

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-18-116-R90.1

Date: 25 February 2025

Original: English

BEFORE A SINGLE JUDGE

Before: Judge José Ricardo de Prada Solaesa

Registrar: Mr. Abubacarr M. Tambadou

Decision of: 25 February 2025

PROSECUTOR

v.

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

PUBLIC

DECISION ON ALLEGATIONS OF CONTEMPT

Amicus Curiae:

Mr. Kenneth Scott

Mr. Peter Robinson

1. I, José Ricardo de Prada Solaesa, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case¹ hereby render this decision on whether proceedings, pursuant to Article 1(4)(a) of the Statute of the Mechanism (“Statute”) and Rule 90 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), or other appropriate disciplinary action against Mr. Peter Robinson, are warranted.²

I. BACKGROUND

2. On 25 June 2021, a Single Judge of the Mechanism pronounced the judgement in the *Nzabonimpa et al.* Contempt Case³ on charges against Mr. Augustin Ngirabatware and four other accused in relation to protected witnesses, who had testified for the Office of the Prosecutor of the International Criminal Tribunal for Rwanda (“ICTR Prosecution” and “ICTR”, respectively)⁴ in the *Ngirabatware* ICTR Case.⁵ The charges at the center of the *Nzabonimpa et al.* Contempt Case related to witness interference and the violation of court orders that occurred in connection with the *Ngirabatware* Review Case, which concerned Ngirabatware’s efforts to have his convictions reviewed before the Mechanism.⁶ From at least 15 August 2015 until 19 December 2017, Robinson acted as Ngirabatware’s counsel in the *Ngirabatware* Review Case.⁷

3. In the course of his final deliberations and the preparation of the *Nzabonimpa et al.* Contempt Trial Judgement, the Single Judge considered, *inter alia*, that the record before him raised grave concerns of repeated professional and ethical lapses on the part of Robinson, while acting as Ngirabatware’s counsel, as well as reason to believe that Robinson may be in contempt of the

¹ Order Assigning a Single Judge to Consider a Matter Pursuant to Rule 90(C), 8 October 2021, p. 1.

² Bearing in mind that all proceedings before the Mechanism shall be public unless exceptional reasons require keeping them confidential (*see, e.g., In the Matter of Emmanuel Rukundo*, Case No. MICT-23-128, Decision on an Appeal of a Decision on Request for Temporary Humanitarian Aid, 15 August 2023, n. 3), I have avoided express references to names and/or omitted specific details that run the risk of disclosing protected information to ensure that this decision is public.

³ *See Prosecutor v. Anselme Nzabonimpa et al.*, Case No. MICT-18-116-T (“*Nzabonimpa et al.* Contempt Case”).

⁴ *See Prosecutor v. Anselme Nzabonimpa et al.*, Case No. MICT-18-116-T, Judgement, pronounced on 25 June 2021 and filed in writing on 20 September 2021 (“*Nzabonimpa et al.* Contempt Trial Judgement”), paras. 1, 2, 7, 9-11, 409.

⁵ *See The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T (“*Ngirabatware* ICTR Case”). *See also Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-A.

⁶ *See Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R (“*Ngirabatware* Review Case”). *See also Nzabonimpa et al.* Contempt Trial Judgement, paras. 5-7, 10, 11.

⁷ Although it appears that Robinson formally commenced representing Ngirabatware on 17 August 2015, I note that, according to the *amicus curiae* appointed to this matter (*see infra*, para. 4), Robinson signed the undertaking as Ngirabatware’s counsel on 11 August 2015. *See Amicus Curiae* Report to the Single Judge, 13 March 2023 (confidential and *ex parte*) (“Report”), para. 99 and references cited therein. *See also Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Decision, 19 January 2018, pp. 1-3 (wherein the Registrar of the Mechanism (“Registrar”): (i) noted that, on 17 August 2015, Robinson commenced representing Ngirabatware before the Mechanism on a *pro bono* basis; (ii) considered that, on 19 December 2017, the Appeals Chamber of the Mechanism (“Appeals Chamber”) granted the withdrawal of Robinson as Ngirabatware’s counsel and instructed the Registrar to replace Robinson; and (iii) withdrew the assignment of Robinson and assigned Ms. Diana Ellis as counsel and Mr. Sam Blom-Cooper as co-counsel).

Mechanism.⁸ Consequently, on 20 September 2021, the Single Judge referred the matter to the President of the Mechanism (“President”), in accordance with Rule 90(C) of the Rules, so that another Single Judge of the Mechanism could independently assess whether or not further proceedings under Rule 90 of the Rules or other appropriate disciplinary action against Robinson, including denial of audience before the Mechanism, are warranted.⁹

4. On 25 October 2021, having been assigned by the President as the Single Judge in this case, I directed the Registrar, pursuant to Rule 90(C)(ii) of the Rules, to appoint an *amicus curiae* to investigate whether Robinson interfered with the administration of justice or should otherwise be professionally sanctioned or denied audience for having: (i) violated order(s) of a Chamber or Single Judge; (ii) unauthorized communication with Ngirabatware; and (iii) engaged in a pattern of repeated professional and ethical lapses while acting as Ngirabatware’s counsel (“Investigation”).¹⁰ I also directed the *amicus curiae* to submit a report containing the conclusions of the Investigation.¹¹ On 30 November 2021, the Registrar appointed Mr. Kenneth Scott as *amicus curiae* to conduct the Investigation (“*Amicus Curiae*”).¹²

5. On 13 March 2023, the *Amicus Curiae* filed the confidential and *ex parte* Report to the Single Judge.¹³ Following his interview of Robinson on 23 and 24 May 2023 (“Suspect Interview”),¹⁴ the *Amicus Curiae* filed the confidential and *ex parte* “*Amicus Curiae*’s Supplemental Report to the

⁸ *Prosecutor v. Anselme Nzabonimpa et al.*, Case No. MICT-18-116-T, Order Referring a Matter to the President, 20 September 2021 (“*Nzabonimpa et al.* Contempt Case Order of 20 September 2021”), p. 3.

⁹ *Nzabonimpa et al.* Contempt Case Order of 20 September 2021, p. 3.

¹⁰ Order Directing the Registrar to Appoint an *Amicus Curiae* to Investigate Pursuant to Rule 90(C)(ii), 25 October 2021 (“Order of 25 October 2021”), p. 3.

¹¹ See Order of 25 October 2021, p. 4.

¹² Decision, 30 November 2021, p. 2.

¹³ While the Report was initially due on 30 March 2022, I granted several requests for extension of time to file the Report. See Decision on Request for Extension of Time, 1 April 2022, pp. 1, 2; Decision on Request for Extension of Time, 28 July 2022, pp. 1, 2; Decision on Request for Extension of Time, 28 September 2022, pp. 1, 2; Decision on Request for Extension of Time, 29 November 2022, pp. 1, 2; Decision on Further Request for Extension of Time, 26 January 2023, pp. 2, 3; Decision on Further Request for Extension of Time, 13 February 2023, pp. 1, 2.

¹⁴ During the Suspect Interview, Robinson waived his right to remain silent and indicated that he understood that any statement made during the Suspect Interview and in his written statement dated 28 April 2023 (“Robinson April 2023 Statement”) (see Supplemental Report, Annex A) may be used as evidence against him. See Supplemental Report, paras. 6, 7; Submission to the Single Judge of Material Related to the Interview of Mr. Peter Robinson, 12 July 2023 (strictly confidential and *ex parte*), Annexes 1, 2 (collectively, “Suspect Interview Transcript”). Robinson also waived his right to counsel. See Suspect Interview Transcript, pp. 10-12. See also Supplemental Report, para. 4.

Single Judge” on 13 June 2023 (“Supplemental Report”).¹⁵ Thereafter, I considered further filings by the *Amicus Curiae* that were related to additional investigative matters.¹⁶

6. On 27 October 2023, having considered, *inter alia*, that the Report and the Supplemental Report referred to materials that may be subject to the provisions of Rule 76 of the Rules and/or lawyer-client privilege, I ordered submissions from Robinson and the *Amicus Curiae* on the: (i) use of materials in the present case that may be subject to the provisions of Rule 76 of the Rules in the event of any possible trial or disciplinary actions against Robinson; and (ii) applicability of the crime-fraud exception to lawyer-client privilege with respect to such material.¹⁷ On 2 April 2024, having considered those submissions,¹⁸ I issued my decision finding that: (i) the lawyer-client privilege does not prevent the use of any materials used for the Investigation, Report, and Supplemental Report, including the documents subject to Rule 76 of the Rules, in any further proceedings, unless otherwise ordered; and (ii) in view of Robinson’s consent during the Suspect Interview, documents subject to Rule 76 of the Rules may be used in further proceedings to the extent provided for in the Decision of 2 April 2024.¹⁹ On 24 April 2024, I granted the *Amicus Curiae*’s request for certification to appeal the Decision of 2 April 2024.²⁰

7. On 17 July 2024, the Appeals Chamber, *inter alia*, granted the *Amicus Curiae*’s appeal, in part, and remanded the matter to me for further consideration consistent with its decision.²¹ The

¹⁵ See Decision on Request for Leave to Make Submissions, 20 April 2023, pp. 2, 3 (wherein, having considered, *inter alia*, that Robinson had previously expressed his willingness to be interviewed by the *Amicus Curiae*, I instructed the *Amicus Curiae* to schedule an interview with Robinson and file a supplement to the Report). See also Decision on Motion for Extension of Time, 18 May 2023 (confidential and *ex parte*), pp. 1, 2.

¹⁶ See Request for Authorization to Complete Certain Investigative Matters, 11 August 2023 (confidential and *ex parte*); Decision on Request for Authorization to Complete Certain Investigative Matters, 27 October 2023 (confidential and *ex parte*); Request for Authorization to Complete an Investigative Matter, 6 February 2024 (confidential and *ex parte*); Decision on Further Request for Authorization to Complete Certain Investigative Matters, 15 February 2024 (confidential and *ex parte*).

¹⁷ See Order for Submissions, 27 October 2023 (confidential, made public on 21 May 2024), pp. 2, 3.

¹⁸ See Submissions on Rule 76 and Privileged Materials, 22 November 2023 (confidential, made public on 21 May 2024); Submissions on the Use of Rule 76 Material and the Crime-Fraud Exception to Lawyer-Client Privilege, 4 December 2023 (confidential, made public on 21 May 2024); Reply Re: Rule 76 and Privileged Materials, 11 December 2023 (confidential, made public on 21 May 2024); *Amicus Curiae* Sur-Reply to “Reply Re: Rule 76 and Privileged Materials”, 28 December 2023 (confidential, made public on 21 May 2024); Response to Sur-Reply Re: Rule 76 and Privileged Materials, 4 January 2024 (confidential, made public on 21 May 2024). See also Order for Submissions, 27 October 2023 (confidential, made public on 21 May 2024), pp. 2, 3; Decision on Request for Leave to Sur-Reply to “Reply Re: Rule 76 and Privileged Materials”, 22 December 2023 (confidential, made public on 21 May 2024), p. 2.

¹⁹ Decision on Application of Lawyer-Client Privilege and Use of Material Subject to Rule 76 in Further Proceedings, 2 April 2024, para. 30.

²⁰ Decision on *Amicus Curiae* Request for Certification, 24 April 2024, p. 3. See Request for Certification to Appeal the “Decision on Application of Lawyer-Client Privilege and Use of Material Subject to Rule 76 in Further Proceedings” Dated 2 April 2024, 9 April 2024 (confidential, made public on 21 May 2024).

²¹ Decision on Appeal of Decision on the Use of Material Subject to Rule 76 in Further Proceedings, 17 July 2024 (“Appeals Chamber Decision of 17 July 2024”), para. 30.

Appeals Chamber had clarified that “the protection afforded under Rule 76 of the Rules is that of *confidentiality*, not of control over the direction or the nature of the proceedings, for example disciplinary or criminal, that may be initiated” and that the “control over whether the information may be used as evidence at trial necessarily derives from the control that the provider has over whether and to whom the information may be disclosed”.²² With respect to the present matter, the Appeals Chamber stated that “[g]iven that Robinson had already consented to the disclosure of the Rule 76 material to the *Amicus Curiae* and the Single Judge, should the Single Judge consider that there are sufficient grounds to proceed against Robinson for contempt and issue an order in lieu of indictment, no further consent to the disclosure of the material would be required and it will be for the *Amicus Curiae* or the Single Judge prosecuting the matter to ‘elect’ whether such material should be presented as evidence in future criminal proceedings against Robinson”.²³

II. DISCUSSION

8. Pursuant to Article 1(4)(a) of the Statute and Rule 90 of the Rules, the Mechanism has the power to prosecute any person who knowingly and wilfully interferes or has interfered with the administration of justice with respect to proceedings before the Mechanism, and to hold such person in contempt. If the Single Judge reviewing the matter considers that there are sufficient grounds to proceed against a person for contempt, the Single Judge *may* issue an order in lieu of an indictment and either prosecute the matter or direct an *amicus curiae* to prosecute the matter.²⁴ The “sufficient grounds” standard requires the Single Judge to determine whether the evidence before him gives rise to a *prima facie* case of contempt.²⁵ This is the same standard employed in confirming an indictment or in issuing charges in an order in lieu of an indictment, namely a “credible case which, if accepted and uncontradicted, would be a sufficient basis on which to convict the accused”.²⁶

9. The language of the Rule 90(D)(ii) of the Rules and related jurisprudence are unequivocal in that, even if a *prima facie* case of contempt exists, the decision on whether or not to initiate a contempt proceeding is discretionary.²⁷ I consider that such exercise of my discretion entails a careful and reasonable consideration of proportionality that takes into account and acknowledges the nature and seriousness of the alleged events, which are balanced against a variety of factors. In this regard, I note

²² Appeals Chamber Decision of 17 July 2024, para. 25 (emphasis added).

²³ Appeals Chamber Decision of 17 July 2024, para. 26, *referring, inter alia, to* Rule 76(C) of the Rules.

²⁴ Rule 90(D)(ii) of the Rules (emphasis added).

²⁵ *Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38-R90.1, Decision on Allegations of Contempt, 29 April 2024 (confidential, public redacted version filed on the same day) (“*Kabuga* Decision of 29 April 2024”), para. 15 and references cited therein.

²⁶ *Kabuga* Decision of 29 April 2024, para. 18 and references cited therein.

²⁷ See *Kabuga* Decision of 29 April 2024, para. 15 and references cited therein.

that the United Nations Security Council (“UNSC”), which established the Mechanism under its authority under Chapter VII of the Charter of the United Nations, has repeatedly emphasized that the Mechanism shall be a “small, temporary and efficient structure, whose functions and size will diminish over time”.²⁸ This emphasis of the UNSC is just one of the many factors that shall be considered against the nature and seriousness of the alleged events in the judicious determination of whether to initiate criminal contempt proceedings.

10. With respect to the *actus reus* for contempt, Rule 90(A) of the Rules provides a non-exhaustive list of conduct that could amount to an interference with the administration of justice,²⁹ which includes, under Rule 90(A)(ii) of the Rules, “disclos[ing] information relating to those proceedings in knowing violation of an order of a Chamber or a Single Judge” and under Rule 90(A)(iii) of the Rules “without just excuse fails to comply with an order by a Chamber or Single Judge [...]”. Interference may be by way of conduct that obstructs, prejudices, or abuses the administration of justice.³⁰ Further, prohibited contact with protected witnesses that amounts to an interference with the administration of justice can be direct or indirect,³¹ and any such contact may still be in violation of protective measures even if the contact is initiated by protected witnesses.³² It is also well established that, for the purposes of a conviction for contempt, any defiance of an order of a Chamber *per se* interferes with the administration of justice and no additional proof of harm to the administration of justice is required.³³

11. The *mens rea* for a violation under Rule 90(A) of the Rules is satisfied by proof of any knowing and wilful conduct in violation of an order by a Chamber or Single Judge.³⁴ The Appeals Chambers has confirmed that the *mens rea* for allegations under Rule 90(A)(ii) of the Rules is the knowledge that the disclosure in question is in violation of an order of a Chamber or a Single Judge,

²⁸ UNSC Resolution 2637 (2022), U.N. Doc. S/RES/2637 (2022), 22 June 2022; UNSC Resolution 2529 (2020), U.N. Doc. S/RES/2529 (2020), 25 June 2020; UNSC Resolution 2422 (2018), U.N. Doc. S/RES/2422 (2018), 27 June 2018; UNSC Resolution 2256 (2015), U.N. Doc. S/RES/2256 (2015), 2 December 2015; UNSC Resolution 1966 (2010), U.N. Doc. S/RES/1966 (2010), 22 December 2010 (“UNSC Resolution 1966”).

²⁹ *Kabuga* Decision of 29 April 2024, para. 18, referring, *inter alia*, to *Prosecutor v. Marie Rose Fatuma et al.*, Case No. MICT-18-116-A, 29 June 2002, Judgement (“*Fatuma et al.* Contempt Appeal Judgement”), n. 276.

³⁰ *Kabuga* Decision of 29 April 2024, para. 18 and references cited therein.

³¹ See *Fatuma et al.* Contempt Appeal Judgement, paras. 95, 99, 115; *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4, Judgement on Allegations of Contempt, 17 December 2008 (“*Haraqija and Morina* Contempt Trial Judgement”), para. 101.

³² See *Léonidas Nshogoza v. The Prosecutor*, Case No. ICTR-07-91-A, Judgement, 15 March 2010 (“*Nshogoza* Contempt Appeal Judgement”), para. 84; *The Prosecutor v. Léonidas Nshogoza*, Case No. ICTR-07-91-T, Judgement, 7 July 2009, para. 169; *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-T, Decision on the Prosecutor’s Urgent Motion for an Immediate Restraining Order Against the Defence’s Further Contact with Witness RM-10 and for other Relief Based on the Ngeze Defence’s Violations of Court Decisions and Rules, 17 January 2003, para. 16.

³³ *Fatuma et al.* Contempt Appeal Judgement, para. 75 and references cited therein.

³⁴ *Nshogoza* Contempt Appeal Judgement, para. 80. See also Rule 2(C) of the Rules.

and no demonstration of a “specific intent to interfere with the administration of justice” is required.³⁵ Further, Trial Chambers of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) have indicated that the *mens rea* for allegations under Rule 90(A)(iii) of the Rules is satisfied when it is shown that the accused was not only able to fully comprehend the contents of the order and its implications, but also the obligations it imposed on the accused.³⁶ It is sufficient to establish, including through inference from circumstantial evidence, that the conduct that constituted the violation was deliberate and not accidental.³⁷ A finding of intent to violate a judicial order will almost necessarily follow where it is established that an accused had knowledge of the existence of that order or acted with wilful blindness to its existence.³⁸ Reckless indifference to the consequences of the act by which the order is violated may satisfy the mental element.³⁹

12. Rule 90(B) of the Rules provides that “[a]ny incitement or attempt to commit any of the acts punishable under paragraph (A) is punishable as contempt of the ICTY, the ICTR, or the Mechanism with the same penalties.” While commission requires that the person’s acts form part of the *actus reus* element of the offence, without however being limited to direct and physical perpetration, incitement relates to actions that encourage or persuade another to commit the offence.⁴⁰ It follows that any person who knowingly and wilfully encourages and/or persuades another person to commit any act described in Rule 90(A) of the Rules shall be subject to the same penalties as one who commits the act.⁴¹

13. Turning now to the allegations, the *Amicus Curiae* submits that Robinson committed 34 violations,⁴² constituting contempt or a violation of the Code of Conduct, during his representation of Ngirabatware in the *Ngirabatware* Review Case.⁴³ As noted above,⁴⁴ the *Amicus Curiae* also

³⁵ *Fatuma et al.* Contempt Appeal Judgement, para. 84 and references cited therein.

³⁶ See *In the Contempt Case of Milan Tupajić*, Case No. IT-95-5/18-R77.2, Public Redacted Version of “Judgement on Allegations of Contempt” Issued on 24 February 2012, 24 February 2012 (“*Tupajić* Contempt Trial Judgement”), paras. 14, 28; *In the Contempt Case of Dragomir Pećanac*, Case No. IT-05-88/2-R77.2, Judgement on Allegations of Contempt, 9 December 2011 (confidential) (“*Pećanac* Contempt Trial Judgement”), paras. 17, 36.

³⁷ *Fatuma et al.* Contempt Appeal Judgement, para. 84, referring, *inter alia*, to *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Judgement, 19 July 2011 (“*Hartmann* Contempt Appeal Judgement”), para. 128.

³⁸ *Fatuma et al.* Contempt Appeal Judgement, para. 84; *Tupajić* Contempt Trial Judgement, para. 16; *Pećanac* Contempt Trial Judgement, para. 19 and references cited therein.

³⁹ *Fatuma et al.* Contempt Appeal Judgement, para. 84; *Tupajić* Contempt Trial Judgement, para. 16; *Pećanac* Contempt Trial Judgement, para. 19 and references cited therein.

⁴⁰ See *Haraqija and Morina* Contempt Trial Judgement, para. 20.

⁴¹ See *Haraqija and Morina* Contempt Trial Judgement, para. 20.

⁴² See Report, para. 167 (wherein the *Amicus Curiae* divides the 34 violations into seven categories of improper conduct).

⁴³ See Report, paras. 160, 167, 168, 452-455; Supplemental Report, para. 166, Registry Pagination (“RP.”) 439; Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism, 14 November 2012 (MICT/6) (“Code of Conduct”). I note that the alleged violations took place prior to the revision of the Code of Conduct on 14 May 2021, and that, therefore, such revised Code of Conduct is not applicable to the present matter. See also Report, n. 37.

⁴⁴ See *supra* para. 6.

raised evidentiary issues that could pose difficulties in pursuing certain violations at trial, including the possible limitations on the admission into evidence of information that he relied upon during the Investigation that: (i) had been subject to restrictions pursuant to Rule 76 of the Rules in the *Nzabonimpa et al.* Contempt Case; and/or (ii) may be subject to lawyer-client privilege.⁴⁵ Noting that the *Amicus Curiae* subsequently indicated that “all the material referred to in his Report and Supplemental Report as potentially protected by Rule 76 is covered by the Appeals Chamber Decision [of 17 July 2024]”,⁴⁶ I will consider the possible limitations raised by the *Amicus Curiae* in my review below of the alleged violations, while bearing in mind the Appeals Chamber Decision of 17 July 2024.

A. Alleged Violations Related to Relevant Protective Measures Decisions
(Violations 1-10, 14-30, 32-34)

1. Prohibited Contact with Protected ICTR Prosecution Witnesses in Violation of
Protective Measures Decisions (Violations 1-4, 6-9, 32, 33)

14. The *Amicus Curiae* presents evidence under Violations 1, 3, 4, 6-9, 32, and 33 that, in violation of the Protective Measures Decision of 7 May 2009⁴⁷ and/or the Protective Measures Decision of 5 August 2016,⁴⁸ Robinson attempted to, incited, or had prohibited contact with protected ICTR Prosecution witnesses through direct or indirect communications with persons who were in communication with those protected witnesses.⁴⁹ With respect to Violations 3, 8, 9, and 32, the *Amicus Curiae* further contends that, if it is considered that Robinson did not intend for contact with

⁴⁵ See Report, paras. 161-166, 186, 192, 207, 208, 215, 221, 230, 236, 253-255, 279, 280, 290, 300, 303, 315, 316, 328, 331, 336, 340, 357, 358, 368, 379, 388, 404, 411, 417, 418, 435, 436, 447-451; Supplemental Report, paras. 154-159.

⁴⁶ *Amicus Curiae*’s Submissions Updating His Recommendations to the Single Judge, 26 July 2024 (confidential and *ex parte*), para. 9.

⁴⁷ See *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Decision on Prosecution’s Motion for Special Protective Measures for Prosecution Witnesses and Others, 7 May 2009 (“Protective Measures Decision of 7 May 2009”), providing, in relevant part, that: “(v) the Defence team in this case and any representative acting on its behalf shall notify the Prosecution in writing if it wishes to contact any protected [ICTR Prosecution] witness and/or his or her family. If the person concerned consents, the Prosecution shall facilitate such contact together with the [Witness Support and Protection Unit (“WISP”)]”. I note that, although the Protective Measures Decision of 7 May 2009 is in reference to the ICTR Prosecution, its functions are now with the Office of the Prosecutor of the Mechanism (“Prosecution”) following the closure of the ICTR. See also UNSC Resolution 1966, Annex 2 (Transitional Arrangements), Article 6.

⁴⁸ See *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Decision on a Motion for Modification of Protective Measures, 5 August 2016 (confidential) (“Protective Measures Decision of 5 August 2016”), providing, in relevant part, that: “(v) [a] party who wishes to contact Witnesses [...] shall notify the WISP and the other party. The WISP shall contact the witness to determine if he or she consents to the meeting. The WISP shall thereafter facilitate the meeting if the witness consents and shall be present during the meeting. The other party may be present during the meeting if it so wishes”.

⁴⁹ See Report, paras. 179-186, 193-215, 222-280; Supplemental Report, paras. 38-54, 60-82, 87-92.

the protected witnesses, his conduct displayed reckless indifference to the fact that such contact would occur.⁵⁰

(a) Violations 1, 6, 32, and 33

15. I note that Violations 1, 6, 32, and 33 concern Robinson's repeated alleged conduct to communicate with a protected ICTR Prosecution witness through an individual close to that witness.⁵¹ In terms of evidence on whether, as a direct result, there was ensuing contact between the protected witness and the close individual of the witness, the *Amicus Curiae* indicates that there is evidence for Violation 1⁵² and a lack of such direct evidence for Violation 6.⁵³ He did not make any submissions on the matter for Violations 32 and 33.⁵⁴

16. Specifically, Violation 1 concerns Robinson's alleged effort to determine the protected witness's willingness to meet with him, involving express indication that this close individual would communicate with the witness on Robinson's behalf. Violations 6, 32, and 33 each concern Robinson's alleged effort to convey certain information to the protected witness regarding: (i) what the witness can expect in a certain situation;⁵⁵ (ii) Robinson's willingness to hear the witness's requests when they meet;⁵⁶ and (iii) the witness's right not to consent to the Prosecution's request for an interview.⁵⁷

17. Having examined the evidence provided by the *Amicus Curiae*, I consider that the evidence of Robinson's conduct in connection with Violations 1, 6, 32, and 33 gives rise to a *prima facie* case for contempt, under Rule 90(A) of the Rules or, alternatively, for attempt to or incitement to commit contempt, under Rule 90(B) of the Rules. This finding is in view of the Protective Measures Decision of 7 May 2009, which Robinson was well aware of,⁵⁸ that explicitly required him to notify the

⁵⁰ See Report, paras. 205, 248, 251, 271; Supplemental Report, paras. 50, 82, 88. See also Supplemental Report, para. 75.

⁵¹ With respect to Violation 1, I note that, according to the *Amicus Curiae*, Robinson signed the undertaking as Ngirabatware's counsel on 11 August 2015. See *supra* n. 7. See also Robinson April 2023 Statement, Annex 3. In these circumstances, I consider that it is irrelevant that Robinson's conduct occurred on 15 August 2015, prior to his official recognition as counsel acting on behalf of Ngirabatware, and that his conduct in relation to Violation 1 was in furtherance of his anticipated representation of Ngirabatware.

⁵² See *Nzabonimpa et al.* Contempt Case, Exhibits 1D4 (confidential), P1712 (confidential), 1D8 (confidential); Robinson April 2023 Statement, para. 42, Annex 8. See also Report, para. 181.

⁵³ See Report, para. 228.

⁵⁴ See generally Supplemental Report, paras. 87-90.

⁵⁵ See Report, paras. 227, 228.

⁵⁶ Supplemental Report, paras. 87, 88, referring to Robinson April 2023 Statement, Annex 8.

⁵⁷ Supplemental Report, paras. 89, 90, referring to Robinson April 2023 Statement, Annex 25.

⁵⁸ See, e.g., Robinson April 2023 Statement, paras. 41, 119. See also *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29, Decision on Prosecution's Motion Regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel, 5 May 2016 ("Protective Measures Decision of 5 May 2016"), para. 11.

Prosecution in writing if he wished to contact the protected witness.⁵⁹ Further, the evidence, if proven, appears to show that Robinson circumvented this judicial order by communicating with an individual close to the protected witness, whom Robinson knew was in direct communication with the protected witness,⁶⁰ so as to contact the witness on Robinson's behalf in order to relay certain information that may otherwise not reach the witness. Accordingly, taking into consideration the nature of Robinson's conduct, I exercise my discretion to initiate contempt proceedings against Robinson for these violations. In this regard, mindful of the Appeals Chamber Decision of 17 July 2024, I am not aware of any evidentiary issues that may pose difficulties in pursuing this violation at trial.

(b) Violations 3 and 4

18. With respect to Violations 3 and 4, I consider that they should be examined collectively as they both concern Robinson's alleged prohibited contact with certain protected ICTR Prosecution witnesses in relation to his efforts to determine the reason behind their refusal to meet with his team.⁶¹ The evidence indicates that Robinson explicitly instructed Mr. Dick Prudence Munyeshuli, his investigator, to find out the reason for the aforementioned refusal, and, in so doing, identified a specific individual, namely Mr. Maximilien Turinabo, for the investigator to contact on his behalf.⁶² In this regard, both Robinson and the investigator understood that the investigator would reach out to individuals, including Turinabo, who were in contact with the protected witnesses, on Robinson's behalf, for the very purpose of investigating the issue of their refusal.⁶³ Further, there appears to be evidence of contact, on at least one occasion, between the investigator and Turinabo, and of Robinson's subsequent receipt of documents related to the protected witnesses.⁶⁴ Considering the above, even if Robinson did not intend for contact with the protected witnesses to take place on his behalf, his conduct displayed reckless indifference to the fact that such contact would likely occur and would elicit a response or reaction from these witnesses that would be transmitted back to him. Mindful of the lack of evidence on whether, as a direct result, there was ensuing contact between the

⁵⁹ See *supra* n. 47.

⁶⁰ See Suspect Interview Transcript, p. 32 (wherein Robinson agrees, in response to questions from the *Amicus Curiae*, that, throughout the time he was communicating with the close individual of the protected witness, he believed the individual would be in communication with the protected witness).

⁶¹ Although the *Amicus Curiae* frames Robinson's conduct regarding the receipt of related documents as a separate violation, I do not make such a distinction and consider that, for all intents and purposes, Robinson's conduct under Violation 4 is evidential of the prohibited contact alleged under Violation 3 and that, therefore, these violations should not be regarded separately.

⁶² See *Nzabonimpa et al.* Contempt Case, Exhibit 5D15 (confidential).

⁶³ See also Suspect Interview Transcript, pp. 70 (wherein Robinson says he "expected" the contact person to reach out to persons who did have contact with the protected witnesses), 75 (wherein Robinson states that he "wanted to find out more information about what had happened [...]").

⁶⁴ See Suspect Interview Transcript, p. 75; Robinson April 2023 Statement, para. 77, Annex 15.

protected witnesses and the specific individual identified by Robinson,⁶⁵ I consider that a *prima facie* case exists for contempt under Rule 90(A) of the Rules, or alternatively, for attempt to or incitement to commit contempt, under Rule 90(B) of the Rules, for these violations. This finding is in view of the Protective Measures Decision of 7 May 2009, which Robinson was well aware of,⁶⁶ that explicitly required him to notify the Prosecution in writing if he wished to contact the protected witnesses.⁶⁷ Further, the evidence, if proven, appears to show that Robinson intended to relay a specific question, through certain individuals, to the protected witnesses, which may otherwise not reach them, and requiring a response or reaction that would be transmitted back to Robinson. Accordingly, considering the nature of Robinson's alleged conduct with respect to these violations, I exercise my discretion to initiate contempt proceedings against Robinson for Violations 3 and 4. In this regard, mindful of the Appeals Chamber Decision of 17 July 2024, I am not aware of any evidentiary issues that may pose difficulties in pursuing these violations at trial.

(c) Violation 7

19. Turning to Violation 7, the evidence indicates that Robinson gave his investigator's phone number to a protected ICTR Prosecution witness, instructed the witness to call the investigator if the witness had any problems,⁶⁸ and that the witness did indeed contact the investigator.⁶⁹ Recalling the jurisprudence that contact may still be in violation of protective measures even if the contact is initiated by a protected witness,⁷⁰ I consider that the evidence gives rise to a *prima facie* case for contempt case under Rule 90(A) of the Rules, or alternatively, for attempt to or incitement to commit contempt, under Rule 90(B) of the Rules, in view of the Protective Measures Decision of 7 May 2009, which Robinson was well aware of,⁷¹ that required him to notify the Prosecution in writing if he wished to contact the protected witness.⁷² That Robinson may have had a "good faith belief that protective measures would be modified" and that he subsequently told his investigator not to contact the protected witness does not raise questions as to the existence of a *prima facie* case.⁷³ Further, considering the evidence indicating Robinson's deliberate instruction to the protected witness to contact the Defence investigator, while well aware that such an instruction was in contravention of

⁶⁵ See also Report, para. 204.

⁶⁶ See, e.g., Robinson April 2023 Statement, paras. 41, 119. See also Protective Measures Decision of 5 May 2016, para. 11.

⁶⁷ See *supra* n. 47.

⁶⁸ *Nzabonimpa et al.* Contempt Case, Exhibit 5D22 (confidential); *Nzabonimpa et al.* Contempt Case, T. 7 April 2021 p. 36; Robinson April 2023 Statement, paras. 118, 121. See Suspect Interview Transcript, pp. 95-97.

⁶⁹ See Robinson April 2023 Statement, para. 120, Annex 25; Suspect Interview Transcript, p. 96.

⁷⁰ See *supra* para. 10.

⁷¹ See, e.g., Robinson April 2023 Statement, paras. 41, 119.

⁷² See *supra* n. 47.

⁷³ See Robinson April 2023 Statement, para. 121, Annex 25. See Supplemental Report, para. 63.

the Protective Measures Decision of 7 May 2009,⁷⁴ I exercise my discretion to initiate contempt proceedings against Robinson with respect to Violation 7. In this regard, mindful of the Appeals Chamber Decision of 17 July 2024, I am not aware of any evidentiary issues that may pose difficulties in pursuing this violation at trial.

(d) Violations 8 and 9

20. With respect to Violations 8 and 9, I note that both violations concern Robinson's alleged repeated conduct to communicate with a number of protected ICTR Prosecution witnesses through certain individuals, including his investigator on two separate occasions. I consider that the evidence of Robinson's explicit instructions to the Defence investigator to inform certain individuals, who were in contact with the protected ICTR Prosecution witnesses, that the WISP would contact them in relation to the *Ngirabatware* Review Case,⁷⁵ and that the information Robinson provided to the investigator was subsequently shared with protected ICTR Prosecution witnesses,⁷⁶ gives rise to a *prima facie* case for contempt under Rule 90(A) of the Rules. This finding is in view of the Protective Measures Decision of 5 August 2016, which was the result of Robinson's motion for the variation of protective measures, that required him to notify the WISP and the Prosecution if he wished to contact these protected witnesses.⁷⁷ The evidence, if proven, appears to show that Robinson circumvented this judicial order by communicating with individuals, whom Robinson was well aware were in communication with the protected witnesses, to contact the witnesses on his behalf in order to relay certain information that may otherwise not reach the witnesses. Accordingly, I exercise my discretion to initiate contempt proceedings for these violations. In view of the Appeals Chamber Decision of 17 July 2024, I am not aware of any evidentiary issues that may pose difficulties in pursuing these violations at trial.

(e) Violation 2

21. Under Violation 2, the *Amicus Curiae* also presents evidence that Robinson had prohibited direct contact with a protected ICTR Prosecution witness in violation of the Protective Measures Decision of 7 May 2009.⁷⁸ As it relates to this violation, notwithstanding the additional context that

⁷⁴ See Robinson April 2023 Statement, paras. 119, 120.

⁷⁵ See Report, paras. 237-252, 256-258, *referring, inter alia, to* Nzabonimpa *et al.* Contempt Case, Exhibits 5D24 (confidential), 5D10 (confidential); Supplemental Report, paras. 72-82, *referring, inter alia, to* Robinson April 2023 Statement, paras. 13, 145, 164, 165.

⁷⁶ See Report, paras. 241-245, *referring, inter alia, to* Nzabonimpa *et al.* Contempt Case, Exhibits 5D24 (confidential), P248 (confidential), P249 (confidential), P251 (confidential).

⁷⁷ See, e.g., Robinson April 2023 Statement, para. 133. See *supra* n. 48.

⁷⁸ See Report, paras. 187-191; Supplemental Report, paras. 31, 32. See *supra* n. 47.

has been presented by the *Amicus Curiae*, I consider that the issue, for all intents and purposes, is *res judicata*.⁷⁹ The Prosecution raised Violation 2 before the Appeals Chamber, which declined to issue a warning or any other possible sanction to Robinson and instead cautioned him to exercise greater care when seeking to contact witnesses and to check the trial record accordingly.⁸⁰ I do not consider that the additional information presented through the Report and the Supplemental Report requires me to revisit the matter.

(f) Conclusion

22. In view of the foregoing, I find it appropriate to issue an order in lieu of an indictment and to initiate proceedings against Robinson for contempt in connection with Violations 1, 3, 4, 6-9, 32, and 33 under Rule 90(A) of the Rules or, alternatively, for attempt to or incitement to commit contempt, under Rule 90(B) of the Rules. Subject to Article 6 of the Statute, I direct the *Amicus Curiae* to prosecute the matter in accordance with Rule 90(D)(ii) of the Rules. With respect to Robinson's conduct in relation to Violation 2, I do not find that criminal prosecution is warranted for the reasons explained above.

2. Disclosures Regarding the Confidentiality of Protective Measures Decisions (Violations 27-30)

23. The *Amicus Curiae* presents evidence under Violations 27-30 that Robinson disclosed to certain Defence witnesses and/or other individuals, including Turinabo, the existence of, or the content within, the Protective Measures Decision of 5 May 2016, prior to its declassification,⁸¹ and/or the confidential Protective Measures Decision of 5 August 2016.⁸² According to the *Amicus Curiae*, Robinson's alleged conduct of meeting certain Defence witnesses separately and informing them that the "Mechanism's Judges" had authorized him to meet with certain protected ICTR Prosecution witnesses, thereby disclosing the contents of the then confidential Protective Measures Decision of 5 May 2016, and requesting the Defence investigator to explain the contents of the confidential

⁷⁹ See *Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25-AR14.1, Decision on an Appeal Concerning a Request for Revocation of a Referral, 4 October 2016, para. 29 (wherein the Appeals Chamber stated that "[r]es judicata arises only when there is an identity of parties, identity of issues, and importantly a final determination of those issues in the previous decision by a court competent to decide them."); *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Motion for Redacted Versions of Decisions Issued Under Rule 75(H) of the ICTY Rules, 18 July 2016, p. 4 (wherein the Appeals Chamber stated that "considering that legal certainty presupposes respect for the principle of *res judicata*, which holds that no party is entitled to seek a review of a final and binding decision or judgment merely for the purpose of obtaining a rehearing and a fresh determination of the same issue"). Considering the jurisprudence from the Appeals Chamber, I find that the Prosecution during the *Ngirabatware* Review Case and the *Amicus Curiae* in this proceeding have an identity of interests, creating a *de facto* identity of parties, in considering whether the decision of the Appeals Chamber is binding in this proceeding.

⁸⁰ See Protective Measures Decision of 5 May 2016, paras. 24, 26.

⁸¹ See Report, p. 139, paras. 406-411; Supplemental Report, paras. 131-133.

⁸² See Report, p. 139, paras. 412-418; Supplemental Report, paras. 134-136.

Protective Measures Decision of 5 August 2016 to a certain Defence witness and another individual, violated the confidentiality of both Decisions and, therefore, amounts to contempt.⁸³

24. I am mindful that the issuance of a confidential decision constitutes an order for nondisclosure of the information contained therein, and that it is not for a party to decide which aspects of a confidential decision may be disclosed.⁸⁴ I, therefore, consider that a *prima facie* case for contempt in line with this jurisprudence exists in view of the evidence of Robinson's conduct under these violations, which, at the very least, reflects a carelessness that rises to a level of reckless indifference to the consequences of his actions. However, I am also mindful that these violations were triggered primarily by Robinson's reference to his ability to meet with protected ICTR Prosecution witnesses, as authorized by the Judges of the Mechanism, and to explain the procedure entailed in meeting with the protected witnesses;⁸⁵ that there is no showing of any harm that befell the protected witnesses due to these disclosures; and that these violations are not among the most serious allegations advanced in the Report and the Supplemental Report. While these considerations are not necessarily a defence in contempt proceedings,⁸⁶ I nevertheless find them relevant in the exercise of my discretion as to whether contempt proceedings should be initiated. I further take into consideration, in this particular context, the alleged conduct enumerated in these violations balanced against the expenditure of resources that would be required to prosecute them, bearing in mind the emphasis of the UNSC.⁸⁷ Accordingly, in the exercise of my discretion, I decline to initiate contempt proceedings against Robinson for his conduct in relation to Violations 27-30 and find that judicial warnings are instead warranted.

3. Disclosure of Identities, Status, and Other Information Concerning Protected Witnesses in Violation of Protective Measures Decisions (Violations 14-23, 34)

25. The *Amicus Curiae* presents evidence under Violations 14-23 and 34 that Robinson disclosed to non-Defence team members, in violation of the Protective Measures Decision of 7 May 2009⁸⁸ and/or the Protective Measures Decision of 5 August 2016:⁸⁹ (i) the identities of protected witnesses

⁸³ See Report, paras. 405, 410, 414, 415; Supplemental Report, para. 131.

⁸⁴ *Hartmann Contempt Appeal Judgement*, para. 52.

⁸⁵ See Report, paras. 407, 412.

⁸⁶ See *Fatuma et al.* Contempt Appeal Judgement, para. 75.

⁸⁷ See *supra* para. 9.

⁸⁸ See Protective Measures Decision of 7 May 2009, providing, in relevant part, that: "(vi) [t]he parties shall keep confidential any information concerning the witnesses and their identities, and shall not share, discuss, or reveal, directly or indirectly, such information to any person or entity outside of the Defence and the Prosecution teams".

⁸⁹ See Protective Measures Decision of 5 August 2016, providing, in relevant part, that: "(vi) [t]he parties shall keep confidential any information concerning the witnesses and their identities, and shall not share, discuss, or reveal, directly or indirectly, such information to any person or entity outside of the Defence and the Prosecution teams".

or their status as protected ICTR Prosecution witnesses in the *Ngirabatware* ICTR Case; and (ii) other information concerning the protected witnesses, including the possibility of being witnesses in the *Ngirabatware* Review Case and upcoming contact by the WISP, in view of the notice from the Prosecution of its intention to interview them.⁹⁰ With respect to Violations 14 and 16-21, the *Amicus Curiae* submits that, if it is considered that Robinson did not disclose such information, then there is evidence that he confirmed it.⁹¹

26. The Appeals Chamber has confirmed that any defiance of an order of a Chamber *per se* interferes with the administration of justice and that private disclosure of protected information to persons, who are already aware of such information, may constitute unauthorized disclosure and therefore fulfil the requirements for the *actus reus* of contempt.⁹² With the jurisprudence in mind, I consider that the evidence gives rise to a *prima facie* case for contempt, in view of the Protective Measures Decision of 7 May 2009 and/or the Protective Measures Decision of 5 August 2016, which Robinson was well aware of,⁹³ that required the disclosed information to remain confidential.⁹⁴ At the same time, I observe that the nature of many of these disclosures are tacit confirmation that certain individuals are protected witnesses in the *Ngirabatware* ICTR Case and may be witnesses in the *Ngirabatware* Review Case.⁹⁵ Moreover, the disclosures are to persons who, by the very nature of their relationships and/or their discussions with the relevant protected witnesses, knew at the time of such disclosures that the protected witnesses had testified in the *Ngirabatware* ICTR Case and/or may testify in the *Ngirabatware* Review Case.⁹⁶ In this regard, I note that there is no showing of any harm that befell protected witnesses due to these disclosures. While this may not be a defence in contempt proceedings,⁹⁷ I consider this factor as relevant in the exercise of my discretion as to whether contempt proceedings should be initiated. I further take into consideration, in this particular context, the alleged conduct enumerated in these violations balanced against the expenditure of resources that would be required to prosecute them, bearing in mind the emphasis of the UNSC.⁹⁸ Accordingly, in the exercise of my discretion, I decline to initiate contempt proceedings against Robinson for his conduct in relation to Violations 14-23 and 34 and, bearing in mind that Robinson's

⁹⁰ See Report, paras. 324-379; Supplemental Report, paras. 16, 101-122.

⁹¹ See Report, paras. 327, 335, 339, 346, 350 and references cited therein.

⁹² *Fatuma et al.* Contempt Appeal Judgement, paras. 75-79.

⁹³ See, e.g., Robinson April 2023 Statement, paras. 41, 119, 133. See also Protective Measures Decision of 5 May 2016, para. 11.

⁹⁴ See *supra* nn. 88, 89.

⁹⁵ See, e.g., Report, paras. 325, 329, 333, 337, 343, 344, 364, 369; Supplemental Report, para. 118. See also Suspect Interview Transcript, p. 91.

⁹⁶ See Report, para. 91 (wherein the *Amicus Curiae* describes the relationship between the relevant protected witnesses and persons to whom disclosures were made). See also Suspect Interview Transcript, pp. 84-89.

⁹⁷ *Fatuma et al.* Contempt Appeal Judgement, para. 75.

⁹⁸ See *supra* para. 9.

conduct under these violations falls well below the standard of professionalism and ethics required of the important role Defence counsel play in the administration of justice,⁹⁹ I find that judicial warnings are instead warranted.

4. Prohibited Contact with Family Members of Protected Witnesses in Violation of a Protective Measures Decision (Violations 5 and 10)

27. Under Violations 5 and 10, the *Amicus Curiae* presents evidence that Robinson had direct and/or indirect contact with the family members of protected ICTR Prosecution witnesses in violation of the Protective Measures Decision of 7 May 2009.¹⁰⁰

28. Among the two family members concerned with these violations, I observe that one individual was expressly excluded from the protective measures that applied to ICTR Prosecution witnesses and made a Ngirabatware Defence witness,¹⁰¹ and that both individuals were on the list of Ngirabatware Defence witnesses before the ICTR.¹⁰² In this context, where these family members were subject to potentially conflicting protective measures and considering the principle that protective measures should be interpreted and implemented in the least restrictive manner necessary to provide protection for victims and witnesses,¹⁰³ questions arise as to whether Robinson's contact with these individuals necessarily violates the Protective Measures Decision of 7 May 2009. In this regard, I have considered the *Amicus Curiae*'s observations that Robinson's motivation for speaking with the family members was not about evidence they might give *per se*, but rather concerned obtaining information about protected ICTR Prosecution witnesses with whom they were related.¹⁰⁴ At the same time, I am mindful that making inquiries about a protected witness is not *per se* a violation of protective measures.¹⁰⁵ As such, I am not convinced that a *prima facie* case of contempt exists in respect of these violations and that, even if it did, bearing in mind the circumstances of these violations, I would

⁹⁹ See Articles 3(ii), 3(iii), 3(v), 10(i), 10(iv) of the Code of Conduct.

¹⁰⁰ See Report, paras. 216-220, 281-289; Supplemental Report, paras. 55-59, 83-86. See *supra* n. 47.

¹⁰¹ *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Decision on Defence Motion for Variation of Protective Measures for Prosecution Witnesses and Others, 14 December 2010, p. 7.

¹⁰² See *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Identifying Information of Defence Protected Witnesses, 15 October 2010 (confidential), RP. 8738, 8800.

¹⁰³ *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Motion for a Public Redacted Version of a Decision, 12 February 2019, Annex, p. 7; *The Prosecutor v. Théoneste Bagosora et al.*, Case Nos. ICTR-98-41-AR73 & ICTR-98-41-AR73(B), Decision on Interlocutory Appeals of Decision on Witness Protection Orders, 6 October 2005 ("Bagosora et al. Decision of 6 October 2005"), paras. 17, 19, 21.

¹⁰⁴ See Report, paras. 284, 401, Supplemental Report, n. 68.

¹⁰⁵ See *Bagosora et al. Decision of 6 October 2005*, paras. 18-22.

decline to exercise my discretion to initiate contempt proceedings for Violations 5 and 10 and expend additional limited judicial resources.¹⁰⁶

5. Recording Interviews of Protected ICTR Defence Witnesses Without Judicial Leave in Violation of Protective Measures Decisions (Violations 24-26)

29. Under Violations 24-26, the *Amicus Curiae* identified instances where Robinson, without prior judicial authorization, recorded, or instructed the Defence investigator to record, meetings with protected ICTR Defence witnesses, which was in violation of the Protective Measures Decision of 9 February 2010.¹⁰⁷ He further alleges that one such interview of an ICTR Defence witness led to the recording of protected witness information related to a protected ICTR Prosecution witness and that witness's evidence before the ICTR, which was in violation of the Protective Measures Decision of 7 May 2009.¹⁰⁸ The *Amicus Curiae* points out that these recordings reveal the identity of certain protected ICTR Defence or Prosecution witnesses, or reveal their status as protected ICTR witnesses or as a potential witness in the *Ngirabatware* Review Case.¹⁰⁹ The *Amicus Curiae* contends that Robinson was, at the very least, recklessly indifferent to the fact that such information would be revealed.¹¹⁰

30. I am not persuaded that the evidence of Robinson's alleged conduct, which was identified by the *Amicus Curiae* under these violations, gives rise to a *prima facie* case of contempt. Noting that the prohibition against the recording of protected witness is addressed to "person[s]", not parties, and bearing in mind that the recording of interviews during an investigation can be considered best practices, I do not consider that these recordings are necessarily contrary to the relevant provisions in the aforementioned protective measures decisions.¹¹¹ Rather, I interpret the relevant provisions to

¹⁰⁶ See *supra* para. 9.

¹⁰⁷ See Report, paras. 384-387, 389-395; Supplemental Report, paras. 123-128. See *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Decision on Defence Urgent Motion for Witness Protective Measures, 9 February 2010 ("Protective Measures Decision of 9 February 2010"), p. 8 (providing, in relevant part, that: "(iv) [n]o person shall be allowed to make audio or video recordings, broadcasts, sketches or take photographs of any protected [Defence] witness and/or his or her family in relation to their testimony at the Tribunal, nor make any disclosure of the hearings or material which may reveal the identity of the protected witnesses without leave of the Chamber").

¹⁰⁸ See Report, paras. 396-403; Supplemental Report, paras. 129, 130. See also Protective Measures Decision of 7 May 2009, p. 7 (providing, in relevant part, that: "(iv) [n]o person shall be allowed to make audio or video recordings, broadcasts, sketches or take photographs of any protected [Prosecution] witness and/or his or her family in relation to their testimony at the Tribunal, without leave of the Chamber").

¹⁰⁹ Report, paras. 385, 386, 390, 393, 397, 398, 401. See also *supra* paras. 25, 26.

¹¹⁰ Report, paras. 386, 394, 398.

¹¹¹ See *supra* nn. 107, 108.

be applicable to non-parties, which includes the public and media.¹¹² Accordingly, I find that there are not sufficient grounds to proceed against Robinson in relation to these violations.

B. Alleged False Statements in Filings Before the Mechanism (Violations 11-13)

31. The *Amicus Curiae* points to three instances under Violations 11-13, in which he alleges that Robinson made false statements before the Appeals Chamber and that this conduct, although not listed under Rule 90 of the Rules, constitutes contempt.¹¹³ Specifically, the *Amicus Curiae* argues that statements Robinson made as Ngirabatware’s counsel, in a 2 March 2016 filing before the Appeals Chamber, that “he never asked or encouraged any person to contact protected witnesses” and that he “never asked or instructed anyone to solicit any person to contact the prosecution witnesses on our behalf” are demonstrably false.¹¹⁴ The *Amicus Curiae* also contends that, in a filing that Robinson made before the Appeals Chamber on 30 November 2017, he falsely stated that “supporters of Dr. Ngirabatware have repeatedly contacted Prosecution witnesses without the knowledge of counsel”.¹¹⁵ The *Amicus Curiae* further contends that, in the same filing, Robinson provided a misleading and a false account in submitting that, only at the time of interviews of the protected ICTR Prosecution witnesses conducted in August 2016 and September 2017, did it emerge that Ngirabatware’s “supporters had assisted the witnesses in preparing their letters of recantation and in sending those letters to the Mechanism [and that] Defence counsel only learned after-the-fact that Dr. Ngirabatware’s supporters had participated in obtaining and sending the letters of recantation”.¹¹⁶

¹¹² See also *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Prosecution’s Extremely Urgent Motion for Special Protective Measures for Prosecution Witnesses and Others, 24 April 2009, para. 24 (wherein it is indicated that the relief sought by the ICTR Prosecution is for an order that “[n]owhere and at no time shall the public or media make audio or video recording or broadcasts [...] without leave of the Trial Chamber”) (emphasis added); *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Defence Urgent Motion for Witness Protective Measures, 15 December 2009, para. 45 (iv) (wherein it is indicated that the relief sought by the Ngirabatware Defence is for an order that “neither the public nor the media shall make any audio or video recordings or broadcasts [...] without leave of the Chamber and the parties”) (emphasis added). Cf. *Prosecutor v. Jean-Paul Akayesu*, Case No. MICT-13-30, Order on the Registrar’s Rule 31(B) Submission of 28 April 2016, 2 June 2016, p. 3 (wherein a Single Judge of the Mechanism enjoined a filmmaker, who had recorded protected ICTR witnesses for a documentary, from disseminating protected information).

¹¹³ See Report, paras. 296-299, 301, 302, 304-314; Supplemental Report, paras. 17-23, 93-100.

¹¹⁴ See Report, paras. 297-299, referring, *inter alia*, to *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29, Reply Brief: Motion for Assignment of Counsel, 2 March 2016 (confidential), Annex.

¹¹⁵ See Report, paras. 301, 302, referring, *inter alia*, to *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Defence Counsel’s Motion to Withdraw, 30 November 2017 (public with confidential Annex) (“Robinson Motion to Withdraw”), Annex, para. 7. See also Violations 1, 3, 5, 6, 8, and 9 (wherein the *Amicus Curiae* alleges conduct demonstrating the falsity of this statement).

¹¹⁶ See Report, paras. 304-314, referring, *inter alia*, to Robinson Motion to Withdraw, Annex, para. 5.

32. In view of the evidence underpinning the violations discussed above, in which I have directed the *Amicus Curiae* to prosecute Robinson,¹¹⁷ these statements appear to be false and making them to the Appeals Chamber, who must rely on a counsel's duty of candor in making decisions, may constitute a *prima facie* case for contempt. Moreover, Robinson is a lawyer practicing before the Mechanism and should be held to high standards, as expounded in the Code of Conduct. Nonetheless, in view of my decision to proceed in relation to the specific alleged conduct to which these statements run counter, I am not persuaded that it is necessary and an efficient use of limited judicial resource to initiate contempt proceedings in relation to these derivative violations.¹¹⁸ I do, however, consider that, if the violations relating to prohibited contact are proven, this conduct *prima facie* is in violation of Article 10 (Competence, Integrity and Independence) of the Code of Conduct, which requires counsel to, *inter alia*, act with competence, skill, care and honesty to preserve "his own integrity and that of the legal profession as a whole."¹¹⁹ In this regard, I consider that any determination as to whether these violations should be subject to disciplinary measures should be deferred until the conclusion of contempt proceedings against Robinson for the Single Judge assigned to the matter.¹²⁰

C. Communications Through Prohibited Means with Ngirabatware (Violation 31)

33. The *Amicus Curiae* presents, under Violation 31, evidence of Robinson communicating with Ngirabatware, who was detained in Arusha at the United Nations Detention Facility ("UNDF"), through personal mobile devices.¹²¹ Detained persons at the UNDF are not permitted to possess personal mobile devices except in cases of emergencies when the available landline is out of order.¹²² Specifically, the *Amicus Curiae* submits a list of email communications between Robinson and Ngirabatware that were exchanged through personal mobile phones in Ngirabatware's possession at the UNDF during the period that Robinson represented Ngirabatware. This list includes email communication between 30 November 2015 and 28 November 2017.¹²³ In addition, the *Amicus Curiae* submits that Ngirabatware contacted Robinson numerous times through a personal mobile

¹¹⁷ See *supra* para. 22.

¹¹⁸ See *supra* para. 9.

¹¹⁹ See Article 10(i), 10(ii) of the Code of Conduct. See also Article 23(A) of the Code of Conduct.

¹²⁰ See also Article 41 of the Code of Conduct.

¹²¹ See Report, paras. 419-434; Supplemental Report, paras. 138-153.

¹²² Although subsequently superseded, the relevant provisions governing the alleged violations documented in the Investigation are the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal (June 1998) ("Rules Governing Detention"), Rule 58; Regulations to Govern the Supervision of Visits to and Communication with Detainees (May 1996) ("Rules Governing Visits and Communication"), pp. 407, 409, 411, 413.

¹²³ See Report, para. 430.

phone, and, to the extent that such contacts include telephone conversations, Robinson must have known that some of these conversations were not made through the available landline at the UNDF.¹²⁴

34. I am not persuaded that, in the circumstances of this case, the evidence of Robinson's participation in his client's violations of the relevant Rules Governing Detention and Rules Governing Visits and Communication, in relation to his request for review before the Appeals Chamber, gives rise to a *prima facie* case for contempt.¹²⁵ Moreover, I consider that the record is insufficient to show that these communications were necessarily used to facilitate a criminal scheme by Ngirabatware or that Robinson had knowledge that that would be the case.¹²⁶

35. Nevertheless, I consider Robinson's conduct regarding these communications with Ngirabatware unethical, bearing in mind Article 8 (Scope of Representation) of the Code of Conduct, which provides:

[...]

(C) Counsel shall not advise or assist a client to engage in conduct which counsel *knows is* criminal or *fraudulent*, in breach of the Statute, the Rules, this Code or any other applicable law and, where counsel has been assigned to the client, the Directive. However, counsel may discuss the legal consequences of any proposed course of conduct with a client and may advise or assist a client in good faith to determine the validity, scope or meaning of the applicable law.¹²⁷

36. I further note Article 35 (Professional Misconduct) of the Code of Conduct, which provides:

It shall be professional misconduct for counsel, *inter alia*, to:

- (i) violate or attempt to violate the Statute, the Rules, this Code or any other applicable law, or to knowingly assist or induce another person to do so, or to do so through the acts of another person;
- (ii) commit a criminal act which reflects adversely on counsel's honesty, trustworthiness or fitness as counsel;
- (iii) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (iv) engage in conduct which is prejudicial to the proper administration of justice before the Mechanism; or

¹²⁴ See Report, paras. 432, 433. See also Report, para. 434.

¹²⁵ See *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Decision on a Motion to Reconsider Decision on Renewed Motion for Contempt, 31 July 2018, p. 3 (wherein the Appeals Chamber considered that Rule 90(A) of the Rules pertains to the interference with the administration of justice through, *inter alia*, a failure to comply with a judicial order and not to an alleged violation of the United Nations Detention Unit guidelines in the absence of a judicial order); *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-Misc.5 & Misc.6, Decision on the Initiation of Contempt Investigations, 18 July 2011, para. 12 (wherein an ICTY Trial Chamber indicated that the information disclosed was of such a general nature that its disclosure was not of a kind that interferes with the Tribunal's administration of justice).

¹²⁶ See *generally* Report, paras. 419-434; Supplemental Report, paras. 138-153.

¹²⁷ Emphasis added.

(v) provide inaccurate information or fail to disclose information regarding counsel's qualifications to practice before the Mechanism as set out in the Rules and, where counsel has been assigned to a client, the Directive.¹²⁸

37. In view of the above, I consider that Robinson's alleged conduct in relation to Violation 31 is *prima facie* in violation of Article 35 of the Code of Conduct, which is a non-exhaustive list of actions amounting to professional misconduct, as he was fully aware that he and Ngirabatware were communicating with each other through prohibited means.¹²⁹ However, in view of my decision to defer any determination as to whether Violations 11-13 should be subject to disciplinary measures until the conclusion of contempt proceedings against Robinson for the Single Judge,¹³⁰ and for the efficient use of judicial resources, I consider that a determination for Violation 31 shall also be deferred.

D. Next Stages

38. In view of my assignment to assess whether proceedings under Rule 90 of the Rules or other appropriate disciplinary action against Robinson are warranted,¹³¹ this Decision – finding that a *prima facie* case for contempt exists regarding Robinson's conduct in relation to Violations 1, 3, 4, 6-9, 32, and 33 and exercising my discretion to initiate contempt proceedings against Robinson for these violations – brings this stage of the contempt process to a close. With the issuance of the order in lieu of an indictment against Robinson, it is appropriate that, going forward, the contempt case against Robinson be named *In the Matter of Peter Robinson*.

39. Article 1(4) of the Statute provides, in relevant parts, that before proceeding to try persons for contempt, the Mechanism shall consider referring the case to the authorities of a State in accordance with Article 6 of the Statute, taking into account the interests of justice and expediency. Pursuant to Articles 6(2) and 12(1) of the Statute, after an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Mechanism,¹³² the President may designate a Single Judge to determine whether the case should be referred to the authorities of a State. Accordingly, I consider it appropriate at this stage to refer the matter to the President to consider the designation of a Single Judge to determine whether the case against Robinson should be referred to the authorities of a State, as well as to commence and conduct

¹²⁸ Emphasis added.

¹²⁹ See Robinson April 2023 Statement, para. 44.

¹³⁰ See *supra* para. 32.

¹³¹ See *supra* para. 3.

¹³² In view of the nature of the offence and general cooperation of Robinson to date, I do not consider it necessary at this stage of the proceedings to issue an arrest warrant against him.

the proceedings *In the Matter of Peter Robinson*, including setting a date for an initial appearance and issuing a summons,¹³³ where appropriate and applicable if the matter cannot be referred.

40. Finally, I note that Rule 71(A)(i) of the Rules provides in relevant part that an accused has a right to “copies of supporting material which accompanied the indictment when confirmation was sought” and Rule 55 of the Rules provides, *inter alia*, that a Judge may issue, *proprio motu*, such orders as may be necessary for the preparation or conduct of trial. With these Rules in mind and considering that this Decision should be read in conjunction with the Report and the Supplemental Report, including the Annexes thereto, I shall lift the *ex parte* status of both the Report and Supplemental Report with respect to Robinson, while retaining their confidential status.

III. DISPOSITION

41. For the foregoing reasons, pursuant to Article 1(4) of the Statute and Rule 90(D)(ii) of the Rules, I hereby:

LIFT the *ex parte* status of the Report and Supplemental Report;

TERMINATE the proceedings in this case against Robinson with respect to Violations 2, 5, 10, and 24-26;

WARN and **REMIND** Robinson, in view of Violations 14-23, 27-30, and 34, to strictly adhere to the standards of professional competence and ethics expected of a defence counsel in representing clients before the Mechanism as set out in the Code of Conduct;

INITIATE contempt proceedings against Robinson with respect to Violations 1, 3, 4, 6-9, 32, and 33 and, subject to Article 6 of the Statute;

DIRECT the *Amicus Curiae* to prosecute the matter;

ISSUE an Order in Lieu of an Indictment against Robinson for knowingly and wilfully interfering with the administration of justice with respect to proceedings before the ICTR and/or the Mechanism in relation to Violations 1, 3, 4, 6-9, 32, and 33;

DIRECT the Registrar that all future filings in the contempt proceedings against Robinson be filed under the case name *In the Matter of Peter Robinson*;

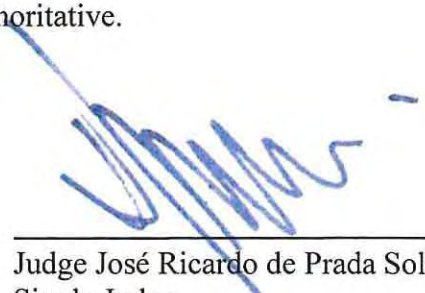
¹³³ See Article 18 of the Statute; Rules 55 and 64 of the Rules.

REFER the matter to the President to consider the designation of a Single Judge to conduct the proceedings *In the Matter of Peter Robinson* and to determine whether the case should be referred to the authorities of a State; and

DEFER the determination as to whether Violations 11-13 and 31 should be subject to disciplinary measures to the Single Judge assigned to the contempt proceedings against Robinson.

Done in English and French, the English version being authoritative.

Done this 25th day of February 2025,
At Arusha,
Tanzania



Judge José Ricardo de Prada Solaesa
Single Judge

[Seal of the Mechanism]



TRANSMISSION SHEET FOR FILING OF DOCUMENTS / FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS

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"/> President / <i>Président</i>	<input checked="" type="checkbox"/> Chambers / <i>Chambre</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>	<input type="checkbox"/> Defence / <i>Défense</i>
	<input type="checkbox"/> Registrar / <i>Greffier</i>	<input type="checkbox"/> Other/ <i>Autre</i>		
Case Name/ Affaire :	Prosecutor v. Anselme Nzabonimpa et al		Case Number/ Affaire n°:	MICT-18-116-R90.1
Date Created/ Daté du :	25 February 2025	Date transmitted/ Transmis le :	25 February 2025	No. of Pages/ Nombre de pages : 23
Original Language / Langue de l'original :	<input checked="" 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/Autre (specify/préciser):
Title of Document/ Titre du document :	Decision on Allegations of Contempt			
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"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>		
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement 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"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :		
Document type/ Type de document :				
<input 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 checked="" 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 type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>				
<input checked="" 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 checked="" type="checkbox"/> French/ <i>Français</i>	<input checked="" type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre(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/Autre (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/Autre (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/Autre (specify/préciser) :

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

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

Rev: August 2019/ *Rév. : Août 2019*