



# ICTR NEWSLETTER



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United Nations International Criminal Tribunal for Rwanda

## ICTR President and Prosecutor Address the UN Security Council

**The President of the Tribunal, Judge Dennis Byron and the Prosecutor, Justice Hassan Bubacar Jallow on 18 June 2007 addressed the UN Security Council in New York during which they reported on the progress of trials at the ICTR. Their reports are reproduced below.**

### Judge Byron before the UN Security Council



President Byron and President of the ICTY and the Appeals Chamber, Judge Pocar

Mr. President, Your Excellencies, Ladies and Gentlemen,

It is a great honour for me to address the members of the Security Council as the new President of the International Criminal Tribunal for Rwanda and I am particularly pleased to appear before you, Mr. President, as your country has consistently supported the work of the Tribunal.

After a concise overview of the judicial work of the Tribunal for the last six months, my intention today, if I may Mr. President, will be to outline for the Security Council key issues and challenges in connection with the completion strategy of the Tribunal.

Mr. President, Your Excellencies, please let me start with a brief overview of the judicial work since the last report made to the Security Council in December 2006.

The total number of cases completed in first instance is now 27, involving 33 accused. Since the last report to your Council, one final judgement on a guilty plea has been issued in the case of Joseph Nzabirinda.

My statement today will present an updated version of the ICTR completion strategy submitted to the Security Council by my predecessor, Judge Erik Møse on 23 May 2007.

In addition, one case has been transferred to the Kingdom of The Møse on 23 May 2007.

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### Statement by Justice Hassan B. Jallow to the UN Security Council

Mr. President, Your Excellencies,

The updated Completion Strategy document of the ICTR reflecting the information available as at 15 May 2007 and which has been submitted to the Security Council reflects the continued progress of the ICTR in the implementation of the completion of our mandate as set out in Security Council Resolution 1503 (2003) and 1534 (2004).

Our commitment to and our confidence in attaining the goals of the Completion Strategy remain firm and unwavering. We continue to believe these goals to be reachable and we shall continue to work towards that end.



From left to right: Ms. Carla Del Ponte, Prosecutor of the ICTY and Justice Jallow

With the conclusion of proceedings in the case of Prosecutor vs Bagosora and 3 others (Military I), a major case of the ICTR is now reaching finality and awaiting only judgement. The number of accused persons standing trial has now thus been reduced to twenty two,

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## ICTR Prosecutor Requests Transfer of First Case to Rwanda

On 11 June, the Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) requested transfer of the case of Fulgence Kayishema to Rwanda for trial. It is the first request for transfer of an ICTR case to the Rwandan national jurisdiction.

Kayishema is among the 18 fugitives indicted by the ICTR who are still at large. The indictment that was confirmed on 3 July 2001, charges Kayishema with genocide, complicity in genocide, conspiracy to commit genocide and extermination as a crime against humanity.

Kayishema was born in 1961 in Kivumu commune, Kibuye Prefecture of Rwanda. During 1994, he was the inspector of police in the same commune. He allegedly conspired with Father Athanase Seromba and others to prepare and carry out a plan to exterminate the Tutsi population in Kivumu commune and elsewhere in Kibuye. It is alleged that in implementing their plan, thousands of Tutsis, including those that had sought refuge at Nyange Parish, were exterminated.

The Government of Rwanda has expressed its willingness and readiness to accept and prosecute the Accused, with assurances that he will receive a fair trial, that in the event of conviction, the death penalty will not be applied and that Rwanda will comply with all the conditions required by the Trial Chamber in its Referral Order.

According to the Prosecutor's submission, Rwanda meets the requirements set out in the Tribunal's Rule 11 bis to merit transfer of the case for trial. In addition, Rwanda's legal framework guarantees all the Rule 11 bis safeguards including the protection of witnesses and allowing for the monitoring of the proceedings by monitors appointed by the Prosecutor. The African Commission on Human and People's Rights has accepted the responsibility to monitor the trial on behalf of the Prosecutor.

The Prosecutor asked the Trial Chamber to require the ICTR Registrar to designate a defence counsel to represent the interests of the Accused in the referral proceedings. He also asked the Trial Chamber to issue a new warrant of arrest requiring states to cooperate in arresting Kayishema and transferring him to Rwandan authorities.

Assisting the Prosecutor is a referral team led by Dr. George Mugwanya, Senior Appeals Counsel.

## ICTR Judicial Activities

### • Trial of Father Nsengimana Commences

The Trial of Hormisdas Nsengimana, a priest who was formerly Rector of Christ-Roi College in Nyanza, Nyabisindu Commune in Butare Prefecture, began on 22 June 2007 with the Prosecution stating

that it will submit evidence establishing beyond a reasonable doubt that the accused is guilty of genocide, murder and extermination against the Tutsi ethnic group. The Prosecution made the submission during its opening remarks before Trial Chamber I composed of Judges Erik Møse, presiding, Sergei Alekseevich Egorov and Florence Rita Arrey.



Nsengimana

In her opening remarks, the Chief of Prosecution Ms. Silvana Arbia said that 24 Prosecution Witnesses will be called to prove the prosecution case. Witnesses will come from members of the clergy who have opted to tell the truth on what happened; members of the Hutu ethnic group who were employees of the College and some being accomplices; victims and survivors of the mass attacks; former students of the College; and experts and analysts who will put the activities of the accused in context during the period charged in the indictment.

Nsengimana, 53, is alleged to have been among the organisers of the slaughter of Tutsis in Nyanza, Butare in 1994. He is accused of playing a leading role in a group of killers called Les Dragons (The Dragons) or *Escadrons de la Mort* (Death Squad) which allegedly played a crucial role in the killing of Tutsis in and around the Christ-Roi College and in other parts of Butare Prefecture. He is also alleged to have worked closely with soldiers in the prefecture to commit the crimes.

Further, the accused is alleged to have been instrumental in the killing of several Tutsi priests from his college. In one incident he allegedly gave some money to some people to get information about the whereabouts of three Tutsi priests who had fled the Christ-Roi College. After being informed of their whereabouts, Nsengimana informed his co-perpetrators who went and took the three and killed them.

Counsel, David Hooper ( England), for the accused, told the Trial Chamber that Nsengimana disputes each and every allegation made against him. He further stated that the accused was also caught up in the dreadful events of 1994; he lost members of his family and several friends; and that this trial will vindicate him.

On 24 April 2007, during a further appearance, Nsengimana pleaded not guilty to three counts charging him with genocide, murder and extermination as crimes against humanity. The accused was arrested in Yaoundé, Cameroon on 21 March 2002 and transferred to the United Nations Detention Facility in Arusha on 10 April 2002.

### • Final Submissions in Military I Case

From 28 May to 1 June 2007, the Prosecution and the four Defence teams presented their closing arguments before Trial Chamber I in the case known as "Military I". The case involves four former high



*Bagosora, Ntabakuze, Kabiligi and Nsengiyumva*

ranking military officials: Colonel Théoneste Bagosora, former Directeur de Cabinet in the Rwandan Ministry of Defence; General Gratien Kabiligi, former Chief of Military Operations in the Rwandan Armed Forces; Lieutenant Colonel Anatole Nsengiyumva, former Commander of the Gisenyi Military Operational Sector; and Major Aloys Ntabakuze, former Commander of the Para-commando Battalion.

They are jointly charged with conspiracy to commit genocide, genocide or in the alternative complicity in genocide, crimes against humanity, and serious violations of the Geneva Conventions and the Second Additional Protocol (war crimes). The Accused Nsengiyumva is additionally charged with incitement to commit genocide.

The Prosecutor asked the Chamber to find the Accused guilty on all counts. He submitted that the Accused were all men of immense power and authority at that time and that, individually and in their official capacities, they prepared, planned, ordered, directed, incited, encouraged, and approved the killing of innocent civilian Tutsi men, women and children, and others considered to be their accomplices. He noted that none of the Accused has ever accepted any responsibility for the crimes. The Prosecution seeks life sentences for the four Accused.

The Defence teams argued that the Prosecution had not proven the allegations against the Accused beyond a reasonable doubt, particularly as to conspiracy to commit genocide, and requested that each Accused be acquitted. They further argued that the Prosecution case had evolved during the trial and that it ultimately bore little resemblance to the initial Indictments against the Accused. In their view, this transformation of the case left the Defence constantly responding to new allegations and prejudiced their ability to respond to the Prosecution case.

The trial concludes after 408 trial days, during which time 242 witnesses have testified; 1,584 exhibits have been tendered into evidence; and more than 300 written judicial decisions have been issued.

**• ICTR Indicts Witness for False Testimony**

On 11 June, the International Criminal Tribunal for Rwanda (ICTR) issued an indictment against a witness for giving false testimony during the trial of Jean de Dieu Kamuhanda. Judge Jai Ram Reddy (Fiji) confirmed the indictment and issued a warrant for arrest of the witness code named GAA.

This is the Tribunal's first prosecution for contempt of court and false testimony. The case arises out of an investigation by the Office of the Prosecutor on the

direction of the Appeals Chamber when it upheld the conviction of Kamuhanda on 19 September 2005. Witnesses in the trial were allegedly induced to give false testimony under oath.

The confirming judge issued the indictment on the basis of the written material submitted by the Prosecutor.

**ICTR at The Hague**

**• Activity of the Appeals Chamber**

The Appeals Chamber is presently deliberating on the Nahimana et al. and Simba appeal judgements and is preparing the Muvunyi and Seromba cases for hearings. Further, the Appeals Chamber is seized of an appeal in the Rwamakuba case and of interlocutory appeals in the Bizimungu et al., Karemera et al., and Butare cases. It is also seized of an application in the Niyitegeka case. During June, the Appeals Chamber issued decisions concerning two pre-appeal matters.

**• Inter-Tribunals Co-operation and ICTR-Internal Co-operation**

The ORSS-U within the ICTR/ACSU in The Hague composed of Koffi Afandé (Legal Officer), Patrice Tchidimbo (Associate Legal Officer) and Ramadhani Juma (Documents Clerk) held a working session with a delegation of OTP/ICTR composed of George Mugwanya (Senior Appeals Counsel), Neville Weston (Senior Appeals Counsel), Abdoulaye Seye (Appeals Counsel) and Alfred Orono (Assistant Appeals Counsel).

The working session aimed at enhancing and redesigning the role of the ORSS-U as interface in the internal coordination within the ICTR between the OTP/ICTR and relevant Registry Sections/Units in Arusha as well as in the cooperation between the OTPs of the ICTR and ICTY.

**Commonwealth Secretary-General Visits Tribunal**

On 8 June 2007, the Commonwealth Secretary-General, Rt. Hon. Don McKinnon visited the United Nations International Criminal Tribunal for Rwanda and pledged his organisation's support to ICTR's commitment to international justice. He also commended the work being undertaken by the Tribunal of promoting international justice and national reconciliation in Rwanda.



During his one day visit, Rt. Hon. McKinnon held talks with the ICTR President Sir Dennis Byron, Judge Jai Ram Reddy, the Prosecutor Mr. Hassan Bubacar





Jallow, the Registrar Mr. Adama Dieng, and the ICTR's Spokesperson. The talks centered on areas of cooperation between the Commonwealth and the Tribunal and in particular the sensitization of Commonwealth Member States in the continued provision of cooperation and judicial assistance in apprehending the remaining fugitives and in overcoming the challenges facing the Tribunal at this critical stage of its completion strategy.

Other issues discussed included support by the Commonwealth for the ICTR's effort in the capacity building process in Rwanda and other countries including the sharing of the ICTR experience in Information Technology based management of judicial archives and the tools the Tribunal has developed in Witness Protection and Court Management. All these are part of the Tribunal's legacy. Rt. Hon. McKinnon was also briefed on latest developments at the Tribunal apart from being offered a guided tour of the ICTR facilities.

The Commonwealth Secretary-General was accompanied by Prof Ade Adefuye, Special Adviser, Head of Africa Section, Political Affairs Division, Mr. Amitav Banerji, Director and Head, Office of the Secretary-General and Mr. Manoah Esipisu, Deputy Director of Communications and Public Affairs Division.

## Honorary DCL for Former President of the ICTR, Judge Navanethem Pillay



Chancellor Dr Bill Bryson, Judge Pillay, her legal officer Natasha Naidoo and the Vice-Chancellor Professor Chris Higgins

On 27 June 2007, during the graduation ceremony for the Durham Law Department's students, Judge Pillay, Chairwoman of the Centre for Criminal Law and Criminal Justice was awarded an honorary Doctor of Civil Law in recognition of her services to international criminal justice. Judge Pillay was the President of the ICTR from 1999 to 2003.

## ICTR Appoints New Chief of Prosecutions

On 7 June 2007, Ms Silvana Arbia was appointed to the position of Chief of Prosecutions. Ms Arbia will replace Mr. Stephen Rapp who was appointed, by the Security Council, Prosecutor of the Special Court for Sierra Leone.



Ms. Silvana Arbia

Ms Arbia joined the ICTR in October 1999 as a Senior Trial Attorney in the Office of the Prosecutor where she supervises the on-going Butare trial. She also led the trial team in the Seromba case, the first Catholic priest convicted for genocide and crimes against humanity. From December 2001 to December 2002, she served as Acting Chief of Prosecutions.

Ms Arbia received a master of law degree from Padova University (Italy) in February 1976. She undertook additional legal training at the Canadian Human Rights Foundation, The Hague Academy of International Law, the Academy of European Law, and at the International Institute of Human Rights.

From 1976 to 1978, she practiced at a law firm in Venice, Italy. She served as public prosecutor and judge in Venice from 1979 to 1982. She then served as a judge in Rome from 1983 to 1999. As an Appeal's Chamber judge and a magistrate of the Supreme Court in Italy, she heard criminal cases on organized crime, money laundering, international traffic in drugs, corruption, and abuse of children.

Ms Arbia has served as a lecturer on human rights and the use of electronic database at several universities and academies. In 1998, she served as the Italian delegate to the diplomatic conference for the establishment of the International Criminal Court.

## Nairobi Media and Tribunal's Press to Strengthen Cooperation

On 18 June, Bocar Sy, Chief of Public Affairs & Information Unit, Roland Amoussouga, Spokesperson for the Tribunal and Tim Gallimore, Spokesperson for the Prosecutor shared a breakfast with Nairobi-based journalists. The "Breakfast Briefing" was aimed to update them on the status of ICTR cases in progress and generally about the work and accomplishments of the Tribunal.

The Breakfast Briefing was held at the Intercontinental Hotel in Nairobi and was attended by approximately 30



journalists from a variety of media organizations. The briefing lasted more than two hours including time for questions from the participants.

After the briefing, the two spokespersons granted interviews with individual journalists.

While in Nairobi, Mr. Gallimore and Mr Sy met with Mr. Eric Falt, Director of Communication of UNON and staff of his Department. During the discussion Mr. Falt proposed to avail to the Tribunal a five-minutes Radio Program twice a month to be aired by Kenya Broadcast Cooperation (KBC). Cooperation to publicize information about the Tribunal in Kenyan Newspapers was also discussed.

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## Workshop between the ICTR and Rwandan NGOs

The Office of the Prosecutor recently successfully organized a two-day Roundtable workshop which took place on 28 and 29 June 2007 at Kigali Serena Hotel. This was the first European Union-Funded Workshop organized between the ICTR and Rwandan NGOs. The Roundtable gathered around 50 participants: senior officials of the Tribunal from the Registry, Chambers, Office of the Prosecutor, strategic NGOs in Rwanda, top officials from Rwandan Government, Civil Society and as well as Ambassadors representing their respective countries especially from European Union and East African Countries.

The aim of the roundtable was to enhance the image of the Tribunal by communicating its completion strategy and proposed transfer of cases to relevant NGO's and as well as significant stakeholders in Rwandan society.

The Roundtable was officially declared open by the Rwandan Minister of Justice Tharcisse Karugarama who stated that the government of Rwanda was very happy with the collaboration and working relationship between it and the Tribunal. He stated that during June 2007, the Security Council also made this observation and commended the smooth working relationship between both parties. The Deputy Registrar, Mr Everard O'Donnell also spoke extensively about the importance of the work of the Tribunal as a continuation of the work started by the Nuremberg Trials and the lasting impact it has made in revolutionizing the punishment of impunity in international criminal justice.

The Roundtable workshop was also attended by Rwanda's Prosecutor-General Martin Ngoga, who in his comments expressed his satisfaction at the harmonious relationship between the Tribunal and the Government of Rwanda. He reminded the audience that one of the major reasons Rwanda decided to abolish the death penalty, was to see to it that Rwandan laws are in conformity with the Tribunal's Rules and Statute. The Rwandan Prosecutor summed his comments by assuring the audience that, Rwanda is ready to keep the Tribunal's Archives at the end of the Tribunal's mandate.

Papers were presented at the workshop on issues such as Gender and the ICTR, the Role of NGOs in Assisting Due Process in the Post Tribunal Era, Witness Handling and Protection, Overview of the Prosecution of Genocide over the Years and the Supervision of Imprisonment in Post Tribunal Rwanda.

The Roundtable provided an excellent Forum for stakeholders to exchange ideas and ventilate their views and perceptions on these and other topical matters, common to both parties. The Deputy Prosecutor, Mr Bongani Majola also spoke on the need for continuous dialogue between the Tribunal and the Rwandan government in the light of this important phase in the life of the Tribunal.

The Roundtable was closed by Prosecutor Ngoga who described the end of the programme as an adjournment and encouraged many more such initiatives by the Tribunal.

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## Gender Issues and the ICTR Completion Strategy

*Highlights of an ICTR paper presented by Ms. Elsie Eftange-Mbella on Gender Issues at the European Union Funded Round Table Discussions, Kigali 28-29 June 2007, Rwanda*

### The Rwanda genocide and gender issues

The circumstances circumscribing the Tribunal's mandate are today well known. About 800,000 Tutsi's and moderate Hutus from two ethnic groups of the Rwandan nation, were massacred most cruelly by Hutu extremists in a hundred days of bloodshed lasting from April to July 1994. The genocide was masterminded by an Interim Hutu regime headed by Prime Minister Jean-Kambanda (already sentenced to life imprisonment by the Tribunal upon a guilty plea) after the tragic plane crash on April 6, 1994 that killed the then Rwandan President Juvenal HABYARIMANA. The killings were also fueled by a hate radio run by extremist Hutu journalists, three ring leaders of whom have now been sentenced to life imprisonment by the Rwanda Tribunal, ICTR. It has also been amply documented by UNIFEM and Africa Women's Watch that about 250,000 women of Tutsi or moderate Hutu origin were systematically raped and sexually assaulted as part of the genocide conspiracy. The ICTR has played a pivotal role in developing the standards for adjudicating these sexual and other crimes.

### Overview of the Tribunal's prosecution of gender based crimes

In spite of logistical difficulties encountered by the Tribunal at its start up phase resulting from its split locations, it has made path breaking contributions to the development of new jurisprudence in international criminal law especially with regard to gender issues. This earned it the Human Rights Award in May 2003 of the Friedrich Ebert Stiftung Foundation. Prominent



among the achievements are the sentencing to life imprisonment in February 1998 of Jean Paul AKAYESU, former Mayor of Taba, Gitarama marking the first ever conviction for the crime of genocide by an international criminal court. The Akayesu Judgement was a path breaker in the development of new jurisprudence in international law in that for the first time an international court ruled that rape was a crime of genocide and a crime against humanity when committed with the specific intent of eliminating in whole or in part a racial entity. During the Akayesu judgement, ICTR Trial Chamber I, (Judge Laïty Kama, presiding; Judge Lennart Aspergren, Judge Navanethem Pillay), enunciated a broad definition of rape which included any physical invasion of a sexual nature in coercive circumstances and which was not limited to forcible sexual intercourse. Sexual violence was also defined in Akayesu as any act of a sexual nature which is committed on a person under circumstances which are coercive. Akayesu was convicted of rape charges based on command responsibility.

36 accused persons including Akayesu have been charged with rape among the 68 indicted persons so far arrested by the Tribunal signifying more than half of the target group of arrested indicted persons. 23 of the 36 persons charged with rape have not yet been tried. Of the 13 completed cases where rape was charged, only 4 cases have resulted in a successful conviction for rape. These four are Akayesu, Semanza, Muhimana( with a record number of eight rape witnesses) and Gacumbitsi.

The indictments on sexual offences have included rape as a war crime, rape as a crime of genocide, rape as crime against humanity, rape as a crime against humanity/ Torture and complicity in genocide. Specific circumstances described have included sexual violence, beatings and murders, sexual slavery, outrage upon personal dignity, degrading and humiliating treatment and indecent assault, abetting and inciting others to rape and other inhuman acts. The later charge is one of the charges levied against Pauline Nyiramasuhuko, the Minister of Family and Women's Affairs of the interim government during the genocide and first ever female to be indicted for the crime of genocide.

### **Gender mainstreaming at the ICTR**

The ICTR by virtue of its mandate and the provisions of Article 21 of its Statute and Rule 34 of its Rules of Procedure and Evidence, has played a fundamental and unique role in contributing to the achievement of peace, justice and national reconciliation in Rwanda, by creating inter-alia, conducive conditions for the physical and psychological rehabilitation of witnesses thereby enabling their effective participation in the process of testifying before the Tribunal particularly for victims of rape and sexual assault summoned as witnesses by the parties to the cases.

Psychological and medical support activities for witnesses coordinated by the Gender Advisory Unit, Office of the Registrar are funded by the ICTR Trust

Fund Support Programme for Witnesses. The core activities entail: psychological and related counselling preparatory to the cases; medical support (including in the treatment of HIV/AIDS), medical referrals and bill payments, related social support including in food supplementation, transport assistance for medical consultations and the building of partnerships with relevant stakeholders in view of the longer-term, physical and psychological rehabilitation of witnesses of rape and sexual assault. The programmes of the Gender Advisory have targeted the witnesses of the Prosecutor and the Defence indiscriminately whether they live in Rwanda or elsewhere, as long as they have been summoned to give evidence at the Tribunal. Key stakeholders are the IRISH-AID, European Union, UNDP, WHO, UNAIDS and the TRAC /MAP initiatives of the Rwandese Ministry of Health.

73 of about 500 confirmed witnesses having accessed to the ICTR clinic for witnesses in Kigali are being treated and closely monitored for HIV/AIDS. The challenge is that most witnesses will still not access counselling services for voluntary HIV/AIDS testing for fear of stigmatization. There is also the issue of developing a comprehensive strategy with partners for the sustainability of services currently provided at the completion of the ICTR's mandate.

### **Completion Strategy**

The core objective in the completion strategy on gender issues is the sustainability of medical support and related services for Rwanda based witnesses within the ICTR Outreach and other Programmes. The focus will aim at strengthening partnerships for enhancing the longer term implementation and sustainability of the ICTR medical support measures for witnesses. This will target other on-going national programs and initiatives particularly in the area of HIV/AIDS. Relevant activities will include: developing appropriate linkages with national institutions in specialized diagnosis and follow-up; liaising with a core of Physicians, community workers and care providers in trauma counselling and community based support for witnesses with HIV/AIDS within EU funding; networking with the Rwandese Government and relevant United Nations Agencies in view of establishing referral protocols of benefit to the longer-term physical and psychological rehabilitation of ICTR witnesses.

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## **Justice and Independence**

Justice and independence are two concepts linked together in every modern society. They are also subject to passionate debates, rhetoric, controversy, criticism, misunderstanding, misconception and confusion. In any event, independence seems to be the most important quality which should be achieved by any reliable justice system. The relation between justice and independence needs to be defined, analyzed, clarified and understood with calm and serenity.





Article 11 of the Statute of the United Nations International Criminal Tribunal for Rwanda (UNICTR) provides: *"The Chamber shall be composed of sixteen permanent independent Judges ... and a maximum at any one time of nine Ad Litem independent Judges."*

The attention given to the independence of the Judges is clearly noticeable from the above quoted passage.

The same emphasis on the independence also appears from article 15-2 of the Statute of the UNICTR in relation to the responsibilities of the Prosecutor: *"The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any government or from any other source."*

By making reference to *"government or other source"*, article 15-2 of the Statute is providing more details about the implications of the expression *"act independently"*.

In the general context of criminality, justice is defined as the system of legislations, practices and organizations directed to maintain public order, deter and control crime and sanction those who violate laws. The primary agencies charged with these responsibilities are the police, the courts and the prisons. It is in relation to the courts that the independence of justice is mostly mentioned and that the concept of judicial independence is used.

Judicial independence means that decisions of the courts should be impartial and not subject to influence from governments, political interest, private interest or any other sources. An independent judiciary is essential for the protection of human rights and for ensuring that there is no discrimination in the administration of justice.

In 1985 the General Assembly of the United Nations adopted resolutions 40/32 and 40/146 outlining the Basic Principles on the Independence of the Judiciary. According to these basic principles the independence of the judiciary should be guaranteed by the state and enshrined in the Constitution. Furthermore, it is the duty of all governments and other institutions to respect the independence of the judiciary.

In connection to this issue, the most difficult and complex problem is the following: how to secure judicial independence?

The following are some of the measures provided by the United Nations Basic Principles on the Independence of the Judiciary. These measures aim at placing the Judges in very special working conditions in order to promote, preserve and secure judicial independence.

Selected Judges should be persons of high moral character, integrity and impartiality and should possess outstanding legal qualifications. The term of office of Judges, their security, remuneration, conditions of

service, pensions and the age of retirement should be adequately secured by law. Judges should have guaranteed tenure of office until a mandatory retirement age or the expiry of their term of office. Promotion of Judges should be based on objective factors. Judges should not be easily removable. The disciplinary system should be internal and without interference. The legal profession should be a self regulating profession. It should be responsible for its own professional standards and for dealing with those who fall short.

The independence of the judiciary is indispensable to the credibility of any kind of justice system. However, as far as this matter is concerned, it is important to distinguish between empty rhetoric and the reality on the ground.

In fact, experience has shown that in every country the process leading to judicial independence is long and slow. In real life this process is closely linked with several decisive factors such as separation of powers, democracy, good governance, socio-economic development and form of society.

Just like any other type of true independence, judicial independence is achieved patiently, gradually and through hard work and determination.

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## International Criminal Court (ICC)

### Pre-emptive Prosecutions: Is Sudan a sacred cow?

*"In the prospect of an international criminal court lies the promise of universal justice. That is the simple and soaring hope of this vision. We are close to its realization. We will do our part to see it through till the end. We ask you . . . to do yours in our struggle to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity. Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice; that they, too, have rights, and that those who violate those rights will be punished."*

This is a modest attempt to show that the Government of Sudan has demonstrated its continuing reluctance to bring two of those who allegedly bear the greatest responsibility for the ongoing violations of international humanitarian and human rights law in Darfur. It will also demonstrate that by its refusal to co-operate with the ICC, the Sudanese government has no serious intention of punishing those who have been identified and indicted by the International Criminal Court, after a thorough investigation conducted by the highly competent and qualified experts. By attempting to stall the serious work of the ICC, the Government of Sudan has demonstrated her reluctance and defiance to bring justice to the people of Darfur including the victims of wanton killings, plundering, massive internal displacement of civilians, sexual violence and racially motivated atrocities which border on genocide.



### Jurisdiction

Unlike the *ad hoc* Tribunals, the ICC enjoys universal jurisdiction over all states party to the Rome Statute and by agreement with states which are yet to become members. Secondly, the *ad hoc* tribunals have been given jurisdiction over a specific geographical area within a specific time frame, with powers to prosecute crimes within their jurisdictional competence. Thirdly, the *ad hoc* tribunals do not differ to domestic jurisdictions within their competence but they may transfer cases to domestic courts and where necessary take over ongoing prosecutions from them. The Rome Statute on the other hand, only enjoys prospective jurisdiction in respect of the crimes within its competence from 1 July 2002 and subject to the *complimentarity* principle contained in its preamble. The ICC has jurisdiction in accordance with Article 5 of its Statute in respect of the following crimes; the crime of Genocide, Crimes against humanity, War crimes, and aggression.

#### *A test of complimentarity principle.*

A fundamental characteristic of the ICC remains the principle of *complimentarity*. This principle gave priority of jurisdiction to domestic courts as the primary forum for the prosecution of crimes within the competence of the ICC.

Sometime ago, the ICC embarked upon the prosecution of cases within its temporal jurisdiction in the Democratic Republic of Congo, Sudan and Uganda. While the cases involve rebel leaders in DRC and Uganda exclusively, the indictment in respect of Sudan involves both Government and a government allied militia Group, known as the Janjaweed. Again based on the *rationae persona*, under the Rome Statute, the Court could try cases of individuals on the basis of group criminality and for individual criminal responsibility. This is a shared legacy between the ICC and the *ad hoc* Tribunals. The Sudanese Government is reportedly opting to exercise its primacy under the Rome Statute by invoking the right of first forum to try suspected Sudanese nationals who were recently indicted by the Prosecutor of the ICC. Sudan has not, so far, accepted the jurisdiction of the ICC. This is not necessarily a bar to the jurisdiction of the Court as it has been clearly stated that; the Court can prosecute nationals of *non-party states* that accept its jurisdiction on an *ad hoc* basis by virtue of a declaration, or pursuant to a decision of the Security Council. The question then is: Can a Chapter VII Security Council resolution impose a legal obligation to a nonparty to an international treaty? What is the legal basis of the Security Council authority to impose legal obligations on States not parties to an international treaty? Is the action of the Security Council *ultra vires* international law? Is the action of the Security Council in referring Sudan to the ICC not in conflict with general principles of law, customary international law and the 1969 Vienna Convention on the Law of Treaties?

What then are the rights and obligation of States that are not a party to the ICC Statute? The United States, for example, is not a party to the ICC Statute and yet

as a permanent member of the Security Council she sits and deliberates on issues that, in law, are the responsibilities of only State parties to the ICC Statute.

On the other hand, it could be argued that since Sudan became a member of the UN by ratifying the Charter of the Organization, it is deemed to have ceded part of her sovereignty to the Security Council which by law, acts as the final determinant as to what constitutes a threat to world peace and security. Secondly, by not ratifying the Rome Statute, Sudan nonetheless, has an obligation to respect certain norms and treaties guaranteeing the protection of human rights and humanitarian law. These include, the genocide convention, the Geneva conventions and Optional Protocols, the African Charter on Human and Peoples rights to name but a few. Thirdly, non ratification should not be used as a license by any state to perpetrate violations of humanitarian and human rights law under the cloak of state sovereignty.

Therefore, by falling back on Article 13 of the Rome Statute, the Security Council will be exercising a legitimate power under Chapter VII of the UN Charter notwithstanding the non binding effect of a treaty which Sudan has not ratified. Further more, it could be argued that Sudan may have impliedly delegated the Security Council with the requisite powers when she ratified the UN Charter to determine what situations constitute a threat to world peace and security without reservations.

Also, the doctrine of *ultra vires* as applied in domestic law or under customary international will only apply if, Sudan could demonstrate that she has successfully opted out of her international legal obligations under some of the existing human rights treaties which she has ratified. Similarly, despite the debate as what crimes have attained the status of *ius cogens*, it is submitted that war crimes in Darfur have attained the status of *ius cogens*. Alternatively, it could also be argued that Article 13 of the Rome Statute is *sui generis* and therefore a departure from customary international law, by remitting that residual power to the Council in derogation of the Geneva Convention on the Law of Treaties, and thus, subject countries to Chapter VII referral even if they are not signatories thereto.

The recent indictment however confirms this position, because it was as a direct result of Security Council *Resolution 1593* which mandated the ICC to investigate and prosecute those bearing responsibility for atrocities and crimes against humanity in Sudan's Darfur Region. It therefore remains to be seen if the ICC will defer to the Government of Sudan to carry out a free and fair trial of the indicted Sudanese nationals in defiance of the Security Council.

The other pertinent questions which beg for an answer are: why did the Government of Sudan fail to initiate investigations and prosecution *suo motu* only to take such a reactive step after the ICC set the motion? It appears to me that this is yet another attempt to test the resolve of the international community by the Khartoum regime. If the trial goes on as promised, it may raise serious concerns about objectivity and





impartiality relating to witnesses who will testify for the prosecution. Secondly, what type of legal defence will be available to the accused persons who are undoubtedly very close allies of the Khartoum regime? Thirdly, how credible or impartial will the defence be? Fourthly, will the trial be accessible to the international community since the venue of the trial is Darfur, a region which is not often readily accessible to most credible institutions which could vouch on the outcome of the proposed trial. These and other issues will go a long way to assure both the UN and AU that unless pressure is brought to bear on Khartoum, to comply with the ICC, this case will be reduced to a mockery of international criminal justice.

The situation has recently prompted a further call on the UN-Security Council by the ICC Prosecutor for the arrest of the two indictees. It remains to be seen whether the Council will mobilise enough support from its members for the use of Chapter VII powers to ensure that Sudan complies with the request of the ICC. This case will undoubtedly, encourage future compliance with the ICC, and thereby enhance the development of international criminal justice and accountability in Africa. After all, the violation of human rights anywhere should be the legitimate concern of everyone anywhere. There should be no sacred cows.

### **Interface between Peace and International Justice: A Human Rights Colloquium**

Upon the request of the Prosecutor of the International Criminal Court (ICC), H.E. Luis Moreno-Ocampo, Africa Legal Aid (AFLA), in cooperation with the International Criminal Court (ICC) and the African Union (AU) convened a high level Pan African Conference on the *Interface Between Peace and International Justice* in Africa on 22 and 23 June. The conference was held at the MPLaza Hotel in Accra, Ghana.

The galaxy of leading experts participating in the meeting included H. E. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), Mr. Adama Dieng, Registrar of the International Criminal Tribunal for Rwanda (ICTR), Mr. Hassan Jallow, Prosecutor of the ICTR, Judge Emile Short, Prof. S. B. O. Gutto, Acting Chair of AFLA's Governing Council, H. L. Justice Georgina T. Wood, first female Chief Justice of Ghana and Hon. Nana Akufo-Addo, Minister of Foreign Affairs and Chairperson of the Executive council of the African Union.

*"This conference is a unique opportunity for the various stakeholders, including civil society, government and the legal community to consider new solutions to achieve enduring peace in the region,"* said Evelyn A. Ankumah, Executive Director of Africa Legal Aid.

After the opening ceremony, over a hundred participants from Africa and beyond participated in discussions on topics including Power Sharing, Gender

Crimes, and Alternative Forms of Justice. The conference adopted a Plan of Action which will be used for advocacy and lobbying initiatives.

*(A more detailed article will be published in the next issue of the Newsletter).*

### **Information and Records Management: ICTR shines across the United Nations Organization**

From 28-31 May 2007, the UNHQ Archives and Records Management Section (ARMS) organized a practical records management workshop in Brindisi, Italy. Intended for United Nations field staff, the workshop's objective was to present participants with best practices in record keeping, standards and principles for managing records in the United Nations, and to enable them to benchmark their current practice against the ARMS policy and procedures.

It was most delighting to note that 12 out of 35 participants to the training were former and current ICTR staff members serving as information/records specialists in various United Nations missions: Anne Fraser (ARMS-New York), Tom Adami and Valbert Rutasitara (UNMIS-Sudan), Manoj Giani (UNTSO-Palestine/Israel), Khamis Khamis (UNIFIL-Lebanon), Rosemary Oyoko (MONUC-DRC), Fatima Samatar (MINUSTAH-Haiti), Randolph Tebbs, Kelvin Mburu, Louis Ndiaye, Ayodeji Fadugba and Angeline Djampou (ICTR-Arusha).



One of the most valuable outcomes of the workshop was the establishment of Best Practice Community of Practice. This community serves as a forum for lessons learned and experience-sharing among its members. Already extremely active, it is very efficiently led by Tom Adami, one of the most trusted experts in the field.

This is yet another reminder of the invaluable contribution of the ICTR to the United Nations. At this time when the ICTR is struggling to complete its mandate on time, it is critically important for all sections to document their experiences, achievements and best practices in order to inspire current and future United Nations Missions. This is indubitably part of the ICTR legacy to the international community.



## Executive Members of ICTR Staff Association 2007-2009

On 25 June 2007, the UNICTR staff members went to the poll to elect representatives to the Staff Association for a tenure of two years. They elected Optatus Nchimbi as the President of the Staff Association, Samuel Igogo as the Vice President, Anna Maria Mchaki as its Public Relations Officer, Nuru Mbeb'ha as the Secretary General, Prosper Ngimbwa as the Treasurer, Margaret Mganga as the Vice Treasurer. Similarly Mr Thierno Diallo was elected as the Representative of Professional Category, while Ms. Zouleka Gondji, Mr. Kazim Hijaz and Mr. Beyan Harris were elected for the Field Service Category. Ms. Levina Moshia, Ms. Annerose Mtui and Mr. Michael Minde were elected as General Services Category representatives.



*Some of the members of the Staff Association*

The election of Executive Committee members of the ICTR Staff Association has been a significant endeavour especially when the tribunal is in its completion strategy era marking the end of tribunal's mandate in rendering justice and reconciliation process to the victims of Rwanda's 1994 genocide. The UN Security Council has set 2008 as the end of all trials at the tribunal and 2010 as the completion of all Appeals cases.

The objectives of the Staff Association are to contribute to the promotion of the Charter of the UN and in particular, the UNICTR; to promote and safeguard the rights, interests and welfare of all members of the staff of the UNICTR; and to maintain and ensure cooperation with Staff Associations and similar bodies of other organizations, in particular the staff union of the UN Secretariat in New York.

The newly elected president stated that he believes that working hard for the promotion of basic rights of the staff members will definitely serve as a catalyst for unity, harmony, understanding, mutual respect, cooperation, cohesion and mutual support between all members of staff for greater productiveness within a management that is sound, transparent and efficient.

Mr. Nchimbi added that the EC members will take action on core issues namely: ensure peace, stability and unity among staff members, protect and promote all successes attained in the previous phrases of EC mandate, fulfill governance and development responsibilities as well as focus on good governance, transparency and accountability, the rule of law and respect for human rights of all staff members.

## Arrival of Law Students from the National University of Rwanda



A group of law students from the National University of Rwanda will carry out from 18 June-09 August 2007 the annual research paving the way to their graduation. Every year, ICTR provides six law students from the National University of Butare with research bursaries which enable them to carry out thesis research in the ICTR library and archives, to attend trial proceedings and to receive briefings on various aspects of the Tribunal's work. Each student is assigned a mentor from among the Tribunal's legal professionals who supervise and guide their research. This model has engaged many law students to the extent that the number of research projects about international justice has increased.

## Visitors to the Tribunal during the month of June 2007

**1 June** Timothy Gitau Njogu and Lilian Obuo, AGs Chamber Kenya; Jenna Applebaum, Researcher

**2-5 June** Mohammed Bani Faris, Director DSSS, UNHQ

**8 June** Commonwealth Secretary-General delegation: The Secretary-General, H.E. Rt. Hon. Donald Mckinnon; Mr Amitav Banerji, Director & Head, Office of the Secretary-General; Professor Ade Adefuye, Special Adviser & Head, Africa Section, Political Affairs Division; Mr. Manoah Espisu, Deputy Director of the Communications and Public Affairs Division

**11-15 June** Rwandan Bar Association: Me Kaburege Project; Me Niyibizi Jean Baptiste; Me Ndahiro Faroh; Me Bugondo Natacha; Me Gatera Gashabana; Me Mucyo Donatien

**15 June** Dr. Charles Harper, Senior Vice –President John Templeton Foundation, USA; Mr. David Ashley, United Kingdom Regional Conflict Advisor Central and East African Region

**19 June** Georgia Police Academy (4 people)  
25 June H.E. Ambassador Trijono Marjono, Indonesian Ambassador; Ms. Intan Komalasari, Assistant to H.E. the Indonesian Ambassador; Ms. Mulgrew Roison, PHD Researcher on Detention Matters, University of Nottingham; Ms. Bumukobwa Belonella (AVEGA); Mr. Simbirudali Theodore (IBUKA)

**27 June** Cross Cultural Solutions ( 26 people)



## Judge Byron Addresses UN Security Council

*Continued from p. 1*

Netherlands . Two other cases are at the Judgement writing phase, including the Military I case, which involves four co-accused.

The ongoing trials at first instance involve 22 accused in nine different cases that are at a very advanced stage in the proceedings as the Tribunal continues to operate at maximum capacity.

Of these ongoing trials, it is expected that the five single-accused cases will all be completed by the end of this year, with respective judgements to be rendered in 2008.

Our major challenge in terms of ongoing trials remains four multi-accused cases, involving 17 accused.

In the Butare trial, the fifth of the sixth accused will begin his case in the next few weeks. The presentation of evidence will be completed in 2007 or early 2008.

In the Government trial, the second of the four defendants has completed his case. With two remaining accused to present their defence cases, the presentation of evidence will be completed in early 2008, and the judgement expected in 2008.

The Prosecution case in Military II closed in early December 2006, and the Defence case of the first of the four accused commenced on 16 April 2007. As such, the presentation of evidence is expected to be completed during 2008.

In the Karemera et al. case, which involves three co-accused, the trial resumed last week, after a break of five months due to the withdrawal of a Judge. The Trial Chamber is taking steps to ensure that the Prosecution completes its case this year and that the trial stage concludes during 2008. However, due to the particular complexity of the procedural history of this case, it may roll into 2009.

At the Appeals Chamber, two Judgements were recently delivered in the cases of Emmanuel Ndinabahizi and Mika Muhimana. Four cases concerning six individuals are also pending appeal.

Mr. President, Your Excellencies, as you may notice, in view of these elements which are substantiated more fully in the recent completion strategy report, there has been a very high level of productivity in the four courtrooms of the Tribunal over the last six months. The result of these achievements is an ever-diminishing case load, and indications suggest that the next six months will be even more productive.

The completion of the five single-accused cases this year will allow the Tribunal to commence the trial phase for the remaining single accused in the second half of 2007, and early 2008, as soon as Trial Chamber and courtroom capacity permits . One of them, the case of Hormisdas Nsengimana, is scheduled to commence later this month on 22 June 2007.

Mr. President, Your Excellencies, please let me now turn to another challenge that I would like to address this morning, namely the apprehension of the 18 accused persons at large and the transfer of cases to national jurisdictions.

Concerning these issues, the Tribunal – and, in particular, the Prosecutor – has developed specific steps in the path to completion.

Last week, the Prosecutor requested the referral of the cases of three fugitives to Rwanda and to France. However, it is clear that in view of the Tribunal's mandate as defined by the Security Council, some of the remaining fugitives should be considered as candidates for trial at the Tribunal itself.

As the Prosecutor will detail in a few minutes, his Office also intends to ask for the transfer of a maximum of three of the eight accused currently detained in Arusha to national jurisdictions for trial.

These steps, however, will only be successful if Member States provide support to the Tribunal in that regard. This is a crucial component of the completion strategy. I have no doubt that my visit here to the United Nations will be an opportunity to discuss this matter with Member States and to consolidate their continuous support with respect to the arrest and transfer of indictees. The purpose of the establishment of the Tribunal to contribute to the restoration and maintenance of peace as well as to contribute to international justice will be seriously impaired if the remaining indictees are not brought to justice. If these fugitives are not arrested and transferred in time for their trials to be completed by the end of 2008, a solution must be discussed that will allow the Tribunal or another mechanism to proceed with such cases beyond the end of 2008.

Mr. President, Your Excellencies, please let me emphasize the issue of State co-operation as one of the cornerstones of the success of this Tribunal. As I just explained, the assistance of States is critical for the arrest and transfer of indictees. This assistance is also crucial in connection with the situation of acquitted persons, the relocation of convicted persons who have served their sentences, and the serving of sentences of convicted persons.

Acquittals are a natural consequence of fair trials and the application of the rule of law. This matter has been raised at various times before this Council; yet, to date, the progress has not been as advanced as had been hoped. As of today, only two of the five persons acquitted by the Tribunal have been accepted by a Member State, that is France. I would like to express our gratitude to France for its support.

The other three acquitted persons are under the protection of the Tribunal in Arusha, two since February 2004, and one since September 2006. The Registry has made many attempts to find a country for them. On behalf of the Tribunal, I must reiterate the appeal for the assistance of Member States in that regard as well.





The situation of released persons who have completed their sentences is another of the issues that must be urgently addressed as the Tribunal moves forward. It must be determined where these individuals will be transferred after they have served their sentences.

Concerning convicted persons, six of them are currently incarcerated in the Republic of Mali, while the other convicted persons remain at the facility in Arusha. In addition, the Tribunal has concluded enforcement of sentence agreements with the Republic of Benin, the Kingdom of Swaziland, the Republic of France, the Republic of Italy, and the Kingdom of Sweden. The Tribunal is grateful for the support of these six countries, and their willingness to enter into enforcement of sentence agreements, and remains confident that other States will provide their support with respect to the location of convicted persons.

Mr. President, Your Excellencies, the significant results of the Tribunal over the last six months are indisputably due to an improvement in the working methods of the three branches of the Tribunal.

There is also no doubt that the recent successes are the result of the assistance of this Council in fostering continuity at the Tribunal, notably in extending the term of office of all permanent and ad litem Judges until 31 December 2008. The Tribunal has increasingly relied on ad litem Judges for realizing the completion strategy objectives, a contribution that has surpassed what was envisaged.

The efficient completion of trials at the Tribunal also continues to be possible thanks to the highly dedicated work of staff. In the face of the lack of sufficient resources in key departments, the staff has evinced its commitment to the completion strategy of the Tribunal by absorbing the resulting increased workloads.

There is no doubt that retention of experienced staff constitutes one of the major success criterion in our completion strategy. The knowledge and past experience of staff serve the prompt and efficient achievement of the Tribunal's work.

Many highly competent staff members, however, continue to leave our institution. This situation is aggravated by the difficulties the Tribunal foresees in recruiting new staff as the Tribunal moves closer to completion.

Mr. President, Your Excellencies, it is essential that I draw your attention to the fact that the Tribunal will only be able to achieve its goal if it obtains the necessary resources, among other things, by developing the capability to retain its experienced staff with institutional knowledge.

Mr. President, before I conclude my address today, please let me now turn to the Tribunal's contribution to Rwanda.

The strengthening of the Rwandan judicial system and the improvement of its capacity to prosecute cases

transferred from the Tribunal is also a goal and expected achievement as identified by the Security Council in its Resolution 1503. The Tribunal provides support to the local judiciary and prosecutors in the region, as further described in the completion strategy. These efforts are made possible thanks to current and future donor and technical assistance from Member States. Moreover, with respect to increasing outreach, the Tribunal is actively working through various initiatives, namely the ICTR Outreach Programme, programmes on awareness-raising within Rwanda, strengthening relations with academic institutions in Rwanda, developing media, and the continuation of active cooperation and assistance to Rwandan civil society organizations. With respect to the relationship with academic institutions, the Tribunal is fostering a number of initiatives, such as continuing with the Special Fellowship Programme for Rwandan Law Students and internship and legal researcher programmes. A number of these programmes are funded through the Tribunal Voluntary Contributions Trust Fund, which is currently depleted. Any further contributions from Member States will be greatly appreciated.

I am also pleased to reiterate that Rwanda has continued to cooperate with the Tribunal by facilitating the flow of witnesses and by providing documents to the Prosecution and the Defence.

Mr. President, Your Excellencies, as with my predecessors, my objective and mandate continues to be to lead the Tribunal to the completion of its work, while upholding the highest standards of due process and fair trial.

The above projections suggest that 65 to 70 persons will have judgements in their case by the end of 2008.

However, as indicated, despite the successes and positive projections, challenges remain due to external factors outside the control of the Tribunal that could be remedied with the support and assistance of this Council and of Member States.

With the possibility that one multi-accused case will continue after 2008, as well as the issue of fugitives, some trials, as well as the drafting of judgements in some cases, may in fact run into 2009. The cooperation of Member States with the Tribunal is paramount for the Tribunal to successfully complete this work.

The projections will also depend on sufficient resources being made available by the Member States throughout the completion of the Tribunal's work.

The Tribunal, as we move towards the completion of our work, will also continue to prioritize the contribution to building the capacity of the Rwandan judicial system.

The achievements of the Tribunal and the commitment to bringing to justice those persons who were most responsible for genocide and violations of international



humanitarian law that were committed in Rwanda in 1994 is unwavering. The Tribunal's work will not be completed until we meet the challenge given to us by this honourable Council, to establish the guilt or innocence of the accused, bring justice to victims of the massive crimes that were committed and establish a record of facts that can aid reconciliation in Rwanda. In the process, the Tribunal will leave a legacy of international jurisprudence that can guide future courts, deter potential perpetrators, and prevent impunity for these grave crimes.

On behalf of the Tribunal, allow me to express appreciation to the Council for its support of the Tribunal's mission. That support continues to have a direct impact on the work of the Tribunal.

Mr. President, Your Excellencies, allow me to conclude by thanking the distinguished members of the Security Council, the Secretariat and the Member States for their steadfast support. We look forward to continuing the Tribunal's work with you all in the final years of our mandate.

#### **Statement by Mr. Jallow to the UN Security Council**

*Continued from p. 1*

with all but five of them charged in multi-accused trials. All these cases are anticipated to conclude between 2007 and 2008. There is a possibility of a case or two which might be in progress in 2008 extending over to early 2009.

Since our last report to the Security Council, the number of detainees awaiting trial has been reduced from 11 to 8. After making allowance for guilty pleas and for possible referrals of some of these cases to national jurisdictions for trial we believe what remains of this category of cases can be disposed of by the end of 2008. The negotiation and conclusion of guilty pleas with accused persons continues to be an important element of the Prosecution strategy. We anticipate some positive outcome in this respect shortly. The OTP is actively engaged in ensuring the trial readiness of these cases in order to be able to proceed with the trials as soon as the programme of the Trial Chambers so permits.

You will recall that on previous occasions, the Prosecutor has indicated plans to request the referral of the cases of five detainees to a national jurisdiction for trial. This figure has now been reduced to a maximum of three detainees whose cases may be so referred. This adjustment is due to the reduction in the number of such detainees awaiting trial.

I reported to Council earlier that the OTP has already handed over 30 files of suspects to Rwanda and to other jurisdictions for further investigation and possible prosecution by the national authorities of the states concerned. These cases relate to persons who were under investigation but had not yet been indicted and whose cases we believe require further attention and action where possible.

I am pleased to report that the referral of cases of

indictees under R11bis of the ICTR to national jurisdictions for trial has now started since the last report to the Council. After the initial setback in the application for the transfer of the case of MICHEL BAGARAGAZA to Norway, the judges of the ICTR finally acceded to the request of the Prosecutor to refer this case to the Kingdom of the Netherlands which had agreed to accept the case. The accused and the case file of the Prosecutor have now been handed over to the Dutch authorities. We are immensely indebted to the Kingdom of the Netherlands for their cooperation in this and several other matters.

Rwanda remains the main possible destination for the referral of cases under R11bis for prosecution. The number of cases of indictees which remain for referral is in the region of 15 accused, comprising twelve of the 18 fugitives and three of the detainees awaiting trial.

Six of the 18 fugitives, including FELICIEN KABUGA businessman and supporter of the MRND, PROTAIS MPIRANYA former Commander of the Presidential Guard, AUGUSTIN BIZIMANA former Minister of Defence, CALLIXTE NSABINIMANA former Minister of Youth, AUGUSTIN NGIRABATWARE former Minister of Planning and IDELPHONSE NIZEYIMANA former Military official have been earmarked for trial in the ICTR because of their respective leadership roles in the genocide of 1994. It is important, for continued success of the campaign to combat impunity worldwide, that such persons of high standing who bear responsibility for serious crimes do not escape the arm of the law. In the event that these persons are arrested too late for their trials to conclude by the end of 2008, or they remain at large, un-arrested by that date, the Tribunal will need guidance from the Council as to how their cases should be dealt with. The solutions may include authority for the ICTR to proceed with such cases beyond the end of 2008 or the referral of the cases to a national jurisdiction for trial.

It is important to stress however, that if the ICTR is to succeed in concluding the trials of these top level six accused fugitives, they, including FELICIEN KABUGA, need to be arrested and placed in the custody of the Tribunal by the end of 2007. This will allow the necessary preliminary procedures and arrangements to be made by the Chambers and the parties to the case – prosecution and defence - before the commencement of trial proceedings. Hence the need for vigorous efforts by all concerned including member states to ensure their timely arrest.

In my last report to the Security Council, I briefed members on my discussions with officials and ministers of the Government of Kenya who continue to assure me of the full cooperation of the government with regard to the arrest and transfer to the ICTR of FELICIEN KABUGA. Since then, a joint effort has been under way between ICTR officials and Kenya Police. That effort disclosed that KABUGA was present at various times in Kenya up to October/November 2006 and that he has several business interests in that country. An independent source has confirmed to the ICTR that KABUGA was indeed in Nairobi as late as April 2007. We remain convinced, on the basis of our



intelligence reports that FELICIEN KABUGA continues to be present and carry on business in that country. The joint investigations between the ICTR and Kenya, continue to point in this direction. Welcome as they are however, the current joint efforts have not led us to our goal which is his arrest and transfer to the ICTR. These inquiries are not an end in themselves and are only useful if they lead us to that ultimate goal. It is necessary that the Security Council and the members of the U.N. bring their influence to bear on the government of Kenya for it to live up to its international legal obligations by arresting FELICIEN KABUGA and handing him over to face justice at the ICTR.

Most of the remaining fugitives are reported to be in the DRC. Their arrest, particularly those earmarked for trial in Arusha must remain a priority. The cooperation of the Government of the DRC and of other states in the Great Lakes Region continues to be sought by the ICTR to this end. I believe a broader view of the MONUC mandate which would facilitate collaboration between that mission, the DRC and the ICTR will help us achieve good results.

Rwanda has recently enacted legislation which has now come into force providing for the trial of cases referred from the ICTR and states for offences related to the 1994 genocide. The Law excludes the application of the death penalty from such cases and provides extensive guarantees for fair trial similar to the provisions of the ICTR statute. The OTP has secured the agreement of the African Commission on Human and Peoples' Rights to monitor the trial of any case referred by the Tribunal to Rwanda. Donor assistance notably from the European Union, Canada, the U.S.A. and the technical assistance of the ICTR continue to provide for capacity building for the Rwanda legal system. These significant developments have, in my view, made Rwanda eligible for referral of cases under R11bis of the ICTR Rules. The decision however, rests with the judges. My office has accordingly, a week ago, filed the first R11bis request for the referral of the case of an indictee to Rwanda. Should the outcome prove

favourable to the Prosecution, a number of other similar requests will follow. In the event that these R11bis requests to Rwanda are not approved, I shall revert to the Security Council.

My office also filed R11bis requests a week ago for the referral of the cases of two other indictees to France for trial. These indictees are resident in France which has jurisdiction over the cases and which has also agreed to receive the cases. We await the decisions of the trial chamber on the requests. I would like to place on record our appreciation for the invaluable support that France has provided to the Tribunal over the years.

Investigation of the allegations against members of the RPF, which we had hoped to conclude by now, need to be continued until we are in a position to finish that aspect of our mandate.

Rwanda continues to cooperate effectively with the ICTR. Its support in facilitating access to witnesses, sites and evidence has contributed significantly to the steady pace of the trials in Arusha.

Staff retention continues, as we reported at the December 2006 meeting, to be a matter of serious concern as we progress to completion. The challenge of proper completion can best be met with the aid of competent, dedicated, well-motivated staff. We thus wish to emphasise the need for early approval of measures and incentives to enable the Tribunal to retain the staff it requires for completion of its mandate.

Let me conclude by conveying our appreciation of the immense support we continue to receive from the Security Council and other organs of the United Nations as well as from the Secretariat and member states. Such support and cooperation is absolutely essential for the success of the Tribunal's mandate and for furthering the cause of international criminal justice.

I thank you all for your attention.

### Judicial Decisions of the ICTR between 1 and 30 June 2007

Date	Case	Record Number	Title	TC
01/06/2007	[MILITARY I] BAGOSORA ET AL	ICTR-98-41-2231	DECISION ON WITHDRAWAL OF THE ASSIGNMENT OF MR MARC NERENBERG, CO-COUNSEL FOR THE ACCUSED ALOYS NTABAKUZE	TC 1
01/06/2007	RUKUNDO	ICTR-01-70-0279	DECISION ON WITHDRAWAL OF THE ASSIGNMENT OF MS ANNIE OLIVIER, CO-COUNSEL FOR THE ACCUSED EMMANUEL RUKUNDO	TC 2
04/06/2007	[MILITARY I] BAGOSORA ET AL	ICTR-98-41-2232	DECISION ON WITHDRAWAL OF THE ASSIGNMENT OF MS. ALLISON TURNER, CO-COUNSEL FOR THE ACCUSED THEONESTE BAGOSORA	TC 1
04/06/2007	RENZAHO	ICTR-97-31-0200	DECISION ON KARERA DEFENCE MOTION FOR DISCLOSURE	TC 1





Date	Case	Record Number	Title	TC
06/06/2007	KALIMANZIRA	ICTR-05-88-0015	DECISION ON DEFENCE REQUEST FOR PROVISIONAL RELEASE	TC 1
06/06/2007	KAREMERA ET AL	ICTR-98-44-2833	PROSECUTOR'S RESPONSE TO JOSEPH NZIRORERA'S APPEAL FROM DECISION ON REQUEST FOR DESIGNATION OF TC TO CONSIDER REFERRAL TO NATIONAL JURISDICTION	TC 3
06/06/2007	SEROMBA	ICTR-01-66-0294	DECISION ON "MOTION ACCOMPANYING ATHANASE SEROMBA'S APPELLANT'S BRIEF AND "PROSECUTOR'S URGENT MOTION OBJECTING TO THE FILING OF ATHANASE SEROMBA'S APPELLANT'S BRIEF"	TC 3
07/06/2007	BIZIMUNGU ET AL	ICTR-99-50-1668	BICAMUMPAKA'S REQUEST PURSUANT TO RULE 73 FOR CERTIFICATION TO APPEAL "DECISION ON JEROME-CLEMENT BICAMUMPAKA'S MOTION FOR THE STATEMENT OF THE DECEASED WITNESS, FAUSTING NYAGAHIMA, TO BE ACCEPTED AS EVIDENCE" OF MAY 30, 2007 (Rule 73)	TC 2
08/06/2007	KAREMERA ET AL	ICTR-98-44-2852	DECISION ON JOSEPH NZIRORERA'S SUBMISSION TO SUBSTITUTION TO SUBSTITUTE JUDGE	TC 3
08/06/2007	[BUTARE] NYIRAMASUHUKE ET AL	ICTR-98-42-0720	DECISION ON AUGUSTIN BIZIMUNGU'S EXTREMELY URGENT MOTION FOR DISCLOSURE OF THE CLOSED SESSION TESTIMONY OF WITNESS WKNMJ AND ANY SEALED EXHIBITS ADMITTED IN THE COURSE OF HER TESTIMONY	TC 2
08/06/2007	RENZAHO	ICTR-97-31-0204	DECISION ON BIZIMUNGU REQUEST FOR CLOSED SESSION TESTIMONY	TC 1
11/06/2007	KAREMERE ET AL	ICTR-98-44-2848	MOTION TO VACATE DECISION ON JOSEPH NZIRORERA'S SUBMISSION TO SUBSTITUTE JUDGE AND TO POSTPONE THE RESUMPTION OF TRIAL	TC 3
11/06/2007	KANYARUKIGA	ICTR-02-78-0028	DECISION ON DEFENCE MOTION TO SET A DATE FOR TRIAL	TC 1
11/06/2007	NYIRAMASUHUKE ET AL	ICTR-98-42-0721	DECISION ON NTAHOBALI'S MOTION FOR RECONSIDERATION OF THE DECISION OF 2 MARCH 2006	TC 2
11/06/2007	KAREMERA ET AL	ICTR-98-44-2860	MEMOIRE POUR M. NGIRUMPATSE SUR LA JOSEPH NZIRORERA'S MOTION TO VACATE DECISION	TC 3
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26/06/2007	BIKINDI	ICTR-01-72-0232	DECISION ON THE DEFENCE REQUETE EN EXCLUSION DES ELEMENTS DE PREUVE PRODUITS PAR L'ACCUSATION POUR ETABLIR DES FAITS NON CONTENUS DANS L'ACTE D'ACCUSATION	TC 3
26/06/2007	BIKINDI	ICTR-01-72-0233	DECISION ON DEFENCE MOTION FOR JUDGEMENT OF ACQUITTAL	TC 3
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