

**UNITED  
NATIONS**

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International Residual Mechanism  
for Criminal Tribunals

Case No: MICT-25-135-I

Date: 9 April 2025

Original: English

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**BEFORE THE SINGLE JUDGE**

**Before: Judge Joseph E. Chiondo Masanche**

**Registrar: Mr Abubacarr M. Tambadou**

**IN THE MATTER OF  
PETER ROBINSON**

*Public*

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**PRELIMINARY SUBMISSIONS ON REFERRAL**

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**Amicus Curiae:**  
Mr. Kenneth Scott

**Mr. Peter Robinson**

## **Introduction**

1. Prosecuting a defence counsel for his good faith interpretation of a court order is inappropriate in any jurisdiction. If the Appeals Chamber nevertheless upholds the decision to initiate contempt proceedings against me,<sup>1</sup> the Single Judge is respectfully requested to invite the United States of America to make submissions on its jurisdiction, willingness, and preparedness to accept the case for trial. Despite the *amicus curiae*'s self-serving arguments, trial at the Mechanism should be the last resort.

## **Relevant Procedural History**

2. On 25 February 2025, Judge Jose Ricardo de Prada Solaesa decided to initiate contempt proceedings against me for having indirect contact with protected prosecution witnesses in connection with my representation of Augustin Ngirabatware some ten years ago.<sup>2</sup>

3. On 3 March 2025, I appealed the decision to initiate contempt proceedings.<sup>3</sup> The *amicus curiae* responded on 11 March 2025.<sup>4</sup> I replied on 16 March 2025.<sup>5</sup> On 17 March 2025 and 20 March 2025, the Association of Defence Counsel—International Criminal Tribunals (“ADC-ICT”) and International Criminal Court Bar Association (“ICCBA”) requested leave to appear as *amicus curiae* in the appeal.<sup>6</sup> On 24 March 2025, the *amicus curiae* opposed both requests.<sup>7</sup> The Appeals Chamber is currently considering the appeal.

4. On 3 March 2025, the President assigned Judge Joseph E. Chiondo Masanche to conduct the proceedings and determine whether the case should be referred to the authorities of a State.<sup>8</sup>

5. On 12 March 2025, Judge Masanche issued an order directing the parties to make preliminary submissions on the suitability of referring the case to a State.<sup>9</sup> The *amicus curiae* filed his submissions on 26 March 2025.<sup>10</sup>

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<sup>1</sup> [Prosecutor v Nzabonimpa et al, No. MICT-18-116-AR90.1, Appeal of Decision on Allegations of Contempt \(3 March 2025\)](#).

<sup>2</sup> [Prosecutor v Nzabonimpa et al, No. MICT-18-116-AR90, Decision on Allegations of Contempt \(25 February 2025\)](#).

<sup>3</sup> [Prosecutor v Nzabonimpa et al, No. MICT-18-116-AR90.1, Appeal of Decision on Allegations of Contempt \(3 March 2025\)](#).

<sup>4</sup> [Prosecutor v Nzabonimpa et al, No. MICT-18-116-AR90.1, Response to the “Appeal of Decision on Allegations of Contempt” dated 3-March-2025 \(11 March 2025\)](#).

<sup>5</sup> [Prosecutor v Nzabonimpa et al, No. MICT-18-116-AR90.1, Reply Brief: Appeal of Decision on Allegations of Contempt \(16 March 2025\)](#).

<sup>6</sup> [Prosecutor v Nzabonimpa et al, No. MICT-18-116-AR90.1, ADC-ICT Request for Leave to Appear as Amicus Curiae \(17 March 2025\)](#); [Prosecutor v Nzabonimpa et al, No. MICT-18-116-AR90.1, ICCBA Request for Leave to Appear as Amicus Curiae \(20 March 2025\)](#).

<sup>7</sup> [Prosecutor v Nzabonimpa et al, No. MICT-18-116-AR90.1, Response to the “ADC-ICT Request for Leave to Appear as Amicus Curiae” dated 17 March 2025 \(24 March 2025\)](#); [Prosecutor v Nzabonimpa et al, No. MICT-18-116-AR90.1, Response to the “ICCBA Request for Leave to Appear as Amicus Curiae” dated 20 March 2025 \(24 March 2025\)](#).

<sup>8</sup> [Order Assigning a Single Judge to Consider a Matter \(3 March 2025\)](#).

<sup>9</sup> [Order for Submissions \(12 March 2025\)](#).

<sup>10</sup> [Amicus Curiae’s Submissions on the Suitability of the Referral of the Case \(26 March 2025\)](#).

## The Mechanism's Statute

7. Article 1(4) of the Mechanism's Statute provides:

The Mechanism shall have the power to prosecute, in accordance with the provisions of the present Statute,

(a) any person who knowingly and wilfully interferes or has interfered with the administration of justice by the Mechanism or the Tribunals, and to hold such person in contempt; or

(b) a witness who knowingly and wilfully gives or has given false testimony before the Mechanism or the Tribunals.

Before proceeding to try such persons, the Mechanism shall consider referring the case to the authorities of a State in accordance with Article 6 of the present Statute, taking into account the interests of justice and expediency.

8. The requirement to first consider transfer of a contempt case to a national jurisdiction is **mandatory**, and the inclusion of this provision in the Statute indicates a **strong preference** for referral if all relevant conditions are met.<sup>11</sup>

9. Those relevant conditions are set out in Article 6 of the Statute. That Article provides in pertinent part:

1. The Mechanism shall have the power, and shall undertake every effort, to refer cases involving persons covered by paragraph 3 of Article 1 of this Statute to the authorities of a State in accordance with paragraphs 2 and 3 of this Article. The Mechanism shall have the power also to refer cases involving persons covered by paragraph 4 of Article 1 of this Statute.

2. 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, the President may designate a Trial Chamber which shall determine whether the case should be referred to the authorities of a State:

(i) in whose territory the crime was committed; or

(ii) in which the accused was arrested; or

(iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State...

4. The Trial Chamber may order such referral proprio motu or at the request of the Prosecutor, after having given to the Prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out.

10. Therefore, the Single Judge is to consider whether the case should be referred to the authorities of a State: (1) in whose territory the crime was committed; or (2) in which the accused was arrested; or (3) having jurisdiction and being willing and adequately prepared to accept the case

<sup>11</sup> [Prosecutor v Seselj et al, No. MICT-23-129-I, Decision on Referral of the Case to the Republic of Serbia \(29 February 2024\)](#) at para. 9; [In the matter of Francois Ngirabatware, No. MICT 24-131-I, Decision on the Suitability of the Referral of the Case \(17 September 2024\)](#) at pp. 3-4.

and try it.<sup>12</sup>

### **Application of the Mechanism’s Statute—Precedent**

11. There have been four contempt cases at the Mechanism.

12. In the *Jojic and Radeta* case, the Single Judge, after noting that the crimes were committed in Serbia, first sought submissions from Serbia “on its jurisdiction, willingness, and preparedness to accept this case for trial.”<sup>13</sup> Although Serbia expressed its willingness to try the case, the Mechanism ultimately decided to retain the case over concerns that prosecution witnesses would not testify in Serbia.<sup>14</sup>

13. In the *Nzabonimpa et al* case, the Single Judge, after noting that the crimes were committed in Rwanda and the six accused were arrested there, first sought submissions from Rwanda “on its jurisdiction, willingness, and preparedness to accept this case for trial.”<sup>15</sup> Rwanda preferred the case be tried before the Mechanism. The six accused objected to being tried in Rwanda. The Judge ultimately decided to try the case at the Mechanism.<sup>16</sup>

14. In the *Seselj et al* case, where the crimes were committed in Serbia and the defendants resided there, the Single Judge requested from Serbia “a detailed written submission on its jurisdiction, willingness, and preparedness to accept this case for trial.”<sup>17</sup> After Serbia said it was willing to try the case, the Single Judge referred the case to Serbia.<sup>18</sup>

15. In the *Francois Ngirabatware* case, the Single Judge requested a submission from Belgium “on its jurisdiction, willingness, and preparedness to accept this case for trial.”<sup>19</sup> Although Belgium preferred that the case be tried at the Mechanism, the Judge decided to transfer the case to Belgium where the accused resided and was a national there, and at least one of the crimes was committed there.<sup>20</sup>

16. Therefore, in all four cases, the Single Judge issued an order seeking submissions from States on their “jurisdiction, willingness, and preparedness to accept the case for trial.” The States from which submissions have been sought, consistent with the criteria set out in Article 6(2), are

<sup>12</sup> [Prosecutor v Jokic & Radeta, No. MICT-17-111-R90, Decision on Amicus Curiae’s Appeal against the Order Referring a Case to the Republic of Serbia \(12 December 2018\)](#), para. 12; [Prosecutor v Seselj et al, No. MICT-23-129-I, Decision on Referral of the Case to the Republic of Serbia \(29 February 2024\)](#), para. 10 (emphasis added).

<sup>13</sup> [In the Case Against Jojic and Radeta, No. MICT-17-111-R90, Order for Submissions \(15 February 2018\)](#), p. 2.

<sup>14</sup> [In the Case Against Jojic and Radeta, No. MICT-17-111-R90-AR14.1, Decision on the Republic of Serbia’s Appeal Against the Decision Re-examining the Referral of a Case \(24 February 2020\)](#), paras. 15-18.

<sup>15</sup> [Prosecutor v Turinabo et al, No. MICT-18-116, Order for Submissions \(18 September 2018\)](#), p. 2.

<sup>16</sup> [Prosecutor v Turinabo et al, No. MICT-18-116, Decision on Suitability of Referral of the Case \(7 December 2018\)](#), pp. 4-5.

<sup>17</sup> [Prosecutor v Seselj et al, No. MICT-23-129-I, Order for Submissions \(12 October 2023\)](#), p. 2.

<sup>18</sup> [Prosecutor v Seselj et al, No. MICT-23-129-I, Decision on Referral of the Case to the Republic of Serbia \(29 February 2024\)](#), para. 21.

<sup>19</sup> [In the Matter of Francois Ngirabatware, No. MICT-24-131-I, Order for Submissions \(25 July 2024\)](#), p. 3.

<sup>20</sup> [In the Matter of Francois Ngirabatware, No. MICT-24-131-I, Decision on the Suitability of the Referral of the Case \(17 September 2024\)](#), pp. 3-5.

ones on whose territory at least part of the crimes were committed and where the defendants resided.

### **Application of the Mechanism’s Statute to this Case**

17. The United States of America meets the criteria of Article 6(2).

18. First, the alleged crimes were committed in part in the United States of America. I was based in the United States during the relevant time period and sent e-mails from the United States that are alleged to have caused or incited the indirect contact with protected witnesses.<sup>21</sup> The *amicus curiae* concedes that “at least some of Robinson’s activities and exchange of communications as Ngirabatware’s Counsel are likely to have occurred in the United States”.<sup>22</sup>

19. Second, I reside in and am a citizen of the United States of America. In the *Seselj* and *Ngirabatware* cases, the fact that the defendants resided in a State was considered to satisfy this factor.<sup>23</sup>

20. Third, whether the United States of America has jurisdiction over the alleged crimes and is willing and adequately prepared to accept the case and try it is a matter to be put to US officials by inviting submissions.

21. Therefore, referring this case to the United States of America appears possible and would be consistent with the Mechanism’s statute.

### **Conclusion**

22. In accordance with Articles 1(4) and 6(2), and the Mechanism’s precedents, the Single Judge should seek submissions from the United States of America on its “jurisdiction, willingness, and preparedness to accept the case for trial.”

Word Count: 1898

Respectfully submitted,  
  
PETER ROBINSON

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<sup>21</sup> [Decision Issuing Order in Lieu of Indictment \(25 February 2025\)](#), paras. 7,10,12,13.

<sup>22</sup> [Notice of Filing of Public Redacted Version of “Annex A to Amicus Curiae’s Submissions on the Suitability of the Referral of the Case” dated 26-March-2025 \(1 April 2025\)](#), para. 10.

<sup>23</sup> [Prosecutor v Seselj et al, No. MICT-23-129-I, Decision on Referral of the Case to the Republic of Serbia \(29 February 2024\)](#) para. 11; [In the Matter of Francois Ngirabatware, No. MICT-24-131-I, Decision on the Suitability of the Referral of the Case \(17 September 2024\)](#), p. 4.



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