

MICT-13-33
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UNITED
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	Case No.	MICT-13-33
Mechanism for International Criminal Tribunals	Date:	23 July 2015
	Original:	English

BEFORE THE SINGLE JUDGE

Before: Judge Vagn Joensen, Single Judge
Registrar: Mr. John Hocking

PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

PUBLIC

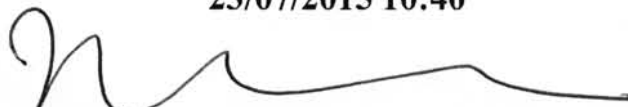
**ASSOCIATION OF DEFENCE COUNSEL (ADC-ICTY) REQUEST FOR LEAVE
TO SUBMIT *AMICUS CURIAE* OBSERVATIONS**

The Office of the Prosecutor
Mr. Hassan Bubacar Jallow

Counsel for Jean de dieu Kamuhanda
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Association of Defence Counsel
Ms. Colleen Rohan, ADC-ICTY President

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MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

Case No: MICT-13-33

PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA*PUBLIC*

**ASSOCIATION OF DEFENCE COUNSEL (ADC-ICTY) REQUEST FOR LEAVE
TO SUBMIT *AMICUS CURIAE* OBSERVATIONS**

I. INTRODUCTION

1. The Association of Defence Counsel practising before the International Criminal Tribunal for the former Yugoslavia (ADC-ICTY) hereby applies to make submissions as *amicus curiae*, pursuant to Rule 83 of the MICT Rules of Procedure and Evidence, in the above-mentioned case. The ADC-ICTY wishes to offer its observations on the issue of “the modalities for [...] Counsel to interview persons who have been granted protective measures [...] as part of investigations into possible new facts that may warrant a review of [...] conviction” as defined by Order of the Single Judge of 8 July 2015.¹ Specifically, the ADC-ICTY would provide reasoning and support for the Defendant’s request that all protected witnesses be contacted through the neutral body of the ‘WISP’ as a matter of policy of the MICT.²

¹ *The Prosecutor v. Jean de dieu Kamuhanda*, MICT-13-33, Order for Submissions, 8 July 2015, para. 1 referencing *The Prosecutor v. Jean de dieu Kamuhanda*, MICT-13-33, Motion for Decision on Contact with Persons Benefitting from Protective Measures, 1 July 2015.

² See *The Prosecutor v. Jean de dieu Kamuhanda*, MICT-13-33, Motion for Decision on Contact with Persons Benefitting from Protective Measures, 1 July 2015.

II. LEGAL AND FACTUAL BASIS FOR PROPOSED SUBMISSIONS

2. MICT Rule 83 provides that: *A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to appear before it and make submissions on any issue specified by the Chamber.* For this, the ADC-ICTY notes that the ICTY/ICTR Appeals Chamber has held that the primary criterion for granting leave to file an *amicus* brief is whether the proposed submission would assist the Chamber in its consideration of the questions at issue.³
3. The ADC-ICTY respectfully requests to be heard on the matter of who should contact witnesses who have been granted protective measures in ICTY and ICTR proceedings for the sake of any proceedings before the MICT and how these protected persons should be contacted. The issue for which the Single Judge has ordered observations of the parties presents an opportunity to ensure that consistent practices can be established to ensure a continuation of fair proceedings; it is respectfully requested that the ADC-ICTY be heard on this issue that is, and will be, important to its members, the defendants, and the pursuit of justice.
4. The ADC-ICTY respectfully submits that it is well-qualified to assist in the present case. The ADC-ICTY is a body that has been provisionally recognised by the MICT Registry pursuant to MICT Rule 42(A)(iii).⁴ This recognition is in addition to the fact that the ADC-ICTY has been the body officially recognised by the Registry of the International Criminal Tribunal for the Former Yugoslavia as representing all Defence Counsel practising before the ICTY since 2002.⁵
5. In its Preamble, the ADC-ICTY Constitution states that it “is a partner, along with the organs of the International Tribunal, in promoting the fairness of the proceedings and the accomplishment of the mission of the International Tribunal pursuant to United

³ See, e.g., *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.

⁴ Letter of Mr. John Hocking, MICT Registrar, to the ADC-ICTY President, IOR/TD/8.5.7, 18 December 2012. See also Letter of Jaimee Campbell, ICTY OLAD Head of Office, to ADC-ICTY President, 10 December 2012.

⁵ The ADC-ICTY was founded in September 2002 and recognised by the Registry the following month. The ADC-ICTY is recognised pursuant to ICTY Rule 44(A)(iii).

Nations Security Council Resolution 827 (1993)".⁶ Furthermore, the "*Manual on International Criminal Defence – ADC-ICTY Developed Practices*", produced by the ADC-ICTY with the assistance of the European Union and under the auspices of the United Nations Interregional Crime and Justice Research Institute (UNICRI) and the OSCE Office of Democratic Institutions and Human Rights (OSCE-ODIHR) War Crimes Justice Project, recognises that the ADC-ICTY has developed a "unique expertise" arising from representation of Accused at the ICTY, including the development of a body of written work, practical experience, and courtroom skills which translate to both domestic war crimes courts and other international courts.⁷

6. Further, the ADC-ICTY has been previously granted the status of *amicus curiae* in proceedings before the *ad hoc* Tribunals; for example, in *Prosecutor v. Brđanin* (on substantive law questions regarding the doctrine of Joint Criminal Enterprise),⁸ in *Prosecutor v. Prlić et al.* (on whether conduct of counsel constituted contempt of court, violation of the ICTY RPE or amounted to misconduct),⁹ and in *Prosecutor v. Hadžihasanović & Kubura* (regarding the impact of the allocation of resources to the Accused on his right to a fair trial).¹⁰
7. The ADC-ICTY views, as part of its mission, the obligation to ensure that the rights of defendants and the fairness of proceedings in the international courts are guaranteed in accordance with applicable Statutes, Rules of Procedure and Evidence, and other relevant international instruments. Likewise, the ADC-ICTY respectfully submits that it is in a unique position to assist the Residual Mechanism given the experience it has acquired through its position and members. As the present matter is of concern to numerous cases that will come before the MICT, an ADC-ICTY *amicus* brief, if allowed, will assist the Single Judge in dictating a policy for all future proceedings.

⁶ The ADC-ICTY Constitution is on file with the Office of the Registry of the ICTY. It may also be accessed at: http://adc-icty.org/Documents/adcioty_constitution.pdf.

⁷ *Manual on International Criminal Defence, ADC-ICTY Developed Practices* (UNICRI, ADC-ICTY, ODIHR OSCE 2011), Introduction, p. 3 found at <http://wcjp.unicri.it/deliverables/manual.php>.

⁸ *Prosecutor v. Brđanin*, IT-99-36-A, Amicus Brief of Association of Defence Counsel – ICTY, 5 July 2005.

⁹ *Prosecutor v. Prlić et al.*, IT-04-74-T, Advisory Opinion of Amicus Curiae Disciplinary Council of the Association of Defence Counsel of the ADC-ICTY, 13 August 2009.

¹⁰ *Prosecutor v. Hadžihasanović & Kubura*, IT-01-47-PT, Amicus Brief of the Association of Defence Counsel Practicing Before the International Criminal Tribunal for the former Yugoslavia in Support of Joint Defence Oral Motion for Reconsideration of Decision on Urgent Motion for *Ex Parte* Oral Hearing on Allocation of

III. RELIEF SOUGHT

8. For the foregoing reasons, the ADC-ICTY respectfully requests that the Single Judge grant it leave to appear as *amicus curiae* and submit observations in the present case as detailed above.

Word Count: 1,057

RESPECTFULLY SUBMITTED,



Colleen Rohan, President
Association of Defence Counsel (ADC-ICTY)

Dated this 23rd day of July 2015
in The Hague, The Netherlands