



UNITED NATIONS
NATIONS UNIES

ICTR-2001-72-T
28-5-2008
(1294 - 1292)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1294
2008

OR: ENG

TRIAL CHAMBER III

Before Judges: Inés Mónica Weinberg de Roca, Presiding
Florence Rita Arrey
Robert Fremr

Registrar: Adama Dieng

Date: 27 May 2008

JUDICIAL NOTICE
2008 MAY 26 - A II 10
Bifekrom

THE PROSECUTOR

v.

Simon BIKINDI

Case No. ICTR-2001-72-T

**DECISION ON REQUESTS FOR JUDICIAL NOTICE PURSUANT TO
RULE 94 OF THE RULES**

Rule 94 of the Rules of Procedure and Evidence

Office of the Prosecutor:

William T. Egbé
Sulaiman Khan
Veronic Wright
Patrick Gabaake
Peter Tafah
Amina Ibrahim
Gilain Disengi Mugeyo

Defence Counsel:

Andreas O'Shea
Jean de Dieu Momo

Introduction

1. In the case of the *The Prosecutor v. Simon Bikindi*, the Prosecution and then the Defence closed their case respectively on 22 February 2007 and 7 November 2007.

2. In a motion filed on 9 April 2008¹, the Defence moves the Chamber to take judicial notice pursuant to Rule 94 (A) of the Rules of Procedure and Evidence (the "Rules") of the following facts:

- (i) Operation Turquoise consisted of troops from France, Senegal, Guinea-Bissau, Chad, Mauritania, Egypt, Niger, and Congo;
- (ii) Operation Turquoise was a humanitarian operation with a limited mandate as described in paragraph 3 of UN Security Council Resolution 929 (1994), referencing subparagraphs 4(a) and (b) of UN Security Council Resolution 925 (1994);
- (iii) The zone of operation of Operation Turquoise consisted of the regions as set out in Section III "Deployment" of the Final Report on Operation Turquoise;
- (iv) The said mission began as from 22 June 1994; and
- (v) The troops landed in Goma and Bukavu and those that landed in Goma subsequently moved to Kibuye.

3. The Defence submits that these are facts not reasonably open to dispute, relating to matters of fact, not law, and properly considered as facts of common knowledge for the purposes of the proceedings in the *Bikindi case*.²

4. The Defence also requests the Chamber to take judicial notice, pursuant to Rule 94 (B) of the Rules, of a document entitled "Organisation and Structure of the Broader Initiative Committee of R/TLM" dated 26 November 1993 and exhibited as Prosecution Exhibit 53 in the *Nahimana et al.* case on 7 June 2001. The Defence adds that this document recently came to the attention of the Defence while examining the Appeals Judgment in that case. In the Defence view, this document is of an exculpatory nature and should have been disclosed to the Defence under Rule 68 of the Rules. The Defence further submits that this document sheds light on whether Mr. Bikindi held any level of responsibility with regards to the emissions of R/TLM.³

5. While the Prosecutor does not oppose the Motion, it adds that the document for which the Defence is seeking judicial notice pursuant to Rule 94 (B) of the Rules is a public document since 7 June 2001 and is not exculpatory.⁴

6. During the Closing arguments that were heard by the Chamber on 26 May 2008, the Prosecution requested that Rwandan Law number 27/1983 of 15 November 1983 on Authors' rights be admitted pursuant to Rule 94 of the Rules. The Defence opposed.⁵

¹ Motion for judicial Notice Pursuant Rule 94 of the Rules, filed on 9 April 2008.

² Motion for judicial Notice Pursuant Rule 94 of the Rules, filed on 9 April 2008, para. 9.

³ Motion for judicial Notice Pursuant Rule 94 of the Rules, filed on 9 April 2008, paras. 10-12.

⁴ The Prosecutor's Response to Defence Motion for Judicial Notice Pursuant to Rule 94 of the Rules, filed on 14 April 2008.

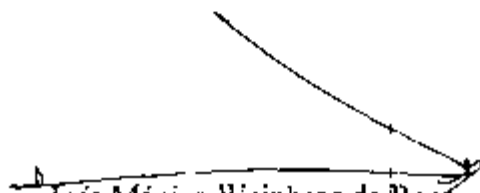
⁵ T. 26 May 2008.

Deliberations

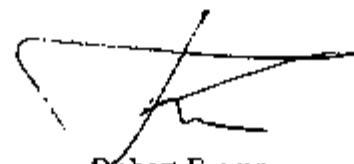
7. The Chamber notes that the Defence is requesting the admission of facts that are contained in United Nations documents which have been available to the public for more than thirteen years as well as the admission of a document available to the Defence for nearly seven years. The Chamber also finds that the instant issue should have been debated during the trial proceedings and not introduced five months after the closing of the Defence case. The Chamber decides that the same applies to the Prosecution's request as the Rwandan statute at stake was enacted twenty-five years ago and the Parties should have proceeded with due diligence concerning these documents that were available to them at the time of the presentation of their case.

**CONSEQUENTLY, THE CHAMBER
DISMISSES** the motions in their entirety.

Arusha, 27 May 2008, in English.


Inés Mónica Weinberg de Roen
Presiding Judge


Florence Rita Arrey
Judge


Robert Fremr
Judge


[Seal of the Tribunal]