

ICTR-99-54-T
15-07-2010
(7478-7464)

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Msuya



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Solomy Balungi Bossa
Judge Mparany Rajohnson

Registrar: Mr. Adama Dieng

Date: 15 July 2010

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

2010 JUL 15 A 10:50
Augustin NGIRABATWARE

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

Office of the Prosecutor

Mr. Wallace Kapaya
Mr. Patrick Gabaake
Mr. Iskandar Ismail
Ms. Faria Rekkas

Defence Counsel

Mr. Peter Herbert
Ms. Mylène Dimitri
Mr. Deogratias Sebureze
Ms. Anne-Gaëlle Denier
Ms. Chloé Gaden-Gistucci

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Solomy Balungi Bossa and Mparany Rajohnson (the “Chamber”);

BEING SEIZED of the “Prosecutor’s Motion for Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94(A) (B) and 89(C)”, filed on 3 May 2010;

CONSIDERING the “Defence Response to the Prosecution Motion to Take Judicial Notice of Facts of Common Knowledge as Set Out in Its Motion Dated 3 May 2010 Pursuant to Rules 94 (A) and (B), 89 (C) of the Rules of Procedure and Evidence”, filed on 10 May 2010;

CONSIDERING also the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

NOW DECIDES the Motion pursuant to Rules 89 (C) and 94 of the Rules.

SUBMISSIONS OF THE PARTIES

Prosecution Motion

1. The Prosecution requests the Chamber to take judicial notice of, and to admit into evidence, certain documents used in other proceedings of the Tribunal. These consist of an administrative and roads map of Rwanda as well as the cover and pages 697 through 701 of André Guichaoua’s report entitled “Les crises politiques au Burundi et au Rwanda (1993-1994)”, which includes a partial list of persons evacuated from the French Embassy on 12 April 1994.¹
2. The Prosecution submits that the documents are common knowledge and beyond reasonable dispute, and therefore must command judicial notice pursuant to Rule 94 (A). Even were this not the case, the Chamber should exercise its Rule 94 (B) discretion to take judicial notice of these documents in order to promote judicial economy and consistency. In this regard, the Prosecution notes that the report was admitted into evidence in the *Bagosora et al.* and *Bizimungu et al.* cases.²
3. The Prosecution also deems the documents to be relevant and of probative value, and thus admissible per Rule 89 (C). The geographical map is a public document, its substance is common knowledge, and its admission will aid determinations regarding

¹ Motion, paras. 1-2, 21, Annexures A-B. The map and extracts from the report are attached to this Decision, respectively, as Annexes 1 and 2.

² *Id.*, paras. 3, 10-11, 14, 15-16, 18-21, citing *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T (“*Bagosora et al.*”), *Bagosora Defence Exhibit 99*; *Bagosora et al.*, Nsengiyumva Defence Exhibit 1; *Bagosora et al.*, Prosecution Exhibit 370; *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T (“*Bizimungu et al.*”), Prosecution Exhibit 2(67)(F).



locations and distances between places mentioned in the trial proceedings. As for the extract of the report, it helps to demonstrate that identified persons were present at the French Embassy between 6 and 12 April 1994.³

Defence Response

4. The Defence does not oppose the admission into evidence of the map or of the report's extracted pages. It concedes that the map reflects the scales, distances and roads present in Rwanda in 1999.⁴

5. The Defence identifies what it considers to be errors in the report, and states that it does not accept the accuracy of the facts contained therein. Furthermore, the Defence emphasizes that the map and the extracts should neither supersede nor replace better evidence.⁵

DELIBERATIONS

6. At the outset, the Chamber notes that although the Defence does not oppose the admission into evidence of the map and extracts of the report, it does not appear to have commented on the issue of judicial notice.

7. Rule 94 (A) of the Rules states: "[a] Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof." This standard is not discretionary; if a Trial Chamber determines that a fact is "common knowledge", it must take judicial notice of it.⁶ The term "common knowledge" encompasses facts that are widely known and 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.⁷

8. Rule 94 (B) grants the Chamber the discretion to "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." When this discretion is exercised under appropriate circumstances, it is a method of achieving judicial economy and harmonizing judgements of the Tribunal while ensuring the Accused's right to a fair, public and expeditious trial.⁸

³ Motion, paras. 11-12, 18.

⁴ Response, paras. 4-7, 10. The Chamber notes that the Defence identifies the map as being dated 27 April 1999. *Id.*, para. 6. At the present time, the Chamber is unable to determine whether this date appears on the document.

⁵ *Id.*, paras. 4-5, 7-9.

⁶ *Simon Bikindi v. The Prosecutor*, Case No. ICTR-01-72-A, Judgement (AC), 18 March 2010 ("*Bikindi Appeals Judgement*"), para. 99, citing *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006 ("*Karemera et al. Decision*"), para. 22.

⁷ *Bikindi Appeals Judgement*, para. 99, citing *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005, para. 194.

⁸ *Karemera et al. Decision*, para. 39.

9. The Appeals Chamber has clarified that:

[W]hereas facts noticed under Rule 94 (A) are established conclusively, those established under Rule 94 (B) are merely presumptions that may be rebutted by the defence with evidence at trial. . . . [J]udicial notice does not shift the ultimate burden of persuasion, which remains with the Prosecution. In the case of judicial notice under Rule 94 (B), the effect is only to relieve the Prosecution of its initial burden to produce evidence on the point; the defence may then put the point into question by introducing reliable and credible evidence to the contrary.⁹

Administrative and Roads Map

10. The Chamber notes that the map in question bears the seal of the United Nations Information Management Unit. In the *Semanza* case, the Bench took judicial notice of documents, as well as their contents, that had been produced by an organ of the United Nations.¹⁰

11. As the map contains commonly accepted facts, including general facts of geography, the Chamber considers that the map represents facts of common knowledge. Pursuant to Rule 94 (A), the Chamber takes judicial notice of the map and its contents.

Extracts of the Report

12. The extracted pages of the report list Rwandans who were evacuated from the French Embassy on 12 April 1994. The Chamber considers that this information is neither universally known nor commonly accepted. Accordingly, this document does not qualify for judicial notice under Rule 94 (A).

13. The Chamber notes that the excerpted pages of this report have been admitted as evidence in the *Nahimana et al.*, *Bagosora et al.* and *Bizimungu et al.* cases.¹¹ As documentary evidence from other proceedings of the Tribunal, the report extracts might be subject to judicial notice pursuant to Rule 94 (B).

14. In the *Bizimungu et al.* case, however, Trial Chamber II declined to take judicial notice of facts that either “go directly to the guilt or innocence of the Accused or [that] are reasonably disputed by the parties”, reasoning that such facts are best determined through trial proceedings.¹²

⁹ *Id.*, para. 42.

¹⁰ *The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-I, Decision on the Prosecutor’s Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54 (TC), 3 November 2000, para. 38. The *Semanza* Bench also took judicial notice of the contents of various portions of Rwandan laws. *Id.*

¹¹ *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-T, Exhibit 1D151 (pages 697 through 701 of the report); *Bagosora et al.*, Bagosora Defence Exhibit 99 (the entire report); *Bizimungu et al.*, Prosecution Exhibit 2(67)(F) (same).

¹² *Bizimungu et al.*, Decision on the Prosecutor’s Motion and Notice of Adjudicated Facts (TC), dated 10 December 2004, para. 22.

15. The Chamber notes that the list of persons allegedly evacuated from the French Embassy on 12 April 1994, including the Accused, remains at issue in this case.¹³ Under such circumstances, the Chamber does not consider it appropriate to make presumptions about the accuracy of the report extracts or their contents. Accordingly, the Chamber declines to exercise its Rule 94 (B) discretion to take judicial notice of them.

Admission into Evidence

16. The Chamber recalls that, in addition to judicial notice, the Prosecution seeks admission of the map and report extracts into evidence. The Defence does not oppose this request.¹⁴

17. Pursuant to Rule 89 (C), the Chamber “may admit any relevant evidence which it deems to have probative value.”

18. The Chamber agrees that the map is relevant and has probative value, as it may assist the Chamber in determining the distances between locations at issue in the case. Although the map has been judicially noticed, the Chamber considers that its admission into evidence may prove helpful for any future reference.

19. As for the extracts of the report, the Chamber considers that they may tend to establish the presence of individuals within the French Embassy on or before 12 April 1994. Accordingly, the extracted pages meet the threshold of Rule 89 (C), and the Chamber grants the Prosecution motion to have these pages admitted into evidence.

¹³ Compare, for example, Second Additional Notice of Alibi, dated 3 May 2010, para. 7 (“The Defence of Dr. Ndirabatware reiterates that the latter was at the Presidential Guard Camp and at the French Embassy in Kigali, from April 6th to April 12th, inclusively. The individuals listed above will confirm that.”), and Prosecutor’s Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders [made pursuant to Rules 73bis (E), 54, 69, 75 of the Rules of Procedure and Evidence, Article 21 of the Statute of the Tribunal and the Inherent Criminal Jurisdiction of the Tribunal], 24 June 2010, para. 28 (“The anticipated testimony of [requested Prosecution] witnesses will tend to show further, that the Accused *may have stayed* at the Presidential Guard Camp and the French Embassy *for certain periods between 7 and 11 or 12 April 1994.*”) (emphases added).

¹⁴ Motion, paras. 1, 21; Response, paras. 4-5, 7, 9-10.

FOR THE ABOVE REASONS, THE CHAMBER

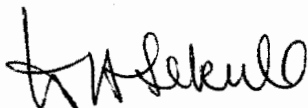
GRANTS the Motion;

TAKES JUDICIAL NOTICE of the Administrative and Roads Map and its contents;

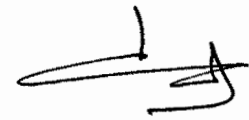
ADMITS into evidence the Administrative and Roads Map, to be marked as Prosecution Exhibit 25; and

ADMITS into evidence the front cover and pages 697 through 701 of "Les crises politiques au Burundi et au Rwanda (1993-1994)" by André Guichaoua, to be marked as Prosecution Exhibit 26.

Arusha, 15 July 2010



William H. Sekule
Presiding Judge



Mparany Rajohnson
Judge