# UNITED NATIONS

Case No.: MICT-25-135-I

International Residual Mechanism

for Criminal Tribunals

Date: 29 August 2025

Original: English

## **BEFORE THE SINGLE JUDGE**

Before: Judge Joseph E. Chiondo Masanche

Registrar: Mr. Abubacarr Tambadou

## IN THE MATTER OF PETER ROBINSON

## **PUBLIC**

# AMICUS CURIAE'S RESPONSE TO THE SUBMISSIONS OF THE UNITED STATES OF AMERICA ON THE REFERRAL OF THE CASE

Amicus Curiae

**United States of America** 

Mr. Kenneth Scott

## Mr. Peter Robinson

The *Amicus Curiae* ("*Amicus*") respectfully makes these submissions in response to the submissions of the United States of America on the referral of the case titled *In the Matter of Peter Robinson*, dated 1-August-2025.

- 1. On 25-February-2025, Judge de Prada Solaesa, in his capacity as Single Judge in the investigation into allegations of contempt against Peter Robinson ("Robinson"), issued the *Decision on Allegations of Contempt* and the *Decision Issuing Order in Lieu of Indictment* ("Indictment"), initiating contempt proceedings against Robinson.<sup>1</sup>
- 2. On 12-March-2025, Judge Chiondo Masanche, the Single Judge appointed to conduct the proceedings titled *In the Matter of Peter Robinson* ("Single Judge"), ordered *Amicus* to file submissions on "the suitability of referring the case to a State and whether such referral would serve the interests of justice and expediency, and respect the rights of an accused to a fair trial, bearing in mind the preference for the referral of contempt cases as envisioned in the Statute".<sup>2</sup>
- 3. On 26-March-2025, *Amicus* filed submissions on the suitability of referral. *Amicus* argued, *inter alia*, that the case should be conducted before the Mechanism for various reasons, including the interests of justice and expediency ("26-March-2025 Submissions").<sup>3</sup>
- 4. On 9-April-2025, Robinson filed his "Preliminary Submissions on Referral", submitting that referring the case to the United States of America ("USA") "appears possible and would be consistent with the Mechanism's statute."

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Prosecutor v. Nzabonimpa et al., MICT-18-116-R90.1 ("Nzabonimpa"), Decision on Allegations of Contempt, 25-February-2025 ("Decision on Allegations of Contempt"); In the Matter of Peter Robinson, MICT-25-135-I ("Robinson"), Decision Issuing Order in Lieu of Indictment, 25-February-2025.

<sup>&</sup>lt;sup>2</sup> Robinson, Order for Submissions, 12-March-2025, p.2.

<sup>&</sup>lt;sup>3</sup> Robinson, Amicus Curiae's Submission on the Suitability of the Referral of the Case, 26-March-2025.

<sup>&</sup>lt;sup>4</sup> Robinson, Preliminary Submissions on Referral, 9-April-2025, p.4.

- 5. On 15-April-2025, *Amicus* replied to Robinson, highlighting that the USA has only very small links to the crimes charged, and reiterating that the case should, for all the reasons stated, be conducted before the Mechanism.<sup>5</sup>
- 6. On 13-May-2025, the Single Judge invited the USA to provide, within 60 days, written submissions on its jurisdiction, willingness and preparedness to accept this case for trial. <sup>6</sup>
- 7. On 9-July-2025, the USA requested an extension for their submissions. On 11-July-2025, the Single Judge granted the extension sought, setting the deadline to 4-August-2025.
- 8. On 1-August-2025, the USA filed their submissions on the referral of the case ("USA Submissions"), 9 received by *Amicus* on 4-August.
- 9. On 5-August-2025, the Single Judge granted *Amicus*' Request for an extension of time for *Amicus* and Robinson's responses to the USA submissions and for replies to each other's responses, setting the deadline for any such response on 29-August-2025 and for any such reply on 5-September-2025.<sup>10</sup>

#### I. APPLICABLE LAW

10. Pursuant to Articles 6(1) and 6(2) of the Mechanism's Statute, a contempt case may be referred to the authorities of a State:

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<sup>&</sup>lt;sup>5</sup> *Robinson, Amicus* Reply Submission on the Suitability of the Referral of the Case, 15-April-2025, paras.11-18.

<sup>6</sup> Robinson, Invitation for Submissions, 13-May-2025, p.3.

<sup>&</sup>lt;sup>7</sup> Robinson, Submission of the United States on the Issue of Referral in Response to the Mechanism's Order of 13 May 2025 – Request for Extension of Time, 9-July-2025.

<sup>&</sup>lt;sup>8</sup> Robinson, Decision on Request for Extension of Time, 11-July-2025.

Robinson, Submission of the United States on the Issue of Referral in Response to the Mechanism's Order of 13 May 2025, 1-August-2025.

Robinson, Amicus Curiae's Request for Extension of Time Regarding Submissions on the Potential Referral of the Case, 31-July-2025; Robinson, Decision on Request for Extension of Time, 5-August-2025.

- (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.
- 11. In a previous contempt case, the Mechanism's Appeals Chamber stated: "At the outset, the Appeals Chamber considers that the preference in the Mechanism for contempt cases to be tried by national jurisdictions can only be understood as conditional, (...) as various factors specific to a case must be prudently considered."
- 12. Article 1(4) of the Statute states that the Single Judge in a contempt case shall consider whether to refer the case to the authorities of a State "taking into account the interests of justice and expediency".
- 13. Pursuant to Article 6(4), the Single Judge can refer the case to a State "after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out."
- 14. In addition, the Mechanism, ICTR and ICTY's Appeals Chamber each established that the State must have "a legal framework which <u>criminalizes</u> the alleged conduct of the accused" and a "penalty structure within the State [providing] a<u>n appropriate punishment</u> for the offences for which the accused is charged". This jurisprudence is followed in contempt cases at the Mechanism. <sup>13</sup>

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In the case against Jocić and Radeta, MICT-17-111-R90-AR14.1, Decision on Republic of Serbia's Appeal Against the Decision Re-Examining the Referral of a Case, 24-February-2020, para.14 (emphasis added).

Phénéas Munyarugarama v. Prosecutor, MICT-12-09-AR14, Decision on Appeal Against the Referral of Phénéas Munyarugarama's Case to Rwanda and Prosecution Motion to Strike, 5-October-2012, para.18 (emphasis added). See also Prosecutor v. Željko Mejakić et al., IT-02-65-AR11bis.1, Decision on Joint Defence Appeal Against Decision on Referral Under Rule 11bis, 7-April-2006, para.48; The Prosecutor v. Ildephonse Hategekimana, ICTR-00-55B-R11bis, Decision on the Prosecution's Appeal Against Decision on Referral under Rule 11bis, 4-December-2008, para.4, and jurisprudence cited therein.

Prosecutor v. Šešelj et al., MICT-23-129-I, Decision on the Suitability of Referral of the Case, 29-February-2024, para.12; *In the matter of Francois Ngirabatware*, MICT-24-131-I, Decision on the Suitability of Referral of the Case, 17-September-2024, p.4.

#### II. SUBMISSIONS

- 1. The USA cannot identify a jurisdictional basis to criminally prosecute Robinson, and any such prosecution would likely be barred by a statute of limitations.
- 15. In its Submissions, the USA stated:

The United States has not identified a clear jurisdictional basis to criminally prosecute Mr. Robinson in the United States for the alleged conduct described in the February 25, 2025 Decision Issuing Order in Lieu of Indictment. Additionally, even if an avenue for the U.S. federal criminal prosecution of Mr. Robinson for said conduct were available, it is highly likely that any applicable statute of limitations would bar initiation of such a prosecution today given the extended length of time that has passed since the alleged conduct took place in 2015, 2016 and 2017.<sup>14</sup>

- 16. Criminal proceedings in the USA are therefore not an avenue that is adequate or available for prosecuting Robinson for the conduct charged in the Indictment.
- 2. Disciplinary proceedings initiated by bar associations at the USA state level cannot adequately replace criminal proceedings for contempt at the Mechanism.
- 17. The USA Submissions explain that at the USA state level, state bar organisations "regulate the conduct of attorneys subject to their jurisdictions and may investigate alleged misconduct and initiate appropriate <u>administrative disciplinary proceedings</u>." Robinson is licensed at the State Bar of California, although he moved to "inactive" status on 1-February-2018, and at the North Carolina State Bar. <sup>15</sup>
- 18. The State Bar of California informed the USA authorities that it may be able to refer the present matter to disciplinary proceedings, citing provisions of the California Business and Professions Code. The USA Submissions add that "[p]otential discipline for violation of such provisions ranges from reproval to probation to suspension to possible disbarment from the practice of law in California."<sup>16</sup>

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USA Submissions, p.1 (emphasis added).

USA Submissions, p.1 (emphasis added).

The provisions cited in the USA Submissions only include, as a potential penalty, a disbarment or suspension: "California Business and Professions Code § 6103 ('A wilful disobedience or violation of an order

- 19. The USA Submissions also indicate that counsel with the North Carolina State Bar advised that "if disciplinary penalties are imposed by the California State Bar, reciprocal disciplinary penalties may be pursued in North Carolina". North Carolina's Rules of Professional Conduct provide that disciplinary proceedings for misconduct can only affect the lawyer's license to practice law, and cannot result in incarceration. 18
- 20. Therefore, disciplinary proceedings initiated by the bar associations in California and North Carolina cannot adequately replace criminal proceedings conducted at the Mechanism.
- 21. First, professional misconduct as provided in and other violations of the above-cited Californian Code and North Carolina Rules for lawyers do not constitute crimes, and as such the disciplinary proceedings initiated at California and North Carolina State Bars are not based on "a legal framework which <u>criminalizes</u> the alleged conduct of the accused" as required by the above-cited jurisprudence. Such disciplinary proceedings at the State Bar level are simply not the equivalent of, or an adequate alternative to criminal proceedings for contempt, and cannot achieve the same aim or effect as criminal proceedings at the Mechanism. <sup>19</sup>

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of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension.')" USA Submissions, p.1 (emphasis added).

USA Submissions, p.1 (emphasis added).

North Carolina's Rules of Professional Conduct (available on North Carolina's State Bar website at <a href="https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/">https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/</a>) provide, under Rule 8.4 titled "Misconduct", that it is professional misconduct for a lawyer to, among other conduct: "(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer; (d) engage in conduct that is prejudicial to the administration of justice". Comment [3] to Rule 8.4, which "explains and illustrates the meaning and purpose of the Rules" (see Rule 0.2, titled "Scope", at paragraph [8]), states: "The purpose of professional discipline for misconduct is not punishment, but to protect the public, the courts, and the legal profession. <a href="Lawyer discipline affects only the lawyer's license to practice law. It does not result in incarceration." (emphasis added) The Rules' introduction, accessible at the above link, state that the Comments to the Rules, like the Rules themselves, were approved by the North Carolina Supreme Court.

Article 32 of the *Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism* recognizes the difference between contempt and disciplinary proceedings, stating that the disciplinary regime provided for in the Code does not affect the Mechanism's power to deal with conduct which interferes with the administration of justice.

- 22. Second, Rule 90(G) of the Mechanism's Rules provides for a maximum penalty of a term of imprisonment of seven years, or a fine of 50,000 Euros, or both, for a person found to be in contempt. However, disciplinary penalties pursuant to the California Business and Professions Code and the North Carolina's Rules of Professional Conduct do not constitute a criminal sanction, only concern the lawyer's license to practice law, and cannot include a fine and\or term of imprisonment. As such, disciplinary proceedings initiated by bar associations in California and North California cannot lead to "an appropriate punishment for the offences for which the accused is charged", as required by the above-cited jurisprudence.
- 23. Judge de Prada Solaesa, the Single Judge in the investigation phase of the present case, was already assigned to determine whether to initiate criminal proceedings for contempt or take disciplinary action against Robinson.<sup>20</sup> When issuing the 25-February-2025 *Decision on Allegations of Contempt* and *Decision Issuing Order in Lieu of Indictment*, Judge de Prada Solaesa decided that the initiation of criminal proceedings, rather than disciplinary action, was the appropriate avenue to address Robinson's conduct charged in the Indictment.<sup>21</sup>
- 24. In the *Nzabonimpa et al.* case which is factually very closely connected to the present case and from which the present case originates, <sup>22</sup> Robinson's investigator (Dick Prudence Munyeshuli) was convicted and sentenced to five months' imprisonment for having improper contact with protected witnesses and disclosing protected witness identities, while acting under

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On 8-October-2021, the President of the Mechanism appointed Judge de Prada Solaesa as the Single Judge to assess whether contempt proceedings or other appropriate disciplinary action against Mr. Peter Robinson were warranted. *See Nzabonimpa*, Order Assigning a Single Judge to Consider a Matter Pursuant to Rule 90(C), 8-October-2021.

In the 25-February-2025 Decision on Allegations of Contempt, at paragraphs 1 and 38, Judge de Prada Solaesa recalled his assignment to assess which avenue was best to address Robinson's conduct between contempt proceedings and disciplinary action, if any. Indeed, in that Decision, Judge de Prada Solaesa decided that certain conduct by Robinson, other than that which was included in the Indictment against Robinson, would be better addressed by potential disciplinary measures rather than criminal proceedings. Judge de Prada Solaesa deferred the decision on whether to take disciplinary measures for specific conduct until the conclusion of the contempt proceedings. *See* paras.32, 37 & 41.

On 20-September-2021, Judge Vagn Joensen, the Single Judge in the *Nzabonimpa et al.* contempt case, on the same day that the written Judgement in that case was issued, also issued an Order Referring a Matter to the President. In that Order, Judge Vagn Joensen found reason to believe, based on the *Nzabonimpa et al.* case record, that Robinson, former counsel for Augustin Ngirabatware for the purpose of the *Ngirabatware* review case and preparation of the same, may have committed repeated professional and ethical lapses and may be in contempt of the Mechanism for his acts and conduct while he was acting as Ngirabatware's counsel. *Prosecutor v. Nzabonimpa et al.*, MICT-18-116-T, Order Referring a Matter to the President, 20-September-2021, p.3.

Robinson's instruction.<sup>23</sup> That same instruction from Robinson to Munyeshuli, which led to the events for which Munyeshuli was criminally convicted of contempt, is the basis for one of the eight criminal violations for which Robinson is now charged.<sup>24</sup>

# 3. Conducting the present case before the Mechanism will better serve the interests of justice and expediciency

- 25. For reasons outlined in *Amicus*' 26-March-2025 Submissions, even if Robinson could have been prosecuted in the USA, the interests of justice and expediciency are better served by conducting the case before the Mechanism.<sup>25</sup>
- 26. The reasons outlined by *Amicus* include the present case's very close nexus to the *Nzabonimpa et al.* contempt case, the *Ngirabatware* review proceedings, and the *Ngirabatware* genocide case. *First*, a great deal of the evidence in the present Robinson case will come directly from and be based upon the records in these closely-related cases. Therefore, conducting the trial here would greatly facilitate access to the relevant case records, and allow the expedited presentation of evidence, including by (a) taking of judicial notice of adjudicated facts and the authenticity of various evidence pursuant to Rule 115(B); and (b) the admission of evidence from connected cases at the Mechanism and ICTR pursuant to Rules 110 and 111 (including transcripts of evidence). As found in the referral Decision in the *Nzabonimpa et al.* case from which the present case originates, given the strong nexus between this and other ICTR and Mechanism cases, "maintaining jurisdiction will greatly facilitate access of the parties to relevant information in these related cases." <sup>26</sup>

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See the Appeals Judgement in the Fatuma et al. case (the appeal proceedings resulting from the Nzabonimpa et al. case), stating: "The Appeals Chamber is mindful (...) that, in initiating indirect contact with the Recanting Witnesses, Munyeshuli acted under Robinson's instructions." Prosecutor v. Fatuma et al., MICT-18-116-A, Judgement, 29-June-2022, para.115 (emphasis added). See also Prosecutor v. Nzabonimpa et al., MICT-18-116-T, Judgement, 25-June-2021, paras.365-366.

Indictment, para.13.

<sup>&</sup>lt;sup>25</sup> 26-March-2025 Submissions, paras.13-23.

*Prosecutor v. Turinabo et al.*, MICT-18-116-PT, Decision on Suitability of Referral of the Case, 7-December-2018, p.5 (emphasis added).

- 27. Second, adjudicating the present case at the Mechanism would bring closure to a long history of closely-related Mechanism proceedings, each related to and touching on the others. The Mechanism must be seen as protecting its witnesses and enforcing its protective measures, even after the conclusion of trials, in light of the possibility of future review proceedings before the Mechanism and investigations into potential causes for review of convictions.<sup>27</sup>
- 28. Important evidence to this case, the Robinson case, is covered by a Rule 76 Order issued in *Nzabonimpa et al.*, where Robinson attempted to bar *Amicus*' use of such material, with the Appeals Chamber determining that the material can be used in the present case given Robinson's consent to its disclosure to *Amicus*. There is no guarantee that Robinson would agree to the full disclosure of this important evidence to State authorities.<sup>28</sup>
- 29. Expedient proceedings will also be served by Judge de Prada Soleasa's tailoring of the Indictment in light of the "expenditure of resources" necessary to prosecute the crimes and the efficient use of these resources, declining for that reason, among other bases, to indict various *prima facie* violations.<sup>29</sup> State authorities could decide to indict Robinson of additional charges which were not included in the Indictment, likely making the proceedings longer and more complicated.
- 30. The State authorities would have to learn and prepare the case from scratch, including potential re-investigation, while *Amicus* has detailed knowledge of the case, the evidence and the closely-linked cases.
- 31. In addition to the reasons outlined in *Amicus*' 26-March-2025 Submissions, conducting the present case before the Mechanism will assist in ensuring the protection of witness information subject to protective measures ordered in the closely-related cases, including by

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Another review case recently took place before the Mechanism based on an alleged recantation of witness testimony. *Prosecutor v. Ntakirutimana*, MICT-12-27-R, Review Judgement, 22-November-2024.

<sup>28</sup> Prosecutor v. Nzabonimpa et al., MICT-18-116-AR90.1, Decision on Appeal of Decision on the Use of Material Subject to Rule 76 in Further Proceedings, 17-July-2024, paras.15, 20, 25-26.

Decision on Allegations of Contempt, paras.24, 26, 32, 37.

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preventing further access to and dissemination of that information, and promptly reacting to any prohibited disclosure. It will also facilitate the appropriate modification of these measures, if and as strictly needed.

#### III. **CONCLUSION**

32. Robinson cannot be criminally prosecuted in the USA for the conduct charged in the Indictment. Conducting the present case before the Mechanism is the appropriate avenue to address Robinson's conduct as charged.

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Word count: 2992 words

Respectfully submitted this 29-August-2025.

Kenneth Scott Amicus Curiae

Quence Scott

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