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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:** 21 August 2009

THE PROSECUTOR

v.

Jean-Baptiste GATETE

Case No. ICTR-00-61-PT

2009 AUG 21 11:00  
JUDICIAL SECRETARIAT  
ICTR

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

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

**Office of the Prosecutor:**

Richard Karegyesa  
David Akerson  
Dennis Mabura

**Counsel for the Defence:**

Marie-Pierre Poulain  
Kate Gibson

## INTRODUCTION

1. On 3 August 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").<sup>1</sup>
2. On 7 August 2009 the Defence filed its response.<sup>2</sup>

## 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.<sup>3</sup>
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".<sup>4</sup>
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.<sup>5</sup>

<sup>1</sup> *The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-PT, Prosecutor's Motion for Judicial Notice Pursuant to Rule 94 of the Rules of Procedure and Evidence, 3 August 2009 ("Prosecution Motion").

<sup>2</sup> *The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-PT, Defence Response to Prosecution Motion for Judicial Notice of Facts of Common Knowledge, 7 August 2009 ("Defence Response").

<sup>3</sup> *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.

<sup>4</sup> *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.

<sup>5</sup> *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, 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.

8. The Defence does not oppose taking judicial notice of proposed facts (v) and (vi).<sup>6</sup> However, it does object to taking judicial notice of facts (i), (ii) and (iii), and (iv), which it submits are subject to reasonable dispute and therefore cannot be qualified as facts of common knowledge.

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<sup>6</sup> Defence Response, para. 9.



9. With regard to facts (i), (ii) and (iii), the Defence objects to the description as submitted by the Prosecution and requests the Chamber to take judicial notice, instead, of those facts according to different formulations submitted by the Defence.<sup>7</sup>

10. With regard to fact (iv), the Defence submits that if the Chamber took judicial notice of it, it would prevent the leading of evidence of particular relevance to this trial and would consequently affect the fairness of the proceedings.<sup>8</sup>

11. The Defence further argues that the Chamber, by taking judicial notice of such facts which it disputes, would reduce the burden of proof of the Prosecution, and consequently impair the Accused's right to a fair trial.

12. The Chamber recalls that 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.<sup>9</sup> The Chamber is therefore obliged to take judicial notice of these facts.

13. Further, the Chamber considers that taking judicial notice of the facts proposed by the Prosecution will not affect the Accused's right to a fair trial. As the Appeals Chamber noted in *Karemera et al.*, taking judicial notice of a fact of common knowledge – even one that is an element of an offence –

“does not lessen the Prosecutor's burden of proof or violate the procedural rights of the Accused. Rather, it provides an alternative way that the burden can be satisfied, obviating the necessity to introduce evidence documenting what is already common knowledge.”<sup>10</sup>

The Prosecution must still introduce evidence demonstrating the specific events alleged in the Indictment and show that the conduct and mental state of the Accused specifically makes him culpable of the charges against him.

**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the Prosecution Motion; and

<sup>7</sup> In this regard, the Defence also refers to its submissions in its “Defence Response to Prosecution's Request to Admit Facts”, filed on 15 July 2009. See Defence Response, para 7.

<sup>8</sup> Defence Response, para. 8.


<sup>9</sup> *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).


<sup>10</sup> *Karemera* Decision (AC), para. 37.


*The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-PT

**TAKES JUDICIAL NOTICE** of facts (i) to (vi) as formulated in paragraph 7, above.

21 August 2009

  
Khalida Rachid Khan  
Presiding Judge

  
For and with the consent of  
Lee Gacuiga Muthoga  
Judge

  
For and with the consent of  
Aydin Sefa Akay  
Judge

[Seal of the Tribunal]

