

**4UNITED
NATIONS**

International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-18-116-AR90.1

Date: 24 March 2025

Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Graciela Gatti Santana, Presiding
Judge Prisca Matimba Nyambe
Judge Claudia Hofer

Registrar: Mr. Abubacarr Tambadou

PROSECUTOR

v.

**ANSELME NZABONIMPA
JEAN DE DIEU NDAGIJIMANA
MARIE ROSE FATUMA
DICK PRUDENCE MUNYESHULI
AUGUSTIN NGIRABATWARE**

PUBLIC

**RESPONSE TO THE “ADC-ICT REQUEST FOR LEAVE TO APPEAR
AS *AMICUS CURIAE*” DATED 17-MARCH-2025**

Amicus Curiae

Mr. Kenneth Scott

Mr. Peter Robinson

The *Amicus Curiae* (“*Amicus*”) respectfully files this response to the “ADC-ICT Request for Leave to Appear as *Amicus Curiae*” dated 17-March-2025.

1. On 25-February-2025, Judge de Prada Solaesa, in his capacity as Single Judge in the investigation concerning allegations of contempt against Peter Robinson (“Single Judge” and “Robinson,” respectively), issued his *Decision on Allegations of Contempt* (“Decision”) and *Decision issuing Order in Lieu of Indictment* (“Indictment”), initiating contempt proceedings against Robinson.¹

2. Robinson filed his “Appeal of Decision on Allegations of Contempt” on 3-March-2025 (“Appeal”), asking that the Appeals Chamber vacate the Decision and “exercise its discretion [-- as if in a first instance proceeding --] not to initiate contempt proceedings, or remand the matter to the Single Judge for a proper consideration of the special role that defence counsel play at the Mechanism and in the international criminal justice system.”²

3. On 17-March-2025, the Association of Defence Counsel practising before the International Courts and Tribunals (“ADC-ICT”) filed its “ADC-ICT Request for Leave to Appear as *Amicus Curiae*” (“Request”).³ The ADC-ICT requests to submit observations on “the necessity of utilising the Mechanism’s comprehensive disciplinary framework to fairly regulate the conduct of Defence counsel.” The ADC-ICT also wants to make submissions on its role and experience “as an integral component of the disciplinary framework before the Mechanism.”⁴

4. “[T]he primary criterion for the Appeals Chamber in determining whether to grant leave to an *amicus curiae* to submit a brief is whether such submission would assist the Appeals

¹ *Prosecutor v. Nzabonimpa et al.* (hereinafter “*Nzabonimpa*”), MICT-18-116-R90.1, Decision on Allegations of Contempt, 25-February-2025; *In the Matter of Peter Robinson*, MICT-25-135-I, Decision Issuing Order in Lieu of Indictment, 25-February-2025.

² *Nzabonimpa et al.*, MICT-18-116-AR90.1, Appeal of Decision on Allegations of Contempt, 3-March-2025, para.3.

³ *Nzabonimpa*, MICT-18-116-AR90.1, ADC-ICT Request for Leave to Appear as *Amicus Curiae*, 17-March-2025.

⁴ Request, para.2.

Chamber in its consideration of the questions at issue on appeal".⁵ A request to appear must not simply address abstractions and policies, but the specific facts and circumstances of the particular case.

5. The ADC-ICT observations would not assist the Appeals Chamber, as there is plainly no "necessity" or requirement that the Mechanism only proceed through the Mechanism's disciplinary framework, as contended by the ADC-ICT, and the utility of the Mechanism's disciplinary framework is not in question or at issue here. The Mechanism's disciplinary framework was not disregarded or overlooked in any way by the Single Judge or *Amicus*' investigation. In fact, to the contrary, the Single Judge repeatedly recognized, in many instances, a possible role for disciplinary proceedings.

6. The Code of Conduct for Defence Counsel is clear, stating at Article 32: "This Part [of the Code, titled "Disciplinary Regime"] shall not affect the inherent powers of the Mechanism to deal with conduct which interferes with the administration of justice under the Statute, the Rules, or any other applicable law." (Emphasis added)

7. Judge Vagn Joensen in *Nzabonimpa et al.*,⁶ Judge Agius, the Mechanism's President at the time,⁷ and Judge de Prada Solaesa,⁸ each determined, acting individually, that Robinson's acts and conduct should be investigated with a view to determine whether Robinson should be subject to contempt proceedings and/or disciplinary action. In his Decision on Allegations of Contempt, which is the subject of Robinson's Appeal, Judge de Prada Solaesa repeated the nature of his assignment:

⁵ See *Prosecutor v. Šainović et al.*, Decision on David J. Scheffer's Application to File an *Amicus Curiae* Brief, 7-September-2010, p.2 (emphasis added).

⁶ *Nzabonimpa*, MICT-18-116-T, Order Referring a Matter to the President, 20-September-2021, p.3.

⁷ *Nzabonimpa*, MICT-18-116-R90.1, Order Assigning a Single Judge to Consider a Matter Pursuant to Rule 90(C), 8-October-2021, p.1.

⁸ *Nzabonimpa*, MICT-18-116-R90.1, Order Directing the Registrar to Appoint an *Amicus Curiae* to Investigate Pursuant to Rule 90(C)(ii), 25-October-2021, p.3.

In view of my assignment to assess whether proceedings under Rule 90 of the Rules or other appropriate disciplinary action against Robinson are warranted, this Decision -- finding that a *prima facie* case for contempt exists regarding Robinson's conduct in relation to Violations 1, 3, 4, 6-9, 32, and 33 and exercising my discretion to initiate contempt proceedings against Robinson for these violations -- brings this stage of the contempt process to a close.⁹

8. Judge de Prada Solaesa clearly considered whether disciplinary proceedings were appropriate. Indeed, he found that four of the 34 violations of an order and/or the Code of Conduct of Defence Counsel identified by *Amicus*¹⁰ expressly warrant disciplinary proceedings rather than contempt proceedings -- deferring, however, whether to actually initiate such disciplinary proceedings until the completion of the contempt proceedings, “for the efficient use of judicial resources”.¹¹

9. Any determination as to whether, in fact, certain acts and conduct by Robinson should be the subject of disciplinary, rather than contempt proceedings, squarely fell within the Single Judge’s discretion, and are not the mandate of an *amicus* observer or the ADC-ICT. Indeed, in the *Kamuhanda* case, cited by the ADC-ICT, Judge Vagn Joensen, citing relevant practice directions, determined not to receive *amicus* observations by the associations of Defence counsels at the ICTR and ICTY, on issues “linked to facts particular to Kamuhanda's case.”¹²

10. In the *Prlić* case, also referenced in the Request, the Disciplinary Council of the ADC (the former version of the ADC-ICT),¹³ mandated by the ADC Executive Committee to file observations, stated:

⁹ Decision, para.38.

¹⁰ See Decision, para.13: “the *Amicus Curiae* submits that Robinson committed 34 violations constituting contempt or a violation of the Code of Conduct, during his representation of Ngirabatware in the *Ngirabatware* Review Case.”

¹¹ Decision, para.37. See also para.32.

¹² *The Prosecutor v. Jean de Dieu Kamuhanda*, MICT-13-33, Decision on ADAD-ICTR and ADC-ICTY Motions for Leave to Submit *Amicus Curiae* Observations and Decision on Application for Leave to Reply, 13-August-2015, para.11 (emphasis added).

¹³ Request, para.5.

The [Disciplinary Council of the ADC (“DC”)] does not have jurisdiction to offer an Advisory Opinion on whether or not certain conduct may or may not constitute contempt of the Tribunal. None of the instruments relevant to its role and functioning provide for any authority or competence as regards contempt. (...)

In light of the above, the DC cannot offer an advisory opinion as to whether certain conduct may constitute contempt as such an opinion may improperly usurp the fact finding function of other organs of the Tribunal, and would not be based on the kind of investigation required by and contemplated under Rule 77(C) [regarding interference with the administration of justice] and the Practice Direction. Expressing any views as regards this matter could also have the effect of prejudicing the DC’s jurisdiction as defined under the above-mentioned instruments, should the matter ever be brought before the DC.¹⁴

11. Despite (and plainly contrary to the above), the ADC-ICT suggests that it was requested in *Prlić*, and that it is now seeking to file observations in this case, on the “characterisation of conduct undertaken by Defence counsel”:

[I]n *Prosecutor v Prlić et al.*, the ADC-ICT intervened on the issue of whether the conduct of counsel constituted contempt of court, a violation of the Rules of Procedure and Evidence or misconduct. Notably, in that instance, it was ICTY Trial Chamber III which had requested the ADC-ICT to provide an advisory opinion on similar issues—specifically, the characterisation of conduct undertaken by Defence counsel—which now arise in Mr. Robinson’s appeal.¹⁵

12. The ADC-ICT says that its observations would support Mr. Robinson’s submission “that the Single Judge erred [i.e., in fact] by failing to consider the ‘well-established alternative of referring [Mr. Robinson’s] conduct to the Mechanism’s own Disciplinary Panel’”.¹⁶ Again, it is abundantly clear that the Single Judge did not fail to consider the “alternative” of disciplinary proceedings.

13. The ADC-ICT seeks to support Robinson’s Appeal, whose only ground of appeal is that the Single Judge “abused his discretion by failing to consider the role and obligations of

¹⁴ *The Prosecutor v. Prlić et al.*, IT-04-74-T, Advisory Opinion of *Amicus Curiae* Disciplinary Council of the Association of Defence Counsel of the ICTY, 13-August-2009. paras.21, 23 (emphasis added). See also para.10: “the making of any factual findings, as may be necessary in the present matter, is not within the jurisdiction of the DC and is the responsibility of the Trial Chamber.” [*Prlić* Advisory Opinion] (emphasis added).

¹⁵ Request, para.9.

¹⁶ Request, para.3.

defence counsel to interpret court orders and to act in the best interest of their clients and other mitigating factors.”¹⁷ However, the ADC-ICTY’s own observations in the *Kamuhanda* case, in which the same Robinson was the Defence counsel in relation to the review of Kamuhanda’s convictions, in fact show that the Single Judge in the present case did not abuse his discretion:

[T]he ADC-ICTY submits that the WISP is the neutral interlocutor which can establish if a protected witness consents to be contacted by the opposing party in the proceedings. The ADC-ICTY agrees with Kamuhanda's [represented by Robinson] assertion that "[t]he fact that contact with a witness is made by a neutral organ such as the VWS [i.e. the Victims and Witnesses Section, corresponding to the Mechanism’s WISP] removes any influence or appearance of influence on the witness that exists when one party conveys the request for interview by the other party" (...) To avoid any such possibility of influence, then, would significantly advance the fairness of the proceedings while, at the same time, promote limited and appropriately conducted contacts with those witnesses the Mechanism maintains a duty to protect.¹⁸

14. In the *Ngirabatware* Review case, the Appeals Chamber did just what the ADC-ICTY advised, by ordering on 5-August-2016 at Robinson’s own request that the WISP be the "neutral interlocutor" in determining the consent of protected witnesses to be contacted.¹⁹ In fact, the Single Judge in the *Decision on Allegations of Contempt* found *prima facie* evidence that on at least two occasions -- one just four days after the 5-August-2016 Order, Robinson did indeed, like the ADC-ICTY said in *Kamuhanda*, “convey the request for interview by the other party”:

I consider that the evidence of Robinson's explicit instructions to the Defence investigator to inform certain individuals, who were in contact with the protected ICTR Prosecution witnesses, that the WISP would contact them in relation to the *Ngirabatware* Review Case, and that the information Robinson provided to the investigator was subsequently shared with protected ICTR Prosecution witnesses, gives rise to a *prima facie* case for contempt under Rule 90(A) of the Rules. This finding is in view of the Protective Measures Decision of 5 August 2016, which was the result of Robinson's motion for the variation of protective measures, that required him to notify the WISP and the Prosecution if he wished to contact these protected witnesses. The evidence, if proven, appears to show that Robinson circumvented this judicial order by communicating with individuals, whom Robinson was well aware were in communication with the protected witnesses, to contact the witnesses

¹⁷ Appeal, para.83.

¹⁸ *Prlić* Advisory Opinion, para.16.

¹⁹ Decision, paras.14, 20 & fn.48.

on his behalf in order to relay certain information that may otherwise not reach the witnesses.²⁰

15. The present case is not one where the Single Judge failed to consider a counsel's duty to defend his client or the availability of disciplinary proceedings. As further demonstrated in *Amicus'* Response to Robinson's Appeal (which Robinson did not have jurisdiction to make in the first place), the Single Judge clearly considered whether to initiate disciplinary proceedings, took into consideration the Code of Conduct for Defence Counsel and Robinson's status and role as Defence Counsel, and there is no special interpretation that a Defence counsel must have that can excuse Robinson's acts and conduct as charged.


16. The ADC-ICT suggested observations, as already set out in other cases and again here, cannot assist the Appeals Chamber concerning the exercise of discretion and the factual appropriateness of the contempt charges brought by the Single Judge on the particular record in this case. There is no requirement that the Mechanism proceed by disciplinary proceedings, the Single Judge plainly considered the alternative of disciplinary proceedings and there was no abuse of discretion.

RELIEF SOUGHT

WHEREFORE, *Amicus* respectfully requests that the Appeals Chamber deny the Request.

Word count: 2013 words

Respectfully submitted this 24-March-2025.



Kenneth Scott
Amicus Curiae

²⁰ Decision, para.20, Indictment, paras.12-13 (emphasis added).



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