

**SPEECH OF THE ICTR REGISTRAR, MR. BONGANI MAJOLA ON
THE OCCASION OF THE COMMEMORATION OF THE 20TH
ANNIVERSARY OF THE ESTABLISHMENT OF THE ICTR**

Judge Vagn Joensen, President of the ICTR

His Excellency, Dr. Ghalib Bilal, Vice President of the United Republic of Tanzania,

Mr. Migel De Serpa Soares, Under Secretary-General and Head of the Office of Legal Counsel, Representing the Secretary-General of the United Nations

Judge Theodor Meron, President of the International Criminal Tribunal for the Former Yugoslavia and of the Residual Mechanism for International Criminal Tribunals

Justice Hassan Bubacar Jallow, Prosecutor of the International Criminal Tribunal for Rwanda

Mr. Adama Dieng, Under Secretary-General and Special Advisor to the Secretary-General on the Prevention of Geocide

His Excellency, Eugene Kayihura, High Commission of Rwanda to Tanzania

Honourable Judges present

Mr. John Hocking, Registrar of the ICTY and the Mechanism and Other Fellow Registrars present

All the staff of the ICTR and the Mechanism,

Distinguished guests and Ladies and gentlemen,

It gives me a great pleasure to welcome you all to Arusha. We are gathered here today to commemorate the 20th anniversary of the establishment of the International Criminal Tribunal for Rwanda (ICTR). Your presence here today is therefore greatly appreciated.

As we commemorate this anniversary, we remember with sadness the barbaric acts of genocide that were committed in Rwanda in 1994. Our hearts, first and foremost, reach out to the souls of those who perished in that tragedy and to the survivors who lost all that it meant to be human and whose tales of resilience and perseverance in the face of adversity are a true inspiration for all of us as they continue to rebuild their shattered lives and to lift their nation of Rwanda from the ashes of the Genocide.

Twenty years ago, following the tragedy that engulfed the nation of Rwanda and resulted in the murder of in excess of half a million persons, the majority of whom were of Tutsi ethnicity, the Security Council of the United Nations established this ad hoc international criminal tribunal, under Chapter 7 of the Charter, to prosecute persons responsible for that ghastly tragedy. One of the objectives of the Member States was to put an end to the commission of international crimes in Rwanda by

bringing to justice and prosecuting those who bore the highest responsibility for the genocide against the Tutsi and others in which others who opposed the genocide were also killed. The Security Council was convinced at the time that the prosecution and punishment of these persons would put an end to the atrocities, contribute to national reconciliation and peace in Rwanda.

This institution, together with its sister Tribunal, the International Criminal Tribunal for the former Yugoslavia (ICTY) were the first international criminal tribunals established post the Nuremberg and Tokyo trials. They were faced with the challenge of establishing a new set of rules and procedures in the international criminal law arena. The ICTR was established by UN Security Council Resolution 955, after determining that the situation in Rwanda constituted a threat to international peace and security. This marked the beginning of a trend to seriously hold individuals accountable for breaches of international humanitarian law. The establishment of these ad hoc Tribunals gave much hope to both victims and potential victims of international crimes and raised expectations among the members of the international community. There is no clear mechanisms for managing those expectations.

Well, it is now exactly 20 years since that decision was taken by the Security Council. Some have asked what has changed and whether the world has become better.

Critics will be quick to point out that impunity is alive and well, and frequently commutes from region to region. The current developments around the world push even those most supportive of the international criminal justice system to question its relevance and efficiency. The images we see these days paint an unfortunate, dark picture of the world *vis-à-vis* international criminal justice. There are conflicts in several areas of the world – where we have seen public and gross violations of international humanitarian law committed with apparent impunity.

Some question the relevance of international criminal justice in general and particularly the establishment of these ad hoc tribunals and have already written off the 20 years of the ICTR as a waste not only of time but also of valuable resources that could have been fruitfully used elsewhere, for other purposes. Some leaders even go as far as suggesting that there is no need for an international criminal justice system and that restoring peace and rebuilding post conflict societies requires only dialogue among the parties concerned. For example, former South Africa President, Thabo Mbeki, correctly points out that international tribunals

cannot stop politically driven mass violence. This is probably based on the assumption that the international criminal tribunals are a panacea for all ailments. The prosecution of the leadership of those who commit mass atrocity crimes is but one of the solutions that, together with many others, can contribute to stopping such violence. Some academics observed last year that part of the legacy of the ICTR is that it has failed to bring about reconciliation in Rwanda, even though the mandate of the Security Council does not charge the Tribunal with that responsibility. There is also now a strong push, one which I strongly support, towards trying international crimes at the national level.

As we pause today to reflect on the 20 years of the existence and work of the ICTR, how do we assess the achievements of the ICTR over that period? If we take the approach that the purpose of prosecuting international crimes is to stop violence, then the ICTR has clearly not been a successful experiment. Similarly, if we take the view that its purpose was to bring about reconciliation, we are obliged to arrive at the same conclusion.

I agree with the International Centre for Transitional Justice that investigations and trials of powerful leaders – be they political or military – helps to strengthen the rule of law and send a strong signal that such crimes will no longer be tolerated.

Indeed the mandate of the ICTR is to do just that, namely, to prosecute and punish those most responsible for genocide in Rwanda in 1994. If judged on the basis of this mandate, there is no doubt that the ICTR has been a greatly successful, though expensive, experiment.

In the 20 years of its existence, the ICTR indicted 93 persons. So far 55 convictions and 14 acquittals have been registered in finalized cases. There are a further 7 persons who were convicted at the trial level but who are waiting the completion of their appeals in two cases, one of which is now under the jurisdiction of the Mechanism. Cases against 10 were referred to national jurisdictions for trial and a further 3 were taken over by the Mechanism. Two (2) accused persons died before the completion of their trials and indictment against another 2 were withdrawn.

The Republic of Rwanda would probably not have been able to track, cause to be arrested and extradited to Rwanda, this number of the leaders of the genocide of 1994. They would have remained free and unaccountable for their evil deeds had the ICTR not been established. The fact that the Tribunal managed to get such a high number of convictions, establish new jurisprudence and record lessons learnt, suggests that the Tribunal has been a success.

Of course, compared to the number of accused persons processed by the Gacaca courts in Rwanda, the number of convictions I have just mentioned pale into insignificance. However, this should not be the standard for gauging the impact of the ICTR. The two have fundamental differences that make it unhelpful to make a comparison between them.

One recalls that at the end of the conflict in 1994, the judicial system and other infrastructure in Rwanda had been almost completely destroyed, if not totally crippled. Consequently, Rwanda was not in a position to track and prosecute especially those who had played the leading role in the genocide. Many, if not all the leaders of the genocide had fled Rwanda and hid in different parts of the world. When Rwanda started rebuilding its infrastructure, it was, for a long time, confronted by the unwillingness of countries to extradite those suspects back to Rwanda for trial.

During the symposium yesterday, we heard from someone who has had recent personal experience working within the Rwandan judicial system, how the work of the ICTR has helped the positive development and growth of the Rwandan judicial system which included the abolition of the death penalty, the reform of criminal

legislation, the establishment of detention conditions meeting international standards, and many others. The ICTR played an important role in assisting in rebuilding the judicial system of Rwanda and restoring faith in it. By referring cases to Rwanda for trial, the Tribunal further assisted Rwanda to get some of the suspects that it had been struggling to get. The referrals have encouraged many countries to either extradite Rwandan genocide suspects to Rwanda or prosecute them. The ICTR continues to support those countries by providing them with information they need for either purpose.

The Tribunal has as well contributed to the development of international criminal law through its jurisprudence. You have, no doubt, heard of the cases such as Akayesu which handed down the first ever conviction for rape as a crime against humanity, and ruled that rape could be a crime of genocide if committed with the genocidal intent of destroying a racial, ethnic or religious group. There is also the case of Karemera which declared that judicial notice can be taken that genocide was committed in Rwanda in 1994. There are many others. The path-breaking precedents set by the ICTR judgements and the relevance of its pioneering experience continue to impact the growing number of international and regional judicial institutions as well as national jurisdictions. For the past two decades, the ICTR has made available its expertise and lessons learnt to ensure that these

institutions (both regional and international) acquire the capacity to investigate and prosecute genocide, crimes against humanity and war crimes.

This is not meant to be an exhaustive description of the achievements of the ICTR. Considering the available time, let me also talk briefly about the challenges or failures of the ICTR. The ICTY and ICTR were an unprecedented experiment in holding accountable those responsible for committing mass atrocities. Because they had no precedents, these Tribunals had to innovate when dealing with a large number of issues. There were bound to be failures therefore. It is not possible to talk about all the failures within the limited time available. So, I will mention one or two examples. While the ICTR was able to send to prison a large number of those who bear the greatest responsibility for the genocide of 1994, it failed to also hold to account most of those who committed rape and used it as a weapon for committing genocide. The ICTR has also been criticized for failing to care for the surviving victims of the genocide and to adequately involve them in the process of prosecuting those it investigated, indicted and tried. Finally, the Tribunal has been criticized that it has taken too long and consumed a lot of money to prosecute the “few” persons that it indicted.

The Tribunal has, however, used its challenges and failures as a learning experience. For example, in respect of the prosecution of sexual violence crimes, the ICTR has recorded lessons learnt from that failure and produced a manual which has been shared with national prosecuting authorities and others who work on issues of sexual violence in armed conflict. In this regard, I would like to thank among others, the Office of the Prosecutor of the ICTR for producing the manual and also UN Women for supporting its effort to its conclusion. The ICTR is also recording lessons learnt in the prosecution of genocide and other international crimes within its jurisdiction as well as on the management and protection of witnesses. Lessons have been learnt by the whole international community with regard to the costs of establishing and running an international criminal tribunal. The ICTR and ICTY experience has enabled the Member States to tailor and narrow the jurisdiction of subsequent international criminal tribunals and, in some cases to ensure that the states in which the atrocities occurred are involved in the process and make a contribution to the costs of running the court. Finally, the failure of the ICTR to provide for the surviving victims of mass atrocities has provided useful lessons that were used in the creation of subsequent international criminal court. It is worth stating that this failure is however not of the Tribunals own making but emanated from the way in which it was meant to operate. Nevertheless, the ICTR did not fail to do something about the plight of surviving

victims. It raised funds from voluntary donations and provided especially medical and psychological care to those who were in most need of care.

One failure of the ICTR from which lessons can be learnt, relates to its inability to help those acquitted by its Trial and Appeals Chambers leave Tanzania and go away to live their normal lives. There remain 8 of the acquitted persons living in an ICTR safe house without identities, with no means of survival and unable to go anywhere because they do not have anywhere to go. Despite three UN Security Council Resolutions calling upon states that have not yet done so to assist the Tribunal in its relocation efforts, there has been very little support from states. I therefore appeal to Member States in spirit of the numerous Security Council Resolutions to explore means and ways to address their plight. It is evident that their situation presents a significant human rights challenge that cries out for the assistance of the international community.

In conclusion, I wish to avail myself of this opportunity to once again convey our profound gratitude to the governments of Tanzania and Rwanda for their support and underscore the significant role they have played, in ensuring that there can now be no safe havens for those who have committed gross human rights violations. The challenge of replacing a culture of impunity with one of

accountability is still on. I believe that the wealth of knowledge left behind by the Tribunal and the experience of staff acquired in its service will positively contribute to a better world premised on justice and respect for human rights.

Last but not least, I would like to say that all the successes of the ICTR and all the lessons learnt from the ICTR experiment would neither have been learnt nor recorded had it not been for the excellent work and professionalism of the staff of the Tribunal, both past and present. I would like to join many others who have recognized the efforts of these men and women in thanking them for their commitment, hard work and achievement.

With these few remarks, I take this opportunity to launch a new website of the ICTR and a video prepared to commemorate this anniversary. The website contains comprehensive database on various cases and materials the Tribunal has rendered for the past two decades. I therefore call on all of you to make use of this website and materials available on it and make the website known to your colleagues, your students and researchers.

I thank you very much for your attention.

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