

**UNITED
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 “ICCBA REQUEST FOR LEAVE TO APPEAR
AS *AMICUS CURIAE*” DATED 20-MARCH-2025**

Amicus Curiae

Mr. Kenneth Scott

Mr. Peter Robinson

The *Amicus Curiae* (“*Amicus*”) respectfully files this response to the “ICCBA Request for Leave to Appear as *Amicus Curiae*” dated 20-March-2025.

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

2. On 3-March-2025, Robinson filed his “Appeal of Decision on Allegations of Contempt”, 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.” (“Appeal”)²

3. On 20-March-2025, the International Criminal Court Bar Association (“ICCBA”) filed the “ICCBA Request for Leave to Appear as *Amicus Curiae*” (“Request”).³

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 Chamber in its consideration of the questions at issue on appeal”.⁴

5. The Request states that the ICCBA “intends to support Mr. Robinson’s submission that the Single Judge erred by failing to give consideration to the role and responsibilities of

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 *Prosecutor v. 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, ICCBA Request for Leave to Appear as *Amicus Curiae*, 20-March-2025.

⁴ *Prosecutor v. Šainović et al.*, IT-05-87-A, Decision on David J. Scheffer’s Application to File an *Amicus Curiae* Brief, 7-September-2010, p.2.

Defence counsel towards their client when interpreting judicial orders.”⁵ In that regard, the ICCBA submits that the Defence Code of Conduct is the “*lex specialis* in matters pertaining to Defence counsel’s ethical obligations”, and adds:

The Code of Conduct was adopted specifically to address the issue of Defence Counsel’s ethical obligations and duties towards their clients, the Mechanism and other stakeholders. It also provides for mechanisms in case of alleged breaches of Counsel’s obligations under the Code. As such, it is the *lex specialis* through which the acts and omissions of Counsel must be viewed and interpreted.⁶

6. Statements that the Code of Conduct is “*lex specialis*” concerning the conduct of defence counsel, to the exclusion of, or taking precedence over the Mechanism’s statute and rules, are plainly wrong. The Code of Conduct, at Article 16, states: “Counsel and other Defence Team members shall at all times comply with the Statute, the Rules, this Code or any other applicable law, including such rulings as to conduct and procedure as may be issued by the Mechanism in its proceedings.” (Emphasis added.) Also, as stated below, the Code’s Article 32 provides that nothing in the Code’s section on Disciplinary Regime, shall affect “the inherent powers of the Mechanism to deal with conduct which interferes with the administration of justice”. “In the event of any inconsistency between this Code and the Statute, the Rules, and/or the Directive, the terms and provisions of the Statute, the Rules, and/or the Directive, respectively, shall prevail.”⁷

7. Having said this, in the *Decision on Allegations of Contempt*, as outlined in *Amicus’* Response to the Appeal, the Single Judge clearly took into consideration the Code of Conduct, citing its content at various places throughout the Decision.⁸ The Single Judge also considered whether disciplinary proceedings under the Code of Conduct should be initiated, which was part of his assignment to start with.⁹ Indeed, he found that four of the 34 violations of the

⁵ Request, para.9.

⁶ Request, para.10.

⁷ Art.1(B).

⁸ See, e.g. paragraphs 34 and 45 of the Response to the “Appeal of Decision on Allegations of Contempt” dated 3-March-2025, *Prosecutor v. Nzabonimpa et al.*, MICT-18-116-AR90.1, 11-March-2025 (“Response”).

⁹ Response, paras.44-45. See also *Nzabonimpa*, MICT-18-116-T, Order Referring a Matter to the President, 20-September-2021, p.3; *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; *Nzabonimpa*, MICT-18-116-R90.1, Order

Mechanism's obstruction of justice rule and/or the Code of Conduct of Defence Counsel identified by *Amicus*¹⁰ warrant, given a consideration of various factors, disciplinary proceedings rather than a contempt charge and trial, deferring, however, whether to actually initiate such disciplinary proceedings until the completion of the contempt proceedings “for the efficient use of judicial resources”.¹¹ The ICCBA cannot assist the Appeals Chamber in relation to the Code of Conduct and the availability of disciplinary mechanisms -- which are plainly not binding alternatives on the Mechanism, since it is already abundantly clear that the Single Judge took these matters into consideration.

8. Let's be clear: *Amicus* respectfully submits that, by *prima facie* evidence, it established 34 instances of Robinson's very serious, knowing and intentional interference with the administration of justice. It is not for the ICCBA, with no knowledge of the investigation, the facts or the underlying evidence, to substitute its factual judgement for that of the Single Judge.

9. Whether or not *Amicus* or the ICCBA agree, it was within the Single Judge's discretion to determine whether contempt or disciplinary proceedings should be initiated, based on Robinson's acts and conduct. There is nothing in the Code of Conduct that says that disciplinary proceedings pursuant to the Code are the only appropriate way to deal with such violations. Again, and quite to the contrary, the Code, at article 32, states: “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.)¹²

Directing the Registrar to Appoint an *Amicus Curiae* to Investigate Pursuant to Rule 90(C)(ii), 25-October-2021, p.3.

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 ICCBA position would essentially create a dual system for dealing with interference with the administration of justice -- a special one, whereby Defence counsel would only be subject to disciplinary proceedings, and one for non-Defence counsel or regular persons, subject to contempt. There is no basis for such a distinction.

10. Any ICCBA observation as to whether, in fact (and based on the *prima facie* evidence), the Single Judge should have initiated disciplinary proceedings for one or more of the 34 violations rather than contempt proceedings, are, at the end of the day, wholly artificial and without merit. Such observations would require a detailed knowledge and extensive appreciation of the facts, submissions and evidence of the case -- which the ICCBA clearly does not have (they have no access to the records in the closely-related cases, specifically including the contempt case, or the facts found by *Amicus'* investigation).¹³

11. The ICCBA incorrectly states that the present case “significantly differs from the *Bemba et al.* case before the International Criminal Court, in which Defence counsel was accused of giving *specific instructions* violating Court orders, rather than simply erring in balancing competing interests.”¹⁴ By the *prima facie* evidence and on the face of his investigator Munyehsuli's conviction, Robinson did instruct various agents to have contact with protected witnesses. The Single Judge found that the *prima facie* evidence established that Robinson gave such instructions, rather than making “simple errors of balancing competing interests,” contrary to the ICCBA's statements. As the ICCBA presumably has no access to the extensive investigation and evidence in this case, it has no ability or basis to contest the Single Judge's findings in this case. *Amicus'* Response to Robinson's Appeal further highlights that Robinson's acts and conduct cannot be the result of a “good faith interpretation” in the client's best interests, or a case of Robinson “simply erring in balancing interests”.¹⁵ *Amicus'* case on trial will clearly demonstrate this.

¹³ In the *Kamuhanda* case, the Single Judge, 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.” *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.

¹⁴ Request, para.12. See Request, para.11, where the ICCBA makes another submission which can only be based on an appreciation of the facts: “The Single Judge failed to apply this presumption as concerns Mr. Robinson and instead erroneously gave disproportionate value to the duties towards the Mechanism's protective measure orders, without due regard to Mr. Robinson's ethical obligations towards his client.”

¹⁵ Response, paras.47-56.

12. The ICCBA emphasizes that “any submissions made by it are produced entirely independently of counsel and support staff acting in the case in question.”¹⁶ [And without any access to the investigation, related cases or evidence in this case.] *Amicus* notes, however, that the President of the ICCBA was counsel for the convicted co-accused Jean de Dieu Ndagijimana in the *Nzabonimpa et al.* contempt case, from which case the present matter originated, with the Single Judge in that case stating, based on his review of the case record, that he had “grave concerns” that Robinson may have interfered with the administration of justice before referring the matter to the Mechanism’s President.¹⁷ The present case is, factually speaking, tightly connected to the *Nzabonimpa et al.* Case, which also concerned Augustin Ngirabatware’s review case and in which Robinson’s own investigator in relation to Ngirabatware’s review case, Dick Prudence Munyeshuli, was convicted for a violation which was found to have been committed pursuant to Robinson’s instructions.¹⁸ These instructions are in fact the basis of one of the incidents for which Robinson is charged in the present case.¹⁹

13. Finally, the ICCBA position presumes that a defence counsel's duties to his client can properly overcome or take precedence over obedience to clear court orders. There is nothing in the two applicable protective measures that require any special or esoteric interpretation, as both are clear on their face and provided Robinson with a ready, express and correct way to contact protected witnesses if he had reason to believe, e.g., that they would recant previous testimony -- proceed through the OTP and/or the Witness Support and Protection Unit.

14. Indeed, the Appeals Chamber specifically warned Robinson about his conduct concerning contact with protected witnesses, with the Appeals Chamber indicating no need for any special interpretation of the clear, applicable measures. On 5-May-2016, after finding that Robinson had a prohibited contact with a protected Prosecution Witness, the Appeals Chamber

¹⁶ Request, para.7.

¹⁷ Order Referring a Matter to the President.

¹⁸ See the Appeals Judgement in the *Fatuma et al.* case (the appeal proceedings resulting from the *Nzabonimpa et al.* case), stating: “The Appeals Chamber is mindful, however, that Turinabo was already aware of the identities of the Recanting Witnesses prior to Munyeshuli’s disclosure and that, in initiating indirect contact with the Recanting Witnesses, Munyeshuli acted under Robinson’s instructions.” *Prosecutor v. Fatuma et al.*, MICT-18-116-A, Judgement, 29-June-2022, para.115 (emphasis added).

¹⁹ Indictment, para.13.

cautioned Robinson “to exercise greater care when seeking to contact witnesses and to check the trial record accordingly.” (Emphasis added.) The Appeals Chamber determined that it was sufficient to caution Robinson, rather than to sanction him, “in light of the explanation provided” that Robinson had met the protected witness without the knowledge that he was the subject of protective measures – it was not because Robinson had made a “good faith interpretation” in light of duties towards his client Ngirabatware. The Appeals Chamber also stated: “The Appeals Chamber recalls that Mr. Robinson has access to the record of the proceedings and that knowledge of the witness protection measures in place is of central importance to the conduct of any defence investigation, including into possible witness recantation for the purposes of a review application.”²⁰ The Single Judge's Decision refers to all of this at para.21, fn.80, showing again that the Single Judge was well aware of the procedural history and all circumstances and factors concerning the various, including related cases.

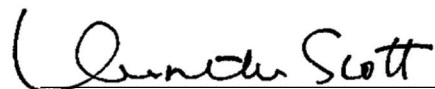
15. The ICCBA observations are legally wrong, without factual bases, and do not assist the Appeals Chamber.

RELIEF SOUGHT

WHEREFORE, *Amicus* respectfully asks the Appeals Chamber to deny the Request.

Word count: 2097 words

Respectfully submitted this 24-March-2025.



Kenneth Scott
Amicus Curiae

²⁰ See *Prosecutor v. Ngirabatware*, MICT-12-29, Decision on Prosecution’s Motion Regarding Protected Witnesses and Ngirabatware’s Motion for Assignment of Counsel, 5-May-2016, paras.24-27 (emphasis added).



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