

Judge Dennis C.M. Byron
President, ICTR

Opening Remarks
Prosecutor's Forum, Arusha, 26 November 2008

- Distinguished guests, ladies and gentlemen.
- I am glad to see that so many of you have followed the invitation of the Prosecutor to attend this Forum, representing national prosecution services, relevant departments in the Ministries of Justice and also civil society.
- I would like to commend the Prosecutor, Hassan Jallow, on his excellent initiative to organize this Forum, focused on the cooperation between international and national prosecuting authorities. It brings together, for the first time, all those whose close cooperation is essential for efficiently closing the impunity gap for international crimes.
- The Forum is being held at a crucial moment. As you know, the mandate of the ICTR is coming closer to an end, as well as the mandate of our ICTY colleagues in The Hague and the Special Court for Sierra Leone in Freetown. For national prosecution authorities, this will most imply an ever stronger role in the fight against impunity for the crimes committed in Rwanda, in the former Yugoslavia and in Sierra Leone.
- Already now, the cooperation of national prosecution and investigative authorities with the Tribunal is crucial. I have underlined this again, as many times before, in the last Completion Strategy

Report of the ICTR that has just been submitted to the Security Council [Quote]: “The Tribunal depends on the continued assistance of Member States to accomplish its mandate. Cooperation is required in many aspects, including arrests of fugitives, possible transfer of cases, enforcement of sentences and relocation of acquitted persons and persons who have served their sentence”. [unquote]

- But this close cooperation will not end with the Tribunal’s mandate: in whatever form and structure the residual functions of the Tribunal will be exercised: continued assistance to national authorities in the prosecution of the crimes within the mandate will be one of these functions.
- But the point I would like to underline today in particular is that the relation between national and international prosecution of international crimes is not a one-way street.
- The international tribunals need national cooperation in investigation and prosecution of the crimes under their mandate. But national judicial authorities also can and should benefit from international justice systems and from the heritage they will leave behind.
- Allow me therefore to draw your attention to some of the achievements of this Tribunal, which are of importance to national jurisdictions for prosecutions and trials relating to the events of Rwanda in 1994, but also beyond that.
- For national investigations and prosecutions of crimes relating to the Rwandan genocide in 1994, the Tribunal has established an important judicially verified factual record of the grave violations of

international humanitarian law committed in 1994 in Rwanda. The Appeals Chamber took judicial notice of the commission of the genocide in June 2006.

- Beyond trials relating directly to Rwanda, the jurisprudence of the ICTR provides abundant interpretative material on the legal nature and factual realities of the crime of genocide. The *Akayesu* Trial Judgement brought the 1948 Genocide Convention to life by interpreting for the first time, at the international level, how to apply the Convention's definition of the crime of genocide. The Trial Chamber clarified the meaning of the intent to destroy a national, ethnic, racial or religious group. The Chamber found in an innovative approach that the four protected groups share common criterion: they are stable and permanent, and their membership is largely determined by birth in a continuous and often irremediable manner.
- The ICTR has similarly set groundbreaking precedent by finding that rape may constitute an act of genocide and a crime against humanity. Prior to first the *Akayesu* and then the *Muhimana* and *Semanza* judgements, there was no internationally accepted definition of the crime of rape. By paving the way for the prosecution of sexual crimes during genocide and non-international armed conflicts, the ICTR has clarified that such crimes are more than a pure side-effect of war: they constitute a violation of the conduct of war and an international crime.
- Beyond the substantive law, it is worth noting that the ICTR was the first international tribunal after Nuremberg to hand down a judgment

against a head of government. Three years before the former Yugoslav President Milosevic was to face trial at the ICTY, the ICTR had convicted Jean Kambanda, Prime Minister of Rwanda from April to July 1994, for genocide. This reaffirmed the principle that no individual enjoys impunity for such crimes on account of their official position.

- Also for the first time since the conviction of Julius Streicher at the Nuremberg trials, it was in the Media Trial at the ICTR that the role of the media in the context of international crimes, including genocide, was addressed.
- Apart from those contributions to international criminal law, the Tribunal's work has already and continues to have an impact on national compliance with international obligations in the human rights sphere: I refer in particular to the abolition of the death penalty and further judicial reforms in Rwanda to enable the future referral of cases to Rwandan courts. These reforms will impact also on national decisions concerning the possible extradition of suspects to Rwanda.
- In European countries, there have been gaps in the implementation of human rights obligations, as well, that should be cured. For example, in the *Bagaragaza* case, the Appeals Chamber confirmed the denial of a referral to Norway because the Kingdom had not implemented the Genocide Convention into its national law and therefore lacked subject-matter jurisdiction. In the case of a referral, Bagaragaza could have only been tried for homicide under the Norwegian Criminal Code, but not for genocide. Therefore, the Trial

Chamber denied the referral of the case. Norway is currently working on a bill to implement the Genocide Convention.

- Outside such concrete referral cases, it seems, however, that the jurisprudence of the international tribunals is still too little taken into consideration on national level. The jurisprudence should provide guidance as a point of reference in national jurisprudence and legislation, and in the daily work of prosecutors dealing with international crimes.
- A good, even if rare example for such reference by national judges is a decision of the Supreme Court of Canada in the *Mugesera* case, dealing with a hate speech delivered by a Rwandan politician in 1992. The Court convicted Mugesera for the domestic crimes of incitement to commit genocide and the crime against humanity of persecution. In this judgment, the Court used the international case law to circumscribe the elements of the domestic crime and to include hate speech in the crime against humanity. It even departed from an earlier judgment which was not in accordance with the international rulings. In return, the Appeals Chamber in the Media case, which I mentioned before, cited the Canadian Supreme Court's decision when ruling on the interpretation of ambiguous speech for defining incitement to genocide.
- I am convinced that such mutual reference in national and international jurisprudence on international crimes is of greatest benefit for both legal orders – and not only if it comes to cases directly concerning the Rwandan genocide.

- Obviously, a final assessment of the ICTR's legacy must await the completion of its work. But I hope that in my short remarks I have showed you that the Tribunal has contributed greatly to the development of international criminal law and procedure, and that national prosecution and trials can and should benefit from this heritage.
- The great number of participants from national authorities in this Forum is a proof of the great interest in the fight against impunity for international crimes and in close cooperation between the national and international level of prosecution. It makes me confident that this fight against impunity is in committed hands, also after the mandate of the ad hoc tribunals will have ended.
- Let me conclude by wishing you a fruitful meeting. I hope that those of you who have come from far will enjoy your stay in Arusha as much as the staff of the Tribunal has enjoyed working here in Tanzania for the last 12 years. Karibu sana.