



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-T  
20-05-2009  
(46090-46087)

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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:** 20 May 2009

**THE PROSECUTION**

v.

**Édouard KAREMERA**  
**Matthieu NGIRUMPATSE**  
**Joseph NZIRORERA**

*Case No. ICTR-98-44-T*

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**DECISION ON JOSEPH NZIRORERA'S MOTION FOR JUDICIAL NOTICE OF  
ADJUDICATED FACTS: BAGOSORA JUDGEMENT**  
*Rule 94(B) of the Rules of Procedure and Evidence*

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**Defence Counsel for Joseph Nzirorera**  
Peter Robinson and Patrick Nimy Mayidika Ngimbi

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## INTRODUCTION

1. Pursuant to Rule 94(B) of the Rules of Evidence and Procedure ("Rules"), the Defence for Joseph Nzirorera moves the Trial Chamber to take judicial notice of certain purported adjudicated facts from the *Bagosora et al.* trial judgement.<sup>1</sup> Nzirorera avers that the facts in question are findings made by the Trial Chamber on factual issues contested in the *Bagosora* trial and that they relate to exhibits and testimony introduced during the Prosecution's case in the *Karemera* trial.<sup>2</sup> He submits moreover that these facts have been finally adjudicated and that they do not go directly to the acts and conduct of the accused.<sup>3</sup>
2. The Prosecution opposes Nzirorera's Motion in its entirety.<sup>4</sup> First, the Prosecution argues that the judicial notice of facts after the close of the Prosecution's case-in-chief will not result in any judicial economy as the Prosecution will need to re-open its case for the purpose of adducing rebuttal evidence.<sup>5</sup> Second, the Prosecution submits that the Appeals in *Bagosora et al.* have not been exhausted as one of the convicted accused has appealed against the judgment<sup>6</sup> while a further appeal is anticipated from another convicted accused.<sup>7</sup> Alternatively, the Prosecution argues that the facts in question do not meet the conditions

<sup>1</sup> Joseph Nzirorera's Motion for Judicial Notice of Adjudicated Facts: Bagosora Judgement, filed on 27 April 2009 ("Nzirorera's Motion"); *Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-A18 December 2008.

<sup>2</sup> *Ibid.*, paras 4, 8.

<sup>3</sup> *Ibid.*, paras 6-7.

<sup>4</sup> Prosecutor's Response to "Joseph Nzirorera's Motion for Judicial Notice of Adjudicated Facts: Bagosora Judgement," filed on 4 May 2009 ("Prosecution's Response").

<sup>5</sup> Prosecution's Response, paras 6-11, referring to, *inter alia*, *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Decision on Defence Motion for Judicial Notice and Presumption of Facts pursuant to Rules 94(B) and 54, 6 February 2002; *Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Decision on Requests for Judicial Notice Pursuant to Rule 94 of the Rules, 27 May 2008; *Eliézer Niyitegeka v. Prosecutor*, Case No. ICTR-96-14-A, Reasons for Oral Decision Rendered 21 April 2004 on Appellant's Motion for Admission of Additional Evidence and for Judicial Notice, 17 May 2004.

<sup>6</sup> Amended Nsengiyumva's Notice of Appeal, filed on 23 April 2009.

<sup>7</sup> Prosecution's Response, paras 12-15, referring, *inter alia*, to *The Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Decision on Appeals Chamber Remand of Judicial Notice, 11 December 2006, para. 22.

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required for judicial notice, as some facts are irrelevant, not adjudicated findings, insufficiently clear, legal conclusions or related to core issues in the current proceedings.<sup>8</sup>

## DISCUSSION

3. Rule 94(B) of the Rules provides that the Trial Chamber “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.” In the jurisprudence of both *ad hoc* tribunals, a fact cannot be considered as adjudicated in circumstances where those facts *are* or *might be* subject to pending appeal.<sup>9</sup>

4. Joseph Nzirorera argues that the facts to which his request refers have been finally adjudicated because the Prosecution has not appealed any part of the *Bagosora et al.* trial judgement.<sup>10</sup> However, the Trial Chamber notes that the *Bagosora et al.* trial judgement is currently being appealed by two of the accused, Anatole Nsengiyumva<sup>11</sup> and Aloys Ntabakuze,<sup>12</sup> and that another accused, Théoneste Bagosora, has indicated his desire to file a notice of appeal following the translation of the trial judgement into French, which is due no later than 1 December 2009.<sup>13</sup> In addition, the Trial Chamber notes that Nsengiyumva's and Ntabakuze's notices of appeal allege a number of errors that have the potential to affect all of

<sup>8</sup> Prosecution's Response, paras 18-39.

<sup>9</sup> *Prosecutor v. Zoran Kupreskic et al.*, Case No. IT-95-16-A, Decision on the Motions of Drago Josipovic, Zoran Kupreskic and Vlatko Kupreskic to admit additional Evidence pursuant to Rule 115 and for judicial Notice to be taken pursuant to Rule 94(B), 8 May 2001, para. 6; *Karemera et al.*, Decision on Appeals Chamber Remand of Judicial Notice, 11 December 2006, paras 23 and 73. See also *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Decision on Defence Motion for Judicial Notice and Presumption of Facts pursuant to Rules 94(B) and 54, 6 February 2002, fn. 3; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex (TC), 26 September 2006, para. 14, and fn. 50; *Prosecutor v. Momcilo Perisic*, Case no. IT-04-81-PT, Decision on Prosecution's Motion for Judicial Notice of Facts and Documents Relevant to the Zagreb Crime Base, 2 September 2008, para. 27.

<sup>10</sup> Nzirorera Motion, para. 6.

<sup>11</sup> Nsengiyumva's Amended Notice of Appeal, filed on 23 April 2009.

<sup>12</sup> Ntabakuze's Amended Notice of Appeal, filed on 18 May 2009.

<sup>13</sup> *Théoneste Bagosora v. Prosecutor*, Case No. ICTR-98-41B-A, Decision on Théoneste Bagosora's Motion for Extension of Time for Filing Appeal Submissions, 15 January 2009, p. 4.

the factual findings in the trial judgement.<sup>14</sup> Accordingly, the facts to which Nzirorera's request refers cannot, at this time, be deemed to be adjudicated facts within the meaning of Rule 94(B) and cannot therefore be judicially noticed.

5. In light of the above, the Trial Chamber does not deem it is necessary to consider the Prosecution's other objections to Nzirorera's Motion.

**FOR THESE REASONS, THE CHAMBER**

**DENIES** Joseph Nzirorera's Motion in its entirety.

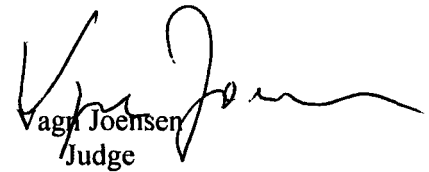
Arusha, 20 May 2009, done in English.



Dennis C. M. Byron  
Presiding Judge



Gberdao Gustave Kam  
Judge



Vagn Joensen  
Judge



<sup>14</sup> Nsengiyumva's Amended Notice of Appeal, paras 4, 11-13, 17-22, 23-31; Ntabakuze's Amended Notice of Appeal, paras 134-138.