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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

OFFICE OF THE PRESIDENT

**Before Judge:** Dennis C. M. Byron  
President of the Tribunal

**Registrar:** Adama Dieng

**Date:** 3 March 2009

THE PROSECUTOR

v.

Édouard KAREMERA  
Matthieu NGIRUMPATSE  
Joseph NZIRORERA

*Case No. ICTR-98-44-T*

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*H. K. Brown*

DECISION ON MATTHIEU NGIRUMPATSE'S MOTION TO VARY HIS  
CONDITIONS OF DETENTION

*Rule 64 of the Rules of Procedure and Evidence*

Defence Counsel:  
Chantal Hounpatin  
Frédéric Weyl

*H*

## INTRODUCTION

1. Since August 2008, Matthieu Ngirumpatse has been suffering from a serious illness. He is currently receiving medical treatment outside of Tanzania.
2. On 21 November 2008, Matthieu Ngirumpatse filed a request with the President of the Tribunal, pursuant to Rule 64 of the Rules of Procedure and Evidence, to vary his conditions of detention by transfer to the International Criminal Tribunal for the former Yugoslavia ("ICTY") in order to receive the medical attention necessary for his condition.<sup>1</sup>
3. He requests that (a) the Tribunal respect its obligation to guarantee the physical and sanitary integrity of detainees; (b) his conditions of detention be consistent with the treatment he is receiving; (c) his conditions of detention respect the dignity and integrity of human beings; and (d) his conditions of detention are respectful of the best administration of justice, remembering that he is presumed innocent.<sup>2</sup>
4. On 24 November 2008, Matthieu Ngirumpatse filed a supplementary brief in which he summarized the report of a medical expert who took the position that Ngirumpatse should receive his medical treatment in Europe or in the United States.<sup>3</sup>
5. The Prosecution responded to this motion conjointly with its response to other motions regarding Matthieu Ngirumpatse which were pending before the Trial Chamber presiding over these proceedings. It indicated that it would support any reasonable measures that the Chamber deemed appropriate.<sup>4</sup>
6. Matthieu Ngirumpatse has also directed several submissions concerning his health to the Trial Chamber, including a motion for provisional release in order to receive medical care outside of Africa.<sup>5</sup> The Chamber responded to these various submissions on 6 February 2009.<sup>6</sup>

<sup>1</sup> Requête en extrême urgence dans l'intérêt de M. Ngirumpatse sur le fondement de l'article 65 RPP, filed on 21 November 2008 ("Motion").

<sup>2</sup> Motion, para. 13.

<sup>3</sup> Mémoire complémentaire au soutien de la requête en extrême urgence dans l'intérêt de M. Ngirumpatse sur le fondement de l'article 64 RPP, filed on 24 November 2008 ("Supplementary Filing").

<sup>4</sup> Prosecutor's Response to "Deuxième mémoire complémentaire urgent pour M. Ngirumpatse" and "Mémoire complémentaire au soutien de la requête en extrême urgence dans l'intérêt de M. Ngirumpatse sur le fondement de l'article 64 RPP", filed on 1 December 2008.

<sup>5</sup> 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, déposée le 22 septembre 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 », déposée le 24 septembre 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

7. On 22 January 2009, counsel for Matthieu Ngirumpatse addressed a letter to the President and the Registrar of the Tribunal with respect to Ngirumpatse's detention. Counsel submits that Ngirumpatse is not receiving adequate security or adequate privacy in his current place of hospitalization.<sup>7</sup>

### DELIBERATIONS

8. Rule 64 provides that:

Upon his transfer to the Tribunal, the accused shall be detained in facilities provided by the host country or by another country. The President may, on the application of a party, request modification of the conditions of detention of an accused.

9. The Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal ("Rules of Detention") do not expressly require that accused persons are to be held at the Tribunal's detention facility in Arusha.<sup>8</sup> Indeed this Tribunal has held that some circumstances, such as security concerns,

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Greffier, déposé le 15 octobre 2008 ; Nouveau mémoire complémentaire pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicale, déposé le 27 octobre 2008 ; Requête de M. Ngirumpatse aux fins de mise en liberté provisoire pour motif médical, et de transfert en urgence dans l'attente qu'il soit statué sur les conditions matérielles susceptibles d'assortir sa mise en liberté (confidentiel), déposée le 3 novembre 2008 ; Réplique complémentaire pour M. Ngirumpatse sur la réponse du Procureur sur sa demande aux fins de mise en liberté provisoire pour motif médical, déposée le 6 novembre 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, déposée le 21 novembre 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, déposée le 24 novembre 2008 ; Nouveau mémoire complémentaire urgent pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicale, déposé le 21 Novembre 2008 ; Deuxième mémoire complémentaire urgent pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicales, déposé le 24 novembre 2008 ; Troisième mémoire complémentaire urgent pour M. Ngirumpatse sur ses précédentes écritures relatives à sa situation médicale, déposé le 18 décembre 2008 ; Nouveau mémoire pour M. Ngirumpatse sur sa demande aux fins de mise en liberté provisoire pour motif médical, déposé le 18 décembre 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, déposée le 31 décembre 2008 ; de M. Ngirumpatse aux fins de mise en liberté provisoire pour motif médical et de transfert en urgence dans l'attente qu'il soit statué sur les conditions matérielles susceptibles d'assortir sa mise en liberté (confidentiel), déposée le 3 novembre 2008 ; Réplique intérimaire de M. Ngirumpatse sur la réponse du Procureur sur sa demande aux fins de mise en liberté provisoire pour motif médical (confidentiel), déposée le 5 novembre 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, déposée le 21 novembre 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, déposée le 24 novembre 2008. Prosecutor's Response to Mathieu Ngirumpatse's Motion for Provisional Release (confidentiel), déposé le 4 novembre 2008, par. 4 ; Prosecutor's Response to Mathieu Ngirumpatse's Motion for Provisional Release (confidentiel), déposé le 4 novembre 2008, par. 3, 14 ; Prosecutor's Response to Mathieu Ngirumpatse's Motion for Provisional Release, déposé le 23 décembre 2008 ; Prosecutor's Second Response to Mathieu Ngirumpatse's Motion for Provisional Release (confidentiel), déposée le 10 novembre 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 », déposée le 24 Septembre 2008, par. 2.

<sup>6</sup> Décision sur les diverses requêtes relatives à l'état de santé de Mathieu Ngirumpatse, 6 February 2009.

<sup>7</sup> Letter from Chantal Hounkpatin and Frédéric Weyl, 22 January 2009.

<sup>8</sup> *The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-2005-86-I ("*Bagaragaza*"), Order for Special Detention Measures, 13 August 2005, para. 2.

may justify detention at a location other than the detention facility in Arusha.<sup>9</sup> Medical reasons may also justify transfer to another facility, as in the current proceedings where Matthieu Ngirumpatse has already been transferred to address his medical situation. The question therefore is whether his condition is such that he must be moved to yet another facility, or whether his conditions of detention in hospital should be altered.

10. The President recalls that Matthieu Ngirumpatse is being treated for a serious illness in hospital, but that he remains a detainee of the Tribunal. Such a situation presents unique challenges. The letter of 22 January 2009 complains that the privacy of Ngirumpatse is compromised by the security arrangements in place at the hospital. The President recalls that the situation is multifaceted and includes issues of Ngirumpatse's personal security, his medical treatment and his status as a detainee. The Registrar is directed to review the arrangements and report to the President under confidential cover.

11. The President further notes the opinion of Matthieu Ngirumpatse's medical expert, as described by his Counsel, that Ngirumpatse's condition is of sufficient gravity that he can only receive adequate treatment in a hospital in Europe or the United States.<sup>10</sup> Ngirumpatse specifically requests a transfer to the ICTY detention facility, but fails to provide evidence that either the ICTY or the Government of the Netherlands have agreed to his transfer and detention.

12. The President recalls that in its decision on 6 February 2009, the Chamber found that Matthieu Ngirumpatse has received sustained and adequate medical treatment in his current place of hospitalization.<sup>11</sup> The Chamber further noted the opinion of the Chief Medical Officer, who is tasked by the Rules of Detention with monitoring whether any condition of detention may adversely affect a detainee,<sup>12</sup> that Ngirumpatse was receiving the same level of medical care that he would receive elsewhere.<sup>13</sup>

<sup>9</sup> Bagaragaza, Order for Special Detention Measures, para. 3.

<sup>10</sup> Supplementary Filing, para. 3.

<sup>11</sup> Décision sur les diverses requêtes relatives à l'état de santé de Mathieu Ngirumpatse, para. 8.

<sup>12</sup> Rule 32, Rules of Detention, 14 March 2008.

<sup>13</sup> Décision sur les diverses requêtes relatives à l'état de santé de Mathieu Ngirumpatse, para. 22.

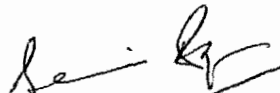
13. There is no basis to reconsider the decision of the Chamber and find that Matthieu Ndirumpatse's current conditions of detention are not adequate or in any way violate his rights. Consequently, Ndirumpatse has not demonstrated that his conditions of detention should be modified by transfer to the ICTY or elsewhere.

**FOR THOSE REASONS, THE PRESIDENT**

**DENIES** the Motion in its entirety; and

**ORDERS** the Registrar to review the security arrangements in place at Matthieu Ndirumpatse's place of hospitalization and report to the President under confidential cover.

Arusha, 3 March 2009, done in English.

  
Dennis C. M. Byron  
President

[Seal of the Tribunal]

