

ICTR-98-44C-A
12-2-2007
(3/A - 1/A)

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Hm

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE N° ICTR 98-44C-1

In the Appeals Chamber

Registrar: Adama Dieng

Date: 8th February 2007

THE PROSECUTOR

V

DR ANDRE RWAMAKUBA

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DEFENCE NOTICE OF APPEAL OF DECISION DATED 31st JANUARY 2007

For the Prosecutor:

Dior Fall
Adama Niane
Ian Morley

For the accused:

David Hooper
Andreas O'Shea

NOTICE OF APPEAL

1. This is a Notice of Appeal of the Chamber's Decision on Appropriate Remedy of 31 January 2006. This Notice of Appeal relates to that part of the Decision pertaining to compensation for the grave and manifest miscarriage of justice arising out of the circumstances of the prosecution, detention and trial of the Appellant, Dr Andre Rwamakuba.
2. This appeal is brought under Article 24 (2) of the Statute, Rule 108, or alternatively Rule 73.
3. Further or in the alternative the defence files this appeal by virtue of the implied and inherent right of appeal to the Appeal Chamber from the decision of the Chamber.
4. In these circumstances, we seek appropriate direction from the Chamber as to the appropriate procedure and time limits to be followed in this instance.

Grounds of Appeal

5. The grounds of this appeal are as follows:
 - (i) *The Chamber erred in finding that the right to compensation for a grave and manifest injustice is not founded in custom, since the right to an effective remedy is a right under customary international law and is sufficient for the provision of compensation for a grave and manifest injustice.*
 - (ii) *The Chamber erred in finding that it could not provide compensation for a grave and manifest injustice because it did not form a customary right. Since it has an inherent discretion to provide an effective remedy, it is not necessary to establish a right to compensation under customary international law for that discretion to be exercised.*

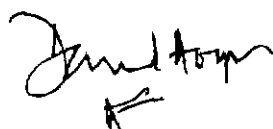
Relief sought

6. It is accordingly requested, that the Appeals Chamber:

- (a) find that the Chamber has the power to grant compensation to an acquitted person in circumstances where there has been a grave and manifest miscarriage of justice;
- (b) find that the circumstances in this case are such that it would be right and just to award compensation;
- (c) award appropriate compensation for such injustice.

In the alternative, refer the matter back to the Trial Chamber for reconsideration.

[word count 339]



David Hooper

Andreas O'Shea

8 February 2007



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Case Name:	The Prosecutor vs. RWAMAKUBA			Case Number: ICTR-98 44 1 C
Dates:	Transmitted: 9 2 2007		Document's date: 8 2 2007	
No. of Pages:	3	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	APPEAL OF CHAMBER III DECISION OF 31 1 2007 ON APPROPRIATE REMEDY			
Classification Level:	<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 type="checkbox"/> Submission from non-parties <input type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input checked="" type="checkbox"/> Notice of Appeal <input type="checkbox"/> Submission from parties <input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars <input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities			

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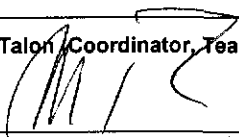


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Date:	12 February 2007	Case Name / affaire:	RWAMAKUBA v. The Prosecutor
		Case No / no. de l'affaire:	ICTR-98-44C-A
	Appeal Chamber Unit, The Hague Koffi Afande Patrice Tchindimbo Ramadhani T. Juma	<input checked="" type="checkbox"/> Appeal Judges / <input checked="" type="checkbox"/> Judge / Fausto Pocar, Presiding <input checked="" type="checkbox"/> Judge / <input checked="" type="checkbox"/> Judge / <input checked="" type="checkbox"/> Judge / <input checked="" type="checkbox"/> Judge /	
To: A:	ACCUSED / DEFENSE <input checked="" type="checkbox"/> Accused / <i>Accusé</i> RWAMAKUBA <input type="checkbox"/> <small>see / voir "CMS4a")</small> <input checked="" type="checkbox"/> Lead Counsel / <i>Conseil Principal D. Hooper</i> <input type="checkbox"/> Arusha _____ (signature) <input type="checkbox"/> Fax (see / voir CMS3F") <input type="checkbox"/> Co-Counsel / <i>Conseil Adjoint: A. O'Shea</i> <input type="checkbox"/> Arusha _____ (signature) <input type="checkbox"/> Fax (see / voir "CMS4") <input type="checkbox"/> OTP / BUREAU DU PROCUREUR <input type="checkbox"/> H. B. Jallow, Chief, Prosecutions <input type="checkbox"/> Arusha _____ (signature) <input type="checkbox"/> Fax (see / voir "CMS3F") <input type="checkbox"/> B. Majola, Deputy Prosecutor <input type="checkbox"/> Arusha _____ (signature) <input type="checkbox"/> Fax (see / voir "CMS3F") <input checked="" type="checkbox"/> Attorney in charge of case D. Fall <input checked="" type="checkbox"/> A. Niane		
From:	<input type="checkbox"/> JP. Fomété (Chief, CMS) <input type="checkbox"/> Matar Diop (D chief CMS) <input type="checkbox"/> F. A. Talon (Coordinator, Team IV) <input type="checkbox"/> <input checked="" type="checkbox"/> Constant Hometowu ((Coordinator, TCIII) <input type="checkbox"/> Other: 		
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