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**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

TRIAL CHAMBER III

Before: Judge Dennis Byron, Presiding Judge
Judge Gustave Kam
Judge Vagn Joensen

Registrar: Adama Dieng

Filed on: 10 February 2010

**THE PROSECUTOR
v.
ILDEPHONSE NIZEYIMANA**

Case No. ICTR-00-55-PT

JUDICIAL RECORDS ARCHIVES
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**Prosecutor's Motion for Judicial Notice of Facts of Common Knowledge
Pursuant to Rule 94(A)**

Counsel for the Prosecutor:
Drew White

Counsel for the Accused:
John Philpot

May It Please the Trial Chamber:

A. Nature of the Motion

1. The Prosecutor hereby respectfully requests that the Trial Chamber take judicial notice, pursuant to Rule 94 (A) of the Rules of Procedure and Evidence, of the following facts of common knowledge, without requiring proof:

- 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.

2. This Motion is based on the *Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice*, dated 16 June 2006, which was rendered by the Appeals Chamber in *Karemera et al.*¹ holding that the Trial Chamber was bound to take judicial notice of the fact that genocide occurred in Rwanda against the Tutsi ethnic group in 1994. This Motion is also based on the earlier Appeal Judgement in *Semanza*,² where the Appeals Chamber held that certain facts were facts of common knowledge,

¹ *Prosecutor v. Karemera et al.*, "Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice", 16 June 2006 (AC), paras. 22-38, 57 (hereinafter, "*Karemera et al. Decision*").

² *Prosecutor v. Semanza*, Case No. ICTR-97-20-A, Judgement, 20 May 2005 (AC), paras. 186-194 (hereinafter, "*Semanza Appeal Judgement*").

falling within the scope of Rule 94 (A). These decisions are of general application to this Tribunal and are binding on all of the Tribunal's Trial Chambers.

3. The Appeals Chamber also held in the *Karemera et al.* decision that judicial notice under Rule 94(B) is discretionary, allowing the Trial Chamber to determine which adjudicated facts to recognize on the basis of a careful consideration of the accused's right to a fair and expeditious trial.³

B. Submissions in Support of the Motion

Mandatory requirement of Rule 94 (A)

4. The facts that are the subject of this Motion are notorious facts that the Appeals Chamber has recognized as being beyond reasonable dispute. In accordance with Rule 94 (A), therefore, they must be the subject of judicial notice.

5. Rule 94(A) provides: "A Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof." The Rule is mandatory, not discretionary: if a Trial Chamber determines that a fact is "of common knowledge", it must take judicial notice of it. Describing the nature of facts of common knowledge, the Appeals Chamber held, in the *Karemera et al.* Decision:

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.⁴

6. The facts listed in paragraph 1 i) – vi) above have all been found to be facts of common knowledge by the Appeals Chamber, either in the *Karemera et al.* Decision, or in the *Semanza* Appeal Judgment, or both. As notorious facts, not being subject to reasonable dispute, therefore, the Trial Chamber is obliged to take judicial notice of them, pursuant to Rule 94(A). Other Trial Chambers have also done so in identical form, for example in *Gatete* (August 2009), *Kanyarukiga* (2009), *Nzabonimana* (2009), *Ngirabatware* (2009), *Ntawukulilyao* (2009) and *Bizimungu* (2006). Acceptance of the wording in a form that was so slightly altered as to be materially inconsequential was also granted in *Kalimanzi* (2008), *Nsengimana* (2008) and *Rukundo* (2006).

³ *Karemera et al.* AC Decision para 41.

⁴ *Karemera et al.* AC Decision, para. 22, citing also *Semanza* Appeal Judgment, para. 194.

Fact i)—Genocide in Rwanda in 1994

7. The Appeals Chamber has accepted that the occurrence of genocide against the Tutsi ethnic group in Rwanda in 1994 is a universally known fact. The Appeals Chamber held that, “there is no reasonable basis for anyone to dispute that, during 1994, there was a campaign of mass killing intended to destroy, in whole or at least in part, Rwanda’s Tutsi population, which was a protected group.”⁵

8. After noting the confirmation of the occurrence of genocide in Rwanda by the Trial and Appeal Judgments of the ICTR, countless books, scholarly articles, media reports, U.N. reports and resolutions, national court decisions, and government and NGO reports,⁶ the Appeals Chamber in the *Karemera et al.* Decision went on to conclude that, “At this stage, the Tribunal need not demand further documentation. The fact of the Rwandan genocide is a part of world history, a fact as certain as any other, and a classic instance of a ‘fact of common knowledge’.”⁷

9. The Appeals Chamber confirmed that taking judicial notice of a fact of common knowledge, even one that is an element of an offence, does not lessen the Prosecution’s burden of proof or violate the procedural rights of the Accused. Rather, it provides an alternative way for the Prosecution to satisfy the burden, obviating the necessity to introduce evidence documenting what is already common knowledge.⁸ The Prosecution must still introduce evidence demonstrating that the specific events alleged in the Indictment constituted genocide, and that the conduct and mental state of the Accused specifically make him culpable for genocide.⁹ The fact of a nationwide campaign of genocide provides the context for understanding the individual’s actions.¹⁰

10. Therefore, the fact that genocide occurred against the Tutsi ethnic group in Rwanda in 1994 must be recognized by the Trial Chamber as a fact of common knowledge.¹¹ The formulation of this fact is set out in paragraph 1 i), above.

⁵ *Karemera et al.* AC Decision, para. 35.

⁶ *Ibid.*, para. 35.

⁷ *Ibid.*, para. 35.

⁸ *Ibid.*, para. 37.

⁹ *Ibid.*, para. 37.

¹⁰ *Ibid.*, para. 36.

¹¹ *Ibid.*, para. 37.

Fact ii)—Status of Hutu, Tutsi and Twa as Ethnic or Protected Groups

11. The manner in which the Appeals Chamber has dealt with the issue of the status of the Hutu, Tutsi, and Twa as ethnic, or protected groups, leaves it open to the Trial Chamber to take judicial notice of the fact, in accordance with the formulation listed above in paragraph 1 ii).

12. This formulation is an amalgamation of two other formulations.¹² Based upon the appellate decisions cited earlier, it is open to the Trial Chamber to take judicial notice of this fact of common knowledge, in accordance with the suggested formulation.

Facts iii) and iv)—Widespread or Systematic Attack and Armed Conflict Not of an International Character

13. The Appeals Chamber in the *Semanza* Appeal Judgment upheld the Trial Chamber's decision to take judicial notice of the two facts listed in paragraph 1(iii) and (iv) above, respectively, as facts of common knowledge. In the *Karemera et al.* Decision, the Appeals Chamber referred to this finding, noting that "the Appeals Chamber has already held that the existence of widespread or systematic attacks against a civilian population based on Tutsi ethnic identification, as well as the existence of a non-international armed conflict, are notorious facts not subject to reasonable dispute. Therefore, the Trial Chamber was obliged to take judicial notice of them, since judicial notice under Rule 94 (A) is not discretionary."¹³

14. As such, the Trial Chamber must take judicial notice of both of the two facts, set out in paragraph 1 iii) and iv) above, as facts of common knowledge.

¹² See *Semanza* Appeal Judgement, para. 194. (See also Annex A, paras. 1-5, to the *Semanza* "Decision on the Prosecutor's Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54", 3 November 2000 (TC)), where the Appeals Chamber endorsed the taking of judicial notice by the Trial Chamber of the fact that, "Between 6 April 1994 and 17 July 1994, citizens native to Rwanda were severally identified according to the following ethnic classifications: Tutsi, Hutu and Twa. See also, *Prosecutor v. Karemera et al.*, "Decision on Prosecution Motion for Judicial Notice Rule 94 of the Rules of Procedure and Evidence", 9 November 2005 (TC), para. 8. Here, the Trial Chamber had taken judicial notice of the fact that, "Hutu, Tutsi and Twa were protected groups falling within the scope of the Genocide Convention of 1948", a formulation the Appeals Chamber, in the *Karemera et al.* Decision subsequently endorsed holding that "the Trial Chamber's formulation equally (or perhaps even more clearly) relieves the Prosecution's burden to introduce evidence proving protected-group status under the Genocide Convention."

¹³ *Karemera et al.* AC Decision, para. 29.

Facts v) and vi)—Rwanda was a State Party to the Relevant Conventions

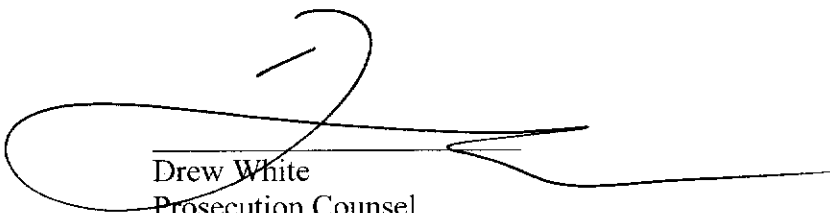
15. The Appeals Chamber, in the *Semanza* Appeal Judgement, considered the facts that Rwanda was a State Party, first, to the Genocide Convention and, secondly, to the Geneva Conventions and their Additional Protocol II, to be “notorious” facts that were beyond reasonable dispute.¹⁴ The Appeals Chamber in the *Karemera et al* Decision did not have cause to consider these facts, as the Trial Chamber in that case took judicial notice of them both, and they were not the subject of appeal.¹⁵ However, the Appeals Chamber’s reasoning in the *Karemera et al* Decision, that a Trial Chamber is obliged to take judicial notice of facts that have been declared to be facts of common knowledge by the Appeals Chamber applies with equal force here in relation to Facts iii) and iv) above. Since the Appeals Chamber, in the *Semanza* Appeal Judgment found that the facts, as set out above in paragraph 1 v) and vi) respectively, are facts of common knowledge, the Trial Chamber is obliged to take judicial notice of them.

C. Relief Requested

16. For all of the foregoing reasons, the Prosecutor hereby respectfully requests the Trial Chamber to take judicial notice, pursuant to Rule 94(A), without requiring proof, of the facts of common knowledge, which are listed in paragraph 1 of this Motion.

All of which is respectfully submitted.

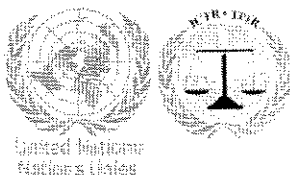
Dated at Arusha this 10th day of February 2010.



Drew White
Prosecution Counsel

¹⁴ *Semanza* Appeal Judgement, paras. 192 and 194.

¹⁵ *Prosecutor v. Karemera et al.*, “Decision on Prosecution Motion for Judicial Notice Rule 94 of the Rules of Procedure and Evidence”, 9 November 2005 (TC), para. 10.



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From:	☐ Chamber (names)	☐ Defence (names)	☒ Prosecutor's Office DREW WHITE (names)
Case Name:	The Prosecutor vs. ILDEPHONSE NIZEYIMANA		Case Number: ICTR-00-55C-PT
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☐ Ex Parte	☐ Indictment	☐ Warrant	☐ Correspondence
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☐ Reference material is provided in annex to facilitate translation.

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Translation	in	☐ English	☐ French	☐ Kinyarwanda

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☐ Normal		☐ Other deadlines: