UNITED NATIONS

Case No.: MICT-25-135-AR14.1

International Residual Mechanism for Criminal Tribunals

Date: 24 November 2025

Original: English

BEFORE THE APPEALS CHAMBER

Before: **A Bench of the Appeals Chamber**

Registrar: **Mr. Abubacarr Tambadou**

IN THE MATTER OF PETER ROBINSON

PUBLIC

NOTICE OF APPEAL AGAINST THE DECISION TO REFER THE CASE AND REQUEST TO STAY AN ORDER

Amicus Curiae

Mr. Kenneth Scott

United States of America

Mr. Peter Robinson

State Bar of California

Chief Trial Counsel

The *Amicus Curiae* in the case titled *In the Matter of Peter Robinson* ("*Amicus*") respectfully files this notice of appeal concerning the Single Judge's "Decision on the Suitability of Referral of the Case" issued on 7-November-2025, pursuant to Mechanism Rule 14(E).

I. BACKGROUND

1. This case originates from the *Nzabonimpa* contempt case. In that case, Judge Joensen established 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".[1]

2. The criminal scheme in *Nzabonimpa* concerned the review of Augustin Ngirabatware's convictions for genocide. Ngirabatware's review case was based on the purported recantation of their testimony by the four main prosecution witnesses on which Ngirabatware's convictions were based.[2] The criminal scheme involved, among other things, "clandestine communications with key witnesses subject to protective measures", "instructions provided on what to say to judicially accountable agents investigating the case [and 'in relation to meetings with the parties or the WISP'] and/or to the Judges who might review Ngirabatware's convictions" and actions "to manipulate and improperly influence potential witness evidence".[3]

3. For more than two years, Peter Robinson was counsel for Ngirabatware for the purpose of his review case.[4] Robinson investigated, prepared and put in motion Ngirabatware's review case.

4. In *Nzabonimpa*, Judge Joensen found that Dick Prudence Munyeshuli, Robinson's investigator for the *Ngirabatware* review proceedings, had, at Robinson's direction, prohibited contacts with the four purported recanting witnesses in violation of protective measures

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

2 Judgement, para.332*; Prosecutor v. Ngirabatware*, MICT-12-29-R, Review Judgement, 27-September-2019, para.6.

3 Judgement, paras.332-333, 338.

4 *In the Matter of Peter Robinson*, MICT-25-135-I, Decision Issuing Order in Lieu of Indictment, 25-February-2025, para.2 ("Indictment").

specifically entered in the review case. 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.[5] The Appeals Chamber convicted Munyeshuli and sentenced him to five months' imprisonment.[6]

5. On the same day that the written Trial Judgement in *Nzabonimpa* was issued, Judge Joensen referred 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 Rule 90 of the Rules or other appropriate disciplinary action against Robinson (...) is warranted".[7] An investigation was initiated and *Amicus* was appointed "to investigate whether Robinson interfered with the administration of justice – or should otherwise be professionally sanctioned or denied audience".[8]

6. On 25-February-2025, following *Amicus*' investigation which identified thirty-four violations by Robinson, sometimes involving multiple protected witnesses, the investigating and charging Mechanism judge, Judge Solaesa, decided that criminal charges, rather than disciplinary action, were the necessary avenue to address some of Robinson's most serious conduct.[9] In deciding which of the numerous violations to subject to criminal proceedings, Judge Solaesa considered "the nature and seriousness" of the violations, which he balanced

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5 Judgement, paras.356, 365 & fn.986.

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

7 *Nzabonimpa*, Order Referring a Matter to the President, 20-September-2021, p.3 (emphasis added)

8 *Nzabonimpa*, Order Assigning a Single Judge to Consider a Matter Pursuant to Rule 90(C), 8-October-2021 (emphasis added); *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 (emphasis added).

9 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").

against other factors, in particular the expenditure of resources and the fact that the Mechanism was to be a "small, temporary and efficient structure, whose functions and size will diminish over time".[10] Based on this careful counter-balancing, Judge Solaesa issued an Order in Lieu of Indictment, charging Robinson with criminal contempt based on eight violations of judicial orders.[11]

7. On 7-November-2025, the Judge appointed to hear the case against Robinson, Judge Chiondo Masanche (the "Single Judge"), decided to refer the case solely to local disciplinary proceedings. Despite and contrary to Judge Joensen's decision after hearing the entire *Nzabonimpa* case to refer Robinson's conduct for the initiation of a criminal investigation, and Judge Solaesa's decision based on *Amicus*' entire investigation to initiate a criminal case rather than only disciplinary proceedings, Judge Chiondo Masanche decided that referring the case to disciplinary proceedings at the state of California bar instead of conducting the duly initiated criminal proceedings before the Mechanism, would "adequately vindicate the Mechanism's interests" ("Decision").[12]

8. *Amicus* seeks the reversal of the Decision to refer the case to disciplinary proceedings in California on the following grounds, as against the applicable law and process in determining the criminal conduct charged against Robinson's, and against the interests of justice and expediency.

II. STANDARD OF APPEAL

9. In a previous contempt case at the Mechanism, the Appeals Chamber stated, based on well-established jurisprudence:

> Where an appeal is filed against a decision referring a case to a competent national jurisdiction for trial, the issue before the Appeals Chamber is not whether the decision was correct, in the sense that the Appeals Chamber agrees with it, but whether in reaching that decision the Single Judge has correctly exercised his or her discretion. The Appeals Chamber will only intervene with the decision of the Single Judge if the decision was based on a discernible error. To demonstrate such error, an appellant must show that the Single

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10 25-February-2025 Decision, paras.9, 24, 26, 28, 32.

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11 Indictment.

12 *Robinson*, Decision on the Suitability of Referral of the Case, 7-November-2025, para.16.

> Judge: (i) misdirected him or herself as to the legal principles to be applied, or the applicable law; (ii) gave weight to irrelevant considerations or failed to give sufficient weight to relevant considerations; (iii) made an error as to the facts upon which the exercise of discretion relied; or (iv) the decision was so unreasonable and plainly unjust that the Appeals Chamber is able to infer that the Single Judge must have failed to exercise his or her discretion properly.[13]

III. THE GROUNDS OF APPEAL

GROUND 1: The Single Judge committed discernible errors by misdirecting himself on the applicable law by referring a criminal case for contempt initiated before the Mechanism to non-criminal State Bar disciplinary proceedings.

10. In particular, the Single Judge's misdirection as to the applicable law includes the following errors:

1) The Single Judge erred, at paragraph 13 of the Decision, in ruling that the Statute and Rules (a) do not mandate that a referred criminal contempt case proceeds as a criminal case and (b) provide no support for the position that the vindication of the Mechanism's interests in the contempt case can only be achieved through criminal sanctions;

2) The Single Judge erred, at paragraph 14 of the Decision, in failing to abide by the jurisprudence of the ICTY, ICTR and Mechanism's Appeals Chambers establishing that the State of referral needs a legal framework criminalizing the conduct of the accused; and

3) The Single Judge's decision to refer the case to disciplinary proceedings was *ultra vires*, because the Single Judge did not have the authority to determine whether disciplinary action or a criminal proceeding was the appropriate avenue to deal with Robinson's conduct, and went against the Mechanism decision taken by the Judge with that authority pursuant to the process provided for in the applicable law. In this way, the Single Judge substituted his judgement for that of the Mechanism's investigating and charging judge. As a consequence, the criminal charges against Robinson were effectively dismissed, prior to and without any trial.

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[13] *In the Case Against Jojić and Radeta*, 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.13.

11. **Remedy for Ground 1:** Any or all of the errors under Ground 1 demonstrate that the Single Judge failed to correctly exercise his discretion (or abused his discretion), and that the referral of the case to the California State Bar for disciplinary proceedings goes against the applicable law. The Decision to refer the case should be reversed.

GROUND 2: The Single Judge committed discernible errors by concluding that the Mechanism's interests are sufficiently vindicated if the case is referred to the California State Bar for possible disciplinary proceedings, and by failing to conclude that the interests of justice weigh against the referral of the case to disciplinary proceedings in California.

12. In particular, the Single Judge erred as follows:

1) The Single Judge failed to give sufficient weight to a relevant consideration when determining, at paragraph 13 of the Decision, that "the possibility of disbarment or suspension of his license to practice law" would be a sufficient sanction, because "they would directly impact Robinson, including his livelihood and reputation", omitting to consider that by the time the North Carolina State Bar takes any sanction following the completion of the California State Bar investigation and proceedings, Robinson's practice, given his age, will already be at an end or very close to it;

2) At paragraph 13 of the Decision, the Single Judge gave weight to irrelevant considerations and misdirected himself as to the applicable law in concluding that the potential sanctions following disciplinary proceedings at the State Bar level are sufficient to address Robinson's charged criminal conduct, in part because of the provisions of Rule 90(I) and Rule 47;

3) The Single Judge made a decision that was so unreasonable and plainly unjust, including by failing to adequately consider relevant considerations and misdirected himself as to the applicable law, when erroneously concluding at paragraph 13 of the Decision that the potential disciplinary sanctions are sufficient to address Robinson's conduct as charged, and deciding to refer the case partly on that basis; and

4) The Single Judge made a decision that was so unreasonable and plainly unjust, including by failing to adequately consider relevant considerations, by concluding at

paragraph 16 of the Decision that the referral would vindicate the Mechanism's interests in the criminal case, and by failing to conclude that the referral to disciplinary proceedings in California of the criminal case against Robinson initiated in light of the nature and seriousness of the violations goes against the interests of justice.

13. **Remedy for Ground 2:** Any or all of the errors under Ground 2 demonstrate that the Single Judge failed to correctly exercise his discretion, that the conditions for referral of the case are not met and the interests of justice, on its own or together with the interests of expediency, justify that the case be conducted before the Mechanism. The Decision to refer the case should be reversed.

GROUND 3: At paragraph 17 of the Decision, the Single Judge made discernible errors by failing to give sufficient weight to relevant considerations in relation to the interests of expediency, and on that basis concluding that the interest of expediency does not weigh against the referral of the case

14. In particular, the Single Judge failed to give sufficient weight to the following considerations in relation to the interests of expediency, some of which are also relevant in relation to the interests of justice:

- that Robinson moved to inactive status at the California Bar and that disciplinary sanctions affecting his right to practice can only have a practical effect against Robinson if taken at the North Carolina Bar following the completion of the Californian proceedings;

- that the California State Bar only mentioned that disciplinary proceedings may be possible and should be contacted to discuss the relevant requirements and arrangements;

- that a high number of violations of an order were not included in the indictment at the Mechanism for various reasons, including the expenditures of resources and whether violations were grave enough to be the basis of criminal charges, but could be the subject of State Bar disciplinary proceedings;

- that a high number of witnesses and volume of information relevant to this case are protected or otherwise confidential given the previous related cases, and that the protection of that information will be much more complex at the California State Bar level;

- that the investigation at the Mechanism is already completed and *Amicus* knows the case, a factor which is compounded by the specifics of this case;

- that the USA only has very small links to the commission of the crimes charged and that potential witnesses relevant to the facts and the foundation of a high volume of evidence of this case are located outside the USA and closer to the Mechanism's premises in Arusha. It would be much more complex and protracted to have such witnesses provide evidence in Californian disciplinary proceedings, if these witnesses appear at all.

- that the Mechanism's Rules provide for alternative modes of presentation of evidence, such as those of Rules 110, 111 and 115, which will make the proceedings at the Mechanism more expeditious.

- that the criminal charges and a large part of the underlying evidence in this case arise from, and are very closely and inherently related to other major litigation at the Mechanism, so that the voluminous case file, related-cases, evidence and criminal charges can be more effectively and expeditiously managed at the Mechanism.

15. **Remedy for Ground 3:** The Single Judge's errors under Ground 3 demonstrate that he failed to correctly exercise his discretion and invalidate the decision to refer the case. The interest of expediency, on its own or together with the interest of justice, justify that the case be conducted before the Mechanism. The Decision to refer the case should be reversed.

GROUND 4: The Single Judge made discernible errors by referring the case to the Office of Chief Trial Counsel of the California State Bar when its preparedness, willingness and competence to accept the case and adequately address Robinson's charged conduct could not be established.

16. The USA Submissions do not demonstrate that the California State Bar is prepared, willing and competent to accept the case and adequately address Robinson's conduct. The USA Submissions only state that the Bar informed that it "has jurisdiction and that it may be possible [emphasis added] to refer this matter to appropriate disciplinary proceedings", providing contact information of the Office of Chief Trial Counsel of the California State Bar, to "discuss the relevant requirements and arrangements". The Single Judge failed to give weight to this consideration and as such made a decision that was so unreasonable and unjust as to constitute a failure to correctly exercise his discretion.

17. Relevant factors going to the Bar's preparedness, willingness or competence could concern, among others: (a) the law applicable in Californian disciplinary proceedings and whether it can adequately address the charges against Robinson; (b) any statute of limitations, time-limits or other circumstance impeding the Bar's capacity to carry out the case; and/or (c) whether the California State Bar is actually prepared and willing to accept the case, given the facts and evidence of the case and their international components.

18. **Remedy for Ground 4:** The Single Judge's errors under Ground 4 show that he failed to correctly exercise his discretion and invalidate the decision to refer the case for possible State Bar disciplinary proceedings. The Decision to refer the case should be reversed.

IV. REQUEST FOR STAY AN ORDER

19. *Amicus* submits that there is good cause to stay the Single Judge's order under appeal – i.e., that *Amicus* transfer the case file to the Chief Trial Counsel at the California State Bar – until the Appeals Chamber's ruling on this appeal.[14]

20. There is no point in *Amicus* making arrangements with the Chief Trial Counsel and to undertake the heavy task of preparing to and transferring all relevant information and material to the Chief Trial Counsel, if the case is to be conducted before the Mechanism. Undertaking such a task would consume Mechanism resources, with no certainty as to where the case will

[14] The Single Judge ordered *Amicus* "to transfer to the Chief Trial Counsel in the Office of Chief Trial Counsel of the California State Bar, as soon as possible, all information relating to this case that he considers appropriate, including, in particular, all materials supporting the Order in Lieu of Indictment". Decision, p.8.

be held. In addition, and importantly, a great volume of information to be transferred is protected or otherwise confidential, including sensitive and protected witness information. Transferring the case file would involve further dissemination of that information, which would serve no purpose if the referral is reversed.

21. *Amicus* notes that his motion for being allowed to transfer non-public information and material from two case records to State authorities or to grant Robinson access to the same, was rejected by the Single Judge as premature prior to knowing whether the case is to be referred.[15] Given the present appeal, we still do not know whether the case will be referred.

V. RELIEF SOUGHT

22. Each of the above Grounds 1, 2, 3 and 4, taken together or on their own, demonstrate that the Single Judge committed discernible errors and failed to correctly exercise his discretion by referring the Mechanism's criminal case against Robinson to possible disciplinary proceedings at the State Bar level. *Amicus* respectfully requests the Appeals Chamber to reverse the referral Decision and order that the case be conducted at the Mechanism.

23. *Amicus* also respectfully requests the Appeals Chamber to suspend the order to *Amicus* to transfer the case file to the California State Bar pending its decision on the present appeal.

Word Count : 2990 words

Respectfully submitted this 24-November-2025.

Kenneth Scott
Amicus Curiae

[15] *Robinson*, Decision on *Amicus Curiae*'s Motion in Relation to Material from Other Cases, 22-May-2025.

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