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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Case No. ICTR-2001-66-T

ENGLISH

Original: FRENCH

Before: Judge Andréia Vaz, presiding
Judge Karin Hökberg
Judge Gberdao Gustave Kam

Registrar: Adama Dieng

Date filed: 14 July 2005

THE PROSECUTOR

v.

ATHANASE SEROMBA

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DECISION ON THE PROSECUTOR'S MOTION FOR JUDICIAL NOTICE
Article 94 of the Rules of Procedure and Evidence

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

SITTING as Trial Chamber III (the “Chamber”), composed of Judges Andréia Vaz, presiding, Karin Hökberg and Gberdao Gustave Kam;

BEING SEIZED of a Prosecution Motion entitled “Prosecutor’s Motion for Judicial Notice pursuant to Rule 94 of the Rules of Procedure and Evidence”, filed on 20 September 2004;

CONSIDERING the Defence Response of 7 March 2005, entitled “*Réplique à la requête du Procureur aux fins de constat judiciaire*”, filed on 8 March 2005;

CONSIDERING the Prosecution’s reply, entitled “Prosecutor’s Response to the Defence Reply on Prosecutor’s Motion for Judicial Notice”, filed on 9 March 2005;

RULING on the basis of the Briefs filed by the parties pursuant to Rule 73(A) of the Rules of Procedure and Evidence (the “Rules”).

INTRODUCTION

1. In his Motion of 20 September 2004, the Prosecutor requested the Chamber to take judicial notice of the facts mentioned and documents cited in Annex I of the present Decision, pursuant to Rule 94(A) of the Rules. He also requested the Chamber to take judicial notice of the facts mentioned in Annex II, pursuant to Rule 94(B) of the Rules.

2. The Prosecutor also submitted that the facts stated in Annex I also fall into the category of facts mentioned in Annex II, and accordingly requested the Chamber to take judicial notice thereof.

3. In support of his motion, the Prosecutor cited several decisions rendered by the Ad hoc¹ Tribunals in judicial notice.²

4. In its Response of 7 March 2005, the Defence stated that it had no objection to judicial notice being taken of the documents mentioned in Points Nos. 5, 6, 9 and 10 of Annex I. However, in regard to the documents mentioned in Points Nos. 1, 2, 4, 7 and 8 of the said Annex, the Defence requested that judicial notice be taken only of their existence and

¹ International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for former Yugoslavia (ICTY).

² *The Prosecutor v. Semanza*, Case No. ICTR-97-20-I, Decision on the Prosecutor’s Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, 3 November 2000; *The Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-T, Judgement, 21 May 1999, paras. 273-274; *The Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998, paras. 157, 164 and 627; *The Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on the Defence Motion on Jurisdiction, 18 June 1997; *Prosecutor v. Kvočka et al.*, Case No. IT-98-30-1-T, Decision on Judicial Notice, 8 June 2000; *Prosecutor v. Simić et al.*, Case No. IT-95-9-PT, Decision on the Pre-Trial Motion by the Prosecution Requesting the Trial Chamber to Take Judicial Notice of the International Character of the Conflict in Bosnia-Herzegovina, 25 March 1999; *Prosecutor v. Kvočka et al.*, Case No. IT-98-30-PT, Decision on Prosecutor’s Motion for Judicial Notice of Adjudicated Facts, 19 March 1999; *Prosecutor v. Kovačević*, Case No. IT-97-24-PT, *Ordonnance relative à la requête de l’Accusation aux fins de constat judiciaire*, 12 May 1998; *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, *Procès-verbal de l’audience consacrée à l’appel interlocutoire d’une décision sur une exception d’incompétence*, 7 September 1995, pp. 107-110 of the French version.

authenticity, “[excluding their content, facts and findings]”. Lastly, the Defence requested that the Prosecutor’s motion for judicial notice be denied in respect of the document referred to in Point No. 3 of the same Annex.

5. Concerning Annex II, the Defence stated that it did not object to judicial notice being taken of the findings referred to in Points Nos. 1, 2, 3, and 6. The Defence, however, requested that the motion for judicial notice be denied in respect of Points Nos. 4, 5 and 7 of the same Annex.

6. In his Reply of 9 March 2005, the Prosecutor argued that the Defence’s Response was inadmissible because it was time-barred, and also requested that Defence Counsel be denied their fees.

DELIBERATIONS

I. Prosecutor’s request that the Defence Brief in Reply be ruled inadmissible and that Defence Counsel be denied fees

7. The Chamber recalls its Decision of 23 February 2005 granting the Defence a seven-day time-limit within which to file its response to the Prosecutor’s motion for judicial notice.³

8. The Chamber notes that the Defence’s response to the said motion was filed on 8 March 2005, namely six days after the prescribed time-limit.

9. The Chamber also recalls that judicial notice, as provided for in Rule 94, dispenses the moving party with the obligation to prove an alleged fact.

10. The Chamber considers that such dispensation is consistent with the Accused’s right to a fair trial only as long as the Accused is able to argue his case, including through his Counsel. The Chamber is also of the opinion that it is in the interests of justice to rule on the Defence Response of 7 March 2005, notwithstanding the fact that it was filed out of time. Accordingly, the Chamber finds that the Prosecutor’s request to rule the Defence’s Reply inadmissible is without merit, and must be denied.

11. The Chamber further finds that the Prosecutor’s additional request to deny the Defence Counsel their fees is without merit, and must also be denied.

II. Request for judicial notice

- **Applicable Law**

12. Rule 94 provides that:

- (A) A Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.

³ *The Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-T, Decision on the Defence Motion for Extension of Time-Limit, 23 February 2005.

(B) At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to the matter at issue in the current proceedings.

• **Judicial notice of facts and documents that are of common knowledge – Rule 94 (A)**

- **Points Nos. 5,⁴ 6,⁵ 9⁶ and 10⁷ of Annex I**

13. The Chamber notes that the Defence does not object to the Chamber taking judicial notice of the above-mentioned documents.

14. The Chamber notes that Points Nos. 5 and 6 fall within the sphere of Rwandan organic laws whose existence and content cannot reasonably be called into question. Hence the Chamber finds that the said documents are matters of common knowledge which must be judicially noted.

15. The Chamber further notes that Points Nos. 9 and 10 relate to international conventions signed under the auspices of the United Nations Organization. These Conventions deal with the prevention and punishment of the crime of genocide and also with international humanitarian law, and are of common knowledge. The Chamber, therefore, considers that judicial notice must be taken of them pursuant to Rule 94(A) of the Rules.

- **Points Nos. 1,⁸ 2,⁹ 4,¹⁰ 7¹¹ and 8¹² of Annex I**

16. The Defence submits that the Chamber may take judicial notice only of the existence and authenticity of the above-mentioned documents and not their content. The Defence argues in particular that the said documents deal with “investigations” concerning Rwanda’s socio-political situation, which are reported “in a subjective manner” by experts sent to the site and “whose opinions are disputable and constitute a number of allegations which the Prosecutor must prove”.

⁴ *Loi du 15 avril 1963 portant organisation territoriale de la République du Rwanda.*

⁵ *Loi du 23 novembre 1963 portant organisation communale de la République du Rwanda.*

⁶ The Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, ratified by Rwanda on 12 February 1975.

⁷ The Geneva Conventions of 12 August 1949 [Rwanda, contracting State since 5 May 1949] and Additional Protocols I and II to the said Conventions of 8 June 1977 [ratified by Rwanda on 19 November 1984].

⁸ United Nations Commission of Experts, Final Report, S/1994/1405 of 9 December 1994, in United Nations and Rwanda, New York, United Nations Department of Public Information, 1996.

⁹ The International Response to Conflict and Genocide: Lessons from the Rwandan Experience, Synthesis Report by the Steering Committee of the Joint Evaluation of Emergency Assistance to Rwanda (1996).

¹⁰ Report on the Situation of Human Rights in Rwanda by Mr. Degni-Segui, Special Rapporteur of the Commission on Human Rights, E/CN.4/S-3/1, of 25 May 1994.

¹¹ Report of the United Nations Special Rapporteur on the Situation of Human Rights, UN Document, E/CN.4/1996/68, 29 January 1996.

¹² Report of the United Nations High Commissioner for Human Rights. Mission of 11-12 May 1994, UN Document E/CN.4/S-3/3.

17. Pursuant to the relevant case-law, judicial notice may be taken of facts or documents of common knowledge. It has been held that the expression “common knowledge” encompasses facts or documents which are not subject to reasonable dispute.¹³

18. In this case, Points Nos. 1, 4, 7 and 8 are official UN documents, whose existence and authenticity are not subject to reasonable dispute. However, the Chamber notes that the said documents make reference to the perpetration of criminal acts or the involvement of certain persons in acts of violence that occurred in Rwanda in 1994. The Chamber considers that such facts must be proven beyond reasonable doubt. The Chamber therefore finds that judicial notice should be taken of the existence and authenticity of the said documents and not of their content.

19. Moreover, the Chamber notes that the document mentioned in Point No. 2 is a report on Rwanda, involving the work of four research institutes.¹⁴ The Chamber is of the view that this document is not of common knowledge, and hence cannot be judicially noted.

- **Point No. 3¹⁵ of Annex I**

20. The above-mentioned Point No. 3 relates to the Report of the United Nations Special Rapporteur on arbitrary, summary and extrajudicial executions in Rwanda.

21. The Defence submits that judicial notice cannot be taken of this Report, on the ground that it deals with matters that fall outside the Tribunal’s temporal jurisdiction.

22. It is the Chamber’s opinion that, under Rule 94(A) of the Rules, the Chamber may take judicial notice of a document of common knowledge, even if such a document does not fall within the Tribunal’s temporal jurisdiction. In the instant case, the above-mentioned Report is a UN official document, whose existence is a matter of common knowledge.

23. With regard to the content, the Chamber notes that the Report contains factual findings which should be proven beyond reasonable doubt. The Chamber therefore finds that only the existence and authenticity of the report, and not its content, should be judicially noted.

- **Point No. 11 of Annex I**

24. The Prosecutor states that, between 1 January 1994 and 17 July 1994, a non-international armed conflict took place in Rwanda.

25. The Defence objects to judicial notice being taken of this fact, on the ground that the above-mentioned dates correspond neither to the beginning nor the end of the conflict. The Defence adds that “[Uganda’s involvement, which is known and has been condemned in

¹³ *The Prosecutor v. Semanza*, Case No. ICTR-97-20-I, Decision on the Prosecutor’s Motion for Judicial Notice and Presumptions of Facts Pursuant to Rule 94 and 5, 3 November 2000, para. 23; Judgement (Appeals Chamber), Case No. ICTR-97-20-A, 20 May 2005, para. 194.

¹⁴ Namely: The Nordic Africa Institute; the Christian Michelsen Institute, the Overseas Development Institute and the Centre for Development Information and Evaluation of the US Agency for International Development.

¹⁵ Report on mission to Rwanda (8 to 17 April 1993), United Nations Special Rapporteur on arbitrary, summary and extrajudicial executions, E/CN.4/1994/7/Add.1.

vain]” makes the non-international nature of the Rwandan conflict questionable.

26. The Chamber recalls that Accused Athanase Seromba is charged with the following crimes: genocide, complicity in genocide, conspiracy to commit genocide and crime against humanity (extermination).

27. The Chamber considers that the lane relating to such crimes does not contemplate the nature of the conflict in question. In the circumstances, the Chamber finds that the nature of the Rwandan conflict is irrelevant to the instant case. The Chamber therefore considers that the fact stated in Point No. 11 should not be judicially noted.

- **Judicial notice of adjudicated facts – Rule 94(B) of the Rules**

- **Points Nos. 1, 2, 3 and 6 of Annex II**

28. The Defence does not object to judicial notice being taken of the facts alleged by the Prosecutor in Points Nos. 1, 2, 3 and 6 of Annex II.

29. The Chamber recalls that the facts in question have been acknowledged the Tribunal’s case-law.¹⁶ Accordingly, the Chamber concludes that judicial notice should be taken of the said facts.

- **Points Nos. 4, 5 and 7 of Annex II**

Point No. 4

30. In Point No. 4 the Prosecutor asserts as an acknowledged fact that between 1 January and 17 July 1994 there were systematic and widespread attacks against civilians on political or ethnic grounds. In support of this assertion, the Prosecutor relies on extracts from decisions and judgements rendered by the Tribunal.¹⁷

31. The Defence objects to judicial notice being taken of these facts, on the ground that the dates indicated above correspond neither to the beginning nor the end of “massacres, systematic attacks and acts of violence”.

32. The Chamber considers that judicial notice of a fact within the meaning of Rule 94(B) of the Rules can be taken only if the fact in question has been previously adjudicated.

¹⁶ *The Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998, paras. 13, 83, 106 and 114; *The Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-T, Judgement, 21 May 1999, paras. 6, 34-36, 289-291; *The Prosecutor v. Rutaganda*, Case No. ICTR-96-3, Judgement, 6 December 1999, paras. 1, 374 and 376; *The Prosecutor v. Kajelijeli*, Case No. ICTR-98-44A-T, Decision on the Prosecutor’s Motion For Judicial Notice Pursuant To Rule 94 of the Rules, 16 April 2002, para. 3; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, *Décision relative à la requête du Procureur aux fins de constat judiciaire*, para. 40.

¹⁷ *Akayesu* Judgement, 2 September 1998, paras. 114, 118, 119, 120, 121, 126, 128, 173; *Kayishema and Ruzindana* Judgement, 21 May 1999, paras. 54, 275, 289, 291; *Rutaganda* Judgement, 6 December 1999, paras. 369, 370, 371, 372; *The Prosecutor v. Bagosora*, Case No. ICTR-98-41-I, Decision on the Prosecutor’s Motion for Judicial Notice and Admission of Facts Pursuant to Rules 73, 89 and 94, 16 April 2003, para. 45; *The Prosecutor v. Niyitegeka*, Case No. ICTR-96-14 -T, Decision on the Prosecutor’s Motion for Judicial Notice of Facts, 4 September 2002, para. 4.

33. In this case, the Chamber notes that the fact alleged by the Prosecutor does not correspond precisely to that acknowledged in the judicial decisions cited, either with regard to the period indicated, or to the incidents described. Thus the *Akayesu*¹⁸ Judgement and the *Rutaganda*¹⁹ Judgement make only a general reference to the situation in Rwanda in 1994, while the *Kayishema and Ruzindana* Judgement refers to the “widespread nature of the attacks” over a three-month period.²⁰

34. The Chamber accordingly finds that judicial notice should not be taken of the facts referred to in Point No. 4 of Annex II.

Point No. 5

35. In Point No. 5, the Prosecutor asserts that it is common knowledge that 500,000 to 1,000,000 people were killed in Rwanda between 1 January and 17 July 1994 as a result of systematic and widespread attacks. In support of this assertion, the Prosecutor cites extracts from the *Akayesu*²¹ Judgement and from the *Kayishema and Ruzindana*²² Judgement.

36. The Defence contends that judicial notice cannot be taken of that fact, on the ground that this “part of the legal findings” contains “dates which have been selected arbitrarily.”

37. The Chamber notes that paragraph 111 of the *Akayesu* Judgement, relied upon by the Prosecutor, reads as follows: “*The killing of Tutsi which henceforth spared neither women nor children, continued up to 18 July 1994, when the RPF triumphantly entered Kigali. The estimated total number of victims in the conflict varies from 500,000 to 1,000,000 or more.*” On the other hand, paragraph 291 of the *Kayishema and Ruzindana* Judgement reads: “*Final reports produced estimated the number of the victims of the genocide at approximately 800,000 to one million, nearly one-seventh of Rwanda’s total population...*”

38. The Chamber notes in particular that these citations do not tally with the facts alleged by the Prosecutor, either with regard to the dates mentioned or to the alleged number of victims of the systematic and widespread attacks. The Chamber therefore finds that judicial notice within the meaning of Rule 94(B) of the Rules cannot be taken in respect of Point No. 5.

Point No. 7

39. The Prosecutor alleges that widespread killings occurred in Kibuye *préfecture*, at the instigation not only of public officials but also of other persons in authority. In support of his allegation, the Prosecutor relies on the following findings in the *Kayishema and Ruzindana* Judgement:

“... in Kibuye *Préfecture*, the plan of genocide was implemented by the public officials. Persons in positions of authority used hate speech and mobilized their subordinates, such as the gendarmes, the communal police, and the militias ... Tutsis were killed, based on their ethnicity, first

¹⁸ *Akayesu* Judgement, paras. 114 and 173.

¹⁹ *Rutaganda* Judgement, paras. 371-372.

²⁰ *Kayishema and Ruzindana* Judgement, para. 289.

²¹ *Akayesu* Judgement, para. 111.

²² *Kayishema and Ruzindana* Judgement, para. 291.

in their homes and ... Those who arrived at churches and stadiums were attacked and as a result tens of thousands perished.”²³

40. The Defence submits that judicial notice cannot be taken of this fact, because “the allegations in Point No. 7 are disputable and their veracity must be tested in a judicial proceeding”.

41. The Chamber notes that the *Kayishema and Ruzindana* Judgement acknowledged the existence of killings in Kibuye *préfecture*. It also notes that, in the same Judgement, the Judges not only took judicial notice of the killings, but also found that public officials and persons in positions of authority in the said *préfecture* were involved.

42. In the instant case, the Chamber recalls that Accused Athanase Seromba was a priest at Nyange parish, Kibuye *préfecture* during the events that occurred in Rwanda in 1994. The Chamber therefore considers that his involvement, in any way, in the killings that occurred in the said *préfecture* must be proven beyond reasonable doubt. Consequently, the Chamber declines to take judicial notice in regard to attribution of responsibility for the said acts, but takes judicial notice of the killings only.

FOR THE ABOVE REASONS, THE CHAMBER

Partially granting the Prosecutor’s Motion;

- **Denies** the request to rule the Defence response and the additional request to deny payment of Defence Counsel’s fees;
- **Takes judicial notice**, pursuant to Rule 94(A) of the Rules, of the documents cited in Points Nos. 5, 6, 9 and 10 of Annex I;
- **Takes judicial notice**, pursuant to Rule 94(B) of the Rules, of the facts cited in Points Nos. 1, 2, 3 and 6 of Annex II;
- **Takes judicial notice**, pursuant to Rule 94(A) of the Rules, of the existence and authenticity, but not of the content, of the documents mentioned in Points Nos. 1, 3, 4, 7 and 8 of Annex I;
- **Takes judicial notice** of the killings mentioned in Point No. 7 of Annex II, but not of the involvement of public officials or other persons in positions of authority;
- **Dismisses** the request for judicial notice of Points No. 2 and 11 of Annex I and Points Nos. 4 and 5 of Annex II;
- **Dismisses** all other submissions of the parties.

²³ *Kayishema and Ruzindana* Judgement, Case No. ICTR-95-1-T, 21 May 1999, para. 312.

Done this fourteenth day of July 2005 at Arusha

[Signed]

Andrésia Vaz
Presiding Judge

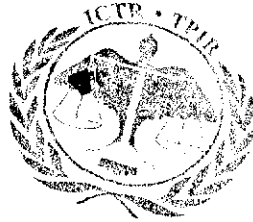
[Signed]

Karin Hökberg
Judge

[Signed]

Gberdao Gustave Kam
Judge

[Seal of the Tribunal]



Annex I

1. United Nations Commission of Experts, Final Report, S/1994/1405 dated 9 December 1994, in United Nations and Rwanda, 1993-1996, New York, United Nations Department of Public Information, 1996.
2. The International Response to Conflict and Genocide: Lessons from the Rwandan Experience, Synthesis Report of the Steering of the Joint Evaluation of Emergency Assistance to Rwanda (1996).
3. Report by Mr. Bacre Waly Ndiaye, Special Rapporteur, on extrajudicial summary or arbitrary executions in Rwanda, Mission conducted from 8 to 17 April 1993, E/CN.4/1994/7/Add.1.
4. Report on the Situation of Human Rights in Rwanda, by Mr. R. Degni-Segui, Special Rapporteur of the Commission on Human Rights, E/CN.4/S-3/1 of 25 May 1994.
5. *Organisation territoriale de la République du Rwanda.*
6. *Loi du 23 novembre 1963 portant organisation communale de la République du Rwanda.*
7. Report of the United Nations Special Rapporteur on the Situation of Human Rights, UN Document E/CN.4/1996/68, dated 29 January 1996.
8. Report of the United Nations High Commissioner for Human Rights, Mission of 11-12 May 1994, UN Document E/CN.4/S-3/3.
9. Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, ratified by Rwanda on 12 February 1975.
10. The Geneva Conventions of 12 August 1949 [Rwanda, contracting party since 5 May 1964] and Additional Protocols I and II of 8 June 1977 [ratified by Rwanda on 19 November 1984].
11. Between 1 January 1994 and 17 July 1994, a non-international armed conflict took place in Rwanda.

Annex II

1. During the events referred to in the Indictment, the Tutsi, Twa and Hutu were recognized as racial and ethnic groups.
2. During the events referred to in the Indictment, Rwanda consisted of the following administrative structures: 11 *préfectures*: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibuye, Kigali-Ville, Kigali-Rural and Ruhengeri.

3. On 6 April 1994, the President of the Republic of Rwanda, Juvénal Habyarimana, was killed when his plane was shot down on its approach to Kigali airport.
4. In Rwanda, between 1 January and 17 July 1994, there were widespread and systematic attacks and violence against civilians on the grounds of their perceived political affiliation or ethnic identification.
5. Between 1 January 1994 and 17 July 1994, 500,000 to 1,000,000 people in Rwanda died as a result of the widespread violence.
6. It cannot reasonably be disputed that widespread killings were perpetrated in Rwanda in 1994.
7. It cannot be disputed that there were widespread killings in Kibuye *préfecture*, which were implemented by the public officials and other persons in authority.
