

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-38-PT

Date: 6 October 2021

Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Abubacarr Tambadou

Decision of: 6 October 2021

PROSECUTOR

v.

FÉLICIEN KABUGA

PUBLIC

**DECISION ON PROSECUTION MOTION
FOR JUDICIAL NOTICE OF ADJUDICATED FACTS**

Office of the Prosecutor:

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

Counsel for Mr. Félicien Kabuga:

Mr. Emmanuel Altit

THE TRIAL CHAMBER of the International Residual Mechanism for Criminal Tribunals (“Trial Chamber” and “Mechanism”, respectively) seised of this case;¹

RECALLING the operative indictment filed on 1 March 2021² and the Prosecution Pre-Trial Brief filed on 23 August 2021;³

BEING SEISED of a Prosecution motion filed on 16 August 2021 requesting that the Trial Chamber take judicial notice of 62 previously adjudicated facts (“Proposed Facts”);⁴

NOTING the Prosecution’s submissions that: (i) the Proposed Facts were adjudicated before the International Criminal Tribunal for Rwanda (“ICTR”) and are relevant to this case;⁵ (ii) the Proposed Facts meet the requirements for judicial notice under Rule 115(B) of the Rules of Procedure and Evidence (“Rules”);⁶ and (iii) taking judicial notice of the Proposed Facts is in the interests of justice as it will expedite the proceedings without compromising the rights of the Accused;⁷

NOTING Félicien Kabuga’s response filed on 27 August 2021, wherein he: (i) submits that a factual finding depends on the circumstances in which it is made and the judicial analysis that led to it,⁸ and the extensive use of judicial notice risks distorting the entire judicial process;⁹ (ii) objects to facts that are too general, ambiguous, subject to interpretation, rely on subjective evaluations of facts, implicate legal qualifications of acts, and/or relate to the conduct of the Accused or conduct “directly alleged against” him;¹⁰ (iii) does not object to judicial notice being taken of Proposed Facts 57 to 62;¹¹ and (iv) argues that he should be authorized to review all the evidence and exchanges between the parties that relate to Proposed Facts that the Trial Chamber may take judicial notice of;¹²

¹ See Order Assigning a Trial Chamber, 1 October 2020, p. 1.

² Prosecution’s Second Amended Indictment, 1 March 2021 (public, with public and confidential annexes), Annex (“Indictment”).

³ Prosecution Pre-Trial Brief and Witness and Exhibit List, 23 August 2021 (confidential, with confidential Annexes A to C) (“Prosecution Pre-Trial Brief”).

⁴ Prosecution Motion for Judicial Notice of Adjudicated Facts, 16 August 2021 (“Motion”), paras. 1, 12, and Annex. The Trial Chamber refers to the Proposed Facts as numbered in the Annex to the Motion.

⁵ Motion, paras. 2, 5.

⁶ Motion, paras. 4-10.

⁷ Motion, paras. 2, 11.

⁸ Defence Response to “Prosecution Motion for Judicial Notice of Adjudicated Facts”, 1 September 2021 (original French version filed on 27 August 2021) (“Response”), paras. 6, 7. See also Response, paras. 4, 5.

⁹ Response, paras. 8, 9.

¹⁰ Response, para. 10.

¹¹ Response, paras. 10, 11.

¹² Response, para. 12.

CONSIDERING that, pursuant to Rule 115(A) of the Rules, a trial chamber shall not require proof of facts of common knowledge – *i.e.* facts that are not reasonably subject to dispute – but shall take judicial notice thereof;¹³

CONSIDERING that Proposed Facts 1 and 2 as well as 5 with modifications were determined by chambers of the ICTR to be facts of common knowledge that are not reasonably subject to dispute and, as such, may constitute facts of which the Trial Chamber must take judicial notice thereof under Rule 115(A) of the Rules;¹⁴

CONSIDERING that, because Kabuga has not specifically addressed whether these facts should be judicially noticed under Rule 115(A) of the Rules, the interests of justice dictate that Kabuga be given the opportunity to address the Trial Chamber on this issue before judicial notice is taken;

CONSIDERING that, pursuant to Rule 115(B) of the Rules, a trial chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts from other proceedings before the ICTR relating to matters at issue in the current proceedings;

CONSIDERING that taking judicial notice of adjudicated facts is a method of achieving judicial economy and harmonization of judgements of the Mechanism, the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and the ICTR, while ensuring the right of the accused to a fair, public, and expeditious trial,¹⁵ and that, by doing so, a trial chamber recognizes a well-founded presumption which therefore does not have to be proven again at trial, but which may be rebutted by introducing “reliable and credible” evidence to the contrary;¹⁶

¹³ See *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006 (“*Karemera et al.* Decision of 16 June 2006”), paras. 22, 23; *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement, 20 May 2005 (“*Semanza Appeal Judgement*”), para. 194.

¹⁴ See *Karemera et al.* Decision of 16 June 2006, paras. 29-32, 35; *Semanza Appeal Judgement*, paras. 192, 194, referring to *The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Decision on the Prosecution’s Motion for Judicial Notice and Presumption of Facts Pursuant to Rules 94 and 54, 3 November 2000 (“*Semanza Decision of 3 November 2000*”), Annex A. See also *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-01-73-T, Oral Decision on the Prosecution’s Motion for Judicial Notice, T. 27 November 2006 (“*Zigiranyirazo Decision of 27 November 2006*”), pp. 2, 3. The Trial Chamber would amend Proposed Fact 5 to reflect the exact phrasing as previously judicially noticed before the ICTR as a fact not subject to reasonable dispute: **“Between 6 April 1994 and 17 July 1994, there were throughout Rwanda widespread or systematic attacks against the civilian population based on Tutsi ethnic identification on ethnic and political grounds between April and July 1994.”** See *Zigiranyirazo Decision of 27 November 2006*, pp. 2, 3; *Semanza Decision of 3 November 2000*, Annex A.

¹⁵ See *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Judgement, 20 March 2019 (public redacted) (“*Karadžić Appeal Judgement*”), para. 219; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Judicial Notice of Adjudicated Facts, 15 October 2018 (“*Stanišić and Simatović Decision of 15 October 2018*”), para. 5; *Karemera et al.* Decision of 16 June 2006, para. 39.

¹⁶ See *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Judgement, 8 June 2021 (public redacted) (“*Mladić Appeal Judgement*”), para. 474; *Karadžić Appeal Judgement*, paras. 120, 128, 219, 452. The use of adjudicated facts does not shift the ultimate burden of proof or persuasion, which remains on the Prosecution but only relieves the

CONSIDERING that taking judicial notice under Rule 115(B) of the Rules is discretionary,¹⁷ but that chambers ought to take a cautious approach in exercising their discretion in order to ensure the Accused's right to a fair trial;¹⁸

CONSIDERING that the Appeals Chambers of the ICTY and the ICTR determined that a trial chamber may exercise its discretionary power to determine whether to take judicial notice of an adjudicated fact,¹⁹ so long as the adjudicated fact has been "established by the [t]rial [c]hamber [in the previous proceedings] on the basis of evidence";²⁰

CONSIDERING that, to be admissible, a proposed adjudicated fact must: (i) be relevant to an issue in the proceedings; (ii) be distinct, concrete, and identifiable; (iii) as formulated by the moving party, not differ in any substantial way from the formulation of the original judgement; (iv) not be unclear or misleading in the context in which it is placed in the moving party's motion; (v) be identified with adequate precision by the moving party; (vi) not contain characterizations or findings of an essentially legal nature; (vii) not be based on an agreement between the parties to the original proceedings; (viii) not relate to the acts, conduct, or mental state of the accused; and (ix) not be subject to a pending appeal or review;²¹

CONSIDERING that a trial chamber must first determine whether a proposed adjudicated fact meets these admissibility criteria, and then consider whether, even if such criteria are met, it should nonetheless decline to take judicial notice on the ground that doing so would not serve the interests of justice, such as where the proposed adjudicated fact goes to issues at the core of the Prosecution case;²²

Prosecution of its initial burden to produce evidence on the point. *See Karadžić Appeal Judgement*, paras. 120, 219, 452; *Stanišić and Simatović Decision* of 15 October 2018, para. 5; *Karemera et al. Decision* of 16 June 2006, para. 42.

¹⁷ *See Karadžić Appeal Judgement*, para. 116; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.1, Decision on Ratko Mladić's Appeal Against the Trial Chamber's Decision on the Prosecution Motion for Judicial Notice of Adjudicated Facts, 12 November 2013 ("*Mladić Decision* of 12 November 2013"), para. 9; *Karemera et al. Decision* of 16 June 2006, para. 41.

¹⁸ *See Mladić Decision* of 12 November 2013, para. 24.

¹⁹ *See Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Judgement, 30 January 2015, para. 622.

²⁰ *See The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-A, Decision on Anatole Nsengiyumva's Motion for Judicial Notice, 29 October 2010, para. 11.

²¹ *See Mladić Decision* of 12 November 2013, para. 25 and references cited therein. *See also Stanišić and Simatović Decision* of 15 October 2018, para. 6.

²² *Mladić Decision* of 12 November 2013, para. 25 and references cited therein. *See also Stanišić and Simatović Decision* of 15 October 2018, paras. 6, 14.

CONSIDERING that it is permissible to take judicial notice of adjudicated facts relating to the existence of a joint criminal enterprise, the conduct of its members other than the accused, and the conduct of physical perpetrators of crimes for which an accused is alleged to be responsible;²³

CONSIDERING that it is within a trial chamber's discretion to make minor corrections or additions to proposed facts to render them clearer and consistent with the meaning intended in the original judgement, as long as the corrections do not introduce any substantive changes or new information and do not alter the meaning of the original judgement from which the proposed adjudicated fact originates;²⁴

CONSIDERING that all Proposed Facts, except Proposed Fact 52, relate to the crimes,²⁵ the *Radio Télévision Libre des Mille Collines* ("RTLM"),²⁶ the *Interahamwe*,²⁷ the *Fonds de Défense Nationale*,²⁸ or other background information for the case,²⁹ and are relevant to issues in the proceedings;³⁰

CONSIDERING, however, that Proposed Fact 52 is not sufficiently relevant given the time difference between it and the pleaded attack in the Indictment and it accordingly fails to satisfy the admissibility criteria;³¹

CONSIDERING that Proposed Facts 8, 12, 19, 20, 27, 28, 30, 32, 35, 39, 40, 48 to 50, 53, 57, and 60 to 62 fulfil all admissibility criteria and are appropriate for judicial notice;³²

²³ *Mladić* Appeal Judgement, para. 126; *Karadžić* Appeal Judgement, para. 121; *Mladić* Decision of 12 November 2013, para. 81.

²⁴ *Stanišić and Simatović* Decision of 15 October 2018, para. 7, referring to *Mladić* Decision of 12 November 2013, paras. 26-28, 33, 35. It is within a trial chamber's discretion to make minor alterations to proposed adjudicated facts – including the replacement of pronouns with name or place references, the insertion of time-references, or the replacement or deletion of cross-referencing language – as long as they accurately reflect the findings in the original judgement. See *Mladić* Decision of 12 November 2013, para. 35.

²⁵ Proposed Facts 1-10.

²⁶ Proposed Facts 11-32.

²⁷ Proposed Facts 33-51, 53.

²⁸ Proposed Facts 54-56.

²⁹ Proposed Facts 57-62.

³⁰ See Indictment, paras. 6-24, 33, 37, 39, 44-51, 60-62, 65.

³¹ Compare Indictment, para. 61(d) ("After the end of May 1994, *Interahamwe* attacked Tutsi and other perceived "accomplices" or "allies" of the RPF at Nyundo parish.") (emphasis added), with Proposed Fact 52 ("A number of mostly Tutsi civilians sought refuge at the Nyundo seminary on 7 April 1994, fearing violence after the death of President Habyarimana. At the time, several hundred Tutsi refugees had already been staying for about a year, guarded by gendarmes, at the nearby cathedral of Nyundo Parish, following earlier violence in the area. That afternoon, a group of *Interahamwe* attacked the seminary killing two Tutsi priests. A second attack in the evening resulted in the death of a number of Tutsis in the chapel of the seminary.") (emphasis added).

³² In relation to Proposed Fact 30, the Trial Chamber relies on the combined reading of the relevant trial and appeal judgements. See *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-T, Judgement and Sentence, 3 December 2003 ("*Nahimana et al.* Trial Judgement"), para. 482; *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 515. With regard to Proposed Facts 60 and 61, the Prosecution refers to *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Judgement and Sentence,

CONSIDERING that Proposed Facts 14, 23, 25, 33, 34, 38, 41, 42,³³ 43, 45, 51, 58, and 59 also fulfil all admissibility criteria and are appropriate for judicial notice, subject to minor editorial changes to expand acronyms³⁴ and to correct a misspelling;³⁵

CONSIDERING that Proposed Facts 24, 36, 37, 46, and 47 also fulfill all admissibility criteria and are appropriate for judicial notice, but require amendments consistent with the original judgements from which they were extracted to render them clearer, such as the insertion of a time-reference,³⁶ the replacement of the broad term “organisation” by the precise designation of “*Interahamwe*”,³⁷ or that they be merged;³⁸

CONSIDERING that the first sentence of Proposed Fact 3 fulfills the admissibility criteria and is judicially noticed but the second and third sentences – which contain characterizations of an essentially legal nature and are duplicative of or not sufficiently distinct from Proposed Facts 1, 2, and 5 – are not appropriate for judicial notice under Rule 115(B) of the Rules;³⁹

18 December 2008 (“*Bagosora et al.* Trial Judgement”), para. 19, but the relevant factual findings for these Proposed Facts are found at paragraph 751 of the *Bagosora et al.* Trial Judgement.

³³ With regard to Proposed Fact 42, the Prosecution refers to *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Judgement and Sentence, 2 February 2012 (“*Karemera et al.* Trial Judgement”), para. 1334 as the source, which is further supported when read in connection with paragraphs 263 and 271 of the *Karemera et al.* Trial Judgement.

³⁴ For the sake of clarity, and in accordance with the original judgements from which the proposed facts derive, the acronym “**RPF**” is expanded to “**Rwandan Patriotic Front**”, “**MDR**” is amended to “**Mouvement Démocratique Républicain**”, “**MRND**” is changed to “**Mouvement Révolutionnaire National pour la Démocratie et le Développement**”, “**CDR**” is changed to “**Coalition pour la Défense de la République**”, “**PSD**” is changed to “**Parti Social Démocrate**”, and “**PL**” is changed to “**Parti Libéral**”. The Trial Chamber does not consider it necessary to replace the acronym for “**RTL**” with *Radio Télévision Libre des Mille Collines* in individual judicially noticed adjudicated facts given that the acronym is both defined in the Indictment and employed repeatedly in it.

³⁵ In Proposed Fact 59, “**André NTAGURERA**” is replaced with “**André NTAGERURA**”.

³⁶ Proposed Fact 24 is amended as follows: “**From April to June 1994**, journalists on RTL explained the need to search for and locate the *Inkotanyi* and their accomplices, even broadcasting locations where ‘*Inyenzi*’ could be found.” (see *The Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-T, Judgement, 2 December 2008, para. 114); Proposed Fact 36 is amended as follows: “**When it was founded**, the *Interahamwe* had a hierarchical structure and was organised at each level of government.” (see *Bagosora et al.* Trial Judgement, para. 457).

³⁷ In light of *Bagosora et al.* Trial Judgement, para. 457, Proposed Fact 37 is amended as follows: “President Habyarimana made the first donation of 500,000 Rwandan francs to the *Interahamwe* organisation, which was used to purchase uniforms and to provide transport to meetings and rallies.”.

³⁸ The Trial Chamber merges Proposed Facts 46 and 47 as follows: “Ngirumpatse and the **MRND Mouvement Révolutionnaire National pour la Démocratie et le Développement** Executive Bureau agreed with the military authorities to distribute arms to the *Interahamwe* and stockpile arms for later distribution to the *Interahamwe*. Starting from 1993, firearms were provided by military authorities and widely distributed to members of the *Interahamwe*. They were not distributed solely for the protection of members of the Provisional National Committee. Additional weapons were stockpiled for later distribution.”.

³⁹ Proposed Fact 3 is therefore amended as follows: “Unarmed Tutsis were killed on a massive scale in Rwanda by mid-July 1994. ~~These killings were conducted on ethnic grounds. The extermination of Tutsis was also politically motivated.~~”.

CONSIDERING that Proposed Fact 10 fulfills the admissibility criteria and is appropriate for judicial notice subject to the deletion of its last section, which contains characterizations of an essentially legal nature and are not appropriate for judicial notice under Rule 115(B) of the Rules;⁴⁰

CONSIDERING that Proposed Fact 13 meets the admissibility criteria and is judicially noticed, subject to the insertion of a time-reference to enhance clarity and the deletion of an aspect that goes to the core of the Prosecution case and is consequently not appropriate for judicial notice;⁴¹

CONSIDERING that the first sentence of Proposed Fact 16 also meets the admissibility criteria and is judicially noticed subject to the deletion of the adjectives “clearly and effectively” and the deletion of the second sentence, which is unnecessarily repetitive;⁴²

CONSIDERING that Proposed Facts 18 and 31 meet the admissibility criteria and are judicially noticed subject to the deletion of text that contain ultimate conclusions that go to the core of the Prosecution case;⁴³

CONSIDERING that the Trial Chamber declines to take judicial notice of the following Proposed Facts for the following reasons: (i) Proposed Facts 4 and 6 contain characterizations of an essentially legal nature and are duplicative of or not sufficiently distinct from Proposed Facts 1, 2, and 5 that the Trial Chamber intends to take judicial notice of under Rule 115(A) of the Rules; (ii) Proposed Facts 7, 9, and 11 contain characterizations of an essentially legal nature that are not appropriate for judicial notice under Rule 115(B) of the Rules; (iii) Proposed Fact 15 is not sufficiently distinct, concrete, and identifiable; (iv) Proposed Facts 17 and 44 are respectively repetitive of Proposed Facts 16 and 45 of which judicial notice is being taken; (v) Proposed Facts 21, 22, 26, 29, 54, and 55 relate to the core of the Prosecution case; and (vi) Proposed Fact 56, when read in connection with the Prosecution’s pre-trial submissions,⁴⁴ appears immediately

⁴⁰ Proposed Fact 10 is amended as follows: “Tutsi women were raped, mutilated, and sexually assaulted by *Interahamwe*, other militias, soldiers, and civilians on a large scale in Ruhengeri, Kigali-Ville, Butare, Kibuye, and Gitarama *préfectures*, along with the rest of Rwanda, ~~as part of the widespread attack against Tutsis as an ethnic group.~~”

⁴¹ Proposed Fact 13 is amended as follows: “~~Both before and after 6 April 1994, t~~The *Interahamwe* and other militia listened to RTLTM ~~and acted on the information that was broadcast by RTLTM.~~” (see *Nahimana et al.* Trial Judgement, para. 487).

⁴² Proposed Fact 16 is amended as follows: “RTLTM ~~clearly and effectively~~ disseminated anti-Tutsi propaganda as early as the end of 1993. ~~RTLTM was a vehicle for anti-Tutsi propaganda as of at least the end of 1993.~~”

⁴³ The Trial Chamber has modified Proposed Fact 31 as follows: “Ferdinand Nahimana, in a Radio broadcast on 25 April 1994, said he was happy that RTLTM had been instrumental in awakening the majority people, meaning the Hutu population, and that the population had stood up with a view to halting the enemy. At this point in time, mass killing ~~in which RTLTM broadcasts were playing a significant part~~ had been ongoing for almost three weeks. Nahimana associated the enemy with the Tutsi ethnic group.”. The Trial Chamber has further modified Proposed Fact 18 as follows: “RTLTM broadcasts engaged in ethnic stereotyping ~~in a manner that promoted contempt and hatred for the Tutsi population.~~”.

⁴⁴ See Prosecution Pre-Trial Brief, para. 172.

proximate to the acts and conduct of Kabuga and it is not in the interests of justice to take judicial notice of it;

CONSIDERING that Kabuga's present request to access all evidence and exchanges between the parties is insufficiently developed at this stage and that he may make a renewed request for access to confidential materials for which he has a legitimate forensic purpose in light of this Decision,⁴⁵ but that any such request should necessarily account for the access he has been granted and the Prosecution disclosures provided to him;⁴⁶

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 55, 115(A), and 115(B) of the Rules,

INDICATES its intention, pursuant to Rule 115(A) of the Rules, to take judicial notice of Proposed Facts 1, 2, and 5 in the manner formulated in the present decision and annex;

ALLOWS Kabuga to file submissions within seven (7) days of the filing of the present decision as to the appropriateness of taking judicial notice under Rule 115(A) of the Rules of Proposed Facts 1, 2, and 5 in the manner formulated in the present decision and its annex;

GRANTS the Motion, in part, and takes judicial notice of the other Proposed Facts, or portions thereof, as indicated in the present decision and its annex, in the manner formulated therein;

DENIES the Defence request as formulated in paragraph 12 of the Response; and

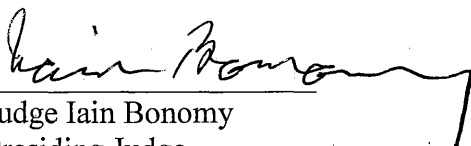
DENIES the remainder of the Motion.

⁴⁵ The Trial Chamber recalls that a party is entitled to seek material from any sources, including from another case before the ICTR, to assist in the preparation of its case if the material sought has been identified or described by its general nature and if a legitimate forensic purpose for such access has been shown. *See* Decision on Defence Motion Seeking Access to Confidential Records from Other Cases, 21 April 2021 ("Decision of 21 April 2021"), p. 2 and references cited therein.

⁴⁶ *See* Decision of 21 April 2021, pp. 3-6 (granting access to confidential parts of the record in the following ICTR cases: *Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41; *The Prosecutor v. Augustin Ndindiliyimana et al.*, Case No. ICTR-00-56; *The Prosecutor v. Augustin Ndirabatswe*, Case No. ICTR-99-54); Prosecution Notice of Compliance with Decision on Defence Access to Motion, 31 May 2021 (public with confidential annexes); T. 1 June 2021 pp. 11-13; Order Establishing a Pre-Trial Work Plan, 4 June 2021, Annex (requiring disclosures under Rule 71(A)(ii) of the Rules by 23 August 2021).

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

Done this 6th day of October 2021,
At The Hague,
The Netherlands


Judge Iain Bonomy
Presiding Judge

[Seal of the Mechanism]

**ANNEX TO DECISION ON PROSECUTION MOTION
FOR JUDICIAL NOTICE OF ADJUDICATED FACTS**

TABLE OF ADJUDICATED FACTS

<u>TC AF No.</u>¹	<u>Proposed Fact No.</u>²	<u>The Adjudicated Facts as Admitted and/or Amended by the Trial Chamber</u>
1. Context and Crimes		
1	P1	Between 6 April 1994 and 17 July 1994, genocide against the Tutsi ethnic group occurred in Rwanda.
2	P2	Between 6 April and 17 July 1994, citizens native to Rwanda were identified according to the ethnic classifications of Hutu, Tutsi and Twa, which were protected groups falling within the scope of the Genocide convention of 1948.
3	P3	Unarmed Tutsis were killed on a massive scale in Rwanda by mid-July 1994.
4	P5	Between 6 April 1994 and 17 July 1994, there were throughout Rwanda widespread or systematic attacks against the civilian population based on Tutsi ethnic identification.
5	P8	The portrayal of the Tutsi woman as a <i>femme fatale</i> , and the message that Tutsi women were seductive agents of the enemy was conveyed repeatedly by RTLM.
6	P10	Tutsi women were raped, mutilated, and sexually assaulted by <i>Interahamwe</i> , other militias, soldiers, and civilians on a large scale in Ruhengeri, Kigali-Ville, Butare, Kibuye, and Gitarama <i>préfectures</i> , along with the rest of Rwanda.
2. RTLM		
7	P12	Radio was the medium of mass communication with the broadest reach in Rwanda. Many people owned radios and listened to RTLM – at home, in bars, on the streets, and at the roadblocks.
8	P13	Both before and after 6 April 1994, the <i>Interahamwe</i> and other militia listened to RTLM.
9	P14	RTLM was owned largely by members of the <i>Mouvement Révolutionnaire National pour la Démocratie et le Développement</i> (“MRND”) party, with Juvenal Habyarimana, President of the Republic, as the largest shareholder and with a number of significant shareholders from the Rwandan Armed Forces. <i>Coalition pour la Défense de la République</i> leadership was represented in the top management of RTLM through Barayagwiza as a founding member of the Steering Committee and Stanislas Simbizi, who was subsequently added to the Steering Committee of RTLM.
10	P16	RTLM disseminated anti-Tutsi propaganda as early as the end of 1993.
11	P18	RTLM broadcasts engaged in ethnic stereotyping.
12	P19	Concern over RTLM broadcasting was first formally expressed in a letter of 25 October 1993 from the Minister of Information to RTLM.

¹ Trial Chamber Adjudicated Fact Number.

² Proposed Adjudicated Fact Number. *See* Motion, Annex.

13	P20	As early as the end of 1993, RTLM listeners were asked to be vigilant against <i>Inkotanyi</i> and <i>Inyenzi</i> , and Hutu to unite against the "Tutsi threat". A reading of the RTLM transcripts reveals assimilation between the <i>Inkotanyi</i> – designation used for the "enemy", the Rwandan Patriotic Front (RPF) – and, on some occasions, the Tutsi ethnic group. It also reveals that the derogatory term " <i>Inyenzi</i> ", meaning cockroach, was used for the assailants and, more generally, the Tutsi ethnic group.
14	P23	From April to June 1994, RTLM journalists called on listeners to seek out and take up arms against <i>Inkotanyi</i> and <i>Inyenzi</i> , the Rwandan Patriotic Front, and its "accomplices", the Tutsi ethnic group.
15	P24	From April to June 1994, journalists on RTLM explained the need to search for and locate the <i>Inkotanyi</i> and their accomplices, even broadcasting locations where " <i>Inyenzi</i> " could be found.
16	P25	The enemy was identified as the Rwandan Patriotic Front, the <i>Inkotanyi</i> , the <i>Inyenzi</i> , and their accomplices, all of whom were effectively equated with the Tutsi ethnic group by several RTLM broadcasts.
17	P27	Both before and after 6 April 1994, RTLM broadcast the names of Tutsi individuals and their families, as well as Hutu political opponents. In some cases after 6 April 1994, these people were subsequently killed.
18	P28	RTLM also broadcast messages encouraging Tutsi civilians to come out of hiding and to return home or to go to the roadblocks, where they were subsequently killed in accordance with the direction of subsequent RTLM broadcasts tracking their movement.
19	P30	In the 20 May 1994 broadcast, Valerie Bemeriki named several priests including Fathers Ngoga, Ntagara and Muvaro, all of whom were subsequently killed. Desire Nshunguyinka was killed with his wife, sister and brother-in-law at a roadblock. Witness FS's brother's name was mentioned on RTLM on 7 April 1994 and shortly thereafter his brother was killed together with his wife and seven children.
20	P31	Ferdinand Nahimana, in a radio broadcast on 25 April 1994, said he was happy that RTLM had been instrumental in awakening the majority people, meaning the Hutu population, and that the population had stood up with a view to halting the enemy. At this point in time, mass killing had been ongoing for almost three weeks. Nahimana associated the enemy with the Tutsi ethnic group.
21	P32	Nahimana and Barayagwiza were together in meetings at which they represented RTLM, and they were the two officials signing checks for the organization.
3. Interahamwe		
22	P33	At the end of 1991, the parties began establishing youth wings, such as the <i>Inkuba</i> (<i>Mouvement Démocratique Républicain</i>), the <i>Interahamwe</i> (<i>Mouvement Révolutionnaire National pour la Démocratie et le Développement</i>), the <i>Impuzamugambi</i> (<i>Coalition pour la Défense de la République</i>), the <i>Abakombozi</i> (<i>Parti Social Démocrate</i>) and the <i>jeunesse du Parti Libéral</i> (<i>Parti Libéral</i>). At times, these groups would engage in violent clashes following political rallies. The violence was mainly between the <i>Mouvement Révolutionnaire National pour la Démocratie et le Développement's Interahamwe</i> and the <i>Mouvement Démocratique Républicain's Inkuba</i> .
23	P34	The <i>Coalition pour la Défense de la République</i> had a youth wing, called the <i>Impuzamugambi</i> , which undertook acts of violence, often together with the <i>Interahamwe</i> , the <i>Mouvement Révolutionnaire National pour la Démocratie et le</i>

		<i>Développement</i> youth wing, against the Tutsi population.
24	P35	The <i>Interahamwe</i> eventually attracted and incorporated unemployed, delinquent youth who often engaged in illegal activity.
25	P36	When it was founded, the <i>Interahamwe</i> had a hierarchical structure and was organised at each level of government.
26	P37	President Habyarimana made the first donation of 500,000 Rwandan francs to the <i>Interahamwe</i> , which was used to purchase uniforms and to provide transport to meetings and rallies.
27	P38	<i>Interahamwe</i> members wore kitenge uniforms of mixed colours, which appeared similar to camouflage, and bore either an effigy of President Habyarimana or the <i>Mouvement Révolutionnaire National pour la Démocratie et le Développement</i> insignia.
28	P39	In 1992 and 1993, members of the <i>Interahamwe</i> and other civilians began receiving military training and weapons with the support of the Rwandan military.
29	P40	The <i>Interahamwe</i> was initially established in Kigali <i>préfecture</i> .
30	P41	In April 1992, the <i>Mouvement Révolutionnaire National pour la Démocratie et le Développement</i> National Congress resolved that the <i>Interahamwe</i> should be set up throughout Rwanda, including in Kibuye and Gisenyi <i>préfectures</i> .
31	P42	The <i>Mouvement Révolutionnaire National pour la Démocratie et le Développement</i> Executive Bureau exercised control over the <i>Interahamwe</i> in areas where the <i>Interahamwe</i> was organized according to party structures, such as Kigali, and over the Provisional National Committee of the <i>Interahamwe</i> , which exercised control of the <i>Interahamwe</i> in at least Kigali.
32	P43	Ngirumpatse and the Executive Bureau of the <i>Mouvement Révolutionnaire National pour la Démocratie et le Développement</i> , including Karemera as the Vice-Chairman, represented the ultimate authority over the <i>Interahamwe</i> in Kigali-ville and Gisenyi. In this regard, Ngirumpatse exerted his authority as National President of the <i>Mouvement Révolutionnaire National pour la Démocratie et le Développement</i> and head of its Executive Bureau.
33	P45	The large-scale military training of <i>Interahamwe</i> in cooperation with the Ministry of Defence, which was also controlled by the <i>Mouvement Révolutionnaire National pour la Démocratie et le Développement</i> party, could not take place without the involvement of the <i>Mouvement Révolutionnaire National pour la Démocratie et le Développement</i> leadership. Ngirumpatse and other national <i>Mouvement Révolutionnaire National pour la Démocratie et le Développement</i> leaders, including Karemera, were involved in the decision to provide military training to the <i>Interahamwe</i> .
34	P46 & P47	Ngirumpatse and the <i>Mouvement Révolutionnaire National pour la Démocratie et le Développement</i> Executive Bureau agreed with the military authorities to distribute arms to the <i>Interahamwe</i> and stockpile arms for later distribution to the <i>Interahamwe</i> . Starting from 1993, firearms were provided by military authorities and widely distributed to members of the <i>Interahamwe</i> . They were not distributed solely for the protection of members of the Provisional National Committee. Additional weapons were stockpiled for later distribution.
35	P48	Attacks against Tutsis occurred in Bisesero Hills throughout April, May and June 1994. Interim Government Minister Eliezer Niyitegeka and <i>préfet</i> Clement Kayishema were among the authorities who ordered, instigated, and directed large-scale attacks against Tutsi civilians in Bisesero from 13 May 1994.
36	P49	Around 18 June 1994, Karemera ordered a “mopping-up” operation against the Tutsis in Bisesero, which resulted in the death

		of scores of Tutsi civilians.
37	P50	Throughout April, May, and June 1994, thousands of Tutsis were killed in Bisesero Hills in several large-scale attacks organised by local officials and carried out by <i>Interahamwe</i> , <i>gendarmes</i> , soldiers, and civilians.
38	P51	The majority of the roadblocks during the genocide were set up or manned by <i>Mouvement Révolutionnaire National pour la Démocratie et le Développement Interahamwe</i> or controlled by <i>Mouvement Révolutionnaire National pour la Démocratie et le Développement Interahamwe</i> . Soldiers participated in manning roadblocks and supervised the activities of the youth militias at the roadblocks. People identified as Tutsis were killed because of their ethnicity at most roadblocks.
39	P53	Soldiers accompanied by <i>Interahamwe</i> killed a large number of Tutsi refugees at the Islamic Cultural Centre in Nyamirambo on 13 April 1994.
5. Miscellaneous		
40	P57	Augustin NGIRABATWARE was Minister of Planning in the government of Rwanda between July 1990 and 1994. He was sworn in as the Minister of Planning in the Interim Government on 9 April 1994 and remained in this position until fleeing Rwanda on 14 July 1994.
41	P58	Joseph NZIRORERA became National Secretary of the <i>Mouvement Révolutionnaire National pour la Démocratie et le Développement</i> in July 1993.
42	P59	André NTAGERURA was a minister in the Rwandan government from March 1981 through July 1994.
43	P60	Joseph KAVARUGANDA was President of the Constitutional Court.
44	P61	Landoald NDASINGWA was Vice-Chairman of the <i>Parti Libéral</i> .
45	P62	The Belgian battalion of UNAMIR was based in Kigali.



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