

UNITED
NATIONS



International Residual Mechanism
for Criminal Tribunals

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

Date: 29 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

**REPLY BRIEF: 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. The *Amicus Curiae* has responded to the motion to strike his notice of appeal from the Single Judge’s decision to refer this case to the United States. He contends that “Rule 90(E) clearly states that Rule 14(E) applies *mutatis mutandis* to *Amicus*.”¹

2. Rule 90(E) says no such thing. It provides that “[t]he Rules shall apply *mutatis mutandis* to proceedings under this Rule.”

3. Rule 90(E) does not give the powers conferred on the United Nations Secretary-General’s duly-appointed Prosecutor Serge Brammertz to the *Amicus Curiae* Kenneth Scott. The *Amicus Curiae* does not carry out all of the functions of the Prosecutor provided in the Rules, even with respect to the contempt case to which he has been appointed. For example, the *Amicus Curiae* cannot propose amendments to the Rules under Rule 6, report a State’s non-compliance to the President under Rule 8, request information directly from a State under Rule 9, apply for deferral of a prosecution in a State under Rule 11, or sit on the Mechanism’s Coordinating Council under Rule 25.

4. Rather, Rule 90(E) applies to the procedural aspects of a contempt case, allowing the Rules applicable to core crimes to apply to contempt cases unless otherwise specified. It does not give the *Amicus Curiae* the broad powers he suggests. Accepting his interpretation would unduly expand his, and any future *Amicus Curiae*’s, status and power under the Mechanism’s statutory framework.

5. Unlike the Prosecutor, the *Amicus Curiae* is not accountable to the Secretary-General. Instead, he is a friend of the court, accountable to the judges. As such, his powers are limited to those specifically granted to him, and subject to ongoing judicial supervision. Nothing in his appointment by the Single Judge granted him the unilateral power to appeal a referral decision. A proper application of Rules 14 and 80 requires that he seek certification to appeal from the Single Judge before being allowed to exercise that power.

6. It is true that in the past, the Appeals Chamber has broadened the categories of cases it considered on direct appeal by exercising its discretion to hear direct appeals in situations where the Rules were silent. Thus, as the *Amicus Curiae* points out, it allowed an accused to take a direct appeal of a decision to revoke a referral.² It has also, in the past, allowed direct appeals from both

¹ *Response to Motion to Strike Notice of Appeal* (27 November 2025), para. 12.

² *Prosecutor v. Stankovic*, MICT No. 13-51, *Decision on Stankovic’s Appeal Against Decision Denying Revocation of Referral and on the Prosecution’s Request for Extension of Time to Respond* (21 May 2014), para.9.

the Prosecution³ and the Defence⁴ on such issues as disqualification of judges and the welfare of acquitted and released persons detained in Niger.

7. However, since those decisions, times have changed. The Mechanism has been instructed by the United Nations Security Council to reduce its judicial activities.⁵ In furtherance of this instruction, in September 2025, the Plenary of Judges amended Rule 90 to limit the contempt cases tried at the Mechanism. It now requires consideration of “the gravity of the alleged offence and the efficient use of judicial resources”.⁶

8. Just last week, the President declined to even assign an Appeals Chamber panel to a notice of appeal from a decision not to revoke a referral decision, citing concerns about the “needless expenditure of judicial resources”.⁷

9. In May 2025 the Appeals Chamber declined to exercise its discretion to allow me to take a direct appeal of the decision to initiate contempt charges in this case.⁸ Allowing the *Amicus Curiae* to directly appeal a referral decision under Rule 14(E) requires the same exercise of discretion by the Appeals Chamber as the decision whether to allow an accused to appeal a decision authorizing the initiation of contempt charges. The Appeals Chamber should not exercise its discretion differently in the current circumstances.

10. Reading Rule 14(E) as it is written will not result in any unfairness or prejudice. The *Amicus Curiae* remained entitled to seek certification to appeal under Rule 80. Rather, a plain reading of the Rule imposes the degree of judicial supervision of the *Amicus Curiae*’s activities and expenditure of Mechanism resources contemplated by the *amicus curiae* system, by requiring him to seek leave to appeal from the Single Judge.

³ *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on Prosecution Motion to Strike Karadzic’s Second Motion to Disqualify Judge Theodor Meron, Motion to Strike Judge William Sekule, and for Related Orders* (1 November 2018) at para. 10

⁴ *In the matter of Nzuwonemeye et al*, No. MICT-22-124, *Decision on Motions to Appeal Decision of 8 March 2022, for Reconsideration of the Decision of 15 March 2022, and to Appear as Amicus Curiae* (27 May 2022) at para. 14

⁵ S/RES/2740 (2024), para. 9.

⁶ *Amendments to the Rules of Procedure and Evidence* (9 September 2025)

⁷ *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), p. 2.

⁸ *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.

11. The *Amicus Curiae*'s efforts to claim for himself the status and powers of the Prosecutor should be rejected. The Appeals Chamber, or the President, is respectfully requested to strike his notice of appeal.

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Respectfully submitted,

PETER ROBINSON



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