its part, maintains

Deuxième mémoire complémentaire urgent pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicale, filed on 24 November 2008.

¹² Ngirumpatse's Extremely Urgent Motion for the Provision of Appropriate Treatment for his Condition and for the Release of his Medical Records to a Doctor of his Choosing, filed on 22 September 2008; Prosecutor's Response to "Requête en extrême urgence pour M. Ngirumpatse aux fins de prescrire toutes mesures médicales adaptées à son état, et de communication de son dossier médical au médecin de son choix", filed on 24 September 2008, para. 4; Ngirumpatse's Motion for Provisional Release on Medical Grounds and Urgent Transfer Pending a Ruling on the Measures for His Release (Confidential), filed on 3 November 2008; *Nouvelle réplique pour M. Ngirumpatse sur la deuxième réponse du Procureur sur sa demande aux fins de mise en liberté provisoire pour motif médical*, filed on 21 November 2008, para. 27; Prosecutor's Consolidated Response to Mathieu Ngirumpatse's Motion for Provisional Release, Modifications in his Conditions of Detention and for Access to his Entire Medical File (Confidential), filed on 24 November 2008, para. 8.

¹³ *Nouveau mémoire complémentaire urgent pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicale*, filed on 21 November 2008, para. 6; *Deuxième mémoire complémentaire urgent pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicale*, filed on 24 November 2008.

¹⁴ Registrar's Representations Following the Chamber's Order of 29 September 2008 on M. Ngirumpatse's State of Health (Confidential), 1 October 2008.

¹⁵ Prosecutor's Response to Mathieu Ngirumpatse's Motion for Provisional Release (Confidential), filed on 4 November 2008, paras. 4-6; Prosecutor's Consolidated Response to Mathieu Ngirumpatse's Motion for Provisional Release, Modifications in his Conditions of Detention and for Access to his Entire Medical File (Confidential), filed on 24 November 2008, para. 5; Prosecutor's Response to "Troisième mémoire complémentaire urgent pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicale", filed on 23 December 2008.

¹⁶ Interim Reply by Mr. Ngirumpatse to the Prosecutor's Response to the Former's Motion for Provisional Release on Medical Grounds (Confidential), filed on 5 November 2008.

¹⁷ *Mémoire complémentaire en extrême urgence pour M. Ngirumpatse sur les précédentes requêtes relatives à sa situation médicale et en l'état des observations du Greffier*, filed on 5 October 2008, para. 26.

that the Registry's reports to the Chamber on Mathieu Ngirumpatse's health should be disclosed to all the parties to the trial.¹⁸

13. It is the Chamber's view that there is no reason to overrule the right to medical secrecy. Consequently, the Chamber will not order the disclosure of Mathieu Ngirumpatse's medical file to third parties, even parties to this trial. Nevertheless, the Chamber will continue to ensure that the parties receive adequate information on Mathieu Ngirumpatse's condition to enable them to organize themselves with respect to the conduct of the trial. This information shall be given by means of regular disclosure to the parties, and the parties alone, of the interim reports produced by the Tribunals' Chief Medical Officer.

Provisional release on medical grounds

14. Rule 65(A) of the Rules provides that an accused may not be provisionally released except upon an order of a Trial Chamber. Rule 65(B) stipulates the requirements for provisional release and prescribes that provisional release may be ordered by a Trial Chamber "only after giving the host country and the country to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person". These conditions are cumulative.¹⁹ The Appeals Chamber has held that in assessing whether the minimum conditions of Rule 65(B) have been met, the Chamber must take into account the relevant factors that a reasonable trier of fact would consider in order to reach a decision.²⁰ These relevant factors and the weight to attach to them are to be decided on a case-by-case basis in the light of the particular circumstances of the individual accused.²¹

15. Whereas the accused is not bound to provide guarantees from the State to which he or she seeks to be released or from anyone else that he will appear for trial,²² Rule 65(C) permits the Trial Chamber to impose such conditions upon the provisional release of the accused as it may

¹⁸ Prosecutor's Response to "*Mémoire complémentaire en extrême urgence pour M. Ngirumpatse sur les précédentes requêtes relatives à sa situation médicale et en l'état des observations du Greffier*", filed on 20 October 2008, para. 3.

¹⁹ *The Prosecutor v. Joseph Nzabirinda*, Decision on the Defence Motion for the Setting of a Date for the Commencement of Trial and Provisional Release (TC), 13 October 2006, para. 13. See also *Prosecutor v. Delali} et al.*, Case No. IT-96-21, Decision on Motion for Provisional Release filed by the Accused Zejnil Delali} (TC), 25 September 1996, para. 1.

²⁰ Decision on Defence Motion for Review of Provisional Measures, or Alternatively, for Provisional Release, 17 November 2008, para. 15 citing *inter alia* *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.5, Decision on Prosecution's Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić, 11 March 2008, para. 7.

²¹ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.5, Decision on Prosecution's Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić, 11 March 2008, para. 7.

²² *Prosecutor v. Blagojević, Obrenović and Jokić*, Case No. IT-02-53-AR65, Decision on Application by Dragan Jokić for Leave to Appeal (AC), 18 April 2002, para. 7; *The Prosecutor v. Hormisdas Nsengimana*, Case No. ICTR-01-69-AR65, Decision on Application by Hormisdas Nsengimana for Leave to Appeal the Trial Chamber's Decision on Provisional Release (AC), 23 August 2005.

consider appropriate to ensure his or her presence at trial. As is frequently the case, the Chamber may thus consider imposing the production of a guarantee from the relevant governmental body as a condition to be fulfilled.²³ Case law considers it advisable for an accused applying for provisional release to provide such a guarantee from a governmental body, as the Tribunal has no power to execute an arrest warrant in the event the accused fails to appear.²⁴

16. Where humanitarian grounds are invoked in support of a request for provisional release, as in the instant case, the Chamber shall rule on such grounds, after having ensured that the requirements of Rule 65(B) of the Rules have been satisfied.²⁵

17. Mathieu Ngirumpatse seeks provisional release for the duration of his medical treatment, which he estimates at not less than six months, in one of the countries listed in order of preference in Annex A of his motion.²⁶ He includes in his motion, information drawn from the report of the medical expert he had consulted,²⁷ and requests that the Chamber direct the Registry to make the necessary contacts and take all measures to implement Rule 65 of the Rules, in particular subparagraphs (B) and (C) thereof.²⁸ He further submits that, under Article 28 of the Statute, the Tribunal may require a State to host him on its territory for the duration of his provisional release. In support of his motion, he cites his advanced age, his detention on remand for more than 10 years, the fact that his state of health is incompatible with his continued detention and the separation from his family which has affected his ability to recover. Moreover, he excludes any possibility of continuing treatment at the United Nations Detention Facility in Arusha.²⁹ He submits that he must continue treatment in a specialist hospital in Europe.³⁰

²³ *The Prosecutor v. Hormisdas Nsengimana*, Case No ICTR-01-69-AR65, Decision on Application by Hormisdas Nsengimana for leave to Appeal the Trial Chamber's Decision on Provisional Release (AC), 23 August 2005.

²⁴ *The Prosecutor v. Hormisdas Nsengimana*, Case No. ICTR-01-69-AR65, Decision on Application by Hormisdas Nsengimana for Leave to Appeal the Trial Chamber's Decision on Provisional Release (AC), 23 August 2005; *The Prosecutor v. Joseph Nzabirinda*, Decision on the Defense Motion for the Setting of a Date for the Commencement of Trial and Provisional Release (TC), 13 October 2006, para.14; *Prosecutor v. Blagojević, Obrenović and Jokić*, Case No IT-02-53-AR65, Decision on Application by Dradan Jokic for Leave to Appeal (AC), 18 April 2002, para. 8.

²⁵ *Prosecutor v. Milutinović*, Case No IT-05-87-AR65.6, Decision on "Prosecution's Appeal from Decision on Lazarević Motion for Temporary Provisional Release dated 26 September 2008", (AC), 23 October 2008, paras. 11-14.

²⁶ Ngirumpatse's Motion for Provisional Release on Medical Grounds and Urgent Transfer pending a Ruling on the Measures for his Release (Confidential) filed on 3 November 2008, paras. 21-22.

²⁷ *Deuxième réplique pour M. Ngirumpatse sur la deuxième réponse du Procureur sur sa demande aux fins de mise en liberté provisoire pour motif médical*, filed on 21 November 2008, para. 2; *Deuxième mémoire complémentaire pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicale*, filed on 24 November 2008, para. 2; *Deuxième mémoire complémentaire pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicale*, filed on 24 November 2008.

²⁸ Ngirumpatse's Motion for Provisional Release on Medical Grounds and Urgent Transfer Pending a Ruling on the Measures for his Release (Confidential), filed on 3 November 2008, para. 31.

²⁹ *Ibid*, paras. 5-7.

³⁰ *Deuxième réplique pour M. Ngirumpatse sur la deuxième réponse du Procureur sur sa demande aux fins de mise en liberté provisoire pour motif médical*, filed on 24 November 2008, paras. 3-4.

18. Mathieu Ngirumpatse also states that the fact that “[he has to undergo an intense, frequent and complex treatment is further reason for there to be no doubt as to his appearance in court]” and that his previous conduct as well as his personality prove that he poses no danger to anyone.³¹

19. Finally, Mathieu Ngirumpatse submits that the guarantee of the country hosting the accused that the latter will appear for trial and poses no danger to anyone is not a requirement for the motion to be granted. He contends that he is not bound to produce evidence of a prior undertaking by the host country for the Chamber to grant his motion³² and alleges peremptorily that States to which he would want to be sent would not object to such a request.³³ He assures the Chamber that, should his motion be granted, he shall comply with the requirements of Rule 65 and all other orders of the Chamber;³⁴ he agrees that the technical and legal requirements for application of Rule 65 have not yet been satisfied because of the “impending emergency dictated by the compelling consideration of his medical condition and security situation”.³⁵

20. Though objecting, the Prosecutor indicates that he may support the motion for provisional release if independent, objectively verifiable expert medical opinion were to establish conclusively that provisional release and treatment in the distant locations mentioned by the Accused are the only means of ensuring his recovery. To that end, he suggests that Ngirumpatse authorizes the release of his medical records to the Prosecution.³⁶

21. The Chamber notes that Mathieu Ngirumpatse has not furnished any guarantee from any Government of the States he has listed in Annex A of his motion and has not provided any documentation to show that he has contacted the States concerned. Mathieu Ngirumpatse only argues that the Chamber merely needs to afford the host country, or the country to which he seeks to be sent, the opportunity to be heard without it signifying that the countries concerned must grant their consent nor that the Tribunal should proceed in spite of an “improbable” refusal.³⁷ Yet the governmental body is the guarantor of public safety and order on its territory. It is the only body that is in a position to provide the Tribunal with guarantees that the accused will not flee and that if he does, he will be arrested.³⁸ The Chamber is of the opinion that it is not

³¹ *Nouvelle réplique pour M. Ngirumpatse sur la deuxième réponse du Procureur sur sa demande aux fins de mise en liberté provisoire pour motif médical*, filed on 21 November 2008, paras. 19-22.

³² *Ibid*, paras. 23-25.

³³ *Ibid* para. 26.

³⁴ Ngirumpatse's Motion for Provisional Release on Medical Grounds and Urgent Transfer Pending a Ruling on the Measures for his Release (Confidential), filed on 3 November 2008, paras. 24-25.

³⁵ *Ibid*, para. 26.

³⁶ Prosecutor's Consolidated Response to Mathieu Ngirumpaste's Motion for Provisional Release, Modifications in his Conditions of Detention and for Access to his Entire Medical File (Confidential), filed on 24 November 2008, para. 5.

³⁷ *Nouvelle réplique pour M. Ngirumpatse sur la deuxième réponse du procureur sur sa demande aux fins de mise en liberté provisoire pour motif médical*, filed on 21 November 2008, paras. 25-26.

³⁸ *Prosecutor v. Limaj, Bala and Musliu*, Case No. IT-03-66-AR65.3, Decision on Application for Provisional Release by Isak Musliu, 31 October 2003, para. 21; *The Prosecutor v. Hormisdas Nsengimana*, Case No. ICTR-01-

in its remit to engage in consultations with States in the search for a host country for an accused applying for provisional release.

22. The Chamber further recalls the testimony of the Tribunal's Chief Medical Officer asserting that Mathieu Ngirumpatse is receiving the same medical treatment as he would receive anywhere else and therefore concludes that he would not receive better treatment in Europe or anywhere else.³⁹

23. Consequently, it is the view of the Chamber that Rule 65 requirements have not been satisfied and accordingly denies Ngirumpatse's motion for provisional release.

On the need for an independent expert medical opinion

24. Mathieu Ngirumpatse requests the Chamber to order an independent expert medical opinion on his case.⁴⁰ A similar motion was filed by Joseph Nzirorera for the appointment of an independent medical expert to examine Mathieu Ngirumpatse and report back to the Chamber on whether the transfer of Mathieu Ngirumpatse to a hospital in Europe would facilitate his recovery and whether the prognosis is such that [it is necessary that] his deposition should be taken in order to preserve his testimony.⁴¹ The Prosecutor is not opposed to the appointment of an independent expert and has so requested to enable him to decide on whether to support a request for Mathieu Ngirumpatse's provisional release. Be that as it may, he objects to Joseph Nzirorera's request.⁴²

25. The Chamber relies on the reports of the Tribunal's Chief Medical Officer and deems unnecessary further expert opinion on Mathieu Ngirumpatse's health beyond the investigations conducted by the Tribunal's Chief Medical Officer and her colleagues in the hospitals where Ngirumpatse was admitted. The symptoms have been identified, same as the illness itself, and Mathieu Ngirumpatse has received and continues to receive adequate medical treatment similar to that which he might receive in a hospital in Europe. Consequently, the Chamber is of the opinion that there is no basis for ordering fresh expert medical opinion.

26. The Chamber notes that Mathieu Ngirumpatse does not appear on Joseph Nzirorera's list of witnesses. It therefore considers his motion regarding a possible recourse to a written testimony as unfounded and requiring no further deliberation.

69-AR65, Decision on Application by Hormisdas Nsengimana for Leave to Appeal the Trial Chamber's Decision on Provisional Release (AC), 23 August 2005.

³⁹ T. 28 October 2008, p. 14.

⁴⁰ Ngirumpatse's Motion for Provisional Release on Medical Grounds and Urgent Transfer Pending a Ruling on the Measures for his Release (Confidential), filed on 3 November 2008, para. 8.

⁴¹ Joseph Nzirorera's Motion for Independent Medical Examination and Report, filed on 24 December 2008, para. 2.

⁴² Prosecutor's Response to Joseph Nzirorera's Motion for Independent Medical Examination and Report, filed on 29 December 2008.

45354

FOR THE FOREGOING REASONS, THE CHAMBER

DENIES Ngirumpatse's motion for provisional release and urgent transfer;

DENIES the Prosecutor's motion for the release of Ngirumpatse's medical records to the Prosecution;

DISMISSES the other motions by the parties;

DIRECTS the Registrar to ensure that Ngirumpatse continues to have access to his medical records;

INSTRUCTS the Tribunal's Chief Medical Officer to report, on a bimonthly basis, to the Chamber on developments in Ngirumpatse's health.

Arusha, 6 February 2009

[Signed]
Judge Dennis Byron,
President

[Signed]
Judge Gberdao Gustave Kam

[Signed]
Judge Vagn Joensen

(Seal of the Tribunal)

