



UNITED NATIONS
NATIONS UNIES

ICTR-98-44D-T 5347 : 5347
09-11-2010
(5347 - 5344) IWAH
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Solomy Balungi Bossa, Presiding
Bakhtiyar Tuzmukhamedov
Mparany Rajohnson

Registrar: Adama Dieng

Date: 9 November 2010

2010 NOV 09 P 9:00
JUDICIAL RECORDS ARCHIVE
S. J. Jones

THE PROSECUTOR

v.

Callixte NZABONIMANA
Case No. ICTR-98-44D-T

**ORDER FOR SUPPLEMENTAL SUBMISSIONS IN RELATION TO REPORT OF
AMICUS CURIAE ON INVESTIGATIONS RELATED TO THE DISCLOSURE OF
PROSECUTION WITNESSES CNAL AND CNAE STATEMENTS
(Rules 77 (A) (ii) and 77 (C) of the Rules of Procedure and Evidence)**

Office of the Prosecutor
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Defence Counsel
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Philippe Larochelle

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Decision on Report of Amicus Curiae on Investigations Related to the Disclosure of Prosecution Witnesses CNAL and CNAE Statements

1. On 15 December 2009, the Trial Chamber issued a Decision directing the Registry to appoint an *amicus curiae* to investigate the allegations that Defence investigator Jean-Claude Misano violated protected measures afforded certain Prosecution witnesses in the instant proceedings, and to provide a report to the Chamber by 29 March 2010 (“Report”).¹
2. On 30 March 2010, the *amicus curiae* appointed by the Registry filed his Report.²
3. On 12 July 2010, the Trial Chamber directed the Registry to disclose the Report to the parties and ordered the parties to file any submissions on the Report by 23 July 2010.³
4. On 23 July 2010, the Prosecution⁴ and Defence⁵ filed initial submissions regarding the Report. On 28 July 2010, the Prosecution filed a “Reply” to the Defence’s submissions.⁶ On 2 August 2010, the Defence filed a “Response” to the Prosecution’s submissions.⁷
5. The Trial Chamber takes note of a recent filing by the Defence in a collateral matter before this Chamber, in which the Defence indicated that it did not expect the Chamber to render a Decision regarding the Report.⁸ While the Trial Chamber did not believe there was any ambiguity on this point, to ensure complete clarity the Chamber hereby notifies the parties that it intends to issue a Decision on the Report in due course.
6. This being noted, the Trial Chamber recalls the recent Decision rendered by the Appeals Chamber, affirming that the Defence enjoys the right to be fully informed of the potential consequences of any submissions it makes on a given matter, including whether such

¹ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on the Prosecution’s Urgent Motion Alleging Contempt of the Tribunal, 15 December.

² *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Report of Amicus Curiae on Investigations Related to the Disclosure of Prosecution Witnesses CNAL and CNAE Statements, 30 March 2010.

³ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Order to Disclose Amicus Curiae Report to the Parties, 12 July 2010.

⁴ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor’s Submissions on the Amicus Curiae Report Concerning Alleged Contempt of Tribunal, 23 July 2010.

⁵ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana’s Submissions on the Report of *Amicus Curiae on Investigations Related to the Disclosure of Prosecution Witnesses CNAL and CNAE Statements* dated 30 March 2010, 23 July 2010.

⁶ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor’s Reply to Nzabonimana’s Submissions on the Report of Amicus Curiae on Investigations Related to the Disclosure of Prosecution Witnesses CNAL and CNAE Statements dated 30 March 2010, 28 July 2010.

⁷ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana’s Response to the Prosecutor’s Submissions on the Amicus Curiae Report Concerning Alleged Contempt of Tribunal, 2 August 2010.

⁸ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Reply to Prosecutor’s Response to Nzabonimana’s Motion to Admit Exhibit DNZ-461 into Evidence and to Appoint an *Amicus Curiae* to Investigate Witness CNAL’s False Testimony, 29 October 2010, paras. 41-46.

submissions will have a bearing on a decision to be taken by the Trial Chamber.⁹ With due regard to this precedent, the Trial Chamber believes that the parties are entitled to file supplemental submissions addressing any concerns that may have been raised in view of the declared intention of the Chamber to render a Decision on the Report.

7. The Trial Chamber wishes to stress that it is fully apprised of all the prior submissions the parties have made with respect to the Report. Therefore, any supplemental submissions shall not repeat arguments contained in those prior submissions. Failure to abide by this directive shall be construed as an abuse of the Trial Chamber's time and resources.
8. Finally, given the extent of the submissions already received concerning the Report, the Trial Chamber believes that it would not serve the interests of justice to receive "responses" or "replies" from either party in addition to any supplemental submissions.

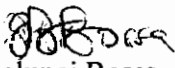
FOR THESE REASONS, THE TRIAL CHAMBER

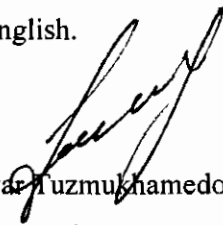
ORDERS the parties to file, within 5 days, whatever supplemental submissions they may have with respect to the Report that have arisen directly as a consequence of the declared intention of the Trial Chamber to render a Decision on the Report;

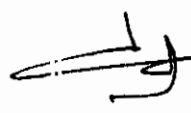
FURTHER ORDERS that these supplemental submissions, if any, shall not repeat the arguments already advanced by the parties in their prior submissions; and

FURTHER ORDERS that neither party shall have a right to "respond" or "reply" to whatever supplemental submissions may be filed.

Arusha 9 November 2010, done in English.


Solomy Balungi Bossa
Presiding Judge


Bakhtiyar Tuzmukhamedov
Judge


Mparany Rajohnson
Judge

[Seal of the Tribunal]



⁹ Prosecutor v. Nzabonimana, ICTR-98-44-AR7bis, Decision on Callixte Nzabonimana's Interlocutory Appeal on the Order Rescinding the 4 March 2010 Decision and on the Motion for Leave to Appeal, the President's Decision dated 5 May 2010, 20 September 2010, paras. 10-11.