



**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

UNITED NATIONS  
NATIONS UNIES

### TRIAL CHAMBER III

Original: English

Before: Judge Lloyd George Williams, Presiding  
Judge Yakov Ostrovsky  
Judge Pavel Dolenc

Registrar: Agwu U. Okali

Date: 3 November 2000

## THE PROSECUTOR

**v.**

**LAURENT SEMANZA**

**Case No. ICTR-97-20-I**

2000 NOV -6 1 A 10: 32  
JUDICIAL RECORDS ARCHIVES  
RECEIVED  
ICTR

**DECISION ON THE PROSECUTOR'S MOTION FOR JUDICIAL NOTICE  
AND PRESUMPTIONS OF FACTS PURSUANT TO RULES 94 AND 54**

The Office of the Prosecutor:

Chile Eboe-Osuji  
Frédéric Ossogo  
Honoré Tougouri  
Patricia Wildermuth  
Holo Makwaia

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS

NAME / NOM: Kali Kumbilio A. AFANDE

SIGNATURE: [Signature] DATE: 06/11/2001

Defence Counsel for the Accused:

Charles Achaleke Taku

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

**SITTING** as Trial Chamber III, composed of Judge Lloyd George Williams, Presiding, Judge Yakov Ostrovsky and Judge Pavel Dolenc (the "Chamber");

**BEING SEIZED** of the Prosecutor's Notice of Motion for Judicial Notice and Presumptions of Facts Pursuant to Rule 94 and 54 of the Rules of Procedure and Evidence, filed on 19 January 1999 (the "Motion").

**CONSIDERING** the Prosecutor's Memorial in Support of Prosecutor's Motion for Judicial Notice and Presumptions of Facts together with Appendix A and Appendix B (the "Memorial")<sup>1</sup>;

**CONSIDERING** the Prosecutor's Book of Authorities in the Prosecution's Motion for Judicial Notice (Rules 54 and 73), filed on 17 July 2000 (the "Prosecutor's Book of Authorities");

**CONSIDERING** the Prosecutor's Revised Memorial in the Prosecutor's Motion for Judicial Notice (Rule 54 and 73) filed on 14 July 2000 (the "Revised Memorial");

**CONSIDERING** Appendix A and Appendix B to the Revised Memorial;

**CONSIDERING** the Defence Notice to File Further Written Replies to Prosecutor's Response in the Defence Motion for Dismissal of the Entire Proceeding Filed on the 30 June 2000 and 14 July 2000 and Prosecutor's Revised Memorial in the Prosecutor's Motion for Judicial Notice (Rules 54 and 73), filed on 17 August 2000 (the "Defence Notice");

**CONSIDERING** the Preliminary Response of the Defence to the Prosecutor's Revised Memorial in the Prosecutor's Motion for Judicial Notice, filed on 1 September 2000 (the "Preliminary Response"); and

**CONSIDERING** the Preliminary Reply to Prosecutor's Supplementary Appendixes to Motion for Judicial Notice Filed on 15/8/2000, filed on 5 September 2000 (the "Defence Preliminary Reply").

**NOTING** the hearing of 6 July 2000, in which the Chamber granted the Prosecutor's request to update her motion of 19 January 1999 and ruled that the Chamber would consider the matter solely on the basis of the briefs pursuant to Rule 73(A).

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<sup>1</sup> By memorandum dated 14 July 2000 and filed on the same date, the Prosecutor transmitted the Revised Memorial including Appendices A and B with the express intent that the Revised Memorial supersede and replace the Memorial. Accordingly, the Chamber did not consider the Memorial together with its Appendices A and B in its deliberations on the instant motion.

**NOW CONSIDERS** the matter pursuant to Rule 73(A) of the Rules of Procedure and Evidence (the "Rules") without a hearing, solely on the basis of the written submissions of the parties.

**I.**

***THE PARTIES' SUBMISSIONS***

*A. THE PROSECUTOR'S SUBMISSIONS*

1. The Prosecutor submits that she served on the Defence a Request to Admit Facts and Documents, including some facts and documents of a general nature relating to the general events in Rwanda at material times, with the aim of conducting a trial without undue delay. The Defence has not admitted any facts or documents, as requested.
2. By the instant motion, the Prosecutor seeks a declaration by the Tribunal taking judicial notice of factual matters described in Appendix A and of documents listed in Appendix B to the Motion. In the alternative, the Prosecutor urges the Chamber to accept the presumptions of fact as they are stated in Appendix A and in the documents listed in Appendix B. The Prosecutor requests that the Chamber upon taking judicial notice of the facts in Appendices A and B accept such facts as established in the trial of the Accused.
3. The Prosecutor cautions, however, that she does not request that the Chamber take judicial notice of the ultimate facts at issue in this case with regard to the specific conduct of the Accused and his alleged responsibility for committing the crimes charged in the indictment. The Prosecutor insists judicial notice notwithstanding, the burden of adducing formal proofs of the facts supporting the alleged guilt of the Accused remains with the Prosecution.
4. In Appendix A to the Motion, the Prosecutor prays that this Chamber takes judicial notice of a panoply of facts, which collectively may fairly be characterised as socio-political historical background facts relating to the existence of "genocide" "armed conflict" and "widespread systematic attacks" against the Tutsi civilian population in Rwanda during the months of April through July, 1994. By submitting Appendix B to the Motion, the Prosecutor argues for admission into evidence by judicial notice of certain documents that comprise legislative and administrative regulations and governmental investigative reports of the genocide in Rwanda, including among others, United Nations reports.
5. The Prosecutor's request for judicial notice rests on the following principal legal grounds. Notably, the Prosecutor submits that the facts in Appendix A belong to the category of facts of common knowledge, which, under Rule 94, are entitled to judicial notice. Pursuing her thesis, the Prosecutor maintains that the Chamber may equally take judicial notice of the facts pursuant to Rule 89. Moreover, the Prosecutor cites Rules 54 and 89 as providing support for the Chamber to take judicial notice of, or accept presumptions of facts contained in Appendices A and B. More specifically, citing Rule

94, the Prosecution contends that the factual matters delineated in Appendix A belong to the category of facts of "common knowledge around the world, facts which are not subject to reasonable dispute, matters which are within the knowledge of the Tribunal, or matters which are self-evident in the circumstances." Alternatively, the Prosecutor argues, without the benefit of Statutory authority or support in the Rules, that the facts in Appendix A qualify to be treated as presumptions because the facts are the logical consequences of basic established facts.

6. With respect to the documents listed in Appendix B to the Revised Memorial, the Prosecutor contends that the documents eminently qualify for judicial notice inasmuch as they are "public documents," created by public officials acting in pursuance of their designated public functions. Further, the documents in Appendix B, the Prosecutor argues, are the proper subject of judicial notice because the facts contained therein have been established in previous proceedings before the Tribunal either through judicial notice or by the formal introduction of positive proof. In this regard, the Prosecutor notes that the Tribunal took judicial notice of United Nations documents previously in, among other cases, *Prosecutor v. Akayesu*, ICTR-95-1-T, at ¶¶ 157, 165 and 627 (Judgement) (2 September 1998). Among a myriad of other legal arguments and authority, the Prosecutor also invokes Article 21 of the Charter of the International Military Tribunal at Nuremberg as additional authority to take judicial notice in the instant case.

7. Finally, the Prosecutor maintains that taking judicial notice or accepting the presumptions of fact it urges will not encroach upon the ultimate question of the guilt or innocence of the Accused in this case. The Prosecutor contends that the taking of judicial notice or the acceptance of factual presumptions she advocates will significantly reduce the length of the trial of this matter without visiting unfair prejudice upon the rights of the Accused to a fair trial.

#### *B. THE DEFENCE'S SUBMISSIONS IN OPPOSITION TO THE MOTION*

8. In its Preliminary Response to the Motion, the Defence submits the Defence Notice in which, among other things, he asks this Chamber to grant him additional time to file a written response to the Motion on the grounds that the Motion was filed while lead counsel for the Defence, Mr. Taku, was on mission in Europe pursuant to a mission order. Additional time is necessary, argues Mr. Taku, because filing a written response would entail extensive references to several of the transcripts of this Chamber and decisions.<sup>2</sup>

9. In the Preliminary Response, the Defence advances the following arguments. First, the Defence contends that the Chamber should deny the Motion because it was brought pursuant to the authority of Rules 54 and 73, Rules which merely provide authority for directing the parties to make admissions of fact, and therefore do not allow

<sup>2</sup> Appended to the Defence Notice, is a copy of letter dated 10 July 2000 from the Registry informing the reader that Mr. Taku "will be on mission in Tanzania, France, Belgium, Holland, Norway and Germany during the month of July, August and September 2000." (Emphasis in original). The letter does not indicate what portion of Mr. Taku's mission was to be spent in Tanzania.

for the judicial notice and presumptions of facts the Prosecution seeks in the instant Motion. In this regard, the Defence claims that the Chamber should not permit the Prosecutor to rely upon the authority of Rules 94 and 89(b) as it does in the table of contents to the Revised Memorial.

10. The Defence next expostulates that the Motion should be denied because it is premature. Thus, even if it were proper for the Chamber to take judicial notice or recognize presumptions of fact, the proper time for such an order would be during the course of the trial of this matter but, not before. In addition, the Defence argues that the Motion should be dismissed because it suffers from certain internal inconsistencies, namely the point made in Part III of the table of contents is at odds with points 12 and 15 of the Prosecutor's submissions because the Defence has consistently refused to make admission of fact in this matter since such was never ordered by the Chamber. Similarly, the Defence submits that the Motion must fail because it contradicts the not-guilty plea entered by the Accused and is therefore an impermissible attempt to relieve the Prosecutor of the burden of proof on contested issues of fact which rest exclusively upon the Prosecutor throughout the trial of this matter. More significantly, the Defence claims that granting the Motion at this juncture would constitute a violation of Article 20 of the Statute and result in gross unfairness and prejudice to the Defendant by rendering nugatory the full scope of the testimony of several witnesses appearing on the Prosecutor's Supplementary List of Witnesses, filed on 19 April 2000. Consequently, argues the Defence, the request for judicial notice is premature and should be allowed only when and if such witnesses are called to testify under oath at trial.

11. The Defence further submits that the Chamber should dismiss the Motion because it calls upon the Chamber to take judicial notice of facts that are contrary to the Statute of the Tribunal and to abdicate its role as an impartial arbiter of the facts. As an example of this alleged contradiction, the Defence notes that the Statute never sanctioned the prosecution of Hutus for committing genocide and other violations against Tutsis as insinuated in Point 4 of the Revised Memorial. In effect, claims the Defence, taking judicial notice of such facts would be tantamount to foreclosing *in futuro* the indictment of any Tutsi or non-Rwandans for committing the very same offences against Hutus, Tutsis, Twas or any other protected persons. In further support of this argument, the Defence claims that judicial notice does not lie because the Defence possesses documents evidencing that the RPF and mercenaries employed by them committed genocide and other serious violations against Rwandan citizens during the temporal jurisdiction of this Tribunal. As evidence of such contradictory facts, the Defence submits copies of certain excerpts from books, pamphlets and United Nations reports.

12. The Defence next attempts to lay waste to the Prosecution's principal argument in support of the Motion by stating that the facts for which judicial notice is sought or the recognition of a presumption are not of such an indisputable character as would qualify them for admission through judicial notice. For example, the Defence argues that the Chamber should not take judicial notice of the fact placing the death toll at between 500,000 and 1,000,000. Similarly, the facts relating to the general political circumstance extant in Rwanda do not belong to the genus of indisputable facts. In the same vein, but

perhaps more fundamentally, the Defence is vehement in his argument that the Chamber cannot take judicial notice that certain elements of Hutus committed acts of genocide targeting Tutsis, as alleged in Point 4 of the Revised Memorial. Indeed, claims the Defence, the United Nations resolution and other documents cited by the Prosecutor mandates that all who are believed to have committed the subject offences and violations be tried by the Tribunal, rather than only "certain elements of the Hutu ethnic group," as urged by the Prosecutor.

13. The Defence contends that the Prosecutor's Motion is without legal authority. It is neither supported by the Statute of the Tribunal nor by the previous decisions rendered by the Tribunal. Significantly, the Defence maintains that the fact that matters may have been judicially noticed in other cases does not authorize the same result in the instant Motion since those previous decisions are limited to their particular underlying circumstances. Moreover, the Defence underscores that the Prosecutor has failed to cite to any specific *ratio decidendi* in the Tribunal's previous cases in which judicial notice was taken as would authorize the same result to obtain under the circumstances in this case. In any event, argues the Defence, the Chamber should not predicate judicial notice in the instant matter upon the precedents set in previous decisions since those matters are still being reviewed by the Appeals Chamber and are therefore inconclusive.

14. When countering the Prosecutor's arguments for the admission of the documents listed in Appendix B, the Defence submits that the documents likewise lack the requisite indisputability as would entitle the Prosecutor to admit them through judicial notice. Moreover, states the Defence, the documents contain statements on political issues that are beyond the parameters of the Tribunal's mandate.

15. Finally, the Defence cautions the Chamber to avoid confounding, as did the Prosecutor, the similar but very discrete concepts of judicial notice and admissions. In this regard the Defence submits Exhibit E, an excerpt from Sakar's Law of Evidence in India, Pakistan, Bangladesh, Burma and Ceylon, 15<sup>th</sup> ed. (India, 1999). Relying on Sakar's Law of Evidence, the Defence stresses that even if a court takes judicial notice of a fact, such a ruling cannot deprive the opponent of its opportunity to present contradicting evidence on that fact.

## II.

### DELIBERATIONS AND FINDINGS

#### A. THE DEFENCE MOTION FOR ADDITIONAL TIME TO FILE WRITTEN SUBMISSIONS IN OPPOSITION TO THE MOTION

16. As a threshold matter, the Chamber finds that it is neither necessary nor proper for it to grant the Defence additional time to submit more written submissions in opposition to the Prosecutor's Motion. Indeed, since the filing of the Motion the Defence availed itself of the opportunity to make not less than three submissions, complete with supporting legal authorities and exhibits, in opposition to the instant Motion.

Notwithstanding its protestation that additional time was necessary to enable it to fully address the issues raised by the Motion, the Chamber finds that the Defence itself concedes that it has adequately, in its own estimation, responded to the Motion. Notably in this regard, at the Pre-Trial Conference in this matter, the Defence upon being denied its motion to postpone the trial asked the Chamber to render decisions on all pending motions. Surely, the Defence would not have insisted on issuance of a decision on the Motion if it still believed that it had not adequately and fully addressed the issues raised in the Motion. *See* Transcript of 25 September 2000, at 66:18-25--67:1-6. Consequently, the Chamber denies the Defence request for additional time to submit written opposition to the Motion. There must be some closure and finality with regard to submissions on pending motions. There must be some finality to litigation.

*B. THE PROSECUTION'S MOTION FOR JUDICIAL NOTICE*

17. The Chamber notes the importance of the issues raised in the Motion and the Defence's opposition to the Motion. These matters merit full discussion inasmuch as the Defence cogently argues that none of the previous decisions of this Tribunal reveals the *ratio decidendi* by which judicial notice was taken or denied. Consequently, none of the decisions seems to disclose principled guidance as to what genre of facts properly allow a trial court to take judicial notice thereby relieving the Prosecutor of her burden of formally adducing evidence at trial.

18. As a point of departure, it is imperative that the Chamber identify the issues and interests it must balance in rendering its decision on the Motion. As is plainly evident in the Prosecutor's Motion, the Chamber must contend with the issue of whether the Rules, Statute and previous jurisprudence of the Tribunal properly permit taking judicial notice of the facts contained in Appendix A and of the documents listed in Appendix B. The Chamber must assess whether it may take judicial notice of the reasonable inferences and conclusions that may be drawn from the noticed facts. Under the same rubric, the Chamber must determine whether the noticed fact is to be given conclusive effect, i.e., to be taken as proving a particular relevant fact beyond a reasonable doubt, consequently foreclosing the opportunity of the Defence to present evidence disputing the noticed fact. In addition, the Chamber must consider when is the proper time for taking judicial notice. Finally, the Chamber must assess all of the foregoing issues, against its momentous countervailing mandate to ensure a fair and equitable trial for the Accused.

*I. JUDICIAL NOTICE UNDER THE RULES*

19. The Defence invites the Chamber to restrict consideration of the Motion solely on the basis of Rules 54 and 73, as indicated in the title to the Motion. Rule 73(A) invests the parties with the power to make motions for appropriate relief before the Chamber. Rule 54, which is also cited by the Prosecutor as supporting the grant of the relief it seeks in the Motion, reinforces the mandate of Rule 89 by authorising the Chamber, upon the request of a party or *sua sponte*, to issue such orders and other measures as are necessary for purposes of preparation or conduct of the trial. Inasmuch as the Motion and the Revised Memorial correctly invoke Rule 94 and Rule 89, in addition to Rule 54 and Rule

73, the Chamber declines the Defence's invitation to restrict consideration of the Motion to Rules 54 and 73.

*a. POLICY REASONS FOR DOCTRINE OF JUDICIAL NOTICE*

20. Legal scholars invariably recite two reasons justifying the application of the doctrine of judicial notice. First, resort to judicial notice expedites the trial by dispensing with the need to formally submit proof on issues that are patently indisputable. Second, the doctrine fosters consistency and uniformity of decisions on factual issues where diversity in factual findings would be unfair. See Cross and Tapper on Evidence, 8<sup>th</sup> ed., Colin Tapper (United Kingdom, 1995) p. 78.

21. One learned legal authority, Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals, p. 303 (England, 1993) (emphasis added) has described judicial notice as follows:

[C]ertain allegations of the parties that are within the knowledge of the tribunal need no evidence in support. 'Judicial notice' is taken of the facts averred. Proof may be dispensed with as regards facts, which are of **common knowledge** or **public notoriety** . . .

*b. JUDICIAL NOTICE OF FACTS OF "COMMON KNOWLEDGE:" RULE 94*

22. Rule 94 entitled "Judicial Notice," provides "A Trial Chamber shall not require proof of facts of **common knowledge** but shall take judicial notice thereof." Rule 94 (emphasis added). Thus, following Rule 94, a Trial Chamber is permitted to take judicial notice of facts if such facts are "of common knowledge." Rule 94, however, provides no guidance as to what manner of facts constitutes "common knowledge." For an understanding as to what is encompassed under the broad rubric "common knowledge," the Chamber resorts to the learned legal treatises for guidance.

23. The term "common knowledge" is generally accepted as encompassing "... those facts which are not subject to reasonable dispute including, common or universally known facts, such as general facts of history, generally known geographical facts and the laws of nature." M. Cherif Bassiouni & P. Manikas The Law of the International Tribunal for the Former Yugoslavia, (United States of America, 1996) p. 952. See also; Phipson on Evidence, 14<sup>th</sup> ed., §2-06-2-16 (England, 1990); Sakar's Law of Evidence in India, Pakistan, Bangladesh, Burma and Ceylon, 15<sup>th</sup> ed. (India, 1999) p. 1015; Hon. Roger E. Salhany Criminal Trial Handbook, (Canada, 1994), § 9.5. A common example of a fact of common knowledge are the days of the week. In addition, and perhaps more importantly for the present purposes, "common knowledge" also encompasses those facts that are generally known within a tribunal's territorial jurisdiction. The Law of the International Tribunal for the Former Yugoslavia, at p. 952.

24. Once a Trial Chamber deems a fact to be of "common knowledge" under Rule 94, it must determine also that the matter is reasonably indisputable. A fact is said to be



indisputable if it is either generally known within the territorial jurisdiction of a court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be called into question. *See General Principles of Law as Applied by International Tribunals*, pp. 303-304; 29 *American Jurisprudence* §33 (United States of America, 1994).

*C. JUDICIAL NOTICE OF NOTORIOUS FACTS OF HISTORY*

25. Under the rubric matters of “common knowledge,” a court may generally take judicial notice of matters “ . . . so notorious, or clearly established or susceptible to determination by reference to readily obtainable and authoritative source that evidence of their existence is unnecessary . . . .” *Archibold Criminal Pleading, Evidence & Practice* § 10-71 (England, 2000); *see also Phipson on Evidence*, at § 2-06; United States of America Federal Rule of Civil Procedure § 201(B).

26. Article 21 of the Charter of the International Military Tribunal at Nuremberg, which provided for judicial notice of certain matters of common knowledge, further bolsters the propriety of taking judicial notice of some of the facts contained in Appendix A and the documents in Appendix B. In this connection, Article 21 of the Charter provided, in relevant portion:

The Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof. It shall also take judicial notice of official governmental documents and reports of the United Nations, including the acts and documents of the committees set up in the various allied countries for the investigation of war crimes, and of records and findings of military or other Tribunals of any of the United Nations.

27. Perhaps the best support of the propriety and fairness of taking judicial notice of certain matters stated in Appendix A and documents in Appendix B comes from the Bangladesh International Crimes (Tribunal) Act of July 19, 1973 because its language coincides with that of Rules 89 and 94. In April of 1973 the newly emerged state of Bangladesh announced its intention to try Pakistani nationals for “serious crimes,” including genocide, war crimes, crimes against humanity, breaches of Article 3 of the Geneva Conventions, murder, rape and arson. To facilitate the trials of the accuseds, the Act permits a tribunal to take judicial notice of common knowledge facts. The Act provides in relevant respect:

- (1) A Tribunal shall not be bound by technical rules of evidence; and it shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and may admit any evidence, including reports, and photographs published in newspapers, periodicals and magazines, films and tape-recordings and other materials as may be tendered before it, which it deems to have probative value. . . .
- (3) A Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof.

- (4) A Tribunal shall take judicial notice of official governmental documents and reports of the United Nations and its subsidiary agencies or other international bodies including non-governmental organisations.<sup>3</sup>

28. A prominent legal treatise, Sakar's Law of Evidence, upon which the Defence heavily relies, states the matter more categorically still. "No court insists upon formal proof by evidence of notorious facts of history past or present." Sakar's at p. 1016. To the extent that the matters in Appendix A are matters of public history, the Chamber may properly dispense with formal proof of such notorious matters. In addition, to illustrate the type of facts that are the proper subject of judicial notice, Sakar's, provides a list of thirteen matters that are so notorious and indisputable that one ought to take judicial notice of them. Sakar's, at p. 999, f.n. 15. According to Sakar's, among the facts that a court is compelled to recognise are facts evidencing: (1) accession to office, names, titles and functions of public officers; (2) commencement or continuation of hostilities between the State and a body of persons; (3) constitutional and political matters; (4) that a government is run by certain political parties. Sakar's, at pp. 1005, 1007-1009.

## 2. JUDICIAL NOTICE OF CERTAIN FACTS IN APPENDIX A

29. Some of the facts the Prosecutor seeks judicial notice of in Appendix A belong to that genus of "common knowledge" or "notorious historical facts" permitting a court to dispense with the submission of formal proofs. For example, the Prosecutor first calls on the Chamber to take judicial notice of the fact that Rwandan citizens were classified into three ethnic groups, namely, Hutu, Tutsi and Twa. Similarly, the fact that during the period from 6 April 1994 to 17 July 1994 there existed throughout Rwanda "widespread and systematic attacks" against the civilian population based on certain invidious classifications including Tutsi ethnic identity, is a notorious historical fact of which this Chamber may take judicial notice. Moreover, the powers of the office of *Bourgmestre* is a proper subject of judicial notice because it falls squarely into the category of matters that are of common knowledge within the jurisdiction of this Tribunal and which may readily be determined by reference to such reliable sources such as the written laws of Rwanda.<sup>4</sup>

<sup>3</sup> Prominent legal commentators have hailed the Bangladesh International Crimes (Tribunal) Act as a model of international due process. See Jordan J. Paust, M Cherif Bassiouni, et al., International Criminal Law: Cases and Materials, p. 751 (United States of America, 1996).

<sup>4</sup> The powers of the *Bourgmestre* of which the Prosecutor seeks judicial notice are described in the following Articles of Loi du 23 November 1963 (reprinted in Code et Loi du Rwanda, Reyntjens, F. et Gorus, J. eds. (1995): Art. 57 (the *Bourgmestre* is charged with the execution of the laws and regulations at the commune); Art. 38 (the *Bourgmestre* is nominated by the President of the Republic on the recommendation of the Minister of the Interior); Art. 58(11) (the *Bourgmestre* is charged with exercising administrative control over civil servants or agents of the government assigned to the commune); and Art. 62, 103 and 104 (The *Bourgmestre* hire and is the sole authority over communal police. In addition, he may incarcerate anyone causing public disorder).

30. It also bears noting that within the area of its territorial jurisdiction<sup>5</sup> and within the sphere of its specialised competence, a court is allowed to take judicial notice of an even wider scope of facts of common knowledge and notorious history. Phipson on Evidence, §2-21. See also, Sakar's, at p. 1015. Thus, the Chamber may take judicial notice of facts that are notorious within the territories of Rwanda, Burundi and other neighbouring states. Prosecutor v. Tadic, IT-94-1-AR72, Transcript of Hearing on Interlocutory Appeal on Jurisdictional Challenge at pp. 107-10 (ICTY Appeals Chamber, 7 September 1995) (finding that that Tribunal must in the interest of fairness take judicial notice of notorious facts). Accordingly, this Chamber may properly take judicial notice of the factual elements constituting the crime of genocide, crimes against humanity and violations of certain provisions of the Geneva Convention with respect to the large number of deaths of civilians in Rwanda during 1994.

31. Disputed facts, necessarily do not belong to that realm of indisputability as historical facts, and other matters of common knowledge as would properly place them within the reach of the Chamber's power to take judicial notice. Having entered a plea of not guilty to all the counts in the indictment, the Accused has placed even the most patent of facts in dispute. However, this alone cannot rob the Chamber of its discretion to take judicial notice of those facts not subject to dispute among reasonable persons. There is no requirement that a matter be universally accepted in order to qualify for judicial notice. See Sakar's at 1015.

32. In the instant case, some of the matters the Prosecutor seeks judicial notice of do not appear to be disputed by the Defence. Rather, the Defence disputes Semanza's personal involvement in the offences cited within the facts. Palpably absent from the Defence submissions, is any argument or authority negating the existence of either the "widespread or systematic attacks" or the elemental components of the crime of genocide against Tutsis. Consequently, there is no impediment to taking judicial notice of those matters which are of common knowledge and reasonably indisputable contained in Annexes A and B to this Decision.

### 3. PREVIOUS TRIBUNAL CASES TAKING JUDICIAL NOTICE

33. Although no additional authority is needed to support the propriety of taking judicial notice of facts in the instant matter, additional authority may be found in the jurisprudence of this Tribunal. See e.g., Prosecutor v. Kanyabashi, ICTR-96-15-T, (Decision on Jurisdiction) (18 June 1997). In rendering a decision on a defence pre-trial motion challenging the jurisdiction of the Tribunal, a unanimous Chamber in Kanyabashi rejected the Defence arguments that the Tribunal lacked the jurisdictional predicate under Article 3 of the 1949 Geneva Conventions, by, among other things, taking judicial notice of the fact that the Special Rapporteur for Rwanda, the Commission of Experts on Rwanda and the Security Council had all concluded that the conflict in Rwanda as well as the stream of refugees had created a highly volatile situation in the neighbouring states.

<sup>5</sup> Article 7 of the Statute of the Tribunal provides, in relevant portion: "The territorial jurisdiction of the [Tribunal] shall extend to the territory of Rwanda including its land surface and airspace as well as the territory of neighbouring States. . . ."

*Prosecutor v. Akayesu*, ICTR-96-4-T, (Judgement) at ¶ 627 (2 September 1998); (taking judicial notice of United Nations reports); *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, (Judgement) at ¶¶ 273-274 (21 May 1999) (finding that Article 2 of the Statute which defines genocide is not aimed at determining individual responsibility or guilt, rather a finding that genocide occurred merely provided a context in which the crimes alleged in the indictment may have been perpetrated).

34. The Chamber is mindful not to confound the related but discrete concepts of admissions and judicial notice. Thus, the Chamber notes that the Prosecutor's reliance on those cases in which the accused entered a plea of guilty pursuant to a plea agreement or in which the accused voluntarily admitted facts, thereby relieving the Prosecutor of its burden to prove such facts by formal proof, is misplaced. That an accused admits a fact pursuant to a plea agreement reveals nothing about the nature of the facts as either common knowledge or as indisputable. Similarly, facts that are voluntarily admitted by an accused in the context of a proceeding are not the proper subject of judicial notice because such admissions speak neither to the general currency of the fact nor to its indisputable character. For these reasons, the Chamber is not persuaded to take judicial notice of the facts at issue in the instant Motion on the basis of the jurisprudence in the cases cited by the Prosecution.<sup>6</sup> Accordingly, the Chamber shall not take judicial notice of the matters in Appendix A at ¶¶ 8(e), 9, 10, 11, 12, 13, and 14.

35. In addition, the Chamber cannot take judicial notice of matters, which are unadorned legal conclusions. Accordingly, the Chamber shall not take judicial notice of the matters in ¶¶ 3(a) (ii), (iii); (e), (d) (f), (g), (i), (j), (k), and (l) in Appendix A because these paragraphs do not contain facts of common knowledge or matters of public notoriety. Rather, they merely recite bare legal terminology borrowed verbatim from Article 3 of Statute of the Tribunal, which lists Crimes Against Humanity. In order to make the matters stated in the foregoing paragraphs eligible for judicial notice, the Prosecutor must state the specific acts or factual matters of which the Trial Chamber is being asked to take judicial notice. Moreover, the Chamber shall not take judicial notice of those facts recited in ¶¶ 4, 5(a), 8(e), and 9-21 in Appendix A because such matters are not reasonably indisputable.

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<sup>6</sup> See, *Prosecutor v. Kambanda*, ICTR-97-23-S, Judgement and Sentence, (4 September 1998) (defendant made wide variety of admissions of disputed facts in indictment as part of plea agreement); *Prosecutor v. Serushago*, ICTR-98-39-S, Sentence (5 February 1999) (defendant made many admissions incident to a plea agreement); and *Prosecutor v. Musema*, (ICTR-96-13-T), Judgement and Sentence (defendant made several admissions before trial, including admissions of existence of genocide, armed conflict and Tusti extermination) ( 27 January 2000).

4. JUDICIAL NOTICE OF ENUMERATED ACTS COMPRISING CRIME OF  
"GENOCIDE"

36. A fundamental question in this case is whether "genocide" took place in Rwanda. Notwithstanding the over-abundance of official reports, including United Nations reports confirming the occurrence of genocide, this Chamber believes that the question is so fundamental, that formal proofs should be submitted bearing out the existence of this jurisdictional elemental crime. *Kayishema*, Judgement at ¶ 273 (referring to "genocide," and holding "the question is so fundamental to the case against the accused that the Trial Chamber feels obliged to make a finding of fact on the issue"). The Chamber shall take judicial notice of the existence of the enumerated acts comprising the crime of genocide as provided in Article 2 and recited in ¶3(a) of Appendix A, including killing or causing serious bodily harm to members of a group.

37. In the interest of safeguarding the Accused's right to a fair trial and in the interest of fostering judicial economy and consistency, this Chamber takes judicial notice of some of the facts contained in Appendix A to the Revised Memorial, as indicated in Annex A to this Decision.

5. JUDICIAL NOTICE OF DOCUMENTS IN APPENDIX B

38. Similarly, concerning the documents listed in Appendix B, there is ample precedent in this Tribunal to take judicial notice of the existence and authenticity of such documents without taking judicial notice of the contents thereof. The Chamber, nevertheless, shall take judicial notice of the contents of resolutions of the Security Council and of statements made by the President of the Security Council because it is an organ of the United Nations which established the Tribunal. In addition, the Chamber takes judicial notice of the contents of Décret-Loi no. 01/81 and Arrêté ministériel no. 01/03, which are the copies of certain portions of the laws of Rwanda and properly qualify for judicial notice. The Chamber stresses, however, that by taking judicial notice of the existence and authenticity of the other documents in Appendix B, the Chamber does not take judicial notice of the facts recited therein.

39. It bears noting that the Tribunal has previously taken judicial notice of the very documents listed in Appendix B for purposes of providing an historical and political context for the offences with which an accused is charged. *Prosecutor v. Akayesu*, ICTR-96-4-T, (Judgement) at ¶¶ 157, 165 (2 September 1998). The Defence provides no principled reason why this Chamber should depart from the authority of *Akayesu*. The Tribunal having previously adjudicated the existence of the very documents and facts of which the Prosecutor seeks judicial notice, it would be wasteful of the Tribunal's resources for this Chamber to now insist upon formal proof of matters of notorious public history. To adopt such an approach would flout the very principles underlying the doctrine of judicial notice: judicial economy and consistency of judgements.

40. Accordingly, this Chamber takes judicial notice of the documents listed in and appended to Appendix B to the Revised Memorial, without modification, as indicated in Annex B to this Decision.

6. *JUDICIALLY NOTICED FACTS SERVE AS CONCLUSIVE EVIDENCE*

41. In the case before this Chamber, in exercise of its sound discretion under Rules 94 and 89(B), the Chamber holds that the judicially noticed facts shall serve as conclusive proof of the facts recited in Annexes A and B. The taking of judicial notice of those facts in Annexes A and B will end the evidentiary inquiry. To permit the Defence to submit evidence in rebuttal of the judicially noticed facts would undermine the very nature of the doctrine which is aimed at dispensing with formal proofs for matters that are of common knowledge and reasonably indisputable. The facts in Annex A that the Chamber has judicially noticed are of common knowledge or public notoriety and reasonably indisputable. Such an approach safeguards the right of the Accused to a fair trial without undue delay, as is his due pursuant to the Statute and the Rules. *See* Article 20; Rule 87(A).

7. *NO JUDICIAL NOTICE OF INFERENCES*

42. The Prosecutor requests that the Chamber take judicial notice of the inferences, without elaboration, that may be fairly drawn from judicially noticed facts. In this regard, Rule 89 permits this Chamber to determine whether it may properly take judicial notice of the logical inferences that may be drawn from the judicially noticed facts in Appendix A and documents in Appendix B. In the interest of protecting the rights of the Accused, the Chamber finds that pursuant to Rule 94 it cannot take judicial notice of inferences to be drawn from the judicially noticed facts in Appendix A. If and when those facts are presented in evidence, that will be the appropriate time for the Chamber to draw the relevant conclusions.

43. It must be stressed, at this time the Chamber draws no impermissible inferences regarding the Accused's involvement in those matters of which it takes judicial notice. The burden of proving the Accused's guilt, therefore, continues to rest squarely upon the shoulders of the Prosecutor for the duration of the trial proceeding. The critical issue is what part, if any, did the Accused play in the events that took place.

8. *TIME FOR TAKING JUDICIAL NOTICE*

44. The Chamber finds that the proper time for taking judicial notice of the matters contained in Appendices A and B is at this stage of the proceedings. In the interest of aiding the parties in preparing their respective trial presentations the Chamber is constrained to take judicial notice of some of the facts contained in Appendix A, as modified, and of the documents in Appendix B at this time. This Decision shall become part of the trial record of this case.

## 8. NO PRESUMPTIONS OF FACT

45. Having found that Rule 94 adequately provides for the judicial notice of some of the facts sought to be admitted in Appendix A and the documents in Appendix B, the Chamber need not reach that portion of the Prosecutor's Motion requesting the Chamber to create evidentiary presumptions on the basis of the facts stated in the two appendices. Rule 89(B) already provides for the particular matter under consideration. There is, therefore, no need for the Tribunal to apply any other evidentiary rules or principles.

## CONCLUSION

46. In conclusion, the Chamber considers that it is appropriate to apply the doctrine of judicial notice in the context of this case in some of the instances requested by the Prosecutor because to do so will ensure the Accused a fair trial without undue delay rather than one unnecessarily drawn out by the introduction of evidence on matters which are patently of common knowledge in the territorial area of the Tribunal and reasonably indisputable. The facts of which the Chamber takes judicial notice will not place even the smallest chink in the armour of presumed innocence in which the Accused is cloaked throughout the proceeding. In this regard the Tribunal's pronouncement in *Prosecutor v. Akayesu*, ICTR-96-4-T, (Judgement) at ¶129 (2 September 1998), with respect to the "general allegations" of which it took judicial notice, is particularly instructive. The *Akayesu* Chamber stated:

[T]he Chamber holds that the fact that the [enumerated crimes constituting] genocide [were] indeed committed in Rwanda in 1994 and more particularly in Taba, cannot influence its decision in the present case. Its sole task is to assess the individual criminal responsibility of the accused for the crimes with which he is charged, the burden of proof being on the prosecutor. [Footnote omitted] In spite of the irrefutable atrocities of the crimes committed in Rwanda, the judges must examine the facts adduced in a most dispassionate manner, bearing in mind that the accused is presumed innocent.

47. By taking judicial notice of some of the facts in Appendix A and the documents in Appendix B, the Chamber merely provides a backdrop -- a blank canvas-- against which the Prosecutor is still saddled with the daunting burden of adducing formal evidence to paint the picture establishing the personal responsibility of the Accused for the offences with which he is charged in the indictment beyond a reasonable doubt.


## 48. FOR THESE REASONS THE CHAMBER:

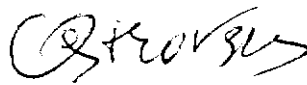
(a) **DENIES** those portions of the Defence's Notice to File Further Written Replies to Prosecutor's Response in the Defence Motion For Dismissal of the Entire Proceeding Filed on the 30 June 2000 and 14 July 2000 and the Prosecutor's Revised

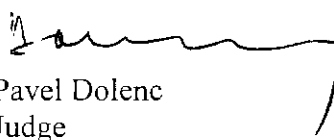
Memorial in the Prosecution's Motion for Judicial Notice (Rules 54 and 73), seeking additional time to file written responses to the instant Motion.

- (b) **GRANTS** the Prosecutor's Motion and takes judicial notice of the facts and documents described in **Annex A** and **Annex B**, attached hereto.
- (c) **ORDERS** that this Decision become part of the trial record of this case.
- (d) **DENIES** the Prosecutor's requests made in the Motion: (i) to create evidentiary presumptions on the basis of the facts in Appendices A and B and (ii) to take judicial notice of inferences that may be drawn from the judicially noticed facts.

Arusha, 3 November 2000.

  
Lloyd George Williams  
Judge, Presiding

  
Yakov Ostrovsky  
Judge

  
Pavel Dolenc  
Judge

[Seal of the Tribunal]





## ANNEX A

1. Between 6 April 1994 and 17 July 1994, citizens native to Rwanda were severally identified according to the following ethnic classifications: Tutsi, Hutu and Twa.
2. The following state of affairs existed in Rwanda between 6 April 1994 to 17 July 1994. There were throughout Rwanda 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 was a large number of deaths of persons of Tutsi ethnic identity.
3. Between 1 January 1994 and 17 July 1994 in Rwanda there was an armed conflict not of an international character.
4. 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.
5. 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 succeeded 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.
6. Before the introduction of multi-party politics in Rwanda in 1991, the office of the *Bourgmestre* was characterised by the following features:
  - (a) The *Bourgmestre* represented executive power at the *commune* level.
  - (b) The *Bourgmestre* was appointed and removed by the President of the Republic on the recommendation of the Minister of the Interior.
  - (c) The *Bourgmestre* had authority over the civil servants posted in his *commune*.
  - (d) The *Bourgmestre* had policing duties in regard to maintaining law and order.

**ANNEX B**

- i. Décret-Loi no. 01/81 du 16 janvier 1981 relatif au recensement à la carte d'identité, au domicile et à la résidence des Rwandais.
- ii. Arrêté ministériel no. 01/03 du 19 janvier 1981 portant mesures d'exécution du décret-Loi no. 01/81 du 16 janvier 1981 relatif au recensement à la carte d'identité, au domicile et à la résidence des Rwandais: J.O. no. 2 *bis* du 20 janvier 1981.
- iii. Commission pour le mémorial du génocide et des massacres au Rwanda, "Rapport préliminaire d'identification des sites du génocide et des massacres d'avril-juillet 1994 au Rwanda."
- iv. UN Secretary-General, "Report on the situation of Human Rights in Rwanda" submitted by Mr. R Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of commission resolution E/DN.4/S-3/1 of 25 May 1994, 28 June 1994, pages 5, 6, 7, 8 and 17. UN Document E/CD.4/1995/7.
- v. UN Secretary General, 'Report on the situation of Human Rights in Rwanda' submitted by Mr R. Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of commission resolution E/DN.4/S-3/1 of 25 May 1994, 18 January 1995. UN Document E/CD.4/1995/7.
- vi. UN Secretary-General, "Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935 (1994)". UN Document S/1994/1405, 9 December 1994.
- vii. Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on his mission to Rwanda, submitted by Mr. Bacre Waly Ndiaye, 8-17 April 1993, including as annex II the statement of 7 April 1993 of the Government of Rwanda concerning the final report of the independent International Commission of Inquiry on human rights violations in Rwanda since 1 October 1990. UN Document E/CN.4/1994/7/add.1, 11 août 1993.
- viii. Rapport spécial du Secrétaire Général sur la Mission des Nations Unies pour l'assistance au Rwanda (MINUAR), le 20 avril 1994. UN Document S/1994/470.
- ix. Report of the United Nations High Commission for Human Rights on his Mission to Rwanda of 11-12 May 1994, dated 19 May 1994. UN Document E/CN.4/S-3/3.
- x. The United Nations and Rwanda 1993-1996. The United Nations Blue Books Series, Volume X (New York: Department of Public Information, United Nations, 1996).