



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

Original: English

Before:

Judge Navanethem Pillay, Presiding
Judge Erik Møse
Judge Pavel Dolenc

Registrar: Dr Agwu Ukiwe Okali

Decision of: 1 June 2000

THE PROSECUTOR

v.

Georges RUGGIU

Case No. ICTR-97-32-I

JUDGEMENT AND SENTENCE

Office of the Prosecutor:

Carla del Ponte
Mohamed Othman
William T. Egbe

Counsel for the Accused:

Mohammed Aouini
Jean Louis Gilissen

I. THE PROCEEDINGS

A. Background

1. On 9 July 1997, the Prosecutor addressed a formal request to the authorities of the Republic of Kenya pursuant to Rule 40 of the Rules of Procedure and Evidence

- (hereinafter "the Rules") for the arrest and provisional custody of Georges Ruggiu (hereinafter "the accused").
2. By Order of 16 July 1997, Judge Laïty Kama, pursuant to a request made by the Prosecutor under Rule 40 *bis* of the Rules, ordered the transfer and provisional detention of the accused to the United Nations Detention Facility in Arusha.
 3. On 23 July 1997, officers of the Kenya Police Criminal Investigation Department arrested the accused during the NAKI operation in Mombasa. His transfer to the Detention Facility in Arusha was made on the basis of said order.
 4. The indictment against the accused of 30 September 1997 was confirmed by Judge Lennart Aspegren on 9 October 1997. On 24 October 1997, at his initial appearance, before Trial Chamber I, the accused pleaded not guilty to the two counts against him, namely direct and public incitement to commit genocide and crimes against humanity (persecution).
 5. Following complaints from the accused of several incidents at the Detention Facility, the Prosecutor, by request dated 5 June 1998, sought orders under Rule 64 for the modification of the conditions of detention of the accused. On 12 June 1998, Judge Laïty Kama, then President of the Tribunal, authorised the Registrar to take appropriate measures to ensure the separation of the accused from other detainees.
 6. On 28 June 1999, the accused filed an application requesting further modification of the conditions of his detention, on the grounds *inter alia*, that threats to his personal security had been further aggravated by several new developments. On 14 July 1999, Judge Erik Møse, Acting President of the Tribunal, authorised the transfer of the accused to a separate detention facility in Arusha.
 7. On 11 April 2000, the Defence applied for leave to change the plea to guilty and filed a Plea Agreement, with the Prosecutor, in support of the Motion.
 8. On 9 May 2000, Trial Chamber I granted the Defence Motion for protective measures for Defence witness, "AB".
 9. At the hearing of 15 May 2000, Trial Chamber I granted the following Motions:
 - i. Prosecution Motion for Leave to Amend the Indictment;
 - ii. Defence Motion for Withdrawal of all Pending Motions;
 - iii. Defence Motion for Leave to Change the Plea;
 - iv. Defence Motion for Admissibility of the Statement of the Witness "BC".

B. The Guilty Plea

10. On 15 May 2000, having been authorized to change his plea, the accused pleaded guilty to the two counts set forth in the indictment against him. He confirmed that he had signed a plea agreement, which was also signed by his Counsel and the Prosecutor, in which he admitted having committed all the acts to which he pleaded guilty, as charged by the Prosecutor.
11. In accordance with Rule 62(v), the Trial Chamber verified 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; namely, that he was waiving his right to be tried; 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.

12. The accused replied in the affirmative to all these questions.

C. Conviction on a Guilty Plea

13. Under Count 1, the Prosecutor charges Georges Ruggiu with direct and public incitement to commit genocide, a crime punishable under Article 2(3)(c) of the Statute.
14. The above crime is extensively discussed in *Prosecutor v. Akayesu*. In this case, the Tribunal considered that the *mens rea* required for this crime lies in the intent to directly prompt or provoke another to commit genocide. The person who incites to commit genocide must himself have the specific intent to commit genocide, namely, to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.
15. In *Akayesu*, the Tribunal also noted that "at the time the Convention on Genocide was adopted, the delegates agreed to expressly spell out direct and public incitement to commit genocide as a specific crime, in particular, because of its critical role in the planning of a genocide". In this regard, the delegate from the USSR stated that, "It was impossible that hundreds of thousands of people should commit so many crimes unless they had been incited to do so and unless the crimes had been premeditated and carefully organized. He asked how in those circumstances, the inciters and organizers of the crime could be allowed to escape punishment, when they were the ones really responsible for the atrocities committed."
16. The Tribunal held, in the same case, that the crime of genocide is so serious that the direct and public incitement to commit genocide must be punished as such, even if the incitement failed to produce the result expected by the perpetrator. In this sense, the Rwandan Penal Code provides that direct and public incitement or provocation is a form of complicity. In fact, Article 91 subparagraph 4 provides that an accomplice shall mean "A person or persons who, whether through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at public gatherings or through the public display of placards or posters, directly incite(s) the perpetrator or perpetrators to commit such action, without prejudice regarding the penalties to be applicable to those who incite others to commit offences, even where such incitement fails to produce results."

17. In *Akayesu*, the Tribunal considered, and this is particularly relevant to the present case, that "the public element of incitement to commit genocide may be better appreciated in light of two factors: the place where the incitement occurred and whether or not [incitement] was selective or limited. A line of authority commonly followed in Civil law systems would regard words as being public where they were spoken aloud in a place that were public by definition. According to the International Law Commission, public incitement is characterized by a call for criminal action to a number of individuals in a public place or to members of the general public at large by such means as the mass media, for example, radio or television." In the instant case, the accused's acts constitute public incitement. His messages were broadcast in a media forum and to members of the general public.
18. Under Count 2, the Prosecutor charges Georges Ruggiu with Crimes against Humanity (Persecution), a crime punishable under Article 3(h) of the Statute.
19. The Trial Chamber has examined significant legal precedents related to the crime of persecution, including the Judgement of *Julius Streicher*. In that historic case, The International Military Tribunal at Nuremberg held that the publisher of a private, anti-Semitic weekly newspaper "Der Stürmer" incited the German population to actively persecute the Jewish people. The Tribunal found that "Streicher's incitement to murder and extermination at the time when Jews in the East were being killed under the most horrible conditions clearly constitutes persecution on political and racial grounds in connection with War Crimes as defined by the Charter, and constitutes a Crime against Humanity". The *Streicher* Judgement is particularly relevant to the present case since the accused, like Streicher, infected peoples' minds with ethnic hatred and persecution.
20. In the case *The Prosecutor v. Dusko Tadic*, the Tribunal for the former Yugoslavia (ICTY) held that "the determination of the elements comprising the *mens rea* of crimes against humanity has proved particularly difficult and controversial. Nevertheless, the requisite *mens rea* for crimes against humanity appears to be the *intent* to commit the underlying offence, combined with the *knowledge* of the broader context in which that offence occurs". In the case *The Prosecutor v. Kayishema*, the Tribunal for Rwanda stated that: "The perpetrator must knowingly commit crimes against humanity in the sense that he must understand the overall context of his act. [...] Part of what transforms an individual's act(s) into a crime against humanity is the inclusion of the act within a greater dimension of criminal conduct. Therefore an accused should be aware of this greater dimension in order to be culpable thereof. Accordingly, actual or constructive knowledge of the broader context of the attack, meaning that the accused must know that his act(s) is part of a widespread or systematic attack on a civilian population and pursuant to some kind of policy or plan, is necessary to satisfy the requisite *mens rea* element of the accused."
21. In *The Prosecutor v. Zoran Kupreskic*, the ICTY has summarized the elements that comprise the crime of persecution as follows: "a) those elements required for all crimes against humanity under the Statute, b) a gross or blatant denial of a fundamental right reaching the same level of gravity as the other acts prohibited under Article 5, c) discriminatory grounds."

22. The Trial Chamber considers that when examining the acts of persecution which have been admitted by the accused, it is possible to discern a common element. Those acts were direct and public radio broadcasts all aimed at singling out and attacking the Tutsi ethnic group and Belgians on discriminatory grounds, by depriving them of the fundamental rights to life, liberty and basic humanity enjoyed by members of wider society. The deprivation of these rights can be said to have as its aim the death and removal of those persons from the society in which they live alongside the perpetrators, or eventually even from humanity itself.
23. The accused has affirmed his Guilty Plea and has fully confessed to all the relevant facts alleged in support of Counts 1 and 2 of the Indictment. It is clear from the Plea Agreement, the Briefs submitted by the Parties, the oral arguments and the accused's address to the Chamber that there is no material disagreement between the Parties about the facts in support of the two counts of the Indictment. The Chamber therefore concludes that the Guilty Plea is based on sufficient facts, firstly, for the crimes charged and, secondly, for the accused's participation therein.
24. Accordingly, the Chamber finds Georges Ruggiu guilty of the crime of direct and public incitement to commit genocide and of crime against humanity (persecution).

II. LAW AND APPLICABLE PRINCIPLES

A. Applicable Texts

25. The relevant legal texts are Articles 22 (judgement), 23 (penalties) and 26 (enforcement of sentences) of the Statute. Rules 100, 101, 102, 103 and 104 of the Rules cover sentencing procedure on a guilty plea, penalties, status of a convicted person, place and supervision of imprisonment, respectively.

B. Scale of Sentences Applicable to an Accused Found Guilty of One of the Crimes Listed in Article 2 or 3 of the Statute of the Tribunal

26. It follows from the provisions cited above that the only penalty the Tribunal can impose on an accused who pleads guilty or is convicted, as such, is a term of imprisonment up to and including a life sentence. The Statute of the Tribunal excludes other forms of punishment such as the death sentence, penal servitude or a fine.
27. The relevant provision here is Rule 101:
 - 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;

(iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the Statute.

- C. The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.
- D. 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 or pending trial or appeal.
28. 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, groups accused persons into four categories as follows:

Category 1

(a) persons whose criminal acts or those whose acts place them among planners, organizers, supervisors and leaders of the crime of genocide or of a crime against humanity;

(b) Persons who acted in positions of authority at the national, prefectural, communal, sector or cell, or in a political party, the army, religious organizations, or militia and who perpetrated or fostered such crimes;

(c) Notorious murderers who by virtue of the zeal or excessive malice with which they committed atrocities, distinguished themselves in their areas of residence or where they went;

(d) Persons who committed acts of sexual violence.

Category 2

Persons whose criminal acts or whose acts of criminal participation place them among perpetrators, conspirators or accomplices of intentional homicide or of serious assault against the person causing death.

Category 3

Persons whose criminal acts or whose acts of criminal participation make them guilty of other serious assaults against the person.

Category 4

Persons who committed offences against property.@

29. Persons in Category 1 are mandatorily liable to the death penalty, persons in Category 2 to life imprisonment and for persons in Category 3, the term of imprisonment shall be of shorter duration.
30. The Prosecutor argues that the accused falls under Category 1. It may well be argued, in light of the admissions, that he is more likely to fall under Category Two. It is noteworthy that, under the Organic Law, the sentence for a confession and a guilty plea made by offenders in Category Two, prior to prosecution, is imprisonment for 7 to 11 years (Art. 15(a)), and for a confession and a guilty plea, after prosecution, imprisonment for 12 to 15 years (Art. 16(a)).
31. While the Chamber will refer as much as practicable to the sentencing provisions under the Organic law, it will also exercise its unfettered discretion to determine sentences, taking into account the facts of the case and the circumstances of the accused. In the words of the Appeals Chamber in the recent judgement *Omar Serushago v. the Prosecutor*, "It is the settled jurisprudence of the ICTR that the requirement that 'the Trial Chambers shall 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."

C. General Principles Regarding the Determination of Sentences

32. In determining the sentence, the Chamber is mindful that this Tribunal was established by the Security Council, pursuant to Chapter VII of the Charter of the United Nations. Under Article 39 of the Charter, the Council has been empowered to ensure that violations of international humanitarian law in Rwanda in 1994 be halted and redressed. The objective in creating the Tribunal is to prosecute and punish the perpetrators of the atrocities in Rwanda, to put an end to impunity, and thereby to promote national reconciliation and restoration of peace.
33. The jurisprudence of the ICTR with regard to penalties has addressed the principal aims of sentencing, namely retribution, deterrence, rehabilitation and justice.
34. In determining the sentence, the Chamber is required by Article 23(2) of the Statute and Rule 101 (B) of the Rules to take into account a number of factors, keeping in mind the need to individualize the penalty. However, the Judges Chamber need not 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.

35. Similarly, the factors at issue in the Statute and in the Rules, in the determination of sentence, cannot be interpreted as having to be necessarily mandatory or exhaustive.

III. CASE ON MERITS

36. Taking into consideration the principles set out above, the Trial Chamber will consider all relevant information submitted by the parties in order to determine an appropriate sentence, pursuant to Rule 101 of the Rules.

A. Facts of the Case

The Accused's Background

37. A review of the accused's Plea Agreement reveals the following admissions about his background.
38. The accused was a social worker who worked for the Belgian Social Security Administration. On a voluntary basis, he assisted people in need. He became interested in Rwanda and the Rwandan people in 1990 when he met Rwandan students, who were his neighbours in Belgium. His interest in Rwandan politics developed progressively, and from the middle of 1992, he established further contacts with Rwandan nationals living in Belgium, including students, political figures, officers, diplomats and government officials.
39. He was one of the founders and an active member of the "*Groupe de réflexion rwando-belge*" which published several articles about the Arusha Accords and the Rwandan political situation.
40. His involvement in Rwandan politics became more intense after a first trip he made to Rwanda in August 1992 to attend a friend's wedding.
41. He progressively became one of the key players in the Rwandan community in Belgium and participated in major political debates. In early 1993, he became radically opposed to the Rwandan Patriotic Front ("RPF") and more supportive of the political regime in Rwanda. In May 1993, he met President Habyarimana several times on personal invitation. At one meeting, the President solicited his opinion about means of improving the image of Rwanda and his regime.
42. In November 1993, the accused left Belgium to settle in Rwanda, start a family and work for the National Revolutionary Movement for Development ("MRND"). His employment at the *Radio Television Libre des Mille Collines* ("RTL") was facilitated by President Habyarimana who used his influence with Ferdinand Nahimana, the Director of RTL, the government radio station.
43. While in Rwanda, the accused worked as a journalist and broadcaster for RTL radio from 6 January 1994 to 14 July 1994.

The Accused's Role during the Events in Rwanda

44. On 11 May 2000, the Parties submitted a document entitled "Plea Agreement between Georges Ruggiu and the Office of the Prosecutor", signed by the Prosecutor and Georges Ruggiu and his Defence Counsel. In this document, the accused assumes full responsibility for all the relevant acts alleged in the two counts of the indictment. In particular:

(i) The accused admits that he was a journalistic broadcaster for RTLM. He admits that all broadcasts were directed towards rallying the population against the "enemy", the RPF and those who were considered to be allies of the RPF, regardless of their ethnic background. He admits that RTLM broadcasts generally referred to those considered to be RPF allies *as RPF "accomplices"*. The meaning of this term gradually expanded to include the civilian Tutsi population and Hutu politicians opposed to the Interim Government.

(ii) The accused states that in the months following his arrival in Rwanda, he noticed changes in the Rwandan political scene. The country was slipping senselessly into further violence against a background of increasing ethnic problems and rifts.

(iii) The accused acknowledges that the widespread use of the term "*Inyenzi*" conferred the de facto meaning of "persons to be killed". Within the context of the civil war in 1994, the term "*Inyenzi*" became synonymous with the term "*Tutsi*". The accused acknowledges that the word "*Inyenzi*", as used in a socio-political context, came to designate the Tutsis as "persons to be killed". He also admits that during one broadcast he said that the 1959 revolution ought to be completed in order to preserve its achievements.

(iv) The accused admits that as part of the move to appeal for, or encourage, "civil defence", he made a public broadcast to the population on several occasions to "go to work". The phrase "go to work" is a literal translation of the Rwandan expression that Phocas Habimana, Manager of the RTLM, expressly instructed the accused to use during his broadcasts. With time, this expression came to clearly signify "go fight against members of the RPF and their accomplices." With the passage of time, the expression came to mean, "go kill the Tutsis and Hutu political opponents of the interim government."

(v) The accused also admits having broadcast over the RTLM that:

- *he condemned the attitude of Agathe Uwilingiyimana, the Prime Minister, who was compromising the Rwandan political institutions and, further, demanded that she leave office;*
- *he congratulated the valiant combatants who were engaged in a battle against the "Inyenzi" at Nyamirambo, including civilians, Interahamwe militiamen, members of political parties and military combatants;*
- *there would be a reward offered by the government for any one who killed or captured a white man fighting on the side of the RPF;*

- *he told Karanganwa to "do a good job" and reminded him that the MRND Chairman in Kicukiro wanted to establish a civil defence force;*
- *they were having a "good time" killing the Inyenzi and the population was determined to fight and chase the Inyenzi-Inkotanyi out of the country. He further called on the youth to "work" with the Army;*
- *the civilian population and members of the civil society should remain vigilant, the Inyenzi-Inkotanyi infiltrators should be identified, and all suspicious movements should be reported;*
- *he thanked the civil defence forces and the Rwandan Armed Forces for ensuring the security of the Rwandan people;*
- *the population should be mobilised and the youth should "work" throughout the country with the Army and the government to defend the country.*

(vi) The accused admits that he made the following statements during some of his broadcasts on the RTLTM radio station:

- *Belgian missiles shot down the President's plane;*
- *Belgium is responsible for the oppression of the Hutus by the Tutsis;*
- *Belgium is supporting the RPF;*
- *Measures should be taken against Belgium for assassinating President Habyarimana;*
- *Belgians are neo-colonists and should leave Rwanda;*
- *No co-operation should be extended to Belgium;*
- *Belgium should apologize and make reparations for the death of President Habyarimana, for its assistance to the RPF and for all damages;*
- *In Nyamirambo, three Bazungu (whites) were killed within the RPF ranks. They were not just any Bazungu. They were Belgians;*
- *The President's plane was shot down in Masaka, the security zone controlled by UNAMIR Belgian soldiers;*
- *United Nations Assistance Mission for Rwanda ("UNAMIR") is collaborating with the RPF, and General Dallaire, the UNAMIR Force Commander is the adviser for RPF; Dallaire must choose either to do his work or to leave;*
- *It is absolutely necessary for the Rwandan Government to order Belgians, and particularly Belgians in UNAMIR, to leave;*
- *Belgian blackmail of Rwanda should stop.*

(vii) The accused admits that he broadcast discriminatory and threatening remarks over the radio against the political stance adopted by the Belgian government in Rwanda and the behaviour of UNAMIR, especially the Belgian contingent. The accused waged a media war against the Belgians over the RTLTM to attack the international policy adopted by the Belgian government towards Rwanda.

(viii) The accused admits that between 8 and 13 April 1994, he was informed of large-scale infiltration of RPF members into Gikondo. To alert the RTLTM Editor-in-chief, Gaspard Gahigi, who lived in Gikondo, he broadcast a warning to the Gikondo population about the presence of the infiltrators. Gaspard Gahigi

subsequently explained to the accused that many persons, including women and children, were killed as a result of the broadcast.

(ix) The RTLM broadcast the names of persons such as Faustin Tagiramungu, Prime Minister-designate of the broad-based transitional government formed pursuant to the Arusha Accords, and Lando Ndasinga, Minister of Social Affairs, and accused them of being RPF accomplices. Lando Ndasinga was killed on 7 April 1994. The accused admits that during one of the broadcasts, he accused Tagiramungu of being one of those responsible for the assassination of President Habyarimana and six other political luminaries, and then broadcast that the "popular masses were lying in wait" for Tagiramungu.

(x) The accused acknowledges that he, like other RTLM broadcasters, intermittently played songs, with the intent of encouraging the population to fight the enemy. One such song is entitled "Naanga Abakwite", which means, "I do not like the Hutu."

(xi) The accused acknowledges that RTLM broadcasts reflected the political ideology and plans of extremist Hutus, particularly members of MRND and the Coalition for the Defence of the Republic ("CDR"). He admits that RTLM broadcasts incited young Rwandans, *Interahamwe* militiamen and soldiers to engage in armed conflict against the "enemy" and its accomplices and to kill and inflict serious bodily and mental harm on Tutsis and moderate Hutus.

(xii) The accused admits that on 1 June 1994, he congratulated the *Interahamwe* and *gendarmes* of Gitega and Muhima for capturing a 50 Bromville Mark machine gun, made in the United States of America, from the "enemy".

(xiii) The accused admits that RTLM broadcasters, managerial and editorial staff bear full responsibility for the 1994 massacre of Tutsis and Hutu opposition party members.

45. The accused was fully aware of the mass persecutions of the civilian population and the Belgian contingent on political or ethnic grounds. The accused acknowledges that, during a tour of Kigali in mid-April 1994, he became aware of a plan to destroy the Tutsis as an ethnic group. Furthermore, during the hearing, at a question from the Bench, as to why he wished to change his plea, the accused answered: " I realised that some persons in Rwanda had been killed during the events of 1994, and that I was responsible and guilty of those facts, that there was a direct link with what I had said and their deaths and under these circumstances I believed that I had no other choice than to plead guilty."

B. Facts related to the sentence

46. Pursuant to Rule 23 (2) of the Statute and Article 101 (B) of the Rules, in imposing the sentences, the Trial Chamber is required to take into account such

factors as the gravity of the offence and the individual circumstances of the convicted person, as well as mitigating and aggravating factors. These enumerated circumstances, however, are not mandatory or exhaustive. It is a matter of individualising the penalty, in consideration of the totality of the circumstances.

Aggravating circumstances

47. The Chamber considers the following aggravating factors:

i. Gravity of the Offences

48. The seriousness of the crimes and the extent of the involvement of the accused 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 of mankind.

49. The crimes committed by the accused fall into the most serious categories of the Rwandan Penal Code.

i. The Role of the Accused in the Commission of the Offences

50. The media, particularly RTLM radio, was a key tool used by extremists within the political parties to mobilize and incite the population to commit the massacres. RTLM had a large audience in Rwanda and became an effective propaganda instrument. The accused, who was a journalist and broadcaster with the RTLM, played a crucial role in the incitement of ethnic hatred and violence, which RTLM vigorously pursued. In his broadcasts at the RTLM, he encouraged setting up roadblocks and congratulated perpetrators of massacres of the Tutsis at these roadblocks. In his broadcasts, he continued to call upon the population, particularly the military and the *Interahamwe* militia, to finish off the 1959 revolution. His broadcasts incited massacres of the Tutsi population.

51. Following a tour of Kigali City, after 12 April 1994, organized by the Armed Forces of Rwanda, the accused became aware that the broadcasts from the RTLM radio station were contributing to the massacres perpetrated against Tutsis. Yet the accused made a deliberate choice to remain in Rwanda and to continue his employment with the RTLM. The accused's radio programmes incited hatred against Tutsis, Hutu political opponents and Belgians.

Mitigating circumstances

52. With respect to individualising sentences, this Chamber has unfettered discretion in its assessment of the facts and the attendant circumstances. Such discretion allows the Chamber to decide whether to take into account certain factors in the determination of the sentence. This principle was unequivocally confirmed by the

Appeals Chamber in its 6 April 2000 Decision in the case of the *Prosecutor vs Omar Serushago*.

(i) The Guilty Plea

53. The guilty plea entered by the accused should be considered as a mitigating circumstance since resorting to such a plea facilitates the administration of justice by expediting proceedings and saving resources. The accused's guilty plea has spared the Tribunal a lengthy investigation and trial, thus economising time, effort and resources.
54. The accused's plea reflects his genuine awareness of his guilt, especially since he changed his plea after much reflection. Indeed, the accused reveals a desire to assume responsibility for his acts. The accused was fully aware of the real and direct threat to his personal safety that a guilty plea would cause. As a result of the accused's change of plea, he had to be separated from the other detainees.
55. Although not all legal systems recognise that a guilty plea constitutes a mitigating factor or may be considered advantageous to the accused, in the instant case, there is need to note the striking significance of the plea. The accused's acknowledgement of his mistakes and crimes is a healthy application of reason and sentiment, which illustrates the beginning of repentance. In the *Erdemovic* Judgement, the Chamber observed that an acknowledgement of guilt constituted proof of the honesty of the perpetrator. This Chamber is in accord with the opinion in *Erdemovic* and considers that it is good policy in criminal matters that some form of consideration be shown towards those who have confessed their guilt, in order to encourage other suspects and perpetrators of crimes to come forward. It is important to encourage all those involved in crimes committed in Rwanda in 1994 to confess and admit their guilt. Confession should then be considered as constituting a mitigating factor whose weight and importance will still need to be considered by the Chamber.

(ii) The Accused's Cooperation with the Prosecutor

56. Rule 101 of the Rules of Procedure and Evidence expressly provides that the Trial Chamber take into account "any mitigating circumstance including the substantial cooperation with the Prosecutor by the convicted person before or after conviction".
57. The Chamber notes that initially, despite his decision to plead not-guilty, the accused informed the Prosecutor of his desire to cooperate in search for the truth. In keeping with his desire, the accused instructed his counsel to make it known that he was not denying that genocide had been committed against the Tutsi community in Rwanda. Furthermore, the accused was the first ICTR detainee to accept to submit to questioning under a rogatory commission.
58. The Chamber duly notes the cooperation between the accused and the Office of the Prosecutor. The accused's cooperation has been substantial, and there is reason to believe that such cooperation will continue after sentencing.

(iii) Absence of Criminal Record

59. The accused has no previous criminal record. Until he committed the acts to which he is now pleading guilty, the accused had always conducted himself as an honest and respectable citizen.
60. The above facts constitute mitigating circumstances to be considered by the Chamber.

(iv) Character of the Accused

61. To individualise the penalty, this Chamber should direct attention to the character traits of the accused. There are indications that he was strongly influenced by individuals who were able to take undue advantage of him and to involve him in a situation in which he committed the crimes for which he is now pleading guilty.
62. The accused is a European with a moderate level of education, who is inspired by a sense of justice. He also seems to have been an idealist, though he also appears to have been immature and impulsive. The Prosecution's investigations and questions have further confirmed that in addition to his professional activities, the accused was involved in working with his neighbourhood branch of the Red Cross in Belgium. He provided assistance to foreigners, the underprivileged and illiterates in his area. It was in the course of providing such assistance, spontaneously and voluntarily, to young Rwandan students that the accused came into contact with Rwandans for the very first time.
63. Defence counsel submitted that the accused was indoctrinated by a biased picture of the socio-political situation in Rwanda. The Chamber takes into account that the accused was not sufficiently knowledgeable to be able to make informed assessments of the situation.
64. The above factors should be considered as having substantially contributed to the accused's involvement in Rwanda.
65. Witness "AB", a character witness, knew the accused from October 1992 to December 1993. She stressed the strong personality of the accused, his intelligence and good character. According to the witness, the accused could have been manipulated and misled because of his infatuation with Africa. His reasons for settling in Africa were sentimental, not political.
66. The Defence produced the written testimony of another character witness "BC". This witness stated that the accused was enlisted by extremists whom he met in Belgium and who came from the same region as the President of Rwanda. The accused became interested in Rwandan politics because of his idealism. His departure for Rwanda was motivated by personal reasons.
67. The Chamber finds both witnesses to be credible and accepts that the accused was a person of good character imbued with ideals before he became involved in the events in Rwanda.

68. On the basis of the character information provided, the Chamber considers that there is cause to believe that the accused has undergone a profound change and that there are good reasons to expect his re-integration into society.

(v) Regret and Remorse

69. Under questioning, the accused on several occasions spoke of feeling an overwhelming and enduring sense of regret and remorse. The accused stated that "in Rwanda, I lost everything, including my honor".

70. Counsel for the accused are of the opinion that the sincerity of the accused's feelings of regret and remorse indicate sincere repentance.

71. There has been a significant change in the accused's attitude towards victims of the Rwandan genocide and of the crimes against humanity committed against Tutsis and Belgian nationals. The accused has been overcome by a profound sense of guilt and responsibility for the fate of the victims.

72. On several occasions, Ruggiu has expressed the hope that his guilty plea will somehow help alleviate, however slightly, the suffering of the victims or their families. The accused wishes to do all in his power so that the victims' rights to their legitimate "status" is recognized and the terrible truth underlying the crimes committed in Rwanda be exposed.

(vi) Accused's Assistance to Victims

73. The accused explained that on a few occasions he personally assumed responsibility for conveying Tutsi children in his jeep, hidden under blankets, to a mission so that they would be cared for and protected.

74. Ruggiu explained that he was responsible for feeding a group of farmers and refugees in Kigali including Tutsis. This information, which was not challenged by the Prosecutor, is of relevance in guiding this Chamber's deliberations regarding mitigating circumstances.

(vii) Accused's Position with *Radio Télévision Libres des Milles Collines* and in Political Life.

75. The accused did not hold an official position of authority in Rwanda or a senior position within RTL. The accused did not play a role in the organization, the technical services, or the administration. He exercised no influence over the content or the selection of the programme broadcasts. He was a subordinate with no decision-making or autonomous powers, unlike Jean Kambanda in *The Prosecutor v. Jean Kambanda*. In that case, the Tribunal found that as Prime Minister of the Interim Government in Rwanda, Kambanda exercised decisive power to influence events. The Chamber held that his position as Prime Minister constituted an aggravating factor and sentenced Kambanda to life imprisonment. In the instant case, the accused's lack of executive authority needs to be emphasized, since it provides an explanation for why the accused at no time participated in formulating RTL editorial policy. In fact, he was openly

- reprimanded by RTLM management because he "failed to fully reflect" the Radio station's policy.
76. The Chamber takes note of this absence of authority as a factor in favour of the accused.

(viii) No Personal Participation in the Killings

77. The accused did not personally commit any acts of violence. He did not strike a blow or fire a shot. In *The Prosecutor v. Omar Serushago*, the ICTR in imposing a penalty of 15 years imprisonment considered as aggravating circumstances Serushago's high political and military role and the fact that he killed Tutsi and ordered the killing of several others who were killed as a consequence of his order.
78. The accused did not personally participate in the massacres and did not use his pistol. The Chamber takes due account of this.
79. Having weighed all the circumstances of the case, the Trial Chamber is of the opinion that circumstances of the accused operate as mitigatory factors to warrant some clemency.
80. Mitigation of punishment in no way reduces the gravity of the crime or the guilty verdict against a convicted person.

C. Sentencing Recommendations

81. The Defence does not propose a sentence. However, the Prosecutor recommends a single concurrent sentence of twenty years for each of the counts.

IV. 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 9 October 1997;

NOTING the Guilty Plea of Georges Ruggiu on 15 May 2000, Trial Chamber I found that,

(i) from 6 January 1994 to 14 July 1994, in his capacity as a journalist and broadcaster, he made broadcasts over RTL. These broadcasts were made in French, however certain terms in Kinyarwanda were also utilized which had a particular meaning in the socio-cultural context of the time. (paragraph 3.7 of the Indictment).

(ii) through his broadcasts the accused incited to kill and cause serious bodily or mental harm to Tutsis; persecuted Tutsis, certain Hutus and Belgians. (paragraph 3.8 of the Indictment).

COUNT 1 of the Indictment: Direct and Public Incitement to Commit Genocide, as stipulated in Article 2 (3)(c) of the Statute;

1. The acts of the accused, in relation to the events described in paragraphs 3.7 and 3.8, constitute direct and public incitement to kill and cause serious bodily or mental harm to members of the Tutsi population. The accused acted with the intention to destroy, in whole or in part, an ethnic or racial group as such, and has hereby, committed **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE** stipulated in Article 2 (3)(c) of the Statute as a crime, for which he is individually responsible pursuant to Article 6 (1), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

and,

COUNT 2 of the Indictment: a Crime against Humanity (Persecution), as stipulated in Article 3(h) of the Statute;

2. The acts of the accused in relation to the events described in paragraphs 3.7 and 3.8 constitute persecution, on political and racial grounds, in connection with a widespread and systematic attack against a civilian population on national, political, ethnic or racial grounds, and he has thereby committed **CRIMES AGAINST HUMANITY** stipulated in Article 3 (h) of the Statute as a crime, for which he is individually responsible pursuant to Article 6 (1), and which is punishable in reference to articles 22 and 23 of the Statute of the Tribunal.

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 Georges Ruggiu

Born on 12 October 1957 in Verviers, Province of Lieges, Belgium.

To :

COUNT 1 (direct and public incitement to commit Genocide): twelve (12) years of imprisonment;

COUNT 2 (Crime against humanity): twelve (12) years of imprisonment;

DECIDES that Georges Ruggiu shall serve his two sentences concurrently;

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, Georges Ruggiu shall be kept in detention under the present conditions;

RULES that the period of time that the accused has been detained in custody shall be deducted from his sentence. Under Rule 101 (D) of the Rules of Procedure and Evidence, the Trial Chamber is required to give credit to the convicted person for the period, if any, during which he was detained in custody pending his surrender to the International Tribunal, or pending trial or appeal. In the instant case, the accused was arrested on 23 July 1997. The relevant period of time spent in custody will therefore run from that date.

Arusha, 1 June 2000.

Navanethem Pillay, Presiding Judge

Erik Møse, Judge

Pavel Dolenc, Judge

(Seal of the Tribunal)