ICTR-99-54-T
30-03-2009
(511 — 507)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER II**

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr. Adama Dieng

Date: 30 March 2009



**The PROSECUTOR**

**v.**

**Augustin NGIRABATWARE**
Case No. ICTR-99-54-T

# DECISION ON THE PROSECUTION'S MOTION FOR JUDICIAL NOTICE

**Office of the Prosecutor**
Mr. Wallace Kapaya
Mr. Patrick Gabaake
Mr. Brian Wallace
Mr. Iskandar Ismail

**Counsel for Ngirabatware**
Mr. David C. Thomas

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal");

**SITTING** as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramaroson and Solomy Balungi Bossa (the "Chamber");

**BEING SEIZED** of the Prosecution "Motion for Trial Chamber to take Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94 (A)", filed on 9 March 2009 (the "Motion");

**CONSIDERING** "Dr. Ngirabatware's Response to the Prosecutor's Motion for Trial Chamber to Take Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94 (A)", filed on 16 March 2009 (the "Response"); ;

**CONSIDERING** the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

**NOW DECIDES** the Motion pursuant to Rule 73 (A) of the Rules, on the basis of the written briefs filed by the Parties.

## SUBMISSIONS OF THE PARTIES

### The Prosecution

1. The Prosecution moves the Chamber to take judicial notice of the following, which it submits are "facts of common knowledge" pursuant to Rule 94 (A):

i) Between 6 April 1994 and 17 July 1994, genocide against the Tutsi ethnic group occurred in Rwanda;

ii) Between 6 April 1994 and 17 July 1994, citizens native to Rwanda were severally identified according to the following ethnic classifications: Hutu, Tutsi, and Twa, which were protected groups falling within the scope of the Genocide Convention of 1948;

iii) The following state of affairs existed in Rwanda between 6 April 1994 and 17 July 1994: Throughout Rwanda there were widespread or systematic attacks against a civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity;

iv) Between 6 April 1994 and 17 July 1994, there was an armed conflict in Rwanda that was not of an international character;

v) Between 1 January 1994 and 17 July 1994, Rwanda was a State Party to the Convention on the Prevention and Punishment of the Crime of Genocide (1948), having acceded to it on 16 April 1975; and

vi) Between 1 January 1994 and 17 July 1994, Rwanda was a State Party to the Geneva Conventions of 12 August 1949 and their Additional Protocol II of 8 June 1977, having acceded to the Geneva Conventions of 12 August 1949 on 5 May 1964 and having acceded to Protocols Additional thereto of 1977 on 19 November 1984.

**The Defence**

2. The Defence objects to the Motion as regards to facts (ii), (iii), (iv) and (vi). It argues that the Tribunal has not previously taken judicial notice of fact (ii). In addition, according to the Defence, the mention "severally identified" tends to imply that there was a difference between the three ethnic groups who could be severally identified on the basis of their physical appearance or of their objective standards.

3. The Defence further argues that the formulation of fact (iii) is misleading because it implies that only Tutsis were killed and ignores the fact that many Hutus were killed as well.

4. The Defence alleges that the Tribunal has not previously taken judicial notice of fact (iv).

5. The Defence submits that fact (iv) and (vi) are irrelevant to the instant proceedings. Indeed, the Accused is not charged with serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. Furthermore, none of the allegations contained in the Amended Indictment and in the supporting witness statements against the Accused mention or involve military operations of any kind, the context of the conflict with the RPF, or official measures of any kind taken by the Interim Government.

## DELIBERATIONS

6. Rule 94 (A) provides that a "Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof."

7. As stated by the Appeals Chamber in the *Semanza* Appeal Judgment:

> As the ICTY Appeals Chamber explained in *Prosecution v. Milošević*, Rule 94(A) "commands the taking of judicial notice" of material that is "notorious." The term "common knowledge" encompasses facts that are not reasonably subject to dispute: in other words, commonly accepted or universally known facts, such as general facts of

history or geography, or the laws of nature. Such facts are not only widely known but also beyond reasonable dispute.[1]

8. Where a Trial Chamber determines that a fact is one "of common knowledge", it must take judicial notice of it. In the *Karemera et al.* case, the Appeals Chamber emphasised that the "Trial Chamber has no discretion to determine that a fact, although 'of common knowledge', must nonetheless be proven through evidence at trial".[2]

9. The Chamber takes note of the proposed facts which the Prosecution seeks to be taken judicial notice of [3] as well as the Defence submissions on this issue. The Chamber observes that the Appeals Chamber has already taken judicial notice of these facts in the context of the Rwandan Events of 1994.[4] The Chamber therefore considers these facts to be relevant and accordingly decides to take judicial notice of them in this case.

**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the Prosecution Motion; and

**TAKES JUDICIAL NOTICE** of facts (i) to (vi) above.

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[1] *The Prosecutor v. Semanza*, Case No. ICTR-97-20-A, Judgement, 20 May 2005, ("*Semanza* Judgment (AC)"), para. 194. The Appeals Chamber cited *The Prosecutor v. Milošević,* Case No. IT-02-54-AR73.5, Decision on the Prosecution's Interlocutory Appeal against the Chamber's 10 April 2003 Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts (AC), 28 October 2003.

[2] *The Prosecutor v. Karemera et al.,* Case No. ICTR-98-48-AR73, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006 ("*Karemera* Decision (AC)"), para. 23.

[3] i) Between 6 April 1994 and 17 July 1994, genocide against the Tutsi ethnic group occurred in Rwanda; ii) Between 6 April 1994 and 17 July 1994, citizens native to Rwanda were severally identified according to the following ethnic classifications: Hutu, Tutsi, and Twa, which were protected groups falling within the scope of the Genocide Convention of 1948; iii) The following state of affairs existed in Rwanda between 6 April 1994 and 17 July 1994: Throughout Rwanda there were widespread or systematic attacks against a civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity; iv) Between 6 April 1994 and 17 July 1994, there was an armed conflict in Rwanda that was not of an international character; v) Between 1 January 1994 and 17 July 1994, Rwanda was a State Party to the Convention on the Prevention and Punishment of the Crime of Genocide (1948), having acceded to it on 16 April 1975; and vi) Between 1 January 1994 and 17 July 1994, Rwanda was a State Party to the Geneva Conventions of 12 August 1949 and their Additional Protocol II of 8 June 1977, having acceded to the Geneva Conventions of 12 August 1949 on 5 May 1964 and having acceded to Protocols Additional thereto of 1977 on 19 November 1984.

[4] *Karemera* Decision (AC), para. 35 for fact (i); para. 25 for fact (ii) (Note, that while in *Semanza*, the Appeals Chamber accepted the part of the proposed (ii), relating to Hutu, Tutsi, and Twa as being ethnic group classifications, the Trial Chamber in *Karemera et al.*, when requested to accept the same formulation, preferred the wording "which were protected groups falling within the scope of the Genocide Convention of 1948." The Appeals Chamber dismissed the appeal against this part of the decision.); paras. 29 and 31 for facts (iii) and (iv); *Semanza* Judgement (AC), para. 192 accepted facts (iii), (iv), (v) and (vi).

Arusha, 30 March 2009

William H. Sekule

Presiding Judge

Arlette Ramaroson

Judge

Solomy Balungi Bossa

Judge

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| **Dates:** | Transmitted: **30/03/09** | Document's date: **30/03/09** | |
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