



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

21794  
Ivan

09-09-2004  
(21794-21791)

OR: ENG

TRIAL CHAMBER I

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

**Registrar:** Adama Dieng

**Date:** 9 September 2004

THE PROSECUTOR

v.

Théoneste BAGOSORA  
Gratien KABILIGI  
Aloys NTABAKUZE  
Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

UDICIAL RECORDS/ARCHIVES  
RECEIVED  
2004 SEP - 9 P 3 22

DECISION ON MOTION FOR POSTPONEMENT OF TESTIMONY OF WITNESS  
REYNTJENS

**The Office of the Prosecutor**

Barbara Mulvaney  
Drew White  
Christine Graham  
Rashid Rashid

**Counsel for the Defence**

Raphaël Constant  
Paul Skolnik  
Jean Yaovi Degli  
Peter Erlinder  
André Tremblay  
Kennedy Ogetto  
Gershom Otachi Bw'Omanwa

Bhw

2793

**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 “Motion to Postpone the Testimony of Professor Filip Reyntjens Due to Issues of Untimely Disclosure and Filing”, filed by the Defence for Ntabakuze on 6 September 2004;

**CONSIDERING** the Prosecution “Response” thereto, filed on 7 September 2004; and the oral submissions by the Defence for Ntabakuze and Bagosora, on 7 and 8 September 2004, respectively; and the “Nsengiyumva Defence Motion Joining Ntabakuze Defence Motion”, etc., filed on 8 September 2004;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. The Prosecution has indicated that one of its expert witnesses, Filip Reyntjens, is expected to testify during the week commencing 13 September 2004.

**SUBMISSIONS**

2. The Ntabakuze Defence objects that disclosure by the Prosecution of the witness’s expert report has been untimely. Rule 94*bis* (A) requires that an expert report be disclosed twenty-one days in advance of the date on which testimony is expected. The Defence contends that the report must be disclosed in both of the working languages of the Tribunal for effective disclosure to have taken place. It is submitted that the “full” statement of the expert witness referred to in Rule 94*bis* (A) includes both the English and French versions of the statement, these being the official working languages of the Tribunal and one or the other of these being the exclusive working languages of many Counsel and Judges at the Tribunal. As translations of the two documents constituting the expert report were only received on 1 September 2004, the testimony of the witness should be postponed to no earlier than 22 September 2004.<sup>1</sup> The Defence also complains that the Prosecution disclosed a large volume of documents, comprising approximately 2,500 pages, on 6 September 2004 which may be used as exhibits. The disclosure of this volume of documents so close to the date of expected testimony is said to represent an unreasonable burden on the Defence.

3. The Prosecution responds that the two documents disclosed as Witness Reyntjens expert report have long been available to the Defence in their original language. The first document, portions of a book in French entitled *Trois Jours Qui Ont Fait Basculer l’Histoire*, was tendered into evidence by another defence team on 25 September 2002. The Prosecution diligently and in good faith requested its translation into English as early as 2002, but resource constraints in the Registry delayed its completion. The second document constituting the expert report, a four-page document in English, was disclosed to the Defence on 21 June 2004, and available filed in English on 1 September 2004. The Prosecution argues that Rule 94*bis* (A) permits disclosure in either of the Tribunal’s working languages. It further argues that the prejudice to the Prosecution of postponement, which would lead to the non-attendance of the witness, outweighs the burden placed on the Defence to prepare for the imminent appearance of the witness. In respect of the documents which may be used as

<sup>1</sup> The Defence of Nsengiyumva asserts that it did not receive translations until 3 September 2004.

Bh

exhibits during the testimony of the witness, the Prosecution argues that it was under no obligation to disclose those documents to the Defence and that, in any event, the majority of the documents were disclosed to the Defence in 2002.

## DELIBERATIONS

4. Rule 94bis (A) provides that “the full statement of any expert witness called by a party shall be filed with the Trial Chamber not less than twenty-one days prior to the date on which the expert is expected to testify”. No mention is made of the languages in which the filing of the statement is to be made. As French and English are, under Rule 3, the working languages of the Tribunal, the requirements of Rule 94bis (A) may be satisfied by performance in either of those languages.

5. On 25 September 2002, the relevant portions of the book by Reyntjens were tendered into evidence by the Defence for Bagosora.<sup>2</sup> As early as 5 May 2004, the Prosecution clearly advised the Defence that the Reyntjens book would form part of the witness’s expert report.<sup>3</sup> The second four-page document was filed on 21 June 2004. Accordingly, the Chamber is of the view that the Prosecution has complied with the time-limit prescribed by Rule 94bis (A).

6. This does not imply that translation issues may not arise on the basis of, in particular, the right of the Accused to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her, or the right of the Accused to have adequate time and facilities for the preparation of his or her defence, enshrined in Article 20 of the Statute. The Chamber is anxious to ensure that translations are provided to the parties with adequate time to discharge their duties effectively. The Ntabakuze Defence team has bilingual composition, and both counsel on that team understand English. Accordingly, the four-page report, disclosed in English on 21 June 2004, poses no difficulties of comprehension. The book *Trois Jours* has long been in the possession of the Defence and, judging by the extent to which it has been used during proceedings in court, is a document with which all the Defence teams are familiar. Under the circumstances, the absence of translation of that document into English until two weeks before cross-examination does not impair the ability of the Defence to effectively cross-examine the witness.

7. The Chamber is not convinced that the voluminous disclosure of potential exhibits requires postponement of the expert witness’s testimony. The Defence has not established that this disclosure was required under the Rules, or that any time-limits for disclosure were violated. Further, it appears that many of the documents disclosed had already been disclosed to the Defence in the past.

8. This trial is presently being heard during half-day sessions, alternating with another trial which is being heard concurrently by the Chamber. Accordingly, the Defence teams have greater time to prepare for cross-examination than would normally be the case. Under these circumstances, the Chamber is satisfied that the Defence is capable of conducting an effective cross-examination of the Prosecution witness on the basis of the disclosure of the expert report.

---

<sup>2</sup> Exhibit DB 9.

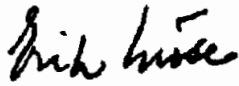
<sup>3</sup> T. 5 May 2004 p. 13.

**FOR THE ABOVE REASONS, THE CHAMBER**

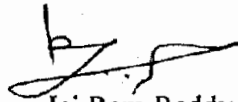
**21791**

**DENIES** the motion.

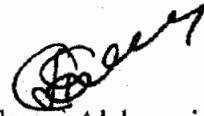
Arusha, 9 September 2004



Erik Møse  
Presiding Judge



Jai Ram Reddy  
Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]

