

UNITED
NATIONS



International Residual Mechanism
for Criminal Tribunals

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

Date: 25 November 2025

Original: English

BEFORE THE APPEALS CHAMBER

Before: A Bench of the Appeals Chamber

Registrar: Mr Abubacarr M. Tambadou

IN THE MATTER OF

PETER ROBINSON

Public

**MOTION TO STRIKE
NOTICE OF APPEAL**

Amicus Curiae:

Mr. Kenneth Scott

Mr. Peter Robinson

Government of the United States of America

State Bar of California

1. I respectfully move to strike the *amicus curiae*'s notice of appeal filed on 24 November 2025 pursuant to Rule 14(E) of the Rules of Procedure and Evidence ('the Rules').¹ The *amicus curiae* has no standing under Rule 14(E) to appeal a referral decision.

2. Rule 14(E) provides that "[a]n appeal by the accused or the Prosecutor shall lie as of right from a decision of the Trial Chamber whether or not to refer a case." The *amicus curiae* is neither the accused nor the Prosecutor.

3. Rule 2 of the Rules defines "the Prosecutor" as "[t]he Prosecutor appointed pursuant to Article 14 of the Statute." Article 14 (4) of the Mechanism's Statute provides that:

The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations."

4. The Prosecutor of the Mechanism is Serge Brammertz, not Kenneth Scott. Therefore, under the plain language of Rule 14(E), the *amicus curiae* has no standing to appeal the referral decision. His notice of appeal should be stricken.

5. It is possible that an avenue existed for the *amicus curiae* to appeal the referral decision. Rule 80 of the Rules. That Rule provides for an appeal of a decision by "either Party". The *amicus curiae* is indeed a party to this litigation. However, to appeal a decision under Rule 80, a party must file a request for certification to appeal within seven days. That time has long expired.

6. The Appeals Chamber has strictly construed its jurisdiction in this case when dismissing my appeal of the decision to initiate contempt proceedings. The Chamber found that I "failed to demonstrate that the subject matter of the appeal—namely whether the Single Judge correctly exercised his discretion in initiating proceedings against Robinson for contempt, given Robinson's official position as defence counsel—raises issues related to the proper functioning of the Mechanism that warrant appellate review as of right."² It would be unfair to apply a different standard to allow the *amicus curiae* to appeal a decision as of right that the Statute does not permit him to appeal.

7. In addition, the *amicus curiae* is not an independent organ of the Mechanism, accountable to the Secretary-General, but is a friend of the court, accountable to the judges. Allowing him an appeal of right, as opposed to seeking certification from the judge who rendered the impugned decision, would circumvent this system of accountability. It should be up to the Single Judge, not

¹ Notice of Appeal against the Decision to Refer the Case and Request to Stay an Order (24 November 2025).

² Prosecutor v Nzabonimpa et al, No. 18-116-AR90.1, Decision on Appeal of Decision on Allegations of Contempt and on Requests to Appear as Amicus Curiae (15 May 2025), p. 3.

the unilateral decision of the *amicus curiae*, whether the resources of the Mechanism should be spent on an appeal and whether the criteria for leave to appeal is met. This is the proper framework for an appeal by the *amicus curiae*, not Rule 14(E), which does not include him among those who can appeal a referral decision.

8. The Appeals Chamber's decision in the *Jojić & Radeta* appeal is distinguishable.³ There, although Rule 14(E) did not explicitly grant the referral State standing to appeal, the Appeals Chamber allowed Serbia to appeal. It noted that another Rule—Rule 134—allowed a State to appeal a decision as of right that affected its legal interests. Here, there is no such Rule allowing an *amicus curiae* the right to take a direct appeal.

9. The Appeals Chamber did entertain an appeal by an *amicus curiae* in the *Jojić & Radeta* case, but there was no challenge to the standing of the *amicus curiae* to appeal and the issue of standing was not discussed in that case.⁴ Here, the issue of the *amicus curiae*'s standing to appeal under Rule 14(E) is the subject of a direct challenge.

10. The Appeals Chamber should not read Rule 14(E) to mean anything other than what it says. It should strike the Notice of Appeal. Should the *amicus curiae* wish to seek certification to appeal under Rule 80, and offer good cause for failing to meet the time limits imposed by that Rule, he can do so before the Single Judge.⁵

11. The Appeals Chamber, or the President,⁶ should strike the Notice of Appeal.

Word Count: 973

Respectfully submitted,

 PETER ROBINSON

³ *In the Case against Jojić & Radeta*, No. 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), paras. 9-10.

⁴ *In the Case against Jojić & Radeta*, No. 17-111-R90, *Decision on Amicus Curiae's Appeal against the Order Referring a Case to the Republic of Serbia* (12 December 2018).

⁵ I do not oppose the stay requested by the *amicus curiae* to delay the production of material to the State Bar of California until the Single Judge's decision becomes final.

⁶ *Prosecutor v Kayishema*, No. MICT-12-23-AR14.1, *Decision in Relation to Defence Notice of Appeal against "Decision on Fulgence Kayishema's Requests for Revocation of Referral and Assignment of Counsel"* (25 November 2025).



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Case Name/ Affaire :	In the Matter of Peter Robinson			Case Number/ Affaire n° :	MICT-25-135-AR14.1	
Date Created/ Daté du :	25 November 2025		Date transmitted/ Transmis le :	25 November 2025		Number of Pages/ Nombre de pages : 3
Original Language/ Langue de l'original :	X English/ Anglais	☐ French/ Français	☐ Kinyarwanda	☐ B/C/S	☐ Other/Autre (specify/ préciser):	
Title of Document/ Titre du document :	MOTION TO STRIKE NOTICE OF APPEAL					
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