International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International humanitarian Law Committed in the territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994

TRIAL CHAMBER I

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Before Judges:
Laïty Kama, Presiding Judge
Lennart Aspegren
Navanethem Pillay

Registry: Mr. Agwu Okali

Decision of: 5 February 1999

THE PROSECUTOR
vs
OMAR SERUSHAGO

Case no.: ICTR 98-39-S

SENTENCE

Office of the Prosecutor:
Mr. Bernard Muna, Deputy Prosecutor
Mr. Mohamed Othman, Senior Legal Officer
Ms. Josée D'Aoust, Legal Adviser

Counsel for the Defence:
Mr. Mohamed Ismail

I. The Proceedings

A. Background

1. On 9 June 1998, Omar Serushago voluntarily surrendered himself to the authorities of the Côte d'Ivoire in Abidjan. Pursuant to a request of the Prosecutor dated 16 June 1998, President Laïty Kama ruling on the basis of Rule 40*bis* of the Rules of Procedure and Evidence (the "Rules") ordered on 30 June 1998 the transfer of Omar Serushago to the Detention Facility of the Tribunal where he was to be provisionally detained for a period of thirty days. The provisional detention of the suspect Omar Serushago was extended twice, firstly, under Rule 40*bis* (F), for a period of thirty days by Judge Kama, and secondly, under the provisions of Rule 40*bis* (G) by Judge Lennart Aspegren, for a further and final period of 20 days.

2. On 24 September 1998, an indictment against the suspect Omar Serushago was filed by the Office of the Prosecutor for confirmation. The indictment was submitted to Judge Yakov Ostrovsky on 28 September 1998, and, pursuant to Rule 47(D) of the Rules, the Prosecutor was heard on 29 September 1998. The same day, Judge Yakov Ostrovsky confirmed counts 2, 3, 4, 5, and 6 of the said indictment, dismissing count 1 thereof. A warrant of arrest and order for continued detention were subsequently issued against Omar Serushago.

3. In accordance with the terms of the abovementioned decision on the review of the indictment, the Prosecutor filed on 14 October 1998 an amended indictment against Omar Serushago.

4. On 14 December 1998, during his initial appearance before this Trial Chamber, the accused pleaded guilty to four of the five counts in the modified indictment, namely, genocide, as stipulated in Article 2(3)(a) of the Statute of the Tribunal (the "Statute"), a crime against humanity (murder), as stipulated in Article 3(a) of the Statute, a crime against humanity (extermination), as stipulated in Article 3(b) of the Statute, and a crime against humanity, (torture), as stipulated in Article 3(f) of the Statute. Following a plea of not guilty by the accused to count 5 of the indictment, a crime against humanity (rape), as stipulated in Article 3(g) of the Statute, the Prosecutor was authorized by this Trial Chamber, on the basis of Rules 51 and 73 of the Rules, to withdraw the said count.

5. After verifying the validity of his guilty plea, particularly in light of an agreement concluded between the Prosecutor, on the one hand, and the accused and his lawyer, on the other, an agreement which was signed by all the parties[(1)], the Chamber entered a plea of guilty against the accused on counts one to four in the indictment. Furthermore, it was decided, as provided for in Rule 100(A) of the Rules, that any relevant information that may assist the Chamber in determining an appropriate sentence which the Prosecutor and the Defence may wish to submit should be filed by the latest Friday 22 January 1999. In accordance with Rule 62(v) of the Rules, the Registrar was instructed to set the date of the pre-sentencing hearing for Friday 29 January 1999, on which day it was held[(2)].

B. The guilty plea

6. As indicated *supra,* Omar Serushago pleaded guilty to four of the five counts set forth in the indictment against him. As stated earlier, the accused confirmed that he had concluded an agreement with the Prosecutor, an agreement signed by his counsel and himself and placed under seal, in which he admitted having committed all the acts to which he pleaded guilty to as charged by the Prosecutor.

7. In accordance with sub-Rule 62(v) of the Rules, the Chamber sought to verify the validity of the guilty plea. To this end, the Chamber asked the accused:

(i) if his guilty plea was entered voluntarily, in other words, if he did so freely and knowingly, without pressure, threats, or promises;

(ii) if he clearly understood the charges against him as well as the consequences of his guilty plea; and

(iii) if his guilty plea was unequivocal, in other words, if he was aware that the said plea could not be refuted by any line of defence.

8. The accused replied in the affirmative to all these questions. Furthermore, on the basis of lack of any material disagreement between the parties about the facts presented in support of counts one to four of the indictment, the Chamber found that the guilty plea was based on sufficient facts, firstly, for the crimes charged and, secondly, for the accused's participation therein.

9. On the strength of the above, the Chamber found Omar Serushago guilty of genocide, as stipulated in Article 2(3)(a) of the Statute, a crime against humanity (murder), as stipulated in Article 3(a) of the Statute, a crime against humanity (extermination), as stipulated in Article 3(b) of the Statute, and a crime against humanity, (torture), as stipulated in Article 3(f) of the Statute.

II. Law and applicable principles

10. The Chamber will now summarize the legal texts relating to sentences and penalties and their enforcement, before going on to specify the applicable scale of sentences, on the one hand, and the general principles on the determination of penalties, on the other.

A. Applicable texts

11. As it has previously done in the cases "The Prosecutor versus Jean Kambanda" and "The Prosecutor versus Jean Paul Akayesu", the Chamber will apply the statutory and regulatory provisions hereafter. Article 22 of the Statute on judgement, Articles 23 and 26 dealing respectively with penalties and enforcement of sentences, Rules 100, 101, 102, 103 and 104 of the Rules which cover respectively sentencing procedure on a guilty plea, penalties, status of the convicted person, place and supervision of imprisonment.

B. Scale of sentences applicable to the accused found guilty of one of the crimes listed in Articles 2, 3 or 4 of the Statute of the Tribunal.

12. As can be seen from a reading of all the above provisions on penalties, the only penalties the Tribunal can impose on an accused who pleads guilty or is convicted as such, are prison terms up to and including life imprisonment. The Statute of the Tribunal excludes other forms of punishment such as the death sentence, penal servitude or a fine.

13. Whereas in most national systems the scale of penalties is determined in accordance with the gravity of the offence, the Chamber notes that, as indicated *supra*, the Statute does not rank the various crimes falling under the jurisdiction of the Tribunal and, thereby, the sentence to be handed down. In theory, the sentences are the same for each of the three crimes, namely a maximum term of life imprisonment.

14. It should be noted, however, that in imposing the sentence, the Trial Chamber should take into account, in accordance with Article 23 (2) of the Statute, such factors as the gravity of the offence. As was held by the Chamber in the sentencing Judgements rendered on 2 October 1998 in the matter of "The Prosecutor versus Jean-Paul Akayesu" and on 4 September 1998 in the matter of "The Prosecutor versus Jean Kambanda", it is difficult to rank genocide and crimes against humanity as one being the lesser of the other in terms of their respective gravity. Therefore, the Chamber held in these two judgements that both crimes against humanity, already punished by the Nuremberg and Tokyo Tribunals, and genocide, a concept defined later, are crimes which both particularly shock the collective conscience. In fact, they are inhumane acts committed against civilians on a discriminatory basis.

15. Regarding the crime of genocide, in particular, the preamble to the Genocide Convention recognizes that at all periods of history, genocide has inflicted great losses on humanity and reiterates the need for international cooperation to liberate humanity from this scourge. The crime of genocide is unique because of its element of *dolus specialis* (special intent) which requires that the crime be committed with the intent 'to destroy in whole or in part, a national, ethnic, racial or religious group as such', as stipulated in Article 2 of the Statute; hence the Chamber is of the opinion that genocide constitutes the "crime of crimes", which must be taken into account when deciding the sentence.

16. There is no argument that, precisely on account of their extreme gravity, crimes against humanity and genocide must be punished appropriately. Article 27 of the Charter of the Nuremberg Tribunal empowered that Tribunal, pursuant to Article 6 (c) of the said Charter, to sentence any accused found guilty of crimes against humanity to death or such other punishment as shall be determined by it to be just.

17. Rwanda, like all the States which have incorporated crimes against humanity or genocide in their domestic legislation, has envisaged the most severe penalties in the criminal legislation for these crimes. To this end, the Rwandan Organic Law on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity, committed since 1 October 1990, adopted in 1996,[(3)] groups accused persons into four categories, according to their acts of criminal participation. The first of these categories concerns the masterminds of the crimes

(planners, organizers), persons in positions of authority, from persons who have exhibited excessive cruelty to perpetrators of sexual violence. All these people are punishable by a death penalty. The second category concerns perpetrators, conspirators or accomplices in criminal acts, who incur life imprisonment. The third category deals with persons who, in addition to committing a main crime, are guilty of other serious assaults against the person. Their sentence is short.The fourth and last category concerns persons who have committed offences against property.

18. But as the Chamber had already stated in the afore-mentioned cases of "The Prosecutor versus Jean Kambanda" and "The Prosecutor versus Jean Paul Akayesu", reference to the practice of sentencing in Rwanda and to the Organic law is just an indication. Also, while referring as much as practicable to this general practice of sentencing, the Chamber will prefer, here too, to lean more on its unfettered discretion each time that it has to pass sentence on persons found guilty of crimes falling within its jurisdiction, taking into account the circumstances of the case and the standing of the accused persons.

C. General principles regarding the determination of sentences

19. In determining the sentence, the Chamber shall be mindful of the fact that this Tribunal was established by the Security Council pursuant to Chapter VII of the Charter of the United Nations within the context of measures the Council was empowered to take under Article 39 of the said Charter to ensure that violations of international humanitarian law in Rwanda in 1994 were halted and effectively redressed. The objective was to prosecute and punish the perpetrators of the atrocities in Rwanda in such a way as to put an end to impunity and thereby to promote national reconciliation and the restoration of peace.

20. That said, it is clear that the penalties imposed on accused persons found guilty by the Tribunal must be directed, on the one hand, at retribution of the said accused, who must see their crimes punished, and over and above that, on other hand, at deterrence, namely to dissuade for good others who may be tempted in the future to perpetrate such atrocities by showing them that the international community shall not tolerate the serious violations of international humanitarian law and human rights.

21. However, the Chamber recalls that, in the determination of sentences, it is required by Article 23 (2) of the Statute and Rule 101 (B) of the Rules to take into account a number of factors including the gravity of the offence, the individual circumstances of the accused, the existence of any aggravating or mitigating circumstances, including the substantial co-operation by the accused with the Prosecutor before or after his conviction. It is a matter, as it were, of individualizing the penalty.

22. Clearly, however, as far as the individualization of penalties is concerned, the judges of the Chamber cannot limit themselves to the factors mentioned in the Statute and the Rules. Here again, their unfettered discretion to evaluate the facts and attendant circumstances should enable them to take into account any other factor that they deem pertinent.

23. Similarly, the factors at issue in the Statute and in the Rules cannot be interpreted as having to be mandatorily cumulative in the determination of the sentence.

III. Case on Merits

24. Having reviewed the principles set out above, the Trial Chamber proceeds to consider all relevant information submitted by both parties in order to determine an appropriate sentence in terms of Rule 101 of the Rules.

A. Facts of the Case

25. In addition to the guilty plea of Omar Serushago, the Prosecutor submitted to the Chamber a document entitled "Plea Agreement between Omar Serushago and the Office of the Prosecutor", signed by the representatives of the Prosecutor, on the one hand, and Omar Serushago and his defence counsel, Mohamed Ismail, on the other hand. In this document, Omar Serushago makes full of all the relevant facts alleged in counts one to four of the indictment, facts pertaining exclusively to count 5 of the indictment having been withdrawn by the Prosecutor with the permission of the Chamber. In particular:

(i) Omar Serushago acknowledges that there was in Rwanda between 7 April-17 July 1994 a widespread or systematic attack against a civilian population, notably on civilian Tutsi and moderate Hutu, on political, ethnic or racial grounds, and which resulted in the death of hundreds of thousands of persons throughout Rwanda. Omar Serushago admits that the purpose of the mass killings of the Tutsi in Rwanda and those in Gisenyi between April and July 1994 was to exterminate them. Omar Serushago further recognizes that this is evidenced by the selective searching and targeting of Tutsi; the indiscriminate nature of the mass killings which victimized women and children, young people and old people alike, and the fact that they were pursued in the places where they had taken refuge, i.e. prefectures and communal offices, schools, churches and stadiums with the intent of exterminating them.

(ii) Omar Serushago acknowledges that Gisenyi, the prefecture of origin of the deceased President, Juvénal Habyarimana, located in northwestern Rwanda, was the bastion of the *Mouvement républicain national pour la démocratie et le développement* (MRND) and the *Coalition pour la défense de la république* (CDR). He further declares that several prominent civil and military leaders who had espoused the extremist Hutu ideology were from this prefecture and that after 1990, the prefecture was the theatre for much inter-ethnic tension and violence, causing the death of many Tutsi (e.g. the case with the *Bagogwe* in 1991). Omar Serushago additionally declares that the interim Government moved to Gisenyi in June 1994.

(iii) Omar Serushago states that on the night of 6 to 7 April 1994, in Gisenyi prefecture, the military commander, Anatole Nsengiyumva ordered certain political leaders, local authorities and militiamen to assemble at the Gisenyi military camp. He declares that this meeting was attended by Bernard Munyagishari, Chairman of the Interahamwe for Gisenyi, Barnabé Samvura, Chairman of CDR for Rubavu commune and Thomas Mugiraneza, Vice-Chairman of the Interahamwe for Gisenyi.

(iv) Omar Serushago states that during this assembly, Anatole Nsengiyumva ordered the participants to kill all the RPF "accomplices"and all the Tutsi. Omar Serushago further declares that at the end of the meeting, Anatole Nsengiyumva ordered his subordinate, Lieutenant Bizumurenyi, to distribute weapons and grenades to the militiamen who were present.

(v) Omar Serushago admits that on 7 April 1994, he was informed by militiamen Thomas Mugirareza and Jumapiri Nyaribogi of the orders given by Lieutenant-Colonel Anatole Nsengiyumva during the night and the telegram he received from Kigali to start the massacres.

(vi) Omar Serushago, acknowledges that as from 7 April 1994, the massacres of the Tutsi population and the killing of numerous Hutu political opponents were perpetrated in Gisenyi and in other localities throughout the territory of Rwanda. Omar Serushago admits that in Gisenyi prefecture the groups of militiamen most involved in the massacres were led, among others, by Bernard Munyagishari, Mabuye Twagirayesu, Hassan "Gitoki", Thomas Nugiraneza and himself.

(vii) Omar Serushago, acknowledges that Barnabé Samvura, Damas Karikumutimana, Michel, Christophe Nizehimana, Thomas Mugiraneza, Hakiziman Faziri, Bernard Munyagishari, Hassan "Gitoki" and himself, among others, attended a meeting held in Gisenyi on or around 13 April, where he was assigned the supervision of one of the roadblocks located on the edge of Gisenyi town near the border with the Democratic Republic of Congo (former Zaïre), known as the "Corniche".Omar Serushago further admits that at that location, he searched for, identified and selected Tutsi and ordered militiamen, members of his group and his subordinates, including Thomas Mugiraneza, to take them to the "Commune Rouge"and execute them. Omar Serushago further acknowledges that his orders were followed and these persons were killed.

(viii) Omar Serushago further acknowledges that as one of the leaders of the Interahamwe in Gisenyi, and as the head of a group of five militiamen, by virtue of the decisions he took and orders he gave Interahamwe assigned to operate under him at the road block called the "Corniche", he exercised authority and control over the group of militiamen, and other militiamen including, among others, Abuba, Thomas Mugiraneza, Bahati, Gahutu, Gamisi-Pokou (alias 'Etranger'), Lionceau and Feruzi Ayabagabo. These militiamen committed massacres of the Tutsi population and moderate Hutus in Gisenyi prefecture with his knowledge and at his instigation.

(ix) Omar Serushago acknowledges that on 20th April 1994, Thomas Mugiraneza, Hassan "Gitoki", Damas Karikumutimana, Michel, Abuba and himself, on the orders of Anatole Nsengiyumva, abducted about twenty Tutsi who had found refuge at the house of Bishop Aloys Bigirumwani in Gisenyi, in collusion with the soldiers who were present on the scene and were supposed to protect them. Omar Serushago further admits that they took them to a place known as "Commune Rouge" (Commune Rubavu) and executed them. Omar Serushago further admits that he personally killed four (one man and three women) of the twenty persons with a R4 rifle given to him at the Mukamira Camp, Ruhengeri, in 1993 by General Augustin Bizimungu, in order to combat the enemy - "*Inyenzi-Tutsi"*.

(x) Omar Serushago admits that at the end of April 1994, Thomas Mugiraneza, Bernard Munyagishari, Hassan "Gitoki", Damas Karikutimana, Michel, Abuba and himself on the orders of Appolinaire Bigamiro, the Gendarmerie commander for Gisenyi, went to the Gisenyi military camp to get several Tutsi and moderate Hutu detained in the Gendarmerie station jail. Omar Serushago further admits that in collusion with the guards present, they abducted them, brought them to "Commune Rouge", where they were killed by Interahamwe present on the site. Omar Serushago further admits that he gave his rifle to his younger brother and bodyguard, Feiruz Ayabagabo, who killed one of the Tutsi, who attempted to escape.

(xi) Omar Serushago acknowledge that around 30 April 1994, Bernard Munyagishari, Thomas Mugiraneza, Damas Karikumutima, Michel, Abuba, Hassan "Gitoki", himself and others, on the orders of Appolinaire Bigamiro, went to the company Rwandex in Gisenyi to abduct and kill Tutsi who had sought refuge there. Upon their arrival, they beat to death a Tutsi guard who was trying to stop them. Afterwards, they abducted four persons of Tutsi origin who were identified by the gendarmes present at the scene. Omar Serushago further admits that they then brought them to "Commune Rouge", where they were killed by some members of the group.

(xii) Omar Serushago acknowledges that in June 1994, in Gisenyi, on the orders of Anatole Nsengiyumva, Thomas Mugiraneza and himself, abducted a Tutsi woman and brought her near "Commune Rouge" to execute her. This person was in fact killed by Lt. Rabuhihi, and ex-soldier of the 42nd Battalion, Force Armée Rwandaise (FAR).

(xiii) Omar Serushago acknowledges that at the end of June 1994, his brother Abbas Habyalimana, a Military Police Sergeant and himself, on the instigation of Félicien Nsengimana, a director in the President's Office, abducted and illegally confined a Tutsi man in order to obtain information and extort money from him. Omar Serushago admits that during this incident, they threatened, questioned, undressed, and repeatedly beat him in order to force him to divulge the information. The man was subsequently freed following a commotion on his ethnic identity which led the assailant to believe he was Hutu.

(xiv) Omar Serushago acknowledges that between April and July 1994, roadblocks were set up by militiamen in Gisenyi préfecture, in order to identify the Tutsi and their "accomplices" and take them to "Commune Rouge" to execute them there. Omar Serushago further acknowledges that Anatole Nsengiyumva and himself distributed ammunition such as cartridges to the militiamen who manned them. Omar Serushago further admits that he distributed ammunition such as cartridges to the group of militiaman that manned the "Corniche" road block, which he was in charge of.

(xv) Omar Serushago acknowledges that between May and July 1994, he knew and participated in a number of meetings held by civil and military authorities that took place in Gisenyi. At these meetings, the progress and the smooth operation of the massacres were discussed and encouraged. Some of the meetings were intended to mobilize the Interahamwe to commit massacres in other prefectures. In particular, Omar Serushago admits that in May 1994, he attended a meeting held in Gisenyi, at which Anatole Nsengiyumva was present, where the fate of surviving Tutsi was discussed. Following this meeting, Anatole Nsengiyumva ordered Thomas

Mugirareza, Mabuye Twagirayesu and Omar Serushago to kill the Bishop, Wenceslas Kalibushi. Before they executed the order, the group was informed by Bernard Munyagishari that instructions had come from Kigali to spare the Bishop.

(xvi) Omar Serushago further admits that in April 1994, he participated at a meeting held at Gisenyi Military Camp, and attended by Anatole Nsengiyumva, Bernard Munyagishari, Wellars Benzi, Appolinaire Biganiro and Hassan "Gitoki". The purpose of the meeting was to send militia reinforcements to Nyange, Kibuye Prefecture, in order to kill Tutsi who had organized resistance against Interahamwe attacks. During the meeting, ammunition and rocket launchers were distributed by Anatole Nsengiyumva to the militiamen. Following the meeting, around thirty militiamen were taken to Nyange in two pick ups, one driven by Safari Besesa. This operation which was led by Bernard Munyagishari from MRND and Mabuye Twagirayesu from CDR, lasted two days and led to numerous deaths.

(xvii) Omar Serushago further acknowledges that between May and June 1994, Anatole Nsengiyumva, Félicien Kabuga, Joseph Nzirorera, Secretary General of the MRND, and Juvénal Uwiligimana, Director of the *Office Rwandais du Tourisme et de Parcs Nationaux*, held a meeting in Gisenyi. During the meeting, Joseph Nzirorera and Juvénal Uwiligimana took note of the names of the Tutsi and moderate Hutu who had come from other préfectures and drew up a list of people to eliminate, which they handed over to him and to the other leaders of the Gisenyi militia groups. Omar Serushago admits that he executed the instructions and orders given to him by these civilian and military authorities.

(xiii) Omar Serushago acknowledges that in June 1994, he arrested at the Corniche road block, one of the people on that list, whose identity, collaboration with RPF and presence in Gisenyi was also broadcasted on RTLM. Omar Serushago further admits that the person was identified to him by Protais Zigiranyirazo, brother-in-law of the late President Habyariamana. Omar Serushago further admits that after arresting the person, he handed him over to Thomas Mugiraneza a militiaman, who then took him to "Commune Rouge" where he was killed. Shortly thereafter, his subordinate reported that the person had in fact been killed by one of the Interahamwe, Kivenge, based at "Commune Rouge".

(xix) Omar Serushago admits that between 13 April to July 1994, he and his group travelled throughout the town of Gisenyi in search of Tutsi and moderate Hutu. On locating the victims his group of militiamen, including himself, either killed them on the spot or took them to "Commune Rouge", where they were executed.

(xx) Omar Serushago declares that since the massacres of the Bagogwe in 1991, Nyundo parish had been a place of refuge for Tutsi victims of ethnic violence. He further declares that as early as 7 April 1994, men, women and children, the majority of whom were Tutsi, sought refuge at that location.

(xxi) Omar Serushago further acknowledges that from 8 April to June 1994, the refugees at Nyundo parish were repeatedly attacked by soldiers and militiamen and that among those militiamen were his group of militiamen, including Damas Karikumutima. Omar Serushago further acknowledges that many people were killed during those attacks, and some three hundred people were abducted from Nyundo

parish, paraded before the people of Gisenyi town by Bernard Munyagishari's group and then executed at "Commune Rouge" by militiamen.

(xxii) Omar Serushago declares that between 7 April to July 1994, many people were massacred in Gisenyi Prefecture and throughout Rwanda and that the majority of the victims were killed solely because they were Tutsi or appeared to be Tutsi. He further declares that the other victims, namely moderate Hutu, were killed because they were considered Tutsi accomplices, were linked to them through marriage or were opposed to the extremist Hutu ideology.

(xxiii) Omar Serushago further declares that from 7 April 1994 to July 1994, most of the massacres were perpetrated with the instigation, participation, assistance and encouragement of political leaders, civilian authorities, military personnel, gendarmes and Hutu militiamen.

(xxiv) Omar Serushago declares that Military officers, members of the Interim Government, militia leaders and Civilian authorities, planned, prepared, instigated, ordered, aided and abetted their subordinates and others in carrying out the massacres of the Tutsi population and their "accomplices". Omar Serushago further declares that without the assistance and complicity of the local and national civil and military authorities, the principal massacres would not have occurred.

B. Judgement

26. In light of the admissions made by Omar Serushago in amplification of his plea of guilty, the Trial Chamber, on 14 December 1998, accepted his plea and found him guilty on the following counts:

(1) By the acts or omissions described in paragraphs 4.1 to 5.27 and more specifically in the paragraphs referred to below, Omar Serushago, pursuant to Article 6(1), according to paragraphs 3.2, 3.3, 4.1, 4.12, 4.15, 5.3, 5.7, to 5.16, 5.18, 5.19,5.27, and pursuant to Article 6(3), according to paragraphs 5.8 to 5.16, 5.18, 5.19, 5.21, is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **GENOCIDE**, a crime stipulated in Article 2(3)(a) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

(2) By the acts or omissions described in paragraphs 4.1 to 5.27 and more specifically in the paragraphs referred to below, Omar Serushago, pursuant to Article 6(1), according to paragraphs 3.2, 3.3, 4.1, 4.12, 4.15, 5.3, 5.7 to 5.16, 5.18, 5.19, 5.27, and pursuant to Article 6(3), according to paragraphs 5.8 to 5.16, 5.18, 5.19, 5.21, is responsible for the murder of persons as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(a) of the Statute of Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

(3) By the acts or omissions described in paragraphs 4.1 to 5.27 and more specifically in the paragraphs referred to below, Omar Serushago, pursuant to Article 6(1), according to paragraphs 3.2, 3.3, 4.1, 4.12, 4.15, 5.3, 5.7 to 5.16, 5.18, 5.19, 5.27, and pursuant to Article 6(3), according to paragraphs 5.8 to 5.16, 5.18, 5.19, 5.21 is responsible for the extermination of persons as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(b) of the Statute of Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

(4) By the acts or omissions described in paragraphs 4.1 to 5.27 and more specifically in the paragraphs referred to below, Omar Serushago, pursuant to Article 6(1), according to paragraphs 3.2, 3.3, 4.1, 4.12, 4.15, 5.3, 5.13, and pursuant to Article 6(3), according to paragraph 5.13, is responsible for torture as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(f) of Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

C. Facts related to the sentence

Aggravating circumstances

(i) Gravity of the Offences:

27. The offences with which the accused Omar Serushago is charged are, irrefutably, of extreme gravity, as the Trial Chamber already pointed out when it described genocide as the "crime of crimes". Omar Serushago personally murdered four Tutsi, while thirty-three other people were killed by militiamen placed under his authority.

(ii) Responsibility pursuant to Article 6(3) of the Statute

28. It was submitted by the Prosecutor and admitted by the Defence, that Omar Serushago, in the commission of the crimes for which he has been found guilty, played a leading role and that he therefore incurs individual criminal responsibility under the provisions of Article 6 (3) of the Statute. At the time of commission of the offences for which he is held responsible, Omar Serushago enjoyed definite authority in his region. He participated in several meetings during which the fate of the Tutsi was decided.

29. He was a *de facto* leader of the Interahamwe in Gisenyi. Within the scope of the activities of these militiamen, he gave orders which were followed. Omar Serushago admitted that several victims were executed on his orders while he was manning a roadblock erected near the border between Rwanda and the Democratic Republic of Congo. As stated *supra*, thirty-three persons were killed by people placed under his authority. The accused admitted that all these crimes were committed because their victims were Tutsi or because, being moderate Hutu, they were considered accomplices.

(iii) Voluntary participation

30. Omar Serushago committed the crimes knowingly and with premeditation.

Mitigating circumstances

(i) Cooperation with the Prosecutor:

31. Omar Serushago's cooperation with the Prosecutor was substantial and ongoing.

32. Even before his arrest, his cooperation enabled the Prosecutor to organize and above all to successfully carry out the "NAKI" (Nairobi-Kigali) operation, which resulted in the arrest of several high-ranking persons suspected of being responsible for the events of 1994 and who are now held in custody at the Detention Facility in Arusha awaiting trial.

33. Furthermore, Omar Serushago has agreed to testify as a witness for the Prosecution in other trials pending before the Tribunal.

(ii) Voluntary surrender

34. Omar Serushago voluntarily surrendered to the authorities of Côte d'Ivoire, although he had not yet been indicted by the Tribunal and was not included in the list of suspects wanted by Rwandan authorities. The Defence submits that when he surrendered he was fully aware that his surrender would lead to his indictment.

(iii) Guilty plea

35. It is important to recall that the accused pleaded guilty to four counts, namely genocide and three counts of crimes against humanity (murder, extermination, torture). As the Chamber established, his guilty plea was made voluntarily and was unequivocal. Omar Serushago clearly understood the nature of the charges against him and their consequences.

(iv) Family and social background

36. Both the Prosecution and the Defence underscored that prior to the commission of the crimes of which he has been convicted, Omar Serushago lived in a highly politicized milieu. As the Defence Counsel stated, the political background of his family played a crucial role in his involvement with the Interahamwe militia. Indeed, the strong and old ties of friendship between his own father and President Juvenal Habyarimana led him to play a prominent role in Interahamwe circles in which he held a *de facto* position of authority.

37. It should be noted that in spite of his activities with the Interahamwe, Omar Serushago never received military training. Without being contradicted by the Prosecutor, his counsel pointed out that he was therefore never truly positively involved. The weapon he used, an R4 gun, had been given to him in public by General Augustin Bizimungu in 1993.

(v) Assistance given by Omar Serushago to certain potential Tutsi victims during the Genocide

38. The Defence alleges that Omar Serushago, during the period of the commission of the crimes with which he is charged, helped several Tutsi, including four Tutsi sisters whom he reportedly helped to cross the border between Rwanda and the Democratic Republic of Congo. The accused also hid a moderate Hutu and allowed many people who feared for their lives to cross this same border. This information not having been contradicted by the Prosecutor, the Trial Chamber holds that it is reasonable to consider that it is established.

(vi) Individual circumstances

39. Both the Prosecutor and the Defence urged the Trial Chamber to take into account the family obligations of the accused who is a father of six children, two of whom are very young. The fact that Omar Serushago is only thirty-seven years old and that he had been very cooperative with the Prosecutor, in addition to showing remorse publicly, would suggest possible rehabilitation.

(vii) Public expression of remorse and contrition

40. During the pre-sentencing hearing, Omar Serushago expressed his remorse at length and openly. He asked for forgiveness from the victims of his crimes and the entire people of Rwanda. In addition to this act of contrition, he appealed for national reconciliation in Rwanda.

41. The Trial Chamber endorses the opinion of Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia which in its decision of 29 November 1996 , in the matter of "The Prosecutor versus Drazen Erdemovic", held that "*it might take into account that the accused surrendered voluntarily to the International Tribunal, confessed, pleaded guilty, showed sincere and genuine remorse or contrition and stated his willingness to supply evidence with probative value against other individuals for crimes falling within the jurisdiction of the International Tribunal, if this manner of proceeding is beneficial to the administration of justice, fosters the co-operation of future witnesses, and is consistent with the requirements of a fair trial."*

42. Having reviewed all the circumstances of the case, the Trial Chamber is of the opinion that exceptional circumstances in mitigation surrounding the crimes committed by Omar Serushago may afford him some clemency.

V. VERDICT

TRIAL CHAMBER I,

FOR THE FOREGOING REASONS;

DELIVERING its decision in public;

PURSUANT to Articles 23, 26 and 27 of the Statute and Rules 100, 101, 102, 103 and 104 of the Rules of Procedure and Evidence;

NOTING the general practice of sentencing by the Courts of Rwanda;

NOTING the indictment confirmed on 28 September 1998;

NOTING the Plea of guilty of Omar Serushago on 14 December 1998 on the Counts of:

COUNT 1 genocide, as stipulated in Article 2(3)(a) of the Statute;

COUNT 2 a crime against humanity (murder), as stipulated in Article 3(a) of the Statute;

COUNT 3 a crime against humanity (extermination), as stipulated in Article 3(b) of the Statute;

COUNT 4 a crime against humanity (torture), as stipulated in Article 3(f) of the Statute;

HAVING FOUND Omar Serushago guilty on all four counts on 14 December 1998;

NOTING the briefs submitted by the parties;

HAVING HEARD the Closing Statements of the Prosecutor and the Defence Counsel;

IN PUNISHMENT OF THE ABOVEMENTIONED CRIMES,

SENTENCES Omar Serushago;

born on 24 April 1961 in Rubavu Commune, Gisenyi Prefecture, Rwanda

To a single term of fifteen (15) years of imprisonment for all the crimes of which he has been convicted;

RULES that imprisonment shall be served in a State designated by the President of the Tribunal, in consultation with the Trial Chamber and the said designation shall be conveyed to the Government of Rwanda and the designated State by the Registry;

RULES that this judgement shall be enforced immediately, and that until his transfer to the said place of imprisonment, Omar Serushago shall be kept in detention under the present conditions;

RULES that credit shall be given to Omar Serushago for the period during which he has been detained as from 9 June 1998 pursuant to paragraph (D) of Rule 101 of the Rules of Procedure and Evidence which provides that credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal and for the period during which he was detained at the Detention Facility of the Tribunal;

Arusha, 5 February 1999.

Laïty Kama	Lennart Aspegren	Navanethem Pillay
Presiding Judge	Judge	Judge

(Seal of the Tribunal)

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1. See *infra*, section on guilty plea.

2. See Decision on Guilty Plea, issued on 14 December 1998.

3. Organic Law No. 8/96 of 30 August 1996, published in the Gazette of the Republic of Rwanda, 35th year, No. 17, 1 September 1996.