



UNITED NATIONS  
NATIONS UNIES

ICTR-98-41-T  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

20-12-2004

(23272-23270)

23272  
Ivan

TRIAL CHAMBER I

**Before:** Judge Erik Møse, presiding  
Judge Jai Ram Reddy  
Judge Sergei Alekseevich Egorov

**Registrar:** Adama Dieng

**Date:** 20 December 2004

**THE PROSECUTOR**

v.

**Théoneste BAGOSORA**

**Gratien KABILIGI**

**Aloys NTABAKUZE**

**Anatole NSENGIYUMVA**

*Case No. : ICTR-98-41-T*

2004 DEC 20 A 4:55  
JUDICIAL ARCHIVES  
ICTR

**DECISION ON TESTIMONY BY VIDEO-CONFERENCE**

**The Prosecution**

Barbara Mulvaney  
Drew White  
Christine Graham  
Rashid Rashid

**The Defence**

Raphaël Constant  
Paul Skolnik  
Jean Degli  
René Saint-Léger  
Peter Erlinder  
André Tremblay  
Kennedy Ogetto  
Gershon Otachi Bw'Omanwa

6h

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (“the Tribunal”),

**SITTING** as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

**BEING SEIZED OF** the “Confidential Motion to Have Defence Witness Major Donald MacNeil Testify by Video Conferencing”, filed by the Defence for Bagosora on 17 November 2004;

**CONSIDERING** the Prosecution Response, filed on 26 November 2004;

**HEREBY DECIDES** the motion.

1. The Defence for Bagosora requests that the testimony of one of its witnesses, Major Donald MacNeil of the Canadian Armed Forces, be heard by video-link with a Canadian military facility in Toronto, Canada. A letter from a Canadian military doctor, appended as Annex 2 of the motion, indicates that Major MacNeil’s health is fragile because of a recent limb amputation and that travel is not recommended. The Defence enumerates the topics on which it wishes to elicit testimony of Major MacNeil, who was part of the UNAMIR mission in Rwanda in 1994. In particular, it seeks to introduce evidence concerning his involvement in the transfer of refugees effected through UNAMIR in 1994; his perception of events during his mission to Rwanda; the visit to Rwanda by Bernard Kouchner concerning the transfer of orphans, about which General Dallaire has testified for the Prosecution; his attendance at a meeting between representatives of UNAMIR’s Humanitarian Assistance Group and Rwandan government officials, including a military officer, on 16 May 1994; his attendance at a meeting with *Interahamwe*; and his knowledge of a meeting between Colonel Yaache and Colonel Bagosora on 17 May 1994 concerning the transfer of orphans.

2. Relying on Rules 71 (A) and 54 of the Rules of Procedure and Evidence, the Defence asserts that hearing the testimony by video-conference is in the interests of justice in light of his knowledge of events and his desire to testify. His medical condition justifies hearing the testimony in this manner, and is said to be an exceptional circumstance. The Defence wishes that the testimony be heard during the first trial session in 2005, scheduled to commence on 12 January 2004.

3. The Prosecution suggests that, depending on the content of the witness’s testimony, it might be willing to admit the witness’s evidence by written statement. Testimony by video-link would, accordingly, be unnecessary because a less costly alternative for the admission of the evidence would be available.

4. Video-testimony has been granted on several occasions during the present case. The standard for authorizing testimony by video-conference was discussed extensively by this Chamber in its *Decision on Prosecution Request for Testimony of Witness BT Via Video-Link*.<sup>1</sup> Video-conference testimony should be ordered where it is in the interests of justice, as that standard has been elaborated in ICTR and ICTY jurisprudence. In particular, the Chamber will consider the importance of the testimony; the inability or unwillingness of the witness to attend; and whether a good reason has been adduced for the inability or unwillingness to attend. This in no way detracts from the general principle, articulated in Rule 90 (A), that “witnesses shall, in principle, be heard directly by the Chambers”.

<sup>1</sup> *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004.

23270

5. The Defence has established that the witness is, for medical reasons, unable to travel to Arusha to give his testimony. This is undoubtedly a sufficient reason.<sup>2</sup> The Defence has also established with particularity the nature of the testimony to be adduced and its importance.

6. The Prosecution suggests that it might agree to the admission of the witness's testimony by written procedure, depending on its precise content, and that this would be a more efficient method of introducing the evidence. The present decision does not preclude the Defence from making an application under the Rules to introduce the evidence as a written statement, should it wish to do so. In general, however, it is for the party presenting a witness to determine whether to make such an application.

7. Accordingly, the Chamber authorizes Defence witness Major Donald MacNeil to give testimony by way of video-conference from the Canadian Forces College, Toronto, or such other suitable location as may be designated by the Registry in consultation with the Defence. The witness's counsel may be present during the testimony, which shall be taken in accordance with the Rules and procedures applicable at the Tribunal.

**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the motion;

**ORDERS** the Registry, in consultation with the parties, to make all necessary arrangements in respect of the testimony of Major Donald MacNeil via video-conference, and to videotape the testimony for possible future reference by the Chamber.

Arusha, 20 December 2004

Erik Mose  
Presiding Judge

Jai Ram Reddy  
Judge

Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]



<sup>2</sup> *Brdanin*, Order for Testimony via Video-Conference Link Pursuant to Rule 71bis (TC), 9 September 2003 (ordering video testimony based on the "poor state of the Witness' health and his extreme difficulty in coping with the emotional stress caused by giving evidence"); *Milosevic*, Order on Prosecution Motion for the Testimony of Nojko Marinovic via Video-Conference Link (TC), 19 February 2003 (ordering video testimony due to the "current state of health of the witness" stating that "it is not possible for the Witness to travel to the seat of the International Tribunal and that it would be appropriate for his testimony to be given by way of a video-conference link"); *Krnjelac*, Order for Testimony via Video-Conference Link (TC), 15 January 2001 (ordering video testimony because "the medical condition specified in the Motion precludes witness FWS-49 from appearing before the Tribunal, which in the circumstances shows good cause).