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ICTR-98-44D-T
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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: 2 December 2010

THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D-T

JUDICIAL DEPARTMENT
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**DECISION ON NZABONIMANA'S MOTION TO ADMIT EXHIBIT DNZ-461 INTO
EVIDENCE AND TO APPOINT AN *AMICUS CURIAE* TO INVESTIGATE
WITNESS CNAL'S FALSE TESTIMONY**

Pursuant to Rules 89(C) and 91(B) of the Rules of Procedure and Evidence ("RPE")

Office of the Prosecution:

Paul Ng'arua
Elvis Bazawule
Memory Maposa
Ndeye Marie Ka

Defence Counsel

Vincent Courcelle-Labrousse, Lead Counsel
Philippe Larochelle, Co-Counsel

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INTRODUCTION

Procedural History

1. On 13 February 2009, the Pre-Trial Chamber issued an Interim Order providing protective measures for Prosecution witnesses.¹
2. During his testimony on 2 December 2009, Witness CNAL alleged that a member of Callixte Nzabonimana's Defence team had disclosed his statement to Nzabonimana's family members and that, as a result, he felt threatened.²
3. On 2 December 2009, the Prosecutor filed a motion under Rule 77(C) of the Rules of Procedure and Evidence requesting the appointment of *Amicus Curiae* to investigate the allegations.³
4. On 15 December 2009 the Trial Chamber issued a Decision granting the Prosecution motion and directing the Registry to appoint *Amicus Curiae* to investigate the allegations made by Prosecution Witnesses CNAL and CNAE and to submit a report to the Trial Chamber no later than 29 March 2010.⁴
5. On 30 March 2010, the *Amicus Curiae* appointed by the Registry filed his Report.⁵
6. On 12 July 2010, the Trial Chamber issued a Decision requiring the Registry to disclose the *Amicus Curiae* Report to the parties. In that Order the Chamber directed the parties to make submissions on the report if any, by 23 July 2010.⁶
7. On 13 July 2010, the Registry disclosed the said *Amicus Curiae* Report to the parties.

¹ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR 98-44D-I, Interim Order in Protective Measures for Prosecution Witnesses, 13 February 2009.

² *Prosecutor v. Callixte Nzabonimana*, T. 2 December 2009, pages 19-21 (closed session).

³ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR 98-44D-T, Prosecutor's Urgent Motion for the Prohibition of Conduct Contrary to Rule 77(c) of the Rules of Procedure and Evidence, 2 December 2009.

⁴ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR 98-44D-T, Decision on the Prosecutor's Urgent Motion Alleging Contempt of the Tribunal, 15 December 2009.

⁵ *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.

⁶ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR 98-44D-T, Order to Disclose *Amicus Curiae* Report to the Parties, 12 July 2010.

8. On 23 July 2010 both the Prosecutor and Defence filed Submissions on the *Amicus Curiae* Report with respect to the complaints made by Witnesses CNAL and CNAE.
9. On 28 July 2010 the Prosecution responded to 23 July 2010 Defence submissions on the *Amicus Curiae* Report.⁷
10. On 2 August 2010, the Defence responded to the Prosecution's submissions on the *Amicus Curiae* Report.⁸
11. On 19 October 2010, the Defence filed the instant Motion, requesting firstly that the Chamber admit Exhibit DNZ-461 into evidence, and secondly, that the Chamber appoint *Amicus Curiae* to investigate alleged false testimony of Witness CNAL.⁹
12. On 25 October 2010, the Prosecution filed a response opposing the Defence Motion.¹⁰
13. On 29 October 2010, the Defence filed a Reply.¹¹
14. On 19 November 2010, the Trial Chamber issued a Decision concluding that it was "unable to rely on [*Amicus Curiae*'s] Report in making a determination whether to initiate contempt proceedings pursuant to Rule 77 (D)," and requesting that the Registrar appoint a new *Amicus Curiae* to investigate the allegations made by Prosecution Witnesses CNAL and CNAE.¹²

⁷ *Prosecutor v. Callixte Nzabonimana*, Case No. 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.

⁸ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR 98-44D-T, Nzabonimana's Response to the Prosecutor's Submissions on the *Amicus Curiae* Report Concerning Alleged Contempt of the Tribunal, 7 August 2010.

⁹ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR 98-44D-T, Nzabonimana's Motion to Admit Exhibit DNZ-461 into Evidence and to Appoint an *Amicus Curiae* to Investigate Witness CNAL's False Testimony, 19 October 2010 ("Motion").

¹⁰ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR 98-44D-T, 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, 25 October, 2010 ("Response").

¹¹ *Prosecutor v. Callixte Nzabonimana*, Case No. 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 ("Reply").

¹² *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR 98-44D-T, Decision on Report of *Amicus Curiae* on Investigations Related to the Disclosure of Prosecution Witnesses CNAL and CNAE statements, 19 November 2010, para. 30 and Disposition.

SUBMISSIONS OF THE PARTIES

Defence Motion

15. The Defence makes a twofold application in its present motion filed on 19 October 2010.¹³
16. In Part (A), the Defence seeks admission of Exhibit DNZ-461 into evidence under Rule 89(C). This Exhibit was produced in the *Karemera et al.* Trial with respect to Witness BTH, who was a prosecution witness in both *Karemera et al.* and *Bizimungu et al.* (in which he testified under the pseudonym GFA. He will hereafter be referred to as 'Witness BTH/GFA'). Exhibit DNZ-461 is a transcript of the DVD recording of a meeting held on 8 February 2008 with counsel for Mr. Bicamumpaka in *Bizimungu et al.*, in which Witness BTH/GFA recanted his testimony in relation to the accused persons in both cases. The basis of the recantation was that he had been pressured to testify against the accused persons by the Rwandan Government.¹⁴
17. The Defence seeks the admission of Exhibit DNZ-461 on the basis that it suggests that Prosecution Witness CNAL in the present case was similarly pressured by the Rwandan Government to fabricate his testimony. The Defence argues that Witness CNAL fabricated his testimony in relation to the French military presence at Mount Ndiza between April and June 1994 (relating to paragraph 54 of the Indictment). The Defence contends that this undermines Witness CNAL's general credibility, and casts doubt on the reliability of the testimony of the other Prosecution witnesses.¹⁵
18. In Part (B) of its application, the Defence seeks the appointment of *Amicus Curiae* under Rule 91(B) on the basis that there are "strong grounds for believing that Witness CNAL knowingly and wilfully gave false testimony" in the following:

- i. His three statements alleging that Defence Investigator Jean Claude Misano breached witness protection measures;

¹³ Motion, paras. 1 and 2.

¹⁴ Motion, Annex 8.

¹⁵ Motion, para. 1.

- ii. His testimony with respect to the French military presence at Ndiza; and
- iii. His testimony regarding the number of prior statements the witness provided to the Prosecution.¹⁶

19. The Defence refers to the *Report of Amicus Curiae on Investigations related to the Disclosure of Prosecution Witnesses CNAL and CNAE Statements* submitted to the Chamber on 30 March 2010 (“the *Amicus Curiae* report”). The Defence asserts that the *Amicus Curiae* Report confirms the fact that Witness CNAL lacks credibility insofar as it concludes that there were insufficient grounds to institute proceedings for contempt against the Defence Investigator, Mr. Misano, despite Witness CNAL’s allegation that Mr Misano had breached witness protection measures by revealing portions of his statement(s) to those associated with the Accused.¹⁷

Prosecution Response

20. The Prosecutor opposes the Defence request for the admission of DNZ-461 into evidence under Rule 89(C) on five discrete bases:¹⁸
- i. The Defence did not link the alleged fabrication of evidence by Witness CNAL with respect to the Ndiza battalion with the fabrication of evidence by witness BTH/GFA;
 - ii. The alleged procurement and inducement of Witness BTH/GFA’s evidence has not been conclusively determined in other proceedings, and thus cannot be given any “meaningful weight” in the current proceedings;
 - iii. The Prosecution would be prejudiced by the admission into evidence of Exhibit DNZ-461 as it would not have the opportunity to clarify statements made by Witness BTH/GFA contained therein, and therefore opposes its admission into evidence prior its verification pursuant to Rule 89(D);

¹⁶ Motion, para. 2.

¹⁷ Motion, para. 7.

¹⁸ Response, para. 9.

- iv. The Defence never raised the issue of the fabrication of evidence in relation to the Ndiza battalion despite having had the opportunity to do so during the cross-examination of Witness CNAL during 1-2 December 2009, and thus the Prosecution was denied the opportunity to clarify the issue with the witness during the course of his testimony; and
- v. The Defence has failed to satisfy the threshold contained in Rule 89(C) relating to the relevance and probative value of the evidence.

21. The Prosecutor also opposes the Defence application for appointment of *Amicus Curiae* under Rule 91(B), on four bases,¹⁹ namely:

- i. The Defence has failed to establish the existence of “strong grounds” that Witness CNAL wilfully or knowingly fabricated his testimony on Ndiza, or other matters;
- ii. The Defence are seeking to pre-empt the Chamber’s decision with respect to the *Amicus Curiae* Report relating to Witness CNAL’s allegation against Defence Investigator Misano by accepting its conclusions in a wholesale manner prior to the Chamber’s decision regarding the Report;
- iii. During his testimony, Witness CNAL asserted that he could not recall the exact number of prior statements he had made to investigators; and
- iv. Given that the Defence have failed to establish the existence of “strong grounds” that Witness CNAL fabricated his testimony in the current proceedings, there is no basis for appointment of *Amicus Curiae*.

Defence Reply

22. In relation to Part (A) of their application, the Defence assert that the arguments put forward by the Prosecutor in favour of excluding the Exhibit relate wholly to its

¹⁹ Response, para. 11.

weight, not its *admissibility*.²⁰ The Defence move that the question of weight is a matter for the Chamber to be addressed in its Final Judgment “in light of the totality of the case’s evidence.”²¹

23. The Defence also argues that the *Karemera* Chamber found Exhibit DNZ-461 sufficiently relevant to Mr. Nzabonimana’s case when the Defence sought unrestricted access to the Exhibit on 25 May 2010, and asserts this as an *indicium* of the Exhibit’s relevance to the present case for admissibility purposes.²²

24. The Defence addresses each of the Prosecutor’s five arguments opposing the admission into evidence of Exhibit DNZ-461 as follows:

- i. The Exhibit, “through logical inferences, tends to prove the proposition that CNAL was coerced ”;²³
- ii. The fact that the alleged procurement of Witness BTH/GFA has not been conclusively adjudicated by any *Amicus Curiae* of Trial Chamber should go to the *weight* of the evidence (to be assessed in the Final Judgment) and is irrelevant to its *admissibility*;²⁴
- iii. The Prosecution would suffer no prejudice by the admission into evidence of Exhibit DNZ-46 on two bases because it retains the ability to recall either Witness CNAL or Witness BTH/GFA and thereby examine Witness CNAL and Witness BTH/GFA on the contents of the Exhibit;²⁵
- iv. With respect to authenticity, there exist “sufficient indicia of reliability” insofar as it is an official ICTR transcription of an interview;²⁶ and
- v. The Defence was unable to raise the possible inducement of Witness CNAL to testify falsely during cross-examination on 1-2 December

²⁰ Reply, para.7.

²¹ Reply, para. 8.

²² Reply, para. 20.

²³ Reply, para.10 (emphasis in original).

²⁴ Reply, paras 21-22 (emphasis added).

²⁵ Reply, paras 23-25.

²⁶ Reply, para. 30.

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2009 because Witness CNAL never previously mentioned the presence of French troops in Nyakabanda in his statements, and as such, that portion of his evidence only emerged during cross-examination on 2 December 2009.²⁷

25. In relation to the Defence application for the appointment of *Amicus Curiae* to investigate Witness CNAL's alleged fabrication of testimony, the Defence refutes the Prosecutor's arguments in a threefold manner:

- i. The Defence argues that it has met the "strong grounds" threshold in asserting that Witness CNAL fabricated his testimony on the *primary* basis that the three written statements by Witness CNAL accusing Mr. Misano of contempt contain "six irreconcilable allegations",²⁸ and that Dr. Itsouhou-Mbadinga's Report suggests collusion between Witness CNAL and Minani. It reiterates Witness CNAL's (allegedly false) testimony regarding the Ndiza battalion and the number of statements he made;²⁹
- ii. The Defence denies that it is pre-empting a decision by the Chamber regarding the *Amicus Curiae* Report of Dr. Itsouhou-Mbadinga on allegations of contempt against Mr. Misano, "because the Defence was under the impression that there would not be such a decision" by the Chamber regarding the Report;³⁰ and

iii. The Defence emphasises that the issue of the number of statements made by Witness CNAL is merely a *subsidiary* finding that does not detract from the Defence's assertion of the existence of "strong grounds" on alternative bases that Witness CNAL falsely testified regarding his accusations of Jean-Claude Misano.³¹

²⁷ Reply, paras 31-32.

²⁸ Reply, para. 35.

²⁹ Reply, para. 39.

³⁰ Reply, para. 42.

³¹ Reply, paras 47-50.

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DELIBERATIONS

Applicable Law

26. Rule 89(C) provides that:

'A Chamber may admit any relevant evidence which it deems to have probative value.'

27. In *Karemera et al.* the Trial Chamber stated that in order to establish the probative value of the evidence, the moving party must show that the evidence goes to prove or disprove an issue.³² The Trial Chamber in *Nzabonimana* has affirmed this principle in previous decisions.³³

28. Rule 91 (B) on False Testimony under Solemn Declaration provides:

'If a Chamber has strong grounds for believing that a witness has knowingly and wilfully given false testimony, it may:

- (i) Direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony; or
- (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 proceedings for false testimony.'

29. The case of *Akayesu*³⁴ established that raising doubt about the reliability of a witness is not in itself sufficient to establish that the witness knowingly and wilfully

³² *The Prosecutor v Edouard Karemera, et al.* Case No. ICTR-98-44-T Decision on the Prosecution Motion for Admission into Evidence of Post-Arrest Interviews with Joseph Nzirorera and Mathieu Ndirumpatse, 2 November 2007, para. 4; *The Prosecutor v Edouard Karemera, et al.* Case No. ICTR-98-44-T Interim Order on the Prosecutor's Motion for Admission of Documents, 8 August 2007, para. 7.

³³ *Prosecutor v Callixte Nzabonimana*, Case No. ICTR 98-44D-T, Decision on the Prosecutor's Motion for the Admission of Margeurite Mukansanga and Alfred Kwende's Affidavits Pertaining to the Testimony of Jean Vianney Mporanzi, 16 September 2010 para. 16; *Prosecutor v Callixte Nzabonimana*, Case No. ICTR 98-44D-T, Decision on the Defence Motion for the Admission of Documentary Evidence, 7 May 2010 para. 9.

³⁴ *The Prosecutor v Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Decision on the Defence Motions to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness "R", 9 March 1998.

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gave false testimony. In *Karemera et al.*,³⁵ the Trial Chamber held that ‘...in determining whether strong grounds exist, a Chamber must examine, on a case-by-case basis, and given the particular circumstance of each case, whether evidence exists of intent to commit the offences.’

The admission of Exhibit DNZ-461 under Rule 89(C)

30. This Chamber notes that the *Amicus Curiae* ordered to investigate the allegations of false testimony of Witness BTH/GFA in the *Karemera* and *Bizimungu* proceedings concluded that it was beyond reasonable doubt that Witness BTH/GFA, a detainee in Ruhengeri Prison, had given false testimony.³⁶ However, the Chamber does not accept the Defence inference that Witness CNAL was similarly induced by virtue of his status as a Prosecution witness similarly imprisoned is a logical one.

31. The Defence's second argument is based on Witness BTH/GFA's claim that Prosecution witnesses fabricated testimony regarding the presence of French troops in Rwanda during the genocide, and that consequently, it can be 'infer[ed] through logic that there is a probability that CNAL's mention of the French, too, was elicited through coercion.'³⁷ The Chamber dismisses this argument for the same reason outlined above – that it is highly speculative and fails to establish a sufficient nexus between the contents of Exhibit DNZ-461 and the facts at issue in the present case.

32. The Chamber further notes the broader context in which Witness BTH/GFA recanted his testimony. It is problematic that, subsequent to the meeting recorded within Exhibit DNZ-461 in which Witness BTH/GFA stated that he had given false testimony in *Karemera at al.* and *Bizimungu et. al.*, Witness BTH/GFA refused to confirm this assertion under oath before the *Bizimungu et al.* Chamber.³⁸ It is

³⁵ *Prosecutor v Karemera et al.*, Case No. ICTR-98-44-T, Decision on Nzirorera's Motions to Appoint an *Amicus Curiae* to Investigate GAP for False Testimony and to Appoint an *Amicus Curiae* to Investigate Prosecution Witness BDW for False Testimony, 6 April 2010 para.4.

³⁶ *The Prosecutor v Edouard Karemera, et.al.* Case No. ICTR-98-44-T, Final Report of *Amicus Curiae* of the Investigations into the False Testimony of Prosecution Witness BTH/GFA in *The Prosecutor v Karemera, et.al.* and *the Prosecutor v. Casimir Bizimungu et al.*, filed confidentially on 17 April 2009.

³⁷ Reply, para.12.

³⁸ *Bizimungu et al.*, T. 5 May 2008, p.54, ln.9, requesting GFA to swear an oath; T. 5 May 2008, p.58, ln.3-4, GFA refuses to swear an oath, T. 30 April 2008, p.21, ln.28, requesting GFA to swear an oath; T.29 April 2008, pp.59-60, GFA requests time to decide if he will testify, the Chamber grants that request.

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further noted with concern that Witness BTH/GFA failed to testify in accordance with the subpoena subsequently issued in relation to this case, as well as absconding from Rule 91 proceedings stemming from the recommendations of the Final Report of *Amicus Curiae* appointed to investigate his false testimony. Finally, it is noted with concern that the said Report did not indicate on which particular occasion that Witness had given false testimony (whether in his original or recanted testimony).³⁹

33. Given this complex history, this Chamber considers that there can be no reliable nexus between the contents of Exhibit DNZ-461 and the facts at issue in the present case. The Chamber, however, rejects the Prosecution argument that the authenticity of Exhibit DNZ-461 is required to be 'verified 'under Rule 89(D)' prior to its admission into evidence.⁴⁰ The Chamber further rejects the notion that the failure of the Defence to raise the issue of inducement during the cross-examination of Witness CNAL demonstrates a lack of due diligence on behalf of the Defence that thwarted the Prosecution's ability to rebut this allegation.⁴¹

34. Nonetheless, the Trial Chamber is of the opinion that, in the present circumstances, the Defence has failed to establish that Exhibit DNZ-461 has any relevance or probative value for the purposes of admission into evidence under Rule 89(C).

Appointment of Amicus Curiae under Rule 91(B)

Summary of arguments on this issue

35. This Chamber rejects the three arguments advanced by Defence to support the appointment of *Amicus Curiae* in relation to Witness CNAL, namely that:

- Witness CNAL fabricated allegations against Defence investigator Mr. Jean-Claude Misano;
- Witness CNAL lied regarding the presence of French troops at Mount Ndiza; and

³⁹ *Prosecutor v. Karemera et al.*, Case No ICTR-98-44-T, Final Report of *Amicus Curiae* of the Investigations into the False Testimony of Prosecution Witness BTH/GFA in *Prosecutor v. Karemera et al.* and the *Prosecutor v. Casimir Bizimungu et al.*, filed confidentially on 17 April 2009, para.119.

⁴⁰ Response, paras 92-98.

⁴¹ Response, paras 89-91.

- Witness CNAL lied regarding the number of statements provided to the Office of the Prosecution.

These arguments are rejected on the basis that they fail to demonstrate that Witness CNAL “knowingly and wilfully gave false testimony” as required by Rule 91(B). Rather, the Defence refers primarily to ‘instances in the testimony which give rise to possible contradictions.’⁴²

36. The Trial Chamber considers that the Defence arguments regarding contradictions or inconsistencies in relation to Witness CNAL relate only to the issue of the *credibility* of Witness CNAL rather than to demonstrate the existence of strong grounds for believing that he may have given false testimony. The Trial Chamber’s ruling in *Akayesu* must prevail, insofar as:

‘...[R]aising doubts about the reliability of statements made by witness is not in itself sufficient to establish that this witness knowingly and wilfully gave false testimony; the Tribunal moreover is of the opinion that, in the context of the ongoing trials before the Tribunal, inaccuracies and other contradictions could eventually be raised during the overall evaluation of credibility upon the final determination of the probative value of the evidence presented at trial’.⁴³

37. In a similar vein, the Chamber considers that the Defence arguments regarding Witness CNAL relate to the issue of credibility rather than false testimony, and are thus both misplaced and premature. The credibility of Witness CNAL is of course, an issue that should be properly considered at the conclusion of the trial within the totality of the evidence, rather than at this early stage of proceedings. This Chamber will address the three Defence arguments in this light.

Arguments relating to appointment of Amicus Curiae

38. The ‘primary’ argument advanced by the Defence in establishing a violation of Rule 91 was that Witness CNAL fabricated allegations against Defence investigator Mr. Jean-Claude Misano, that argument being based on the findings of the *Amicus Curiae* Report of 30 March 2010 which concluded that there were insufficient

⁴² *The Prosecutor v Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Decision on the Defence Motions to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness “R”, 9 March 1998.

⁴³ *Ibid.*

grounds to institute proceedings for contempt against the Defence Investigator, Mr. Misano.⁴⁴

39. However, on 19 November 2010, the Trial Chamber issued a Decision concluding that it was “unable to rely on [*Amicus Curiae*'s] Report in making a determination whether to initiate contempt proceedings pursuant to Rule 77 (D),” and requesting that the Registrar appoint a new *Amicus Curiae* to investigate the allegations made by Prosecution Witnesses CNAL and CNAE. Therefore, the Report cannot be relied upon by Defence to advance arguments that Witness CNAL knowingly and wilfully gave false testimony given that its findings have been rejected by this Chamber in their entirety and have not been admitted into evidence under Rule 89(C).
40. The Chamber notes further, that, even if it had adopted the conclusions of the Report, the fact that *Amicus Curiae* found no evidence of misconduct by the Defence investigator does not establish a correlative basis for arguing that Witness CNAL issued false testimony under oath. As per *Karemera et al.*,⁴⁵ the Defence would still need to adduce evidence pointing to Witness CNAL's intent to *knowingly and wilfully mislead or deceive* the Chamber.
41. The second argument put forward by Defence to support the argument that Witness CNAL fabricated his testimony is that he lied regarding the presence of French troops at Mount Ndiza.⁴⁶ The Trial Chamber recalls the contents of the *Note Verbale* relating to this matter⁴⁷ and considers that there cannot exist a correlative allegation that Witness CNAL lied about the presence of French troops merely because the French Government has failed to produce documentary evidence attesting to their presence. The Chamber therefore considers this to be another issue relating to the credibility of Witness CNAL rather than demonstrating strong grounds for believing he may have given false testimony.

⁴⁴ Motion, para. 7.

⁴⁵ *Prosecutor v Karemera et al.*, Case No. ICTR-98-44-T, Decision on Nzirorera's Motions to Appoint an *Amicus Curiae* to Investigate GAP for False Testimony and to Appoint an *Amicus Curiae* to Investigate Prosecution Witness BDW for False Testimony, 6 April 2010 para.4.

⁴⁶ Motion, para. 46.

⁴⁷ *Note Verbale* from the French Embassy to the Registry received on 11 March 2010, cited in *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Urgent Third Motion of Callixte Nzabonimana Requesting an Order Directed at France, 4 June 2010, paras 7-8.

42. In relation to the third argument put forward by Defence regarding Witness CNAL's alleged misinformation related to the number of statements provided to the Office of the Prosecution, the Trial Chamber observes that this, too, calls for the assessment of the credibility of Witness CNAL, which as noted above is preemptive at this stage of proceedings.
43. This Chamber again notes the requirement under Rule 91(B) that a witness is required to 'knowingly and willingly' make false testimony in order to initiate an investigation into said testimony. The Chamber in *Karemera et al.* held that '*...contradictions between witnesses' testimony do not, standing alone, demonstrate that a witness intended to mislead the Chamber and to cause harm.*'⁴⁸ Therefore, in the absence of credible arguments indicating bad faith on the part of Witness CNAL in relation to the number of statements made, the Chamber considers this to be an issue to be considered at the conclusion of the trial in light of the evidence as a whole.
44. In light of these considerations, this Chamber finds that the Defence has failed to establish the existence of "strong grounds" that Witness CNAL wilfully or knowingly fabricated his testimony on the Ndiza battalion, or other matters, and therefore declines to appoint *Amicus Curiae* under Rule 91(B).

⁴⁸ *Prosecutor v Karemera et al.*, Case No. ICTR-98-44-T, Decision on Nzirorera's Motions to Appoint an *Amicus Curiae* to Investigate GAP for False Testimony and to Appoint an *Amicus Curiae* to Investigate Prosecution Witness BDW for False Testimony, 6 April 2010 para.4.

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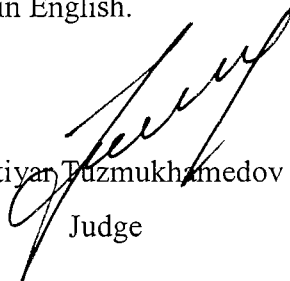
FOR THESE REASONS, THE TRIAL CHAMBER:

DENIES the Motion in its entirety.

Arusha, 2 December 2010, done in English.



Solom / Balungi Bossa
Presiding Judge



Bakhtiyar Tuzmukhamedov
Judge



Mparany Rajohnson
Judge

[Seal of the Tribunal]

