UNITED NATIONS

Case No.: MICT-25-135-I

International Residual Mechanism for Criminal Tribunals

Date: 5 September 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 REPLY TO PETER ROBINSON'S RESPONSE TO THE SUBMISSIONS OF THE UNITED STATES OF AMERICA ON THE REFERRAL OF THE CASE

Amicus Curiae

Mr. Kenneth Scott

Mr. Peter Robinson

United States of America

The *Amicus Curiae* ("*Amicus*") respectfully makes these submissions in reply to the 29-August-2025 submissions of Peter Robinson ("Robinson") made in response to submissions of the United States of America ("USA") on the referral of the present case.

1. On 29-August-2025, Robinson responded to the USA submissions of 1-August-2025 on the referral of the present case ("Robinson's Submissions" and "USA Submissions").[1] On the same day, *Amicus* also responded to the USA Submissions ("*Amicus*' Submissions").[2]

REPLY TO ROBINSON'S SUBMISSIONS

1. The preference for referral is conditional and does not apply here

2. In arguing that this case should be referred to California Bar disciplinary proceedings, Robinson's Submissions generally rely on "a strong preference for referring a contempt case".[3]

3. Robinson cites an Appeals Chamber Decision stating that there is a strong preference, but the Decision states that this preference is conditional: "This requirement [of considering referral prior to trial] is mandatory, and the inclusion of this provision in the Statute indicates a strong preference for referral if all relevant conditions are met."[4]

4. The Appeals Chamber has stated: "At the outset, the Appeals Chamber considers that the preference in the Mechanism for contempt cases to be tried by national jurisdictions can

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[1] *In the Matter of Peter Robinson*, MICT-25-135-I ("*Robinson*"), Response to the Submission of the United States of America, 29-August-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.

[2] *Robinson, Amicus Curiae*'s Response to the Submissions of the United States of American on the Referral of the Case, 29-August-2025.

[3] *Ibid.*, e.g. paras.8, 14, 30.

[4] Robinson's Submissions, para.11.

only be understood as conditional, (...) as various factors specific to a case must be prudently considered."[5]

5. In the present case, as submitted below and in other *Amicus*' submissions on referral,[6] the conditions for referral do not exist. The preference for referral is plainly inapplicable because the USA has no criminal jurisdiction, and even if it did, a prosecution would be barred by the statute of limitations. Any referral is also outweighed by the interests of justice and expediency, in keeping the case at the Mechanism.

6. Robinson cites an Appeals Decision stating that "where a State expresses a willingness and commitment to try a case over which it has jurisdiction, as Serbia has done in this case, it should be given the opportunity to do so, provided other relevant factors are satisfied."[7] Here, however, not only are the "relevant factors" not satisfied, but the State Bar of California has not expressed a commitment to try the case, but only stated that it "may be possible" to initiate disciplinary proceedings, providing contact information for a discussion concerning "the relevant requirements."[8]

2. The Mechanism's interest in this case can only be vindicated by conducting criminal proceedings

7. Robinson asserts that Californian disciplinary proceedings will vindicate the Mechanism's interests in this case.[9] However, the historical background of the case clearly shows that the Mechanism's interest can only be vindicated by subjecting Robinson to criminal proceedings.

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5 *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).

6 *Amicus*' Submissions; *Robinson*, *Amicus Curiae*'s Submission on the Suitability of the Referral of the Case, 26-March-2025 ("26-March-2025 Submissions").

7 Robinson's Submissions, para.12 (emphasis added).

8 USA Submissions, p.1 (emphasis added).

9 Robinson's Submissions, paras.24, 30.

8. This case originates from the *Nzabonimpa et al.* contempt case in which Judge Joensen found that a criminal scheme including "repeated acts involving multiple witnesses spanning nearly three years" had been implemented, making it "amongst the most brazen efforts to interfere with the administration of justice before an international tribunal".[10]

9. In particular, Judge Joensen found that Dick Prudence Munyeshuli, Robinson's investigator for the *Ngirabatware* review proceedings, had, at Robinson's direction, prohibited contacts with witnesses in violation of protective measures.[11] Judge Joensen determined that Munyeshuli did not contact witnesses on his own initiative, but "was instructed to do so by Robinson", noting that Robinson had previously given Munyeshuli similar instructions.[12] The Appeals Chamber convicted Munyeshuli and sentenced him to five months' imprisonment.[13] That same instruction from Robinson to Munyeshuli, which led to the events for which Munyeshuli was criminally convicted of contempt and sentenced to five months' imprisonment, is the direct basis for one of the eight criminal violations for which Robinson is now charged.[14]

10. On the same day that the written Trial Judgement in *Nzabonimpa et al.* was issued, Judge Joensen issued an Order Referring a Matter to the President. Judge Joensen stated that in the course of his preparation of the Trial Judgement, he found that "the record before [him] raises 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 he may be in contempt of the Mechanism." Judge Joensen referred the matter to the Mechanism's President "so that another Single Judge can independently assess whether or not [criminal contempt] proceedings under

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10 *Prosecutor v. Nzabonimpa et al.*, MICT-18-116-T ("*Nzabonimpa*"), Judgement, 25-June-2021, paras.398 (emphasis added).

11 *Ibid*., para.363.

12 *Ibid*, para.65 & fn.986.

13 *Prosecutor v. Fatuma et al.*, MICT-18-116-A, Judgement, 29-June-2022, para.115.

14 *Robinson*, Decision Issuing Order in Lieu of Indictment, 25-February-2025, para.13 ("Indictment").

Rule 90 of the Rules or other appropriate disciplinary action against Robinson (...) is warranted".[15]

11. The President assigned the matter to Judge Solaesa, who in turn assigned *Amicus* "to investigate whether Robinson interfered with the administration of justice – or should otherwise be professionally sanctioned or denied audience".[16] It was clear that Judge Solaesa and *Amicus*' assignment included the determination of which avenue -- criminal proceedings or disciplinary action -- was the appropriate course of action.

12. On 25-February-2025, Judge Solaesa decided that the initiation of criminal proceedings, rather than disciplinary action, was the appropriate avenue to address some of Robinson's most serious conduct.[17] He issued an Order in Lieu of Indictment, charging Robinson with criminal contempt based on eight violations of judicial orders.[18]

13. There can be no doubt that it was duly established, following the appropriate procedure initiated by Judge Joensen and completed by Judge Solaesa, that the appropriate avenue for addressing a substantial part of Robinson's conduct is a criminal proceeding, and not an administrative disciplinary action.

14. Indeed, on 13-May-2025, Judge Chiondo Masanche, the Single Judge assigned to the present case following the Indictment, invited the USA to make submissions on the referral of the case, and only mentioned that a criminal prosecution in the USA might vindicate the Mechanism's interest, not a disciplinary action:

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[15] *Nzabonimpa*, Order Referring a Matter to the President, 20-September-2021, p.3.

[16] *Nzabonimpa*, Order Assigning a Single Judge to Consider a Matter Pursuant to Rule 90(C), 8-October-2021; *Nzabonimpa*, MICT-18-116-R90.1, Order Directing the Registrar to Appoint an *Amicus Curiae* to Investigate Pursuant to Rule 90(C)(ii), 25-October-2021.

[17] Indeed, in that Decision, Judge Solaesa also decided that certain conduct by Robinson, other than that included in the Indictment, would be better addressed by disciplinary measures rather than criminal proceedings. *Nzabonimpa*, MICT-18-116-R90.1, Decision on Allegations of Contempt, 25-February-2025, paras.32, 37, 41 ("25-February-2025 Decision").

[18] Indictment.

> CONSIDERING, therefore, that the conduct charged in relation to Robinson may be subject to the jurisdiction of the United States as contempt, an offence against the administration of justice, or a violation of another appropriate provision of their criminal code, which may vindicate the Mechanism's interest in this matter[19]

3. Administrative Bar proceedings and related penalties are not sufficient to adequately address Robinson's conduct

15. In his Submissions, Robinson argues that while he would not face criminal penalties, a disbarment or suspension from practice would vindicate the Mechanism's interests in this case.[20]

16. As highlighted in *Amicus*' Submissions of 29-August-2025, there is well-established jurisprudence to the effect that the State to which the case might be referred must have "a legal framework which criminalizes the alleged conduct of the accused" and a "penalty structure within the State [providing] an appropriate punishment for the offences for which the accused is charged".[21] In the two contempt cases before the Mechanism that were referred to State authorities, the State identified potential criminal provisions addressing the relevant conduct. For example, in the *François Ngirabatware* case, while Belgium did not propose to charge the accused for contempt, it still identified provisions criminalizing the accused's conduct: "Belgium has: (i) an adequate legal framework criminalising the Accused's conduct charged in the Order in Lieu of Indictment as forgery and the use of forged documents pursuant to Articles 196 and 197 of the Belgian Criminal Code".[22] Subjecting Robinson to bar disciplinary proceedings rather than criminal proceedings would fundamentally change the case against Robinson, essentially freeing him of the criminal proceedings that were duly initiated by Judge Solaesa, while providing no adequate alternative. For the reasons outlined in *Amicus*'

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19 *Robinson*, Invitation for Submissions, 13-May-2025, p.3 (emphasis added).

20 Robinson's Submissions, para.24.

21 *Amicus*' Submissions, para.14.

22 *In the matter of Francois Ngirabatware*, MICT-24-131-I, Decision on the Suitability of Referral of the Case, 17-September-2024, p.3 ("F.Ngirabatware"); *Prosecutor v. Šešelj et al.*, MICT-23-129-I, *Decision on Referral of the Case to the Republic of Serbia,* 29-February-2024, paras.14-16 ("Šešelj").

Submissions of 29-August-2025[23] and this Reply, the legal requirements for referral are not satisfied and it goes against the interests of justice to refer Robinson's case to administrative disciplinary proceedings, effectively absolving Robinson of the crimes for which he is charged by the Mechanism, prior to and without a trial.

17. State Bar disciplinary proceedings are not conducted before a "national court" – *see* Statute, Arts.6.5 & 6.6., but before a local administrative body. The USA Submissions talk of potential "administrative disciplinary proceedings."[24] The California Business and Professions Code recognizes that these disciplinary proceedings do not equate to criminal proceedings for contempt.[25]

18. In terms of the penalties that can result from Californian disciplinary proceedings, they cannot rise to the level and address the gravity underlying a finding of guilt for contempt at the Mechanism. California disciplinary penalties would only affect Robinson's ability to practice law in California, where he in fact no longer resides or practices.[26] Judge Solaesa, in deciding to indict Robinson for contempt, primarily took into consideration "the nature and seriousness of the alleged events", which he "balanced against a variety of factors."[27] In another contempt case involving Defence Counsel, the ICTY Appeals Chamber confirmed that contemptuous conduct of a certain gravity, as determined by Judge Solaesa, is more appropriately dealt with as contempt than by subjecting it to disciplinary action:

> Mere negligence in failing to ascertain whether an order had been made granting protective measures to a particular witness could never amount to such conduct [i.e. contempt]. It is unnecessary in this appeal to determine whether any greater degree of negligence could constitute contempt. Negligent conduct could be dealt with sufficiently, and more appropriately, by way of disciplinary action, but it could never justify imprisonment or a substantial fine even though the unintended consequence of such negligence was an interference with the Tribunal's administration of justice. At the other end of the spectrum, wilful blindness to the existence of the order in the sense defined is, in the opinion of the

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23 *Amicus*' Submissions, paras.17-24.

24 USA Submissions, p.1

25 *See, e.g.,* § 6084(d), 6086.7(a)(1).

26 *Amicus*' Response, para.22.

27 25-February-2025 Decision, para.9.

> Appeals Chamber, sufficiently culpable conduct to be more appropriately dealt with as contempt.[28]

19. What specific sentence will adequately address Robinson's conduct if proven can only be determined at the end of trial, based on the evidence and submissions. Suffice it to say at this stage that a disciplinary penalty does not satisfy or constitute a criminal sanction, a fine and/or a term of imprisonment, which is the penalty structure provided in the Mechanism's Rules. And a term of imprisonment is -- contrary to what Robinson implies,[29] not a mere technical possibility. Again, Robinson's investigator Munyeshuli was sentenced to a term of five months' imprisonment for acting pursuant to Robinson's instructions, the same instructions which form the basis for one of the eight violations for which Robinson is charged.

4. The possibility of revoking the deferral cannot remedy the lack of jurisdiction to criminally prosecute Robinson in the USA

20. Robinson's Submissions state that the Mechanism "retains the possibility of revoking the referral [and that any] reservations the Single Judge may have about referring the case to the United States, as in the *Šešelj et al* case, ought to be resolved in favor of referral."[30] Robinson says that the Single Judge's reservations in *Šešelj et al*. included "whether Serbian law encompassed the offenses charged in the Mechanism indictment and whether the statute of limitations would preclude prosecution in Serbia."[31]

21. Contrary to the present case, in *Šešelj et al.*, the Serbian authorities submitted that the accused conduct "can correspond to a number [of offences]",[32] and that it was "prepared to conduct criminal proceedings (...) under its domestic legislation".[33] The possibility of revoking

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[28] *Prosecutor v. Aleksovski*, IT-95-14/1-AR77, Judgment on Appeal of Anto Nobilo against Finding of Contempt, 30-May-2001, para.45 (emphasis added).

[29] Robinson's Submissions, para.26 and fn.18.

[30] Robinson's Submissions, para.20.

[31] Robinson's Submissions, para.18.

[32] Šešelj, para.13 (emphasis added).

[33] *Ibid*., para.17.

the referral was a way to alleviate the Judge's reservations, among others, that Serbia could potentially not find a provision to criminally charge the accused for the conduct charged. The Judge stated:

> It follows from a previous ruling of the Appeals Chamber in another contempt case that, if the Accused are not brought to trial within a reasonable time or if a competent Serbian court determines that it does not have jurisdiction to prosecute the Accused for contempt of the ICTY and the Mechanism as alleged in the Indictment, a deferral may be sought in the interests of justice. Accordingly, taking into account the availability of a revocation procedure under the Statute and the Rules, the deficiencies identified in Serbia's submission do not necessarily preclude the referral of the case to Serbia at this stage.[34]

22. In the present case, the revocation procedure cannot help the fact that the USA does not have a jurisdictional basis to criminally prosecute Robinson. There is no jurisdictional issue that *may* be confirmed in the future if the USA doesn't find jurisdiction and that can be addressed by a potential revocation of the referral. That the USA lacks criminal jurisdiction here is already confirmed. Article 6.6 of the Statute talks of a revocation "where it is clear that the conditions for referral of the case are no longer met". Because of this lack of jurisdiction – and in any case based on the interests of justice and expediency – the conditions for referral are already not met.

5. Conducting the present case before the Mechanism will better serve the interests of justice and expediency

23. Robinson's Submissions state that the interests of justice and expediency favor the referral of the case, and that there is no reason to believe that the Mechanism's criminal proceedings would be more expeditious than merely speculative California disciplinary proceedings.[35]

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34 *Ibid*., para.18 (emphasis added).

35 Robinson's Submissions, paras.25-29.

24. For reasons outlined in *Amicus*' 26-March-2025 Submissions and 29-August-2025 Submissions,[36] even if Californian administrative disciplinary proceedings could adequately address Robinson's conduct, which they cannot, *Amicus*' position is clearly to the contrary.

25. The Mechanism is the center of gravity and evidence in this case, as it includes: (a) a large part of the complex evidence from previous Mechanism cases, which can be accessed and admitted into evidence in this case much more expeditiously at the Mechanism per Rules 110, 111 and 115; (b) adjudicated facts from Mechanism cases; (c) important material subject to Rule 76 for which Robinson, as the provider, only consented to the disclosure to *Amicus*; (d) African witnesses who may not wish to appear in California proceedings, as opposed to Mechanism proceedings in Tanzania. Contrary to what Robinson argues,[37] there is no indication that California bar proceedings would secure such witness evidence for the purpose of local, administrative and non-criminal proceedings which concern the violation of Mechanism's orders, and include only the smallest links to the USA.[38]

26. In addition, the history of monitoring of the two contempt cases that were referred by the Mechanism shows that charges at the national level come, if at all, with important delays.

27. In the *Šešelj et al.* case, the Decision referring the case was issued on 29-February-2024.[39] In the Fifth Monitoring Report of 14-July-2025, close to a year and a half following the referral Decision, the monitor stated that she was unable to report if any progress had been made since the last report, but that it appeared that no indictment had yet been filed.[40]

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[36] 26-March-2025 Submissions, paras.13-23; *Amicus*' Submissions, paras.25-31.

[37] Robinson's Submissions, para.20.

[38] 26-March-2025 Submissions, paras.9-12 and Annex.

[39] *Šešelj*.

[40] *In the Matter of Vojislav Šešelj et al.*, MICT-23-129-Misc.1, Fifth Monitoring Report, 14-July-2025, para.12.

28. In the *François Ngirabatware* case, the Decision referring the case was issued on 17-September-2024.[41] In the second monitoring report on 15-July-2025, the monitor reported that the alleged fraudulent documents at the centre of the Indictment at the Mechanism had been analysed, but that François Ngirabatware had not yet been ordered to appear before a tribunal.[42]

29. Any disciplinary penalty affecting Robinson's practice in California would be without any practical effect, as Robinson has taken "inactive" status in such Bar and no longer practices there.[43] According to the USA Submissions, disciplinary actions in North Carolina where Robinson resides would only be pursued after the California proceedings, occasioning more delays.[44]

WHEREFORE, Judge Solaesa already determined that criminal proceedings are called for, the USA has no criminal jurisdiction, and the Mechanism is clearly the center of gravity for these proceedings, in protecting its proceedings.

Word count: 2,964 words

Respectfully submitted this 5-September-2025.

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41 F.Ngirabatware.

42 *In the Matter of François Ngirabatware*, MICT-24-131-I, Deuxième Rapport de Suivi, 15-July-2025, paras.7, 9.

43 USA Submissions, p.1.

44 USA Submissions, p.1., where it states that disciplinary action in North Carolina could be taken on the basis and following such action in California.

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