



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

ORIGINAL: ENGLISH

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 2 June 2006

THE PROSECUTOR

v.

Joseph SERUGENDO

Case No. ICTR-2005-84-I

SUMMARY OF JUDGEMENT

Office of the Prosecutor:

Hassan Bubacar Jallow
Stephen Rapp
William Egbe

Counsel for the Defence

Cecil Maruma

I. Introduction

1. Joseph Serugendo was born in 1953. In July 2005, he was indicted by the ICTR Prosecutor with conspiracy to commit genocide, genocide, complicity to commit genocide, direct and public incitement to commit genocide and persecution as a crime against humanity. In September 2005, he was arrested and later transferred to the Tribunal. During his initial appearance, he pleaded not guilty to all five counts. Serugendo immediately commenced discussions with the Prosecution with the view to full cooperation and an eventual guilty plea.

2. A joint motion for consideration of a plea agreement between Serugendo and the Prosecution was filed on 12 January 2006. On the same date, the Prosecution also requested leave to amend the Indictment. The proposed Amended Indictment sought to withdraw five charges and to retain two counts.

3. A plea agreement was filed jointly on 16 February 2006. Serugendo agreed to plead guilty to Counts 1 and 2 of the proposed Amended Indictment, alleging direct and public incitement to commit genocide pursuant to Articles 2 (3)(c) and 6 (1) of the Statute of the Tribunal, and persecution as a crime against humanity, pursuant to Article 3(h) and Article 6 (1) of the Statute.

4. At a Plea Hearing of 15 March 2005, the Prosecution motion to amend the Indictment was granted by the Chamber. Serugendo pleaded guilty to the Amended Indictment. The Chamber found that the plea was voluntary, informed and unequivocal and entered a finding of guilt for each of the two counts. Following sentencing briefs from both parties, a Sentencing Hearing was held yesterday, on 1 June 2006. Below follows a summary of the Judgement.

II. Facts of the Case

5. Serugendo was a member of the *Comité d'Initiative*, the governing board of *Radio Television Libre des Mille Collines*; the adviser on technical matters to the RTLM radio station; Chief of the Maintenance Section of Radio Rwanda in the *Office Rwandais d'Information* ["ORINFOR"] and a member of the enlarged National Committee of the *Interahamwe za MRND* that exercised authority over the *Interahamwe* of Kigali.

6. From early 1992 through 1994, Serugendo has acknowledged that, as a member of the *Interahamwe*, he planned with other leaders of the MRND, and the *Interahamwe* militias, political meetings and rallies aimed at inciting members of the *Interahamwe* to kill or cause serious harm to members of the Tutsi population with the goal of destroying the Tutsi ethnic group.

7. Serugendo admits that during this period, he and others planned to establish, fund and operate the RTLM as a radio station which disseminated an anti-Tutsi message, intended to foment racial hatred and ultimately to destroy the Tutsi ethnic group.

8. He accepts that during 1993 and 1994, the RTLM broadcasted messages aimed at disseminating an anti-Tutsi message and that such broadcasts in fact incited the killing of hundreds of thousands of civilian Tutsi throughout Rwanda.

9. Serugendo has also acknowledged that as a member of the *Comité d'Initiative* and as adviser on technical matters, he aided and abetted these broadcasts by RTLM employees during the period when it was on air from 8 July 1993 to 17 July 1994. In particular, he went to the RTLM studios, accompanied by armed militia, to offer technical assistance and moral encouragement to ensure that RTLM broadcasting continued uninterrupted.

10. Following the destruction of the RTLM transmitter in Kigali around 4 July 1994, RTLM technicians under the authority of Serugendo took the RTLM equipment salvaged from Kigali to the top of Mount Muhe near Gisenyi and used the transmission equipment installed previously on Mount Muhe to create a makeshift studio, thus allowing RTLM broadcasts to resume. In the same period, he provided technical expertise that enabled RTLM journalists to record programs calling for the extermination of Tutsi on tapes which were then broadcasted over the RTLM from Mount Muhe.

11. Serugendo admits that, as a member of the *Comité d'Initiative* and as adviser on technical matters, he exercised authority over RTLM technical employees and other support staff in this manner. He further acknowledges that he was at all material times aware of the persecution of some persons on political grounds and of mass discrimination against the Tutsi. He admits that, despite this knowledge, he nevertheless continued to work with the RTLM and to discharge his functions.

12. The Chamber has found that both the *actus reus* and *mens rea* of the crimes to which Serugendo has pleaded guilty have been established.

III. Sentencing

13. The Chamber will now give a summary of its considerations concerning the sentence.

14. Amongst aggravating circumstances are the seriousness of the crimes and the extent of the involvement of Serugendo in their commission. Genocide and crimes against humanity are inherently aggravating offences because they are heinous in nature and shock the collective conscience.

15. Serugendo's position as a member of the managerial staff of the RTLM, the authority he therefore exercised over the personnel of the radio station, and his active role in ensuring the proper functioning of the radio station are indeed aggravating factors.

16. The Chamber notes, however, that Serugendo was not a particularly high-ranking or influential personality in Rwanda during 1994. Nor did he personally make anti-Tutsi or inflammatory statements over the RTLM or commit any violent acts during the massacres in Rwanda.

17. The Chamber now turns to the mitigating circumstances,

Guilty plea

18. The Chamber concurs with previous decisions of this Tribunal that some form of consideration should be given to those who have confessed their crimes in order to encourage others to come forward. Moreover, the guilty plea of the Accused may contribute to the process of national reconciliation in Rwanda. Further, by pleading guilty prior to the commencement of the trial, the Accused relieved the victims of the need to open old wounds.

19. The Chamber finds that Serugendo's change of plea to one of guilty is a mitigating circumstance. The plea was accompanied by publicly expressed acknowledgement of his responsibility. The timely nature of the guilty plea facilitates the administration of justice and saves the Tribunal's resources.

Cooperation with the Prosecution

20. Both the Prosecution and Defence concur that Serugendo has provided substantial cooperation to the Prosecution. This cooperation is described as wide-ranging, leading to the clarification of many areas of investigative doubt, and including in relation to crimes previously unknown by the Prosecution. Consequently, he can be seen as setting an example that may encourage others to acknowledge their personal involvement in the massacres that occurred in Rwanda in 1994. Based on the submissions of the parties, it is clear that Serugendo's cooperation with the Office of the Prosecutor has been substantial. The Chamber finds this factor to be a significant mitigating circumstance.

Remorse

21. Both in the Plea Agreement and during the Sentencing Hearing, Serugendo publicly expressed regret and remorse for his crimes. The Chamber accepts that this remorse is genuine and finds that his expression of remorse is one mitigating factor among others.

Good character

22. Both parties note that as far as is known, Serugendo was of good character and had no record of extremism before 1994. The Accused has no previous criminal record, a factor to be taken into account for mitigation.

Personal and family circumstances

23. The Chamber notes that Serugendo is married and that he is 53 years old. It considers that these factors taken together amount to personal circumstances of a kind which may be accorded some, although very limited, weight in mitigation.

Assistance given to certain victims

24. During the Sentencing Hearing, the Defence called Witness AX, a Tutsi, who testified that on 10 or 11 April 1994, he was chased by armed attackers. Serugendo rescued the witness by transporting him in his car and refusing to relinquish him to the angry mob. This evidence was uncontested by the Prosecution. The Chamber accepts that Serugendo saved the life of Witness AX during the genocide as a factor in mitigation.

Ill health

25. Serugendo has been recently diagnosed with a terminal illness. Both parties concur that his fragile health and poor prognosis must be taken into account in determining a fair sentence.

26. The Chamber has noted the content of the confidential Medical Report which was tendered into evidence during the Sentencing Hearing on 1 June 2006. This Report suggests that Serugendo is suffering from an incurable and inoperable condition and that his life

expectancy is accordingly reduced. Further, he is likely to require intensive ongoing medical treatment and palliative care.

27. Ill health has been considered as a mitigating factor in sentencing by both this Tribunal and the ICTY. The weight it has been accorded has varied. There is no case law concerning the significance of terminal illness in relation to sentencing. Although both parties view Serugendo's state of health as a significant mitigating factor, they do not seek medical care as an alternative to confinement. They submit, however, that irrespective of the sentence to be imposed, he must continue to be provided with medical treatment, including referral to appropriate facilities where appropriate.

28. The Chamber considers that Serugendo's current state of health, as established by the Medical Report, constitutes a significant mitigating circumstance in sentencing. Further, the palliative care and ongoing treatment necessary to treat his condition requires a modified regime of detention.

Other considerations

29. The Chamber has taken into account the sentencing practice in the courts of Rwanda. It has also noted the sentencing recommendations of the parties. In the Plea Agreement, the Prosecution undertook to recommend a sentence of between six and fourteen years imprisonment. At the Sentencing Hearing, the Prosecution revised this range and proposed a sentencing range instead of six to ten years given the substantial nature of Serugendo's cooperation to date.

30. Although the Chamber is not bound by the recommendations of the parties, the Appeals Chamber has nevertheless emphasised that Trial Chambers shall give due consideration to the recommendation of the parties and, should the sentence diverge substantially from that recommendation, give reasons for the departure.

Determination of sentence

31. Despite the gravity of Serugendo's crimes and his official position, the Chamber nevertheless finds that significant mitigation is warranted in view of his guilty plea with publicly expressed remorse and his substantial cooperation with the Prosecution. His family situation, his good character prior to these events, his lack of prior criminal convictions and his age, while factors in mitigation, are of substantially less weight.

32. By contrast, the Chamber finds Serugendo's ill health, and consequently reduced life expectancy and quality of life, to be a significant factor in mitigation.

33. It is noted that the Plea Agreement and its recommendation as to sentence was filed jointly, with the Prosecution subsequently recommending a lower sentencing range in view of Serugendo's substantial cooperation. While the Chamber is not bound by such a recommendation, it is nonetheless of assistance when deciding the range of sentence to be imposed. It finds that he should be given a sentence at the lower end of the recommended range.

34. This said, it is clear that Serugendo is not in a position to serve a sentence under normal prison conditions. He has recently been diagnosed with a terminal illness, has very fragile health and a poor prognosis. The Tribunal must continue to ensure that he receives adequate medical treatment, including hospitalization to the extent needed. This should be reflected in the disposition of the Judgement.

DISPOSITION

For the foregoing reasons, having considered the evidence and arguments presented by the parties, the **CHAMBER**

SENTENCES Joseph Serugendo to a single sentence of

SIX YEARS IMPRISONMENT

INSTRUCTS the Registry to ensure that Joseph Serugendo shall continue to receive adequate medical treatment, including hospitalization to the extent needed.

Pursuant to Rule 101 (D) of the Rules, Serugendo shall receive credit for the time spent in detention.

Arusha, 2 June 2006