



STATEMENT

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Arusha, The Hague, 9 December 2015

Statement by Justice Hassan B. Jallow Prosecutor UN-ICTR & UN-MICT to the United Nations Security Council 9 December 2015

Mr. President

Your Excellencies,

I am pleased to present once more to this honorable Council my six-monthly report and assessment on the work of the OTPs of the Mechanism and for the last time in respect of the ICTR. Permit me to begin with the Residual Mechanism.

With the imminent closure of the ICTR, the Office of The Prosecutor of the Residual Mechanism has taken over the functions of the OTP ICTR and continues to do so in respect of the ICTY OTP. Activities have been intensified on tracking the three fugitives earmarked for trial by the Mechanism. We are deploying considerable efforts to secure their arrest and trial before the Mechanism or in Rwanda as appropriate. I am pleased to inform the Council that Ladislav Ntaganzwa, one of the six indictees whose cases have been referred by the ICTR to Rwanda for trial, has been arrested in the DRC and is in the custody of the DRC Police. Ntaganzwa, the former mayor of Nyakizu Commune in Butare, was indicted for genocide and crimes against humanity for the massacre of Tutsis in his locality including at Cyahinda Parish, and for rapes and other acts of sexual violence perpetrated against many women in Butare. We thank the authorities of the DRC for their cooperation and urge them to transfer the accused to Rwanda for trial without delay in accordance with the order of the ICTR Referral Chamber. The Council is requested to urge all States to cooperate fully in the arrest and transfer of the remaining 8 fugitives. Such cooperation is essential to supplement our internal measures in tracking if these are to yield dividends. We are ready to put these fugitives on trial at the Mechanism within the shortest possible time of their arrest.

With regard to judicial activities, there has recently been a significant increase in motion practice in the Mechanism. In the past six months alone, since June 2015, both the Arusha branch and The Hague branch of the Mechanism OTP have been engaged in litigation in 23 cases. The staff of the Mechanism OTP have as the Tribunals downsized, increasingly been called upon to multi-task in order to maximize the use of OTP resources, provide for greater flexibility, and to fulfill the Mechanism mandate in respect of both its core and ad hoc functions. The Mechanism OTP has also adopted other strategies to maximize efficiency including delaying recruitments to adapt to changes in the ICTY trial schedule. With the staff in place, 10 continuous and 26 appeals staff, intense preparations have been also underway for possible appeals in the cases of Vojislav Šešelj, Radovan Karadžić and that of Goran Hadžić in the months ahead.

Assistance to national jurisdictions continues to be an important part of the work of the Mechanism OTP. In the past six months, we have handled 135 requests for assistance from 8 Member States and international organizations, bringing the total requests in the past 12 months to 343. This represents a significant workload which I am pleased to report the MICT OTP continues to manage efficiently through multitasking of staff as well as other measures. In this regard, I have promulgated several guidelines and protocols in order to streamline procedures regarding the provision of assistance to national jurisdictions.

The Mechanism OTP has now taken over the bulk of investigation and prosecution records and material from the ICTR-OTP. It has recently received 207 boxes of various records. The remaining items are scheduled to be transferred after the delivery of the Butare Judgment on 14 December 2015 and will complete the transfer of all ICTR-OTP active records to the Arusha branch of the Mechanism OTP. The ICTR evidence collection database, the shared network drives and equipment as well as the vault containing the physical evidence of the ICTR-OTP are now fully transferred to and managed by the OTP of the Arusha Branch. The Hague branch continues to work with the ICTY-OTP to prepare for a gradual handover of the ICTY-OTP records to the Mechanism OTP in tandem with the completion programme of the ICTY.

The Mechanism OTP is also monitoring the cases transferred by the ICTR to Rwanda and France. The investigation phase of the Munyeshyaka case in France has now been concluded and following the dismissal of the case by the Juge d'instruction as recommended by the French Prosecutor on 5th October 2015, the case is now on appeal in France. In the Bucyibaruta case, also before an investigating Judge in France is expected, I am advised, to be completed by the first quarter of 2016 with trial, if any, anticipated to commence by the end of 2016 in which case a final decision is not likely before mid-2017. The Uwinkindi trial in Rwanda following closing arguments in November 2015, is now scheduled for Judgment in December.

Mr. President, Your Excellencies, permit me to now turn to the ICTR.

Some twenty years ago, this Council decided by its Resolution 955(1994) adopted on 8th November 1994, to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda and by Rwandan citizens in neighboring states between 1st July and 31st December 1994.

Just over a week ago, on 1st December 2015, the ICTR held its official closing ceremony in Arusha, Tanzania to mark the conclusion of its work and mandate subject only to the delivery of judgment by the Appeals chamber in the case of Nyiramasuhuko and 5 others (the Butare case) scheduled for 14th December 2015. The ICTR will thus definitely close down by the end of this year.

It has been a long and challenging journey for all involved in ensuring accountability for the crimes committed in Rwanda in 1994 and in bringing justice to the community subjected to one of the most horrendous humanitarian tragedies of modern times. The ICTR closes down after having indicted 93 persons selected on the basis of their leadership status, their extensive participation in the genocide and their involvement in the commission of specific horrific offences such as those relating to rape and other acts of sexual violence. All but 8 of these indictees have been arrested and with a few exceptions prosecuted to finality in 5800 days of court proceedings. Thus far, 75 of them have been tried with 61 convicted of genocide and related offences. 14 have been acquitted.

Through these cases the tribunal has established in a fair and transparent judicial process the account of what transpired in Rwanda in 1994, held to account those who committed serious violations of international humanitarian law, and contributed significantly in the development of the jurisprudence and also of best practices in the investigation and prosecution of international crimes.

What happened in Rwanda in 1994 is best described by the ruling of the ICTR Appeals Chamber in the case of the Prosecutor vs Karemera et al. In 2006, the Appeals chamber in the landmark Karemera et al appellate decision held, upon application by the Prosecutor, that the occurrence of the genocide in Rwanda in 1994 is a well established and notorious fact of history requiring no further proof and of which judicial notice should be taken. In a memorable ruling, the Appeals Chamber of the ICTR declared that:

"There is no reasonable basis for anyone to dispute that, during 1994, there was a campaign of mass killing intended to destroy, in whole or at least in very large part, Rwanda's Tutsi population... that campaign was, to a terrible degree, successful; although exact numbers may never be known, the great majority of Tutsis were murdered, and many others were raped or otherwise harmed..."

The Tribunal has been the premier judicial institution in elaborating the law on genocide; it has similarly registered several other jurisprudential landmarks for instance in the definition of rape, in elaborating the link between sexual violence and genocide, the principles of command and superior responsibility etc. Its partnership with Rwanda and other States has enabled the tribunal to contribute to the restoration and the strengthening of the Rwandan legal system whose independence, impartiality, efficiency and fairness is now well attested to by the extraditions and referrals of cases to that jurisdiction.

The work of the ICTR – its jurisprudence, its practices and procedures – I believe provides significant lessons – from the challenges we faced and in the manner we tried to respond to them, for national courts and other international tribunals in carrying forward the task of the investigation and prosecution of international crimes. The documentation of such lessons and practices – already commenced in the closing years of the ICTR, should be continued by others for the benefit of future generations.

Mr. President, Your Excellencies, a debt of gratitude is owed to many whose support has been indispensable and critical to the execution of the ICTR mandate: the Security Council, the Secretary General, the U.N. Secretariat, particularly the Office of Legal Affairs and its leadership, and the other organs of the United Nations for their constant support and cooperation; particularly to the Security Council for its foresight in 1994 and earlier in initiating and sustaining through the establishment of the ICTY and the ICTR of new forms of accountability which have not only ensured justice for the countries in the Former Yugoslavia and Rwanda but also have provided the impetus for a new and vibrant architecture for the global struggle against impunity and made international criminal justice a lasting feature of the international system; to the member States of the United Nations for their cooperation in tracking and arrest of fugitives and in all other aspects of our operations. Permit me to single out in this context the government and people of Rwanda whose support and cooperation has been critical in assisting our investigations, in accessing witnesses and other evidence and in the implementation of our strategy for referral of cases to national jurisdictions; the government and people of Tanzania who have been our gracious hosts for the past two decades and more; to the thousands of witnesses – for the prosecution as well as for the defence – who have had to travel to Arusha to testify, recounting and reliving their often traumatic experiences in order to provide the court with the relevant evidence ; to the entire staff of the tribunal – in chambers, registry and the OTP – including the judges who have given the best of their time and skills - with dedication and commitment – towards the executions of the ICTR mandate. I wish to pay tribute particularly to my predecessors – Prosecutors Richard Goldstone, Louise Arbor and Carla Del Ponte, each of whom made a lasting and valuable contribution to the work of the OTP and of the Tribunal and wider afield to the global effort to promote accountability for mass crimes; to President Vagn Joensen and Registrar Majola and their predecessors; and to our colleagues of the defence too, an indispensable element of a fair judicial process – for the end the legacy of a judicial process will be determined by its fairness, perhaps more than by its jurisprudence or statistics.

The ICTR has done its utmost, despite many challenges, to fulfill the mandate entrusted to it by the Security Council to meet the expectations of the communities most directly affected by the tragedy of 1994 as well as those of the rest of the international community.

Much has been accomplished in bringing justice to the victims and for the accountability of the perpetrators of the genocide of 1994. Some work still remains to be done as well. Current gaps in impunity need to be closed with proper accountability. Member States need to give maximum cooperation to the Mechanism to secure the arrest and trial of the remaining 8 fugitives; hundreds of other suspected genocidaires must be tried in their countries of refuge or be extradited to Rwanda for trial; the acquitted and released persons currently under the Mechanism in Arusha need to be relocated to where they can resume their lives. The closure of the ICTR, the first ad hoc tribunal to do so, is a momentous event. But only the end of a chapter. The global struggle for justice and accountability must continue and must be intensified, building on the legacies of the ICTR and of the ICTY and indeed of the hybrid tribunals as well. We must continue to respond through appropriate accountability mechanisms to mass atrocity everywhere. That as the Security Council emphasized some twenty years ago and on several instances since then is the pathway to peace and to reconciliation.

Mr. President, Excellencies, I am greatly conscious of the fact that this is my last address and report to the Security Council as Prosecutor of the ICTR; greatly conscious too of the honour given me by the Council in appointing me as Prosecutor in 2003 and renewing my appointment on subsequent occasions. This Council has granted me the privilege of leadership of the OTP, and of the investigative and prosecutorial process at the ICTR, at the peak of its workload, during the implementation of the completion strategy and through the transition to the now well-established Residual Mechanism. I am indeed immensely grateful to the Secretary General and to the Security Council for this honour. I thank you for your attention.