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UNITED NATIONS
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**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: 24 June 2010

THE PROSECUTOR

v.

Matthieu NGIRUMPATSE

Case No. ICTR-98-44-T

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

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Defence Counsel:
Chantal Hounkpatin and Frédéric Weyl

INTRODUCTION

1. On 22 June 2010, Matthieu Ngirumpatse filed a motion before the President of the Tribunal seeking modification of the conditions of his detention by transferring him from the safe-house in Arusha where he is located to the United Nations Detention Facility ("UNDF"); and the postponement of the presentation of his defence in the *Karemera et al.* case to 23 August 2010.¹

DELIBERATIONS

Variation of Conditions of Detention

2. Rule 64 of the Rules of Procedure and Evidence provides that upon his transfer to the Tribunal, an accused shall be detained in facilities provided by the host country and that the President of the Tribunal, on the application of a party, may request modification of the conditions of detention of an accused. This Tribunal has held that some circumstances, such as security concerns,² or medical reasons,³ may justify detention at a location other than the detention facility in Arusha.

3. Matthieu Ngirumpatse had been receiving medical treatment at a hospital facility outside of Arusha from August 2008 to May 2009. On 3 March 2009, the President denied Ngirumpatse's application to have his conditions of detention varied by sending him to Europe or the United States for medical treatment, but at the same time ordered the Registrar to investigate and report.⁴

4. After the Registrar reported,⁵ on 29 May 2009, the President made an order to modify the conditions of detention by having Matthieu Ngirumpatse transferred to a safe-house in Arusha where he would receive medical treatment under the supervision of the Chief Medical

¹ Nouveau mémoire urgent de Matthieu Ngirumpatse sur la modification de ses conditions de détention, filed on 22 June 2010.

² *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41, Order for Special Detention Measures, para. 3.

³ *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44 ("*Karemera et al.*"), Decision on Matthieu Ngirumpatse's Motion to Vary his Conditions of Detention (President), 3 March 2009, para. 9.

⁴ *Karemera et al.*, Decision on Matthieu Ngirumpatse's Motion to Vary his Conditions of Detention (Président), 3 March 2009.

⁵ Observations supplémentaires du Greffier, en vertu de l'article 33(B) du Règlement de Procédure et de preuve à la suite du dépôt du rapport du médecin chef du TPIR en date du 27 avril 2009 (confidential), filed on 5 May 2009.

Officer of the Tribunal.⁶ In that decision, the President reasoned that the transfer would address the concerns expressed by Ngirumpatse regarding his security and privacy and facilitate his return to good health.⁷

5. On 2 December 2009, the Registrar filed submissions to draw attention to the possibility of a new variation in Matthieu Ngirumpatse conditions of detention by returning him to the UNDF.⁸ He argued that Ngirumpatse had responded well to his treatment which was suspended on 5 November 2009 and that the Chief Medical Officer advised that there were no medical reasons for him to remain at the safe-house. In his submissions, the Registrar indicated the special arrangements and facilities that would be put in place at UNDF to ensure continuous monitoring of his condition, exempt him from domestic chores, and provide a special diet.

6. The President invited Matthieu Ngirumpatse to make submissions on the Registrar's proposals.⁹ Ngirumpatse filed those submissions in respect to the President's invitation on 18 January 2010.¹⁰ Ngirumpatse challenged the favourable report on his health, and although he indicated that he would leave it to the President's discretion, he made a number of submissions from which his opposition to the move could be inferred. On the same day he made submissions on a scheduling issue in the *Karemera et al.* case.¹¹ In that case, he was objecting to the resumption of full day hearings and included in his submissions the suggestion that transfer to the UNDF would impact on his ability to enjoy his rights to a fair trial. Against this background and with concerns for the interests to which Ngirumpatse referred, the President deferred his decision on the transfer to UNDF.

7. Now on 22 June 2010, Matthieu Ngirumpatse has filed an application which unambiguously affirms that he considers it to be in his best interests to be transferred to the UNDF. The President welcomes this development and will immediately make the order for transfer.

⁶ *Karemera et al.*, Decision Varying Matthieu Ngirumpatse's Conditions of Detention (President), 29 May 2009.

⁷ *Karemera et al.*, Decision Varying Matthieu Ngirumpatse's Conditions of Detention (President), 29 May 2009, para. 7.

⁸ The Registrar's Submission on Ngirumpatse's Conditions of Detention (Confidential), 2 December 2009.

⁹ *Karemera et al.*, Ordonnance sur le dépôt d'écritures (Confidential) (President), 7 January 2010.

¹⁰ Réponse de Matthieu Ngirumpatse à l'Ordonnance du Président du 7 janvier 2010, dated 17 January 2010 but filed on 18 January 2010.

¹¹ Mémoire pour M Ngirumpatse en exécution du Scheduling Order du 12 janvier 2010, dated 17 January 2010 but filed on 18 January 2010.

8. The President notes that the application contains allegations that the detention at the safe-house displeased Ngirumpatse as, *inter alia*, it imposed conditions of solitary confinement on him. These submissions could not have been made in good faith. It should be recalled that Ngirumpatse was evacuated from UNDF because of serious illness in August 2008. Since then, the conditions of his detention were varied to allow him to have the best medical treatment and care available, not only in Arusha but in East Africa. By mid-2009, his condition no longer required hospitalization, and he could have been returned to the UNDF. The more costly and logistically complicated arrangement for his care in a safe-house was decided upon in the best interests of Ngirumpatse. The President was also aware that Ngirumpatse had unsuccessfully applied for conditional release. Detention in a safe-house seemed to approximate release with the added benefit to Ngirumpatse that the Tribunal continued to bear the full responsibility for the cost of his medical treatment, board and lodging, personal security and other elements of care. At all times, the provision of the best available medical and other care was the primary motivation for the variations in the terms of detention. Today, despite the discourteous manner in which the submissions have been framed, it is clear that even Ngirumpatse acknowledges that there is no longer any health impediment to his return to UNDF.

9. Although some requests for special arrangements have been made, the material circumstances of detention at the UNDF are governed by the Registrar. There is every indication that special care has and will continue to be taken of Matthieu Ngirumpatse. The arrangements described in the Registrar's submissions of December 2010 are satisfactory and the President does not consider it necessary to make any orders in this regard.

Postponement

10. The application for a postponement of the presentation of the commencement of Ngirumpatse's defence case is not within the jurisdiction of the office of the President. That is a matter which falls to the Trial Chamber. The application must be dismissed for want of jurisdiction.

FOR THESE REASONS, THE PRESIDENT

- I. GRANTS IN PART** Mathieu Ngirumpatse's Motion;
- II. REVOKES** the order of 29 May 2009 modifying Mathieu Ngirumpatse's conditions of detention;
- III. ORDERS** that Mathieu Ngirumpatse be transferred to UNDF as soon as practicable; and
- IV. DISMISSES** the application to postpone the presentation of Mathieu Ngirumpatse's defence in the *Karemera et al.* trial.

Arusha, 24 June 2010, done in English.


Dennis C. M. Byron
President

[Seal of the Tribunal]

