



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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ICTR-01-68-PT
08-04-2010
(1522-1517)

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Vagn Joensen
Aydin Sefa Akay

Registrar: Adama Dieng

Date: 7 April 2010

THE PROSECUTOR

v.

Grégoire NDAHIMANA

CASE NO. ICTR-2001-68-PT

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DECISION ON THE PROSECUTION'S MOTION FOR JUDICIAL NOTICE

Rule 94 of the Rules of Procedure and Evidence

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INTRODUCTION

1. On 15 March 2010, the Prosecution filed a motion seeking the Chamber to take judicial notice of eight facts of common knowledge and four adjudicated facts in the *Seromba* trial.¹ The Defence partially opposes the Motion.²

DELIBERATIONS***Facts of Common Knowledge***

2. Rule 94 (A) of the Rules of Procedure and Evidence provides that a Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof. Once a Trial Chamber determines that a fact is of common knowledge, it must take judicial notice of it.³ Facts noticed under Rule 94 (A) are established conclusively.

3. The Prosecution seeks the admission of the following facts of common knowledge:

- Fact (i) Between 6 April 1994 and 17 July 1994, genocide against the Tutsi ethnic group occurred in Rwanda.
- Fact (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.
- Fact (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, a large number of deaths of persons of the Tutsi ethnic group occurred.
- Fact (iv) Between 6 April 1994 and 17 July 1994, there was in Rwanda, an armed conflict that was not of an international character.
- Fact (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
- Fact (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 Convention of 12 August 1949 on 5 May 1964 and having acceded to the Protocols Additional thereto of 1977 on 19 November 1984.
- Fact (xi) *Codes et lois du Rwanda, 11 mars 1975 – Arrêté présidentiel N° 68/03/1. Création et organisation des services de l'administration préfectorale.*
- Fact (xii) *Codes et lois du Rwanda, 23 novembre 1963 – Loi. Organisation communale.*

4. The Chamber notes that the Prosecution's proposed Facts (i) to (vi) have been

¹ Prosecutor's Motion for Judicial Notice Pursuant to Rule 94 of the Rules of Procedure and Evidence, filed on 15 March 2010.

² Defence Response to the Prosecutor's Motion for Judicial Notice, Pursuant to Rule 94 (RPE) Filed on 15 March 2010, filed on 19 March 2010

³ *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, para. 22.

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established by the Appeals Chamber as facts of common knowledge, not subject to reasonable dispute.⁴ The Chamber is therefore obliged to take judicial notice of these facts.

5. The Chamber recalls that the jurisprudence admits that the relevant legislative, executive, and administrative and organizational laws of Rwanda properly qualify for judicial notice and that the legislation and documents relating to the administrative organisation of a geographic area and the legislative law of a country fall within matters of common knowledge, which may fairly be judicially noticed.⁵

6. Accordingly, the Chamber considers that the Rwandan legislation referred to in Facts (xi) and (xii) cannot reasonably be disputed and consequently constitutes a fact of common knowledge within the meaning of Rule 94 (A) which is suitable for judicial notice by this Chamber.

Adjudicated Facts

7. Rule 94 (B) provides that 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. This rule confers a discretionary power on the Trial Chamber to decide whether or not to take judicial notice of adjudicated facts or documentary evidence.

8. Pursuant to the 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.⁶ There is no requirement

⁴ Fact (i): See *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 35; Fact (ii), (iii) and (iv): See *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 25; *Semanza*, Judgement (AC), 20 May 2005, para. 192-194 referring to *Semanza*, Decision on the Prosecutor's Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, 3 November 2000. Facts (v) and (vi): See *Semanza*, Judgement (AC), 20 May 2005, para. 192-194.

⁵ *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for Judicial Notice (TC), 11 April 2003, paras. 45, 53. See also *Prosecutor v. Seromba*, Case No. TPIR-2001-66-T, Décision Relative à la Requête du Procureur aux Fins de Constat Judiciaire, 14 juillet 2005; *Karemera et al.*, Case No. ICTR-98-44-R94, Decision on Prosecution Motion for Judicial Notice, 9 November 2005, para. 10; *Bizimungu et al.*, Decision on the Prosecutor's Motion for Judicial Notice Pursuant to Rule 73(A), 94(A) and 89 of the Rules and Article 7 of the Statute (TC), 6 December 2005, para. 14.

⁶ *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50, Decision on Bicumupaka's Motion for Judicial Notice (TC), 11 February 2004, paras. 4-5; *Karemera et al.*, Decision on Prosecution Motion for Judicial Notice (TC), 9 February 2005, para. 14; *Prosecutor v. Élizaphan Ntakirutimana & Gérard Ntakirutimana*, Cases No. ICTR-96-10 and ICTR-96-17-T, Decision on the Prosecutor's Motion for Judicial Notice of Adjudicated Facts (TC), 22 November 2001, para. 29; *Prosecutor v. Hategekimana*, Case No. ICTR-00-55B, Decision on the Prosecution Motion for Judicial Notice, 9 April 2009, para. 7.

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that adjudicated facts be beyond reasonable dispute.⁷ A Trial Chamber cannot take judicial notice of adjudicated facts relating to the acts, conduct, and mental state of an accused.⁸ The effect of a Trial Chamber taking judicial notice of facts pursuant to Rule 94 (B) is only to relieve the Prosecution of its initial burden to produce evidence on the point. Consequently, the Defence may challenge that point by presenting reliable and credible evidence to the contrary.⁹ A fact, of which judicial notice is taken, must be relevant to the matters at issue in the current proceedings.¹⁰

9. The Prosecution seeks the admission of the following adjudicated facts in the *Seromba* Trial:

Fact (vii) In 1994, the Nyange Church measured 55 meters by 19 meters.

Fact (viii) The Nyange Church had a seating capacity of 1500.

Fact (ix) The Kivumu [*commune*]¹¹ is located in Kibuye *préfecture*, Republic of Rwanda.

Fact (x) In 1994, Kivumu *commune* had a population of about 53 000 inhabitants, including approximately 6,000 Tutsi.

10. The Chamber reviewed both the *Seromba* Trial and Appeal Judgements. The Chamber notes that Fact (vii) and (ix) are facts that have been adjudicated in the *Seromba* Trial. These facts are relevant to matters at issue in the current proceedings and do not relate to the acts, conduct and mental state of the accused person in this case. After reviewing Facts (vii) and (ix) in the context of the Judgement,¹² the Chamber is satisfied that they are truly adjudicated facts. In view of the particular circumstances of the case, the Chamber is satisfied that taking judicial notice of Facts (vii) and (ix) will contribute to the objective of expediency while not compromising the rights of the Accused.

⁷ *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, paras. 40, 42 citing *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.5, Decision on the Prosecution's Interlocutory Appeal against the Trial Chamber's 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts (AC), 28 October 2003, pp. 3-4; *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, Decision on Appellant's Motion for Judicial Notice (AC), 1 April 2005, paras 10-11; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-PT, Decision on Prosecution Motions for Judicial Notice and Adjudicated Facts and for Admission of Written Statements of Witnesses pursuant to Rule 92bis (TC), 28 February 2003, para. 16.

⁸ *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 50.

⁹ *Ibid.*, para. 42. *Bizimungu et al.*, Decision on Prosper Mugiraneza's First Motion for Judicial Notice Pursuant to Rule 94(B) (TC), 10 December 2004, para. 21.

¹⁰ *Prosecutor v. Dragomir Milošević*, 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; *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006 (AC), para. 50.

¹¹ The Chamber notes that the word "*commune*" is missing from the text of the Motion at paras. 3 and 23.

¹² Fact (vii): *Seromba*, judgement (TC), para. 37, not disputed on Appeal. Fact (ix): Fact (vii): *Seromba*, judgement (TC), para. 36, not disputed on Appeal.

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11. Grégoire Ndahimana opposes the admission of Facts (viii) and (x). For Fact (viii), Ndahimana submits that Nyange Church did not have a seating capacity of more than 300-500 persons and that the size of a building and its seating capacity need to be substantiated by a building expert.¹³ For Fact (x), Ndahimana submits that the Prosecution relied on two witnesses in the *Seromba* case and that they failed to provide the source of their information, or the methodology they used to reach these conclusions.¹⁴

12. The Chamber notes that the Prosecution incorrectly transcribed Facts (viii) and (x). From Paragraph 37 of the *Seromba* Trial Judgement, Fact (viii) should read as follows: The Nyange Church had a seating capacity of at least 1500. The Chamber notes that there is a discrepancy between the original version of the *Seromba* Trial judgement in French and its translation into English which affects Fact (x). Fact (x) should consequently read as follows from Paragraph 36 of the *Seromba* Trial Judgement: In 1994, Kivumu *commune* had a population of at least 53,000 inhabitants, including approximately 6,000 Tutsi. These facts, as corrected, are relevant to matters at issue in the current proceedings and do not relate to the acts, conduct and mental state of the Accused person in this case. After reviewing Facts (viii) and (x), as corrected, in the context of the Judgement,¹⁵ the Chamber is satisfied that they are truly adjudicated facts. In view of the particular circumstances of the case, the Chamber is satisfied that taking judicial notice of Facts (viii) and (x) will contribute to the objective of expediency while not compromising the rights of the Accused.

FOR THESE REASONS, THE CHAMBER

- I. **GRANTS** the Prosecution's Motion; and hereby
- II. **TAKES JUDICIAL NOTICE** of the following **facts of common knowledge**, pursuant to Rule 94(A):

Fact (i) Between 6 April 1994 and 17 July 1994, genocide against the Tutsi ethnic group occurred in Rwanda.

Fact (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.

¹³ Response, paras. 3-4.

¹⁴ Response, para. 5.

¹⁵ Fact (viii): *Seromba*, judgement (TC), para. 37, not disputed on Appeal. Fact (ix): Fact (x): *Seromba*, judgement (TC), para. 36, not disputed on Appeal.


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- Fact (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, a large number of deaths of persons of the Tutsi ethnic group occurred.
- Fact (iv) Between 6 April 1994 and 17 July 1994, there was in Rwanda, an armed conflict that was not of an international character.
- Fact (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
- Fact (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 Convention of 12 August 1949 on 5 May 1964 and having acceded to the Protocols Additional thereto of 1977 on 19 November 1984.
- Fact (xi) *Codes et lois du Rwanda, 11 mars 1975 – Arrêté présidentiel N° 68/03/1. Création et organisation des services de l'administration préfectorale.*
- Fact (xii) *Codes et lois du Rwanda, 23 novembre 1963 – Loi. Organisation communale.*

III. TAKES JUDICIAL NOTICE of the following **adjudicated facts**, pursuant to Rule 94(B):

- Fact (vii) In 1994, the Nyange Church measured 55 meters by 19 meters.
- Fact (viii) The Nyange Church had a seating capacity of at least 1,500.
- Fact (ix) The Kivumu *commune* is located in Kibuye *préfecture*, Republic of Rwanda.
- Fact (x) In 1994, Kivumu *commune* had a population of at least 53,000 inhabitants, including approximately 6,000 Tutsi.

Arusha, 7 April 2010, done in English.


Dennis C. M. Byron
Presiding Judge


Vagn Joensen
Judge


Aydin Sefa Akay
Judge

[Seal of the Tribunal]