



**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

UNITED NATIONS  
NATIONS UNIES

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OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Adama Dieng

**Date:** 19 November 2010

**THE PROSECUTOR**

**v.**

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

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**DECISION ON 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)*

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**Office of the Prosecutor**

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**Defence Counsel**

Vincent Courcelle-Labrousse  
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## INTRODUCTION

1. On 2 December 2009, the Prosecution filed a motion seeking to appoint an *amicus curiae* to investigate the possibility of initiating contempt proceedings against Defence investigator Jean-Claude Misano (“Misano”) for alleged violations of the protective measures afforded Prosecution Witnesses CNAL and CNAE, including the divulgence of unredacted witness statements to a friend of CNAL and CNAE (“Mr. A”).<sup>1</sup>
2. On 15 December 2009, the Trial Chamber issued a Decision directing the Registry to appoint an *amicus curiae* to investigate the allegations against Misano, and to provide a report to the Chamber by 29 March 2010 (“Report”).<sup>2</sup>
3. On 30 March 2010, the *amicus curiae* appointed by the Registry filed his Report.<sup>3</sup>
4. On 24 May 2010, the Defence filed a motion seeking disclosure of the Report.<sup>4</sup>
5. On 28 May 2010, the Prosecution filed a response to the Defence motion in which it concurred with the Defence’s request to disclose the Report to the parties.<sup>5</sup>
6. 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.<sup>6</sup>
7. On 23 July 2010, the Prosecution<sup>7</sup> and Defence<sup>8</sup> filed submissions regarding the Report.
8. On 28 July 2010, the Prosecution filed a “Reply” to the Defence’s submissions.<sup>9</sup>

<sup>1</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor’s Urgent Motion for Prohibition of Conduct Contrary to Rule 77(C) of the Rules of Procedure and Evidence, 2 December 2009.

<sup>2</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on the Prosecution’s Urgent Motion Alleging Contempt of the Tribunal, 15 December 2009 (“15 December Decision”).

<sup>3</sup> *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.

<sup>4</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana’s Motion for Disclosure of Amicus Curiae Report Concerning Alleged Contempt of Tribunal, 24 May 2010.

<sup>5</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor’s Response to Nzabonimana’s Motion for the Disclosure of the Amicus Curiae Report Concerning Alleged Contempt of Tribunal, 28 May 2010.

<sup>6</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Order to Disclose Amicus Curiae Report to the Parties, 12 July 2010.

<sup>7</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor’s Submissions on the Amicus Curiae Report Concerning Alleged Contempt of Tribunal, 23 July 2010 (“Prosecution Submissions”).

<sup>8</sup> *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 (“Defence Submissions”).

9. On 2 August 2010, the Defence filed a “Response” to the Prosecution’s submissions.<sup>10</sup>
10. On 9 November 2010, the Trial Chamber issued an order announcing that it intended to issue a decision with respect to the Report and soliciting any supplemental submissions the parties may have as a direct consequence of that announcement.<sup>11</sup>
11. On 15 November 2010, the Prosecution<sup>12</sup> and Defence<sup>13</sup> filed their supplemental submissions.

### **SUBMISSIONS OF THE PARTIES**

#### *Prosecution Submissions*

12. The Prosecution submits the Report contains “several errors... and leaves several questions unanswered” about the investigation,<sup>14</sup> and posits that “the *amicus curiae* did not fully investigate the matter”.<sup>15</sup> Specifically, the Prosecution asserts that the *amicus curiae*: 1) misdirected himself in his assessment of the facts before him;<sup>16</sup> 2) made misleading and unfounded assumptions;<sup>17</sup> 3) made erroneous conclusions that were not based on recorded facts;<sup>18</sup> 4) failed to confirm allegations, and adopted allegations by Misano in a biased manner;<sup>19</sup> and 5) contradicted facts contained in the affidavits appended to the Report.<sup>20</sup>
13. Regarding its first critique of the Report, the Prosecution argues that the *amicus curiae* unfairly impugned the credibility of Mr. A by treating sceptically his explanation as to why Misano disclosed the witness statements, as well as Mr. A’s limited capacity to read

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<sup>9</sup> *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 (“Prosecution Reply”).

<sup>10</sup> *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 (“Defence Response”).

<sup>11</sup> *Prosecutor v. Nzabonimana*, 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, 9 November 2010.

<sup>12</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor’s Supplemental Submissions on the Amicus Curiae Report Concerning Alleged Contempt of Tribunal Pursuant to the Trial Chamber’s Order dated 9 November 2010 and Annexures “A”, “B” and “C”, 15 November 2010 (“Prosecution Supplemental Submissions”).

<sup>13</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana’s Supplemental Submission in Relation to Report of Amicus Curiae on Investigations Related to the Disclosure of Witnesses CNAL and CNAE’s Statements, 15 November 2010 (“Defence Supplemental Submissions”).

<sup>14</sup> Prosecution Submissions, para. 12.

<sup>15</sup> Prosecution Submissions, para. 12.

<sup>16</sup> Prosecution Submissions, paras. 15-18.

<sup>17</sup> Prosecution Submissions, para. 19.

<sup>18</sup> Prosecution Submissions, paras. 20-21.

<sup>19</sup> Prosecution Submissions, para. 22.

<sup>20</sup> Prosecution Submissions, para. 23.

statements in French.<sup>21</sup> As to the second critique, the Prosecution maintains that it was improper for the *amicus curiae* to comment on Mr. A's demeanour.<sup>22</sup> Regarding the third critique, the Prosecution claims that the Report's observation that Misano may not have been on official Tribunal business at the time of the alleged infraction is irrelevant, since "Misano did not need to be on official mission to have been able to disclose the statements".<sup>23</sup> On the fourth critique, the Prosecution castigates the *amicus curiae*'s use of uncorroborated evidence provided by the Defence mere hours before the Report's deadline to suggest "a clear collusion between [Mr. A] and CNAL".<sup>24</sup> For the fifth critique, the Prosecution claims the Report wrongly ignored evidence that Misano and Mr. A were familiar with each other.<sup>25</sup>

14. For all the above reasons, the Prosecution submits that the *amicus curiae*'s Report is "fatally flawed".<sup>26</sup> The Prosecution further notes that the Report exposes that the Defence team revealed the statement of CNAL to Defence Witness Straton Sibomana,<sup>27</sup> but that "[t]he *amicus curiae*... did not bother to investigate this matter in any depth".<sup>28</sup> The Prosecution therefore prays that the Trial Chamber: 1) make a finding critical of the quality of the Report; 2) disregard the Report's recommendations and appoint a new *amicus curiae* to conduct a fresh investigation into the matter at hand; 3) in the alternative, order the *amicus curiae* to revisit the "inconsistencies" highlighted by the Prosecution and file a supplementary Report; 4) order that any fees payable to the *amicus curiae* "be withheld pending the finalisation of this Report in a proper and professional manner"; 5) order that any additional investigations to be conducted be extended "to include any member of the Defence team who might have revealed protected information pertaining to witnesses CNAL and CNAE to Straton Sibomana".<sup>29</sup>

#### *Defence Submissions*

15. The Defence endorses the *amicus curiae*'s qualifications,<sup>30</sup> and commends the "thoroughness" of the Report prepared by the *amicus curiae*, citing the number of interviews

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<sup>21</sup> Prosecution Submissions, paras. 15-18.

<sup>22</sup> Prosecution Submissions, para. 19.

<sup>23</sup> Prosecution Submissions, paras. 20-21.

<sup>24</sup> Prosecution Submissions, para. 22.

<sup>25</sup> Prosecution Submissions, para. 23.

<sup>26</sup> Prosecution Submissions, para. 24.

<sup>27</sup> Prosecution Submissions, para. 25.

<sup>28</sup> Prosecution Submissions, para. 26.

<sup>29</sup> Prosecution Submissions, para. 32.

<sup>30</sup> Defence Submissions, para. 9.

conducted and the breadth of the investigative missions undertaken.<sup>31</sup> The Defence announces that it “does not have any submissions to make as to the substance of the Report”,<sup>32</sup> and requests that the Trial Chamber admit the Report into the evidentiary record pursuant to Rule 89 (C) of the Rules of Procedure and Evidence (“Rules”).<sup>33</sup>

#### *Prosecution “Reply”*

16. The Prosecution opens its “Reply” by noting that it had been unaware that the *amicus curiae* was a member of the Witness and Victims Support Section (“WVSS”) of the Tribunal until the Defence acknowledged this in its submissions.<sup>34</sup> The Prosecution then asserts that “[t]he Chamber expressed apprehension that WVSS may not have the investigative resources necessary to conduct such an inquiry”,<sup>35</sup> and therefore “[t]he appointment of a member of WVSS and clothing him with the title of *amicus curiae* runs contrary to the Trial Chamber’s intention and the incomplete investigations and inadequate report submitted by him confirms the Chamber’s initial apprehension”.<sup>36</sup>

#### *Defence “Response”*

17. The Defence rejects the Prosecution argument that the Report was “rushed over so as to meet the deadline” as “unsubstantiated conjecture”, countering that if the *amicus curiae* felt rushed, he would have asked for an extension of the filing deadline.<sup>37</sup> The Defence also disputes the Prosecution argument that the *amicus curiae* lacked the proper qualifications to conduct the investigation because he was a member of WVSS.<sup>38</sup>

18. Regarding the Report’s content, the Defence contests the Prosecution’s assertion that the role of the *amicus curiae* is “to leave [no] doubt hanging over an issue” to be investigated.<sup>39</sup> It further disputes the assertion that the Report cannot contain observations regarding the conduct of interviewees that are not reflected in their declarations,<sup>40</sup> and submits that the Chamber “must show deference” to the *amicus curiae* as “the trier of fact” in this regard.<sup>41</sup>

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<sup>31</sup> Defence Submissions, para. 8.

<sup>32</sup> Defence Submissions, para. 10.

<sup>33</sup> Defence Submissions, paras. 11-15.

<sup>34</sup> Prosecution Reply, para. 10.

<sup>35</sup> Prosecution Reply, para. 10.

<sup>36</sup> Prosecution Reply, para. 11.

<sup>37</sup> Defence Response, para. 7.

<sup>38</sup> Defence Response, paras. 8-9.

<sup>39</sup> Defence Response, para. 11.

<sup>40</sup> Defence Response, paras. 12, 15-16.

<sup>41</sup> Defence Response, para. 14.

19. The Defence requests that the Trial Chamber order the *amicus curiae* to file a supplementary Report investigating potential collaboration between Witness CNAL and Mr. A alluded to in the Report, to ascertain whether Witness CNAL provided false testimony to the Trial Chamber.<sup>42</sup> At the same time, the Defence strenuously denies the “defamation” levied by the Prosecution that the Defence disclosed unredacted statements of protected Prosecution witnesses to Defence Witness Straton Sibomana, stressing that such an allegation falls outside the terms of reference mandated to the *amicus curiae* and therefore that the Prosecution must file a fresh motion if it wishes to pursue contempt proceedings in relation to this allegation.<sup>43</sup>

#### *Prosecution Supplemental Submissions*

20. The Prosecution makes two supplemental submissions: 1) the *amicus curiae* relied on an incomplete record of Misano’s official activities in Rwanda in determining the plausibility of Mr. A’s allegation that the illicit disclosure occurred in July 2009;<sup>44</sup> 2) the *amicus curiae* did not sufficiently “ventilate” the fact that certain geographical jurisdictions in Rwanda have changed and what impact this might have on the Report’s conclusions with respect to Misano’s whereabouts in June-July 2009.<sup>45</sup>

#### *Defence Supplemental Submissions*

21. The Defence makes “no new submissions concerning the *Amicus Curiae* Report itself”,<sup>46</sup> but prays that a collateral motion it filed on 19 October 2010 requesting the Chamber to appoint an *amicus curiae* to investigate alleged false testimony by Prosecution witness CNAL not be “disregard[ed]... as a repetition of the 23 July 2010 Submission.”<sup>47</sup>

## **DELIBERATIONS**

#### *Applicable Law*

22. Rule 77 (A) states:

The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who [...] (ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber [...] (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give

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<sup>42</sup> Defence Response, paras. 17-30.

<sup>43</sup> Defence Response, paras. 31-35.

<sup>44</sup> Prosecution Supplemental Submissions, paras. 9-11.

<sup>45</sup> Prosecution Supplemental Submissions, paras. 12-13.

<sup>46</sup> Defence Supplemental Submissions, para. 7.

<sup>47</sup> Defence Supplemental Submissions, para. 9.

evidence in proceedings before a Chamber, or a potential witness; or (v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber.

23. Rule 77 (C) stipulates that:

When a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may: [...] (ii) where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings [...]

*Preliminary Matters*

24. At the outset, the Trial Chamber wishes to address three preliminary matters. First, the Chamber accepts the judgement of the Registrar that Dr. Moussounga Itsouhou-Mbadinga is qualified to act as *amicus curiae* in this case. The Prosecution's repudiation of Dr. Itsouhou-Mbadinga's credentials principally rests on the argument that his employment as a member of WVSS precludes him serving as *amicus curiae*.<sup>48</sup> The Trial Chamber considers that in the absence of specific evidence demonstrating that Dr. Itsouhou-Mbadinga himself lacked the necessary qualifications of an *amicus curiae*, there are insufficient grounds to interfere with the deference owed to the Registrar in conferring an appointment that falls well within the sphere of his regular functions and expertise.

25. Second, despite the Defence's argument to the contrary, the Trial Chamber wishes to affirm that it—not the *amicus curiae*—is the trier of fact with respect to all issues stemming from the present investigation. As the literal translation of the title suggests and the Appeals Chamber of this Tribunal has recognised, an *amicus curiae* functions as “a friend of the court”<sup>49</sup> who facilitates, rather than assumes, the fact-finding function of the Trial Chamber.

26. Third, the Trial Chamber wishes to inform all parties that it considers the motion filed by the Defence on 19 October 2010 be separate and distinct from the instant Decision and that the Chamber shall dispose of that motion on the merits in due course.

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<sup>48</sup> Prosecution Reply, paras. 11-12.

<sup>49</sup> See *Prosecutor v. Milošević*, IT-02-54-AR73.7, Decision on the Interlocutory Appeal by the Amici Curiae Against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, 20 January 2004, para. 4 and dissenting opinion of Shahabuddeen, J.. See also comments of the Pre-Appeal Chamber in *Prosecutor v. Krajišnik*, IT-00-39-A, Decision on Momčilo Krajišnik's Request for Reconsideration of the Pre-Appeal Judge's Decision of 11 June 2008, p. 2, citing Black's Law Dictionary (8<sup>th</sup> ed. 2004).

*Analysis*

27. The Trial Chamber observes that the *amicus curiae* interviewed at least 16 persons in investigating whether Misano violated an order of this Chamber by revealing the protected information of Witnesses CNAL or CNAE to unauthorised third parties, as mandated by the Chamber in its 15 December Decision. It further notes the Report's conclusion that there are insufficient grounds to initiate contempt proceedings under Rule 77.

28. Nevertheless, having examined the Report in detail, the Chamber finds that a number of issues were not suitably addressed therein, that others require further investigation, and that therefore it cannot accept the Report's conclusions.

29. Specifically, the Trial Chamber notes the following aspects of the Report with concern:

- i. On 29 March 2010, the *amicus curiae* informed the Trial Chamber that he would issue his Report late "due to new elements received this morning from the Defence team for Callixte Nzabonimana which need verification and analysis".<sup>50</sup> This "new element" proved to be unsigned correspondence, dated 19 November 2009, in which Misano informs Defence Counsel that he was told by Defence Witness RW39 that the Rwandan secret services, and Witness CNAL, were seeking information about Misano's identity.<sup>51</sup> The *amicus curiae* does not appear to have made any inquiries as to why a document that was dated over four months prior was only disclosed on the day the Report was due to be filed, but rather postulates, without critical analysis, that "[i]f this information is confirmed, this is a clear collusion between [Mr. A] and CNAL."<sup>52</sup> The Chamber finds this sequence of events curious, and is troubled by the absence of any explanation as to what happened, as well as the lack of any attempt to corroborate this information received immediately before the filing deadline.
- ii. The Report frequently comments on the reticence or embarrassment of Misano's accusers, principally Mr. A, to speak with the *amicus curiae*. While the Trial Chamber accepts that an *amicus curiae* is entitled to comment on the demeanour of a witness being interviewed, the basis for such observations must be detailed and well-articulated, rather than simply asserted. Without such a foundation, the Chamber is

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<sup>50</sup> E-mail sent from Dr. Moussounga Itsouhou-Mbadinga to Trial Chamber, 29 March 2010.

<sup>51</sup> Report, para. 16; Annex 18.

<sup>52</sup> Report, para. 17.



unable to exercise its function, as the trier of fact, of assessing what weight ought to be afforded the *amicus curiae*'s observations.

- iii. Moreover, while the Report focuses on the reticence of Misano's accusers to participate in the investigation, it makes no comment on the documented unavailability of Misano when WVSS attempted to contact him for an interview in December 2009 and January 2010. In an Annex to the Report, it is noted that these attempts were, for some time, "futile" and "in vain".<sup>53</sup> Moreover, the explanation offered by Misano for his failure to respond to these persistent requests – "[i]nitially I did not understand properly that I was being required for an interview"<sup>54</sup> – appears to have been uncritically accepted.
- iv. The Report discredits Mr. A by noting that CNAL claims he "clearly recounted" the contents of the statements to him, whereas Mr. A's recollection of the events in question was much vaguer when interviewed by the *amicus curiae*. However, Mr. A was interviewed many months after the alleged event, and CNAL was referring to when Mr. A approached him a few days following the event. The *amicus curiae* failed to consider how the considerable passage of time between these two accounts may have impacted the assessment of Mr. A's credibility.
- v. In impugning the credibility of Mr. A, the Report places significant emphasis on the fact he had little formal education, and thus would likely have had difficulty reading statements written in French. However, this conclusion does not appear to take into consideration Mr. A's evidence that where there were passages that he did not understand, Misano "explain[ed] them to me".<sup>55</sup>
- vi. Citing Tribunal security clearances, the Report observes that "there is also an uncertainty about the presence of Jean-Claude Misano on official mission in [the area of the alleged infraction] in June/July 2009".<sup>56</sup> However, Misano admits to having stopped at Mr. A's place of business in July 2009 after returning from a site visit in a neighbouring area, and further admits to personally meeting Mr. A on that

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<sup>53</sup> Annex 14 to Report ("Annexes"), p. 2.

<sup>54</sup> Annex 14, p. 2.

<sup>55</sup> Report, para. 11; Annex 2, para. 17.

<sup>56</sup> Report, para. 15.

occasion.<sup>57</sup> This account, which was confirmed by Co-Counsel for Nzabonimana in an interview with the *amicus curiae*,<sup>58</sup> places Misano at the precise location during the relevant time period and suggests he had direct contact with Mr. A. It also raises questions about the propensity of Misano to conduct Tribunal business without official authorisation, as security clearances do not document Misano conducting any official mission in July 2009.<sup>59</sup> The Trial Chamber considers that the Report did not give these factors any meaningful consideration in its ultimate analysis.

- vii. The Trial Chamber notes that the Report’s analysis fails to address the fact that CNAL testified before the Gacaca courts against a number of Gitarama detainees who allege that CNAL actually disclosed protected information about himself. No attempt is made to analyse how this significant factor might impact the credibility of those witnesses, and if the *amicus curiae* had good reason to conclude that this factor ought not to discredit these witnesses, the Report does not explain why this is so.
- viii. The *amicus curiae* failed to interview a number of persons to whom protected information was allegedly disclosed by Misano, including Callixte Nzabonimana’s cousin “Faustin”, one Joseph Mureramanzi, and a certain “Charles.” No reason for these critical omissions was provided.
- ix. Finally, the Trial Chamber finds several problems with the Report’s treatment of the allegation made by Defence Witness Straton Sibomana that the Nzabonimana Defence team visited him at Gitarama prison on two occasions in 2009 and divulged unredacted Prosecution witness statements to him. First, Misano claims that he was never authorised to visit Sibomana at Gitarama prison,<sup>60</sup> an assertion that is directly contradicted by two official documents from the Rwandan government attached as Annexes to the Report.<sup>61</sup> The Report does not analyse this contradiction.<sup>62</sup> Second, despite its exoneration of Misano, the Report never actually rules out the possibility that Misano visited Sibomana at Gitarama prison. Sibomana claims that a different “Rwandese” man attended the two visits in the company of Co-Counsel for

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<sup>57</sup> Report, para. 64; Annex 15, para. 11.

<sup>58</sup> Report, fn 67.

<sup>59</sup> Report, para. 15; Annex 30.

<sup>60</sup> Report, para. 66; Annex 15, para. 18.

<sup>61</sup> Annexes 16 and 17.

<sup>62</sup> The Report alludes to the contradiction in a footnote, but does not incorporate it into the overall analysis in any way.

Nzabonimana. While Sibomana denies that the second man was Misano, he never identifies the first man.<sup>63</sup> Third, the *amicus curiae* does not incorporate the startling revelation – by a Defence witness, no less – that the Nzabonimana Defence team may have been committing contempt against this Chamber into the conclusions of the Report in any meaningful way. While the conduct of people other than Misano may have, strictly speaking, fallen outside the terms of reference given to the *amicus curiae*, this is nevertheless circumstantial evidence of malfeasance that was essentially ignored by the Report’s conclusion that the allegations against Misano were “not supported by any evidence”.<sup>64</sup>

30. Perfection is not the standard demanded of an *amicus curiae* by this Trial Chamber. The Chamber recognises the inherent difficulties posed by an investigation of this nature and realises that even the most thorough report is likely to leave certain avenues unexplored. However, the Chamber considers that the issues outlined above, when considered in their totality, evince a trend of incomplete investigations followed by often questionable or unfounded conclusions. Moreover, what the Trial Chamber finds most disconcerting are the number of occasions in which an explanation for an incomplete investigation, a conspicuously late filing of a critical piece of evidence, or a tendentious inference was clearly required, but not provided. For these reasons, the Trial Chamber concludes that it is unable to rely on the Report in making a determination whether to initiate contempt proceedings pursuant to Rule 77 (D). The Trial Chamber therefore rejects the Report and denies the Defence request to admit the Report into evidence pursuant to Rule 89 (C).

31. With respect to the Prosecution’s request that the Trial Chamber order that any additional investigations to be conducted be extended “to include any member of the Defence team who might have revealed protected information pertaining to witnesses CNAL and CNAE to Straton Sibomana”,<sup>65</sup> and the Defence request for further investigations into potential collaboration between Witness CNAL and Mr. A, the Trial Chamber observes that the submissions sought by the Trial Chamber with respect to the Report are not “Motions” within the meaning of Rule 73, but rather comments on the compliance of the *amicus curiae* with his terms of reference. Therefore, the Chamber considers that it has not been properly moved by either party regarding these requests for supplemental investigations.

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<sup>63</sup> Report, para. 72; Annex 25, para. 12.

<sup>64</sup> Report, para. 90.

<sup>65</sup> Prosecution Submissions, para. 32.

**FOR THESE REASONS, THE TRIAL CHAMBER**

**REJECTS** the Report submitted by the *amicus curiae*;

**DECLINES** to admit the Report into the evidentiary record pursuant to Rule 89 (C);

**DIRECTS** the Registry, pursuant to Rule 77 (C) (ii), to appoint a new *amicus curiae* to investigate the allegations that the named Defence investigator revealed protected information pertaining to Witnesses CNAL and CNAE, and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings, as soon as practicable, and in no case later than 3 March 2011;

**INSTRUCTS** the Registry to make available the previous report of Dr. Moussounga Itsouhou-Mbadinga, former *amicus curiae*, as well as this Decision, to the new *amicus curiae*, to assist in his/her investigations;

**INSTRUCTS** WVSS to provide any information it may have gathered regarding these allegations to the new *amicus curiae*; and

**DIRECTS** the Registry to instruct the *amicus curiae* that should he or she require any further instruction from the Chamber during the course of the investigation, the *amicus curiae* may request such instruction through the Registry.

Arusha, 19 November 2010, done in English.

Solomy Balungi Bossa  
Presiding Judge

Bakhtiyar Tuzmukhamedov  
Judge

Mparany Rajohnson  
Judge

[Seal of the Tribunal]