



## **Statement by Justice Hassan B. Jallow**

### **Prosecutor UN-ICTR & UN-MICT to the**

### **United Nations Security Council**

*5 December 2012*

Mr. President,

Your Excellencies,

I am greatly honoured to brief you once more on the progress of the Completion Strategy of the ICTR and to present to you the first report on the work of the Office of the Prosecutor (OTP) of the International Residual Mechanism for Criminal Tribunals.

The trial phase of the OTP of the ICTR has now concluded save for the receipt of judgement in the case of *Prosecutor v. Augustin Ndirabatware* now scheduled to be delivered on 20<sup>th</sup> December 2012 which will mark the conclusion of the trial phase of the ICTR. Similarly, all trial related activities including updating of the files of the fugitives, R71 bis evidence preservation proceedings in respect of the three top-level fugitives i.e. *Felicien Kabuga*, *Protais Mpiranya* and *Augustin Bizimana* as well as litigation in respect of R11bis applications for the referral of cases to national jurisdictions have also been concluded except in the case of *Prosecutor v. Benard Munyagishari* which is pending on appeal.



Our focus at the OTP-ICTR for the past six months has been and, for the ensuing months, will continue to be on the prosecution and completion of appeals, the preparation of OTP records for archiving and hand over to the Residual Mechanism, the completion of legacy, residual and closure issues as well as providing support to the OTP Arusha Branch of the Mechanism.

The conclusion of trials has substantially increased the appellate workload of our Appeals and Legal Advisory Division (ALAD). Currently, we are litigating 31 appeals arising from 9 cases. We nonetheless anticipate the timely conclusion of this appellate workload by 2014, within the time frame of the Completion Strategy of the ICTR set by the Security Council.

The preparation of the records of the OTP for archiving by the Residual Mechanism has progressed during the past few months and has received a welcome boost with the recent promulgation of the Secretary General's bulletin on archiving standards and retention schedules for the records of the international tribunals. The bulletin clears the way for the security classifications of the various records held by the OTP and the other organs of the Tribunal. In July this year, following the commencement of operations of the Arusha Branch of the Residual Mechanism, I was able to hand over to its Registrar the OTP records of some 27 cases for retention by the archives of the Mechanism. The remaining ICTR records will be handed over to the Mechanism as and when they are



cleaned up, properly classified and packaged for secure storage and when they are no longer required as working records by the OTP-ICTR.

These records and archives constitute an important legacy of the ICTR and the other tribunals for the future generations of researchers, historians, lawyers and judges as well as for the communities that were directly affected by the situations under our mandate. So also are a number of other important legacy projects on which the ICTR has been working and which we plan to conclude before the expiry of the tribunal's mandate. In 2006, at their first Colloquium held in Arusha, the Prosecutors of the International Tribunals, having regard to the fact that the legacy of the tribunals lies not only in their jurisprudence which is readily available but also in the practices which the various OTPs had developed in their operations, decided to implement a Best Practices Project which would document the lessons learnt – from both successes and challenges – in the investigation and prosecution of mass crimes. I am pleased to report that with the financial support of the Government of Canada, the Prosecutors of the ICTY, ICTR, SCSL, STL and the ECCC were able, on the basis of the experience of their respective offices, to finalise a joint Compendium of Lessons Learnt on the investigations and prosecution of international crimes and to launch it on 1<sup>st</sup> November 2012 at the Annual Conference of the International Association of Prosecutors. The Compendium is available to national and international prosecutors and will hopefully provide guidance on some of the many difficult aspects of investigation and prosecution of mass crimes.



Further work on legacy projects of this nature will continue both jointly amongst the OTPs of the various tribunals and by individual tribunals. The OTP-ICTR has already made substantial progress in executing a number of projects from a best practices and lessons learnt perspective including the tracking and arrest of fugitives, the recording of the course of the 1994 Rwandan genocide on the basis of facts established by the ICTR judicial process as well as the challenges in the referral under Rule 11*bis* of the ICTR rules of cases to national jurisdictions for trial. This latter project is intended to highlight the difficulties encountered in finding able and willing national jurisdictions for referral and the measures *inter alia* of law reform and capacity building that have had to be undertaken in some national jurisdictions in collaboration with the ICTR to enable the states concerned to be legally eligible for receipt of referral cases. We hope that the project will provide useful lessons on the partnership between national and international jurisdictions and in the implementation of the principle of complementarity whose effectiveness is so critical to the future of international criminal justice. The OTP-ICTR has also prepared two lessons learnt manuals respectively on the investigation and prosecution of sexual and gender based violence as well as on the management of victims and witnesses of sexual violence crimes in situations of armed conflict. These two manuals, which are now being finalized, were subjected some two weeks ago to peer review at an international workshop organized by my office in Kigali in collaboration with UN Women, the Open Society Justice Initiative, the East African Community and the Government of Rwanda to all of whom we are very grateful. The manuals are based on the ICTR experience in the investigation and prosecution of sexual violence and



gender crimes that were so extensive during the genocide of 1994. Such crimes continue unfortunately to feature significantly in many of the conflicts around the globe, making it one of the biggest human rights challenges facing the global community. We hope that our ICTR experience, captured in these manuals and in the very useful discussions at the workshop, will assist national and other international jurisdictions to effectively ensure accountability for such serious crimes.

The ICTR OTP is currently also working on a final report of its activities in time for the conclusion of our mandate. We expect that the report will indicate what has been achieved, the challenges faced by the ICTR in the execution of its mandate and the lessons for the future of the struggle against impunity.

The reduction in the workload of the OTP-ICTR will result in a considerable downsizing of the office this year and early next year. The Prosecution Division in Arusha and the Investigation Section in Kigali will both be closed down by the 31<sup>st</sup> December 2012 and their staff separated from the tribunal. This will be accompanied by staff reductions in the Information and Evidence Support Section (IESS), the Immediate Office of the Prosecutor as well as in the Appeals and Legal Advisory Division (ALAD) by the end of this year. These staff reductions are in addition to staff separations effected earlier in the OTP at the end of June 2012. Beyond the OTP there will also be significant reduction in staff resources tribunal-wide. To all of our separating staff, we wish to record our appreciation for their commitment and diligence which has enabled the ICTR



make significant progress in the discharge of its mandate and in bringing justice to the victims of the tragedy of 1994.

Mr. President, Your Excellencies, I now turn to the operations of the OTP of the Arusha Branch of the International Residual Mechanism for Criminal Tribunals (UN-MICT). The Branch came into being on 1<sup>st</sup> July 2012 and has been in operation since then. Recruitment of core staff of the OTP is ongoing with 8 of the 14 core staff already in place. The staff currently on duty includes legal officers and investigators charged with tracking and related assignments. We expect the recruitment of core staff to be completed in the next few months. We plan to commence the establishment of the roster of *ad hoc* staff soon after the New Year in order to be able to proceed with trials without further delay in the event of any new arrests. In order to facilitate the work of the OTP MICT I have also designated several members of staff of the OTP-ICTR to double-hat by attending to the MICT workload in addition to their normal ICTR duties. I would like to record our appreciation to the Registrars and staff of the ICTR, the ICTY and the MICT for their assistance which have facilitated the commencement and continuity of operations of the Mechanism in general and its OTP in particular. In consultation with my colleague Mr. Brammertz at the ICTY we have commenced preparations for the recruitment of staff for The Hague Branch of the Mechanism in order to ensure that the Branch can take off effectively on 1<sup>st</sup> July 2013 as directed by this Council.



The OTP of the Arusha Branch of the Mechanism has, since July this year, focused on the tracking of the three top fugitives i.e. *Felicien Kabuga*, *Protais Mpiranya* and *Augustin Bizimana*, the servicing of foreign requests for assistance, the monitoring of cases referred to national jurisdictions for trial and the trial preparations for any possible arrests of the three fugitives whose cases have been reserved for trial by the Mechanism.

Since 1<sup>st</sup> July 2012, the OTP-MICT has attended to 23 requests for assistance from 11 countries in addition to hosting three national delegations in support of on-going national investigations or prosecutions. As more jurisdictions take on their share of the responsibility of prosecuting their residents who are suspected of having committed atrocities in Rwanda, this aspect of the workload of the OTP-MICT will continue and probably increase. This service provided by the OTP is very crucial to empowering national systems play an effective role in combating impunity for mass crimes and should continue to be supported.

I have already appointed, in accordance with the ICTR rules, monitors to observe the proceedings in the two cases of *Prosecutor vs. Wenceslas Munyeshyaka* and *Prosecutor vs. Laurent Bucyibaruta* that have been referred to France and the case of *Prosecutor vs. Jean Uwinkindi* which has been referred to Rwanda for trial. The proceedings of the cases in France are progressing. The trial of *Uwinkindi*, after conclusion of preliminary proceedings, is scheduled to commence in the Rwandan High Court on 14<sup>th</sup> January 2013. I shall be appointing a monitor as well in the case of



*Prosecutor v. Bernard Munyagishari*, if and when, the Appeals Chamber confirms the referral and also in respect of the cases of the fugitives referred to Rwanda as and when they are arrested and transferred to that jurisdiction for trial. The biggest challenge however that the Mechanism faces is the tracking, arrest and trial of the three fugitives reserved to its jurisdiction. The readiness of the Mechanism of the ICTR OTP for the trials has been greatly enhanced by the Rule 71*bis* evidence preservation hearings already undertaken and the general updating of the files carried out by the ICTR-OTP and which files have now been handed over to OTP-MICT Prosecutor. The trials, however, cannot proceed *in absentia* and the arrest of the suspects continues to pose a major challenge for international justice.

The tracking of these fugitives has been intensified in the past six months and will continue to be a priority. Our work in Kenya, Zimbabwe and with other countries and organisations in the region has been ongoing and has been expanded to other countries and institutions outside Africa.

I had useful discussions in September 2012 with government officials in Harare, Zimbabwe on the case of the fugitive *Protais Mpiranya* and the investigations of the activities of the fugitive in Zimbabwe by MICT investigators and Zimbabwe law enforcement officials is now on-going. I have received assurances from Zimbabwean officials of the commitment of the government to collaborate with the Mechanism in the search for this fugitive.





The cooperation of all member states of the U.N. is absolutely essential for the tracking and arrests of not only these three fugitives but also of those 8 others whose cases have been referred to Rwanda for trial. The ICTR and the Mechanism can track but have no powers of arrest; that is a responsibility reserved to member states hence their legal duty to cooperate with the tribunals in this respect. The Security Council should continue to call on all member states to discharge their legal responsibility of cooperation with the tribunals.

On our part, we shall continue to make tracking the top priority of the Mechanism. Some two weeks ago, the OTP of the MICT and the ICTR took time to review current strategies and explore new methods that would assist the Mechanism fulfill its mandate, including in the difficult area of tracking. As a result we shall be looking at new ways of doing things and hope that these will be truly productive.

For the fugitives themselves, the clear message is that tracking will not cease. There is no time limit for the prosecution of the offences with which they are charged. The search for them will therefore continue until they are found and brought to justice, either before the international mechanism or an appropriate national jurisdiction to account for their deeds.

I thank you for your attention.