2697

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

ICTR-01-70-T
29-11-2006
(2697-2693)

TRIAL CHAMBER II

Before Judges: Asoka de Silva, Presiding
Taghrid Hikmet
Seon Ki Park

Registrar: Adama Dieng

Date: 29 November 2006

2006 NOV 29 P 12:38
ICTR
JUDICIAL RECORDS/ARCHIVES
RECEIVED

THE PROSECUTOR

v.

EMMANUEL RUKUNDO

Case No. ICTR-2001-70-T

DECISION ON PROSECUTOR'S MOTION FOR THE TRIAL CHAMBER TO TAKE JUDICIAL NOTICE OF FACTS OF COMMON KNOWLEDGE PURSUANT TO RULE 94(A)

Office of the Prosecutor:
William Egbe
Sulaiman Khan
Veronic Wright
Patrick Gabaake
Thembile Segoete
Amina Ibrahim

Defence Counsel
Aicha Condé
Olivia Bouét

INTRODUCTION

1. On 13 November 2006, the Prosecution filed a Motion for the Trial Chamber to take Judicial Notice of Facts of Common Knowledge pursuant to Rule 94(A) of the Rules of Procedure and Evidence. The Defence did not file a Response.
2. The Prosecution identifies the following six facts and submits that they were recognised by the Appeals Chamber as facts of common knowledge within the meaning of Rule 94(A):[1]
   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, Twa;
   iii. 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 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;
   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 Convention of 12 August 1949 on 5 May 1964 and having acceded to Protocols Additional thereto of 1977 on 19 November 1984.
3. The Prosecution further submits that based on the Appeals Chamber's holding in respect of these six facts, the Trial Chamber shall not require that evidence be led to prove their existence and is bound to take judicial notice of them.

[1] The Prosecution relies on *Laurent Semanza v. The Prosecutor*, Judgement (A.C.), 20th May 2005; and *The Prosecutor v. E. Karemera et al*, "Decision on the Prosecutor's Interlocutory Appeal of Decision on Judicial Notice", 16 June 2006.

DELIBERATIONS

4. The Chamber has reviewed Rule 94(A), the Judgement of the Appeals Chamber in *Semanza,* and the Decision on the Prosecutor's Interlocutory Appeal on Judicial Notice rendered in the case of *Karemera et al.*[2]

5. The Chamber notes that Rule 94(A) imposes a mandatory requirement. This implies that once a certain fact is determined to be so notorious as not to be subject to reasonable dispute, it qualifies as a fact of common knowledge thereby dispensing with the need to lead evidence to prove its existence. With respect to such facts, the Trial Chamber's broad discretion under Rule 89(C) to admit evidence which it deems to have probative value, is superseded by the specific, binding provision contained in Rule 94(A).[3]

6. The Trial Chamber further notes that the practice of taking judicial notice of facts of common knowledge is well-established both under domestic and international criminal law, and that it is neither inconsistent with the presumption of innocence contained in Article 20(3) of the Statute, nor does it relieve the Prosecution of its burden to establish beyond reasonable doubt that the Accused is guilty of the specific criminal conduct alleged in the Indictment. Rather, taking judicial notice provides an alternative way of discharging the Prosecution's burden by obviating the need to lead evidence on facts of common knowledge.[4] In this manner, the doctrine of judicial notice advances judicial economy.

7. The Chamber notes that in the *Semanza* Judgement, the Appeals Chamber confirmed the Trial Chamber's finding taking judicial notice of the fact that between April and July 1994, Rwandan citizens were classified by ethnic group; that widespread or systematic attacks against a civilian population based on Tutsi ethnic identification occurred during that time; that between 1 January 1994 and 17 July 1994, there was an armed conflict not of an international character in Rwanda; that on 16 April 1975, Rwandan became a State Party to the Convention on the Prevention and Punishment of the Crime of Genocide (1948); and that between 1 January 1994 and 17 July 1994,

---

[2] *Semanza,* Appeal Judgement supra; *Karemera et al,* Decision on Judicial Notice, *supra* note 1.
[3] *Karemera et al,* Decision on Judicial Notice", *supra*, para.23.
[4] Ibid. paras. 30, 37.

Rwanda was a state party to the Geneva Conventions of 12 August 1949 and their Additional Protocol II of 8 July 1977.[5]

8. The Chamber further notes that in the *Karemera et al* Decision, the Appeals Chamber affirmed the Trial Chamber's holding taking judicial notice of "the existence of the *Twa, Tutsi,* and *Hutu* as protected groups falling under the Genocide Convention" and reasoned that when compared to the formulation in the *Semanza* Appeal Judgement, the Trial Chamber's formulation of this fact equally, or even more clearly, relieves the Prosecution's burden to introduce evidence proving protected-group status under the Genocide Convention.[6]

9. With respect to genocide, the Chamber recalls the reasoning of the Appeals Chamber in the *Karemera et al* Decision that the fact that genocide took place in Rwanda in 1994 is now "a part of world history", that it is "a classic instance of a 'fact of common knowledge'", and that its notoriety is confirmed by various United Nations documents, by the Security Council resolution establishing the Tribunal, various government and non-governmental reports on the situation in Rwanda in 1994, multiple Appellate and Trial Chamber Judgements of the Tribunal, as well as countless books, articles, and media reports.[7] The occurrence of genocide in Rwanda in 1994 is therefore not subject to reasonable dispute and thus qualifies for judicial notice under Rule 94(A).

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Prosecution Motion; and

TAKES judicial notice of fact (i), (iii), (iv), (v), and (vi) as formulated under paragraph 1 above. With respect to fact (ii), takes judicial notice that between 1 January 1994 and 17 Jnly 1994, the *Twa*, *Tutsi*, and *Hutu* existed in Rwanda as protected groups falling under the Genocide Convention.

Arusha, 29 November 2006, done in English.

[5] *Semanza Appeal Judgment*, para. 192.
[6] *Karemera et al* "Decision on Judicial Notice", supra, para. 25.
[7] Ibid., para. 35.

Asoka de Silva

Presiding Judge

Taghrid Hikmet

Judge

Seon Ki Park

Judge

[Seal of the Tribunal]