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12 December 2005  
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UNITED NATIONS  
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**International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda**

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**APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding Judge

**Registrar:** Mr. Adama Dieng

**Date Filed:** 9 December 2005

ICTR Appeals Chamber

Date: 12 December 2005

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**The PROSECUTOR**

v.

**Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA**

**Case No. ICTR-98-44-T**

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**PROSECUTOR'S INTERLOCUTORY APPEAL  
OF DECISION ON JUDICIAL NOTICE (Rule 73 (C))**

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*For the Prosecutor:*

Mr. Hassan Bubacar Jallow  
Mr. James Stewart  
Mr. Don Webster  
Mr. Gregory Lombardi

*For the Accused:*

Ms. Dior Diagne and Mr. Moussa Félix Sow for Édouard Karemera  
Ms. Chantal Hounkpatin and Mr. Frédéric Weyl for Mathieu Ngirumpatse  
Mr. Peter Robinson for Joseph Nzirorera

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## PART I—STATEMENT OF THE CASE ON APPEAL

### A. Issues on Appeal

1. The Prosecutor (hereinafter, “the Appellant”) hereby appeals to the Appeals Chamber, in accordance with Rule 73 (C) of the Rules of Procedure and Evidence, against the *Decision on Prosecution Motion for Judicial Notice*, rendered by Trial Chamber III on 9 November 2005 (hereinafter, “the impugned Decision”).<sup>1</sup> Trial Chamber III granted the Appellant certification to appeal against the impugned Decision in its *Certification of Appeal concerning Judicial Notice*, which was dated and filed on 2 December 2005 (hereinafter, “the Certification”).
2. This interlocutory appeal raises several significant issues, but the question of central importance is this: At what point is a Trial Chamber of the International Criminal Tribunal for Rwanda, which was established by Resolution of the Security Council for the prosecution of persons responsible for genocide and other serious violations of international law,<sup>2</sup> permitted to conclude, in accordance with Rule 94 (A), that it need not require proof that genocide was committed against the Tutsi as an ethnic group in Rwanda between 6 April and 17 July 1994, because it is a notorious fact of common knowledge? For the reasons that will be developed below, no Trial Chamber at this Tribunal should any longer require proof that genocide occurred, as just described. A fundamental error of the Trial Chamber in this case was its failure to recognize this, and to apply Rule 94 (A) correctly.
3. Pursuant to the Certification, this interlocutory appeal, against the aspects of the impugned Decision that are identified below, relies upon the following grounds:
  - The refusal to take judicial notice, as facts of common knowledge, of four facts, namely, facts 1, 2, 5, and 6 appearing in Annex A to this appeal, in respect of

<sup>1</sup> This brief is filed in accordance with the page-limit established in the Practice Direction on the Length of Briefs and Motions on Appeal, dated 16 September 2002, § I.C.2.d.(1). See also *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-AR73 & ICTR-98-41-AR73(B), Decision on Interlocutory Appeal of Decision on Witness Protection Orders, 6 October 2005, para. 39.

<sup>2</sup> See Security Council Resolution 955 (1994).

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which the Prosecutor sought judicial notice, pursuant to Rule 94 (A), is an error of law, invalidating the impugned Decision,<sup>3</sup> in particular:

- The Trial Chamber erred in law, in relation to fact 6, by failing to recognize that it was a fact of common knowledge, of which it was obliged to take judicial notice, pursuant to Rule 94 (A), that, between 6 April and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group;<sup>4</sup>
  - The Trial Chamber erred in law when it declined to take judicial notice of fact 6 on the ground that "it does not matter whether genocide occurred in Rwanda or not...."<sup>5</sup>
  - The Trial Chamber erred in law when it declined to take judicial notice of fact 6 on the ground that this would lessen the Prosecutor's burden of proof of the guilt of the Accused at trial;<sup>6</sup>
  - The Trial Chamber erred in law when it failed to take judicial notice of facts 1, 2, and 5, which the Appeals Chamber has already held to be facts of common knowledge;<sup>7</sup>
  - The Trial Chamber erred in law when it declined to take judicial notice of facts 2 and 5 on the ground that these were legal conclusions.<sup>8</sup>
- The refusal to take judicial notice, as adjudicated facts, of 147 facts, which are included in Annex B to this appeal, in respect of which the Prosecutor sought judicial notice, pursuant to Rule 94 (B), was either an error of law, with respect to the legal criteria that should govern the exercise of the Trial Chamber's discretion, thus invalidating the impugned Decision, or an error of fact affecting the basis for the exercise of discretion, thus invalidating the impugned Decision, as follows:
    - The Trial Chamber erred in law in refusing to take judicial notice of facts 1-30, 33-74, 79-85 and 111-152, inclusive, on the basis that "most of these facts may go directly or indirectly to the guilt of the Accused, notably in relation with the pleading of their participation in a joint criminal

<sup>3</sup> The Trial Chamber *did* take judicial notice of facts 3 and 4, which also appear in Annex A to this appeal (see paragraph 10, and Disposition II, of the impugned Decision), and these two facts are not in issue in this appeal. The Trial Chamber also took judicial notice of a form of fact 1 (see paragraph 8, and Disposition I, of the impugned Decision), relating to protected groups in Rwanda, but the Prosecutor has sought and received certification to appeal against this aspect of the impugned Decision, in order to seek judicial notice of fact 1 in the form in which it was submitted to the Trial Chamber by the Prosecutor.

<sup>4</sup> See paragraphs 6 and 7, and Disposition III, of the impugned Decision.

<sup>5</sup> See paragraph 7 of the impugned Decision.

<sup>6</sup> See paragraph 7 of the impugned Decision.

<sup>7</sup> See paragraphs 8, 9, and 11, and Dispositions I and III, of the impugned Decision.

<sup>8</sup> See paragraphs 9 and 11, and Disposition III, of the impugned Decision.

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enterprise," which the Appellant submits is an over-broad interpretation of principle that is at odds with the object and purpose of the law;<sup>9</sup>

- o The Trial Chamber erred in law in refusing to take judicial notice of facts 86-110, inclusive, on the ground that they were taken out of context, when the requirement is, not that facts be stated in context, but that they be distinct, concrete, and identifiable;<sup>10</sup>
- o The Trial Chamber erred in fact in exercising its discretion to refuse to take judicial notice of facts 86-110, inclusive, on the patently incorrect ground that they were not facts that had been adjudicated.<sup>11</sup>

4. Fact 153, which is included in Annex B to this appeal, was presented as an alternative to fact 6, which appears in Annex A. In other words, if the Trial Chamber declined to take judicial notice that genocide was committed against the Tutsi as an ethnic group in Rwanda between 6 April and 17 July 1994, as a fact of common knowledge, then the Prosecutor sought to have judicial notice taken of this fact, as an adjudicated fact. The Appellant submits that the Appeals Chamber should take judicial notice of the fact of genocide, as described, within the scope of Rule 94 (A), but does not abandon the position advanced, in the alternative, before the Trial Chamber.<sup>12</sup>

5. The Trial Chamber also declined to take judicial notice of facts 31-32 and 75-78, inclusive,<sup>13</sup> which also appear in Annex B, but the Appellant is not appealing these aspects of the impugned Decision.

6. With respect to the four facts falling within the scope of Rule 94 (A), the Appellant asks the Appeals Chamber to reverse the impugned Decision and to take judicial notice of the facts in question as facts of common knowledge. Rule 94 (A) is mandatory and does not involve the exercise of the Trial Chamber's discretion (except to the limited degree involved in assessing what facts constitute facts of common

<sup>9</sup> See paragraph 15, in particular, and Disposition III, of the impugned Decision.

<sup>10</sup> See paragraph 15, in particular, and Disposition III, of the impugned Decision.

<sup>11</sup> See paragraph 15, in particular, and Disposition III, of the impugned Decision.

<sup>12</sup> See *Motion for Judicial Notice of Facts of Common Knowledge and Adjudicated Facts*, dated and filed on 30 June 2005, [the original Motion], para. 3 and relief sought.

<sup>13</sup> The Trial Chamber refused to take judicial notice of Facts 31 and 32 because the Prosecutor had already adduced evidence on them at trial (see paragraph 15 of the impugned Decision). The Appellant can only note that he sought judicial notice in June before the Trial commenced but the Trial Chamber did not decide the motion until 9 November 2005, by which time the trial had begun. Facts 75-78 are taken from the *Ndindabahizi* Trial Judgement, which is currently under appeal.

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knowledge). The Appeals Chamber is perfectly placed to take judicial notice of these facts.

7. With respect to the 147 facts falling within the scope of Rule 94 (B), the Appellant asks the Appeals Chamber to reverse the impugned Decision and to remand to the Trial Chamber to decide the motion again in accordance with the correct criteria, and with whatever guidance the Appeals Chamber deems appropriate to provide. Rule 94 (B) does involve the exercise of discretion by the Trial Chamber, which is best placed to determine the issue in the context of the trial, in accordance with the correct legal criteria and on the basis of correct factual conclusions.

#### B. Factual background

8. Only a brief factual recital is necessary, to provide some context for the issues arising in this interlocutory appeal. In this case, the Indictment alleges, in summary, that the Accused, Édouard KAREMERA, Mathieu NGIRUMPATSE, and Joseph NZIRORERA, who are presumed to be innocent of the crimes, with which they are charged, until the Prosecutor proves their guilt beyond a reasonable doubt, participated in a joint criminal enterprise, the purpose of which was the destruction of the Tutsi population in Rwanda, through the commission of crimes in violation of Articles 2, 3, and 4 of the Statute of the Tribunal.<sup>14</sup>

9. It is alleged that the Accused participated in the joint criminal enterprise, over the relevant period of time, with military authorities, political authorities at the national and regional level, influential businessmen, members of an organization known as the *Akazu*, political party leaders affiliated with so-called "Hutu Power" extremism, and leaders of the *Interahamwe* and other political party "youth wing" militias and of the "civil defence" program.

<sup>14</sup> The Indictment in this case charges the three Accused with Conspiracy To Commit Genocide, Direct and Public Incitement To Genocide, Genocide, Complicity In Genocide, Rape, as a Crime against Humanity, Extermination, as a Crime Against Humanity, and Murder and Causing Violence to Health and Physical or Mental Well-Being, as Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II.

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10. According to what is alleged, the Accused participated, in summary, by creating and organizing the *Interahamwe*; recruiting members for the *Interahamwe*; providing weapons, military training, and indoctrination to the *Interahamwe*; purchasing and distributing weapons to armed militias, particularly the *Interahamwe*; organizing and participating in rallies and public meetings that promoted the ideology of "Hutu Power"; making public statements and engaging in public displays that supported anti-Tutsi ideology; attempting to legitimize the Interim Government internationally; manipulating press reports of the genocide; leading propaganda efforts to accelerate the genocide; publicly characterizing the Tutsi as "accomplices of the enemy", or publicly acquiescing to such characterizations; organizing and participating in meetings of the MRND for such purposes; inciting or aiding and abetting killings of Tutsi; rewarding or praising persons who killed Tutsi; participating in the formulation and implementation of the policies of the Interim Government of 8 April 1994 that were directed to those ends; and mobilizing the physical and logistical resources of their respective political parties, the Interim Government ministries controlled by those parties, and the military, to achieve the destruction of the Tutsi ethnic group. The Accused were all highly placed and influential figures in the MRND party.

11. The procedural background to this appeal may be briefly summed up. On 30 June 2005, the Appellant moved the Trial Chamber to take judicial notice of six facts of common knowledge and 153 adjudicated facts, the last of which was sought in the alternative.<sup>15</sup> On 9 November 2005, after receiving written submissions from the Accused, the Trial Chamber issued the impugned Decision.<sup>16</sup> It took judicial notice of three facts of common knowledge, although one of these was in a form different than that requested by the Prosecutor. It denied the remainder of the motion. The Prosecutor

<sup>15</sup> These facts are set out in Annex A and Annex B to the original motion, respectively, and are reproduced in Annexes A and B to this appeal. See original Motion.

<sup>16</sup> See Joseph Nzirorera's Partial Response to Motion for Judicial notice and Request for Extension of Time, 4 July 2005; Requête de M. Mathieu Ndirumpatsé en extension de délai de réponse à la Prosecutor's Motion for Judicial Notice of Facts, 5 July 2005; Joseph Nzirorera's First Supplemental Response To Motion For Judicial Notice, 14 July 2005; Mémoire de M. Mathieu Ndirumpatsé sur la Prosecutor's Motion For Judicial Notice Of Facts Of Common Knowledge And Adjudicate Facts, 15 August 2005; Joseph Nzirorera's Second Supplemental Response To Motion For Judicial Notice, 7 November 2005. See, ultimately, the Trial Chamber's *Decision on Prosecution Motion for Judicial Notice*, 9 November 2005.

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sought certification to appeal and this was granted on 2 December 2005, over Defence objections.<sup>17</sup> The Prosecutor now appeals.

## PART II—APPELLANT'S ISSUES

### A. Applicable Standard of Appellate Review

12. Where the Appeals Chamber is persuaded that a Trial Chamber has committed an error of law, it may intervene to correct it and determine the matter afresh.<sup>18</sup> While an appellant cannot simply repeat on appeal arguments that did not succeed at trial, this is not objectionable where the appellant can demonstrate that rejecting them constituted such an error as to warrant the intervention of the Appeals Chamber.<sup>19</sup> These propositions apply particularly with respect to the errors of law committed by the Trial Chamber in this case, in refusing to take judicial notice of facts of common knowledge, as Rule 94 (A) required it to do. They also apply, in relation to the errors of law pertaining to the Trial Chamber's exercise of discretion to refuse to take judicial notice of facts, as adjudicated facts, under Rule 94 (B).

13. Where the appeal is against a decision involving an exercise of discretion by the Trial Chamber, the issue for the Appeals Chamber, in reviewing the exercise of discretion, is whether the Trial Chamber exercised its discretion reasonably in reaching its decision, not whether the Appeals Chamber agrees with the Trial Chamber's conclusion. So, for example, a Trial Chamber's exercise of discretion will be overturned on appeal, if its decision was based on an incorrect interpretation of governing law, or

<sup>17</sup> See Prosecution's Motion For Certification To Appeal Trial Chamber's Decision On Prosecution Motion For Judicial Notice Of Facts Of Common Knowledge And Adjudicated Facts Dated 9 November 2005, 15 November 2005; Joseph Nzirorera's Response To Application For Certification To Appeal Decision On Judicial Notice And Motion For Reconsideration, 18 November 2005; Prosecution Reply To Joseph Nzirorera's Response To Application To Appeal Decision On Judicial Notice And Motion For Reconsideration, 21 November 2005; Mémoire de M. Mathieu Ndirumpatsé sur la Application For Certification To Appeal On Judicial Notice Of Facts Of Common Knowledge And Adjudicated Facts, 22 November 2005; Prosecutor's Reply To Mémoire De M. Mathieu Ndirumpatsé sur la Application For Certification To Appeal On Judicial Notice Of Facts Of Common Knowledge And Adjudicated Facts, 24 November 2005; Duplique de M. Mathieu Ndirumpatsé sur la Prosecutors Application For Certification Appeal On Judicial Notice Of Facts Of Common Knowledge And Adjudicated Facts, 1 December 2005. See too *Certification of Appeal Concerning Judicial Notice*, 2 December 2005.

<sup>18</sup> See *Prosecutor v. Kamuhanda*, Case No. ICTR-99-54A-A, Judgement, 19 September 2005, para. 6, and citations in the footnote thereto.

<sup>19</sup> *Id.*, para. 8.

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based on a patently incorrect conclusion of fact.<sup>20</sup> This submission applies with particular force to the errors of law or fact, as the case may be, committed by the Trial Chamber in its exercise of discretion to refuse to take judicial notice of facts, as adjudicated facts, pursuant to Rule 94 (B).

**B. Judicial Notice of Genocide in Rwanda (fact 6)**

14. First, the fact that genocide was committed against the Tutsi as an ethnic group in Rwanda, between 6 April and 17 July 1994, is of such notoriety that it must be taken as a fact of common knowledge. Rule 94 (A) provides that “[a] Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.” It was therefore a fundamental error of law for the Trial Chamber to reject the Appellant’s argument in support of judicial notice of fact 6, pertaining to the genocide in Rwanda. (At the very least, given the long line of jurisprudence on the matter at this Tribunal, the fact should have been accepted as an adjudicated fact, within the meaning of Rule 94 (B).) The issue here, at its simplest expression, is this: When is a Trial Chamber allowed to know what the world knows, namely, the fact of genocide against the Tutsi ethnic group in Rwanda in the period 6 April to 17 July 1994?

15. Secondly, contrary to the view expressed by the Trial Chamber, it *does* matter whether genocide occurred in Rwanda.<sup>21</sup> The approach of the Trial Chamber in this case, on this matter, is inconsistent with the approach that has been taken in all of the other cases that have been tried before the Tribunal. The genocide is a significant contextual fact. The Prosecutor must still prove the individual criminal responsibility of the Accused for genocide beyond a reasonable doubt, but the context in which the Accused acted is both relevant and important to the case against them.

16. Thirdly, taking judicial notice of the genocide is in no way unfair to the Accused. It does not compromise their ability to make full answer and defence to the charges of genocide and other crimes against them. First of all, the fact of genocide, at this stage in the Tribunal’s history, is not subject to reasonable dispute. Secondly, contrary to the

<sup>20</sup> See *Bagosora et al. Decision on Interlocutory Appeals of Decision on Witness Protection Orders*, 6 October 2005 (AC), para. 3.

<sup>21</sup> See paragraph 7 of the impugned Decision.

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view of the Trial Chamber, taking judicial notice of genocide would not lessen the burden of proof on the Prosecutor to establish the guilt of the Accused at trial beyond a reasonable doubt.<sup>22</sup> The Prosecutor must still prove, in relation to each of the Accused, that he did any one or more of the prohibited acts, with the specific intent to commit genocide.<sup>23</sup> In other words, the genocide must still be brought home to each one of the Accused.

17. The submissions that now follow are in support of the three grounds of appeal just articulated above.

18. Rule 94 (A), as noted above, provides that "[a] Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof." Unlike Rule 94 (B), which leaves the decision to take judicial notice to the discretion of the Trial Chamber, Rule 94(A) *requires* the Trial Chamber to take judicial notice of facts falling within its scope, as facts of common knowledge.<sup>24</sup>

19. Facts are deemed to be "of common knowledge", if they are "so notorious, or clearly established or susceptible to determination by reference to readily obtainable and authoritative sources that evidence of their existence is unnecessary."<sup>25</sup> They include commonly accepted or universally known facts, such as general facts of history or geography, or the laws of nature.<sup>26</sup> They also include facts either generally known within the territorial jurisdiction of a court, or capable of accurate and ready determination by resort to sources, the accuracy of which cannot reasonably be called into question.<sup>27</sup> Within the area of its territorial jurisdiction and within the sphere of its specialised competence, a court may take judicial notice of an even wider scope of facts

<sup>22</sup> See paragraph 7 of the impugned Decision. This view of the Trial Chamber would also appear to be inconsistent with its view, earlier expressed, that whether genocide occurred in Rwanda, or not, was irrelevant.

<sup>23</sup> See Articles 2 and 6 of the ICTR Statute.

<sup>24</sup> *Prosecutor v. Semanza*, ICTR-97-20-A, Judgement, 20 May 2005, para. 194, quoting *Prosecutor v. Milošević*, 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 Adjudicative Facts, 28 October 2003, p. 3, [*Milošević* Decision].

<sup>25</sup> *Prosecutor v. Semanza*, Case No. ICTR-97-20-T, Decision on the Prosecutor's Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, 3 November 2000, [*Semanza* Decision], para. 25.

<sup>26</sup> *Semanza* Appeals Judgement, *supra*, para. 194.

<sup>27</sup> *Semanza* Decision, *supra*, para. 24.

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of common knowledge and notorious history.<sup>28</sup> Thus, a Trial Chamber of the Tribunal must take judicial notice of facts that are notoriously known, in relation to Rwanda. They are matters within its peculiar competence, given the very nature of the Tribunal.

20. A Trial Chamber's ability to take judicial notice of a particular fact does not depend on any agreement between the parties. A party's contention that a fact is not a fact of common knowledge, "cannot rob the Chamber of its discretion to take judicial notice of those facts not subject to dispute among reasonable persons."<sup>29</sup> The key consideration is whether, or not, the facts are subject to *reasonable* dispute.

21. Once judicial notice has been taken of a fact, under Rule 94 (A), as one of common knowledge, then it is conclusively established and cannot be challenged during the trial.<sup>30</sup>

22. The fact that genocide occurred in Rwanda is demonstrable by recourse to a number of sources, including United Nations reports,<sup>31</sup> reports of other international institutions<sup>32</sup> and governments,<sup>33</sup> books,<sup>34</sup> decisions in national jurisdictions,<sup>35</sup> and

<sup>28</sup> *Id.*, para. 30.

<sup>29</sup> *Semanza Appeals Judgement*, *supra*, para. 194.

<sup>30</sup> *Semanza Decision*, *supra*, para. 41.

<sup>31</sup> See, e.g., Preliminary Report of the Commission of Experts established pursuant to Security Council Resolution 935 (1994); Final Report of the Commission of Experts established pursuant to Security Council Resolution 935 (9 December 1994); Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission of Human Rights, under paragraph 20 of Commission Resolution E/CN.4/S-31 of 25 May 1994, E/CN.4/1995/7, 28 June 1994; Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission of Human Rights, under paragraph 20 of Commission Resolution E/CN.4/S-31 of 25 May 1994, E/CN.4/1995/7, 12 August 1994; Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission of Human Rights, under paragraph 20 of Commission Resolution E/CN.4/S-31 of 25 May 1994, E/CN.4/1995/7, 11 November 1994.

<sup>32</sup> See, e.g., OAU Special Report of the International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events, 7 July 2000 available at <http://www.oau-oua.org>.

<sup>33</sup> See, e.g., Enquête sur la tragédie rwandaise (1990-1994), Tome I, Rapport d'information, Assemblée Nationale (France), 15 December 1998.

<sup>34</sup> See, e.g., Alison Des Forges, "Leave None to Tell the Story: Genocide in Rwanda" (Human Rights Watch, March 1999); Jean-Paul Gouteux, "La Nuit Rwandaise: L'implication française dans le dernier génocide du siècle" (Éditions Izuba, 2002); Jean-Pierre Chrétien, "L'Afrique des Grand Lacs: Deux mille ans d'histoire" (Aubier, Paris, 2000); Gérard Prunier, "Rwanda: le génocide" (Éditions Dagorno, 1997).

<sup>35</sup> See, e.g., *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, 28 June 2005, par. 8 ("There is no doubt that genocide and crimes against humanity were committed in Rwanda between April 7 and mid-July 1994."). This is a decision from the Supreme Court of Canada, the country's highest court.

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newspaper accounts.<sup>36</sup> But perhaps the most persuasive source is the Tribunal's own jurisprudence. In every case in which an accused has been convicted following a trial, the Trial Chamber has found that genocide occurred in Rwanda, either generally throughout the whole of the country, or in a particular geographic area in Rwanda.

23. In *Akayesu*, the Trial Chamber made a specific finding that genocide occurred in Rwanda prior to considering the guilt of the Accused.<sup>37</sup> In *Kayishema and Ruzindana*, the Trial Chamber concluded that genocide had occurred in Rwanda between April and July 1994.<sup>38</sup> In *Niyitegeka*, the accused had specifically denied the existence of genocide, but the Trial Chamber found that "there was a genocide in Rwanda at the time, when massacres were committed by Hutu against the Tutsi."<sup>39</sup> The Trial Chamber noted that because "there is overwhelming evidence of massacres targeting Tutsi civilians, from both Prosecution and Defence witnesses, to adopt the Defence's position would be so contrary to the evidence as to be perverse."<sup>40</sup>

24. Furthermore, a number of cases have found that genocide occurred in a particular region of Rwanda in 1994. To date, Trial Chambers have found that genocide occurred in seven of eleven prefectures in Rwanda. While six of these cases, involving five prefectures, are still under appeal, the appellants in these cases have not contested the fact that a genocide occurred in these regions.<sup>41</sup> The cases and prefectures are, as follows:

- *Akayesu*—Taba Commune, Gitarama Prefecture;
- *Musema*—Gisovu and Gishyita Communes, Bisesero area, Kibuye Prefecture;
- *Kayishema and Ruzindana*—Kibuye Prefecture;
- *Rutaganda*—Kigali and Gitarama Prefectures;
- *Ntakirutimana*—Mugonero Complex and Bisesero Area, Kibuye Prefecture;

<sup>36</sup> See, e.g., Jeevan Vasagar, "Hutu rebels apologise for Rwanda genocide" *The Guardian* (UK), 1 April 2005.

<sup>37</sup> *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998, para. 126.

<sup>38</sup> *Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-T, Judgement and Sentence, 21 May 1999, para. 291.

<sup>39</sup> *Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-T, Judgement and Sentence, 16 May 2003, para. 396.

<sup>40</sup> *Id.*, para. 393.

<sup>41</sup> This is subject to revision, as Muhimana has not yet filed a notice of appeal.

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- *Semanza*—Bicumbi Commune, Kigali-Rural Prefecture;
- *Niyitegeka*—Gisovu, Bisesero, Kibuye Prefecture;
- *Kajelijeli*—Mukingo and Nkuli Communes, Ruhengeri Prefecture;
- *Kamuhanda*—Kigali-Rural Prefecture;
- *Gacumbitsi*—Rusumo Commune, Kibungo Prefecture;
- *Ntagerura*—Cyangugu Prefecture;
- *Nahimana*—Gisenyi, Gisenyi Prefecture;
- *Ndindabahizi*—Gitwa Hill, Kibuye Prefecture;
- *Muhimana*—Kibuye Prefecture.

25. A further indication of the indisputable nature of the fact that genocide occurred in Rwanda is the admissions of accused in prior cases.<sup>42</sup> In connection with his guilty plea, Jean Kambanda, Prime Minister in the Interim Government during the relevant period, admitted that there was a widespread and systematic attack against the civilian population of Tutsi, the purpose of which was to exterminate them. Kamuhanda, an influential public servant during the time period relevant to his trial, admitted that, between 1 January 1994 and 17 July 1994, there were throughout Rwanda widespread or systematic attacks against a population with the specific objective of extermination of the Tutsi.<sup>43</sup> Similarly, Musema, a prominent official, admitted that in 1994 widespread or systematic attacks were directed against civilians on the grounds of ethnic or racial origin. Musema testified that the massacres in 1994 were targeted and directed against Tutsi civilians, not as individuals, but as members of the group.<sup>44</sup>

26. The fact that a genocide occurred in Rwanda is also readily inferable from the facts that the Appeals Chamber has already accepted as being of common knowledge, in particular:

<sup>42</sup> The Appellant does not contend that these admissions are binding on the Accused in the instant case. They are only offered as a further indication of the undisputed nature of the fact that genocide occurred in Rwanda.

<sup>43</sup> *Prosecutor v. Kamuhanda*, Case No. ICTR-99-54A-T, Judgement and Sentence, 22 January 2004, para. 498.

<sup>44</sup> *Prosecutor v. Musema*, Case No. ICTR-96-13-T, Judgement and Sentence, 27 January 2000, para. 354.

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- The following state of affairs existed in Rwanda from 6 April 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 persons perceived to be Tutsi. As a result of these attacks, there were a large number of deaths of persons of Tutsi ethnic identity.<sup>45</sup>

These facts, which relate to the underlying *actus reus* of the crime of genocide, are the same facts that formed the basis for the conclusion in *Akayesu*,<sup>46</sup> *Kayishema*,<sup>47</sup> and *Niyitegeka*<sup>48</sup> that a genocide had occurred in Rwanda.

27. The reasoning of the Trial Chambers in these Judgements is equally applicable here. For example, the Trial Chamber in *Akayesu* considered that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against the same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, enable a Trial Chamber to infer the genocidal intent accompanying a particular act.<sup>49</sup> On this basis, the *Akayesu* Trial Chamber concluded that “[c]learly therefore, the massacres which occurred in Rwanda in 1994 had a *specific objective*, namely the extermination of the Tutsi, who were targeted especially because of their Tutsi origin....”<sup>50</sup>

28. The Appellant also observes that taking judicial notice of genocide is not unprecedented. A number of national jurisdictions have taken judicial notice of the Holocaust during World War II as a historical fact. In Canada, for example, the Court of Appeal for Ontario upheld the trial court’s decision to take judicial notice of the

<sup>45</sup> *Semanza Decision, supra*, Annex A, para. 2, confirmed on appeal in *Semanza Appeals Judgement, supra*, para. 192.

<sup>46</sup> *Akayesu Trial Judgement, supra*, paras. 114, 118, and 126.

<sup>47</sup> *Kayishema and Ruzindana Trial Judgement, supra*, paras. 290-291.

<sup>48</sup> *Niyitegeka Trial Judgement, supra*, paras. 392-296

<sup>49</sup> *Akayesu Trial Judgement, supra*, para. 523; *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, Judgement, 7 June 2001, para. 62. This reasoning was affirmed on appeal in *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-A, Judgement, 26 May 2003, para. 525.

<sup>50</sup> *Akayesu Trial Judgement, supra*, para. 125 (emphasis added).

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Holocaust in *R v. Zundel* as "a historical fact which is so notorious as not to be the subject of dispute among reasonable persons."<sup>51</sup> It is worth noting that the judicial notice in *Zundel* was restrictively defined, as the judge did not address the question of the number of Jews killed, the means by which they were killed, and the role of official government policy. The facts judicially noticed included only non-contentious, historical facts, which provided essential background to the case.<sup>52</sup>

29. The Appellant acknowledges that prior decisions have denied judicial notice requests concerning the occurrence of genocide in Rwanda.<sup>53</sup> These decisions, however, are mainly distinguishable on the ground that the Prosecutor previously sought judicial notice of a *plan* to commit genocide. In the instant case, the Appellant did not seek judicial notice of a plan to commit genocide, nor of any fact tending to prove the role of any of the Accused in the genocide. The request was confined to judicial notice that genocide occurred.

30. In *Semanza*, the Trial Chamber refused to take judicial notice of genocide on the ground that the question was "so fundamental" that evidence should be required.<sup>54</sup> This

<sup>51</sup> *R v. Zundel*, 37 OAC 354, Court of Appeal for Ontario, 5 Feb. 1990. Zundel was charged with disseminating false news after he published a pamphlet entitled *Did Six Million Really Die?*, which suggested that the Holocaust had not happened.

<sup>52</sup> Similarly, in the United States, the California Superior Court took judicial notice in a contract case, where a revisionist "think tank" reneged on its pledge to pay \$50,000 to anyone who could prove that gassings took place at Auschwitz. The court took judicial notice of the fact that Jews were gassed to death at the Auschwitz Concentration Camp in Poland during the summer of 1944, stating that "it simply is a fact that ... is not reasonably subject to dispute. And it is capable of immediate and determination by resort to sources of reasonably indisputable accuracy. It is simply a fact." *Mermelstein v. Institute for Historical Review*, No. C356 542 (Cal. Super. Ct. July 22, 1985). Analogously, Germany and France have enacted legislation to criminalize denial of the Holocaust. Section 130 of the German Criminal Code makes incitement (*Volkshverhetzung*) a punishable offense, under which Holocaust denial may be prosecuted. Also, in July 1990, the French legislature passed the Gayssot Act, which made it an offense to contest the existence of the category of crimes against humanity as defined in the London Charter of 8 August 1945, on the basis of which Nazi leaders had been tried and convicted by the International Military Tribunal at Nuremberg in 1945-1946.

<sup>53</sup> *Semanza* Decision, *supra*; *Prosecutor v. Ntakirutimana*, Case No. ICTR-96-10 and 96-17-T, Decision on the Prosecutor's Motion for Judicial Notice of Adjudicated Facts, 22 November 2001; *Prosecutor v. Kajelijeli*, Case No. ICTR-98-44A-T, Decision on the Prosecutor's Motion for Judicial Notice Pursuant to Rule 94 of the Rules, 16 April 2002; *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor's Motion for Judicial Notice and Admission of Evidence, 15 May 2002; *Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-T, Decision on Prosecutor's Motion for Judicial Notice of Facts, 4 September 2002; *Prosecutor v. Bagosora*, Case No. ICTR-98-41-T, Decision on the Prosecutor's Motion for Judicial Notice Pursuant to Rules 73, 89 and 94, 11 April 2003, Annex 1, *Bagosora* Decision.

<sup>54</sup> *Semanza* Decision, *supra*, para. 36. In *Nyiramasuhuko*, the Trial Chamber also refused to take judicial notice that "in Rwanda, between 6 April 1994 and 17 July 1994...some Rwandan citizens committed

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is not a legal basis for refusing to take judicial notice. Facts of common knowledge can often be described as referring to fundamental questions—that is part of what makes them matters of common knowledge in the first place. If a fact is of common knowledge, the Trial Chamber's preference is not a consideration, since judicial notice is not discretionary in that instance. But at the time that the Trial Chamber ruled, the Tribunal had rendered Judgements in only four cases<sup>55</sup> and the Appeals Chamber had not reviewed any of them. It is perhaps understandable that the Chamber preferred to hear evidence on this issue.<sup>56</sup>

31. At the present stage, however, over ten years into the mandate of the Tribunal, the situation is markedly different. Trial Chambers have rendered 14 Judgements—ten of which have completed the appellate process—and each has found upon review of the evidence that genocide occurred in Rwanda against the Tutsi ethnic group. There is no longer any need to hear evidence on this point—it is a fact of common knowledge.

32. Accepting that the genocide occurred will not impinge on the right of the Accused to be presumed innocent, or to make full answer and defence. The Prosecutor must still prove the connection of each individual Accused to the genocide, and demonstrate his individual criminal responsibility beyond reasonable doubt. The Trial Chamber in *Akayesu* dealt directly with this issue. After finding that genocide had occurred in Rwanda, the Trial Chamber went on to reason that “the fact that genocide was indeed committed in Rwanda in 1994 and more particularly in Taba, cannot influence it in its decisions in the present case. Its sole task is to assess the individual criminal responsibility of the accused for the crimes with which he is charged, the burden of proof being on the Prosecutor.”<sup>57</sup>

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genocide...” but the Prosecutor's request in that case was imbued with numerous legal conclusions—even appearing under the heading “Legal Findings” in the motion. The decision is distinguishable on that basis.

<sup>55</sup> *Akayesu* Trial Judgement, *supra*; *Kayishema and Ruzindana* Trial Judgement, *supra*; *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, Judgement and Sentence, 6 December 1999; *Musema* Trial Judgement, *supra*.

<sup>56</sup> As the Prosecutor did not appeal this aspect of the decision, the Appeals Chamber did not have occasion to review it in its recent Judgement.

<sup>57</sup> *Akayesu* Trial Judgement, *supra*, para. 129.

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33. Two cases demonstrate the application of this principle. In *Ntagerura et al.*, the Trial Chamber found that genocide occurred at Gashirabwoba football field in Cyanguu.<sup>58</sup> Emmanuel Bagambiki was charged, in relation to this massacre, together with his co-accused, Samuel Imanishimwe. Despite finding that genocide occurred, and despite finding Imanishimwe responsible for this crime, the Chamber acquitted Bagambiki.<sup>59</sup> While the Prosecutor is appealing this verdict, it demonstrates that a finding that genocide occurred will not, by itself, necessarily implicate an accused in genocide. The individual criminal responsibility of the accused is a separate issue.

34. Similarly, in *Bagilishema*, the Trial Chamber found that Tutsi were massacred in several places in the Bisesero region, based in part on factual findings in *Musema* and *Kayishema*, which had formed the basis for the finding that genocide occurred in Bisesero in those cases.<sup>60</sup> Nonetheless, the Trial Chamber acquitted Bagilishema. The Chamber recognized that the question was not whether the massacres had occurred, but the "role of the Accused, if any, in relation to those attacks."<sup>61</sup>

35. A final point may be made here: genocide, in the circumstances raised in this appeal, is not a legal conclusion, but a factual conclusion. It is similar to other factual conclusions recognized by the Appeals Chamber as being capable of judicial notice (see the submissions further below on the effect of the *Semanza* Appeals Judgement). Judicial notice that genocide occurred rests upon a cluster of underlying factual conclusions, for example, that perpetrators:

- acted with intent to destroy the Tutsi ethnic group, in whole or in part, as such,
- killed members of the Tutsi ethnic group, or
- caused serious bodily or mental harm to members of the group, or
- deliberately inflicted on the group conditions of life tending to bring about its physical destruction, in whole or in part.

<sup>58</sup> *Prosecutor v. Ntagerura*, Case No. 99-46-T, Judgement and Sentence, 25 February 2004, para. 689-690.

<sup>59</sup> *Id.*, at para. 642, 679.

<sup>60</sup> *Bagilishema* Trial Judgement, *supra*, para. 804.

<sup>61</sup> *Id.*

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Inferences concerning the specific intent, with which actions are done, are inferences of fact. Conclusions about the occurrence of acts, the time frame in which they were committed, the identity of the victims, the nature of the group to which they belonged, and so on, are all conclusions of fact. Such inferences or conclusions can be made from the evidence led at a trial—as they have been in every case that has been completed before this Tribunal—and, as such, they are also capable of being the subject of judicial notice. Genocide, in these circumstances, is a conclusion of fact, not law, for the purposes of the application of Rule 94 (A).

36. In the end, judicial notice relates to the manner in which facts are going to be established at trial, either by judicial notice, or through proof by evidence. Rule 94 exists to promote judicial economy, enabling the Trial Chamber to ensure that a trial is fair and expeditious.<sup>62</sup> On this matter, the Trial Chamber fairly and correctly noted, in paragraph 5 of the Certification:

The Chamber is of the view that this issue satisfies both criteria for certification. Firstly, this issue would significantly affect the expeditious conduct of the proceedings. It is clear that, if the Appeals Chamber ultimately shared the viewpoint of the Prosecution, and judicial notice was taken of the facts concerned, witness testimony could be reduced in terms of the number of witnesses called and the scope of those witnesses' testimonies. Furthermore, at the crux of Rule 94 of the Rules is the concept of judicial economy and expediency, and, as such, the scope of its application goes to the heart of the concepts of fairness and expediency. Secondly, this Chamber holds the view that an immediate resolution by the Appeals Chamber of this issue may materially advance the proceedings. The impact of an Appeals Chamber decision in the Prosecution's favour upon the Prosecution's witness list would reduce trial time and the parties would be able to focus on the salient issues in the trial. Furthermore, and with reference to the *Bagosora* Decision of 29 July 2005, the determination of this issue by the Appeals Chamber has the potential to affect the admissibility of broad categories of evidence, or crucial matters of procedure or evidence,<sup>63</sup> thereby having potential implications for the methods of proof in the case before this Chamber, as well as in other matters before this Tribunal.

While the Chamber appears to have been specifically addressing the issue of taking judicial notice of adjudicated facts in the above passage, the observations apply with equal force to judicial notice of facts of common knowledge.<sup>64</sup>

<sup>62</sup> See ICTR Statute, Articles 14 and 19 (1).

<sup>63</sup> *Prosecutor v. Bagosora et al*, Certification of Appeal Concerning Access to Protected Defence Witness Information, 29 July 2005, para. 2 [this citation appears in the Certification as footnote 1].

<sup>64</sup> See the Certification, paras. 4 and 5.

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37. For all of the foregoing reasons, the fact that, between 6 April and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group is an indisputable fact of common knowledge. What is left to be determined at trial is the personal responsibility of the Accused for the crimes, with which they are charged, in relation to the period in question. The Appeals Chamber is empowered to intervene to correct the errors of law committed by the Trial Chamber, in refusing to take judicial notice of the genocide, and to take judicial notice of fact 6.

**B. Failure to Follow the Judgement of the Appeals Chamber in *Semanza* (facts 1, 2 and 5)**

38. The Trial Chamber erred in law, with respect to the application of Rule 94 (A), when it failed to take judicial notice of facts 1, 2, and 5, which the Appeals Chamber has already held to be facts of common knowledge.<sup>65</sup> The facts in question are set out in detail in Annex A to this appeal, but, in summary, they refer, respectively, to the ethnic classification, at the relevant time in Rwanda, of Hutu, Tutsi, and Twa (fact 1); the existence of widespread or systematic attacks against a civilian population, in Rwanda during the relevant period, based on Tutsi ethnic identification, resulting in a large number of deaths of members of the group (fact 2); and the existence in Rwanda at the relevant time of an armed conflict that was not of an international character (fact 5).

39. The Trial Chamber also erred in law when it declined to take judicial notice of facts 2 and 5 on the ground that these were legal conclusions, which is contrary to the decision of the Appeals Chamber too.<sup>66</sup>

40. In its Judgement in *Semanza*, the Appeals Chamber affirmed that certain facts, of which the Trial Chamber took judicial notice in that case, are facts of common knowledge.<sup>67</sup> These include the facts now in issue, each of which is relevant to proving the charges against the Accused.

<sup>65</sup> See paragraphs 8, 9, and 11, and Dispositions I and III, of the impugned Decision.

<sup>66</sup> See paragraphs 9 and 11, and Disposition III, of the impugned Decision.

<sup>67</sup> *Semanza* Appeals Judgement, *supra*, para. 192. Facts 1–4 were also judicially noticed in the *Bagosora* Decision, *supra*.

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41. As the Appeals Chamber has considered these facts to be “notorious” facts that are beyond reasonable dispute, and since Appeals Chamber decisions are binding on Trial Chambers,<sup>68</sup> the Appellant submits that this Trial Chamber was bound to accept and follow the conclusion of the Appeals Chamber in *Semanza*. The Trial Chamber was bound to take judicial notice of facts of common knowledge. The facts in question have been so recognized by the Appeals Chamber. The Trial Chamber thus erred in law in failing to apply the decision of the Appeals Chamber to the case before it.

42. The Trial Chamber recognized that it was bound, by the terms of Rule 94 (A), to take judicial notice of facts of common knowledge, but it held that it had a discretion in defining and assessing what constitutes a fact of common knowledge.<sup>69</sup> While this may be correct, it does not explain or excuse the failure of the Trial Chamber to follow the precedent set by the Appeals Chamber, in relation to facts 1, 2, and 5, which was binding on it. The Trial Chamber held that it was not bound by any findings of previous Trial Chambers—but neglected to recognize the impact of the findings of the Appeals Chamber.<sup>70</sup>

43. While the Trial Chamber was prepared to take judicial notice of “the fact that Hutu, Tutsi, and Twa were protected groups falling with[in] the scope of the Genocide Convention of 1948,”<sup>71</sup> which was helpful, the Appellant submits that it should, in conformity with the Appeals Chamber's decision in *Semanza*, have taken judicial notice of fact 1 in the form in which it was submitted to it by the Appellant.

44. Furthermore, taking judicial notice of facts 1, 2, and 5 will not result in prejudice to the ability of the Accused to make full answer and defence, or to receive a fair trial. The Appeals Chamber specifically considered this issue in *Semanza*, and held that

these judicially noticed facts did not relieve the Prosecution of its burden of proof; they went only to the manner in which the Prosecution could discharge that burden in respect of the production of certain evidence which did not concern the acts done by the

<sup>68</sup> See *Prosecutor v. Aleksovski*, Appeals Judgement, 24 March 2000, paras. 112-113.

<sup>69</sup> See the impugned Decision, para. 5.

<sup>70</sup> See the impugned Decision, para. 6.

<sup>71</sup> See the impugned Decision, para. 8 and Disposition I.

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Appellant. When determining the Appellant's personal responsibility, the Trial Chamber relied on the facts it found on the basis of the evidence adduced at trial.<sup>72</sup>

The Appeals Chamber therefore considered that there was no prejudice to the Defence arising from judicial notice of the facts in question. The same approach should apply to the Accused here.

45. The submissions made above, on the issue of judicial economy and trial fairness, apply with the same force here.

46. Given that the Appeals Chamber has held that facts 2 and 5 are *facts of common knowledge*, it was not open to the Trial Chamber to find, as it did, that these were *legal conclusions*.<sup>73</sup>

47. In sum, the Trial Chamber committed errors of law, in refusing to take judicial notice of facts 1, 2 and 5, in the application of Rule 94 (A), which the Appeals Chamber may intervene to correct, reversing the impugned Decision and taking judicial notice of the facts in question.

**C. Failure to Take Judicial Notice of Adjudicated Facts (facts 1-30, 33-74, 79-85, 111-152, and, as an alternative to fact 6, fact 153)**

48. The Trial Chamber erred in law in refusing to take judicial notice of facts 1-30, 33-74, 79-85 and 111-152, inclusive, on the basis that "most of these facts may go directly or indirectly to the guilt of the Accused, notably in relation with the pleading of their participation in a joint criminal enterprise."<sup>74</sup> The Appellant submits that this statement represents an over-broad interpretation of principle that is at odds with the object and purpose of the law. The finding of the Trial Chamber discloses a misinterpretation of governing law, which furnishes a sound basis for the Appeals Chamber to reverse the impugned Decision, notwithstanding that it involves an exercise of the discretion conferred upon the Trial Chamber by Rule 94 (B).

<sup>72</sup> *Semanza Appeals Judgement, supra*, para. 192.

<sup>73</sup> See the impugned Decision, paras. 9 and 11. The reference in this submission is, of course, once again to the Appeals Judgement in *Semanza*.

<sup>74</sup> See paragraph 15, in particular, and Disposition III, of the impugned Decision.

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49. Rule 94(B) grants the Trial Chamber the discretion to take judicial notice of facts that have been adjudicated in other proceedings, and that relate to the matter in issue in the current proceeding.<sup>75</sup> The Rule recognizes the potential relevance of prior Tribunal decisions to the current proceeding, as well as the unique nature of the Tribunal as a specialized institution with a particular jurisdictional competence. It contemplates the development of a body of knowledge about the facts within the geographical and temporal areas of its mandate.

50. The Appellant moved the Trial Chamber to take judicial notice of 153 adjudicated facts, as set out in Annex B to this appeal. As noted earlier, 147 of these facts remain in issue, in relation to this part of the interlocutory appeal. These facts all pertain to the matter that is in issue in the trial proceeding affecting the three Accused. They were adjudicated, variously, in the ICTR cases of *Akayesu*, *Kayishema and Ruzindana*, *Rutaganda*, *Nahimana et al.*, *Kajelijeli*, *Niyitegeka*, *Musema*, *Ntakirutimana*, and *Semanza*.<sup>76</sup>

51. Judicial notice of an adjudicated fact differs in a significant respect from judicial notice of a fact of common knowledge.<sup>77</sup> By taking judicial notice of an adjudicated fact, the Trial Chamber does not establish the fact conclusively. Rather, it establishes a rebuttable presumption that it is true.<sup>78</sup> Thus, unlike facts of common knowledge, judicially noticed adjudicated facts may be challenged by the Defence during trial.

52. The principle behind the exercise by a Trial Chamber of its discretion to take judicial notice of facts, pursuant to Rule 94 (B), is judicial economy. In the instant case, the trial of the Accused is a complex one, involving the proof of many different facts, relating to various crimes perpetrated throughout Rwanda. Taking judicial notice of

<sup>75</sup> *Milošević Decision*, *supra*, p. 2 and 3; *Bagosora Decision*, *supra*, para. 28.

<sup>76</sup> As noted earlier, facts adjudicated in *Ndindabahizi* are no longer being pursued by the Appellant in this appeal.

<sup>77</sup> So much so, that Judge Shahabuddeen suggests that the term must "bear different meanings" in 94(A) and 94(B) in an exception to the traditional rule of statutory interpretation: *Prosecutor v. Milošević*, IT-02-54-AR73.5, Separate Opinion of Judge Shahabuddeen appended to the Appeals Chamber's Decision dated 28 October 2003 on the Prosecution's Interlocutory Appeal Against the Trial Chamber's 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicative Facts, 31 October 2003, para. 9 [Separate Opinion of Judge Shahabuddeen].

<sup>78</sup> *Milošević Decision*, *supra*, p. 3.

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adjudicated facts will expedite the trial of this case "by substituting a shorter form of evidence for the normal but more time-consuming form...."<sup>79</sup> This is the very situation where judicial notice can be put to its best use.

53. To protect the rights of the accused, a Trial Chamber must satisfy itself that an adjudicated fact meets certain criteria, before it can take judicial notice of it. The relevant factors include the following considerations:

- (i) The fact must be distinct, concrete and identifiable;
- (ii) The fact must represent the factual findings of a Trial Chamber or the Appeals Chamber, which means that it must not include legal findings or characterizations, and it must not be based on a plea agreement or facts voluntarily admitted in a previous case;
- (iii) The fact must be "truly adjudicated", which means that the fact itself either has not been contested on appeal, or has been finally settled on appeal;
- (iv) The fact must be in the same, or substantially similar form, as it was expressed by the Trial or Appeals Chamber;
- (v) The fact must not attest, either directly or indirectly, to the criminal responsibility of the accused.<sup>80</sup>

54. One Judge of the Appeals Chamber has further elaborated on the third criterion above, in *Milošević*. According to the opinion of Judge Shahabuddeen, it is no longer necessary that a case be settled on appeal, before an adjudicated fact can be judicially noticed. It is sufficient that the fact to be noticed has not been challenged on appeal.<sup>81</sup>

55. The facts in issue here met the test outlined above. They are distinct. They are factual and not legal. None were made in judgements based on guilty pleas or admissions voluntarily made by an accused during the proceedings. All are facts that have been "truly adjudicated", in that they derive from judgements that are no longer subject to appeal or, as in the case of *Nahimana et al.*, have not been contested on appeal. They are stated in substantially the same form as in the Trial Judgements from which they are

<sup>79</sup> Separate Opinion of Judge Shahabuddeen, *supra*, para. 35.

<sup>80</sup> *Prosecutor v. Blagojević et al.*, Case No. IT-02-60-T, Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 19 December 2003, para. 16.

<sup>81</sup> Separate Opinion of Judge Shahabuddeen, *supra*, para. 34.

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drawn. Finally, none of these facts attest to the criminal responsibility of the individual Accused in this case.

56. The facts are all relevant to matters at issue in this case:

- The facts from the Judgements in *Kayishema and Ruzindana*, *Rutaganda*, *Kajelijeli*, *Nahimana*, *Niyitegeka*, and *Semanza* are relevant, because they concern the acts of participants in the joint criminal enterprise, as alleged in paragraph 6 of the Indictment;
- Facts 1 to 30 are relevant to rape and sexual violence alleged in paragraphs 66 to 70 of the Indictment;
- Facts 33 to 35 are relevant to events in Mukingo Commune, as alleged in paragraphs 62.1 to 62.12 of the Indictment;
- Facts 36 to 40 are relevant to the issue of control over and training of the *Interahamwe* in Mukingo Commune, as alleged in paragraphs 62.2 to 62.12 of the Indictment;
- Facts 41 to 48 are relevant to the issue of planning the killing of Tutsi in Mukingo and Nkuli Communes, as alleged in paragraph 62.8 of the Indictment;
- Facts 49 to 57 are relevant to killings in Mukingo and Nkuli Communes, as alleged in paragraph 62.9 of the Indictment;
- Facts 58 to 60 are relevant to the massacre at Busogo Parish, as alleged in paragraph 62.10 of the Indictment;
- Facts 61 to 64 are relevant to the massacre at the Ruhengeri Court of Appeal, as alleged in paragraph 62.11 and 62.12 of the Indictment;
- Facts 65 to 68 are relevant to the killing of Tutsi individuals throughout Rwanda and to the involvement of officials in the territorial administration in the killing, as alleged in paragraphs 36, 41 and 65 of the Indictment;
- Facts 69 to 74 are relevant to the massacres in the Bisesero Hills, alleged in paragraphs 54, 60, 64.1, 64.2 and 64.3 of the Indictment;
- Facts 79 to 84 are relevant to the meeting of 3 May 1994, as alleged in paragraph 33.1 and 52 of the Indictment;



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namely, that “[g]enocide was committed in Rwanda in 1994 against the Tutsi as a group.”<sup>83</sup> As discussed above, this finding of fact was also made in the cases of *Kayishema and Ruzindana*<sup>84</sup> and *Niyitegeka*.<sup>85</sup>

59. The doctrine of judicial notice serves two purposes: judicial economy and consistency of case law.<sup>86</sup> Judicial notice is a mechanism that fosters judicial efficiency and consistency, by permitting parties to dispense with the obligation of presenting formal proof of facts.<sup>87</sup> Taking judicial notice of the facts in Annex B<sup>88</sup> would not only promote judicial economy in the present case, but would ensure consistency in Judgements in the Tribunal as a whole, as all of the cases before the Trial Chambers arise out of the same contextual setting and conditions in Rwanda in 1994.

60. This is particularly true, with respect to fact 153. It is inconsistent for the Trial Chamber not to conclude that a genocide was committed in Rwanda in 1994 against the Tutsi as a group, when every other Trial Chamber called upon to make a factual finding on this issue, on the basis of the evidence, has concluded that a genocide was committed.

61. As mentioned at the outset of this section of the Appellant’s submissions, the Trial Chamber refused to take judicial notice of facts 1-30, 33-74, 79-85 and 111-152, inclusive, on the basis that “most of these facts may go directly or indirectly to the guilt of the Accused, notably in relation with the pleading of their participation in a joint criminal enterprise.”<sup>89</sup> With respect to the proof that the Accused participated in a joint criminal enterprise, it must first be established that there existed a joint criminal enterprise at the relevant time. Taking judicial notice of facts adjudicated in other proceedings before the Tribunal, from which the existence of a joint criminal enterprise may be inferred, does not relieve the Prosecutor of its burden of proving that the Accused adhered to the joint criminal enterprise during the relevant time period, and did acts to further the achievement of its objectives in conjunction with other members of it.

<sup>83</sup> *Akayesu* Trial Judgement, *supra*, para. 126.

<sup>84</sup> *Kayishema*, Trial Judgement, *supra*, para. 291.

<sup>85</sup> *Niyitegeka*, Trial Judgement, *supra*, para. 396.

<sup>86</sup> *Semanza* Decision, *supra*, para. 20.

<sup>87</sup> *Bagosora* Decision, *supra*, para. 43.

<sup>88</sup> Apart from facts 31-32 and 75-78, which are not the subjects of this interlocutory appeal.

<sup>89</sup> See paragraph 15, in particular, and Disposition III, of the impugned Decision.

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62. If the applicable test is to be whether or not the facts may go directly or indirectly to the guilt of the accused, then no adjudicated fact could be the subject of judicial notice, under Rule 94 (B), since presumably every fact the Prosecutor seeks to establish has some bearing, directly or indirectly, however remotely, on the guilt of the accused.<sup>90</sup>

63. How broadly should the test for the exercise of discretion to take judicial notice of adjudicated facts, in Rule 94 (B), be interpreted? It is submitted that the formulation of the Trial Chamber is too broad, and would to serve to make judicial notice, under Rule 94 (B), practically moot. The appropriate criterion, among others, as outlined above, is whether, or not, the fact attests, either directly or indirectly, to the criminal responsibility of the accused; if it does, then it may not be noticed judicially.<sup>91</sup> Here, however, proof, either by evidence or judicial notice, of the existence of a joint criminal enterprise is not proof of the criminal responsibility of the Accused, who must still be shown to have participated in it. The Trial Chamber, it is submitted, has misinterpreted the law governing the exercise of its discretion to take judicial notice of adjudicated facts, and the Appeals Chamber may intervene to correct the error and reverse the impugned Decision.

64. The Trial Chamber also erred in law in refusing to take judicial notice of facts 86-110 on the ground that they were taken out of context.<sup>92</sup> There is no requirement that facts to be judicially noticed be placed within a context. Rather, they must be "distinct, concrete and identifiable."<sup>93</sup> The facts in question met this test. Once again, the Trial Chamber has misinterpreted the law governing the exercise of its discretion, and the Appeals Chamber may intervene to correct the error and reverse the impugned Decision.

65. Finally, the Trial Chamber erred in fact in exercising its discretion to refuse to take judicial notice of facts 86-110, inclusive, on the patently incorrect ground that they were not facts that had been adjudicated.<sup>94</sup> In this case, since the basis for the exercise of discretion by the Trial Chamber is factually flawed, the Appeals Chamber may intervene to reverse the impugned Decision.

<sup>90</sup> See, for example, the *Milošević* Decision, *supra*.

<sup>91</sup> *Prosecutor v. Blagojević*, Case No. IT-02-60-T, Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 19 December 2003, [*Blagojević* Decision], para. 16.

<sup>92</sup> See paragraph 15, in particular, and Disposition III, of the impugned Decision.

<sup>93</sup> *Blagojević* Decision, para. 16.

<sup>94</sup> See paragraph 15, in particular, and Disposition III, of the impugned Decision.

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66. In his original Motion, the Appellant described the painstaking process that he engaged in, to draw up the adjudicated facts, of which he sought judicial notice.

The Prosecution compiled the facts in Annex B in the following way: For each paragraph in a Judgement, in which the Trial Chamber made a relevant factual finding, counsel copied the text of the whole paragraph verbatim. He then removed all sentences in those paragraphs that were not factual findings. From the factual findings themselves, he removed introductory phrases such as "The Trial Chamber finds..." and all references to a witness's name, substituting the word "man" or "woman", as appropriate. Where the resulting findings consisted of more than two sentences, he listed them separately, with the appropriate reference to the paragraph in the relevant Judgement. On a very few occasions, he inserted a noun in place of a pronoun, where the identity of a person or place was unclear, when the fact was stated in isolation (see, e.g., fact 150).<sup>95</sup>

The Prosecutor was well aware that in motions before other Trial Chambers in other proceedings facts that were stated with less than the necessary precision were rejected, and judicial notice was not taken of them as adjudicated facts.<sup>96</sup>

67. If the form of the adjudicated facts sought to be judicially noticed (see Annex B) is compared to the textual source in the relevant Judgements, it will be readily apparent that the Appellant did not "build new facts" that had not been adjudicated.<sup>97</sup> A few examples, presented in the following table, will suffice to make the point.<sup>98</sup>

Source	Paragraph from Judgement	Fact sought to be judicially noticed
Niyitegeka, para. 205	Judicial notice was taken of the fact that on 14 May, a large-scale attack took place at Muyira Hill against Tutsi refugees. Based on the totality of the evidence, the Chamber finds that on the morning of 14 May, the Accused and others, together with attackers, arrived at Muyira Hill and parked their vehicles at Kucyapa. The attackers comprised civilians, soldiers, Interahamwe, gendarmes and communal policemen. They were carrying guns, spears, clubs, machetes and sharpened objects, and launched a large-scale attack against the Tutsi refugees at Muyira Hill. The Accused was armed with a gun and shot at Tutsi refugees at Muyira Hill.	105. On the morning of 14 May, Niyitegeka and others, together with attackers, arrived at Muyira Hill and parked their vehicles at Kucyapa. 106. The attackers comprised civilians, soldiers, Interahamwe, gendarmes and communal policemen. 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.
Ntakirutimana, para. 635	There is evidence of numerous attacks occurring over a period of time in the hills of Bissero. As will be seen below, Witnesses HH, CC and YY also testified about attacks on Muyira Hill, albeit at other time-period or with different details. The Chamber accepted their evidence. There is	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.

<sup>95</sup> See original Motion, para. 30, fn. 46.

<sup>96</sup> See, e.g., *Prosecutor v. Bagosora*, Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for Judicial Notice Pursuant to Rules 73, 89 and 94, 11 April 2003 (TC), para. 62, and *Prosecutor v. Seromba*, Case No. ICTR-2001-66-T, *Décision Relative à la Requête Du Procureur Aux Fins de Constat Judiciaire*, 14 July 2005 (TC), para. 33.

<sup>97</sup> See the impugned Decision, para. 15.

<sup>98</sup> For ease of reference, the portions of each Judgement that were excerpted as facts to be judicially noticed are highlighted in yellow.

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	therefore corroborative evidence that Gérard Ntakirutimana was in the company of leaders named by Witness GG. The Chamber accordingly finds that 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.	
Kayishema, para 430	In light of the above evidence, the Trial Chamber finds that Kayishema and Ruzindana were present at the massacres in Muyira Hill and its vicinity beginning on about 13 May 1994. Further, the Trial Chamber finds that Kayishema and Ruzindana helped transport other assailants to Muyira Hill and vicinity, instigated them to attack the Tutsis gathered there, orchestrated the method of attack, led the attacks, and personally participated in them. Additionally, with regard to Kayishema, this Chamber finds that the Prosecution has proved the participation in the massacres of his subordinates, including the gendarmes, communal police, members of the Interahamwe, and local officials, such as Bourgmestre Sikubwabo.	95. Kayishema and Ruzindana were present at the massacres in Muyira Hill and its vicinity beginning on about 13 May 1994.

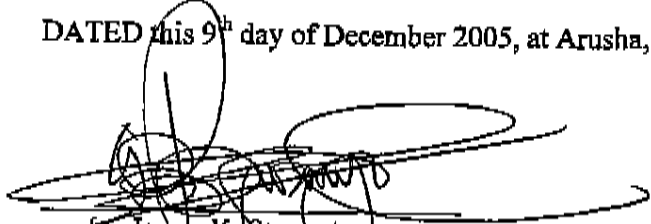
68. Thus, the factual conclusion, upon which the Trial Chamber proceeded to exercise its discretion to refuse to take judicial notice, under Rule 94 (B), in relation to facts 86 to 110, inclusive, was patently wrong.

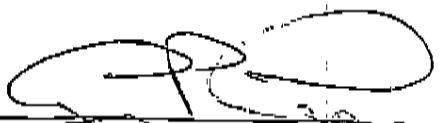
**PART III—RELIEF SOUGHT**

69. For all of the foregoing reasons, the Appellant respectfully requests that the appeal be allowed, and the following relief be granted:

- With respect to the four facts of common knowledge, falling within the scope of Rule 94 (A), the reversal of the impugned Decision, and the taking of judicial notice of the facts in question as facts of common knowledge; and
- With respect to the 147 adjudicated facts, falling within the scope of Rule 94 (B), the reversal of the impugned Decision, and the remanding of the matter back to the Trial Chamber for a decision to be taken in accordance with the correct criteria and on the basis of correct factual conclusions, and with whatever guidance the Appeals Chamber deems to be warranted, in the circumstances.

DATED this 9<sup>th</sup> day of December 2005, at Arusha, Tanzania.

  
 James K. Stewart  
 Senior Appeals Counsel

  
 Gregory P. Lombardi  
 Assistant Trial Attorney

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### Annex A

1. 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.
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 perceived to be Tutsi. As a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity.
3. 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.
4. 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 succeeded 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.
5. Between 1 January 1994 and 17 July 1994 in Rwanda there was an armed conflict not of an international character.
6. Between 6 April 1994 and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group.

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## Annex B

The facts in this annex are taken from the Trial Chamber Judgements in the following cases:

- *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998, confirmed on appeal, ICTR-96-4-A, Judgement, 1 June 2001.
- *Prosecutor v. Kayishema & Ruzindana*, Case No. ICTR-95-1-T, Judgement and Sentence, 21 May 1999, confirmed on appeal, ICTR-95-1-A, Judgement (Reasons), 1 June 2001.
- *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, Judgement and Sentence, 6 December 1999, confirmed on appeal, ICTR-96-3-A, Judgement, 26 May 2003.
- *Prosecutor v. Musema*, Case No. ICTR-96-13-T, Judgement and Sentence, 27 January 2000, confirmed on appeal, ICTR-96-3-A, Judgement, 26 May 2003.
- *Prosecutor v. Ntakirutimana*, Case No. ICTR-96-10-T and 96-17-T, Judgement and Sentence, 21 February 2003, confirmed on appeal, ICTR-96-10-A and 96-17-A, Judgement, 13 December 2004.
- *Prosecutor v. Semanza*, Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003, confirmed on appeal, ICTR-97-20-A, Judgement, 20 May 2005.
- *Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-T, Judgement and Sentence, 16 May 2003, confirmed on appeal, ICTR-96-14-A, Judgement, 9 July 2004.
- *Prosecutor v. Kajelijeli*, Case No. ICTR-98-44A-T, Judgement, 1 December 2003, confirmed on appeal, ICTR-98-44A-A, Judgement, 23 May 2005.
- *Prosecutor v. Nahimana*, Case No. ICTR-99-52-T, Judgement, 3 December 2003.
- *Prosecutor v. Ndindabahizi*, Case No. ICTR-01-71-T, Judgement, 15 July 2004.

All Judgements, save two, have been confirmed on appeal. With respect to *Nahimana* and *Ndindabahizi*, appeals are still pending.

### Adjudicated Facts

### Source

#### *Rape and Sexual Violence – Gitarama*

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.

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Adjudicated Facts	Source
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 <i>bureau communal</i> and the cultural center.	Akayesu, par. 449.
4. A woman was taken from the <i>bureau communal</i> and raped in a nearby field. Three women were raped at Kinihira, the killing site near the <i>bureau communal</i> , and another woman found her younger sister, dying, after she had been raped at the <i>bureau communal</i> .	Akayesu, par. 449.
5. Many other instances of rape in Taba took place outside the <i>bureau communal</i> - 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 <i>bureau communal</i> - 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 <i>bureau communal</i> , the perpetrators were all Interahamwe.	Akayesu, par. 450.
9. Interahamwe are also the perpetrators of many rapes which took place outside the <i>bureau communal</i> .	Akayesu, par. 450.
<i>Rape and Sexual Violence - Kibuye</i>	
10. On 28 June 1994, near the Technical Training College, on a public road, 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, par. 316.
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. 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, par. 828.
14. Musema, acting in concert with others raped Nyiramusugi, and by his example encouraged the others to rape her on 13 May 1994.	Musema, par. 861.

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**Adjudicated Facts****Source***Rape and Sexual Violence – Kigali-Rural*

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.

*Rape and Sexual Violence – Ruhengeri*

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.
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.
18. These rapes and sexual assaults were committed in the course of a widespread attack upon the Tutsi civilian population.
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.
20. The Interahamwe pierced Joyce's side and sexual organs with a spear, and then covered her dead body with her skirt.
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.
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.
23. A Tutsi woman was raped and sexually mutilated by members of the Interahamwe in Susa secteur, Kinigi commune on 7 April 1994.
24. A Tutsi woman was raped by members of the Interahamwe in Susa secteur, Kinigi Commune on 10 April 1994.

Kajelijeli, par. 678.

Kajelijeli, par. 683.

Kajelijeli, par. 922.

Kajelijeli, par. 917.

Kajelijeli, par. 677.

Kajelijeli, par. 679, 918.

Kajelijeli, par. 680, 919.

Kajelijeli, par. 681, 920.

Kajelijeli, par. 682, 921.

*Rape and Sexual Violence – Kigali-ville*

25. Many of the refugees who escaped or survived the attack at ETO headed in groups towards the Amahoro Stadium.
26. Some women were taken forcibly from the group and subsequently raped.

Rutaganda, par. 301.

Rutaganda, par. 301.

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**Adjudicated Facts****Source**

27. Flanked on both sides by *Interahamwe*, approximately 4,000 refugees were then forcibly marched to Nyanza. Rutaganda, par. 301.
28. An attack took place on 11 April, in the late afternoon and into the evening. Many were killed in this attack. Rutaganda, par. 302.
29. The *Interahamwe* then began killing people with clubs and other weapons. Rutaganda, par. 302.
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. 302.

*Interahamwe - formation*

31. The *Interahamwe* were formed in Kigali in 1991, as the youth wing of the MRND party, and spread nation-wide. Kajelijeli, par. 396.
32. The *Interahamwe* were in existence in Ruhengeri préfecture by the end of 1992 and in Mukingo commune by the beginning of 1993. Kajelijeli, par. 396.

*Ruhengeri*

33. On 7 April 1994 many Tutsi men, women and children were attacked and massacred at a place of shelter within the Mukingo commune. Kajelijeli, par. 597.
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.

*Mukingo - Interahamwe - leadership & control*

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.

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Adjudicated Facts	Source
<i>Mukingo - Interahamwe - training</i>	
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.
<i>Mukingo - Planning</i>	
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.
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.

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**Adjudicated Facts****Source***Ruhengeri - Nkuli commune - Kinyababa cellule*

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.
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.

*Ruhengeri - Mukingo commune - Rwankeri cellule*

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.
54. The attack at Busogo Hill claimed the lives of many Tutsis. Kajelijeli, par. 549.

*Ruhengeri - Mukingo commune - Rudatinya's House*

55. Tutsis were attacked and killed at the home of Rudatinya. Kajelijeli ordered and supervised this attack and participated in it. Kajelijeli, par. 555.

*Ruhengeri - Mukingo commune - Munyemvano's Compound*

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.
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.

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Adjudicated Facts	Source
<i>Ruhengeri – Mukingo commune - Busogo Parish</i>	
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.
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.
<i>Ruhengeri Court of Appeal</i>	
61. At the Ruhengeri Court of Appeal, Interahamwe, who were all Hutus, killed about three hundred Tutsis.	Kajelijeli, par. 622.
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.
<i>Kigali-Rural – Musha Church</i>	
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.
<i>Kigali-Rural – Mwulire Hill</i>	
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.

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**Adjudicated Facts****Source***Kigali-Rural – Mabara Mosque*

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.

*Kibuye – Bisesero Hills*

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.
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, par. 448.
71. Attacks occurred at approximately twelve sites in the Bisesero area. Kayishema, par. 411.
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.
74. Ruzindana and Kayishema personally attacked Tutsis seeking refuge during the assaults described in Bisesero. Kayishema, par. 467.

*Kibuye – Gitwa Hill*

75. On 26 April 1994, there was a massive attack against Gitwa Hill by civilians and soldiers or gendarmes. Very few of the thousands of Tutsi men, women and children on Gitwa Hill survived the attack. Ndindabahizi, par. 180.
76. The events at Gitwa Hill formed part of a wider context of ethnically motivated massacres of Tutsi throughout Rwanda, including Kibuye Prefecture. Ndindabahizi, par. 460.
77. Indeed, thousands of attackers who had participated in attacks in Kibuye Town, proceeded to Gitwa Hill. Ndindabahizi, par. 460.

*Kibuye – Meeting 3 May 1994*

78. On 3 May 1994, a meeting took place at the Kibuye Prefectoral Office attended by political leaders, including the Prime Minister Kambanda, Minister of Information Niyitegeka, and Ndindabahizi, as representatives of the Interim Government. Ndindabahizi, par. 89.

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Adjudicated Facts	Source
79. On 3 May 1994, Interim Governmental Prime Minister Jean Kambanda visited Kibuye prefecture with a number of other officials, including Ministers of Interior, Information, and Finance, the Prefect of Kibuye, and the General Secretary of MDR party.	Kayishema, par. 310.
80. The meeting was called ostensibly for pacification purposes; however, the killings and deteriorating security situation in Kibuye were not condemned.	Niyitegeka, par. 251.
81. At the meeting, the Prime Minister, Jean Kambanda, referred to Tutsi as "Inkotanyi" and "accomplices", and asked for the crowd to be vigilant against them as they were the enemy. He also said that they had infiltrators everywhere in the country who had to be rooted out.	Niyitegeka, par. 251.
82. Kayishema reported there was serious insecurity caused by those gathered in Bisesero and requested reinforcement to resolve the problem.	Kayishema, par. 406.
83. Niyitegeka addressed the meeting and supported the calling of the meeting. He expressed support for the Interim Government and Jean Kambanda. Niyitegeka supported actions or inaction in failing to protect the Tutsi population, which resulted in the deaths of many Tutsi victims.	Niyitegeka, par. 252.
84. Soon after in mid May, the assailants again pursued those seeking refuge from place to place.	Kayishema, par. 406.
<i>Kibuye - Muyira Hill - 13 &amp; 14 May 1994</i>	
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.
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.
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 Tsembe Tsembe", which means "Let's exterminate them", a reference to the Tutsi.	Niyitegeka, par. 178.

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Adjudicated Facts	Source
91. The attackers were armed with firearms, grenades, rocket launchers and traditional weapons, and sang anti-Tutsi slogans.	Musema, par. 747.
92. The attackers were armed with guns, machetes, spears, sharpened bamboo sticks and clubs.	Niyitegeka, par. 178.
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.
95. Kayishema and Ruzindana were present at the massacres in Muyira Hill and its vicinity beginning on about 13 May 1994.	Kayishema, par. 430.
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.
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.
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.

1078/4

**Adjudicated Facts****Source**

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.
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.
105. On the morning of 14 May, Niyitegeka and others, together with attackers, arrived at Muyira Hill and parked their vehicles at Kucyapa.
106. The attackers comprised civilians, soldiers, Interahamwe, gendarmes and communal policemen.
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.
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.
109. Ruzindana orchestrated the massacre at the Hole near Muyira Hill, and the assault commenced upon his instruction.
110. Attacks in the vicinity of Muyira Hill continued into June 1994.

***Kibuye – Mumataba Hill***

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.
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.

<sup>1</sup> On appeal, the Appeals Chamber held that the Trial Chamber erred in relying on this fact in convicting the accused because it was not adequately pled in the Indictment. The veracity of the fact, however, was not challenged.

1077/H

**Adjudicated Facts****Source***Kibuye – Nyakavumu Cave*

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.

*Kibuye – Nyarutovu Hill*

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.

*Kibuye – Kabatwa Hill*

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.

*10 June 1994 Meeting - Kibuye*

118. Three meetings convened in Kibuye town in June 1994. Ntakirutimana, par. 711.
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, par. 711.
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, par. 711.
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, par. 711.

1076/14

**Adjudicated Facts****Source**

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, par. 711.
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.
124. Niyitegeka promised to provide weapons for the killing of the Tutsi in Bisesero. Niyitegeka, par. 225.
- 17 June 1994 Meeting – Kibuye*
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, par. 712.
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, par. 712.
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.
132. Gérard Ntakirutimana was named as a member of the "Ngoma group", which included Enos Kagaba and Mathias Nginshuti and was to attack Murambi. Ntakirutimana, par. 712.
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.

1075/H

**Adjudicated Facts****Source***18 June 1994 Meeting – Kibuye*

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.

*June 1994 Meeting – Kibuye*

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.
136. The Interahamwe were chanting: "Exterminate them, flush them out of the forest", meaning the Tutsi.
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.

Niyitegeka, par. 232.

Niyitegeka, par. 232.

*Nyamirambo Stadium - 1993*

138. Nahimana, Barayagwiza and Ngeze participated in an MRND meeting in 1993 at Nyamirambo Stadium in Kigali. The meeting was attended by about 15,000 people, including Interahamwe and Impuzamugambi, who were transported to the meeting by ONATRACOM government-run buses.
139. Nahimana, Barayagwiza and Ngeze were introduced, as were Félicien Kabuga, RTL M and Kangura journalists.
140. The President of MRND, Ngirumpatse, spoke first and referred to RTL M as a radio they had acquired. He urged the crowd to listen to RTL M rather than Radio Rwanda, which he referred to as an Inyenzi radio.
141. When he spoke to the crowd, Kabuga also introduced RTL M as their radio, and asked them to support it.

Nahimana, par. 907.

Nahimana, par. 907.

Nahimana, par. 907.

Nahimana, par. 907.

*Planning – Use of Media*

142. Radio was the medium of mass communication with the broadest reach in Rwanda. Many people owned radios and listened to RTL M – at home, in bars, on the streets, and at the roadblocks.

Nahimana, par. 488.

1074/14

**Adjudicated Facts****Source**

143. The Interahamwe and other militia listened to RTL M and acted on the information that was broadcast by RTL M. Nahimana, par. 488.

*Targeting individuals*

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.

*Kigali-ville*

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. 226.
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. 226.
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.

*Kigali-ville -- concealing bodies*

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.

1073/H

**Adjudicated Facts****Source***Kigali-ville - planning*

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."
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.

*Genocide*

153. Genocide was committed in Rwanda in 1994 against the Tutsi as a group.

1072/H

**Adjudicated Facts****Source**

143. The Interahamwe and other militia listened to RTLM and acted on the information that was broadcast by RTLM. Nahimana, par. 488.

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*Kigali-ville*

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149. The attack on the Tutsi population occurred in various parts of Rwanda, such as in Nyanza, Nyarugenge Commune, Kiemesakara Sector in the Kigali Préfecture. Nvamirambo, Cyahafi, Kicukiro, Rutaganda, par. 372.

1071/H



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**COURT MANAGEMENT SECTION**  
(Art. 27 of the Directive for the Registry)

**I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)**

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Case Name:	The Prosecutor vs. Karmera			Case Number: ICTR-98-44-T
Dates:	Transmitted: 9 December 2005		Document's date: 9 December 2005	
No. of Pages:	46	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	PROSECUTOR'S INTERLOCUTORY APPEAL OF DECISION ON JUDICIAL NOTICE (Rule 73 (C))			
Classification Level:	<input type="checkbox"/> Strictly Confidential / Under Seal <input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Public			
TRIM Document Type:	<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties <input type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input checked="" type="checkbox"/> Submission from parties <input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars <input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities			

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Filing Party hereby submits only the original, and will not submit any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

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CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits BOTH the original and the translated version for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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