UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Emile Francis Short
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 11 December 2006

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

DECISION ON APPEALS CHAMBER REMAND OF JUDICAL NOTICE

Rules 94 of the Rules of Procedure and Evidence

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INTRODUCTION

1. On 9 November 2005, this Chamber ruled upon the Prosecution's request for judicial notice to be taken of six purported facts of common knowledge and 153 purported adjudicated facts.[1] It took judicial notice of three facts of common knowledge, pursuant to Rule 94(A) of the Rules of Procedure and Evidence, and denied the remainder of the request.[2]

2. On 16 June 2006, the Appeals Chamber upheld, in part, the Prosecution's interlocutory appeal of that Decision, directing the Chamber to take judicial notice of certain facts of common knowledge, and to review its findings in the impugned Decision concerning certain purported adjudicated facts.[3]

3. At the Parties' request, the Chamber then issued a Scheduling Order, permitting them to file any further submissions they may have concerning the Trial Chamber's pending review of its findings on judicial notice of adjudicated facts.[4] The Parties duly complied.[5]

4. According to the Defence for Nzirorera, the Defence for each of the Accused agreed to divide their Responses so as each Accused would make submissions with respect to certain Facts only.[6] However, whereas the Defence for Nzirorera adhered to this delineation, the Defence for Ngirumpatse made submissions on almost each and every fact, and the Defence for Karemera made submissions on only some of the facts allocated to it under this division.

5. The Prosecution filed one single Response to all of the Defence submissions. It indicated that it abandoned its application with respect to 10 of the purported adjudicated

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[1] The 153 purported adjudicated facts were taken from the *Nahimana et al., Kajelijeli, Kayishema and Ruzindana, Musema, Ntakirutimana, Niyitegeka, Akayesu, Rutaganda* and *Semanza* Judgements.

[2] *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera* (*"Karemera et al."*), Case No. ICTR-98-44-T, Decision on Prosecution Motion for Judicial Notice (TC), 9 November 2005 ("Impugned Decision"). The facts in relation to which judicial notice was taken were Facts 3 and 4, as proposed by the Prosecution, as well as a slightly modified version of Fact 1. The substance of the denial was the denial of Facts 2, 5 and 6 as facts of common knowledge; and denial of the 153 purported adjudicated facts. Of the adjudicated facts, Fact 153 – that genocide was committed in Rwanda in 1994 against the Tutsi as a group - was pleaded alternatively as a fact of common knowledge and as an adjudicated fact. The Trial Chamber declined to take judicial notice of the fact on either basis.

[3] Respectively, Facts two, five and six; and .Facts 1-30, 33-74, and 79-152 listed under Annex B of the Prosecution's Interlocutory Appeal. *Karemera et al,* Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2005 ("Appeals Chamber Decision").

[4] *Karemera et al,* Case No. ICTR-98-44-T, Scheduling Order, 17 July 2006.

[5] Joseph Nzirorera's "Supplemental Submission on Judicial Notice of Adjudicated Facts", filed by on 8 August 2006; "Requête d' Édouard Karemera relative à la demande de la Chambre d'appel pour la reconsidération de la requête du Procureur à propos du constat judiciaire de faits admis", filed on 25 August 2006; "Mémoire complémentaire pour M. Ngirumpatse sur la requête en constat judiciaire et en admission de faits et demande à la Chambre d'entendre les observations orales des parties au soutien de leurs écritures", filed on 28 August 2006; "Prosecutor's Consolidated Response to Defence Submissions on the Motion for Judicial Notice of Adjudicated Facts", filed on 11 September 2006; Joseph Nzirorera's "Reply Brief on Judicial Notice of Adjudicated Facts", filed on 14 September 2006; "Mémoire en réplique pour M. Ngirumpatse sur la *Prosecutor's Motion for Judicial Notice of Adjudicated Facts*", filed on 25 September 2006. On 27 September 2006, the Chamber granted the Defence an extension of time to reply to 2 October 2006 (see *Karemera et al,* Case No. ICTR-98-44-T, Décision Accordant une Prorogation de Délai de Réponse à Deux Requêtes du Procureur (TC), 27 September 2006). Édouard Karemera filed a Reply to the Prosecution Motion was filed on 1 October 2006.

[6] See Nzirorera's Supplemental Submission, para. 10. According to this submission, the Defence for Joseph Nzirorera was to address the facts taken from the *Nahimana et al.* and *Kajelijeli* Judgements; the Defence for Mathieu Ngirumpatse was to address the facts taken from the *Akayesu, Rutaganda,* and *Semanza* Judgements, and the Defence for Édouard Karemera was to address the facts taken from the *Kayishema, Musema, Ntakirutimana,* and *Niyitegeka* Judgements.

facts,[7] so that only 137 purported adjudicated facts remain to be considered by the Trial Chamber.[8]

6. While the Chamber had completed its deliberations pertaining to the Appeals Chamber's remand and was in the final drafting process of its decision, the anticipated testimony of two Prosecution witnesses rendered necessary the delivery of two oral rulings indicating the Chamber's findings concerning certain facts. The Chamber specified that its written Decision on this matter would provide reasons for its ruling, and would be the authoritative statement of the Chamber's findings and reasoning concerning this issue. These rulings allowed the Prosecution to drastically shorten its examination-in-chief.

DELIBERATIONS

PRELIMINARY MATTER

7. The Defence of each of the Accused in this case requested the Appeals Chamber to reconsider, or alternatively, to clarify, its Decision. Pending the Decision of the Appeals Chamber on reconsideration, the Defence for Ngirumpatse asked the Chamber to defer its review of the judicial notice issues, submitting that such a deferral would be in the interests of justice and judicial economy.

8. This request for deferral has been rendered moot since, on 1 December 2006, the Appeals Chamber dismissed the motions for reconsideration in their entirety.[9]

9. The Trial Chamber will therefore begin by considering that part of the Appeals Chamber Decision which directed the Chamber to take judicial notice of certain facts of common knowledge. It will then go on to consider the adjudicated facts aspect of the Appeals Chamber Decision.

I. FACTS OF COMMON KNOWLEDGE – RULE 94(A)

10. 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 part of the rule is not discretionary;[10] rather Rule 94(A) "commands the taking of judicial notice of material that is 'notorious'".[11] 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.

11. The Appeals Chamber Decision found that this Chamber had erred in failing to take judicial notice of the following facts, which the Appeals Chamber said are facts of common knowledge:[12]

[7] Facts 14, 79-83, and 138-141 – see Prosecutor's Consolidated Response, para. 7.
[8] One of which – Fact 153 – is pleaded alternatively as a fact of common knowledge.
[9] *Prosecutor v. Karemera et al.,* Case No. ICTR-98-44-AR73(C), Decision on Motions for Reconsideration (AC), 1 December 2006, para. 28 and "Disposition".
[10] Appeals Chamber Decision, para. 22; *Prosecutor v. Karemera et al.,* Case No. ICTR-98-44-AR73(C), Decision on Motions for Reconsideration (AC), 1 December 2006, para. 24.
[11] Appeals Chamber Decision, para. 22, citing *Prosecutor v. Semanza,* Case No. ICTR-97-20-A, Judgement, 20 May 2005, para. 194 ("*Semanza* Appeals Judgement").
[12] As to Facts 2 and 5, see Appeals Chamber Decision, paras. 26 to 32, particularly, para. 32. As to Fact 6, see Appeals Chamber Decision, paras. 33 to 38, particularly para. 38.

(i) ***Fact 2*** – "The following state of affairs existed in Rwanda between 6 April 1994 to 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 person[s] perceived to be Tutsi. As a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity."

(ii) ***Fact 5*** – "Between 1 January 1994 and 17 July 1994 in Rwanda there was an armed conflict not of an international character."

(iii) ***Fact 6*** – "Between 6 April 1994 and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group."

12. Whilst this Chamber only sought further submissions from the Parties on the question of judicial notice of adjudicated facts, the Defence for Ngirumpatse makes submissions concerning whether or not the Trial Chamber is bound to follow the Appeals Chamber's directive. It submits that there is no requirement in the Rules that the Trial Chamber is bound to follow the Appeals Chamber and that instead of carrying out the Appeals Chamber's directive, it should revisit the impugned Decision on the basis of the Appeals Chamber's findings.

13. This contention is, however, contrary to the established jurisprudence, and particularly the recent Appeals Chamber's Decisions. When a fact is considered as a fact of common knowledge, a Trial Chamber has no discretion and must take judicial notice thereof.[13] In the present case, the Appeals Chamber has determined that Facts 2, 5 and 6 are of common knowledge and accordingly, directed the Trial Chamber to take judicial notice thereof.[14]

14. In the case of *Bizimungu et al.,* Trial Chamber II also considered that "a determination by the Appeals Chamber that any given fact is one of common knowledge and of which judicial notice should be taken under Rule 94(A) is binding upon all Trial Chambers".[15]

15. The Chamber therefore takes judicial notice of Facts 2, 5 and 5 as facts of common knowledge, pursuant to Rule 94(A) of the Rules.

II. ADJUDICATED FACTS – RULE 94(B)

16. Rule 94(B) of the Rules provides:

> 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.

17. In its Decision of 16 June 2006, the Appeals Chamber remanded the judicial notice matter to the Trial Chamber for further consideration of the majority of the purported adjudicated facts on the basis of two findings.

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[13] Appeals Chamber Decision, para. 22; *Prosecutor v. Karemera et al.,* Case No. ICTR-98-44-AR73(C), Decision on Motions for Reconsideration (AC), 1 December 2006, para. 24.
[14] Appeals Chamber Decision, para. 57.
[15] *Prosecutor v. Casimir Bizimungu et al.,* Case No. ICTR-99-50-T, Decision on Prosecutor's Motion for Judicial Notice (TC), 22 September 2006, para. 7.

18. The Appeals Chamber firstly found that "the Trial Chamber erred to the extent that it found that, under Rule 94(B), it is categorically impermissible to take judicial notice of facts relating directly or indirectly to the defendant's guilt, including facts related to the existence and activity of a joint criminal enterprise."[16] In so doing, the Appeals Chamber also recognised the need for caution in allowing judicial notice of adjudicated facts which were central to the criminal responsibility of the accused. It stated that the Trial Chamber should assess the particular facts of which judicial notice is sought to determine, firstly, whether they are related to the acts, conduct, or mental state of the accused; and, secondly, if not, whether under the circumstances of the case admitting them will advance the objective of expediency without compromising the rights of the accused.[17]

19. The Appeals Chamber secondly considered that a Trial Chamber "can and indeed must decline to take judicial notice of facts if it considers that the way they are formulated – abstracted from the context in the judgement from which they came – is misleading, or inconsistent with the facts actually adjudicated in the cases in question".[18] However, in the present case, the Appeals Chamber was not persuaded that Facts 86 through 110 were actually taken out of context, or improperly combined, in a way which made them inconsistent with the judgements from which they were drawn, as decided by this Chamber. Accordingly, the Appeals Chamber directed the Chamber to reconsider the matter and provide an explanation for its conclusions.[19]

II.1. Applicable Law

20. Under Rule 94(B) judicial notice of adjudicated facts is *discretionary*. Moreover, in order to invoke an exercise of its discretion, the Chamber must be satisfied that the fact in question relates to a matter at issue in the current proceedings.[20]

21. According to the Appeals Chamber, "[t]aking judicial notice of adjudicated facts under Rule 94(B) is a method of achieving judicial economy and harmonising judgements of the Tribunal while ensuring the right of the Accused to a fair, public and expeditious trial".[21] The Appeals Chamber also noted the consistency between taking judicial notice of adjudicated facts and the admission of written statements in lieu of oral testimony under Rule 92*bis* of the Rules – both procedural mechanisms adopted "largely for the same purpose".[22]

22. The Appeals Chamber describes adjudicated facts judicially noticed under Rule 94(B) as "merely presumptions that may be rebutted by the defence with evidence at trial."[23] The

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[16] Appeals Chamber Decision, para. 53.
[17] Appeals Chamber Decision, para. 53, emphasis added.
[18] Appeals Chamber Decision, para. 55.
[19] Appeals Chamber Decision, paras. 56 and 57.
[20] *Prosecutor v. Popović et al.,* Case No. IT-05-88-T, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex (TC), 26 September 2006, para. 5 ("*Popović* Decision"). The Trial Chamber said, "the fact must have some relevance to an issue in the current proceedings."
[21] Appeals Chamber Decision, para. 39. See also *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, 3 November 2000 (TC), para. 20; *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-I, Decision on Prosper Mugiraneza's First Motion for Judicial Notice Pursuant to Rule 94(B) (TC), 10 December 2004, paras. 10, 12; *Prosecutor v. Kajelijeli,* Decision on the Prosecutor's Motion for Judicial Notice pursuant to Rule 94 of the Rules (TC), 16 April 2002, para. 18.
[22] Appeals Chamber Decision, para. 51.
[23] Appeals Chamber Decision, para. 42, referring to *Prosecutor v. Slobodan Milosevic,* 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 Prosecutor's

Appeals Chamber has clarified how this qualification can be reconciled with the presumption of innocence as follows:

> Judicial 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 [credible and reliable] evidence on the point; the defence may then put the point into question by introducing reliable and credible evidence to the contrary.[24]
>
> Analogously, in the context of alibi evidence, for instance, the accused bears the burden of production with respect to a matter centrally related to the guilt of the accused; yet this shift does not violate the presumption of innocence because, as the Appeals Chamber has repeatedly recognized, the prosecution retains the burden of proof of guilt beyond a reasonable doubt.[25]

23. Trial Chambers of both this Tribunal and the International Criminal Tribunal for the former Yugoslavia ("ICTY") have laid down some guiding principles when deciding whether or not to take judicial notice of purported adjudicated facts. They are consistent with the recent directives given by the Appeals Chamber's in its Decision of 16 June 2006. These principles, which are not exhaustive, can be summarized as follows:

- When ruling on the matter, the Chamber must examine the purported fact in the context of the original judgement.[26]

- With regard to the meaning of the term "adjudicated facts", the jurisprudence outlines a number of requirements before a fact can be considered to be truly adjudicated:
  - A fact sought to be judicially noticed must be distinct, concrete and identifiable.[27]
  - A fact in relation to which judicial notice is sought must be in the same or a substantially similar form to how it was expressed by the original Chamber.[28] Facts altered in a substantial way by the moving party cannot be considered to have been truly adjudicated.[29] However, as the Trial Chamber recently noted in the *Popović* Decision, a minor inaccuracy or ambiguity can be cured *proprio motu* by the Trial Chamber. This is discretionary, and should introduce no substantive change to the proposed fact. "[T]he purpose of such correction should be to render the formulation consistent with the meaning intended by the original Chamber."[30]

Motion for Judicial Notice and Adjudicated Facts and Admission of Written Statements of Witnesses pursuant to Rule 92*bis* (TC), 28 February 2003, para. 16.

[24] Appeals Chamber Decision, paras. 42 and 49.

[25] Appeals Chamber Decision, para. 49.

[26] *Popović* Decision, para.6, citing *Prosecutor v. Prlić et al.,* Case No. IT-04-74-PT, Decision on Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), 14 March 2006, para. 12; *Prosecutor v. Hadžihasanović and Kubura,* Case No. IT-01-47-T, Decision on Judicial Notice of Adjudicated Facts Following the Motion Submitted by Counsel for the Accused Hadžihasanović and Kubura on 10 January 2005 (TC), 14 April 2005, p. 5; *Prosecutor v. Krajišnik,* Case No. IT-00-39-T, Decision on Third and Fourth Prosecution Motions for Judicial Notice of Adjudicated Facts (TC), 24 March 2005, para. 14; *Prosecutor v. Krajišnik,* Case No. IT-00-39-T, Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses Pursuant to Rule 92*bis,* 28 February 2003, para. 15; *Prosecutor v. Blagojević and Jokić,* Case No. IT-02-60-T, Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 19 December 2003 ("*Blagojevic* Decision"), para. 16.

[27] *Prosecutor v. Krajisnik,* Decision on the Prosecution Motion for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses Pursuant to Rule 92*bis,* 10 March 2003; *Blagojevic* Decision.

[28] *Blagojevic* Decision.

[29] *Popović* Decision, para. 7.

[30] *Popović* Decision, para. 7.

- Facts proposed for judicial notice must constitute factual findings and must not include legal characterisations.[31]
- A fact cannot be considered as adjudicated in circumstances where those facts *are* or *might be* subject to pending appeal.[32]

- Judicial notice under Rule 94(B) cannot be taken of facts which attest to criminal responsibility of the accused.[33] According to the Appeals Chamber, judicial notice should therefore not be taken of facts relating to the acts, conducts and mental state of the accused.[34] This exclusion does not apply to acts and conduct of other persons for which the accused is alleged to be responsible.[35] Such persons may include, for instance, alleged subordinates whose criminal conduct the accused is charged with failing to prevent or punish, persons said to have participated with the accused in a joint criminal enterprise, and persons the accused is alleged to have aided and abetted.[36]

- Once the Chamber is satisfied that the facts sought for admission are truly adjudicated facts and do not relate to the acts, conduct and mental state of the Accused, it is called upon to invoke an exercise of its discretion for the purpose of expediting the proceedings, only in circumstances where admitting such facts will not compromise the rights of the Accused, including his or her right to a fair and expeditious trial, to hear and confront the witnesses against him or her.[37] In that respect, Trial Chambers of this Tribunal and of the ICTY have considered, in the particular context of their case, that

[31] *Prosecutor v. Krajisnik,* Decision on the Prosecution Motion for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses Pursuant to Rule 92*bis,* 10 March 2003; *Blagojevic* Decision, para. 16; *Bizimungu et al.*, Decision on the Prosecutor's Motion and Notice of Adjudicated Facts, 10 December 2004, para. 16, citing *Nyiramasuhuko et al.,* Decision on the Prosecutor's Motion for Judicial Notice and Admission of Evidence, 15 May 2002, para. 127, which followed the decision in *Ntakirutimana,* Decision on the Prosecutor's Motion for Judicial Notice of Adjudicated Facts, 22 November 2001, para. 35 and 36.

[32] See *Popović* Decision, para. 14, and fn. 50, "[a] Trial Chamber may only judicially notice a purported adjudicated fact if that fact *itself* is clearly not subject to pending appeal or review proceedings." (Emphasis added)

[33] *Prosecutor v. Krajisnik,* Decision on the Prosecution Motion for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses Pursuant to Rule 92*bis,* 10 March 2003.

[34] *Karemera* Appeals Chamber Decision, para. 50

[35] Appeals Chamber Decision, para. 52; see also *Popović* Decision para. 13.

[36] Appeals Chamber Decision, para. 48; *Popović* Decision*,* para. 13. Note that the *Karemera* Appeals Chamber referred to the Decision of the Appeals Chamber in the case of *Galić* concerning the application of Rule 92*bis* (*Prosecutor v. Galić,* Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis* (C) (AC), 7 June 2002, paras. 10-11. In the extract of the Decision quoted, the Appeals Chamber considered whether the exclusion from admission under Rule 92*bis* of any written statement which "goes to proof of the acts and conduct of the accused as charged in the indictment" also mandated the exclusion of any written statement going to proof of the acts and conduct of other persons for whose conduct the accused was alleged to be liable by reason of a joint criminal enterprise theory, or accomplice liability. The Appeals Chamber considered that such an interpretation would denude Rule 92*bis* of any real utility, and that it would be inconsistent with the purpose and terms of the Rule. The *Karemera* Appeals Chamber considered that this analysis was equally applicable to Rule 94 (B).

[37] See Articles 19 and 20 of the Statute of the Tribunal. See Appeals Chamber Decision, para. 50. See *Prosecutor v. Semanza*, Case No. ICTR-97-20-I, Decision on the Prosecutor's Further Motion for Judicial Notice Pursuant to Rules 94 and 54, 15 March 2001, para. 10; *Prosecutor v. Ntakirutimana,* Case Nos. ICTR-96-10-T and ICTR-96-17-T, Decision on Prosecutor's Motion for Judicial Notice of Adjudicated Facts, 22 November 2001, para. 28; *Prosecutor v. Simic et al.*, Decision of 25 March 1999 on the Pre-trial motion by the Prosecution requesting the Trial Chamber to take judicial notice of the international character of the conflict in Bosnia-Herzegovina. *Prosecutor v. Krajisnik,* Decision on the Prosecution Motion for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses Pursuant to Rule 92*bis,* 10 March 2003; *Blagojevic* Decision, para. 18.

facts which are core issues should not be judicially noticed.[38] Where a certain fact concerns a core issue in the case, the taking of judicial notice of that fact may place such a significant burden on the Accused to produce rebuttal evidence that it would jeopardise the Accused's right to fair trial.[39] Considering the interests of justice and the particular circumstances of the case at hand, Trial Chambers have also declined to take judicial notice of adjudicated facts in circumstances where evidence has already been heard on the subject matter of the fact sought to be judicially noticed.[40]

II.2. Facts sought for Judicial Notice

24. Generally the Defence for the Accused dispute the accuracy of the facts sought for admission or their character as adjudicated facts. They also contend that some of the facts relate to the acts, conduct and mental of the Accused or of other persons for which the Accused are alleged to be responsible. In their views, the admission of the purported adjudicated facts will seriously impair the rights of the Accused in various ways and will not contribute to the objective of expediency.

25. The Chamber will now consider whether judicial notice should be taken of the 136 purported adjudicated facts in the light of above-mentioned principles and each party's submissions. In order to facilitate the reading of this Decision, it must be noted that the Chamber will not systematically recall each argument submitted by the Parties with respect to each fact, when it has already been addressed.

1. Facts 1 to 9 (*Akayesu* Judgement)

26. The Prosecution requests the Chamber to take judicial notice of nine facts taken from the *Akayesu* Judgement.[41]

27. 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 persons in this case. After reviewing Facts 1 to 9 in the context of the Judgement, the Chamber is also satisfied that they are truly adjudicated facts. Specifically and contrary to Ngirumpatse's assertions, Facts 1 and 8 are similar to how they were expressed in the original Judgement, and Fact 3 does not contain a characterisation of an essentially legal nature.

28. Furthermore, the Defence for Ngirumpatse and the Defence for Karemera request the Chamber not to take judicial notice where the original Trial Chamber has made the particular finding on the basis of the testimony of only one witness.[42] They contend that this deprives the Accused of the same right which has been afforded to the accused person in the case from which the fact has been taken and an opportunity to raise reasonable doubt in the Prosecution's case.

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[38] *Prosecutor v. Krajisnik,* Decision on the Prosecution Motion for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses Pursuant to Rule 92*bis,* 10 March 2003; *Bizimungu et al.*, Decision on the Prosecutor's Motion and Notice of Adjudicated Facts, 10 December 2004; *Popović* Decision, para. 19.

[39] *Popović* Decision, para. 16.

[40] See *Prosecutor v. Bizimungu et al.,* Case No. ICTR-50-T, Decision on the Prosecutor's Motion and Notice of Adjudicated Facts, 10 December 2004, para. 22; *Blagojevic* Decision, paras. 22 and 23.

[41] Facts 1 to 9. *Prosecutor v. Jean-Paul Akayesu,* Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998, *ICTR Report 1998*, pp. 44 and seq.

[42] The Defence for Karemera also raises this point. Facts 1, 2, 3, 7, 10-24, 36, 41-51, 60, 67, 68, 79, 82, 84, 85, 110, 116-123, 125, 126, 132, 134-141, 144, 145, 148 and 150.

29. Under Rule 89 of the Rules and according to the established jurisprudence of this Tribunal, corroboration of evidence is not required: a Chamber may rely on a single witness' testimony as proof of a material fact.[43] A Chamber also has a broad discretion to admit hearsay evidence, even when it cannot be examined at its source and when it is not corroborated by direct evidence.[44] The Chamber will therefore not exclude the admission of an adjudicated fact solely because the original Chamber made its finding on the basis of the evidence of only one witness.

30. In view of the particular circumstances of the case, the Chamber is satisfied that taking judicial notice of Facts 1 to 9 will contribute to the objective of expediency while not compromising the rights of the Accused. The Chamber, however, deems it necessary to cure certain minor inaccuracies concerning Fact 9.

2. Facts 15, 65 to 68, 144 and 145 (*Semanza* Judgement)

31. The Prosecution seeks judicial notice of facts taken from the *Semanza* Judgement (Facts 15, 65 to 68, 144 and 145).[45]

32. 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 persons in this case. Contrary to Ngirumpatse's assertion, the Chamber is also satisfied that these facts are truly adjudicated facts and are in a substantially similar form to how they were expressed by the original Chamber.

33. The Defence for Ngirumpatse also submits that the Chamber should decline to take judicial notice of Facts 15, 67, 144 and 145 in relation to which the original Chamber did not specify the evidence upon the basis of which the factual finding was made. In its view, where there is lack of transparency, the Accused in this case are unable to bring evidence to rebut those findings.

34. The Chamber has reviewed these facts in the context of the Judgement and does not share the Defence's contention. The *Semanza* Chamber explicitly describes how it assessed and took into consideration the evidence adduced in that trial, including the alibi evidence.

35. Considering the circumstances of the case, the Chamber is of the view that taking judicial notice of Facts 15, 65 to 68 and 144 to 145 will contribute to the objective of expediency without compromising the rights of the Accused.

3. Facts 16 to 24 and 31 to 64 (*Kajelijeli* Judgement)

36. Under Facts 16 to 24 and 31 to 64, the Prosecution moves the Chamber to take judicial notice of facts extracted from the *Kajelijeli* Judgement.[46]

37. Whereas the Defence for Nzirorera concede that none of these facts relates to the acts, conduct and mental state of the Accused, the Defence for Ngirumpatse submits that certain facts must be excluded from admission because they comprise the acts and conduct of the Accused,[47] notably because some of these facts concern the actions of the *Interahamwe*

[43] See for e.g.: *Prosecutor v. Laurent Semanza,* Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005, para. 153; *Prosecutor v. Sylvestre Gacumbitsi*, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006, para. 72.
[44] See for e.g.: *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001; *Gacumbitsi* Appeal Judgement.
[45] *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement and Sentence (TC), 15 May 2003.
[46] *Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Judgement and Sentence (TC), 1 December 2003.
[47] Facts 33-48, 52-54, 58-60.

which, according to the Indictment, are imputed to the Accused.[48] Furthermore, it submits that the Chamber should decline to take judicial notice of facts concerning the synonymous use of the words 'Tutsi' "enemy", "accomplices of the enemy", "infiltrators", "accomplices of the RPF", "*inyenzi*", "*inkotanyi*" for similar reasons.[49]

38. The Chamber is of the view that the facts sought for admission are relevant to matters at issue in the current proceedings. Furthermore, none of them can be said to relate to the acts, conduct and mental state of the Accused in this case.

39. However, some of them directly describe the acts and conducts of Kajelijeli,[50] who according to the Indictment in the present case, is alleged to having directly acted under the instructions of Nzirorera. Paragraph 62 of the Indictment alleges that on 6 or 7 April 1994, or both, Joseph Nzirorera participated in certain decisions taken at a meeting at the residence of Nzirorera's mother in Busogo *secteur* with Juvenal Kajelijeli, amongst others, and ordering the attack and killing of Tutsi population in Mukingo and Nkuli *communes*. It is further alleged that Kajelijeli executed the decisions taken by Joseph Nzirorera.[51]

40. While judicial notice can be taken of acts and conducts of persons for which an accused is alleged to be responsible, the Chamber finds that Facts 19, 40, 50-53, 55-56, 60, 62 and 63 sought for admission are so proximate and central to the criminal responsibility of Joseph Nzirorera following the allegations pleaded in the Indictment that it would compromise the rights of the Accused if judicial notice was taken of these facts.

41. The Chamber finds that Facts 34, which states that killings of the Tutsi in Mukingo *commune* "were not spontaneous reaction of the Hutu populace to the death of the President", touches upon a core issue in the instant case. It has been the consistent Prosecution's theory that the Accused in this case had pre-planned the genocide throughout Rwanda, and the Defence has repeatedly given notice of its intention to rely on the defence that the killings were a spontaneous reaction of the Hutu population. According to the Appeals Chamber, "if the existence of a plan to commit genocide is vital to the Prosecution's case, this must be proved by evidence".[52] Under these circumstances, the Chamber is of the view that it is in the interests of justice to hear oral evidence on this particular issue.

42. With respect to Fact 18,[53] the Prosecution submits that the question of whether there were "widespread attacks" is a question of fact, which having been found proved, can lead to a legal finding. It also submits that, since the Appeals Chamber has found as a fact of common knowledge that there were "throughout Rwanda widespread or systematic attacks against a civilian population based on Tutsi ethnic identification" and rape is one such method of attacking a population, it is proper for the Trial Chamber to take judicial notice of this fact. In the Chamber's view, that rapes and sexual assaults were committed *in the course of* a widespread attack upon the Tutsi civilian population may be considered as a characterisation of an essentially legal nature, which should be left to the ultimate determination of the Trial Chamber. The Chamber therefore declines to take judicial notice of Fact 18.

[48] Facts 16-24, 35, 36, 38-40, 46, 52, 53, 56, 57, 59-63.
[49] Facts 19, 34, 35, 42, 43, 49, 52, 54, 55, 57, 58, 61, 64.
[50] Facts 19, 36-38, 40, 50-53, 55-56, 60, 62 and 63.
[51] Amended Indictment dated 24 August 2005, paras. 62.8 to 62.10.
[52] *Prosecutor v. Karemera et al.,* Case No. ICTR-98-44-AR73(C), Decision on Motions for Reconsideration (AC), 1 December 2006, para. 21.
[53] Fact 18 sought for admission reads as follows: "These rapes and sexual assaults were committed in the course of a widespread attack upon the Tutsi civilian population".

43. Considering the context of the *Kajelijeli* Judgement, the Chamber is not satisfied that Facts 36 to 38 reflect the factual findings of the Trial Chamber in the *Kajelijeli* Judgement.[54] They therefore cannot be considered as adjudicated facts and it is therefore appropriate to decline to take judicial notice of them.

44. The Chamber agrees with the Defence that Facts 35, 47 and 48 are vague and not distinct, concrete and identifiable to be judicially noticed. The Chamber is also of the view that Fact 64 may be ambiguous and does not fairly translate how this finding was expressed by the original Chamber.[55] For this reason, it will not be judicially noticed.

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[54] Fact 36 is extracted from para. 404 of *Kajelijeli* Judgement, which reads as follows:

> The Chamber notes in particular the detailed and reliable account of Prosecution Witness GBH, who stated that the Accused "was the one who gave instructions to the young people who had to do anything. He supervised them and gave them orders… The young people in question were the *Interahamwe*." Witness GBH also testified that "a man of his position as a *bourgmestre* could [have] had the power to stop or lock the young people wearing uniform, engaged in training, singing and dancing." This testimony was further corroborated by Prosecution Witness GBE, who provided testimony that the Accused never bothered the *Interahamwe* even when they were "molesting or harassing" people, though as *bourgmestre* he was both able and obliged to do so. The Chamber finds that these testimonies present a clear picture of the Accused's close association with, and control over, the *Interahamwe*. The Chamber consequently finds that the Accused was a leader of *Interahamwe* with control over the *Interahamwe* in Mukingo *commune*, and that he also had influence over the *Interahamwe* of Nkuli *commune* from 1 January 1994 to July 1994.

Fact 37 is extracted from para. 426 of *Kajelijeli* Judgement, which reads as follows:

> Notwithstanding the fact that the Chamber in its previous findings [Part III, Section H] stated that the Accused was a leader of the *Interahamwe*, the youth wing of the MRND, the Chamber finds, on the basis of the evidence, that there is inconclusive evidence to establish that the Accused was either (a) a registered member of the new MRND, established by the July 1991 Statute; (b) a member of the prefectural committee or a member of the prefectural congress of this party. The aforesaid notwithstanding, the Chamber finds that the Accused was closely associated with the new MRND and its leadership and that, especially from January 1994 to mid-July 1994, he was actively involved in many activities of this party in Mukingo *commune* and the neighbouring areas. He may as well have been a member of the MRND party.

Fact 38 is extracted from Para. 400 of *Kajelijeli* Judgement, which reads as follows:

> The Chamber finds that by 6 April 1994 the Accused was actively involved in the training of the *Interahamwe*. This is evidenced in the eye witness testimony of Prosecution Witness GBH, who stated that the Accused was "seen in the company of the young people while they trained on a football field using the guns, wooden guns." Corroborating evidence is found in the testimonies of Prosecution Witnesses GDD and GAO, both of whom gave similar and largely consistent testimonies of the Accused's involvement in the training of the *Interahamwe.* Witness GDD, a former member of the *Interahamwe*, testified that the Accused and other politicians solicited him to train young *Interahamwe* recruits. Witness GAO, another former member of the *Interahamwe*, also confirmed that when the Accused was *bourgmestre* he [the Accused], together with others, gave *Interahamwe* military training. Witness GAO also testified that the Accused would come to the training grounds every morning, and that the Accused told *Interahamwe* to complete their training quickly so that he [the Accused] could send them to the volcanoes to fight against the "Inkotanyi, the Inyenzi." The Chamber notes in particular, the testimony of Prosecution Witness GAP who stated that the Accused was the leading instructor "responsible for political ideology". Although there are minor ambiguities among them regarding the timing of various training activities of the militia in Mukingo *commune* and the neighbouring areas, the Chamber finds their testimonies consistent and establish beyond reasonable doubt that the Accused did actively participate in the training of *Interahamwe* in Mukingo *commune*. The Chamber finds, however, that there is insufficient evidence that the Accused organized these trainings.

[55] See *Kajelijeli* Judgement, par. 625:

> After careful consideration of all the evidence regarding the massacre at the Ruhengeri Court of Appeal on or around 14 April 1994, the Chamber finds that the Accused played a vital role as an organizer and facilitator of the *Interahamwe* and other attackers. He did this by procuring weapons, rounding up the *Interahamwe* and facilitating their transportation to the Ruhengeri Court of Appeal by supplying them with petrol. The *Interahamwe* were to assist in killing the Tutsis who had been taken from Busengo sub-*prefecture* in Ndusu *Commune* and left at the Ruhengeri Court of Appeal, and who had until that point been successfully resisting attacks by the local militia.

45. Conversely, Facts 16, 17, 20 to 24, 33, 41 to 46, 49, 54, 57, 58, 59, and 61 are truly adjudicated facts. In particular and contrary to the assertions made by the Defence for Nzirorera and the Defence for Ngirumpatse, Facts 17, 33, 43, 59 are distinct, concrete and identifiable, and Fact 44 does not include a legal characterisation.

46. As already mentioned, the Chamber is also satisfied that Facts 16, 17, 20 to 24, 33, 41 to 46, 49, 54, 57, 58, 59, and 61 do not relate to the acts, conduct and mental state of the Accused persons in this case. In that respect, the Chamber notes that Facts 41 to 46 concern a different meeting to the one which the Indictment alleges that Nzirorera attended and do not contain any allegation that Nzirorera was present at that meeting. This was a meeting held by Kajelijeli on the evening of 6 April 1994 at the Canteen next to the Nkuli *bureau communal*. The Chamber is satisfied that these facts are not too proximate to the Accused.

47. The Defence for Nzirorera, however, objects to their admission submitting that in different ways, it will compromise the rights of the accused and that it will not advance the objective of expediency.

48. According to the Defence, Witnesses ANP and GBU, upon the basis of whose testimony certain factual findings were made by the *Kajelijeli* Trial Chamber, have been found to have committed perjury, and therefore taking judicial notice of facts which are based on the testimony of those witnesses would compromise the Accused's rights.

49. The Chamber notes that Witnesses ANP and GBU were two of several witnesses upon whom the Trial Chamber relied in making the findings from which the adjudicated facts are proposed. The Defence's argument in that respect therefore falls to be rejected.

50. The Defence for Nzirorera contends that the testimony already heard by this Chamber of Witness BTH is a bar to the taking judicial notice of certain facts.

51. As previously mentioned, considering the interests of justice and the particular circumstances of the case, some Trial Chambers have declined to take judicial notice of adjudicated facts in circumstances where evidence has already been heard on the subject matter of the fact sought to be judicially noticed.[56] The fact of a Trial Chamber having heard testimony on a particular fact is, however, not an absolute bar to the taking of judicial notice of that fact. The Chamber must determine whether, having already heard testimony on a particular fact, taking judicial notice of that fact will advance the objective of expediency without compromising the rights of the Accused. Relevant considerations to this determination may include, for example, how much evidence has been heard on a particular fact, how much evidence is still to be heard with respect to the particular fact, how directly a witness has testified on a particular fact, and whether the relevant witness testimony corroborates or contradicts the fact proposed for judicial notice.

52. In the present case, the Chamber has considered the facts allegedly precluded from judicial notice by virtue of Witness BTH's testimony, and is of the view that only Fact 39 should be excluded on this basis in the interests of justice. There might be indeed some divergence with the testimony of Witness BTH on the same fact. Contrary to Nzirorera's assertion, the fact that Witness BTH testified that Kajelijeli was acting at the direction of Nzirorera, does not affect the conclusion that Facts 16, 17, 20 to 24, 33, 41 to 46, 49, 54, 57, 58, 59, and 61 do not relate to the acts, conduct and mental state of the Accused.

53. The Defence for Nzirorera also submits, since the Trial Chamber in *Kajelijeli* found that the Prosecution had failed to prove its allegation that Kajelijeli conspired with Nzirorera

[56] See *Prosecutor v. Bizimungu et al.,* Case No. ICTR-50-T, Decision on the Prosecutor's Motion and Notice of Adjudicated Facts, 10 December 2004, para. 22; *Blagojevic* Decision, paras. 22 and 23.

and others,[57] it would be unfair to take judicial notice of selective findings of the Trial Chamber which help the Prosecution.[58] The Chamber is of the view that this argument, on the contrary, favours the admission of Facts 16, 17, 20 to 24, 33, 41 to 46, 49, 54, 57, 58, 59, and 61 since the *Kajelijeli* Trial Chamber did not find that Nzirorera and Kajeljeli were co-conspirators.

54. The Defence for Nzirorera also makes several individual submissions on why taking judicial notice of certain facts will not advance the objective of expediency. Firstly, he submits, Facts 23 and 24 involve events in Kinigi *commune* which are not included in the Amended Indictment, and are not the subject of testimony from any proposed witness on the Prosecution's Witness List. The Defence for Nzirorera submits that, since it will be required to adduce evidence to refute events in Kinigi and Nkuli *communes,* the purpose of expediency will not be advanced. Secondly, with respect to Facts 41 to 50, the Defence submits that these facts are based on findings from the testimony of Witness GDD, who has since died, and that no other witness on the Prosecution's Witness List will testify to these events. It claims that in these circumstances, to take judicial notice of these facts will deprive Nzirorera of his right to cross-examination on matters which are strongly disputed, and will not promote expediency since there are no witnesses whose testimony would not otherwise be needed or whose testimony would be shortened by the taking of judicial notice. The Prosecution acknowledges that Witness GDD has died since his testimony in the *Kajelijeli* case, but says that the Defence will still be able to rebut the facts by calling other witnesses and that there will be other witnesses who will testify about the events in these *communes* whose evidence can be challenged.

55. The Chamber is satisfied that both the Indictment and the Pre-trial Brief make specific mention of massacres in Ruhengeri *prefecture,* within which Kinigi *commune* is located. Furthermore, in the Pre-trial Brief, specific mention is made of Mukingo *commune* and other *communes* which neighbour Kinigi and Nkuli. Having considered the circumstances of the present case, the Chamber is of the view that taking judicial notice of Facts 16, 17, 20 to 24, 33, 41 to 46, 49, 54, 57, 58, 59, and 61 will advance the objective of expediency without compromising the rights of the Accused. Concerning Facts 33 and 54, the Chamber deems it necessary to cure minor inaccuracies (see Annexure to the present Decision)

56. Finally, Facts 31 and 32 have not been appealed, and therefore were not remanded to the Chamber for further consideration. The findings of the Chamber on those facts in the Decision of 9 November 2005 still stand.

*4. Facts 25 to 30 and 146 to 152 (***Rutaganda** *Judgement)*

57. Under Facts 25 to 30 and 146 to 152, the Prosecution seeks judicial notice of facts taken from the *Rutaganda* Judgement.[59]

58. The Defence for Ngirumpatse submits that Facts 27 to 30, 147, 151 and 152 must be excluded from admission because they comprise the acts and conduct of the Accused, or the acts of the *Interahamwe* that can be imputed to the Accused in this case. Furthermore, it contends that the Chamber should decline to take judicial notice of facts concerning the synonymous use of the words 'Tutsi' "enemy", "accomplices of the enemy", "infiltrators", "accomplices of the RPF", "*inyenzi*", "*inkotanyi*" for similar reasons.[60]

[57] *Kajelijeli* Judgement, paras. 794-98.
[58] See paras. 47-49 of Nzirorera's first submissions on this (13 July 2005).
[59] *Prosecutor v. Georges Rutaganda*, Case No. ICTR-96-3-T, Judgement and Sentence (TC), 6 December 1999.
[60] See Facts 151-152.

59. The Chamber is satisfied that the purported facts taken from the *Rutaganda* Judgement concern a matter at issue in the current proceedings and none of them relates to the acts, conduct and mental state of the Accused persons in this case. However, Facts 151 and 152 are so central to the allegations against the Accused in this case, that it is preferable to hear *viva voce* evidence on these matters. The Chamber therefore declines to take judicial notice of them.

60. The Chamber also declines to take judicial notice of Fact 150 on the ground of vagueness, and of Facts 148 and 149 because the Chamber is not persuaded that their admission will promote the objective of expediency.

61. Considering the context of the Judgement, Facts 25 to 30 and 146 and 147 are truly adjudicated facts and are in a substantially similar form to how they were expressed in the original Judgement. Considering the rights of the Accused and the interests of justice, their admission will contribute to expediting the proceedings. The Chamber, however, has cured certain minor inaccuracies *proprio motu,* so as to enable the taking of judicial notice of those facts in a form which does not contain any ambiguity (see Annexure to this Decision; Facts 25 and 28).

5. Facts 10 to 12, 88 to 90, 92, 99 to 103, 105 to 107, 124, 127 to 131, 133, 134 to 137 (*Niyitegeka *Judgement); Facts 13, 86, 87, 91, 93, 94, 104, 111, 112, 113 (*Musema *Judgement); Facts 69, 71, 74, 84, 85, 95 to 98, 109, 110, 114, 115 (*Kayishema *Judgement); and Facts 70, 72, 73, 108, 116 to 123, 125, 126, 132 (*Ntakirutimana *Judgement)

62. The Prosecution moves the Chamber to take judicial notice of a series of facts extracted from the *Niyitegeka, Musema*, *Kayishema* and *Ntakirutimana* Judgements,[61] which, among other things concerns attacks on Muyira Hill, in the Bisesero area, on 13 and 14 May 1994.

63. The Defence for Ngirumpatse and the Defence for Karemera submit that these Facts extracted from the *Niyitegeka* Judgement must be excluded because they comprise the acts, conduct and mental state of the Accused persons or concern the acts of the *Interahamwe* that could be imputed to the Accused in this case. They also claim that some of them are vague or taken out of context of the original Judgement.

64. The Chamber declines to take judicial notice of Fact 84 on the basis that, absent the meaning provided by the context of Facts 79 to 83, in respect of which the Prosecution abandoned its application, the fact is devoid of meaning.

65. After reviewing the remaining facts in the context of their original Judgement, the Chamber considers that they are accurate reproductions of the original Chamber's findings from which they were extracted and are truly adjudicated facts which are relevant to matters at issue in the current proceedings. Contrary to the Defence's assertions, the Chamber is also satisfied that none of them concerns the acts, conduct or mental state of the Accused in this case.

66. The Defence for Ngirumpatse and the Defence for Karemera request the exclusion of facts where the original Trial Chamber has made the particular finding on the basis of the

[61] *Prosecutor v. Eliezer Niyitegeka*, Case No. ICTR-96-14-T, Judgement and Sentence (TC), 16 May 2003; *Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Judgement and Sentence (TC), 27 January 2000; *Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Judgement (TC), 21 May 1999; *Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case No. ICTR-96-10 and ICTR-96-17-T, Judgement and Sentence (TC), 21 February 2003.

testimony of only one witness. Furthermore, the Defence for Karemera submits that judicial notice of Facts 86 to110 should be denied on the basis that those facts are the subject of reasonable dispute. In its view, since Appeals Judge Lennart Aspergen did not find certain facts pertaining to this incident proven beyond reasonable doubt in his Separate Opinion to the *Musema* Judgement, these facts are the subject of reasonable dispute. The Defence for Karemera also contends that, since Witness HR's testimony, upon whose testimony factual findings were made in the *Musema* Judgement, was disregarded by another Trial Chamber, judicial notice should not be taken of Facts 86 to 107.

67. The Chamber has already indicated that according to the established jurisprudence, a Chamber may rely on a single witness' testimony as proof of a material fact.

68. The *Niyitegeka* Trial Chamber explicitly stated that Witness HR was a credible witness, and accepted his testimony.[62] The Appeals Chamber found the Trial Chamber's assessment of Witness HR to be "detailed and careful", and found no error in the Trial Chamber having relied on his testimony.[63] Furthermore, in the *Musema* trial, Witness HR was one of the witnesses upon whom the Trial Chamber relied in making the findings underpinning other facts.[64] The Trial Chamber expressly stated that it found the cross-examination of the witness in no way impaired his credibility, and that his evidence was reliable. The Appeals Chamber did not question the evaluation of this witness by the Trial Chamber.[65]

69. While the Chamber considers that issues of witness credibility in an original judgement *may* mitigate against judicial notice of an adjudicated fact, the Chamber is of the view that this depends upon the particular fact in question and the totality of the circumstances surrounding that finding. The question for the Chamber is whether the taking of judicial notice of the fact will compromise the rights of the Accused. The Chamber notes that a witness may be found to be credible by one finder of fact, and not by another. The Chamber also notes that a witness may be found to be telling the truth in a case against one accused, and not in another. The Chamber is not satisfied, with respect to the particular facts proposed for adjudication and said to be tarnished by issues of witness credibility that the rights of the Accused would be compromised. In addition in the present situation, the facts the admission of which is disputed by the Defence were adjudicated by four different Trial Chambers which also heard various witnesses.

70. In these circumstances, the Chamber is satisfied that taking judicial notice of Facts 10 to 12, 88 to 90, 92, 99 to 103, 105 to 107, 124, 127 to 131, 133, 134 to 137, 13, 86, 87, 91, 93, 94, 104, 111, 112, 113, 69, 71, 74, 85, 95 to 98, 109, 110, 114, 115, 70, 72, 73, 108, 116 to 123, 125, 126, 132 is the interests of justice and will promote expediency in this case, without compromising the rights of the Accused.

*6. Facts 142 and 143 (***Nahimana *Judgement)***

71. The Prosecution seeks judicial notice of two facts taken from the *Nahimana* Judgement (Facts 142 and 143).[66] It claims that while the case is pending appeal, these two facts are not the subject to the appeal and may be judicially noticed. Relying upon the

[62] *Niyitegeka* Judgement, para. 108.
[63] *Prosecutor v. Niyitegeka,* Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004, para. 138.
[64] Facts 86, 87, 91, 93, 94, 104, 111-112.
[65] *Musema* Appeals Chamber Judgement, paras. 77-100.

[66] *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, ICTR-99-52-T, Judgement (TC), 3 December 2003.

Separate Opinion of His Honour Judge Shahabuddeen, it submits that judicial notice can be taken of adjudicated facts in cases pending appeal, provided that the particular facts in question do not form part of the appeal.[67]

72. The Chamber notes that one of the Appellants in the *Nahimana* case, Jean-Bosco Barayagwiza, is requesting the annulment of the Judgement on the basis that the proceedings were conducted in his absence. Furthermore, he is alleging a lack of independency of the Tribunal and lack of impartiality of the Judges.[68]

73. In light of these grounds of appeal, the Chamber considers that the Appeals Chamber Judgement has the potential to impact all factual findings of the Trial Chamber Judgement, including the facts sought for judicial notice. Under these circumstances, Facts 142 and 143 cannot be considered to have been finally adjudicated and cannot therefore be judicially noticed.

General Assessment of the Rights of Accused and Expediency of the Proceedings

74. The Defence for each Accused generally submits that taking judicial notice of the facts proposed for notice by the Prosecution compromises the rights of the Accused, including their rights to examine and have examined the witnesses against him. They also claim that the Rule's purpose of expediency will not be advanced, as required by the Appeals Chamber's ruling, since the Accused in this case will be obligated to call evidence to rebut each fact.

75. The Chamber wholly rejects this argument, for if it were to adopt the position, a Chamber could never find that taking judicial notice of any fact would promote expediency.

76. Considering the interests of justice and the entire circumstances of the case, the Chamber is satisfied that taking judicial notice of certain adjudicated facts, as detailed above, will promote expediency without compromising the rights of the Accused. Particularly, the Chamber is of the view that this Decision will not place such a significant burden on the Accused to produce rebuttal evidence that it would jeopardise their right to fair trial.[69] In terms of expediency of the proceedings, the Chamber expects the Prosecution to comply with its stated intention to streamline the presentation of its evidence and to reduce the number of witnesses it intends to call as a result of admission of adjudicated facts.

77. However, it is necessary to state that judicial notice is neither taken of the specific order in which these facts have been placed by the Prosecution in its Motion, nor of the headings under which those facts have been placed by the Prosecution. The Chamber takes judicial notice of the facts individually, as extracted from the original Judgements in which the findings were made (for details see Annexure A to this Decision).

FOR THOSE REASONS, THE CHAMBER

I. GRANTS the Prosecution Motion in part, and hereby

[67] *Prosecutor v. Milosevic,* Case No. IT-02-54-AR73.5, Separate Opinion of Judge Shahabuddeen Appended to the Appeal's Chamber's 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, 28 October 2003.
[68] See Notice of Request for Annulment of Judgement rendered on 3 December 2003 in *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, ICTR-99-52-T, filed on 3 February 2004.
[69] *Popović* Decision, para. 16.

II. TAKES JUDICIAL NOTICE of the following **facts of common knowledge**, pursuant to Rule 94(A) of the Rules:

(i) The following state of affairs existed in Rwanda between 6 April 1994 to 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 person[s] perceived to be Tutsi. As a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity.

(ii) Between 1 January 1994 and 17 July 1994 in Rwanda there was an armed conflict not of an international character.

(iii) Between 6 April 1994 and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group.

III. TAKES JUDICIAL NOTICE of the following **adjudicated facts**, pursuant to Rule 94(B) of the Rules, which content is detailed in Annexure A to this Decision:

Facts 1 to 8, 10 to 13, 15, 16, 17, 20 to 24, 26, 27, 29, 30, 41 to 46, 49, 57 to 59, 61, 65 to 74, 85 to 137, 144 to 147.

III. TAKES judicial notice of the following **adjudicated facts**, pursuant to Rule 94(B) of the Rules, subject to minor corrections deemed necessary and appropriate by the Chamber, appearing in Annexure A to this Decision: Facts 9, 33, 54, 25 and 28.

III. DENIES the remainder of the Prosecution's request and therefore **DECLINES** to take judicial of the following facts, which content is detailed in Annexure B to this Decision:

Facts 18, 19, 34 to 40, 47, 48, 50-53, 55-56, 60, 62, 63, 64, 84, 142, 143, 148 to 152.

Arusha, 11 December 2006, done in English.

Dennis C. M. Byron	Emile Francis Short	Gberdao Gustave Kam
Presiding	Judge	Judge

[Seal of the Tribunal]

ANNEXURE A - ADJUDICATED FACTS JUDICIAL NOTICED

As explained in this Decision, in some instances the Chamber took judicial notice of adjudicated facts subject to amendments deemed necessary to cure minor inaccuracies or ambiguities. These amendments are highlighted in bold hereinafter when appropriate.

1	During the events of 1994, Tutsi girls and women were subjected to sexual violence, beaten and killed on or near the *bureau communal* premises, as well as elsewhere in the commune of Taba. Hundreds of Tutsi, mostly women and children, sought refuge at the *bureau communal* during this period and many rapes took place on or near the premises of the *bureau communal*.	Akayesu, par. 449.
2	A woman was taken by Interahamwe from the refuge site near the *bureau communal* to a nearby forest area and raped there. She was also raped repeatedly on two separate occasions in the cultural center on the premises of the *bureau communal*, once in a group of fifteen girls and women and once in a group of ten girls and women.	Akayesu, par. 449.
3	Women and girls were selected and taken by the Interahamwe to the cultural center to be raped. Two Interahamwes took a woman and raped her between the *bureau communal* and the cultural center.	Akayesu, par. 449.
4	A woman was taken from the *bureau communal* and raped in a nearby field. Three women were raped at Kinihira, the killing site near the *bureau communal*, and another woman found her younger sister, dying, after she had been raped at the *bureau communal*.	Akayesu, par. 449.
5	Many other instances of rape in Taba took place outside the *bureau communal* - in fields, on the road, and in or just outside houses.	Akayesu, par. 449.
6	Other acts of sexual violence took place on or near the premises of the *bureau communal* - the forced undressing and public humiliation of girls and women.	Akayesu, par. 449.
7	Much of the sexual violence took place in front of large numbers of people, and all of it was directed against Tutsi women.	Akayesu, par. 449.
8	With regard to all rape and sexual violence which took place on or near the premises of the Taba *bureau communal*, the perpetrators were all Interahamwe.	Akayesu, par. 450.
9	Interahamwe are also **identified as** the perpetrators of many rapes which took place outside the *bureau communal*.	Akayesu, par. 450.
10	On 28 June 1994, near the Technical Training College, on a public road **between Charroi Naval and Kibuye,** Niyitegeka ordered Interahamwe to undress the body of a woman who had just been shot dead, to fetch and sharpen a piece of wood, which he then instructed them to insert into her genitalia.	Niyitegeka, paras. 316 and 273.
11	This act was then carried out by the Interahamwe, in accordance with his instructions.	Niyitegeka, par. 316.
12	The body of the woman, with the piece of wood protruding from it, was left on the roadside for some three days thereafter. Niyitegeka referred to the woman as "Inyenzi" by which he meant to refer to Tutsi.	Niyitegeka, par. 316.
13	**Within the area of Gisovu Tea Factory, Twumba Cellule, Gisovu Commune,** Musema ordered the rape of Annunciata Mujawayezu, a Tutsi woman, and the cutting off of her breast to be fed to her son. She was in fact killed.	Musema, paras. 805 and 828.
15	On 13 April 1994 at approximately 10:00 a.m. Semanza directed a group of people to rape Tutsi women before killing them. Victim A was raped by one of the men in the group and that her cousin, Victim B, was taken outside and killed by two other men from the group.	Semanza, par. 261.
16	Ntenzireyerimye and Uyamuremye, members of the Interahamwe, mutilated a Tutsi girl named Nyiramburanga by cutting off her breast and then licking it, on the morning of 7 April 1994 in Rwankeri cellule.	Kajelijeli, par. 678.

17	Members of the Interahamwe, including Interahamwe from Mukingo commune and neighbouring areas committed rapes and sexual assaults in the Ruhengeri Prefecture between 7 and 10 April 1994.	Kajelijeli, par. 683.
20	The Interahamwe pierced Joyce's side and sexual organs with a spear, and then covered her dead body with her skirt.	Kajelijeli, par. 677.
21	A Tutsi woman was raped by members of the Interahamwe in Busogo Parish and in Kabyaza cellule on 7 April 1994, after having been stopped at a roadblock.	Kajelijeli, par. 679, 918.
22	The handicapped daughter of a Tutsi woman was raped and killed by members of the Interahamwe in Rukoma Cellule, Shiringo Secteur on 7 April 1994.	Kajelijeli, par. 680, 919.
23	A Tutsi woman was raped and sexually mutilated by members of the Interahamwe in Susa secteur, Kinigi commune on 7 April 1994.	Kajelijeli, par. 681, 920.
24	A Tutsi woman was raped by members of the Interahamwe in Susa secteur, Kinigi Commune on 10 April 1994.	Kajelijeli, par. 682, 921.
25	Many of the refugees who escaped or survived the attack at ETO **(*École Technique Officielle,* in Kicukiro sector, Kicukiro *Commune*)** headed in groups towards the Amahoro Stadium.	Rutaganda, **paras. 262 and 300.**
26	Some women were taken forcibly from the group and subsequently raped.	Rutaganda, **par. 300.**
27	Flanked on both sides by *Interahamwe*, approximately 4,000 refugees were then forcibly marched to Nyanza.	Rutaganda, **par. 300.**
28	**At Nyanza , a**n attack took place on 11 April, in the late afternoon and into the evening. Many were killed in this attack.	Rutaganda, **par. 301.**
29	The *Interahamwe* then began killing people with clubs and other weapons.	Rutaganda, **par. 301.**
30	Some girls were selected, put aside, and raped before they were killed. Clothing had been removed from many of the women who were killed.	Rutaganda, **par. 301.**
33	On 7 April 1994 many Tutsi men, women and children were attacked and massacred at a place of shelter within the Mukingo commune, **in this case the place known as Munyemvano's compound in Rwankeri cellule.**	Kajelijeli, par. 597.
41	There was a meeting on the evening of 6 April 1994 following the death of the President, at the Canteen next to the Nkuli bureau communal.	Kajelijeli, par. 469.
42	Kajelijeli seized the leading role in the meeting, and addressed those persons present—who were all of Hutu ethnic origin. And he said to them "[Y]ou very well know that it was the Tutsi that killed—that brought down the Presidential plane. What are you waiting for to eliminate the enemy?"	Kajelijeli, par. 469.
43	By "the enemy", a witness present understood Kajelijeli to mean the Tutsi ethnic group.	Kajelijeli, par. 469.
44	After receiving information from Sendugu Shadrack that there were no weapons available to attack the population, Kajelijeli left the meeting with Deputy Brigadier Boniface Ntabareshya.	Kajelijeli, par. 469.
45	When he returned he informed those present that Major Bizabarumana had agreed to provide them with "equipment" at the commune the following morning.	Kajelijeli, par. 469.
46	Kajelijeli also promised to bring Interahamwe reinforcements from Mukingo commune for the attack on Kinyababa cellule.	Kajelijeli, par. 469.
49	Augustin Habiyambere and Sendugu Shadrack led an attack on the morning of the 7 April 1994, following the delivery of weapons from Mukamira camp in which approximately 100 young militants, including youth from Nkuli commune; recruits from Mukingo led by the CDR President from the Gitwa secteur, Iyakaremye; a group from the Rukoma Mountains; forces from Mukamira; and soldiers in civilian attire from IGA, attacked and killed approximately 12 families of Tutsis, numbering approximately 80 people, residing in Kinyababa cellule in Nkuli commune.	Kajelijeli, par. 487.
54	The attack at Busogo Hill, **Rwankeri *cellule,* Mukingo *commune,*** claimed the lives of many Tutsis.	Kajelijeli, **paras. 544 and 549.**
57	The Interahamwe attackers involved in the attack at Munyemvano's compound used traditional weapons, guns and grenades to slaughter their Tutsi victims.	Kajelijeli, par. 597.

58	There was a killing of a large number of Tutsis at the Convent at Busogo Parish on the morning of 7 April 1994. The number of bodies buried the following day is an indicator that approximately 300 people died in the attack.	Kajelijeli, par. 604.
59	Members of the Interahamwe were involved in the attack.	Kajelijeli, par. 604.
61	At the Ruhengeri Court of Appeal, Interahamwe, who were all Hutus, killed about three hundred Tutsis.	Kajelijeli, par. 622.
65	Tutsi civilians were killed at Musha church by soldiers, gendarmes, and Interahamwe militiamen on 13 April 1994. Semanza participated in this attack by gathering Interahamwe to take part in the attack and by directing the assailants to kill Tutsi refugees.	Semanza, par. 206.
66	In April 1994 there were attacks on mostly Tutsi, civilian refugees on Mwulire Hill.	Semanza, par. 224.
67	Semanza participated in the killings of Tutsi refugees on Mwulire Hill on 18 April 1994.	Semanza, par. 228.
68	Semanza was armed and present on 12 April 1994 during the attack on Mabare mosque and that the attack resulted in the death of around 300 Tutsi refugees.	Semanza, par. 244.
69	From about 9 April until 30 June 1994, Tutsis sought refuge in Bisesero from Hutu attacks that had occurred in other parts of Rwanda and, in particularly, other areas of Kibuye Prefecture.	Kayishema, par. 409.
71	Attacks occurred at approximately twelve sites in the Bisesero area.	Kayishema, par. 411.
74	Ruzindana and Kayishema personally attacked Tutsis seeking refuge during the assaults described in Bisesero.	Kayishema, par. 467.
70	Regular attacks occurred in the Bisesero region from 9 April 1994 until about 30 June 1994, and thousands of Tutsi were killed, injured and maimed there.	Ntakirutimana, **paras. 446, 447 and 448.**
72	The attackers consisted of Interahamwe, gendarmes, soldiers, and civilians.	Ntakirutimana, par. 447.
73	The Interahamwe, gendarmes, and soldiers were usually armed with guns and wore uniforms. The civilians were usually armed with clubs, machetes, bows, arrows, spears, hoes, knives, sharpened bamboo sticks, and other traditional weapons.	Ntakirutimana, par. 447.
85	The most severe attacks occurred in the Bisesero area on 13 and 14 May 1994, after an apparent two-week lull in the attacks.	Kayishema, par. 406.
95	Kayishema and Ruzindana were present at the massacres in Muyira Hill and its vicinity beginning on about 13 May 1994.	Kayishema, par. 430.
110	Attacks in the vicinity of Muyira Hill continued into June 1994.	Kayishema, par. 452.
96	Kayishema and Ruzindana arrived at the head of the convoy of vehicles which transported soldiers, members of the Interahamwe, communal police and armed civilians.	Kayishema, par. 565.
97	Kayishema signalled the start of the attacks by firing a shot into the air, directed the assaults by dividing the assailants into groups, and headed one group of them as it advanced up the Hill and verbally encouraged the attackers through a megaphone.	Kayishema, par. 565.
98	Ruzindana also played a leadership role, distributing traditional weapons, leading a group of attackers up the Hill and shooting at the refugees.	Kayishema, par. 565.
109	Ruzindana orchestrated the massacre at the Hole near Muyira Hill, and the assault commenced upon his instruction.	Kayishema, par. 565.
86	On 13 May 1994, a large scale attack occurred on Muyira Hill against up to 40000 Tutsi refugees.	Musema, par. 747.
87	The attack started in the morning.	Musema, par. 747.
91	The attackers were armed with firearms, grenades, rocket launchers and traditional weapons, and sang anti-Tutsi slogans.	Musema, par. 747.
93	Musema was one of the leaders of the attackers coming from Gisovu and drove his red Pajero to the attack. Musema was armed with a rifle. He used the weapon during the attack.	Musema, par. 748.
94	Thousands of unarmed Tutsi men, women and children were killed during the attack at the hands of the assailants and that many were forced to flee for their survival.	Musema, par. 748.

104	A large scale attack occurred on Muyira Hill 14 May 1994 against Tutsi civilians, and the attackers, numbering as many as 15000, were armed with traditional weapons, firearms and grenades, and sang slogans.	Musema, par. 750.
88	The attackers comprised thousands of Interahamwe, soldiers, policemen and Hutu civilians.	Niyitegeka, par. 178.
89	They were transported in ONATRACOM buses, lorries belonging to COLAS, MINITRAP vehicles, buses, pick-ups, vehicles from the Gisovu Tea Factory and vehicles commandeered from Tutsi.	Niyitegeka, par. 178.
90	These vehicles parked at Kucyapa. The attackers were chanting "Tuba Tsemba Tsembe", which means "Let's exterminate them", a reference to the Tutsi.	Niyitegeka, par. 178.
92	The attackers were armed with guns, machetes, spears, sharpened bamboo sticks and clubs.	Niyitegeka, par. 178.
99	On 13 May, sometime between 7.00 a.m. and 10.00 a.m., Niyitegeka was one of the leaders in a large-scale attack by armed attackers against Tutsi refugees at Muyira Hill.	Niyitegeka, par. 178.
100	Niyitegeka was armed with a gun and was shooting at the Tutsi refugees at the hill. In addition, Niyitegeka instructed the attackers during the attack, showing the attackers where to go and how to attack the refugees.	Niyitegeka, par. 178.
101	Niyitegeka was in the front row leading attackers, together with other leaders.	Niyitegeka, par. 178.
106	The attackers comprised civilians, soldiers, Interahamwe, gendarmes and communal policemen.	Niyitegeka, par. 205.
107	They were carrying guns, spears, clubs, machetes and sharpened objects, and launched a large-scale attack against the Tutsi refugees at Muyira Hill. Niyitegeka was armed with a gun and shot at Tutsi refugees at Muyira Hill.	Niyitegeka, par. 205.
105	On the morning of 14 May, Niyitegeka and others, together with attackers, arrived at Muyira Hill and parked their vehicles at Kucyapa.	Niyitegeka, par. 205.
102	In the evening of 13 May 1994, Niyitegeka held a meeting at Kucyapa after the 13 May attack against Tutsi refugees at Muyira Hill, for the purpose of deciding on the programme of killings for the next day and to organize these killings against the Tutsi in Bisesero, who numbered approximately 60,000. The meeting was attended by about 5,000 people.	Niyitegeka, par. 257.
103	Using a loudspeaker, Niyitegeka thanked attackers for their participation in attacks and commended them for "a good work", which refers to the killing of Tutsi civilians. Niyitegeka told them to share the people's property and cattle, and eat meat so that they would be strong to return the next day to continue the work, that is, the killing.	Niyitegeka, par. 257.
108	Sometime in mid-May 1994 in Muyira Hill, Gérard Ntakirutimana led armed attackers in an attack on Tutsi refugees, as a result of which many Tutsi were killed.	Ntakirutimana, par. 635.
111	Musema participated in an attack on Mumataba hill in mid-May 1994. The assailants, numbering between 120 and 150, included tea factory employees, armed with traditional weapons, and communal policemen.	Musema, par. 755.
112	In the presence and with the knowledge of Musema, tea factory vehicles transported attackers to the location. The attack was launched on the blowing of whistles, and the target of the attack were 2000 to 3000 Tutsis who had sought refuge in and around a certain Sakufe's house.	Musema, par. 756.
113	Musema participated in the attack on Nyakavumu cave at the end of May 1994. Musema was present at the attack during which assailants closed off the entrance to the cave with wood and leaves, and set fire thereto. Over 300 Tutsi civilians who had sought refuge in the cave died as a result of the fire.	Musema, par. 780.
114	At the cave, Kayishema was directing the siege generally and Ruzindana was commanding the attackers from Ruhengeri; both were giving instructions to the attackers and orchestrating the attack.	Kayishema, par. 566.
115	Gendarmes, members of the Interahamwe and various local officials were present and participated.	Kayishema, par. 438.

116	Elizaphan Ntakirutimana brought armed attackers in the rear hold of his vehicle to Nyarutovu Hill one day in the middle of May 1994, and the group was searching for Tutsi refugees and chasing them. Elizaphan Ntakirutimana pointed out the fleeing refugees to the attackers who then chased these refugees singing "Exterminate them; look for them everywhere; kill them; and get it over with, in all the forests."	Ntakirutimana, par. 594.
117	Elizaphan Ntakirutimana participated in a convoy of vehicles carrying armed attackers to Kabatwa Hill at the end of May 1994, and, later on that day, at neighbouring Gitwa Hill, he pointed out the whereabouts of Tutsi refugees to attackers who attacked the refugees.	Ntakirutimana, par. 607.
118	Three meetings convened in Kibuye town in June 1994.	Ntakirutimana, **paras. 711 and 720.**
119	The first took place around 10 June in the conference room of the prefectural office. The meeting started between 10.00 and 11.00 a.m.	Ntakirutimana, **paras. 711 and 720.**
120	It was attended by Interahamwe and various officials, including Prefect Kayishema, Ruzindana, Musema, Eliézer Niyitegeka, Gérard Ntakirutimana, and the bourgmestres of the communes surrounding Bisesero, seated in the front row.	Ntakirutimana, **paras. 711 and 720.**
121	Ruzindana took the floor and explained to the participants that the meeting was aimed at evaluating their progress in killing Tutsi in the Bisesero area and to decide what still needed to be done to finish that task.	Ntakirutimana, **paras. 711 and 720.**
122	Gérard Ntakirutimana also took the floor, saying that the problem they faced in completing the work was that they had insufficient guns and ammunition. Like other speakers at the meeting, Gérard Ntakirutimana spoke through a microphone connected to loudspeakers.	Ntakirutimana, **paras. 711 and 720.**
123	At those meetings Gérard Ntakirutimana also participated in the distribution of weapons, discussed the planning of attacks at Bisesero, was assigned a role in such an attack, and reported back on its success.	Ntakirutimana, par. 720.
125	There was a second meeting that took place about a week later at the same venue. It also started between 10.00 and 11.00 a.m. and lasted about four hours.	Ntakirutimana, **paras. 712 and 720.**
126	The same officials who attended the first meeting also attended the second. Many other persons, including Interahamwe, were present, inside and outside the room.	Ntakirutimana, **paras. 712 and 720.**
132	Gérard Ntakirutimana was named as a member of the "Ngoma group", which included Enos Kagaba and Mathias Ngirinshuti and was to attack Murambi.	Ntakirutimana, par. 712.
124	Niyitegeka promised to provide weapons for the killing of the Tutsi in Bisesero.	Niyitegeka, par. 225.
127	The meeting was held to permit Niyitegeka to answer questions posed at the previous meeting, including in relation to the promise of weapons made at the previous meeting.	Niyitegeka, par. 225.
128	At that meeting, Niyitegeka distributed the weapons to group representatives for use in killings in Bisesero.	Niyitegeka, par. 225.
129	Niyitegeka stated that the attack would take place the next day in Bisesero.	Niyitegeka, par. 225.
130	Niyitegeka presented the attack plan on a blackboard: a circle with "Bisesero" written in the circle. Around this circle were written the names of the designated leaders of each group of attackers and the points of departure for the five groups of attackers, which were Karongi, Rushishi, Kiziba, Gisiza and Murambi.	Niyitegeka, par. 225.
131	Niyitegeka encouraged people to participate in the attack, and was himself a leader for the Kiziba group.	Niyitegeka, par. 225.
133	This plan was carried out in the attack at Kiziba the next day against Tutsi in Bisesero, which attack was led by Niyitegeka and resulted in many victims amongst the Tutsi refugees.	Niyitegeka, par. 225.
134	On or about 18 June, Niyitegeka attended a meeting in the canteen of Kibuye Prefectural Office where he promised to supply gendarmes for the next day's attack and urged bourgmestres and others to do all they could to ensure participation in the attacks so that all the Tutsi in Bisesero could be killed. Another attack took place the next day as planned.	Niyitegeka, par. 229.

135	Sometime in June, at approximately 5.00 p.m., Niyitegeka spoke at a meeting at Kibuye Prefectural Office, which was attended by Kayishema, Ruzindana, many Interahamwe, and others.	Niyitegeka, par. 232.
136	The Interahamwe were chanting: "Exterminate them, flush them out of the forest", meaning the Tutsi.	Niyitegeka, par. 232.
137	Niyitegeka told the audience that he had come so they could pool their efforts in overcoming the enemy, that is, the Tutsi, and promised they would get his contribution in due course. He promised that not less than a hundred Interahamwe would assist in the attacks against the Tutsi.	Niyitegeka, par. 232.
144	On 8 April 1994 in the morning, Semanza met Rugambarara and a group of Interahamwe in front of a certain house in Bicumbi commune. Semanza told the Interahamwe that a certain Tutsi family had not yet been killed, that no Tutsi should survive, and that the Tutsis should be sought out and killed.	Semanza, par. 271.
145	Later the same day, the Interahamwe searched a field near the house of the family mentioned by Semanza, found four members of that family, and killed them.	Semanza, par. 271.
146	As from an unspecified date in mid-April, a roadblock was erected by *Interahamwe* on the Avenue de la Justice near a traffic light not far from the entrance to the Amgar Garage at the Cyahafi Sector boundary, in Nyarugenge *Commune* of the Kigali-*ville Préfecture*.	Rutaganda, **par. 225.**
147	At the said roadblock, the *Interahamwe* checked the identity cards of those who crossed it and detained those who carried identity cards bearing the "Tutsi" ethnic reference or were otherwise considered as "Tutsi" because they had stated that they were not in possession of an identity card.	Rutaganda, **par. 225.**

ANNEXURE B - FACTS IN RELATION TO WHICH JUDICIAL NOTICE IS DENIED

18	These rapes and sexual assaults were committed in the course of a widespread attack upon the Tutsi civilian population.	Kajelijeli, par. 922.
19	Pursuant to an order of Kajelijeli given at Byangabo Market on 7 April 1994 to "exterminate the Tutsis" the Interahamwe went to Rwankeri cellule, where a Tutsi woman named Joyce was raped and killed by Interahamwe.	Kajelijeli, par. 917.
34	In Mukingo commune and neighbouring areas in April 1994, the killings of the Tutsi were not a spontaneous reaction of the Hutu populace to the death of the President.	Kajelijeli, par. 161.
35	The killers were, amongst others, Interahamwe who were directed to kill all the Tutsis and received assistance and were supplied with weapons to do so.	Kajelijeli, par. 161.
36	Kajelijeli was a leader of Interahamwe with control over the Interahamwe in Mukingo commune, and he also had influence over the Interahamwe of Nkuli commune from 1 January 1994 to July 1994.	Kajelijeli, par. 404.
37	Kajelijeli was closely associated with the new MRND and its leadership and especially from January 1994 to mid-July 1994, he was actively involved in many activities of this party in Mukingo commune and the neighbouring areas. He may as well have been a member of the MRND party.	Kajelijeli, par. 426.
38	Kajelijeli held and maintained effective control over Interahamwe from Mukingo and Nkuli communes from 6 April until at least 14 April 1994.	Kajelijeli, par. 626.
39	By 6 April 1994, Kajelijeli was actively involved in the training of the Interahamwe in Mukingo commune.	Kajelijeli, par. 400.
40	Interahamwe in Mukingo commune used distinctive uniforms and Kajelijeli participated in the distribution of these uniforms to the Interahamwe in Byangabo Market around 1993	Kajelijeli, par. 402.
47	At the Nkuli bureau communal between 5:00am and 6:00am on the morning of 7 April 1994, a Land Rover arrived from Mukamira military camp.	Kajelijeli, par. 474.
48	The Land Rover had brought Kalashnikovs, grenades and boxes of cartridges.	Kajelijeli, par. 474.
50	The weapons procured by Kajelijeli, which arrived early that morning at the Nkuli bureau communal, were used in the attack.	Kajelijeli, par. 488.
51	Augustin Habiyambere, amongst others, reported back to Kajelijeli at the end of the day on what had been achieved, and assured Kajelijeli that they had "eliminated everything."	Kajelijeli, par. 488.
52	Kajelijeli assembled members of the Interahamwe at Byangabo Market on the morning of 7 April 1994, and instructed them to "[k]ill and exterminate all those people in Rwankeri" and to "exterminate the Tutsis". He also ordered them to dress up and "start to work."	Kajelijeli, par. 531.
53	Kajelijeli participated in this attack by directing the Interahamwe from Byangabo Market towards Rwankeri cellule, to join that attack, and by acting as a liaison with Mukamira camp for military and weapons assistance.	Kajelijeli, par. 549.
55	Tutsis were attacked and killed at the home of Rudatinya. Kajelijeli ordered and supervised this attack and participated in it.	Kajelijeli, par. 555.
56	Kajelijeli was present during the attack on Munyemvano's compound in Rwankeri cellule and, in his position of authority over the Interahamwe attackers, commanded and supervised the attack.	Kajelijeli, par. 597.
60	A feast was held at Kajelijeli's bar on the evening of 7 April 1994 where the Interahamwe feasted together and sang songs after the day's killings. Kajelijeli was present during this event.	Kajelijeli, par. 708.
62	Kajelijeli played a vital role as an organizer and facilitator of the Interahamwe and other attackers in the massacre at the Ruhengeri Court of Appeal on or around 14 April 1994.	Kajelijeli, par. 625.
63	He did this by procuring weapons, rounding up the Interahamwe and facilitating their transportation to the Ruhengeri Court of Appeal by supplying them with petrol.	Kajelijeli, par. 625.

64	The Tutsis at the Ruhengeri Court of Appeal had been taken from Busengo sub-prefecture in Ndusu Commune.	Kajelijeli, par. 625.
84	Soon after in mid May, the assailants again pursued those seeking refuge from place to place.	Kayishema, par. 406.
142	Radio was the medium of mass communication with the broadest reach in Rwanda. Many people owned radios and listened to RTLM – at home, in bars, on the streets, and at the roadblocks.	Nahimana, par. 488.
143	The Interahamwe and other militia listened to RTLM and acted on the information that was broadcast by RTLM.	Nahimana, par. 488.
148	Rutaganda ordered men under his control to take fourteen detainees, including at least four Tutsis, to a deep hole located near Amgar garage and on his orders and in his presence, his men killed ten of the said detainees with machetes. The bodies of the victims were thrown into the hole.	Rutaganda, par. 261.
149	The attack on the Tutsi population occurred in various parts of Rwanda, such as in Nyanza, Nyarugenge *Commune*, Kiemesakara Sector in the Kigali Prefecture, Nyamirambo, Cyahafi, Kicukiro, Masango.	Rutaganda, par. 372.
150	Rutaganda was present at the mass grave site near the hole behind the École Technique de Muhazi and ordered the burial of bodies. Rutaganda ordered the burial of bodies in order to conceal the dead from foreigners.	Rutaganda, paras. 346, 353, 356.
151	There were meetings held to organise and encourage the targeting and killings of the Tutsi civilian population as such and not as "RPF Infiltrators."	Rutaganda, par. 371.
152	This organisation and encouragement took the form of radio broadcasts calling for the apprehension of Tutsi, the use of mobile announcement units to spread propaganda messages about the *Inkontanyi,* the distribution of weapons to the *Interahamwe* militia, the erection of roadblocks manned by soldiers and members of the *Interahamwe* to facilitate the identification, separation and subsequent killing of Tutsi civilians, and the house to house searches conducted to apprehend Tutsis.	Rutaganda, par. 371.