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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:** 12 June 2006

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THE PROSECUTOR

v.

Joseph SERUGENDO

*Case No ICTR-2005-84-I*

JUDGEMENT AND SENTENCE

Office of the Prosecutor

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## I. PROCEDURAL HISTORY AND PLEA AGREEMENT

1. Joseph Serugendo was charged by the Office of the Prosecutor of the International Criminal Tribunal for Rwanda with conspiracy to commit genocide, genocide, complicity in genocide, direct and public incitement to commit genocide and persecution as a crime against humanity in an Indictment confirmed by Judge Sergei Alekseevich Egorov on 22 July 2005.

2. On 16 September 2005, Serugendo was arrested and on 23 September 2005 transferred to the Tribunal. He made his initial appearance on 30 September 2005, and entered a plea of not guilty to all five counts of the Indictment. Serugendo immediately commenced discussions with the Prosecution with the view to full cooperation and an eventual guilty plea.

3. A joint motion for consideration of a plea agreement between Joseph Serugendo and the Prosecution was filed on 12 January 2006.<sup>1</sup> On the same date, the Prosecution also requested leave to amend the Indictment.<sup>2</sup> The proposed Amended Indictment sought to withdraw five charges<sup>3</sup> and to retain two counts.<sup>4</sup>

4. The 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.

5. At a Plea Hearing of 15 March 2006, pursuant to Rule 62 *bis* of the Rules of Procedure and Evidence ("the Rules"), the Chamber granted the Prosecution motion to amend the Indictment.<sup>5</sup> During the same hearing, Serugendo pleaded guilty to the Amended Indictment. This Amended Indictment and Plea Agreement comprised the commonly agreed basis for the guilty plea and for the present Judgement and Sentence.

6. The Plea Agreement states that Serugendo intends to enter a plea of guilty to the two above-mentioned counts.<sup>6</sup> It emphasises that he is "aware of both the consequences and scope of the offences he committed in 1994 while in Rwanda".<sup>7</sup> Through the provision of complete and truthful information regarding these events and his own involvement therein, the Plea

<sup>1</sup> "Joint Motion for Consideration of Plea Agreement Between Joseph Serugendo and the Office of the Prosecutor", filed confidentially on 12 January 2006.

<sup>2</sup> "Prosecutor's Request for Leave to Amend an Indictment Pursuant to Rules 72, 73, 50 and 51 of the Rules of Procedure and Evidence", filed confidentially on 12 January 2006.

<sup>3</sup> Count 1: conspiracy to commit genocide – Article 6 (1); Count 2: genocide – Article 6 (1) and Article 6 (3); Count 3: complicity in genocide – Article 6 (1) and Article 6 (3); Count 4: direct and public incitement to commit genocide – Articles 6 (1) and 6 (3) and Count 5: persecution as a crime against humanity – Articles 6 (1) and 6 (3).

<sup>4</sup> Count 1: direct and public incitement to commit genocide – Article 6 (1) and Count 2: persecution as a crime against humanity – Article 6 (1).

<sup>5</sup> Plea Hearing, T. 15 March 2006, p. 4.

<sup>6</sup> Plea Agreement, para. 2.

<sup>7</sup> *Ibid.*, para. 4.

Agreement records Serugendo's desire "to contribute to the necessary process of national reconciliation in Rwanda".<sup>8</sup>

7. The Plea Agreement acknowledges that Serugendo agreed to plead guilty "freely and voluntarily".<sup>9</sup> He also understands that, by entering into the Plea Agreement, he has given up the rights related to the presumption of innocence and to a full trial.<sup>10</sup> The undertakings contained in the Plea Agreement include Serugendo's co-operation with the Prosecution.<sup>11</sup>

8. In exchange for Serugendo's guilty plea, his genuine co-operation with the Prosecution, and the fulfillment of all his obligations under the Plea Agreement, the Prosecution agreed to recommend to the Chamber the imposition of a term of imprisonment in the range of six to fourteen years.<sup>12</sup> A Chamber is not bound by any agreement reached between the parties on the preferred sentence.<sup>13</sup>

9. Both counts retained in the Amended Indictment refer to crimes under Articles 2 and 3 of the Statute. The elements of the offence of direct and public incitement to commit genocide under Article 2 3(c) of the Statute are described in both the Plea Agreement and the Tribunal jurisprudence as:

- that the accused incited others to commit genocide;
- that the incitement was direct;
- that the incitement was public; and
- that the accused had the specific intent to commit genocide, that is, destroying in whole or in part a national, ethnic, racial or religious group.<sup>14</sup>

10. The elements of the crime against humanity of persecution under Article 3 (h) of the Statute are described in both the Plea Agreement and the Tribunal jurisprudence as:

- the accused committed specific violations of basic or fundamental rights;
- the specific crimes were committed due to political or racial discrimination;

<sup>8</sup> *Ibid.*, para. 12.

<sup>9</sup> *Ibid.*, para. 66. See also Plea Hearing, T. 15 March 2006, p. 5.

<sup>10</sup> These rights include: the right to plead not guilty and require the Prosecution to prove charges in the Amended Indictment beyond a reasonable doubt at a fair equitable public trial; the right to prepare and put forward a defence to the charges at such a trial, and the right to examine at trial, or have examined, witnesses against him and to obtain the attendance and examination of witnesses on his behalf at trial under the same conditions as witnesses against him (Plea Agreement, para. 65).

<sup>11</sup> *Ibid.*, paras. 51-53.

<sup>12</sup> *Ibid.*, para. 59. This range was subsequently revised. See Prosecution Final Pre-Sentencing Brief, para. 5, and *infra*.

<sup>13</sup> Rule 62 bis (B) of the Rules.

<sup>14</sup> Plea Agreement, para. 24. See e.g. *Nahimana et al.*, Judgement (TC), paras. 1071-1072, 1080; *Kajelijeli*, Judgement (TC), paras. 850-854; *Semanza*, Judgement (TC), paras. 347-350; *Ruggiu*, Judgement (TC), paras. 21-22.

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- the accused had real or constructive knowledge of the general context in which the offences were committed;
- the crimes were committed as part of widespread or systematic attacks against a civilian population; and
- the attacks were carried out on political, ethnic, racial or religious grounds.<sup>15</sup>

11. At the Plea Hearing on 15 March 2006, the Chamber confirmed that the plea was based on sufficient facts to establish the crimes and Serugendo's participation in their commission.<sup>16</sup> Following its conclusion that the plea was voluntary, informed and unequivocal, in conformity with Rule 62 (B) of the Rules, the Chamber entered a finding of guilt for each count to which Serugendo pleaded guilty.<sup>17</sup>

12. The Chamber received the Prosecution Sentencing Brief on 3 May 2006 and the Defence Sentencing Brief on 18 May 2006.

13. The Sentencing Hearing was held on 1 June 2006. In the course of this hearing, the Defence called two witnesses who gave evidence of the good character of the Accused prior to the crisis in Rwanda and of assistance rendered to a Tutsi individual during the genocide.<sup>18</sup> Additionally, the Chamber admitted into evidence written statements of four Defence witnesses. All addressed the previous good character and professional competence of the Accused.<sup>19</sup>

14. Finally, Serugendo made a brief oral statement and tendered into evidence two statements prepared by him expressing his genuine remorse and conveying an apology to the people of Rwanda.<sup>20</sup> On the following day, Friday 2 June 2006, the Chamber rendered its judgment orally by reading out a summary.

<sup>15</sup> Plea Agreement, para. 26. See e.g. *Krnojelac*, Judgement (AC), paras. 181-188; *Nahimana et al.*, Judgement (TC), paras. 1001, 1012-1017; 1069-1072; *Niyitegeka*, Judgement (TC), para. 431; *Akayesu*, Judgement (TC), paras. 559-562.

<sup>16</sup> Plea Hearing, T. 15 March 2006, p. 7. The parties further agreed that, if the Prosecution were to proceed with adducing evidence at trial on the facts set forth in the Plea Agreement, the facts thus proven would support a finding of guilt as to all counts contained in the Amended Indictment. (Plea Agreement, paras. 30, 49).

<sup>17</sup> Plea Hearing, T. 15 March 2006, p. 7. Rule 62 (B) of the Rules provides that: "If an accused pleads guilty in accordance with Rule 62 (A) (v), or requests to change his plea to guilty, the Trial Chamber shall satisfy itself that the guilty plea: (i) is made freely and voluntarily; (ii) is an informed plea; (iii) is unequivocal; and (iv) is based on sufficient facts for the crime and accused's participation in it, either on the basis of objective indicia or of lack of any material disagreement between the parties about the facts of the case. Thereafter the Trial Chamber may enter a finding of guilt and instruct the Registrar to set a date for the sentencing hearing."

<sup>18</sup> Witness AX testified that the Accused had rescued him from attackers during the genocide (T. 1 June 2006, pp. 5-8). Witness BG testified to the Accused's positive relationships with persons from all ethnic groups and the medical condition of his family members (*id.*, pp. 9-20).

<sup>19</sup> These statements were admitted following the Chamber's "Decision on Defence Motion for the Admission of Written Witness Statements under Rule 92 bis", 1 June 2006.

<sup>20</sup> Defence Exhibits 11 and 12.

## II. FACTUAL BASIS

15. Joseph Serugendo was born in Kipushi, Democratic Republic of Congo on 24 August 1953.<sup>21</sup>

16. At all times material to the Amended Indictment, Serugendo was a member of the *Comité d'Initiative*, the governing board of *Radio Television Libre des Mille Collines* ("the RTLM"); 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.<sup>22</sup>

17. The Chamber will now review the facts specific to each of the counts in the Amended Indictment. It is recalled that the Chamber is bound by the assessment contained in the Plea Agreement and the factual basis underlying that agreement. The Accused has admitted the veracity of each of these facts.

18. The Amended Indictment alleges that during the course of 1994, and in particular between 6 April 1994 and 17 July 1994, the minority Rwandan ethnic or racial group known as Tutsi was attacked by soldiers, *Interahamwe* militia and armed civilians on the basis that they were Tutsi, with the intent to destroy the Tutsi population in Rwanda in whole or in part.<sup>23</sup> Hundreds of thousands of civilians were killed as a result of these attacks.<sup>24</sup>

19. The Plea Agreement acknowledges that in 1994, widespread and systematic attacks against a civilian population, notably Tutsi and moderate Hutu, occurred on political and ethnic grounds, resulting in the death of hundreds of persons, mainly civilians, throughout Rwanda. This is evidenced by the indiscriminate nature of the killings, which targeted unarmed women, children, young persons and the aged alike, who were massacred at roadblocks or places where they sought refuge.<sup>25</sup>

20. The charges against Serugendo concern the *Interahamwe* and the killing campaign, RTLM broadcasts, and RTLM re-installation and operation in July 1994. With regard to the first of these issues, Serugendo, as a member of the *Interahamwe*, is alleged to have planned with other leaders of the MRND between 1992 and 17 July 1994 political meetings and rallies in order to indoctrinate, sensitize, and incite members of the *Interahamwe* to kill or cause serious bodily or mental harm to members of the Tutsi population, with the aim of destroying the Tutsi ethnic group.<sup>26</sup>

21. Serugendo acknowledges that from early 1992 through 1994, 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

<sup>21</sup> Prosecution Sentencing Brief, para 23.

<sup>22</sup> *Id.*, para 24.

<sup>23</sup> Amended Indictment, paras. 5-6.

<sup>24</sup> *Id.*

<sup>25</sup> Plea Agreement, paras. 31-32. The Accused admits that between 7 April and mid-July 1994, the massacre of the civilian population was aimed largely at the Tutsi in Rwanda (para. 32).

<sup>26</sup> Amended Indictment, para. 8.

serious harm to members of the Tutsi population with the goal of destroying the Tutsi ethnic group.<sup>27</sup>

22. He is further alleged from 8 April 1993 through July 1994 to have planned, in concert with others, the establishment, funding and operation of the RTLM as a radio station to disseminate an anti-Tutsi message and to further ethnic hatred between Hutu and Tutsi. This had the objective of killing or causing serious harm to members of the Tutsi population, with the aim of destroying the Tutsi ethnic group.<sup>28</sup> 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.<sup>29</sup>

23. According to the Indictment, the RTLM broadcasted from Kigali and disseminated an anti-Tutsi message from 8 April 1993 until 4 July 1994.<sup>30</sup> Between April and July 1994, the RTLM, as a leading source of information to the population of Rwanda, broadcasted information identifying the location of Tutsi and inciting members of the Rwandan population to find and kill all Tutsi.<sup>31</sup> During this period, RTLM broadcasted messages that incited the killing of hundreds of thousands of civilian Tutsi throughout Rwanda.<sup>32</sup> Serugendo admits 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.<sup>33</sup>

24. As a member of the *Comité d'Initiative*, and as adviser on technical matters, Serugendo is alleged to have aided and abetted these broadcasts by RTLM employees during the period when it was on air from 8 July 1993 to 17 July 1994.<sup>34</sup> In particular, he is alleged to have gone to the RTLM studios between 6 April 1994 and 12 April 1994, accompanied by armed militia, to offer technical assistance and moral encouragement to ensure that RTLM broadcasting continued uninterrupted.<sup>35</sup> Serugendo admits to having provided these forms of technical assistance and moral support which facilitated RTLM broadcasts during this period.<sup>36</sup>

25. Following the destruction by RPF forces of the RTLM transmitter located in Kigali on or around 4 July 1994, which rendered the RTLM unable to broadcast, Serugendo is alleged to have met with important RTLM personnel at the *Hotel Méridien* in Gisenyi in order to plan the setting up of a new studio and transmission facility in Gisenyi.<sup>37</sup> He admits to having attended this meeting in order to enable RTLM broadcasts to continue.<sup>38</sup>

<sup>27</sup> Plea Agreement, para. 33.

<sup>28</sup> Amended Indictment, para. 9.

<sup>29</sup> Plea Agreement, para. 34.

<sup>30</sup> Amended Indictment, para. 11.

<sup>31</sup> *Id.*, para. 13.

<sup>32</sup> *Id.*, para. 14.

<sup>33</sup> Plea Agreement, paras. 36, 39.

<sup>34</sup> Amended Indictment, para. 10.

<sup>35</sup> *Id.*, para. 12.

<sup>36</sup> Plea Agreement, para. 37.

<sup>37</sup> Amended Indictment, paras. 15, 27.

<sup>38</sup> Plea Agreement, para. 40.

26. Between 5 July 1994 and 14 July 1994, RTLM technicians under the authority of Serugendo are alleged to have taken the RTLM equipment salvaged from Kigali to the top of Mount Muhe near Gisenyi and to have used the transmission equipment installed previously on Mount Muhe to create a makeshift studio, thus allowing RTLM broadcasts to resume. These broadcasts continued to disseminate the call to exterminate the Tutsi ethnic group and incited the killing and injuring of civilian Tutsi throughout Rwanda. In the same period, the Accused is further alleged to have provided technical expertise that enabled RTLM journalists to record programs calling for the extermination of Tutsi on tapes which were then broadcast over the RTLM from Mount Muhe.<sup>39</sup>

27. Serugendo admits to having provided this expertise. By successfully establishing a makeshift transmitter on Mount Muhe and restoring the RTLM's broadcast capability, he admits to having aided and abetted the killing of members of the Tutsi ethnic group.<sup>40</sup>

28. Serugendo is alleged to be criminally responsible for these acts by virtue of his position of authority as a member of the *Comité d'Initiative*, and his supervisory and managerial functions associated with this role. In consequence of his position, he is alleged to have exercised authority over subordinates, including RTLM technicians and other support personnel.<sup>41</sup> As a member of the National Committee of the *Interahamwe*, Serugendo is further alleged to have exercised authority over the members of the *Interahamwe* militias.<sup>42</sup> Specifically, he is alleged to have ordered those over whom he had authority as a result of the positions he held, and instigated and aided and abetted those over whom he did not have such control.<sup>43</sup>

29. Serugendo admits that, as a member of the *Comité d'Initiative*, the governing board of the RTLM, and as adviser on technical matters, he exercised authority over RTLM technical employees and other support staff in this manner.<sup>44</sup> 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.<sup>45</sup> He admits that, despite this knowledge, he nevertheless continued to work with the RTLM and to discharge his functions.<sup>46</sup>

30. The Chamber accordingly finds that both the *actus reus* and *mens rea* of the crimes to which the Accused has pleaded guilty have been established.

<sup>39</sup> Amended Indictment, paras. 17, 18.

<sup>40</sup> Plea Agreement, para. 41.

<sup>41</sup> Amended Indictment, para. 3.

<sup>42</sup> *Id.*, para. 4.

<sup>43</sup> *Id.*, paras. 7, 19. The Accused is further alleged to have participated in a joint criminal enterprise whose object, purpose and foreseeable outcome was the direct and public incitement to commit genocide against the Tutsi racial or ethnic group throughout Rwanda (*id.*, para. 4).

<sup>44</sup> Plea Agreement, para. 35.

<sup>45</sup> *Id.*, paras. 46-47.

<sup>46</sup> *Id.*, para. 48.

### III. APPLICABLE LAW ON SENTENCING

#### A. GENERAL CONSIDERATIONS

31. This Tribunal was established with the objective of prosecuting and punishing the perpetrators of the atrocities in Rwanda with a view to ending impunity and thereby promoting national reconstruction and reconciliation.<sup>47</sup> As an entity established under Chapter VII of the Charter of the United Nations, the Tribunal was also established to contribute to the restoration and maintenance of international peace and security.<sup>48</sup>

32. A guilty plea indicates that an accused is admitting the veracity of the charges contained in an indictment. This also means that the accused acknowledges responsibility for his actions, which tends to further a process of reconciliation.<sup>49</sup> A guilty plea protects victims from having to relive their experiences and re-open old wounds. As a side-effect, albeit not really a significant mitigating factor, it also saves the Tribunal's resources.<sup>50</sup>

33. Fundamental principles taken into consideration when imposing a sentence in the jurisprudence of the *ad hoc* Tribunals are deterrence<sup>51</sup> and retribution.<sup>52</sup> Rehabilitation has also been acknowledged as one of the purposes of punishment in the Tribunal jurisprudence.<sup>53</sup>

34. The Chamber is of the opinion that, when an accused pleads guilty, he or she takes an important step in these processes.<sup>54</sup> By pleading guilty, the Accused should be seen as setting an example that may encourage others to acknowledge their personal involvement in the massacres committed in Rwanda in 1994.<sup>55</sup>

#### B. ARTICLE 23 OF THE STATUTE AND RULE 101 OF THE RULES

35. Article 23 of the Statute provides a non-exhaustive list of the factors to be taken into account by the Trial Chamber in determining the sentence and reads in its relevant parts:

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

<sup>47</sup> *Rutaganda*, Judgement (TC), para. 454; *Kayishema and Ruzindana*, Judgement (TC), para. 1; *Serushago*, Judgement (TC), para. 19.

<sup>48</sup> S.C. Res. 955, U.N. Doc. S/Res/955 (1994), 8 November 1994.

<sup>49</sup> *Rutaganira*, Judgment (TC), para. 146; *Kambanda*, Judgement (TC), para. 50.

<sup>50</sup> *Bisengimana*, Judgment (TC), para. 131; *Rutaganira*, Judgment (TC), para. 146.

<sup>51</sup> *Rutaganira*, Judgment (TC), paras. 110-112; *Rutaganda*, Judgement (TC), para. 455; *Kayishema and Ruzindana*, Judgement (TC), para. 2; *Serushago*, Judgement (TC), para. 20; *Tadić*, Judgement (AC), para. 48; *Mucić et al.*, Judgement (AC), para. 806.

<sup>52</sup> *Rutaganira*, Judgment (TC), paras. 108-109; *Kayishema and Ruzindana*, Judgement (TC), para. 2; *Serushago*, Judgement (TC), para. 20; *Aleksovski*, Judgement (AC), para. 185.

<sup>53</sup> *Kayishema and Ruzindana*, Judgement (TC), para. 2; *Mucić et al.*, Judgement (AC), para. 806.

<sup>54</sup> *Rutaganira*, Judgment (TC), para. 114; *Nikolić*, Judgment (TC), para. 93.

<sup>55</sup> *Bisengimana*, Judgment (TC), para. 129; *Kambanda*, Judgement (TC), para. 53.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. [...]

36. Rule 101 of the Rules further states in its relevant parts:

- (A) A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or the remainder of his life.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 23 (2) of the Statute, as well as such factors as:
  - (i) Any aggravating circumstances;
  - (ii) Any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction;
  - (iii) The general practice regarding prison sentences in the courts of Rwanda; [...]

37. Neither the Statute nor the Rules specify a concrete range of penalties for offences under the Tribunal's jurisdiction. Determination of the appropriate sentence is left to the discretion of each Trial Chamber, although guidance as to which factors should be taken into account is provided by both the Statute and the Rules.<sup>56</sup>

#### IV. SENTENCING FACTORS

38. The Prosecution submits that in determining the sentence of an accused, the Chamber should be guided by "the objectives of criminal law, which include the confirmation of the rule of law, which is a condition of a peaceful society, through a just sentence, which reflects the standard of proportionality between the gravity of the offence, the degree of responsibility of the offender, deterrence of the accused and future perpetrators, retribution, and the need to encourage others to come to terms with their respective roles in the 1994 genocide and accept responsibility for their actions".<sup>57</sup> The Defence invites the Chamber to fully consider the Plea Agreement, embodying the Accused's admission of guilt and acceptance of full responsibility, in determining sentence.<sup>58</sup>

39. The gravity of the offence is a factor of primary importance in determining an appropriate sentence.<sup>59</sup> It is necessary to consider the nature of the crime and "the particular circumstances of the case, as well as the form and degree of the participation of the accused

<sup>56</sup> *Bisengimana*, Judgment (TC), para. 109.

<sup>57</sup> Prosecution Sentencing Brief, para. 21.

<sup>58</sup> Defence Sentencing Brief, paras. 18-19.

<sup>59</sup> *Rutaganda*, Judgment (TC), para. 449; *Kayishema and Ruzindana*, Judgment (TC), para. 8; *Serushago*, Judgment (TC), para. 21; *Kambanda*, Judgment (TC), para. 57; *Jelišić*, Judgment (AC), para. 101; *Mucić et al.*, Judgment (AC), para. 731; *Furundžija*, Judgment (AC), para. 249; *Aleksovski*, Judgment (AC), para. 182.

in the crime” in order to determine the gravity of the crime.<sup>60</sup> A sentence must reflect “the predominant standard of proportionality between the gravity of the offence and the degree of responsibility of the offender”.<sup>61</sup> The Chamber also understands its obligation to ensure that the sentence is commensurate with the individual circumstances of the offender.<sup>62</sup>

40. In determining the sentence, the Chamber is obliged to take into account any aggravating and mitigating circumstances, but the weight to be given to such circumstances is within the discretion of the Chamber.<sup>63</sup> The aggravating circumstances should be proven beyond reasonable doubt,<sup>64</sup> while the standard to be met for mitigating factors is the balance of probabilities.<sup>65</sup>

41. The Rules specify only substantial co-operation with the Prosecutor as a mitigating factor. Other factors often taken into account by this Tribunal in mitigating a sentence are, *inter alia*, a guilty plea,<sup>66</sup> co-operation with the Prosecution,<sup>67</sup> expression of genuine remorse,<sup>68</sup> assistance given to the victims by an accused,<sup>69</sup> absence of previous criminal record,<sup>70</sup> ill health,<sup>71</sup> and the accused’s family and social situation.<sup>72</sup> Mitigating circumstances may also include those not directly related to the offence.<sup>73</sup>

#### A. AGGRAVATING CIRCUMSTANCES

##### (i) Submissions

42. The Prosecution submits that the innate gravity and the absolute prohibition against direct and public incitement to commit genocide and persecution render their commission inherently aggravating.<sup>74</sup>

43. Additionally, by virtue of his position and authority as a member of the *Comité d’Initiative*, and technical adviser to RTLTM, the Prosecution submits that Serugendo

<sup>60</sup> *Jelisić*, Judgement (AC), para. 10; *Mucić et al.*, Judgement (AC), para. 731; *Aleksovski*, Judgement (AC), para. 182.

<sup>61</sup> *Kambanda*, Judgement (TC), para. 58; *Akayesu*, Judgement (TC), para. 40; *id.*, Judgement (AC), para. 414.

<sup>62</sup> *Bisengimana*, Judgement (TC), para. 110; *Muhimana*, Judgement (TC), para. 594; *Mucić*, Judgement (AC), paras. 717-719.

<sup>63</sup> *Mucić et al.*, Judgement (AC), para. 777.

<sup>64</sup> *Bisengimana*, Judgement (TC), para. 111; *Mucić et al.*, Judgement (AC), para. 763.

<sup>65</sup> *Bisengimana*, Judgement (TC), para. 111.

<sup>66</sup> *Bisengimana*, Judgement (TC), para. 140; *Rutaganira*, Judgement (TC), paras. 150-151; *Ruggiu*, Judgement (TC), paras. 53-54; *Serushago*, Judgement (TC), para. 35; *Kambanda*, Judgement (TC), paras. 52-53.

<sup>67</sup> *Ruggiu*, Judgement (TC), paras. 56-58; *Serushago*, Judgement (TC), paras. 31-33; *Kambanda*, Judgement (TC), paras. 46-50.

<sup>68</sup> *Ruggiu*, Judgement (TC), paras. 69-72; *Serushago*, Judgement (TC), para. 40; *Mucić et al.*, Judgement (AC), para. 788.

<sup>69</sup> *Bisengimana*, Judgement (TC), para. 159 (rejected on the facts of this case); *Rutaganda*, Judgement (TC), para. 470; *Serushago*, Judgement (AC), para. 38; *Mucić et al.*, Judgement (AC), paras. 775-776.

<sup>70</sup> *Bisengimana*, Judgement (TC), para. 165; *Rutaganira*, Judgement (TC), para. 129; *Ruggiu*, Judgement (TC), para. 59.

<sup>71</sup> *Bisengimana*, Judgement (TC), para. 175; *Rutaganira*, Judgement (TC), para. 136; *Ntakirutimana*, Judgement (TC), para. 898; *Rutaganda*, Judgement (TC), para. 471.

<sup>72</sup> *Bisengimana*, Judgement (TC), paras. 143-144; *Rutaganira*, Judgement (TC), para. 121; *Serushago*, Judgement (TC), para. 36; *Kunarac*, Judgement (AC), para. 408.

<sup>73</sup> *Jokić*, Judgement (TC), para. 100; *Stakić*, Judgement (TC), para. 920.

<sup>74</sup> Prosecution Sentencing Brief, para. 31.

exercised authority over subordinates, including RTLM technicians and other support personnel.<sup>75</sup>

44. Joseph Serugendo's actions helped ensure that the RTLM broadcasting continued uninterrupted during this period, and comprised oversight of the radio station equipment, technical assistance, and moral encouragement to staff when he personally visited the RTLM studios between 6 and 12 April 1994.<sup>76</sup> His actions therefore contributed to the dissemination by the RTLM, a leading source of information to the population of Rwanda, of information identifying the location of the Tutsi population and inciting the Rwandan population to find and kill all Tutsi, resulting in the killing of hundreds of thousands of civilian Tutsi.<sup>77</sup>

45. The Defence agrees that the offences to which the Accused pleaded guilty are by their nature grave, but that this factor has been reflected in the sentencing range stipulated in the Plea Agreement.<sup>78</sup>

(ii) *Findings*

Gravity of the crimes and the authority exercised by the Accused

46. The Chamber observes that the seriousness of the crimes and the extent of the involvement of Serugendo in their commission are factors to be considered in assessing aggravating circumstances. Genocide and crimes against humanity are inherently aggravating offences because they are heinous in nature and shock the collective conscience.<sup>79</sup>

47. Account must be taken of the particular circumstances of the case, including the form and the degree of the participation of an accused in the crimes.<sup>80</sup> The Chamber finds that 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.

48. Accordingly, Serugendo's position of authority qualifies as an aggravating circumstance, in accordance with the case law of the Tribunal, due to the far-reaching consequences of his improper exercise of his or her authority and power.<sup>81</sup>

49. However, the Chamber notes that Serugendo was not a particularly high-ranking or influential personality in Rwanda during 1994.<sup>82</sup> Nor did he personally make anti-Tutsi or inflammatory statements over the RTLM or commit any violent acts during the massacres in Rwanda.

<sup>75</sup> Prosecution Sentencing Brief, para. 32.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*, para. 36.

<sup>78</sup> Defence Sentencing Brief, paras. 22, 23.

<sup>79</sup> *Ruggiu*, Judgement (TC), para. 48.

<sup>80</sup> *Kayishema and Ruzindana*, Judgement (TC), para. 18; *Serushago*, Judgement (TC), paras. 28-28; *Kambanda*, Judgement (TC), para. 469; *Kupreskić et al.*, Judgement (AC), para. 852; *Mucić et al.*, Judgement (AC), para. 731.

<sup>81</sup> *Serushago*, Judgement (TC), paras. 28-28; *Kambanda*, Judgement (TC), para. 468.

<sup>82</sup> According to his counsel, the Accused's substantive post at the time within the RTLM was a relatively junior post below that of a Departmental Head (Defence Sentencing Brief, para. 26).

## B. MITIGATING CIRCUMSTANCES

(i) *Submissions*

50. The Prosecution and Defence both point to significant mitigating circumstances in the instant case.<sup>83</sup> They rely principally upon Serugendo's timely guilty plea, his ill health, and substantial co-operation with the Prosecution as factors in mitigation.<sup>84</sup>

51. Both parties also acknowledge that Serugendo was a person of previous good character, with no history of extremism prior to the events of 1994, and with no previous criminal record.<sup>85</sup> Finally, it is jointly noted that Serugendo has shown remorse for the crimes for which he has pleaded guilty.<sup>86</sup>

(ii) *Findings*(a) Guilty plea

52. The Chamber agrees with the parties that Serugendo's guilty plea will assist in the administration of justice and in the process of national reconciliation in Rwanda. It will also spare victims from coming to testify before the Tribunal.<sup>87</sup>

53. Further, by pleading guilty, Serugendo may be seen as setting an example that may encourage others to acknowledge their personal involvement in the massacres committed in Rwanda in 1994.<sup>88</sup>

54. The Prosecution submits that Serugendo deserves credit for not delaying his guilty plea until the last minute so as to secure a tactical advantage. By this timely plea, he has therefore saved the Tribunal considerable expense and time. He has assisted the Tribunal and the international community in making substantial savings in terms of time, human and financial resources.<sup>89</sup> The Defence adds that the Accused's decision to plead guilty from the outset reflects his genuine remorse, and that this plea has been entered at great personal risk to both the Accused himself and his family.<sup>90</sup>

55. The jurisprudence of the Tribunal has accepted that a guilty plea may go to the mitigation of sentence because, according to the circumstances, it may: demonstrate repentance, honesty, and readiness to take responsibility;<sup>91</sup> help establish the truth;<sup>92</sup> contribute to peace and reconciliation;<sup>93</sup> set an example to other persons guilty of committing

<sup>83</sup> Prosecution Sentencing Brief, para. 40.

<sup>84</sup> Prosecution Sentencing Brief, paras. 41-44; Defence Sentencing Brief, paras. 39-53.

<sup>85</sup> Prosecution Sentencing Brief, para. 45; Defence Sentencing Brief, para. 29.

<sup>86</sup> Prosecution Sentencing Brief, para. 47; Defence Sentencing Brief, para. 28.

<sup>87</sup> Prosecution Sentencing Brief, para. 41; Defence Sentencing Brief, para. 32.

<sup>88</sup> Prosecution Sentencing Brief, para. 41; Defence Sentencing Brief, para. 36.

<sup>89</sup> Prosecution Sentencing Brief, para. 42.

<sup>90</sup> Defence Sentencing Brief, paras. 33-34.

<sup>91</sup> *Bisengimana*, Judgment (TC), para. 139; *Ruggiu*, Judgment (TC), paras. 54-55; *Kambanda*, Judgment (TC), paras. 52-53.

<sup>92</sup> *Rutaganira*, Judgment (TC), para. 150.

<sup>93</sup> *Rutaganira*, Judgment (TC), para. 146; *Kambanda*, Judgment (TC), para. 50.

crimes;<sup>94</sup> relieve witnesses from giving evidence in court; and save the Tribunal's time and resources.<sup>95</sup> The timing of a guilty plea is also a factor.<sup>96</sup>

56. The Chamber observes that in the Plea Agreement, Serugendo states that by pleading guilty, he indicates his desire to tell the truth and thus genuinely contribute to the search for truth by revealing the knowledge and information in his possession.<sup>97</sup>

57. 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.<sup>98</sup> Moreover, the Chamber is of the view that the guilty plea of the Accused may contribute to the process of national reconciliation in Rwanda.<sup>99</sup> Further, by pleading guilty prior to the commencement of the trial, the Accused relieved the victims of the need to open old wounds.

58. The Chamber finds that Serugendo's change of plea to one of guilty is a mitigating circumstance.<sup>100</sup> The plea was accompanied by a publicly expressed acknowledgement of his responsibility.<sup>101</sup> Further, the timely nature of the guilty plea facilitates the administration of justice and saves the Tribunal's resources.<sup>102</sup>

59. Therefore, the Chamber recognises the importance of Serugendo's guilty plea as an expression of his readiness to take responsibility, and as a contribution to reconciliation in Rwanda.

60. The Chamber concludes that Joseph Serugendo's guilty plea is an important factor going to the mitigation of sentence.

(b) Co-operation with the Prosecution

61. Both the Prosecution and Defence concur that Serugendo has provided substantial co-operation to the Prosecution.<sup>103</sup> This co-operation is described as wide-ranging, leading to the clarification of many areas of investigative doubt, in relation also to crimes previously unknown by the Prosecution.<sup>104</sup> 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.

<sup>94</sup> *Bisengimana*, Judgment (TC), para. 129; *Kambanda*, Judgment (TC), para. 53.

<sup>95</sup> *Rutaganira*, Judgment (TC), para. 151; *Ruggiu*, Judgment (TC), para. 53; *Serushago*, Judgment (TC), para. 35.

<sup>96</sup> *Bisengimana*, Judgment (TC), para. 131.

<sup>97</sup> Plea Agreement, para. 5.

<sup>98</sup> *Ruggiu*, Judgment (TC), para. 55.

<sup>99</sup> *Rutaganira*, Judgment (TC), para. 146; *Kambanda*, Judgment (TC), para. 50.

<sup>100</sup> *Ruggiu*, Judgment (TC), para. 54.

<sup>101</sup> Sentencing Hearing, T. 1 June 2006, p. 23; Defence Exhibits 11 and 12.

<sup>102</sup> *Ruggiu*, Judgment (TC), para. 53.

<sup>103</sup> Prosecution Sentencing Brief, para. 44 (noting debriefings which resulted in more than 120 pages of information relevant to other cases currently before the Tribunal); Defence Sentencing Brief, paras. 41, 42, 45 (referring to "firm and resolute" as well as intense and ongoing co-operation with the Prosecution). See also Prosecution Final Pre-Sentencing Brief, para. 5; Sentencing Hearing, T. 1 June 2006, pp. 26, 28-30.

<sup>104</sup> Defence Sentencing Brief, para. 44.

62. Based on the submissions of the parties, it is clear that Serugendo's co-operation with the Prosecution has been substantial. The Chamber finds this factor to be a significant mitigating circumstance.

(c) Remorse

63. An accused's remorse may be treated as a mitigating circumstance, provided that it is sincere.<sup>105</sup> Both in the Plea Agreement and during the Sentencing Hearing, Serugendo publicly expressed regret and remorse for his crimes.<sup>106</sup> The Chamber accepts that this remorse is genuine.

64. The Chamber therefore finds that his expression of remorse is one mitigating factor among others.

(d) Good character

65. Both parties note that as far as is known, Serugendo was of good character and had no record of extremism before 1994.<sup>107</sup> The Accused has no previous criminal record, a factor to be taken into account for mitigation.

(e) Personal and family circumstances

66. The jurisprudence of the Tribunal has taken into consideration various personal circumstances as mitigating factors, such as the advanced age of an accused,<sup>108</sup> and his family situation.<sup>109</sup> However, the Tribunal has generally attached only limited importance to these factors.<sup>110</sup>

67. 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.

(f) Assistance given to certain victims

68. 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.<sup>111</sup> This evidence was uncontested by the Prosecution.

69. The Chamber accepts that Serugendo saved the life of Witness AX during the genocide as a factor in mitigation.

<sup>105</sup> *Rutaganira*, Judgment (TC), paras. 157-158; *Ruggiu*, Judgment (TC), para. 70; *Serushago*, Judgment (TC), para. 41.

<sup>106</sup> Plea Agreement, para. 21; Sentencing Hearing, T. 1 June 2006, p. 23.

<sup>107</sup> Prosecution Sentencing Brief, para. 46; Defence Sentencing Brief, para. 29.

<sup>108</sup> *Bisengimana*, Judgment (TC), para. 175; *Rutaganira*, Judgment (TC), para. 136; *Ntakirutimana*, Judgment (TC), para. 898.

<sup>109</sup> *Bisengimana*, Judgment (TC), para. 146; *Rutaganira*, Judgment (TC), para. 120; *Kunarac*, Judgment (AC), para. 366.

<sup>110</sup> As noted by the ICTY, "many accused share these personal factors" (*Banović*, Judgment (TC), para. 75).

<sup>111</sup> Sentencing Hearing, T. 1 June 2006, pp. 5-7.

(g) Ill health

70. Serugendo has been recently diagnosed with a terminal illness.<sup>112</sup> Both parties concur that his fragile health and poor prognosis must be taken into account in determining a fair sentence.<sup>113</sup>

71. The Chamber has noted the content of the confidential Medical Report which was tendered by the Accused into evidence during the Sentencing Hearing on 1 June 2006. This Report suggests that the Accused 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.<sup>114</sup>

72. Ill health has been considered as a mitigating factor in sentencing by both this Tribunal<sup>115</sup> and the ICTY.<sup>116</sup> The weight it has been accorded has varied. There is no case law concerning the significance of terminal illness.<sup>117</sup> The Chamber shares the view of the ICTY that when the medical condition of an accused is such as to become incompatible with a state of continued detention, it is the duty of the Tribunal to provide the necessary remedies.<sup>118</sup>

73. 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.<sup>119</sup> They submit, however, that irrespective of the sentence to be imposed, the Accused must continue to be provided with medical treatment, including referral to appropriate facilities where necessary.<sup>120</sup>

74. The Chamber considers that the Accused'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.

<sup>112</sup> Sentencing Hearing, T. 1 June 2006, p. 26.

<sup>113</sup> *Id.*, pp. 26-27, 30.

<sup>114</sup> Defence Exhibit 13 (under seal).

<sup>115</sup> *Bisengimana*, Judgment (TC), para. 175; *Rutaganira*, Judgment (TC), para. 136; *Ntakirutimana*, Judgment (TC), para. 898; *Rutaganda*, Judgment (TC), para. 471.

<sup>116</sup> *Strugar*, Judgment (TC), para. 469; *Plavšić*, Judgment (TC), para. 106.

<sup>117</sup> The ICTY has on one occasion considered the impact of terminal illness on Tribunal proceedings, albeit in the context of an ongoing trial rather than at sentencing. (Decision on the Motion for Provisional Release of the Accused Momir Talić, 20 September 2002). Given Talić's incurable condition, inability to stand trial, and the incompatibility of his medical treatment with any regime of detention, he was granted provisional release and placed under a supervised regime of house arrest and hospitalization. Talić subsequently died on 28 May 2003 (Order Terminating Proceedings Against Momir Talić, 12 June 2003).

<sup>118</sup> The ICTY found that it would be extremely damaging to the institutional authority of the Tribunal were the Chamber to disregard the stark reality of Talić's medical condition and ignore the fact that it is a Tribunal created to assert, defend and apply humanitarian law (Decision on the Motion for Provisional Release of the Accused Momir Talić, 20 September 2002, p. 6).

<sup>119</sup> Sentencing Hearing, T. 1 June 2006, p. 32 (concession by Prosecution that ill health may justify an additional reduction in sentence but that given the gravity of the crimes, the sentence should not be diminished to an extremely short period); *id.*, p. 26 (Defence Counsel): "What the Accused now desperately needs is not a sentence of confinement. He needs proper health care and attention. ... It would serve no useful purpose confining him." His submissions are, however, toward a proposed *reduction* in sentence in consequence of his client's state of health (*e.g. id.*, "It is for this reason that I implore the Honourable Chamber to consider the medical condition of the Accused, which is of a terminal nature, as a serious mitigating factor, calling upon the Chamber to go way below the range proposed.")

<sup>120</sup> Sentencing Hearing, T. 1 June 2006, p. 32.

## C. SENTENCING PRACTICE IN THE COURTS OF RWANDA

75. Although neither party places particular reliance on the sentencing practice in the courts of Rwanda, the Chamber recalls Article 23 of the Statute and Rule 101 of the Rules, which oblige the Tribunal to take into account the general practice regarding prison sentences in the courts of Rwanda. The Tribunal is not bound by the sentencing practice of Rwanda.<sup>121</sup>

76. Under Rwandan law, genocide and crimes against humanity carry the possible penalties of death or life imprisonment, depending on the nature of the accused's participation.<sup>122</sup>

77. Previous jurisprudence has noted that the Rwandan Organic Law setting up Gacaca Jurisdictions<sup>123</sup> and the Organic Law modifying and completing it<sup>124</sup> may be of relevance to guilty pleas before the Tribunal because they address the procedure for persons pleading guilty to crimes against humanity. A person acting in a position of authority at the municipal level,<sup>125</sup> who has encouraged others to commit a crime against humanity, may, after pleading guilty and under certain conditions,<sup>126</sup> be sentenced to a term of imprisonment ranging from twenty-five years to life.<sup>127</sup>

78. The Chamber is also mindful of Article 83 of the Rwandan Penal Code which provides that where there are mitigating circumstances, sentences shall be amended or reduced as follows: a death penalty shall be replaced by a sentence of imprisonment of no less than five years; a sentence of life imprisonment shall be replaced by a sentence of no less than two years imprisonment; and a sentence of imprisonment of five to twenty years or more than twenty years may be reduced to a sentence of one year's imprisonment.<sup>128</sup>

<sup>121</sup> *Semanza*, Judgement (AC), para. 377 ("The command for Trial Chambers to 'have recourse to the general practice regarding prison sentences in the courts of Rwanda' does not oblige the Trial Chambers to conform to that practice; it only obliges the Trial Chambers to take account of that practice."); *Rutaganira*, Judgment (TC), para. 164; *Serushago*, Judgement (AC), para. 30; *Nikolić*, Judgement (AC), para. 69.

<sup>122</sup> Rwandan Organic Law No. 8/96, on the Organization of Prosecutions for Offences constituting Genocide or Crimes Against Humanity committed since 1 October 1990, published in the Gazette of the Republic of Rwanda, 35th year. No. 17, 1 September 1996.

<sup>123</sup> Organic Law setting up Gacaca Jurisdictions and organizing prosecutions for offences constituting the crime of genocide or crimes against humanity committed between October 1990 and December 31, 1994, N. 40/2000 of 26/01/2001, Official Gazette of the Republic of Rwanda, Year 40, n° 6, 15 March 2001 ("Organic Law of 26 January 2001").

<sup>124</sup> Organic Law modifying and completing Organic Law N. 40/2000 of January 26, 2001 setting up "Gacaca Jurisdictions" and organizing prosecutions for offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994, Official Gazette of the Republic of Rwanda, Year 40, n° 14, 15 July 2001 ("Organic Law Modifying and Completing the Organic Law of 26 January 2001").

<sup>125</sup> Article 51 of Organic Law of 26 January 2001 and Article 1 of the Organic Law Modifying and Completing Organic Law of 26 January 2001.

<sup>126</sup> Article 56 of the Organic Law of 26 January 2001.

<sup>127</sup> *Id.*, Article 68.

<sup>128</sup> *Bisengimana*, Judgement (TC), para. 195, citing Code Pénal Rwandais, Décret-Loi n° 21/77, 18 August 1977.

## D. SENTENCING RECOMMENDATIONS OF THE PARTIES

79. In the Plea Agreement, the Prosecution undertook to recommend a sentence of between six and fourteen years imprisonment.<sup>129</sup> At the Sentencing Hearing, the Prosecution revised this range and instead proposed a sentencing range of six to ten years given the substantial nature of the co-operation received from Joseph Serugendo to date.<sup>130</sup>

80. Although both parties acknowledge that, pursuant to Rule 62 *bis* (B), 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.<sup>131</sup>

## V. DETERMINATION OF SENTENCE

## A. GRAVITY OF THE OFFENCES

81. All crimes under the Tribunal's Statute are serious violations of international humanitarian law.<sup>132</sup> When determining a sentence, a Trial Chamber has considerable, though not unlimited, discretion on account of its obligation to individualize penalties to fit the individual circumstances of an accused and to reflect the gravity of the crimes for which the accused has been convicted.<sup>133</sup>

82. In determining an appropriate sentence, the Appeals Chamber has stated that sentences of like individuals in like cases should be comparable. However, it has also noted the inherent limits to this approach because "any given case contains a multitude of variables, ranging from the number and type of crimes committed to the personal circumstances of the individual".<sup>134</sup>

83. The Chamber has found Serugendo guilty of genocide and persecution as a crime against humanity for his managerial role in the RTLM under Article 6 (1) of the Statute. In the Tribunal's jurisprudence, principal perpetration generally warrants a higher sentence than aiding and abetting.<sup>135</sup> However, this alone does not mean that a life sentence is the only appropriate sentence for a principal perpetrator of genocide and crimes against humanity.<sup>136</sup> In this Tribunal, a sentence of life imprisonment is generally reserved those who planned or

<sup>129</sup> Plea Agreement, para. 59. The Prosecution also undertook to make specific recommendations for a sentence within this range conditional upon the Accused's substantial co-operation with the Prosecutor (*id.*, para. 60).

<sup>130</sup> See Prosecution Final Pre-Sentencing Brief, para. 5.

<sup>131</sup> *Nikolić*, Judgement (AC), para. 89: "Those reasons, combined with the Trial Chamber's obligation pursuant to Article 23 (2) of the Statute to render a Judgement 'accompanied by a reasoned decision in writing', will facilitate a meaningful exercise of the convicted person's right to appeal and allow the Appeals Chamber 'to understand and review the findings of the Trial Chamber'."

<sup>132</sup> *Kayishema and Ruzindana*, Judgment (Reasons) (AC), para. 367.

<sup>133</sup> *Kajelijeli*, Judgment (AC), para. 291.

<sup>134</sup> *Kvočka*, Judgment (AC), para. 681.

<sup>135</sup> *Semanza*, Judgment (AC), para. 388.

<sup>136</sup> See, e.g., *Ntakirutimana*, Judgment (TC), paras. 791-793, 832-834, 908-909, 924 (imposing twenty-five years' imprisonment for personal participation).

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ordered atrocities and those who participate in the crimes with particular zeal or sadism.<sup>137</sup> Offenders receiving the most severe sentences also tend to be senior authorities.<sup>138</sup>

84. At all relevant times, Serugendo had no formal position within the government, military, or political structures of Rwanda. In addition, Serugendo did not personally broadcast any anti-Tutsi messages during the relevant period. However, his technical and managerial role was important to the ability of the RTLM to continue to transmit such messages.

85. Although Serugendo's crimes are grave, the Chamber is not satisfied that he is deserving of the most serious sanction available under the Statute. The Chamber finds some guidance from cases that include convictions for direct participation in genocide and crimes against humanity that did not result in life sentences.

86. In *Semanza*, the Appeals Chamber determined twenty-five years' imprisonment to be the appropriate sentence for the direct perpetration of genocide and extermination at a massacre site.<sup>139</sup> *Semanza* was a former bourgmestre and a newly appointed parliamentarian who exercised influence in the locality where his crimes were committed.<sup>140</sup> In *Gacumbitsi*, the Trial Chamber decided that a single sentence of thirty years' imprisonment for the Accused sufficiently reflected the Tribunal's sentencing goals for genocide and extermination as a crime against humanity.<sup>141</sup> In reaching this conclusion, the Trial Chamber noted that the Accused, a bourgmestre at the time of his involvement, was not involved in the long term planning of the events in his commune. In *Ruzindana*, the Appeals Chamber affirmed the Accused's sentence of twenty-five years' imprisonment for genocide, based on his participation in a common purpose or design, which included mutilating and humiliating his victim.<sup>142</sup>

87. On examination of the sentencing practice of this Tribunal and the ICTY, the Chamber notes that principal or co-perpetrators convicted of the crime against humanity of

<sup>137</sup> *Muhimana*, Judgement (TC), paras. 604-616 (conseiller, but recounting the particularly atrocious manner in which the accused personally raped, killed, mutilated, and humiliated his victims); *Niyitegeka*, Judgement (TC), para. 486; *Musema*, Judgement (AC), para. 383 (noting that the leaders and planners of a particular conflict should bear heavier responsibility, with the qualification that the gravity of the offence is the primary consideration in imposing a sentence).

<sup>138</sup> Life sentences have been imposed against senior government authorities in: *Ndindabahazi*, Judgement (TC), paras. 505, 508, 511 (Minister of Finance); *Niyitegeka*, Judgement (TC), paras. 499, 502 (Minister of Information); *Kamuhanda*, Judgement (TC), paras. 6, 764, 770 (Minister of Higher Education and Scientific Research) and *Kambanda*, Judgement (TC), paras. 44, 61-62 (Prime Minister). In addition, life sentences have been imposed on lower level officials, as well as those who did not hold government positions. See, e.g., *Musema*, Judgement (TC), paras. 999-1008 (influential director of a tea factory who exercised control over killers); *Rutaganda*, Judgement (TC), paras. 466-473 (second vice-president of *Interahamwe* at national level).

<sup>139</sup> *Semanza*, Judgement (AC), para. 388-389.

<sup>140</sup> *Semanza*, Judgement (TC), paras. 303-304, 573.

<sup>141</sup> *Gacumbitsi*, Judgement (TC), paras 334, 345, 352-353, 356. The accused in *Gacumbitsi* was also convicted of rape and the Trial Chamber determined that the "particularly atrocious" manner in which some rapes were carried out constituted an aggravating factor (*id.*, at para. 345).

<sup>142</sup> *Kayishema and Ruzindana*, Judgment (Reasons) (AC), paras. 191, 194, 352; *Kayishema and Ruzindana*, Judgement (TC), para. 26. The aggravating factors included Ruzindana cutting off the breasts of a victim and the tearing open of her stomach, while he openly mocked her. The Trial Chamber relied on his relatively young age and the goal of rehabilitation as one of the justifications for providing a sentence less than life.

persecution have received sentences ranging from five years to life imprisonment.<sup>143</sup> Persons convicted of secondary forms of participation have generally received lower sentences.<sup>144</sup>

## B. INDIVIDUAL, AGGRAVATING AND MITIGATING CIRCUMSTANCES

88. The Chamber will consider the individual circumstances of Serugendo, including aggravating and mitigating factors.

89. In general, the Chamber agrees with the Prosecution that the maximum sentence should be reserved for the most serious examples of its kind, and that it should have regard to the range of cases which is actually encountered in practice.<sup>145</sup> Further, the maximum sentence should in general not be imposed where an accused has pleaded guilty. The Chamber reiterates that some form of consideration should be given to those who have confessed their crimes in order to encourage others to come forward. Moreover, Serugendo's guilty plea may contribute to the process of national reconciliation in Rwanda.<sup>146</sup>

90. Among the aggravating factors, the Chamber notes Serugendo's managerial position within the RTLM. The influence he derived from this status made it likely that other employees would follow his example.<sup>147</sup> The number of victims which resulted from the incitement to genocide and persecutions is indeed an aggravating factor. Serugendo played an active role in ensuring the proper functioning of the radio station.

91. Despite the gravity of the Accused'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 co-operation 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.

92. 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.

93. 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 co-operation.<sup>148</sup> While the Chamber is not bound by such a recommendation, it is nonetheless of assistance when deciding the range of sentence to be imposed.<sup>149</sup> It finds that he should be given a sentence at the lower end of the recommended range.

<sup>143</sup> *Nahimana et al.*, Judgement (TC), paras. 1106, 1108; *Ruggiu*, Judgement (TC); *Kvočka*, Judgement (AC), para. 757.

<sup>144</sup> Vincent Rutaganira was sentenced to six years' imprisonment for his complicity by omission in extermination as a crime against humanity (*Rutaganira*, Judgment (TC), para. 40); Elizaphan Ntakirutimana was sentenced to ten years' imprisonment for aiding and abetting genocide (*Ntakirutimana*, Judgement (TC), paras. 790, 921; upheld by the Appeals Chamber (*Ntakirutimana*, Judgement (AC), para. 570)) and Laurent Semanza was sentenced to eight years' imprisonment for instigating the murder of six persons as a crime against humanity (*Semanza*, Judgement (TC), para. 588).

<sup>145</sup> Prosecution Sentencing Brief, para. 19.

<sup>146</sup> *Rutaganira*, Judgment (TC), para. 146; *Kambanda*, Judgement (TC), para. 50.

<sup>147</sup> *Semanza*, Judgement (AC), para. 336.

<sup>148</sup> See Prosecution Final Pre-Sentencing Brief, para. 5.

<sup>149</sup> *Nikolić*, Judgement (Sentence) (AC), para. 89.

94. 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 this Judgement.

### C. CREDIT FOR TIME SERVED

95. Serugendo was arrested on 16 September 2005. He has since then remained in the custody of the Tribunal. Pursuant to Rule 101 (D) of the Rules, he is entitled to credit for the time spent in detention, namely 270 days in total as of the date of delivery of this written judgement.<sup>150</sup>

## VI. DISPOSITION

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

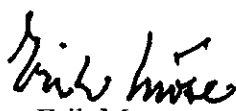
**SENTENCES** Joseph Serugendo to a single sentence of

### SIX (6) YEARS IMPRISONMENT

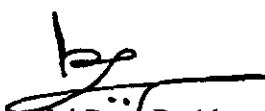
**INSTRUCTS** the Registry to ensure that Joseph Serugendo shall continue to receive adequate medical treatment, including hospitalization to the extent needed.

Pursuant to Rule 101 (D) of the Rules, Serugendo shall receive credit for his time served, which the Chamber has calculated as 270 days.

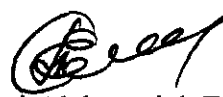
Arusha, 12 June 2006



Erik Møse  
Presiding Judge



Jai Ram Reddy  
Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]



<sup>150</sup> *Kajelijeli*, Judgement (AC), para. 290.

ANNEX

JURISPRUDENCE AND DEFINED TERMS

A. ICTR JURISPRUDENCE

(i) Appeals Chamber

*Prosecutor v. Serushago*, Case No ICTR-98-39-A, Judgment (Reasons) (AC), 6 April 2000;  
*Prosecutor v. Akayesu*, Case No ICTR-96-4-A, Judgment (AC), 1 June 2001;  
*Prosecutor v. Kayishema and Ruzindana*, Case No ICTR-95-1-A, Judgment (Reasons) (AC), 1 June 2001;  
*Prosecutor v. Musema*, Case No ICTR-96-13-A, Judgment (AC), 16 November 2001;  
*Prosecutor v. Ntakirutimana*, Case No ICTR-96-10-A and ICTR-96-17-A, Judgment (AC), 13 December 2004;  
*Prosecutor v. Semanza*, Case No ICTR-97-20-A, Judgment (AC), 20 May 2005;  
*Prosecutor v. Kajelijeli*, Case No ICTR-99-44-A, Judgment (AC), 23 May 2005.

(ii) Trial Chamber

*Prosecutor v. Akayesu*, Case No ICTR-96-4-T, Judgment (TC), 2 September 1998;  
*Prosecutor v. Kambanda*, Case No ICTR-97-23-S, Judgment (TC), 4 September 1998;  
*Prosecutor v. Serushago*, Case No ICTR-98-39-T, Judgment (TC), 5 February 1999;  
*Prosecutor v. Kayishema and Ruzindana*, Case No ICTR-95-1-T, Judgment (TC), 21 May 1999;  
*Prosecutor v. Rutaganda*, Case No ICTR-96-3-T, Judgment (TC), 6 December 1999;  
*Prosecutor v. Musema*, Case No ICTR-96-13-T, Judgment (TC), 27 January 2000;  
*Prosecutor v. Rugguu*, Case No ICTR-97-32-T, Judgment (TC), 1 June 2000;  
*Prosecutor v. Bagilishema*, Case No ICTR-95-1A-T, Judgment (TC), 7 June 2001;  
*Prosecutor v. Ntakirutimana*, Case No ICTR-96-10-T and ICTR-96-17-T, Judgment (TC), 21 February 2003;  
*Prosecutor v. Semanza*, Case No ICTR-97-20-T, Judgment (TC), 15 May 2003;  
*Prosecutor v. Niyitegeka*, Case No ICTR-96-14-T, Judgment (TC), 16 May 2003;  
*Prosecutor v. Kajelijeli*, Case No ICTR-99-44-T, Judgment (TC), 1 December 2003;  
*Prosecutor v. Nahimana et al.*, Case No ICTR-99-52-T, Judgment (TC), 3 December 2003;  
*Prosecutor v. Kamuhanda*, Case No ICTR-95-54-T, Judgment (TC), 22 January 2004;  
*Prosecutor v. Gacumbitsi*, Case No ICTR-01-64-T, Judgment (TC), 17 June 2004;  
*Prosecutor v. Ndindabahizi*, Case No ICTR-2001-71-I, Judgment (TC), 15 July 2004;  
*Prosecutor v. Rutaganira*, Case No ICTR-95-1C-T, Judgment (TC), 14 March 2005;  
*Prosecutor v. Muhimana*, Case No ICTR-95-1B-T, Judgment (TC), 28 April 2005;  
*Prosecutor v. Bisengimana*, Case No ICTR-00-60-T, Judgment (TC), 13 April 2006.

B. ICTY JURISPRUDENCE

(i) Appeals Chamber

*Prosecutor v. Tadić*, Case No IT-94-I-S, Judgment (AC), 26 January 2000;  
*Prosecutor v. Aleksovski*, Case No IT-95-14/1-A, Judgment (AC), 24 March 2000;  
*Prosecutor v. Furundžija*, Case No IT-95-17/1-A, Judgment (AC), 21 July 2000;  
*Prosecutor v. Mucić et al.*, Case No IT-96-21-A, Judgment (AC), 20 February 2001;

*Prosecutor v. Jelisić*, Case No IT-95-10-A, Judgement (AC), 5 July 2001;  
*Prosecutor v. Kupreškić et al.*, Case No IT-95-16-A, Judgement (AC), 23 October 2001;  
*Prosecutor v. Kunarac*, Case No IT-96-23-A & 96-23/1-A, Judgement (AC), 12 June 2002;  
*Prosecutor v. Krnojelac*, Case No IT-97-25-A, Judgement (AC), 17 September 2003;  
*Prosecutor v. Nikolić*, Case No IT-94-2-A, Judgement (AC), 4 February 2005;  
*Prosecutor v. Kvočka et al.*, Case No IT-98-30/1-A, Judgement (AC), 28 February 2005.

(ii) Trial Chamber

*Prosecutor v. Plavšić*, Case No IT-00-39 & 40/1-S, Judgement (TC), 27 February 2003;  
*Prosecutor v. Stakić*, Case No IT-97-24-T, Judgement (TC), 31 July 2003;  
*Prosecutor v. Banović*, Case No IT-02-65/1S, Judgement (TC), 28 October 2003;  
*Prosecutor v. Jokić*, Case No IT-01-42/I-S, Judgement (TC), 18 March 2004;  
*Prosecutor v. Sirugar*, Case No IT-01-42-T, Judgement (TC), 31 January 2005.

C. DEFINED TERMS

**AC**

Appeals Chamber

**Amended Indictment**

*Prosecutor v. Serugendo*, Case No ICTR-2005-84-I, Amended Indictment, signed on 16 February 2006 and filed on 15 March 2006 in English and French.

**Chamber**

Trial Chamber I

**Defence Sentencing Brief**

*Prosecutor v. Serugendo*, Case No ICTR-2005-84-I, "Defence Pre-Sentence Brief Under Rule 100 of the Rules of Procedure and Evidence", filed on 18 May 2006.

**Plea Agreement**

*Prosecutor v. Serugendo*, Case No ICTR-2005-84-I, Plea agreement between Joseph Serugendo and the Office of the Prosecutor, Revised, dated 16 February 2006.

**Prosecution Final Pre-Sentencing Brief**

*Prosecutor v. Serugendo*, Case No ICTR-2005-84-I, "The Prosecutor's Final Pre-Sentencing Brief Dated 31 May 2006", filed on 1 June 2006.

**Prosecution Sentencing Brief**

*Prosecutor v. Serugendo*, Case No ICTR-2005-84-I, "The Prosecutor's Preliminary Pre-Sentencing Brief", filed on 3 May 2006.

**T.**

Official transcripts of the proceedings (in English unless otherwise indicated).

**TC**

Trial Chamber

## TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

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

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|                                                             | <b>Case Name:</b> The Prosecutor vs. Serugendo                           |                                                                                                                                            |                                                              | <b>Case Number:</b> ICTR-2005-84-I                                                            |
| <b>Dates:</b>                                               | Transmitted: 12 June 2006                                                |                                                                                                                                            | Document's date: 12 June 2006                                |                                                                                               |
| <b>No. of Pages:</b>                                        | 24                                                                       | <b>Original Language:</b> <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda |                                                              |                                                                                               |
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