

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

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

Date: 17 March 2025

Original: English

**THE APPEALS CHAMBER**

**Before:** Judge Graciela Gatti Santana  
Judge Prisca Matimba Nyambe  
Judge Claudia Hofer

**Registrar:** Mr. Abubacarr M. Tambadou

**Date:** 17 March 2025

**PROSECUTOR**

**v.**

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

***PUBLIC***

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**ADC-ICT REQUEST FOR LEAVE TO APPEAR AS *AMICUS CURIAE***

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**Amicus Curiae:**

Mr. Kenneth Scott

**Mr. Peter Robinson**

## I. INTRODUCTION

1. The Association of Defence Counsel practising before the International Courts and Tribunals ('ADC-ICT'), requests leave to appear as *amicus curiae* in appellate proceedings concerning Mr. Peter Robinson,<sup>1</sup> pursuant to Rule 83 of the Mechanism's Rules of Procedure and Evidence ('RPE').<sup>2</sup>

2. Should leave be granted, the ADC-ICT will limit its observations to: (i) the significance of its role and prior experience as an integral component of the disciplinary framework before the Mechanism, and (ii) the necessity of utilising the Mechanism's comprehensive disciplinary framework to fairly regulate the conduct of Defence counsel.

3. The ADC-ICT intends to provide reasoning and support to Mr. Robinson's submission that the Single Judge erred by failing to consider the 'well-established alternative of referring [Mr. Robinson's] conduct to the Mechanism's own Disciplinary Panel' as a more 'effective and efficient way to ensure compliance with the obligations flowing from the Statute and the Rules'.<sup>3</sup> The ADC-ICT does not intend to repeat arguments already raised in Mr. Robinson's Appeal.

## II. EXPERTISE IN LEGAL ISSUES TO BE PRESENTED

4. The ADC-ICT respectfully submits that it is well-qualified to offer submissions of assistance in relation to the questions at issue.

5. First, the ADC-ICT is the body officially recognised by the Registrar as representing all Defence Counsel practising before the Mechanism, pursuant to IRMCT Rule 42(A)(iii).<sup>4</sup> This recognition is in addition to the fact that the ADC-ICT (formerly ADC-ICTY) has been the body officially recognised by the Registrar of the ICTY as representing all Defence Counsel practising before the ICTY since 2002.<sup>5</sup>

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<sup>1</sup> MICT-18-116-AR90.1, *Prosecutor v. Nzabonimpa et al*, Appeal of Decision on Allegations of Contempt, 3 March 2025 ('Mr. Robinson's Appeal').

<sup>2</sup> MICT/1/Rev.8, 26 February 2024.

<sup>3</sup> Mr. Robinson's Appeal, paras 105-107.

<sup>4</sup> Rule 42(A)(iii). See also MICT-12-01, Decision recognising the ADC-ICTY as an Association of Defence Counsel Practicing at the Mechanism, 24 August 2015; MICT-12-01, Decision recognising the name change of the 'Association of Defence Counsel Practising Before the International Courts and Tribunals, 16 June 2017.

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

6. Second, in its Preamble, the ADC-ICT Constitution states that ‘it is a partner, along with the organs of the respective International Courts or Tribunals at which they are the recognised Association of Counsel’.<sup>6</sup> In particular, a key objective of the ADC-ICT is to ‘offer advice to the President, the Chambers and the Registrar of the International Courts and Tribunals in relation to the right of the accused to a fair trial and the Rules of Procedure and Evidence as well as Regulations, Practice Directives and Policies related to the work of Defence Counsel, such as inter alia, the Directive on the Assignment of Counsel, the Code of Professional Conduct for Counsel Appearing Before the International Courts and Tribunals and the applicable Legal Aid Policies (emphasis added).’<sup>7</sup>

7. Similarly, the ADC-ICT is tasked with overseeing ‘the performance and professional conduct of Defence Counsel, in so far as it is relevant to their duties, responsibilities and obligations pursuant to the Statute, the Rules of Procedure and Evidence, the Code of Professional Conduct for Counsel Appearing Before the International Courts and Tribunals, the Directive on the Assignment of Defence Counsel, and the Detention Rules and Regulations of the International Courts and Tribunals’.<sup>8</sup>

8. Third, and relatedly, the ADC-ICT holds an integral position within the disciplinary framework of the Mechanism.<sup>9</sup> As reflected in Article 2 of the Code of Conduct,<sup>10</sup> since its inception in 2002, the ADC-ICT has participated in discussions concerning the development and adoption of the Code of Conduct and the disciplinary framework before the ICTY and, subsequently, the Mechanism.<sup>11</sup> Accordingly, the disciplinary regime established by the Code of Conduct mandates that one ADC-ICT member be appointed to any Disciplinary Panel pursuant to Article 34(A)(i) and that two members be appointed to the Disciplinary Board pursuant to Article 43(A)(ii).

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<sup>6</sup> Preamble, [ADC-ICT Constitution](#).

<sup>7</sup> Article 2(3), [ADC-ICT Constitution](#).

<sup>8</sup> Article 2(4), [ADC-ICT Constitution](#).

<sup>9</sup> C/f to the disciplinary regime before the International Criminal Court which does not envisage role for the ICCBA see Resolution ICC-ASP/4/Res.1, Code of Professional Conduct for Counsel, 2005.

<sup>10</sup> MICT/6/Rev. 1, Code of Professional Conduct for Defence Counsel Appearing before the Mechanism, 14 May 2021.

<sup>11</sup> See also ADC-ICT Website – [About Us](#) (‘The Judges felt that there was a need to have an association, which could first ensure a higher quality for Defence Counsel and make collective representations to the organs of the Tribunal on behalf of all Defence Counsel involved in cases. Moreover, it was necessary to have such an association in the context of the Code of Professional Conduct for Counsel Appearing Before the International Tribunal the Judges adopted and its associated Disciplinary mechanism’).

9. Finally, the ADC-ICT has also previously appeared as *amicus curiae* in international criminal cases, including before the ICTY, ICTR, IRMCT and ICC, in relation to a range of substantive, procedural and administrative matters at all stages of proceedings, including during review proceedings and contempt-related proceedings.<sup>12</sup> More specifically, in *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.<sup>13</sup> 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.<sup>14</sup> In doing so, the Chamber ‘deem[ed] it necessary to have the opinion of an *amicus curiae* on the implications that such conduct could have (emphasis added)’ and specifically sought the ADC-ICT’s expertise by posing detailed questions on whether the counsel’s conduct was compatible with the RPE and the Code of Conduct.<sup>15</sup>

### III. ADC-ICT OBSERVATIONS WILL ASSIST IN THE APPEAL CHAMBER’S DETERMINATION

10. Part IV of the Code of Conduct provides a comprehensive framework for filing, investigating, and appealing allegations of misconduct. In particular, Article 31 of the Code of Conduct stipulates that the purpose of the Mechanism’s disciplinary framework is, *inter alia*, to: (i) protect individuals, particularly witnesses, from Counsel; (ii) ensure Counsel’s compliance with the necessary standards of professionalism and uphold the ethics and practice of the Mechanism’s legal system at the highest level; and (iii) guarantee that any disciplinary proceedings against Counsel are procedurally fair. Furthermore, Article 42 of the Code of Conduct outlines a range of sanctions, which must be proportionate to the alleged misconduct and may include official reprimands, financial penalties, suspensions, or disbarment.

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<sup>12</sup> See in particular, MICT-13-33, *Prosecutor v. Kamuhanda*, ADC-ICTY Amicus Curiae Observations, 10 September 2015 whereby ADC-ICT was granted leave to provide submissions on the issue of Defence counsel contacting Prosecution witnesses following the Appeals judgment.

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

<sup>14</sup> IT-04-74-T, *Prosecutor v. Prlić et al.*, Order appointing an amicus curiae, 3 July 2009; IT-04-74-T, *Prosecutor v. Prlić et al.*, Order amending the appointment of an amicus curiae, 15 July 2009.

<sup>15</sup> IT-04-74-T, *Prosecutor v. Prlić et al.*, Order appointing an amicus curiae, 3 July 2009, p. 4.

11. In other words, the Code of Conduct establishes a robust mechanism for regulating a wide range of conduct in a fair and appropriate manner. These objectives can only be fully achieved through the inclusion and involvement of the ADC-ICT, as provided within the disciplinary framework.

12. Over the past twenty-three years, the ADC-ICT has cultivated a membership of experienced Defence counsel who practice across international courts and tribunals. Its members therefore understand the unique challenges of defence work and have first-hand experience which allows them to assess whether the alleged misconduct was a result of systemic challenges or an intentional violation of the Code of Conduct and corresponding statutory obligations. As reflected by the ADC-ICT's detailed advisory opinion in the *Prlić et al.* case, it is this experience which allows the ADC-ICT to provide extensive and necessary context to the conduct in question in order to differentiate between aggressive but permissible advocacy versus any violation of the Code of Conduct, the Rules of Procedure or contempt of court.<sup>16</sup>

13. The value of being assessed or held accountable by professional counterparts is also reflected in the codes of conduct governing both judges and prosecutors. For example, Article 12 of the Code of Conduct for Judges,<sup>17</sup> provides that complaints of misconduct are initially examined by the President or a receiving Judge. In the event of any further formal investigation, a panel of outside experts composed of 'judges, former judges or other eminent jurists' is tasked with completing an investigation report,<sup>18</sup> which is then transmitted to all judges of the Mechanism (with the exception of the judge concerned) for final determination.<sup>19</sup> Similarly, the OTP Code of Conduct,<sup>20</sup> provides that any failure to observe the standards,<sup>21</sup> 'will be dealt with by the Prosecutor, in the exercise of his discretion, and subject to the staff rules of the United Nations, apart from any sanctions that may

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<sup>16</sup> Whilst decisions issued by Disciplinary Panels and Disciplinary Boards are predominantly confidential, the ADC-ICT's advisory opinion in *Prlić et al.*, reflects the expertise offered by the ADC-ICT in its role in disciplinary proceedings including in relation to, *inter alia*, the factors to be considered when determining whether conduct is serious enough to constitute misconduct, noting that not all violations of the Code of Conduct amount to misconduct, and the broad discretion to be afforded to Counsel within the bounds of his/her professional obligations, to decide how best to effectively represent the client.

<sup>17</sup> MICT/14/Rev.1, Code of Professional Conduct for the Judges of the Mechanism, 9 April 2018 ('Code of Conduct for Judges').

<sup>18</sup> Article 13, Code of Conduct for Judges.

<sup>19</sup> Article 14, Code of Conduct for Judges.

<sup>20</sup> MICT/12, Prosecutor's Regulation No 1 (2013), Standards of Professional Conduct of Prosecution Counsel, 29 November 2013 ('OTP Code of Conduct').

<sup>21</sup> The standards include *inter alia*, 'to preserve professional confidentiality, including not disclosing information which may jeopardise ongoing investigations or prosecutions, or which might jeopardise the safety of victims and witnesses' see OTP Code of Conduct, p. 4.

exceptionally be imposed upon prosecution counsel pursuant to Article 1.4(a) of the Statute and Rule 90 of the Rules of Procedure and Evidence (emphasis added).<sup>22</sup>

14. The ADC-ICT's mandatory involvement in the disciplinary framework also safeguards the professional integrity and independence of the Defence bar, as well as the fundamental right of clients to effective legal representation. All individuals appearing before the Mechanism are entitled to diligent and effective representation. However, given the gravity of the crimes under the Mechanism's jurisdiction, there is a risk of bias—whether unconscious or otherwise—among other legal professionals who may not fully appreciate the strategic challenges faced by the Defence. This may lead to unwarranted scrutiny of Defence practices or tactics that are, in fact, permissible under the Code of Conduct. The oversight provided by the ADC-ICT within the disciplinary framework mitigates the risk and impact of such biases on the Defence bar's professional integrity and independence. Moreover, it ensures that the provisions of the Code of Conduct and the related obligations under the Mechanism's statutory framework are upheld, without imposing unnecessary or unjustified restrictions on counsel's ability to effectively represent their client.<sup>23</sup>

15. The presence of the ADC-ICT, as the association officially recognised by the Registrar as representing all Defence counsel practising before the Mechanism, further ensures consistency in the treatment and outcome of disciplinary proceedings. It guards against punitive treatment and prevents the misuse of disciplinary measures as a deterrent against others.

16. In this regard, the ADC-ICT considers it part of its mission to promote the rights of defendants and ensure the fairness of proceedings. The ADC-ICT respectfully submits that it has a particular role in providing views on issues with an institutional or systemic dimension that transcend any individual case. The circumvention of the disciplinary regime—and the exclusion of the ADC-ICT's role within it—poses a significant threat to the continued practice of Defence counsel before international courts and tribunals, particularly before the Mechanism. As stated in its Press Release, the charges against Mr. Robinson mark the first instance in the ADC-ICT's twenty-three year history where a member has faced criminal charges and potential imprisonment for acts connected to alleged

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<sup>22</sup> OTP Code of Conduct, p. 5.

<sup>23</sup> See for example, IT-95-14/1-AR77, *Prosecutor v. Aleksovski*, Judgment on Appeal by Anto Nobile against finding of contempt, 30 May 2001 whereby the Appeals Chamber overturned the Trial Chamber's finding that Defence counsel was in contemptuous breach of its protective orders by disclosing the identity of a protected witness in open court. The proceedings against Mr. Nobile predated the creation of the ADC-ICTY.

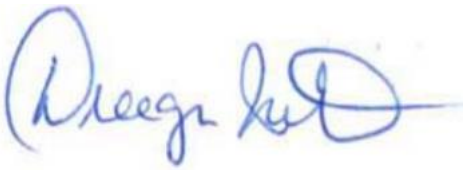
violations of the Code of Conduct.<sup>24</sup> It is imperative that the appropriate mechanism for addressing such alleged violations is properly applied and accessible to all Defence counsel practising before the Mechanism. This will restore trust in the disciplinary framework and ensure the fair and appropriate regulation of Defence counsel.

17. Finally, the ADC-ICT intends to file any observations on an expedited timeframe should leave be granted in order not to further delay resolution of the matter before the Appeals Chamber.

#### **IV. RELIEF SOUGHT**

18. For the foregoing reasons, the ADC-ICT respectfully requests that the Appeals Chamber grant it leave to submit observations as *amicus curiae* in appellate proceedings concerning Mr. Peter Robinson.

**Word count:** 2,242



**Dragan Ivetic**

**President of ADC-ICT**

17 March 2025

At The Hague, the Netherlands

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<sup>24</sup> ADC-ICT Website, [ADC-ICT Expresses Concern Over the Charges Against Defence Counsel Peter Robinson](#), 27 February 2025.



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