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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

ORIGINAL: ENGLISH

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 22 February 2008

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THE PROSECUTOR

v.

Callixte KALIMANZIRA

Case No. ICTR-2005-88-I

DECISION ON JUDICIAL NOTICE OF FACTS OF COMMON KNOWLEDGE

The Prosecution
Christine Graham
Ousman Jammeh
Stephen Agaba
Kartik Murukutla

The Defence
Arthur Vercken

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the Prosecution "Motion for Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94 (A)", filed on 25 September 2007;

NOTING that the Defence did not file a response;[1]

HEREBY DECIDES the motion.

INTRODUCTION

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

(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. 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 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.

(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.

DELIBERATIONS

2. Rule 94 (A) of the Rules of Procedure and Evidence states that a "Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof". The Appeals Chamber in *Milosevic* stated that, under Rule 94 (A), judicial notice is taken on the

[1] T. 13 December 2007 (status conference) p. 3.

basis that the material is notorious.[2] The Appeals Chamber in *Semanza* noted that the term "common knowledge" "encompasses facts that are not reasonably subject to dispute: in other words, commonly accepted or universally known facts...".[3] Judicial notice under Rule 94 (A) is mandatory: if a Trial Chamber determines that a fact is one of "common knowledge", it must take judicial notice of it.[4] In *Karemera et al.*, the Appeal Chamber emphasized that the "Trial Chamber has no discretion to determine that a fact, although 'of common knowledge', must nonetheless be proven through evidence at trial".[5] Further, where the Appeals Chamber has held that a fact is notorious and not subject to reasonable dispute, a Trial Chamber is obliged to take judicial notice thereof under Rule 94 (A).[6]

3. The Prosecution propositions (i), (iii), (iv), (v) and (vi) have already been established by the Appeals Chamber as facts of common knowledge, not subject to reasonable dispute.[7] In *Semanza*, the Appeals Chamber accepted the part of the proposed (ii), relating to Hutu, Tutsi, and Twa as being ethnic groups 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.[8] In the present case, the Prosecution proposes a third wording, combining the two previous formulations.[9] In order to avoid any unnecessary dispute, the Chamber prefers a formula which has been accepted by the Appeals Chamber and chooses the one most recently accepted in the *Karemera et al.* case, which in the Chamber's view expresses a fact of common knowledge. In addition, with respect to point (iv) concerning the nature of the armed conflict, the Chamber prefers to use the formula "non-international armed conflict" instead of "armed conflict ... that was not of an international character", as proposed by the Prosecution.[10]

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[2] *Prosecutor v. Milosevic*, Decision on the Prosecution's Interlocutory Appeal Against the Trial Chamber's 10 April 2003 Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts (AC), 28 October 2003, para. 13.

[3] *Prosecutor v. Semanza*, Judgement (AC), 20 May 2005 ("Semanza Appeals Chamber Judgement"), para. 194.

[4] *Prosecutor v. Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006 ("Karemera Appeals Chamber Decision"), para. 22.

[5] Karemera Appeals Chamber Decision, para. 23.

[6] Karemera Appeals Chamber Decision, para. 29.

[7] Karemera Appeals Chamber Decision, para. 35 established proposition (i) and paras. 29 and 31 (iii) and (iv); Semanza Appeals Chamber Judgement, para. 192 accepted (iii), (iv), (v) and (vi).

[8] Karemera Appeals Chamber Decision, para. 25. ("Although the Prosecution correctly states that the *Semanza* Appeal Judgement recognized that the Tutsi were an "ethnic" group, it has not attempted to show that the formulation that was instead chosen by the Trial Chamber has any potential to prejudice the Prosecution or render the proceedings less fair and expeditious. The Appeals Chamber can see no potential for such consequences, as the Trial Chamber's formulation equally (or perhaps even more clearly) relieves the Prosecution's burden to introduce evidence proving protected-group status under the Genocide Convention. The Appeals Chamber thus need not consider whether the Trial Chamber erred in choosing not to adopt the Prosecution's formulation; nor, given that the Accused have not appealed, need it consider whether it erred in concluding that protected-group status was a fact of common knowledge. The Prosecution's Interlocutory Appeal as to this point is dismissed.")

[9] Motion, para. 11 ("This formulation is an amalgamation of two other formulations. Based upon the appellate decisions cited earlier, it is open to the Trial Chamber to take judicial notice of this fact of common knowledge, in accordance with the suggested formulation").

[10] The Chamber's formulation is consistent with the language of Additional Protocol II and the Appeals Chamber Judgement in *Georges Rutaganda v. the Prosecutor*, Case No. ICTR-96-3-A, 26 May 2003, para. 561 ("The Appeals Chamber notes that it was not disputed at trial that ... the government and army of Rwanda (Rwandan Armed Forces, or "RAF"), on the one hand, and the Rwandan Patriotic front ("RPF"), on the other, were engaged in a non-international armed conflict satisfying the requirements of common Article 3 of the Geneva Conventions and Article 1 of the Additional Protocol II.") (internal citation omitted).

4. The Appeals Chamber noted that

> [w]hether genocide occurred in Rwanda is of obvious importance to the Prosecution's case ... Plainly, in order to convict an individual of genocide a Trial Chamber must collect evidence of that individual's acts and intent. But the fact of the nationwide campaign is relevant; it provides the context for understanding the individual's actions. And indeed, the existence of the genocide may also provide relevant context for other charges against the Accused, such as crimes against humanity.[11]

5. The Accused has been charged with genocide, complicity in genocide, and direct and public incitement to commit genocide.[12] For similar reasons as those set forth above by the Appeals Chamber, and having regard to the charges against the Accused, the Chamber finds that the points that have been established as facts of common knowledge as outlined above and 4 are relevant to the case of the Accused, and may provide the context for understanding his actions.

6. The Chamber considers that taking judicial notice of the points submitted by the Prosecutor before the start of the trial will not compromise equality between the parties or render the trial unjust. As the Appeals Chamber noted in *Karemera et al.*, taking judicial notice of a fact of common knowledge – even one that is an element of an offence –

> does not lessen the Prosecutor's burden of proof or violate the procedural rights of the Accused. Rather, it provides an alternative way that the burden can be satisfied, obviating the necessity to introduce evidence documenting what is already common knowledge.[13]

The Prosecution must still introduce evidence demonstrating the specific events alleged in the Indictment and show that the conduct and mental state of the Accused specifically makes him culpable of the charges against him.

FOR THE ABOVE REASONS, THE CHAMBER

TAKES JUDICIAL NOTICE of facts (i), (iii), (iv), and (vi) above. With regard to (ii), judicial notice is taken of the fact that "Between 6 April and 17 July 1994, citizens native to Rwanda identified as Hutus, Tutsis and Twas were protected groups falling within the scope of the Genocide Convention of 1948". In respect of (iv), judicial notice is taken that "Between 6 April and 17 July 1994, there was a non-international armed conflict in Rwanda".

Arusha, 22 February 2008

Erik Møse	Jai Ram Reddy	Sergei Alekseevich Egorov
Presiding Judge	Judge	Judge

[Seal of the Tribunal]

[11] Karemera Appeals Chamber Decision, p[illegible]
[12] Indictment, filed 21 July 2005.
[13] Karemera Appeals Chamber Decision, p[illegible] 17.