

COMMENTARY

Rwanda's Unanswered Screams:

Still Seeking Justice after the Seromba Trial

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In April 1994, Reverend Athanase Seromba was the vicar of the Nyange parish in the municipality of Kivumu, prefecture of Kibuye, Rwanda. Since the parson had left, Seromba was fully responsible for the daily management of the parish. Two days after President Juvenal Habyarimana had been killed in a plane crash near the capital Kigali, while violence was spreading throughout the country, attacks on the Tutsis began in the district of Kivumu and, from 8 – 11 April, about 2000 Tutsi inhabitants of that area sought protection in the church of Nyange. On April 11, a number of policemen coming from Kibuye arrived at Nyange; several priests and local authorities were also present. The following day, the refugees in the church were surrounded by Hutu soldiers together with members of the so-called Interhamwe militia. For two days the assailants attacked them with axes, picks and grenades. Although the Tutsi tried to defend themselves, many people were killed. Eventually, on April 16, the church was razed to the ground by a bulldozer and the Hutu killed almost all remaining Tutsis, whose corpses were then buried in mass graves.

In 1997, a reverend Atanasio Sumba Bura arrived at the parish of Immacolata e S. Martino a Montughi in Florence, Italy, as the newly designated deputy parson. For about two years he quietly discharged his duties, but in 1999, the London-based non-governmental organization (NGO) African Rights recognized him as Athanase Seromba, whose role in the Nyange massacre had been described by witnesses as one of significant direction and active participation. Immediately, the priest was reassigned to a different parish (S. Mauro a Signa, on Tuscany's hills) and, subsequently, resided for more than two years in the Florence archdiocese. On June 8, 2001 the Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) charged Seromba with genocide (or, in the alternative, complicity in genocide), conspiracy to commit genocide and crimes against humanity;¹ one month later, a warrant of arrest was issued. Rather surprisingly, the Italian

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¹ International Criminal Tribunal for Rwanda, Case No. ICTR-2001-66-I, The Prosecutor against Athanase Seromba, Indictment, 8 June 2001.

government refused to hand over the accused to the ICTR, for the reason that there was no legal basis in Italian legislation to proceed with the arrest. Indeed, more than six years after Security Council Resolution 955 establishing the ICTR, Italy had not enacted a law regulating judicial assistance and cooperation with the Tribunal. Eventually, this was done one year later, by Law No. 181 of 2 August 2002;² but, on 7 February of that year, Father Seromba spontaneously surrendered to the ICTR in Arusha.

The trial of Athanase Seromba, the first Catholic priest accused of genocide, commenced on September 20, 2004 before Trial Chamber III of the ICTR. He pleaded not guilty, but refused to testify and continuously obstructed the proceedings, first suspending his counsel's authorization to represent him, then requesting the disqualification of the judges hearing the trial (request rejected on 25 April 2006³) and submitting documents after the designated deadlines. Eventually, on 13 December 2006, he was condemned to 15 years' imprisonment for aiding and abetting genocide and crimes against humanity (extermination); the alternative charge of complicity was dropped by the Chamber, while he was cleared of conspiracy to commit genocide.⁴ The Prosecutor, who had called for life imprisonment, has appealed the judgment.

The Seromba decision conveys a sense of deep frustration. This is not, however, because of the reasoning of the Trial Chamber or for the moderation of the sentence; instead, what is discouraging is the absolute imbalance between the horror of Nyange and the actual punishment of the persons responsible for those crimes.

In fact, throughout his trial no significant defensive evidence was presented in favor of Father Seromba. The witnesses, however, were often contradictory and found unreliable by the Trial Chamber. Therefore, the most serious charges against him were not proved beyond any reasonable doubt, the judges declared. Among these were the luring by Father Seromba of Tutsi to seek shelter in the church; the conspiracy with the local authorities to exterminate the Tutsis within the church; the order to lock the doors of the church when the Hutus and Interhamwe militias attacked the Tutsi inside; and, above all, the order given to the bulldozer driver, to destroy the church. To sum up, he was not found to have had effective control over the perpetrators of the attacks. On the other hand, the Trial Chamber determined that Father Seromba was present at the church during the days of the attack, that he prevented the Tutsi from seeking food and repelled those looking for protection in his presbytery. He repeatedly met the municipal authorities and accepted their decision to tear down the church; he even showed the bulldozer driver the weakest side of the building, in order to facilitate its

² "Disposizioni in materia di cooperazione con il Tribunale internazionale competente per gravi violazioni del diritto umanitario commesse nel territorio del Ruanda e Stati vicini", O.J. No. 190 of Aug. 14, 2002. On 17 March 2004, the Italian government signed an agreement with the United Nations for the execution of the ICTR sentences.

³ *Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-T, Decision on motion for disqualification of Judges, 25 April 2006.

⁴ Tribunal pénal international pour le Rwanda, Chambre de première instance, Le Procureur contre Athanase Seromba, Affaire No. ICTR-2001-66-I, 13 décembre 2006, para. 314-369.

destruction. Consequently, the counts retained were genocide and extermination, in both cases by aiding and abetting. The Trial Chamber balanced the aggravating circumstances, such as Father Seromba's status as a catholic priest who had abused the confidence of his parishioners and fled under a false identity after the massacre, with the extenuating factors, notably his "good reputation" prior to the events and his "voluntary" rendition to the Tribunal in 2002. The penalty was individualized accordingly, also taking into account his age (31 at the time of the events) and the possibility of his redemption.

Indeed, going through the evidence collected by the Office of the Prosecutor, the role of Athanase Seromba appears to have been one of active assistance, which substantially contributed to the occurrence of the crimes, however not essential to their execution. Although repugnant, the character of the young priest is not one of a criminal leader, but instead that of a condescending and fearful person, wishing to comply with the determinations of the local authorities and the genocidal bands. Some points of the line of reasoning of the Trial Chamber, however, seem at least debatable. For example, the Chamber holds that his education and experience as a Catholic priest should have allowed Father Seromba to understand that his attitude towards the acts of violence in Nyange was reprehensible; it is amazing that no mention is made of the fact that the education of a catholic priest should have prepared him to always act at the highest ethical standard. A second element that may raise some doubts is the qualification of the *mens rea* by the Chamber. While the judgment repeatedly explains that the accused was perfectly aware that his behavior would substantially contribute to the commission of homicides and extermination, his knowledge of the principal perpetrators' specific genocidal intent is merely deduced by a negative statement ("he could not have ignored"). A positive assessment would have been more persuasive.

The verdict in the Seromba case is unlikely to help the process of reconciliation in Rwanda, a predominantly Christian country, where about 65% of people are Roman Catholic. Instead, it might even contribute to the division of religious communities in the country. In a letter of 14 March 1996 to the president of the Rwandan episcopate, Pope John Paul II wrote a letter to Rwandans maintaining that the Catholic Church in itself bears no responsibility for the individual crimes which may have been committed by its members, but appealing to those who had been involved in the genocide to assume the consequences of their misdeeds. In Rwanda today, a sharp contrast remains between those who argue that the Catholic Church was the only power capable of preventing, or at least halting the genocide, and did nothing to this aim; and other groups and organizations, grieving over persecution of the Catholic hierarchy by the present government.

Last, but not least, what is the present situation as concerns the other perpetrators of the Nyange massacre? Among those who have been identified and indicted, two church officials (Jean François Kayiranga and Edouard Nkurikiye), charged with genocide and crimes against humanity and sentenced to death by a Rwandan tribunal in April 1998, were subsequently (October 2000) acquitted and released; two civil servants (the Kivumu mayor Grégoire Ndahimana and the police officer Fulgence Kayishema), both indicted for genocide by the ICTR prosecutor, are still at large; only Anastase Kinamubanzi, one of the bulldozer

drivers (who participated as a witness in the Seromba proceeding), is reported to have been condemned to life imprisonment. Therefore, at the moment, only one among the material executors of the crime and one who aided and abetted the crimes have been sentenced, not the persons behind them. Will the case of the businessman Gaspard Kanyarukiga, also charged of the Nyange slaughter and awaiting trial before the ICTR, bring some light into the darkness of that atrocious event? Some 13 years on, the screams of the Nyange victims still echo without having been properly redressed – will international criminal justice ever be able to answer their desperate pleas for help, in death if not in life?