

**UNITED
NATIONS**

International Residual Mechanism
for Criminal Tribunals

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

Date: 27 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

RESPONSE TO MOTION TO STRIKE NOTICE OF APPEAL

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 responds to Peter Robinson’s “Motion to Strike Notice of Appeal” dated 25-November-2025.

1. On 24-November-2025, *Amicus* filed his Notice of Appeal (“Notice”) concerning the Single Judge’s Decision on the Suitability of Referral of the Case dated 7-November-2025 (“Decision”), wherein the Single Judge determined to refer the Mechanism’s criminal charges against Peter Robinson (“Robinson”) to non-criminal California State Bar disciplinary proceedings.

2. On 25-November-2025, Robinson asked the Appeals Chamber to strike *Amicus*’ Notice (hereafter “Motion”), alleging that *Amicus* has no basis or capacity to appeal the Decision. Robinson argues that Rule 14(E) of the Mechanism’s Rules of Procedure and Evidence provides a right to appeal such decision to “the accused or the Prosecutor”, and that Rule 2 defines the “Prosecutor” as the Prosecutor appointed by the Security Council of the United Nations, Serge Brammertz.¹ Robinson purports that the Appeals Chamber “strictly construed its jurisdiction in this case when dismissing [his] appeal of the decision to initiate contempt proceedings” because Robinson’s appeal did not raise issues related to the proper functioning of the Mechanism.²

3. Robinson adds that *Amicus* could have appealed the referral decision pursuant to Rule 80, providing for an appeal of a decision by “either Party”, which includes *Amicus* because he is a party in this case. However, the time limit for asking certification for a Rule 80 appeal has already passed.³ He adds that *Amicus* is not an officer of the Mechanism and as such his right to appeal should be subject to certification by the judge who rendered the referral decision.⁴

¹ Motion, paras.2-4.

² Motion, para.6.

³ Motion, para.5.

⁴ Motion, para.7.

4. Robinson notes that the Mechanism’s Appeals Chamber entertained an appeal of a referral decision by an *amicus curiae* prosecutor in a previous contempt case, but says that the *amicus curiae*’s standing to file this appeal was not challenged.⁵

I. THE RESPONSE

5. Robinson misconstrues the way the Rules of Procedure and Evidence are built. Throughout the Mechanism’s Rules, in addition to Rule 14, the “Prosecutor” is mentioned in various Rules concerning, among others, pre-trial briefs and related lists of witnesses and evidence (Rule 70(E), disclosure obligations (Rules 71 and 73), pre-trial conferences (Rule 81), protective measures (Rule 86(F)(ii)), opening statements (Rule 100), closing arguments (Rule 103), evidence of pattern of conduct (Rule 114), and judgement of acquittal (Rule 121). The term “Party(ies)” is also mentioned throughout the Rules, and Rule 2 defines the term as “The Prosecutor or the Defence”, which therefore relates in part to using the term “Prosecutor” in the above listed Rules. The term “party” is used (i.e., including the “Prosecutor”), among others, at Rule 80, referred to by Robinson in the Motion as applying to *Amicus*.⁶

6. When it comes to court-appointed *amicus curiae* investigators and prosecutors in contempt matters pursuant to Rule 90, the term “*amicus curiae*” was not explicitly added to every relevant Rule throughout the Rules. Rather, Rule 90(E) states: “The Rules shall apply mutatis mutandis to proceedings under this Rule” (emphasis added), which means the same Rules apply unless modifications are necessary.

7. Robinson is wrong in giving no weight to the fact that the Appeals Chamber already accepted and ruled upon an appeal in a contempt case against a referral decision filed by an *amicus curiae* prosecutor, simply because the matter was not challenged. It is doubtful that the Appeals Chamber would have accepted and ruled upon the appeal if the appeal could not have

⁵ Motion, para.9.

⁶ Robinson’s argument that *Amicus* could have appealed the 7-November-2025 Decision referring the case pursuant to Rule 80 is misplaced and in fact supports *Amicus*’ present response, since “Party” in Rule 80 is defined at Rule 2 as “The Prosecutor or the Defence”. Robinson admits that *Amicus* is a party to whom Rule 80 applies. Motion, para.7.

been filed in the first place.⁷ *Amicus* notes that in its decision regarding the use of material subject to Rule 76 in relation to the present matter, the Appeals Chamber recognized *proprio motu* – i.e., without this standing being challenged – that Robinson had the standing to make submissions in his Respondent Brief. In addition, the Appeals Chamber recognized Robinson’s standing “[g]iven that the Single Judge ordered Robinson to provide submissions on [the relevant issue] and that the Single Judge’s determinations in the Impugned Decision included consideration of Robinson’s submissions”, which is the same as in the present referral matter insofar as it involved *Amicus* extensive submissions.⁸

9. Indeed, Article 6(4) of the Statute mentions that the “Prosecutor” shall be heard prior to any referral of the case and it is *Amicus* who made numerous submissions on the suitability of referral pursuant to the Single Judge’s invitations pursuant to Article 6(4),⁹ submissions which were addressed in the 7-November-2025 referral decision which *Amicus* is now appealing. Similarly, Rule 14 concerning the referral of cases also uses the term “Prosecutor” in stating, at paragraph (A)(iii), that upon referral: “the Prosecutor shall provide to the authorities of the State concerned all of the information relating to the case which the Prosecutor considers appropriate and, in particular, the material supporting the indictment”. It was *Amicus*, as the “Prosecutor”, who was ordered to provide the Chief Trial Counsel in the Office of Chief Trial Counsel of the California State Bar with “all information relating to this case that he considers appropriate, including, in particular, all materials supporting the Order in Lieu of Indictment”.¹⁰

10. There is no reason why, applying Rule 14(E) *mutatis mutandis* to the present case pursuant to Rule 90(E), *Amicus* would be excluded from those who can appeal the referral decision as of right. Contempt cases, involving either an *amicus curiae* or the Mechanism’s Office of the Prosecutor, are subjected to the same referral procedure and requirements, *mutatis*

⁷ *In the Case Against Jojić & Radeta*, MICT-17-111-R90, Decision on *Amicus Curiae*’ Appeal Against the Order Referring a Case to the Republic of Serbia, 12-December-2018.

⁸ *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, para.13.

⁹ Decision, paras.3-6. See Article 6(4) being cited at page 1 of the 12-March-2025 *Order for Submissions* and at page 1 of the 13-May-2025 *Invitation for Submissions* in this case.

¹⁰ Decision, p.8.

mutandis. It is *Amicus* who was duly-appointed to conduct the investigation into Robinson’s conduct,¹¹ to prosecute the present matter,¹² and as such, to defend the interests of the Prosecution. Again, *Amicus* is the “Prosecutor” who was invited to make submissions on referral pursuant to Article 6(4), which were made based on his unique knowledge of the case, its evidence and other circumstances relevant to the suitability of referral, and which submissions were addressed in the Decision referring the case. And as mentioned above, *Amicus* is the “Prosecutor” who was ordered to transfer the case file, in accordance with Rule 14(A)(iii).

11. In another case, the Mechanism’s Appeals Chamber decided that an appeal of a decision concerning the revocation of a referral was receivable, despite the Rules being silent regarding an appeal on a decision on revocation of referral (i.e. not on referral itself), noting among other things that the decision concerned “fundamental questions related to whether the Mechanism should exercise jurisdiction over a case”.¹³ In the face of these fundamental questions surrounding the referral of cases and whether the Mechanism should exercise its jurisdiction, Rule 14(E) provides an appeal as of right which is fundamental and, pursuant to Rule 90(E), should be exercised by the prosecution in this case – here, the *Amicus*.

12. Robinson errs when inviting the Appeals Chamber to strictly construe Rule 14(E) because it allegedly did the same in relation to his appeal of the 25-February-2025 Decision on allegations of contempt. To the contrary, Robinson’s appeal was rejected because Rule 90(J) only allows for appeal of decision “disposing of a contempt case”, which differs from the present case where Rule 90(E) clearly states that Rule 14(E) applies *mutatis mutandis* to *Amicus*. The Appeals Chamber addressed “in any event” Robinson’s contention that his appeal concerned issues related to the proper functioning of the Mechanism. It did not state that it was making a strict interpretation of the jurisprudence, but simply disagreed with Robinson that

¹¹ *Prosecutor v. Nzabonimpa et al.*, 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.

¹² *Prosecutor v. Nzabonimpa et al.*, MICT-18-116-R90.1, Decision on Allegations of Contempt, 25-February-2025, para.41.

¹³ *Prosecutor v. Stanković*, MICT-13-51, Decision on Stankovic’s Appeal Against Decision Denying Revocation of Referral and on the Prosecutions Request for Extension of Time to Respond, 21-May-2014, para.9.

this jurisprudence applied to Robinson's appeal.¹⁴ And in any case, even under a strict interpretation of Rule 14(E), it is clear that it applies to *Amicus*, based on *Amicus* submissions in the present response.

13. On another subject, *Amicus* notes that in the Motion, Robinson states that he does not oppose *Amicus*' request to stay the execution of the order to transfer the case file pending resolution of the appeal.¹⁵

II. RELIEF SOUGHT

Amicus respectfully requests the Appeals Chamber to deny Robinson's request to strike *Amicus*' notice of appeal against the decision to refer this case.

Word count: 1559 words

Respectfully submitted this 27-November-2025.



Kenneth Scott
Amicus Curiae

¹⁴ *Prosecutor v. Nzabonimpa et al.*, MICT-18-116-AR90.1, Decision on Appeal of Decision on Allegations of Contempt and on Requests to Appear as Amici Curiae, 15-May-2025, p.3.

¹⁵ Motion, fn.5. See Notice, paras.19-21.



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