

**ON THE OCCASION OF THE SWEARING IN OF
FATOU BENSOUDA, DEPUTY PROSECUTOR, ICC**

**STATEMENT BY JUSTICE HASSAN B. JALLOW
PROSECUTOR OF THE ICTR**

1st November 2004

Your Honour Mr President of the ICC

Honourable Judges

Mr. Prosecutor of the ICC

Mme Prosecutor of the ICTY

Deputy Prosecutors

Members of the Diplomatic Corps

Some three weeks ago at a ceremony in the premises of the ICTR in the pleasant city of Arusha, Tanzania my colleagues and I at the tribunal officially bade farewell to Mrs Fatou Bensouda as she prepared to leave us to take up her new assignment at the International Criminal Court (ICC) in the Hague. We are greatly honoured to have been invited to this ceremony for her swearing in to office.

I, and perhaps many others here, have had the opportunity to interact with Fatou Bensouda. Prior to her appointment at the ICTR she served her country at the highest levels of the legal profession. First, as Director of Public Prosecutions (DPP) and subsequently as Attorney General. She discharged her responsibilities in both positions with commendation. Those duties gave her the opportunity not only to conduct criminal prosecutions but also to control and manage such prosecutions, spearhead the development of national policy on crime prevention and control but also participate in the international efforts at combating international crime. She also acquired experience subsequently in private legal work and private sector enterprise management.

At the ICTR, where she arrived in May 2002, she served in the Office of the Prosecutor (OT) as Legal Adviser first in Kigali, Rwanda and then in Arusha,

Tanzania. A few months ago she was promoted to the position of Senior Legal Adviser in the OTP. By all accounts she has carried out her duties at the ICTR with remarkable competence, with dedication and with commitment to the cause of international criminal justice. Her position as a legal adviser did not deter her from volunteering for or agreeing to take on advocacy work when the exigencies of the situation so demanded. Thus it was that, although a legal adviser, on numerous occasions she has provided advocacy support to other trial teams.

Mrs Bensouda your new task is a big challenge. There is a heavy burden of expectation from a broad constituency of states, nongovernmental organizations, victims, etc... Your commitment must remain to the cause of justice and the rule of law. You are aware, from, your practical experience at the ICTR, that the challenges of proper administration of international criminal justice are difficult, many and varied. They may be no less for the ICC. The International Criminal Court is after all a permanent tribunal. Dealing with not one situation, as in the case of the ICTR and the ICTY, but with many different situations. In different parts of the world. At the same time. But I, and many others too, are confident that your experience – both at home and at the ICTR – will stand you in good stead as together with your colleagues at the ICC, you prepare to face the challenges that lie ahead. As we congratulate you as well as the ICC on your appointment, we all wish you and the entire ICC success in this great task.

The administration of international criminal justice is entering a new phase. As the ad hoc tribunals prepare to wind up with the implementation of their respective completion strategies, the ICC will become the torchbearer for the cause of international criminal justice. When we look back to the period immediately before the establishment of the two ad hoc tribunals it is fair to

conclude that, measured against their objectives and the expectations of the founders, these institutions have been a success story; despite many constraints – of novelty, of resources, of logistics and of a jurisprudential vacuum on the most important issues the tribunals would be called upon to resolve in the ensuing years. Many gathered here today have made significant contributions to that success.

Established primarily to bring to justice those responsible for serious violation of human rights and humanitarian law, the tribunals were thereby envisaged as institutions which would through their work contribute to ending impunity, securing justice and dignity for victims and on this basis promoting reconciliation and peace.

The ad hoc tribunals have made a great contribution in filling in the jurisprudential vacuum, in developing and enriching the jurisprudence of international criminal law, without which no system of international criminal justice can function effectively. The rules of international criminal procedure, international rules of evidence, and the international standards of fair trial have all been considerably elaborated and advanced by the work of the tribunals. Significant experience and capacity has now been acquired in the conduct of international criminal investigations, in the selection of cases for prosecution, in meeting the logistical challenges of mounting and pursuing a criminal prosecution as well as in dealing with its aftermath in terms of witness protection measures, sentencing, service of sentences, etc...

As of today 25 accused persons have been prosecuted at the ICTR with three having been acquitted and the rest convicted. Among those convicted, stand a

former Prime Minister of Rwanda, Ministers of the former government, leaders of civil and local government, political party leaders, leading members of the clergy, the military and the media. In effect those who held leadership positions and were responsible for the most serious violations of humanitarian law. A significant number of other accused within this category remain on the list for prosecution with seventeen accused in custody awaiting trial in Arusha and a further fourteen indictees at large. A number of additional targets are under investigation. Up to 41 other dossiers have been earmarked for transfer to national jurisdictions.

The strategy of transfer of cases to national jurisdictions has been developed in response to the recognition of the fact that not all those who committed serious violations can be tried at the tribunal. Time does not permit. Nor may I add, do resources. Nonetheless the fact remains that even the numbers identified for trial in Arusha between now and 2008, when trials at first instance are required to conclude, is higher than the number of accused persons dealt with from the inception of the tribunal to date. We are however confident that with the proper support of the international community we shall be able to accomplish that task. Significant internal measures have been taken and experience built up over time to facilitate expediting the prosecution of cases. Nonetheless that challenge can be met only with international support by the provision of adequate resources, the cooperation of states to apprehend and transfer fugitives to the tribunal, the willingness of states to take on cases from the ICTR for prosecution within their national systems and their willingness to facilitate the relocation and protection of witnesses.

The experience of the past decade, I believe, provides us with several lessons. I believe the most important is that the work of the tribunals has demonstrated conclusively that the system of international criminal justice is, despite all the constraints and challenges, a viable and feasible option.

The international prosecution of crime is 'do-able'. It is not of course a perfect system. We must remember that no national legal system can claim to be so. However we must in the international context continue to strive for greater efficiency, and enhancing expeditious delivery of justice in conformity with the standards of due process and fair trial.

International prosecution is however not only feasible; it is desirable; indeed it is necessary, if peace and justice is to be maintained. Egregious violations of human rights, such as occurred in Rwanda and the former Yugoslavia cannot be effectively dealt with through quasi-civil procedures and systems. The penal sanction must be retained. It must be applied to hold to account those responsible, to deter recurrence.

But no such system can succeed without international support in all its aspects. The International Criminal Court today reflects the hopes of humanity for peace with justice. We should strive to move towards a truly universal and consensual system.

We must however recognize the limitation of any system of international criminal justice. No such system can prosecute every offender involved in the massive humanitarian tragedies which the tribunals need to grapple with. In their completion strategies the ad hoc tribunals have come to terms with this

reality, by a process of concentrating on those who bear the greatest responsibility for the crimes on the one hand and by promoting a strategy of transfer of other cases to national jurisdictions on the other hand. Neither the national system alone nor the international system on its own can guarantee that impunity will not prevail. If impunity is to be truly and successfully confronted there must be a real partnership between the national and the international systems in the nature of the complementarity scheme of the Rome Statute.

Hence one of the challenges to the success of international criminal justice lies at the national level. Effective complementarity requires a sustained programme of developing the national will on the one hand and on the other, the national capacity to investigate and prosecute such crimes. A programme of law reform, providing local recognition to the rules of international criminal law, institution building and strengthening, human resource development, nurturing a constituency that promotes the necessary will at the national level to punish such crimes and above all creating an environment of good governance which remains the best preventive barrier to such tragedies.

Many challenges for the future thus lie in our way. But the collective experience of the past decade in the field of international criminal justice – successes as well as errors, the latter, we hope have not been too many – should provide a useful guide as we progress to closure of one phase and the beginning of a new phase in the system of international criminal justice.

I thank you all.