



ICTR-00-55B-T  
9-4-2009  
(1502-1499)

1502  
HM

OR: ENG

**TRIAL CHAMBER II**

**Before Judges:** Arlette Ramaroson, Presiding  
Taghrid Hikmet  
Joseph Masanche

**Registrar:** Adama Dieng

**Date:** 2 April 2009

**THE PROSECUTOR**

v.

**Ildephonse HATEGEKIMANA**

*Case No. ICTR-2000-55B-T*

1 2009 APR - 9 P 4: 51  
JUDICIAL RECORDS/ARCHIVES  
RECEIVED  
ICTR  
09/04/2009

**DECISION ON THE PROSECUTION MOTION FOR JUDICIAL NOTICE**

*Rules 94 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

William Egbe  
Sulaiman Khan  
Peter Tafah  
Adama Niane  
Disengi Mugeyo  
Amina Ibrahim

**Defence Counsel:**

A. R. Dovi  
Ata-Quam Dovi-Avouyi

R

**INTRODUCTION**

- 1. The trial in this matter commenced on 16 March 2009. On 19 March 2009, the Prosecution filed a Motion<sup>1</sup> requesting the Trial Chamber to take judicial notice, pursuant to Rule 94(B) of the Rules of Procedure and Evidence ("Rules"), of nine facts adjudicated in the *Muvunyi* Judgement of September 2006.<sup>2</sup>
- 2. These facts sought to be admitted relate to events in contention in the present case: specifically, acts of soldiers from Ngoma Camp, under the leadership of the Accused, at roadblocks, the *Groupe Scolaire*, the Ngoma Parish and Beneberika Convent, as well as to the conduct of the Accused.
- 3. On 24 March 2009, the Defence filed a Motion requesting, translation for several Motions, including the afore-mentioned Motion, and for extension of the deadlines to respond to the Motion.
- 4. On 2 April 2009, the Chamber denied the Defence Motion, but in the interests of justice, extended the deadline to respond to the Prosecution Motion until 10.00 a.m. on 6 April 2009.<sup>3</sup>
- 5. On 6 April 2009, the Defence filed a Response to the Prosecution Motion for judicial notice opposing the Prosecution request.<sup>4</sup>

**DELIBERATIONS**

- 6. Rule 94 (B) of the Rules provides:  
  
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.  
  
Rule 94 (B) confers a discretionary power on the Trial Chamber to decide whether or not to take judicial notice of adjudicated facts or documentary evidence. In the present case, the Defence requests judicial notice of adjudicated facts only.
- 7. Pursuant to established jurisprudence of the Tribunal, "adjudicated facts" are:  
  
facts which have been finally determined in a proceeding before the Tribunal [and] ... upon which it has deliberated, and thereupon made a finding in proceedings that are final, in that no appeal has been instituted therefrom or if instituted, the facts have been upheld.<sup>5</sup>

---

<sup>1</sup> Prosecutor's Motion for Judicial Notice (Pursuant to Rules 73, 89 and 94), filed on 19 March 2009.  
<sup>2</sup> The Prosecutor v. Tharcisse Muvunyi, Case No. ICTR-00-55A-T, Judgment dated 12 September 2006.  
<sup>3</sup> Decision on the Defence Request for Translation of the Prosecution Motions and for Extension of the Time Limit to File Responses (TC), 2 April 2009.  
<sup>4</sup> *Réponse de la Défense à la Requête intitulée: "Prosecutor's Motion for Judicial Notice (Pursuant to Rules 73, 89 and 94)"*, filed on 6 April 2009.  
<sup>5</sup> *Bizimungu et al.*, Decision on Bicumumpaka's Motion for Judicial Notice, 11 February 2004, paras. 4-5; *Prosecutor v. Edouard Karemera et al.*, Case No. ICTR-98-44-R94, Decision on Prosecution Motion for Judicial Notice (TC), 9 February 2005, para. 14; *Prosecutor v. Elizaphan Ntakirutimana & Gerard*

R

8. A fact, of which judicial notice is taken, must be relevant to the matters at issue in the current proceedings.<sup>6</sup> An adjudicated fact must be one on which the Tribunal has deliberated and made a final determination. However, it must not be an attestation, either directly or indirectly, of the criminal responsibility of the accused.<sup>7</sup>

9. A careful review of the specific facts sought to be admitted, which are contained in Annex A to this Decision, reveals that these facts specifically relate to findings which would have a bearing on the guilt or innocence of the Accused Hategekimana and are central to the issues litigated in the Prosecution case. In the interest of justice, the Chamber will not take judicial notice of such facts, which are essentially legal conclusions.

10. Accordingly, the Chamber denies the Prosecution request for judicial notice of the factual findings made by the Trial Chamber in *Prosecutor v. Muvunyi*, as set out in Annex A.

**FOR THESE REASONS**, the Chamber

**DENIES** the Prosecution Motion.

9 April 2009

Arlette Ramaroson

Presiding Judge

Taghrid Hikmet



Joseph Masanche

Judge

*Ntakirutimana*, Case No. ICTR-96-10-T and Case No. ICTR-96-17-T, Decision on the Prosecutor's Motion for Judicial Notice of Adjudicated Facts, 22 November 2001, para. 29.

<sup>6</sup> *Prosecutor v. Dragomir Milosevic*, Case No. IT-98-29/1-AR73.1, Decision on Interlocutory Appeals Against Trial Chamber's Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts and Prosecution's Catalogue of Agreed Facts, 26 June 2007 (AC), para. 13; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006 (AC), para. 50; and *Ntakirutimana* Decision, paras. 26-28.

<sup>7</sup> *Bizimungu et al.*, Decision on Prosper Mugiraneza's First Motion for Judicial Notice Pursuant to Rule 94(B) (TC), 10 December 2004, para. 21: "The Chamber declines to judicially notice facts which would have a bearing upon the guilt or innocence of the Accused or which are central to the Prosecution case. Further, and in light of the existing jurisprudence of the International Criminal Tribunal [for] Rwanda (ICTR) cited previously, the Chamber will not take judicial notice of facts which are essentially legal conclusions".

## ANNEX A

1. Roadblocks were set up in Butare in the days following the death of President Habyarimana. *Muvunyi, para. 150.*
2. The Ngoma Camp checkpoint was most likely manned by soldiers from that camp, and the military forces and armed civilians were in many instances working together. *Muvunyi, para. 154.*
3. The roadblocks served as points where searches were systematically conducted on civilians for the purposes of identity control. The Chamber further finds that while the official rhetoric was that the roadblocks were to prevent infiltrations by the enemy forces, they were in fact used to identify Tutsi civilians for the purpose of eliminating them. *Muvunyi, para. 155.*
4. A group of soldiers and civilians under the leadership of Lieutenant Hategekimana of the Ngoma Camp attacked Beneberika Convent on or about 30 April 1994 and abducted and subsequently killed a large number of unarmed Tutsi civilians. *Muvunyi, para. 289.*
5. Ngoma Camp soldiers collaborated with ESO soldiers such as Captain Nizeyimana, Lieutenant Modeste Gatsinzi and Lieutenant Gakwerere to attack civilian refugees at the *Groupe Scolaire* and other locations. *Muvunyi, para. 291.*
6. The Prosecution has proven beyond reasonable doubt that a large-scale attack was launched on the Tutsi refugees including orphans at the Ngoma Parish on 29 April 1994. The attack was led by Ngoma Camp soldiers and *Interahamwe* militia. *Muvunyi, para. 323.*
7. A large-scale attack was launched against Tutsi refugees at the Ngoma Parish on or about 29 April 1994. The only evidence before the Chamber is that the attack was led by soldiers under the leadership of Lieutenant Hategekimana of Ngoma Camp. *Muvunyi, para. 327.*
8. The Chamber therefore finds that the Prosecution has proved beyond reasonable doubt that soldiers from ESO in collaboration with men from Ngoma Camp and *Interahamwe* militia attacked and killed a group of Tutsi civilians at the *Groupe Scolaire* on 29 April 1994. *Muvunyi, para. 364.*
9. Soldiers under the leadership of Lieutenant Hategekimana, in the company of *Interahamwe* militia, attacked the Beneberika Convent in April 1994 during which they meted out cruel treatment to the refugees including many children. *Muvunyi, para. 437.*

R