



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-43

Date: 10 September 2018

Original: English

THE PRESIDENT OR SINGLE JUDGE

Before: Judge Theodor Meron

Registrar: Mr. Olufemi Elias

Date: 10 September 2018

PROSECUTOR

v.

FRANCOIS-XAVIER NZUWONEMEYE

PUBLIC

**ASSOCIATION OF DEFENCE COUNSEL PRACTISING BEFORE THE
INTERNATIONAL COURTS AND TRIBUNALS (ADC-ICT)
MOTION FOR LEAVE TO APPEAR AS *AMICUS CURIAE***

The Office of the Prosecutor:
Serge Brammertz

Counsel for Francois-Xavier Nzuwonemeye:
Peter Robinson

Association of Defence Counsel:
Colleen Rohan, President

I. INTRODUCTION

1. The Association of Defence Counsel practising before the International Courts and Tribunals (ADC-ICT) hereby applies, pursuant to Rule 83, to appear as *amicus curiae* in relation to the re-location of Francois-Xavier Nzuwonemeye to France from Arusha, Tanzania, where he has been living since his acquittal by the International Criminal Tribunal for Rwanda (ICTR) in 2014. Specifically the ADC-ICT seeks leave to provide reasoning and support for Nzuwonemeye's argument that France has an obligation to take him back and that failure to do so violates his human rights.¹

II. LEGAL AND FACTUAL BASIS FOR PROPOSED SUBMISSIONS

2. Rule 83 of the Mechanism Rules of Procedure and Evidence 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.*" 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.²
3. The ADC-ICT respectfully submits that it is well-qualified to offer submissions of assistance in relation to the questions at issue. The ADC-ICT is the body officially recognised by the Registrar of the Mechanism as representing all Defence Counsel practising before the Mechanism, pursuant to Mechanism Rule 42(A)(iii). 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 2002.³
4. 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

¹ *Prosecutor v. Francois-Xavier Nzuwonemeye*, MICT-13-43, *Motion For Order to Government of France* (23 August 2018).

² *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) at p.3.

³ 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).

recognised Association of Counsel”.⁴ 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 rights of the accused to a fair trial and the Rules of Procedure and Evidence”.⁵

5. 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),⁶ in *Prosecutor v. Prlić et al.* (on whether conduct of counsel constituted contempt of court in violation of the ICTY RPE or amounted to misconduct),⁷ and in *Prosecutor v. Hadžihasanović & Kubura* (regarding the impact of the allocation of resources to the Accused on his right to fair trial).⁸
6. The ADC-ICT considers that part of its mission is to promote the rights of defendants and the fairness of proceedings in general. The ADC-ICT respectfully submits that it has a particular role in offering views on issues affecting the rights of individuals who were subject to trial proceedings before the *ad hoc* tribunals.
7. The issue raised in the Nzuwonemeye Motion⁹ is also applicable to other acquitted or released persons who were tried at the ICTR.¹⁰ This is a situation which has affected certain individuals from as far back as 2006 and despite efforts by the individuals and their counsel, the Mechanism President and the Mechanism Registrar, there has been limited action taken to alleviate the situation by the international community.
8. These individuals are unable to return to Rwanda and are unable to be reunited with their families who reside in several states. Their family members have either been granted citizenship or refugee status in the countries where they reside.

⁴ Preamble, ADC-ICT Constitution.

⁵ Article 2(3), ADC-ICT Constitution.

⁶ *Prosecutor v. Brđanin*; IT-99-36-A, Amicus Brief of Association of Defence Counsel - ICTY, 5 July 2005.

⁷ *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.

⁸ *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 Resources to the Defence and Consequences Thereof for the Rights of the Accused to a Fair Trial, 14 July 2003.

⁹ *Supra* no. 1.

¹⁰ Annex B, List of ICTR Acquitted Persons or Persons Released after Serving their Sentence

9. After facing justice and being acquitted, these individuals are now being subjected to what amounts to punishment by having to remain in a foreign country without their families. The Mechanism owes a duty of care to these individuals to ensure that they are treated with dignity and respect and are reunited with their families. The Mechanism should take all measures possible to ensure that these individuals' rights are protected, including the issuance of orders to States to uphold their obligations.
10. The ADC-ICT has previously sent correspondence to the UN Secretary-General and Security Council requesting that action be taken to relocate these acquitted or released persons who are effectively stranded in Arusha.¹¹

III. RELIEF SOUGHT

11. For the foregoing reasons, the ADC-ICT respectfully requests that the Appeals Chamber grant it leave to appear as *amicus curiae* and submit observations in the present case as detailed above.

Word count: 943

Respectfully submitted,



COLLEEN ROHAN
President
ADC-ICT

¹¹ Annex A, ADC-ICT Letter to UN Secretary-General, 22 March 2018.

ANNEX A



ASSOCIATION OF DEFENCE COUNSEL PRACTISING BEFORE THE INTERNATIONAL COURTS AND TRIBUNALS

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The Hague, 22 March 2018

H.E. Mr. António Guterres
Secretary-General
United Nations Headquarters
405 East 42nd Street
New York
10017

Re: ICTR Acquitted Persons and Persons Released after Serving their Sentences

Your Excellency,

The Association of Defence Counsel practising before the International Courts and Tribunals (ADC-ICT)¹² hereby expresses its concern regarding the situation of a number of individuals who have been either acquitted or released after serving their sentences at the International Criminal Tribunal for Rwanda (ICTR) and who remain in Arusha, Tanzania.¹³

This is a situation which has affected certain individuals from as far back as 2006 and despite efforts by the individuals and their counsel, the MICT President and the MICT Registrar, there has been limited action taken to alleviate the situation by the international community.

At the present time, there remain eleven individuals who are located in a MICT Safe House in Arusha. These individuals are unable to return to Rwanda and are unable to be reunited with their families who reside in a number of states.¹⁴ Their family members have either been granted citizenship or refugee status in the countries where they reside.

The affected acquitted or release persons were tried at the ICTR, a Tribunal established by the UN Security Council, and after facing justice are now being subjected to what amounts to punishment by having to remain in a foreign country without their families. The international community owes a duty of care to these individuals to ensure that they are treated with dignity and respect and reunited with their families.

The UN Security Council has previously adopted a number of resolutions, including: 2054 (2012), 2080 (2012) and 2256 (2015) calling “upon all states in a position to do so to cooperate with and render all necessary assistance to the International Tribunal for its increased efforts towards the relocation of acquitted persons and convicted persons who have completed serving their sentences”.

¹² The ADC-ICT is an independent professional association which represents all defence counsel practising before the Mechanism for International Criminal Tribunals (MICT). The ADC-ICT works to promote and protect the interests of defence counsel and their clients in proceedings before the Mechanism.

¹³ A list of the individuals is contained in Annex.

¹⁴ Families of these individuals reside in: Belgium, Canada, Denmark, France and the United Kingdom.

Despite these resolutions, member states have failed to take action to ensure that these individuals are relocated and reunited with their families, contrary to their obligations to carry out decisions of the Security Council under the UN Charter. These individuals continue to remain in Tanzania without any identity or travel documents, and consequently, without basic citizen rights, guarantees, and social securities.

The ADC-ICT hereby seeks your enlightened leadership in urging the international community to uphold their obligations and to take action to protect the rights of these eleven individuals and reunite them with their families.

If the ADC-ICT can provide any further assistance or information, please do not hesitate to contact us.

Please accept, Excellency, the assurance of our highest consideration.

Respectfully submitted,



Ms. Colleen Rohan
President
ADC-ICT

Copy to:

President of the UN Security Council, New York
Members of the UN Security Council, New York
H.E. Judge Theodor Meron, President, MICT
Mr. Olufemi Elias, Registrar, MICT
H.E. Mr. Marc Pecsteen de Buytsverve, Permanent Representative of Belgium to the UN
H.E. Mr. Marc-André Blanchard, Permanent Representative of Canada to the UN
H.E. Mr. Ib Peterson, Permanent Representative of Denmark to the UN
H.E. Mr. François Delattre, Permanent Representative of France to the UN
H.E. Mr. Jonathan Allen, Chargé d'Affaires, UK Mission to the UN
Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and UN Legal Counsel

ANNEX B

List of ICTR Acquitted Persons or Persons Released after Serving their Sentence

Name	Country where Family Resides
Jerome C. Bicamumpaka	Canada
Gratien Kabiligi	France
Joseph Kanyabashi	Belgium
Prosper Mugiraneza	France
Tharcisse Muvunyi	United Kingdom
Anatole Nsengiyumva	France
André Ntagerura	France
Alphonse Nteziryayo	France
Francois Nzuwonemeye	France
Innocent Sagahutu	Denmark
Protais Zigiranyirazo	France