

CLOSING THE IMPUNITY GAP

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The President & Secretary General of INTERPOL

The Inspector General of Police of Rwanda

Distinguished delegates

Ladies and Gentlemen

I am honoured to have been invited to address you on what is undoubtedly one of the burning issues of our time: closing the impunity gap and ensuring accountability for international crimes. Significantly, this meeting is being held here in the Rwandan capital of Kigali at a time when the rest of the world joins the people of Rwanda in commemorating the 20th anniversary of the 1994 genocide against the Tutsi. We pay our deepest respects to the victims and survivors of that great tragedy and reaffirm our solidarity with the people of Rwanda.

What occurred in Rwanda during those very dark days has been captured so starkly in the judgment of the Appeals Chamber of the ICTR in the case of the *Prosecutor vs Karemera et al* as a campaign of mass killing intended to destroy, in whole, or at least in large part Rwanda's Tutsi population, which was to a very large degree successful.

Yet Rwanda's experience since 1994 holds so many lessons for the rest of the world: the calamitous consequences of a failure to prevent mass atrocity; the necessity as well as the limitations of international criminal justice; the primary responsibility of national jurisdictions to investigate and prosecute international crimes; the potential for traditional justice mechanisms in delivering post-conflict justice and reconciliation; the resilience, determination and success of a people to build a better society from the ruins of mass atrocity.

It is clear that our best option must remain a strategy to prevent mass crimes and the conflict that breeds them. Peace and justice must rest on the commitment of the international community to protect communities that are under threat; it must also rest on the commitment of all communities to build societies based on justice, respect for the rule of law, human rights and the broader requirements of good governance.

When strategies of prevention fail, as they unfortunately sometimes do, the intervention of legal justice must always remain an option: International justice and national justice. International justice, despite its limitations, has the capacity to hold to account high level perpetrators whom national systems lack the capacity or will to prosecute. Furthermore, given the very international nature of the process of prosecuting such crimes, requiring the involvement of several national jurisdictions, the reach and authority of the international jurisdiction is a tremendous advantage that also supplements national efforts. For example, the judicial notice of the Rwandan genocide by the ICTR Appeals Chamber has in no small measure undermined attempts at denial or revisionism. Similarly, the findings by the same Chamber that the Rwandan judiciary has the capacity to deliver a fair trial meeting minimum standards of due process has been echoed by the European Court of Human Rights and several European jurisdictions who have extradited or are in the process of extraditing suspected genocidaires to stand trial in Rwanda.

We should now all agree that impunity for international crimes is fast becoming a non-option for many countries and entities. State immunity and state sovereignty are no longer acceptable grounds to avoid responsibility and evade justice for these crimes. Yet, the topic for this meeting remains relevant: how do we close the impunity gap at a broader level? In my view, there are mainly two ways to do this. The first option is to surrender those individuals indicted for these crimes to an international tribunal for trial where one exists for that purpose. The second option is to prosecute individuals in domestic courts.

Over the past two decades the ad hoc Tribunals and hybrid courts have together held to account about 300 leading perpetrators who might otherwise have evaded accountability; they have expanded considerably the frontiers of international criminal law and demonstrated the viability of international criminal justice. The tribunals have done so with the support and

partnership of national systems and, notably, with INTERPOL. This revolutionary process and momentum generated in the relatively short period of two decades needs to be maintained and intensified for the sake of global and national peace and justice.

I take this opportunity to re-iterate my call for the arrest of these fugitives from justice wherever they may be hiding. May I also take this opportunity to thank INTERPOL for its continued support to the ICTR and the other Tribunals over the years for the tracking of these fugitives and for the arrest of many others who were surrendered to the Tribunals to stand trial for their crimes. The ICTR would not have been able to fulfill its mandate without your help and continued support and the support of many other countries in the international community. I must also extend a special gratitude to the United States War Crimes Rewards Program for their continuing support to the OTP and for continuing to provide the motivation for the arrest of our fugitives.

The support the ICTR received from many countries and organizations over the years across the world points to an increasingly accepted notion that impunity for these crimes is no longer tolerated by the world. All of the individuals surrendered to the Tribunal for trial were arrested in different countries. The level of cooperation from states and other organizations such as INTERPOL was invaluable.

We must acknowledge however that many challenges remain as the ICTR moves to closure in 2015:

(a) Nine indicted fugitives remain at large – the 3 high level fugitives slated for trial by the MICT if arrested and the 6 fugitives whose files have been referred to Rwanda by the Tribunal;

(b) Many more suspects not indicted by the ICTR, but subject to INTERPOL notices are wanted for trial in Rwanda; where member states are unable to extradite them to Rwanda they should prosecute them in their domestic courts;

I would like to seize this opportunity to call on all states, in fulfillment of their legal obligations, to deploy all efforts in securing the arrest and transfer of these fugitives respectively to Rwanda and the Mechanism. Similarly, all genocide suspects wherever they may be should

also be prosecuted by the host country or extradited to Rwanda to stand trial. The continued evasion of justice by these fugitives and suspects is a serious setback to the global campaign against impunity.

Notwithstanding these challenges, the process of international criminal justice must always remain an option, at multilateral or sub-regional levels, if the struggle against impunity is to be sustained.

But now the primary responsibility for the investigation and prosecution of international crimes rests on national jurisdictions, with the international jurisdictions undertaking only that which the national jurisdiction cannot or will not prosecute. Both the legal framework and the institutional capacity of such states needs to be strengthened and the political will nurtured for the discharge of such responsibility. Law reform to, inter alia, domesticate international crimes, guarantee fair trial rights etc..., training and specialization of personnel in the investigation and prosecution of these crimes, the development of mutual legal assistance networks can significantly assist in the discharge of such a responsibility. Much of the success in combating impunity has been due to effective partnerships between national and international systems.

While some states are willing to try individuals accused of these crimes, they may be hindered from doing so by a combination of factors. These range from the lack of a domestic legal framework which allows them to undertake such prosecutions in domestic courts, a lack of expertise in the investigation and prosecution of these crimes, lack of adequate local resources and, at times, a lack of political will. A typical example of this kind of scenario was our attempts at the OTP of the ICTR, under Rule 11*bis*, to transfer cases to Rwanda and other countries for trial there. We encountered several challenges before we were ultimately successful with our requests for transfer.

As a result of a productive partnership between the ICTR-OTP and Rwanda in capacity building activities and legal sector reform, particularly with respect to elimination of the death penalty, immunity for defence teams and witnesses, introduction of witness protection measures, improved conditions of detention, monitoring of proceedings and conditions of detention, and the possibility of having foreign judges on the panels, the Trial Chamber granted the Prosecutor's request for transfer of the first OTP case to Rwanda in 2011. This was followed by 7 other

successful requests for transfer of cases to Rwanda. The referral of cases to Rwanda by the ICTR also facilitated the extradition of several suspects to Rwanda by other countries. Thus the referrals contributed to closing one of the impunity gaps by enabling such countries to truly live up to their duty to extradite those suspected of committing such serious crimes where they could not prosecute them.

Hence, there is the need to build local capacity to complement international efforts so as to close the impunity gap. The ICTR and Rwanda experience in referral is instructive for the empowerment of national legal systems to discharge what is now their primary obligation under the new ICC regime: the investigation and prosecution of international crimes at the national level.

Furthermore, in the course of the trials at the ICTR and in the course of these capacity building activities, the OTP has also trained a generation of lawyers, many of whom hail from the continent including Rwanda, in the investigation and prosecution of international crimes. As the Tribunal closes, many of these lawyers will return to their countries of origin and integrate their ICTR experience into their national practices as prosecutors, defence counsel, judges and legislators. This is particularly so in the case of Rwanda, many of whose nationals have been employed in the OTP-ICTR as investigators, attorneys, language assistants, etc. some of whom are now employed in Rwanda to manage the cases transferred by the ICTR to that jurisdiction.

It must be acknowledged that Rwanda's experience in the prosecution of these crimes goes beyond the cases referred to it by the ICTR. Rwanda has prosecuted thousands of cases before its conventional courts; more important I believe is its prosecution of close to 2 million cases before the Gacaca jurisdiction courts. The use of these courts in providing speedy, relatively inexpensive and uncomplicated justice together with reconciliation demonstrates the great potential for traditional justice systems in managing post-conflict justice, reconciliation and reconstruction. These traditional systems should thus be factored into any system of post-conflict justice and accountability for mass crimes.

In recognition of the utility of the experience of the ad hoc tribunals and special courts for national jurisdictions, we have been actively engaged in documenting the lessons learnt in manuals on various aspects of our work for wider dissemination and use by relevant stakeholders

such as states and entities including INTERPOL. These include best practice manuals on the tracking and arrest of fugitives and the investigation and prosecution of sexual violence crimes which have now been concluded.

Similarly, in collaboration with the OTPs of the ICTR, ICTY, SCSL, ECCC and STL a compendium of lessons learned documenting the shared experiences in the investigation and prosecution of international crimes, including the establishment, management and closure of a prosecution office was jointly launched slightly over a year ago. We are honoured that INTERPOL is now using these practice manuals in its training and capacity building programmes. The fact that a global body such as yours, with its wealth of experience in law enforcement, saw the need to use these materials for your training is indicative of the potential benefits of these lessons learned initiatives. We are committed to continuously sharing the outcomes of our legacy projects with our partners as much as possible.

In conclusion, it is my view that while we have come a long way in closing the impunity gap and ensuring that those who commit international crimes anywhere are brought to justice, the fact remains that there are still challenges ahead. Overcoming these challenges will require a combination of national and international efforts working independently but in close collaboration with each other so that those who commit these heinous crimes are either put on trial at international tribunals or in domestic courts. The key is to get all countries on board in a way that would see a seamless process of cooperation between the international and national systems on one hand, and between one national system and another national system on the other.

Thank you for your kind attention and I wish you fruitful deliberations at this expert meeting.