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04-09-2002  
(5104-5102)

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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER I**

Before: Judge Navanethem Pillay, presiding  
Judge Erik Møse  
Judge Andréia Vaz

Decision of: 4 September 2002

**THE PROSECUTOR**  
v.  
**ELIÉZER NIYITEGEKA**

Case No. ICTR-96-14-T

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**DECISION ON THE PROSECUTOR'S MOTION FOR JUDICIAL  
NOTICE OF FACTS**

**Rule 94 of the Rules of Procedure and Evidence**

**For the Prosecutor:**

Mr Kenneth C. Fleming  
Ms Melinda Y. Pollard  
Ms Amanda Reichman

**For the Defence:**

Ms Sylvia Geraghty  
Mr Fergal Kavanagh

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

**SITTING** as Trial Chamber I, composed of Judge Navanethem Pillay, presiding, Judge Erik Møse, and Judge Andréia Vaz (“the Chamber”);

**BEING SEIZED OF** the Prosecutor’s “Motion for Judicial Notice of Facts”, filed on 25 July 2002 (“the motion”);

**CONSIDERING** the Defence’s “Response to the Prosecutor’s Motion for Judicial Notice of Facts”, filed on 6 August 2002 (“the response”);

**HEREBY DECIDES** the motion.

### **SUBMISSIONS OF THE PARTIES**

1. By its motion the Prosecutor requests the Chamber to take judicial notice of two sets of alleged facts. The first set, in Annexure A of the motion, consists of nine items which the Prosecutor puts forth as facts of common knowledge to be noticed under Rule 94(A) of the Tribunal’s Rules of Procedure and Evidence. The second set, in Annexure B, consists of twelve items put forth as adjudicated facts for notice under Rule 94(B).
2. The Defence by its response requests the Chamber to dismiss the motion in its entirety, citing various reasons why the items in the first set are not facts of common knowledge and why items in the second set are not adjudicated facts.

### **DELIBERATIONS OF THE CHAMBER**

3. The Chamber’s first observation is that Rule 94 should be resorted to where it meets the purpose of achieving judicial economy. All but two of the items proposed by the Prosecutor in the present motion have recently been considered by Trial Chambers of this Tribunal and refused. The wording of the items has varied slightly from case to case, but the facts alleged by them are the same. No judgements (except for the oral confirmation on 3 July 2002 of the acquittal of Ignace Bagilishema) have been finalized by the Appeals Chamber since 22 November 2001, when the Prosecutor’s motion for judicial notice in the Ntakirutimana case was denied by Trial Chamber I.<sup>1</sup> Since that date, Trial Chambers II and III have issued concordant decisions on judicial notice.<sup>2</sup> Given that there are no new facts that can be considered adjudicated by this Tribunal, the Prosecutor’s resubmission of items denied in the recent decisions does not contribute to judicial economy.

4. The two items that do not present a problem are dealt with first. Annexure A, item 1 (=A1) states: “In Rwanda in 1994 attacks were suffered by civilians on the grounds of their perceived political affiliation or ethnic identification.” (Item B1 gives the narrower

<sup>1</sup> The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, Decision of 22 November 2001 on the Prosecutor’s Motion for Judicial Notice of Adjudicated Facts (“Ntakirutimana”).

<sup>2</sup> See The Prosecutor v. Juvénal Kajelijeli, Decision of 16 April 2002 on the Prosecutor’s Motion for Judicial Notice Pursuant to Rule 94 of the Rules (“Kajelijeli”); The Prosecutor v. Pauline Nyiramasuhuko et al., Decision of 15 May 2002 on the Prosecutor’s Motion for Judicial Notice and Admission of Evidence (“Butare”).

time frame of April to July 1994, but is otherwise the same.) The Chamber accepts that prior judgements of this Tribunal have shown, *in the specific circumstances examined in those judgements*, that certain Rwandan civilians were attacked during the period and on the grounds stated above. Pursuant to Rule 94(B), the Chamber takes notice of item A1/B1 as qualified by the previous sentence in this paragraph.

5. Item B6 states: "On 13 and 14 May 1994, a large scale attack occurred on Muyira Hill against Tutsi refugees." The references supplied by the Prosecutor to the Tribunal's judgements are only partially correct. The relevant finding in *Kayishema & Ruzindana* is not at paragraph 406 as stated by the Prosecutor but at paragraphs 415-425. Paragraph 750 of *Musema* concerns 14 May only; it is paragraph 747 which makes a finding for 13 May. Nevertheless, the Chamber will take notice of item B6.

6. As for the remaining items, they have been considered by the Trial Chambers and found to be presently contentious or not adjudicated and therefore judicial notice had been refused:

- A2: see Ntakirutimana para. 51; Kajelijeli para. 17; Butare paras. 127-128;
- A3-A7: see Ntakirutimana para. 36; Kajelijeli para. 19; Butare paras. 115-116;<sup>3</sup>
- A8-A10: see Ntakirutimana paras. 43-45; Kajelijeli para. 19;
- B2: see Ntakirutimana para. 36; Kajelijeli para. 19;
- B3-B5: see Ntakirutimana paras. 43-45; Kajelijeli para. 19;
- B7-B12 (guilty plea): see Ntakirutimana para. 26; Kajelijeli para. 14.

7. Finally, the Chamber wishes to emphasize that nothing in this decision precludes the Prosecution from drawing support for its arguments in the present case from factual or legal findings made in judgements of the Tribunal.

**FOR THESE REASONS THE CHAMBER:**

**ALLOWS** the motion by taking judicial notice of Annexure A item 1 (=Annexure B item 1) and Annexure B item 6, pursuant to Rule 94(B).

**DENIES** the motion in all other respects.

Arusha, 4 September 2002

Navanethem Pillay  
Presiding Judge

Erik Møse  
Judge

Andrésia Vaz  
Judge

(Seal of the Tribunal)



<sup>3</sup> Item A5 simply repeats item A4.