

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

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

Date: 20 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: 20 March 2025

PROSECUTOR

v.

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

PUBLIC

ICCBA REQUEST FOR LEAVE TO APPEAR AS *AMICUS CURIAE*

Amicus Curiae:

Mr. Kenneth Scott

Mr. Peter Robinson

I. INTRODUCTION

1. This request for leave is submitted pursuant to Rule 83 of the Mechanism’s Rules of Procedure and Evidence (‘RPE’)¹ by the International Criminal Court Bar Association (“ICCBA”). It requests leave for the ICCBA to file submissions concerning the matters raised in appellate proceedings concerning Defence Counsel Mr. Peter Robinson.²

II. THE ICCBA

2. The ICCBA was established in 2016 and is registered as a non-profit foundation in the Netherlands. It is independent of the Court and States Parties to the Rome Statute. It is primarily funded by member subscriptions. In 2019, the ICCBA was officially recognised by the Assembly of States Parties as an independent representative body in accordance with Rule 20(3) of the ICC Rules of Procedure and Evidence.³
3. The ICCBA serves as a collective voice for the independent lawyers who represent defendants, victims and others before the ICC. Its membership is drawn from the ICC’s List of Counsel, as well as the more junior jurists who serve as support staff on counsel teams. The ICCBA is the only organisation which brings together the expertise and experience of private lawyers who are qualified to practice before the ICC. In this role it engages with the organs of the Court, the Assembly of States Parties and others to represent external counsel and their teams.
4. In addition to its role addressing questions of legal representation, the ICCBA has an important role to play on substantive questions of defence and victims’ rights before the Court. In this respect it is the ICC equivalent of the Association of Defence Counsel practising before the International Courts and Tribunals (“ADC-ICT”). That body was initially established at the instigation of ICTY judges in recognition of the need for a body which could make collective representations for defence counsel involved in all cases at the ICTY.⁴ This reflects the fact that, while the Prosecution is carried out by one unified entity and therefore able to speak to matters in a Court-wide manner, that is not the case for the defence.

¹ MICT/1/Rev.8, 26 February 2024.

² MICT-18-116-AR90.1, *Prosecutor v. Nzabonimpa et al*, Appeal of Decision on Allegations of Contempt, 3 March 2025 (‘Mr. Robinson’s Appeal’).

³ [ASP Resolution ICC-ASP/18/Res.6](#), 6 December 2019, paras 78-81.

⁴ See ICTY Press Release, ‘Judges’ Plenary Session adopt reforms concerning Defense Counsel Teams’, 19 July 2002, available at: <https://www.icty.org/en/press/judges-plenary-session-adopt-reforms-concerning-defense-counsel-teams>.

5. This role of the ICCBA means that it is uniquely placed to assist on certain matters. These include both (a) questions concerning legal representation and (b) questions concerning defence counsel's ethical obligations.
6. In this regard the ICCBA is similar to the ADC-ICT.⁵ The provision of *amicus curiae* submissions has been an important function of the ADC-ICT since its founding, with such submissions frequently welcomed by the judges of the *ad hoc* tribunals.
7. The ICCBA emphasizes that any submissions made by it are produced entirely independently of counsel and support staff acting in the case in question.

III. SUMMARY OF PROPOSED SUBMISSIONS

8. Should leave be granted the ICCBA will make submissions on one discrete issue arising from the Mr. Robinson's appeal, namely that the Code of Conduct is the *lex specialis* in matters pertaining to Defence counsel's ethical obligations, and that the Mechanism must interpret the Code in a manner allowing counsel to both, a) act in their client's best interest, and to b) "act honestly, independently, fairly, skilfully, diligently, efficiently and courageously".⁶
9. 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 Defence counsel towards their client when interpreting judicial orders.⁷ The ICCBA's proposed submissions will not repeat Mr. Robinson's arguments on this point.
10. 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.
11. The fundamental principles of the Code of Conduct are enumerated in Article 3. This provision clearly set out that Counsel is presumed to act in good faith and in accordance with their obligations. Although Article 3 (ii) points to a potential tension between the "duty

⁵ See ICC, Pre-Trial Chamber III, *Prosecutor v. Kony*, ICCBA observations on the process of selecting counsel to represent the rights and interests of Joseph Kony during in absentia confirmation proceedings, 22 April 2024, [ICC-02/04-01/05-496](#).

⁶ Code of Professional Conduct for Defence Counsel Appearing before the Mechanism and Other Defence Team Members, MICT/6/Rev.1, 14 May 2021, Article 3 (i) and (ii).

⁷ Mr. Robinson's appeal, paras 100, 104.

of loyalty” to Defence counsel’s clients and “their duty to the Mechanism to act with independence in the administration of justice”, it also presumes that these duties can be exercised in a “consistent” manner. 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.

12. The ICCBA will argue that recourse to contempt proceedings is misguided, because a proper evaluation of Counsel’s competing obligations shows that the present case squarely falls in the ambit of a disciplinary matter under the Code of Conduct. In this sense, the 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.
13. The ICCBA would also provide submissions on the *sui generis* nature of the international courts and tribunals and the limited jurisprudence guiding counsel on balancing their duties to the Court and their obligations to clients, especially in politically sensitive cases. The Single Judge’s decision did not account for this specific complexity.
14. Should leave be granted, the ICCBA intends to file its submissions on an expedited timeframe to avoid further delay in the resolution of the matter.

IV. RELIEF SOUGHT

15. In light of the foregoing, the ICCBA respectfully requests that the Appeals Chamber:

GRANT LEAVE to the ICCBA to file submissions on the above identified matters pursuant to Rule 83 of the RPE.

Word count: 1,050

Respectfully submitted,



Philippe Larochelle
President
ICCBA

Dated this 20th day of March 2025
at The Hague



I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	IRMCT Registry/ <i>Greffe du MIFRTP</i>	<input checked="" type="checkbox"/> Arusha/ <i>Arusha</i>	<input type="checkbox"/> The Hague/ <i>La Haye</i>
From/ De :	<input type="checkbox"/> Chambers/ <i>Chambre</i>	<input type="checkbox"/> Defence/ <i>Défense</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
		<input checked="" type="checkbox"/> Other/ <i>Autre</i> :	ICCBA
Case Name/ Affaire :	Prosecutor v. Nzabonimpa et al	Case Number/ Affaire n° :	MICT-18-116-AR90.1
Date Created/ Daté du :	20 March 2025	Date transmitted/ Transmis le :	20 March 2025
		No. of Pages/ Nombre de pages :	4
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
		<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S	
Title of Document/ Titre du document :	ICCBA REQUEST FOR LEAVE TO APPEAR AS AMICUS CURIAE		
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>
	<input type="checkbox"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i>	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i>	<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :	
Document type/ Type de document :			
<input checked="" type="checkbox"/> Motion/ <i>Requête</i>	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>
<input type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>
<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>	

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input checked="" type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>
<input type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i>)
<input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>
Original/ Original en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
Translation/ Traduction en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>
<input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :

Send completed transmission sheet to/ *Veuillez soumettre cette fiche dûment remplie à :*

JudicialFilingsArusha@un.org OR/ *OU* JudicialFilingsHague@un.org

Rev: July 2018/ Rév. : juillet 2018