

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-13-38-PT

Date: 27 October 2021

Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Iain Bonomy, Presiding  
Judge Graciela Susana Gatti Santana  
Judge Elizabeth Ibanda-Nahamya

**Registrar:** Mr. Abubacarr Tambadou

**Decision of:** 27 October 2021

**PROSECUTOR**

**v.**

**FÉLICIEN KABUGA**

***PUBLIC***

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**DECISION ON DEFENCE SUBMISSION RELATED TO  
JUDICIAL NOTICE OF FACTS OF COMMON KNOWLEDGE**

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**Office of the Prosecutor:**

Mr. Serge Brammertz  
Mr. Rashid S. Rashid  
Mr. Rupert Elderkin

**Counsel for Mr. Félicien Kabuga:**

Mr. Emmanuel Altit

**THE TRIAL CHAMBER** of the International Residual Mechanism for Criminal Tribunals (“Trial Chamber” and “Mechanism”, respectively) seized of this case;<sup>1</sup>

**RECALLING** the Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts filed on 6 October 2021, in which the Trial Chamber took judicial notice of 42 adjudicated facts pursuant to Rule 115(B) of the Rules of Procedure and Evidence (“Rules”),<sup>2</sup> and indicated its intention to take judicial notice pursuant to Rule 115(A) of the Rules of proposed facts 1, 2, and 5 with modifications (“Proposed Facts”), while allowing Mr. Félicien Kabuga to file submissions within seven days as to the appropriateness of taking such judicial notice;<sup>3</sup>

**RECALLING** that the Proposed Facts are as follows: (i) “Between 6 April 1994 and 17 July 1994, genocide against the Tutsi ethnic group occurred in Rwanda” (proposed fact 1); (ii) “Between 6 April and 17 July 1994, citizens native to Rwanda were identified according to the ethnic classifications of Hutu, Tutsi and Twa, which were protected groups falling within the scope of the Genocide convention of 1948” (proposed fact 2); and (iii) “Between 6 April 1994 and 17 July 1994, there were throughout Rwanda widespread or systematic attacks against the civilian population based on Tutsi ethnic identification” (proposed fact 5);

**NOTING** Kabuga’s submission filed on 13 October 2021, wherein he: (i) requests the Trial Chamber not to take judicial notice of the Proposed Facts as adjudicated facts;<sup>4</sup> (ii) argues that the Proposed Facts contain characterizations of an essentially legal nature;<sup>5</sup> and (iii) submits that he retains the right to rebut the Proposed Facts should the Trial Chamber take judicial notice of them;<sup>6</sup>

**NOTING** the Prosecution’s response filed on 20 October 2021, wherein it argues that: (i) the Defence contention is without merit as it relies on the discretionary standard set out in Rule 115(B) of the Rules instead of the non-discretionary standard provided for by Rule 115(A) of the Rules;<sup>7</sup> and (ii) chambers of the International Criminal Tribunal for Rwanda (“ICTR”) previously

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<sup>1</sup> See Order Assigning a Trial Chamber, 1 October 2020, p. 1.

<sup>2</sup> Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 6 October 2021 (“Decision of 6 October 2021”), pp. 2-7. See also Prosecution Motion for Judicial Notice of Adjudicated Facts, 16 August 2021.

<sup>3</sup> Decision of 6 October 2021, pp. 2, 7, referring to Proposed Facts 1, 2, and 5 as modified in the Decision of 6 October 2021, n. 14 and Annex, p. 1. See also Transcript (“T.”) 6 October 2021 p. 5.

<sup>4</sup> Defence Submission in Relation to the Chamber’s Decision of 6 October 2021, 21 October 2021 (original French version filed on 13 October 2021) (“Submission”), Registry Pagination 1/2480 BIS. See also Submission, para. 9.

<sup>5</sup> Submission, para. 7. See also Submission, para. 6.

<sup>6</sup> Submission, para. 10. See also Submission, para. 8.

<sup>7</sup> Prosecution Response to “*Soumissions de la Défense présentées à la suite de la Décision de la Chambre du 6 octobre 2021*”, 20 October 2021 (“Response”), para. 1.

determined that the Proposed Facts were not reasonably subject to dispute and it is therefore necessary for the Trial Chamber to take judicial notice thereof;<sup>8</sup>

**RECALLING** that, pursuant to Rule 115(A) of the Rules, a trial chamber shall not require proof of facts of common knowledge – *i.e.* facts that are widely known and not reasonably subject to dispute – but shall take judicial notice thereof;<sup>9</sup>

**CONSIDERING** that the Proposed Facts were determined by chambers of the ICTR to be facts of common knowledge that are not reasonably subject to dispute;<sup>10</sup>

**CONSIDERING** that, notwithstanding the Defence’s contentions, the Appeals Chamber of the ICTR determined that phrases with a legal meaning or that form elements of crimes charged may nonetheless describe factual situations and thus constitute “facts of common knowledge” that are subject to judicial notice, and that the question is not whether a proposition is put in legal or layman’s terms, but whether the proposition can reasonably be disputed;<sup>11</sup>

**CONSIDERING** that the Defence has not demonstrated any reasonable basis for disputing the Proposed Facts and does not contest that the facts are common knowledge and beyond reasonable dispute;<sup>12</sup>

**CONSIDERING FURTHER** that the Prosecution must still introduce evidence demonstrating that the specific events alleged in the operative indictment constituted genocide or crimes against humanity and that the conduct and mental state of the Accused specifically make him culpable for these crimes;<sup>13</sup>

<sup>8</sup> Response, para. 2.

<sup>9</sup> See Decision of 6 October 2021, p. 2, referring to *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, 16 June 2006 (“*Karemera et al.* Decision of 16 June 2006”), paras. 22, 23; *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement, 20 May 2005 (“*Semanza Appeal Judgement*”), para. 194.

<sup>10</sup> Decision of 6 October 2021, p. 2, referring to *Karemera et al.* Decision of 16 June 2006, paras. 29-32, 35; *Semanza Appeal Judgement*, paras. 192, 194, referring to *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, 6 November 2000, Annex A. See also *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-01-73-T, Oral Decision on the Prosecution’s Motion for Judicial Notice, T. 27 November 2006 pp. 2, 3.

<sup>11</sup> See *Karemera et al.* Decision of 16 June 2006, paras. 29, 35, 37. Judicial notice of the Proposed Facts was taken under Rule 94(A) of the ICTR Rules of Procedure and Evidence, the antecedent to Rule 115(A) of the Rules.

<sup>12</sup> In submitting that it reserves the right to rebut the Proposed Facts at trial if judicially noticed under Rule 115(A) of the Rules, the Defence erroneously relies on the Trial Chamber’s statement of jurisprudence that applies to judicial notice of adjudicated facts under Rule 115(B) of the Rules. See Submission, para. 10.

<sup>13</sup> See *Karemera et al.* Decision of 16 June 2006, para. 37. See also Prosecution’s Second Amended Indictment, 1 March 2021 (public, with public and confidential annexes).

**FINDING** therefore that the Proposed Facts constitute facts of common knowledge not subject to reasonable dispute and that the Trial Chamber is compelled to take judicial notice thereof, in accordance with Rule 115(A) of the Rules;

**FOR THE FOREGOING REASONS,**

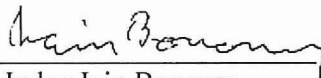
**PURSUANT TO** Rules 55 and 115(A) the Rules,

**DENIES** the Defence request as formulated in the Submission; and

**DECIDES *PROPRIO MOTU*** to take judicial notice pursuant to Rule 115(A) the Rules of the Proposed Facts, as indicated in the Decision of 6 October 2021 and its annex, and in the manner formulated therein.

Done in English and French, the English version being authoritative.

Done this 27th day of October 2021,  
At Arusha,  
Tanzania

  
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Judge Iain Bonomy  
Presiding Judge

**[Seal of the Mechanism]**



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