



UNITED NATIONS
NATIONS UNIES

ICTR-00-55C-PT
3-3-2010
(1197-1195)
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Duffy

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 3 March 2010

JUDICIAL ARCHIVES
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THE PROSECUTOR

v.

Idelphonse NIZEYIMANA

CASE NO. ICTR-2001-55C-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:
Richard Karegyesa
Drew White
Yasmine Chubin
Astou Mbow

Defence Counsel for Idelphonse Nizeyimana:
John Philpot

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INTRODUCTION

1. On 10 February 2010, the Prosecution filed a motion for judicial notice of facts of common knowledge (the "Motion"). The Defence has not responded.

DELIBERATIONS

2. The Prosecution submits six facts of common knowledge for the Chamber to take judicial notice of:

- (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 in Rwanda there was 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.

3. The Chamber recalls that pursuant to Rule 94 (A) of the Rules of Procedure and Evidence (the "Rules"), a "Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof." 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.¹

4. 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

¹ *The Prosecutor v. Semanza*, Case No. ICTR-97-20-A, Judgment (AC), 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.

has no discretion to determine that a fact, although 'of common knowledge', must nonetheless be proven through evidence at trial".²

5. The Chamber notes that all six facts listed in paragraph 2 above have been accepted by the Appeals Chamber as facts of common knowledge, not subject to reasonable dispute.³ Therefore, the Chamber is obliged to take judicial notice of these facts.

6. Further, the Chamber considers that taking judicial notice of the facts proposed by the Prosecution will not affect Idelphonse Nizeyimana's right to a fair trial. As was noted by the Appeals Chamber in *Karemera et al.*, taking judicial notice of a fact of common knowledge "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."⁴

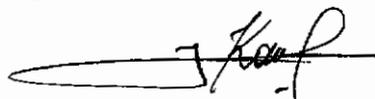
7. The Chamber notes that the Prosecution must still introduce evidence demonstrating the specific events alleged in the Indictment and show that the conduct and mental state of Idelphonse Nizeyimana specifically makes him culpable of the charges against him.

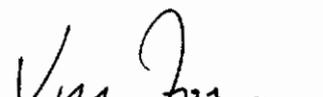
FOR THESE REASONS, THE CHAMBER

- I. **GRANTS** the Prosecution's Motion; and
- II. **TAKES JUDICIAL NOTICE** of facts (i) to (vi) as described in paragraph 2, above.

Arusha, 3 March 2010, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge



² *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.

³ *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).

⁴ *Karemera Decision (AC)*, para. 37.