

ICTR - 05-82-PT
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UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Aydin Sefa Akay

Registrar: Mr. Adama Dieng

Date: 17 March 2009

THE PROSECUTOR
v.
DOMINIQUE NTAWUKULILYAYO

Case No. ICTR-05-82-PT

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

Rule 94 (A) of the Rules of Procedure and Evidence

Office of the Prosecutor:
Charles Adeogun-Phillips
Ibukunolu Alao Babajide
Thembile Seogoete

Counsel for the Defence:
Francois Roux
Dorothee Le Fraper du Hellen

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INTRODUCTION

1. On 11 February 2009, the Prosecution filed a motion for judicial notice of facts, which it submits, are facts of common knowledge pursuant to Rule 94 (A) of the Rules of Procedure and Evidence ("Rules").¹
2. The Defence did not respond to the Motion.

DISCUSSION

Law on Judicial Notice

3. Rule 94 (A) provides that a "Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof."
4. As stated by the Appeals Chamber in the *Semanza* Appeal Judgment:

As the ICTY Appeals Chamber explained in *Prosecution v. Milošević*, Rule 94(A) "commands the taking of judicial notice" of material that is "notorious." The term "common knowledge" encompasses facts that are not reasonably subject to dispute: in other words, commonly accepted or universally known facts, such as general facts of history or geography, or the laws of nature. Such facts are not only widely known but also beyond reasonable dispute.²

5. Where a Trial Chamber determines that a fact is one "of common knowledge", it must take judicial notice of it. In *Karemera et al.*, the Appeals Chamber emphasised that the "Trial Chamber has no discretion to determine that a fact, although 'of common knowledge', must nonetheless be proven through evidence at trial".³
6. Further, where the Appeals Chamber has taken judicial notice of certain facts as "facts of common knowledge", Trial Chambers are bound to follow such findings. It is proper for the Chamber to take judicial notice of such facts at any stage of the trial.⁴

¹ *The Prosecutor v. Dominique Ntawukulilyayo.*, Case No. ICTR-05-82-PT, Judicial Notice of Facts of Common Knowledge Motion Pursuant to Rule 94 (A), 11 February 2009 ("Prosecution Motion").

² *The Prosecutor v. Semanza*, Case No. ICTR-97-20-A, Judgment, 20 May 2005, ("*Semanza* Judgment (AC)"), para. 194. The Appeals Chamber cited *The Prosecutor v. Milosevic*, Case No. IT-02-54-AR73.5, Decision on the Prosecution's Interlocutory Appeal Against the Chamber's 10 April 2003 Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts (AC), 28 October 2003.

³ *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-48-AR73, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006 ("*Karemera* Decision (AC)"), para. 23.

⁴ *Karemera* Decision (AC), para. 29.



The Prosecution's Proposed Facts

7. The Prosecution moves the Chamber to take judicial notice of the following, 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 and ethnically classified as Hutu, Tutsi, and Twa, and were protected groups within the scope of the Genocide Convention of 1948.
- iii) Between 6 April 1994 and 17 July 1994, widespread or systematic attacks against the civilian Tutsi ethnic population occurred throughout Rwanda. During the attacks, persons perceived to be Tutsi were killed or caused serious bodily or mental harm. As a result of the attacks, a large number of persons of the Tutsi ethnic identity died.
- iv) Between 6 April 1994 and 17 July 1994, there was an armed conflict that was not of an international character in Rwanda.
- 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 and having acceded to Protocols Additional thereto of 1977 on 19 November 1984.

8. The Prosecution's proposed facts (i) to (vi) have already been established by the Appeals Chamber as facts of common knowledge, not subject to reasonable dispute.⁵ The Chamber is therefore obliged to take judicial notice of these facts.

⁵ *Karemera* Decision (AC), para. 35 for fact (i); para. 25 for fact (ii) (Note, that while 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.); paras. 29 and 31 for facts (iii) and (iv); *Semanza* Judgment (AC), para. 192 accepted facts (iii), (iv), (v) and (vi).



FOR THE ABOVE REASONS, THE CHAMBER

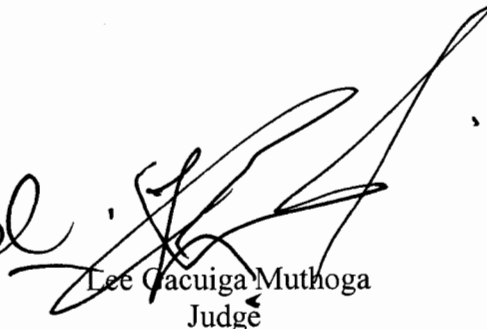
GRANTS the Prosecution Motion; and

TAKES JUDICIAL NOTICE of facts (i) to (vi) above.

Arusha, 17 March 2009



Khalida Rachid Khan
Presiding Judge



Lee Gacuiga Muthoga
Judge



Aydin Sefa Akay
Judge

[Seal of the Tribunal]