



UNITED NATIONS
NATIONS UNIES

ICTR-98-44C-T
8-12-2006
(2760 - 2758)
International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

2769
Muf

Arusha International Conference Centre
P.O. Box 6016, Arusha, Tanzania
Tel: 255 27 2504207-11/2504367-72 or 1 212 963 2850 — Fax: 255 27 2504000/2504373 or 1 212 963 2848

Le Greffier
The Registrar

BEFORE TRIAL CHAMBER III

Before: Judge Dennis C. M. Byron, Presiding
Judge Karin Hökberg
Judge Gberdao Gustave Kam

Registrar: Mr Adama Dieng

Date: 7 December 2006

THE PROSECUTOR

V.

ANDRÉ RWAMAKUBA

JUDICIAL RECORDS/ARCHIVES
UNITED NATIONS
RECEIVED

2006 DEC - 8 1 A 9: 26

[Handwritten signature]

Case No. ICTR-98-44C-T

**THE REGISTRAR'S ADDITIONAL SUBMISSIONS IN REGARD
TO THE DEFENCE APPLICATION FOR REMEDY**

Rule 33(B) of the Rules of Procedure and Evidence

Office of the Prosecutor:

Dior Fall
Iain Morley
Adama Niane

Defence Counsel:

David Hooper
Andreas O'Shea

1. The Registrar of the International Criminal Tribunal for Rwanda ('Registrar' and 'Tribunal' or 'ICTR') wishes to bring the following submissions to the attention of Trial Chamber III of the ICTR ('Chamber'), pursuant to Rule 33(B) of the Rules of Procedure and Evidence of the Tribunal ('Rules'), which reads:

The Registrar, in the execution of his functions, may make oral or written representations to Chambers on any issue arising in the context of a specific case which affects or may affect the discharge of such functions, including that of implementing judicial decisions, with notice to the parties where necessary.

2. On 2 November 2006 the Registrar filed a Submission in response to the "Application for Appropriate Remedy" filed by the Defence for Rwamakuba. In this Submission, the Registrar undertook to contact the Office of Legal Affairs of the Secretary-General ('OLA'), and to keep the Chamber advised of any information or advice received on the matter of the liability of the Tribunal to provide compensation to acquitted persons whose rights have been violated.

3. The Registrar sought the advice of the OLA in respect, essentially, of the following issue:

Which organ or body of the United Nations would be responsible for the enforcement of an order by the Trial Chamber of the ICTR awarding financial compensation to an accused as a result of a violation of his/her rights.

4. On 5 December 2006 the Registrar received the advice of the OLA, as follows.

5. On the issue of an order of the Chamber awarding financial compensation to an accused person, the OLA notes that both the current and former Presidents of the ICTR have adopted the position that neither of the International Tribunals has the mandate under their Statutes to make awards of compensation.

6. This is evidenced by the letters written to the Secretary-General of the United Nations by Judge Claude Jorda, former President of the International Criminal Tribunal for the former Yugoslavia ('ICTY') and Judge Navanethem Pillay, former President of the ICTR in September 2000. In these letters, Judges Jorda and Pillay, on behalf of the Judges in their respective Tribunals, suggested that the Tribunal should be able to compensate persons who may have been wrongfully detained, prosecuted or convicted by the Tribunal. The Judges noted that, in order for the Tribunals to be able to award compensation in these situations, the Security Council would have to amend the Statutes of the Tribunals to empower them to deal with questions of compensation.

7. Judge Jorda reiterated his request for an amendment to the Statute in a letter to the Secretary-General of 12 March 2002, following two claims for compensation received from persons who had their convictions quashed by the ICTY's Appeals Chamber. Judge Jorda sought the opinion of the Security Council regarding these two claims.

8. To date the Security Council has not responded to these requests to amend the Statutes of the Tribunals.

9. As a consequence, a request by the Defence for Mr Ignace Bagilishema for compensation from the United Nations was turned down by the President of the ICTR, Judge Erik Møse, in a letter dated 20 October 2005, on the basis that without an amendment to the Statute, it was not possible for the judges to make an award regarding violations of rights. A similar position was adopted by former President Meron of the ICTY in a letter dated 11 March 2004 to Mr Zejnil Delalić.

10. The OLA acknowledges that on at least three occasions the Appeals Chamber of the ICTR has found that an accused whose rights have been violated is entitled to reparation, if s/he is found not guilty, and a reduction in sentence if s/he is found guilty. OLA states that it is their understanding that in these cases the Appeals Chamber made only declaratory statements about the remedy to which an accused is in principle entitled, and did not, as such, order that financial compensation be awarded.

11. The OLA is therefore of the opinion that an amendment to the Statute of the ICTR would be necessary in order for Chambers to calculate and award compensation to an accused person wrongfully prosecuted or convicted or unlawfully detained. This would also be the case with regard to an accused who has suffered a breach of any other fundamental rights. According to the OLA, this is the case notwithstanding Rule 5 of the Rules which allows the Trial Chamber to grant such a "remedy as the Trial Chamber considers appropriate to ensure consistency with fundamental principles of fairness".

Respectfully submitted.

Arusha, 7 December 2006



Adama Dieng
Registrar



FICHE DE TRANSMISSION POUR DÉPÔT DE DOCUMENTS A LA S.A.C.

SECTION DE L'ADMINISTRATION DES CHAMBRES
(Art. 27, Directive à l'intention du Greffe)

St regi - INFORMATIONS GÉNÉRALES (à compléter par les Chambres / la Partie déposante)

A:	<input type="checkbox"/> Chambre I N. M. Diallo	<input type="checkbox"/> Chambre II R. N. Kouambo	<input checked="" type="checkbox"/> Chambre III C. K. Hometowu	<input type="checkbox"/> Ch. d'Appel / Arusha F. A. Talon
	<input type="checkbox"/> Chef, S.A.C. J.-P. Fomété	<input type="checkbox"/> Chef Adjoint, S.A.C. M. Diop	<input type="checkbox"/> Chef, UPJ, S.A.C. M. Diop	<input type="checkbox"/> Ch. d'Appel / La Haye R. Muzigo-Morrison K. K. A. Afande
De:	Bureau du Greffier (Wohlfahrt Stéphane – X : 4095) <i>[Signature]</i>			
Affaire:	The Prosecutor v. André Rwamakuba		Affaire No.: ICTR-98-44C-T	
Dates:	Transmis le: 8 Dec 2006		Document daté du: 7 Dec 2006	
No. de Pages:	3		Langue de l'original: <input type="checkbox"/> Français <input checked="" type="checkbox"/> Anglais <input type="checkbox"/> Kinyarwanda	
Titre du Document:	The Registrar's Additional Submissions In Regard To The Defence Application For Remedy			
Classification Level:	<input type="checkbox"/> Ex-Parte <input type="checkbox"/> Strictly Confidential / Under Seal <input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Public			
TRIM Document Type:	<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input checked="" type="checkbox"/> Submission from non-parties <input type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Submission from parties <input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input checked="" type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars <input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities			

II - ETAT DE LA TRADUCTION AU JOUR DU DÉPÔT (à compléter par les Chambres/la Partie déposante)

La S.A.C. DOIT prendre en charge la traduction:	
<input checked="" type="checkbox"/>	La Partie déposante ne dépose que l'original et, ne soumettra pas de traduction.
<input type="checkbox"/>	Le matériel de référence se trouve en annexe, pour faciliter la traduction.
Langue(s) visée(s):	
<input checked="" type="checkbox"/>	Français
<input type="checkbox"/>	Anglais
<input type="checkbox"/>	Kinyarwanda
La S.A.C. NE DOIT PAS prendre en charge la traduction:	
<input type="checkbox"/>	La Partie déposante, soumet ci-joint l'original et la version traduite pour dépôt, comme suit:
Original	en: <input type="checkbox"/> Français <input type="checkbox"/> Anglais <input checked="" type="checkbox"/> Kinyarwanda
Traduction	en: <input type="checkbox"/> Français <input type="checkbox"/> Anglais <input checked="" type="checkbox"/> Kinyarwanda
La S.A.C. NE DOIT PAS prendre en charge la traduction:	
<input type="checkbox"/>	La Partie déposante, soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s):
Langue(s) visée(s): <input checked="" type="checkbox"/> Français <input type="checkbox"/> Anglais <input type="checkbox"/> Kinyarwanda	
VEUILLEZ REMPLIR LES CASES CI-DESSOUS	
<input type="checkbox"/> LE BUREAU DU PROCUREUR veille à la traduction Le document est soumis au service de traduction à: <input type="checkbox"/> A la Section des Langues du TPIR / Arusha. <input type="checkbox"/> A la Section des Langues du TPIR / La Haye. <input type="checkbox"/> Au service de traduction agréé ci-après: Nom de la personne à contacter: Nom du service: Adresse: Courriel / Tel. / Fax:	<input type="checkbox"/> LA DÉFENSE veille à la traduction Le document est soumis au service de traduction agréé ci-après: Les frais seront soumis à S.A.C.D.C.D. Nom de la personne à contacter: Nom du service: Adresse: Courriel / Tel. / Fax:

II - PRIORITÉ POUR LA TRADUCTION (Pour usage officiel UNIQUEMENT)	
<input type="checkbox"/> Prioritaire	COMMENTAIRES
<input type="checkbox"/> Urgent	<input type="checkbox"/> Date requise:
<input type="checkbox"/> Normal	<input type="checkbox"/> Date d'audience
	<input type="checkbox"/> Autres dates: