



UNITED NATIONS
NATIONS UNIES

ICTR-98-44D-1
29-04-2009
(1180 - 1177)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 29 April 2009

THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D

JUDICIAL RECORDS ARCHIVES
2009 APR 29 11:41
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DECISION ON PROSECUTOR'S MOTION FOR JUDICIAL NOTICE

Rule 94 of the Rules of Procedure and Evidence

Office of the Prosecution:

Paul Ng'arua
Elvis Bazawule
Memory Maposa
Ndeye Marie Ka

Defence Counsel

Vincent C. Labrousse

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INTRODUCTION

1. On 27 February 2009, the Prosecutor filed a motion requesting the Chamber to take judicial notice of six facts pursuant to Rule 94(A) of the Rules of Procedure and Evidence.¹ The Prosecution argues that the facts at issue are notorious facts that the Appeals Chamber has already found to be facts of common knowledge. Consequently, the Prosecution submits that the Chamber is obliged to take judicial notice of them.² The Defence has not responded to the Motion.

DELIBERATIONS

2. Rule 94 (A) provides that a "Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof."

3. As stated by the Appeals Chamber in the *Semanza* Appeal Judgment:

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.³

4. Where a Trial Chamber determines that a fact is one "of common knowledge", it must take judicial notice of it. In the *Karemera* Decision, 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".⁴ 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.⁵

¹ Prosecutor's Motion for Judicial Notice Pursuant to Rule 94 of the Rules of Procedure and Evidence, 27 February 2009 ("Motion").

² Motion, paras. 4 and 6; See *Prosecutor v. Semanza*, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005 ("*Semanza* Appeal Judgement"); *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006 ("*Karemera* Decision").

³ *Semanza* Appeal Judgment, para. 194; referring to *The Prosecutor v. Milošević*, 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.

⁴ *Karemera* Decision, para. 23.

⁵ *Karemera* Decision, para. 29.

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5. 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, according to the following ethnic classifications: Hutu, Tutsi, and Twa, which were protected groups within the scope of the Genocide Convention of 1948.
- iii) 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 the Tutsi ethnic identity.
- iv) Between 6 April 1994 and 17 July 1994, there was in Rwanda, an armed conflict 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.

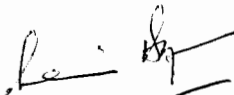
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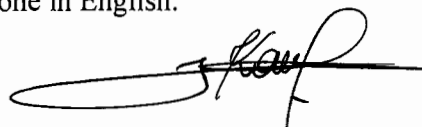
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6. The Prosecution's proposed facts i) to vi) have already been established by the Appeals Chamber as facts of common knowledge, not subject to reasonable dispute.⁶ The Chamber is therefore obliged to take judicial notice of these facts.

**FOR THE ABOVE NOTED REASONS, THE CHAMBER
GRANTS the Prosecution Motion; and
TAKES JUDICIAL NOTICE of facts i) to iv) above.**

Arusha, 29 April 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]



⁶ *Karemera* Decision, para. 35 for fact (i); para. 25 for fact (ii) (Note that while in *Semanza*, the Appeals Chamber accepted the language of proposed fact (ii) relating to Hutu, Tutsi, and Twa as being ethnic group 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 aspect of the decision.); paras. 29 and 31 for facts (iii) and (iv); *Semanza* Appeal Judgement, para. 192 for facts (iii), (iv), (v) and (vi). See also *The Prosecutor v. Ntawukulilyayo*, Case No. ICTR-05-82-PT, Decision on Prosecutor's Motion for Judicial Notice of Facts of Common Knowledge, 17 March 2009; *The Prosecutor v. Ngirabatware*, Case No. ICTR-99-54-T, Decision on the Prosecution's Motion for Judicial Notice, 30 March 2009.