

**UNITED
NATIONS**

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

International Residual Mechanism
for Criminal Tribunals

Date: 28 April 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

***AMICUS CURIAE'S* RESPONSE TO "REQUEST TO APPEAR AS AMICUS CURIAE
ON BEHALF OF THE EUROPEAN CRIMINAL BAR ASSOCIATION (ECBA)"
DATED 17-APRIL-2025**

Amicus Curiae

European Criminal Bar Association

Mr. Kenneth Scott

Mr. Peter Robinson

The *Amicus Curiae* (“*Amicus*”) respectfully files this response to the European Criminal Bar Association’s (“ECBA”) request for leave to make submissions in relation to Peter Robinson’s (“Robinson”) appeal of the *Decision on Allegations of Contempt* dated 25-February-2025.

1. On 17-April-2025, the ECBA asked to be allowed to make submissions in relation to Robinson’s “Appeal of Decision on Allegations of Contempt” dated 3-March-2025 (respectively “Request” and “Appeal”).¹ The Appeal concerns the 25-February-2025 *Decision on Allegations of Contempt* (“Decision”), issued in parallel with the *Decision issuing Order in Lieu of Indictment* (“Indictment”), initiating contempt proceedings against Robinson.²

2. The ECBA seeks leave to make submissions “on [alleged] systemic legal issues in relation to the role and obligations of defence counsel”, more specifically on the subjects of “Due Process and Legal Certainty”, “Comparative and Institutional Practice”, the “Interpretation of ‘Prohibited Contact’”, the “Right to Effective Defence”, “The Systemic Impact of Criminalizing Professional Conduct”, and the “Right to Review”.³

3. The ECBA submissions cannot assist the Appeals Chamber in assessing Robinson’s Appeal, which is not receivable in any event.⁴ Robinson’s Appeal argues that the Single Judge abused his discretion in failing to “consider the role and obligations of defence counsel to interpret court orders and to act in the best interest of their clients and other mitigating factors”.⁵ This failure, according to Robinson, is shown by the fact that the Decision did not address what

¹ The Request, dated 17-April-2025, was actually distributed by the Registry on 22-April-2025. *The Prosecutor v. Nzabonimpa et al.*, (hereinafter “*Nzabonimpa*”), MICT-18-116-AR90.1, Request to Appear as Amicus Curiae on Behalf of the European Criminal Bar Association (ECBA), 17-April-2025; *Nzabonimpa*, MICT-18-116-AR90.1, Appeal of Decision on Allegations of Contempt, 3-March-2025.

² *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.

³ See Request, para.2 and the following sub-sections of the Request.

⁴ Robinson -- against all jurisprudence and the Rules of Procedure and evidence stating that only cases “disposing” of a contempt case can be appealed -- attempts to go around this jurisprudence and the Rules by arguing that he should be allowed to appeal because his Appeal relates to the proper functioning of the Mechanism. This should not be permitted. Appeal, paras.73-81. See also *Nzabonimpa*, MICT-18-116-AR90.1, Response to the “Appeal of Decision on Allegations of Contempt” Dated 3-March-2025, 11-March-2025, paras.5-11. (“Response”).

⁵ Appeal, p.15.

Robinson says the Judge was “obligated to discuss”.⁶ This alleged failure is addressed in *Amicus*’ Response dated 11-March-2025.⁷ The Decision and Appeal do not revolve around the subjects which the ECBA seeks to address, such as due process, the right to effective defence or the right to review. Indeed, the Decision clearly shows the exercise of informed discretion, in which the possibility of disciplinary measures was repeatedly discussed.

4. Contrary to the ECBA’s arguments, the case against Robinson is not one of “procedural non-compliance” as opposed to “deliberate violations of court orders”, which should therefore be “addressed through disciplinary mechanisms rather than contempt proceedings.”⁸ The applicable protective measures were clear on their face, and Robinson knew full well what the orders precluded him from doing.⁹ The *Amicus* will demonstrate at trial that Robinson knowingly violated essential protective measures orders (not simple rules of procedure) when it served his own objectives, thereby facilitating and allowing a grave scheme to interfere with the Mechanism’s administration of justice.

5. As detailed in *Amicus*’ Response dated 11-March-2025, in deciding to indict Robinson for interference with the administration of justice, the Single Judge was plainly aware of Robinson’s status as defence counsel, fully aware of the role of defence counsel and the importance of their professionalism, and clearly aware of the availability of disciplinary proceedings. Even if the Code of Conduct for Defence Counsel is clear that the existence of a disciplinary regime does not affect in any way the Mechanism’s power to charge Defence Counsels for contempt,¹⁰ the Judge did decide that disciplinary proceedings were more

⁶ In his Reply brief, Robinson stated: “the Single Judge was obligated to discuss whether contempt proceedings should be initiated against me in light of my contention that counsel in a criminal case are frequently called upon to interpret judicial orders such as protective measures, and should not have to interpret such orders at their peril of prosecution for contempt and that the alleged conduct was undertaken based on my good faith interpretation of the protective measures orders.” Reply, para.21 (emphasis added).

⁷ Response.

⁸ Request, para.10.

⁹ Robinson’s contentions that his violations are the result of good faith interpretation are entirely baseless. See Response, paras.47-56.

¹⁰ “This part [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.” Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism and Other Defence Team Members, MICT/6/Rev.1, 14-May-2021, Art.32.

appropriate for some of Robinson's acts and conduct.¹¹ In issuing the Decision, the Single Judge considered such factors as "standard of professionalism and ethics required of the important role Defence counsel play in the administration of justice",¹² "best practices" in conducting investigations,¹³ and the seriousness of Robinson's acts and conduct.¹⁴

6. In the *Prlić et al.* case, the Disciplinary Council of the Association of Defence Counsel of the ICTY made it clear in its advisory opinion:

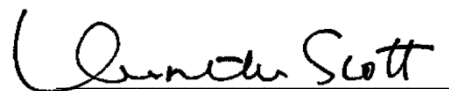
All defence counsel have the concomitant professional obligation to act diligently, fairly, efficiently and courageously in representing his or her client; an obligation which includes the duty to pursue all appropriate avenues in defending the client's legal rights and interests.

Counsel's duty to act in his client's best interest may never be cause, however, to violate an order of the court or to refuse to abide by the applicable rules and regulations binding on counsel, or to violate counsel's duty of candour under Article 23. As noted earlier, Article 14 of the Code makes clear that counsel has a duty towards the Tribunal to act with independence in the interests of justice and shall put those interests before his own interests or those of any other person, organization or State.¹⁵

7. The ECBA cannot assist the Appeals Chamber, certainly not without knowledge and access to the evidence of the case which *Amicus* will put forward, demonstrating Robinson's knowing violations of courts order, and the gravity of these violations in the context of the case, in light of Robinson's knowledge and intention.

Word count: 1115 words

Respectfully submitted this 28-April-2025.



Kenneth Scott
Amicus Curiae

¹¹ E.g., Decision, para.37.

¹² Decision, para.26 (emphasis added).

¹³ Decision, para.30.

¹⁴ E.g. Decision, para.24 "these violations are not among the most serious allegations".

¹⁵ *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.42-43 (emphasis added).



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Case Name/ Affaire :	Prosecutor v. Nzabonimpa et al.		Case Number/ Affaire n° : MICT-18-116-AR90.1			
Date Created/ Daté du :	28 April 2025	Date transmitted/ Transmis le :	28 April 2025	Number of Pages/ Nombre de pages :	4	
Original Language/ Langue de l'original :	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/ préciser):	
Title of Document/ Titre du document :	Amicus Curiae's Response to the "Request to Appear as Amicus Curiae on Behalf of the European Criminal Bar Association (ECBA)" Dated 17-April-2025					
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Public/ Document public	<input type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue	<input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu	<input type="checkbox"/> Ex Parte Rule 86 applicant excluded/ Article 86 requérant exclu	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ Amicus curiae exclu
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