



UNITED NATIONS
NATIONS UNIES

ICTR-98-44D-T
13-05-2011
(7651-7648)

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AM

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 13 May 2011

THE PROSECUTOR

v.

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

JUDICIAL RECORDS ARCHIVE

2011 MAY 13 11:12

**ORDER TO DISCLOSE *AMICUS CURIAE* REPORT WITH RESPECT TO
ALLEGATIONS MADE BY WITNESSES CNAL AND CNAE TO THE PARTIES AND
REQUEST FOR SUBMISSIONS**

Office of the Prosecutor
Paul Ng'arua
Memory Maposa
Simba Mawere
Mary Diana Karanja

Defence Counsel
Vincent Courcelle-Labrousse
Philippe Larochelle

INTRODUCTION

1. On 13 February 2009, the Pre-Trial Chamber ordered a series of protective measures for Prosecution witnesses.¹
2. On 15 December 2009, the Trial Chamber issued a decision directing the Registry to appoint an *amicus curiae* to investigate allegations that Defence investigator Jean-Claude Misano ("Misano") disclosed protected information pertaining to Prosecution witnesses CNAL and CNAE, and to provide a report to the Trial Chamber by 29 March 2010 ("Report").²
3. On 30 March 2010, the *amicus curiae* appointed by the Registry filed his Report.³
4. 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 they may have regarding the Report.⁴
5. The Prosecution filed initial submissions regarding the Report on 23 July⁵ and 28 July 2010.⁶ The Defence filed its initial submissions on 23 July⁷ and 2 August 2010.⁸ On 15 November

¹ *Prosecutor v. Nzabonimana*, ICTR-98-44D-I, Interim Order on Protective Measures for Prosecution Witnesses, 13 February 2009.

² *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on the Prosecution's Urgent Motion Alleging Contempt of the Tribunal, 15 December 2009.

³ *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.

⁴ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Order to Disclose Amicus Curiae Report to the Parties, 12 July 2010.

⁵ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor's Submissions on the Amicus Curiae Report Concerning Alleged Contempt of Tribunal, 23 July 2010 ("Prosecution 23 July Submissions").

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 ("Prosecution 28 July Submissions").

⁷ *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 23 July Submissions").

⁸ *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 2 August Submissions").

- 2010, at the behest of the Trial Chamber,⁹ the Prosecution¹⁰ and Defence¹¹ filed supplemental submissions regarding the Report.
6. On 19 November 2010, the Trial Chamber issued a decision rejecting the Report and directing the Registry to appoint a new *amicus curiae* ("19 November Decision"), tasked with conducting another investigation into the allegations against Misano and preparing a report containing his or her conclusions as to such allegations ("Second Report"). The Chamber ordered the new *amicus curiae* to file the Second Report by 3 March 2011.¹²
 7. On 20 January 2011, the Prosecution filed a motion seeking an expansion of the mandate of the new *amicus curiae* to encompass other members of the Defence team ("Motion").¹³
 8. In a Decision dated 10 February 2011, the Trial Chamber granted the Prosecution Motion in part and extended the deadline for submission of the Second Report until 4 April 2011.¹⁴
 9. On 25 February 2011, the Defence filed a Confidential Notice of Appeal against the Trial Chamber's 10 February 2011 Decision.¹⁵
 10. The Chamber received the Second Report on 1 April 2011.¹⁶ It then sought the assistance of Language Services to have the report translated into English.

⁹ *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.

¹⁰ *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.

¹¹ *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.

¹² *Prosecutor v. Nzabonimana*, 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.

¹³ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor's Motion for Prohibition of Conduct Contrary [sic] to Rule 77 (A) (ii) of the Rules of Procedure and Evidence, 20 January 2011.

¹⁴ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on Prosecutor's Motion for Prohibition of Conduct Contrary to Rule 77 (A) (II) of the Rules of Procedure and Evidence, 10 February 2011.

¹⁵ Notice of Appeal on the Decision on the Prosecutor's Motion for Prohibition of Conduct Contrary to Rule 77 (A) (II) of the Rules of Procedure and Evidence (RPE), Dated 10 February 2011, confidential, 25 February 2011 ("Notice of Appeal").

¹⁶ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Rapport Menée sur la Divulgation D'Informations Protégées des témoins CNAL et CNAI, report is dated 24 March 2011, and CMS stamp is unclear with respect to filing date.

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11. On 11 May 2011, the Appeals Chamber issued a Decision in which it held that "...the Impugned Decision is not subject to Appeal as of right" and dismissed the Defence Motion.¹⁷

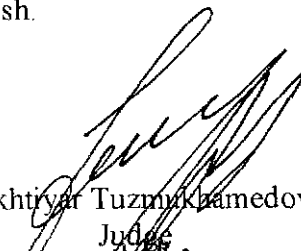
12. Having now received both the relevant translation and the Appeals Chamber Decision, the Trial Chamber wishes to disclose the *amicus report* to the parties, and ask for their submissions thereon before deciding whether to accept it.


FOR THESE REASONS, THE TRIAL CHAMBER

- I. **DIRECTS** the Registry to disclose the above mentioned *amicus curiae* Report to the parties as soon as practicable;
- II. **DIRECTS** the parties to file any submissions they may have on the *amicus curiae* report by 25 May 2011;
- III. **INSTRUCTS** that neither party shall respond or reply to submissions made by the opposing party in this matter.

Arusha, 13 May 2011, done in English.


Solomy Balungi Bossa
Presiding Judge


Bakhtiyar Tuzmukhamedov
Judge


Mparany Rajohnson
Judge



¹⁷ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-AR77, Decision on Callixte Nzabonimana's Interlocutory Appeal of the Trial Chamber's Decision of 10 February 2011, 11 May 2011.