**UNITED
NATIONS**

International Residual Mechanism
for Criminal Tribunals

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

Date: 18 December 2025

Original: English

BEFORE THE APPEALS CHAMBER

Before: **Judge Graciela Gatti Santana**
Judge Claudia Hoefer
Judge Margaret M. deGuzman

Registrar: **Mr Abubacarr M. Tambadou**

IN THE MATTER OF

PETER ROBINSON

Public Redacted Version

RESPONSE BRIEF

Amicus Curiae:
Mr. Kenneth Scott

Mr. Peter Robinson

Government of the United States of America

State Bar of California

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Introduction

1. The Amicus Curiae's *Appeal Brief Regarding Decision to Refer the Case* (8 December 2025)("*Amicus brief*") ignores the United Nations Security Council's mandate that the Mechanism wrap up its judicial activities.[1] The Mechanism has taken steps to comply with that mandate. The judges amended Rule 90 to further limit the contempt cases that the Mechanism would prosecute.[2] The 2026 budget submitted by the Mechanism promises to only expend funds on "contempt proceedings that **cannot be referred**."[3]

2. A report as recent as 8 December 2025 indicated that the United Nations was forced to cut its 2026 budget for emergency aid relief in half and that persons would likely starve to death as a result.[4] The *Amicus* proposes that the Mechanism proceed full-steam ahead in this case to conduct a complex (his words)[5] and highly contested trial and appeal. The proceedings would perhaps cost upwards of a million dollars in United Nations funds, including paying the *Amicus* to prosecute the trial and the appeal, when the alternative of referring the case to the United States is available.

3. The Single Judge's decision took account of these realities. The *Amicus brief* does not.

The United States Submission

4. Responding to the Single Judge's invitation to provide "written submissions on its jurisdiction, willingness, and preparedness to accept this case for trial,"[6] the United States, through its embassy in The Netherlands, answered in the affirmative.[7]

5. The United States first advised that it "has not identified a clear jurisdictional basis to criminally prosecute Mr. Robinson in the United States for the alleged conduct described in the February 25, 2025 Decision Issuing Order in Lieu of Indictment. Additionally, even if an avenue for the U.S. federal criminal prosecution of Mr. Robinson for said conduct were available, it is highly likely that any applicable statute of limitations would bar initiation of such a prosecution today given the extended length of time that has passed since the alleged conduct took place

[1] See S/RES/2740 (2024): "*Emphasizing* the substantially reduced nature of the residual functions following the conclusion of all core crime cases and the tracking of fugitives and the need for the Mechanism to complete its remaining functions expeditiously," and "*Emphasizes* that, in view of the substantially reduced nature of the residual functions, the Mechanism was established to be a small, temporary and efficient structure, whose functions and size will diminish over time, with a small number of staff commensurate with its reduced functions, and *requests* the Mechanism to continue to be guided in its activities by these elements."
[2] *Amendment to the Rules of Procedure and Evidence* (9 September 2025). I note that both Judge Joensen's decision to refer my conduct for investigation and Judge de Prada Solaesa's decision to initiate contempt proceedings were made prior to the amendment and under the lower "*prima facie* case" standard.
[3] A/80/505, *Proposed Programme Budget for the International Residual Mechanism for International Criminal Tribunals for 2026* (24 October 2025), para. 3(b)(emphasis added).
[4] https://www.nytimes.com/2025/12/08/world/united-nations-humanitarian-aid-cuts.html
[5] *Amicus brief*, paras. 42, 55, 56, 67.
[6] *Invitation for Submissions* (13 May 2025).
[7] *Submission of the United States on the Issue of Referral in Response to the Mechanism's Order of 13 May 2025* (1 August 2025).

in 2015, 2016 and 2017."[8]

6. However, the United States informed the Mechanism that "the State Bar of California, where Mr. Robinson was (and remains) licensed at the time of the alleged conduct, has informed the United States that that state bar has jurisdiction and that it may be possible to refer this matter to appropriate disciplinary proceedings pursuant to provisions of the California Business and Professions Code."[9]

7. The United States cited the specific statutory provision under which I could be tried by the State Bar of California. That provision is California Business and Professions Code § 6103. It provides that:

> A wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension.[10]

8. The submission then provided the Mechanism with contact information for the relevant officials of the State Bar of California who would be responsible for carrying out the proceedings.[11]

The Impugned Decision

9. The Single Judge provided the *Amicus* four opportunities to make submissions on the issue of referring the case before he made his decision.[12] When he issued his decision on 7 November 2025 referring the case to the authorities of the United States,[13] the Single Judge diligently summarized the *Amicus'* submissions.[14]

10. The Single Judge first considered the framework of a referral decision for a contempt case as set forth in the Mechanism's statute and jurisprudence. Citing Articles 1(4) and 6(1) of the Statute, he noted that the Mechanism was required to consider referring a contempt case to the authorities of a State, and that a referral decision must take into account the interests of justice and expediency. Citing Appeals Chamber precedent, he observed that "this requirement is mandatory, and the inclusion of this provision in the Statute indicates a strong preference for referral if all relevant conditions are met."[15] The *Amicus brief* ignores this strong preference for referral, analyzing the issues through the lens of the ICTY and ICTR in the height of their activity.

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[8] *Id*, second paragraph.
[9] *Id*, third paragraph.
[10] *Id*, fn. 3.
[11] *Id,* fifth paragraph.
[12] *Amicus Curiae's Submissions on the Suitability of the Referral of the Case* (26 March 2025); *Amicus Reply Submission on the Suitability of the Referral of the Case* (15 April 2025); *Amicus Curiae's Response to the Submissions of the United States of America on Referral of the Case* (29 August 2025); *Amicus Curiae's Reply to Peter Robinson's Response to the Submissions of the United States of America on Referral of the Case* (5 September 2025).
[13] *Decision on the Suitability of Referral of the Case* (7 November 2025)("*Impugned Decision*").
[14] *Impugned Decision*, paras. 4,8.
[15] *Impugned Decision*, para. 10.

11. The Single Judge set forth the criteria listed in Article 6(2) for a State to be eligible for a referral as being a State (i) in whose territory the crime was committed; (ii) in which the accused was arrested; or (iii) having jurisdiction and being willing and adequately prepared to accept such a case. He also referred to the requirement of Article 6(4) that the Single Judge must be satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out, noting that those issues were not disputed in relation to a referral to the United States. Finally, he stated that "[t]he decision on whether or not to refer the case to the authorities of a State is within the discretion of the Single Judge."[16]

12. Turning to the question of whether the Mechanism's statute required that the proceedings in the referral State be criminal in nature, the Single Judge held:

> Neither the Statute nor Rules mandate that a referred contempt case proceed as a criminal trial, nor do they preclude the possibility of disciplinary proceedings in the domestic jurisdiction. The absence of such a restriction reflects the underlying principle that the central issue in the consideration of a referral, in my view, specifically in contempt of court related matters, is whether the domestic process sufficiently vindicates the interests of the Mechanism.[17]

13. On the issue of vindicating the interests of the Mechanism, the Single Judge stated:

> I note that, if the matter is referred to the United States, Robinson faces the possibility of disbarment or suspension of his license to practice law. To the extent that the *Amicus Curiae* submits that such sanctions are insufficient, I am not persuaded as they would directly impact Robinson, including his livelihood and reputation.[18]

14. The Single Judge further reasoned that since the Mechanism's Rules of Procedure and Evidence provides for referral of a defence counsel's misconduct at the Mechanism to that counsel's Bar in their home jurisdiction, "the sanctions available in the domestic jurisdiction fall within the scope contemplated by the Mechanism."[19]

15. The Single Judge then squarely addressed, and distinguished, the cases cited by the *Amicus Curiae* that said that the State of referral must have a framework that "criminalizes the alleged conduct of the Accused." He noted that:

> These cases fell squarely under Article 1(3) of the Statute, addressing allegations of serious violations of international humanitarian law –the core purpose for which the aforementioned international tribunals were created, to support the effort to ending impunity. In contrast, the present matter falls under Article 1(4) of the Statute, which concerns

[16] *Id*, paras. 11-12.
[17] *Id,* para. 13.
[18] *Id*.
[19] *Id*.

the interference with the administration of justice and contempt of court.[20]

16. The Single Judge pointed out "that the language of Article 6(2) of the Statute largely mirrors that of Rule 11*bis* of the Rules of Procedure and Evidence of both the ICTR and the ICTY, where referral was contemplated only for core crimes cases and, consequently, required the existence of a legal framework that criminalizes the alleged conduct." He concluded that criminalization of the alleged conduct is not necessary for referral in relation to allegations of contempt, pointing out in a footnote that even at the Mechanism, a criminal act by counsel could be addressed through disciplinary proceedings.[21]

17. Having concluded that referral to the United States for disciplinary proceedings was not precluded by the Mechanism's Statute or jurisprudence, the Single Judge considered whether the referral would vindicate the interests of the Mechanism, taking into account the interests of justice and expediency.[22]

18. Dealing first with the interests of justice, the Single Judge noted that he was "cognizant of the serious allegations against Robinson." He stated that he had reviewed the *Amicus Curiae*'s reports and cited to Judge de Prada Solaesa's *Decision on Allegations of Contempt* (25 February 2025). Nevertheless, he concluded that "disciplinary proceedings in the United States, given its regulatory framework, would adequately vindicate the Mechanism's interests."[23]

19. The Single Judge explained that the statutory requirement that the Mechanism must first consider referral to the authorities of a State demonstrated "the intention for contempt matters to be, by default, primarily dealt with by domestic jurisdictions." He cited to the resolutions of the United Nations Security Council, noting that it had "repeatedly emphasized since 2010 that the Mechanism shall be a 'small, temporary, and efficient structure, whose functions and size will diminish over time."[24]

20. The Single Judge explained that the Mechanism's own disciplinary sanctions might be insufficient, given that the Mechanism was at the end of its life cycle. He noted that the Mechanism's Rules contemplated, in any event, that a finding of contempt or discipline at the Mechanism be communicated to a counsel's bar in the State where they were licensed to practice law.[25]

21. On the issue of expediency, the Single Judge was "not persuaded that the nexus the *Amicus Curiae* identifies between this matter and prior Mechanism proceedings outweighs the preference inherent in the Mechanism's legal framework and jurisprudence to refer cases to a domestic

[20] *Id*, para. 14.
[21] *Id,* para 14 and fn. 39.
[22] *Id*, para. 15.
[23] *Id*, para. 16 and fn. 40.
[24] *Id*, para. 16 and fn. 41.
[25] *Id*, para. 16

jurisdiction where it is feasible."[26]

22. The Single Judge stated:

> Nothing before me suggests that the United States will not diligently and expeditiously consider this matter, especially in view of the comprehensive *Amicus Curiae*'s reports, Robinson's written statement, and the transcripts of the interview by the *Amicus Curiae*. In addition, I note that Robinson pledges his full cooperation with all proceedings conducted pursuant to a referral to the United States and consents to the disclosure of all materials that fall under Rule 76 of the Rules to the disciplinary authorities in the United States and to their use in any disciplinary proceedings.[27]

23. Citing once again to "the strong preference to refer contempt cases if all requirements are met," the Single judge concluded that "on balance, the above considerations and the context of this matter weigh in favour of referring the case against Robinson to the United States."[28]

24. The Single Judge ordered the referral of the case to "the authorities of the United States for disciplinary proceedings." He instructed the Registrar and *Amicus Curiae* to make his decision and the case material available to the Office of Chief Counsel of the California State Bar and to instruct the Office of Chief Counsel to maintain the confidentiality of the material and report every six months until the matter is completed.[29]

Standard of Review

25. The *Amicus Brief* correctly sets forth the standard of review on appeal of the Single Judge's decision.[30] As applied to this appeal, the *Amicus* bears the burden of convincing the Appeals Chamber that, as to ground one, the Single Judge made an error of law when he concluded that it was possible to refer a case to a State for non-criminal proceedings and, as to grounds two through four, the Single Judge's weighing of the interests of justice and expediency was so unreasonable and plainly unjust as to constitute an abuse of his discretion.

Argument

1. The Single Judge correctly found that neither the Statute nor Rules mandate that a referred contempt case proceed as a criminal trial

26. There are two parts of the Mechanism's Statute that govern the referral of a contempt case to a State. One is Article 1(4) which provides that before proceeding to try persons for contempt, "the Mechanism shall consider referring the case to the authorities of a State in

[26] *Id*, para.17.
[27] *Id.*
[28] *Id*, para. 18.
[29] *Id*, para. 19.
[30] *Amicus brief*, para. 12.

accordance with Article 6 of the present Statute, taking into account the interests of justice and expediency." The other is Article 6, which provides that:

> 1. The Mechanism shall have the power, and shall undertake every effort, to refer cases involving persons covered by paragraph 3 of Article 1 of this Statute to the authorities of a State in accordance with paragraphs 2 and 3 of this Article. The Mechanism shall have the power also to refer cases involving persons covered by paragraph 4 of Article 1 of this Statute.
> 2. After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Mechanism, the President may designate a Trial Chamber which shall determine whether the case should be referred to the authorities of a State:
> (i) in whose territory the crime was committed; or
> (ii) in which the accused was arrested; or
> (iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State.
> 3. In determining whether to refer a case involving a person covered by paragraph 3 of Article 1 of this Statute in accordance with paragraph 2 above, the Trial Chamber shall, consistent with Security Council resolution 1534 (2004), consider the gravity of the crimes charged and the level of responsibility of the accused.
> 4. The Trial Chamber may order such referral proprio motu or at the request of the Prosecutor, after having given to the Prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out.
> 5. The Mechanism shall monitor cases referred to national courts by the ICTY, the ICTR, and those referred in accordance with this Article, with the assistance of international and regional organisations and bodies.
> 6. After an order referring a case has been issued by the ICTY, the ICTR or the Mechanism and before the accused is found guilty or acquitted by a national court, where it is clear that the conditions for referral of the case are no longer met and it is in the interests of justice, the Trial Chamber may, at the request of the Prosecutor or proprio motu and upon having given to the State authorities concerned the opportunity to be heard, revoke the order and make a formal request for deferral.

27. Nothing in either Article 1(4) or Article 6 of the Statute requires that the proceedings in the referral State be criminal in nature. While tacitly acknowledging that the Statute does not **prohibit** referral for non-criminal proceedings, the *Amicus brief* contends that "the Statute and Rules do not **allow** for a criminal case to be referred to a local professional body for disciplinary proceedings."[31] Its argument is long on semantics and short on common sense.

28. The *Amicus brief* claims that a referral must be to a "national" jurisdiction and "the authorities of a State".[32] This does not prohibit referral for disciplinary proceedings. The referral in

[31] *Amicus brief*, para. 14 (emphasis added).
[32] *Id*, paras. 15-17.

this case was made to "the authorities of the United States."[33] after that State indicated its ability and willingness to accept the referral and institute disciplinary proceedings.[34]

29. Referral of a case to a State does not require that proceedings only take place on a national level, rather than in one of the State's political subdivisions. Giving the term "national" the limited meaning ascribed to it in the *Amicus brief* would mean that a referral to a large country such as the United States, Germany, France, or even Canada could not be made if the proceedings were held in a state or province. There is no evidence or logic to support such a contrived interpretation of the Mechanism's Statute.

30. The authorities of the United States have stated that, if referred, the case will be tried by the State Bar of California. This is not a voluntary professional association, but a body established by the California Legislature and governed by the California Supreme Court.[35] It has its own State Bar Court, with full-time judges appointed by the Governor of California, the California legislature, and the California Supreme Court.[36]

31. The *Amicus brief* claims that the use of the word "case" in the Statute means that the referral must be for criminal proceedings.[37] Had the Security Council intended that to be so, it would have inserted the word "criminal" before "case". A reasonable inference from use of the broader term "case" is that the Security Council did not intend to restrict referrals to criminal cases in the referred State. This position would be consistent with the Appeals Chamber's interpretation of the Statute as containing a strong preference for referral.[38]

32. Therefore, the referral of my "case" to "the authorities of the United States for disciplinary proceedings" is in full compliance with the Statute and Rules.

33. The second argument in the *Amicus Brief* is that because contempt at the Mechanism results in either imprisonment or a fine, the proceedings in the referred State must also result in imprisonment or a fine.[39] Indeed, the two cases at the *ad hoc* Tribunals where defence counsel were convicted of contempt were punished solely by fines.[40]

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[33] *Impugned Decision*, para. 19.
[34] *Submission of the United States on the Issue of Referral in Response to the Mechanism's Order of 13 May 2025* (1 August 2025).
[35] California Business and Professions Code, section 6000 et seq. ("the State Bar Act").
[36] California Business and Professions Code, section 6079.1.
[37] *Amicus brief*, para. 18.
[38] *In the Case Against Jojic & Radeta*, No. 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. 11.
[39] *Amicus brief*, paras. 22-23, 28.
[40] *Prosecutor v Aleksovski*, No. IT-95-14/1-AR77, *Judgment on Appeal of Anto Nobilo against Finding of Contempt* (30 May 2001)(fine of 4000 Dutch Guilders); *Prosecutor v Tadic,* No. 94-1-A-AR77, *Appeal Judgment on Allegations of Contempt against Prior Counsel, Milan Vujin* (27 February 2001)(fine of 15,000 Dutch Guilders)

34. The Security Council might have included this requirement in Article 6 if it wished to ensure that proceedings in the referred State carried the same penalties as those at the Mechanism. But it did not do so. Instead, it gave the Mechanism the flexibility to refer contempt cases to national authorities so that the Mechanism could "be a small, temporary and efficient structure, whose functions and size will diminish over time."[41]

35. The Single Judge noted that disciplinary proceedings for defence counsel were mentioned in the Rules and Code of Conduct and therefore "the sanctions available in the domestic jurisdiction fall within the scope contemplated by the Mechanism."[42] This is an accurate statement that illustrates that the proceedings contemplated by the referred State are not foreign to the Mechanism. The Single Judge demonstrated that he was well aware of the penalty structure for contempt at the Mechanism and exercised his discretion to refer the contempt case for disciplinary proceedings in the United States.

36. The *Amicus brief* next moves to the jurisprudence. It quotes language originating in referral decisions for core crimes that "[i]n assessing whether a State is competent within the meaning of Rule 11*bis* of the Rules to accept a case from the Tribunal, a designated Trial Chamber must consider whether it has a legal framework which criminalizes the alleged conduct of the accused".[43]

37. The Single Judge squarely addressed this argument. He found that:

> These cases fell squarely under Article 1(3) of the Statute, addressing allegations of serious violations of international humanitarian law – the core purpose for which the aforementioned international tribunals were created, to support the effort to ending impunity. In contrast, the present matter falls under Article 1(4) of the Statute, which concerns the interference with the administration of justice and contempt of court. Moreover, I note that the language of Article 6(2) of the Statute largely mirrors that of Rule 11*bis* of the Rules of Procedure and Evidence of both the ICTR and the ICTY, where referral was contemplated only for core crimes cases and, consequently, required the existence of a legal framework that criminalizes the alleged conduct. In this context, I do not consider that criminalization of the alleged conduct is necessary for referral in relation to allegations of contempt.[44]

38. This correctly puts the quoted language, which originated in 2006 in the *Mejakic et al* war crimes case at the ICTY,[45] in its proper context. While the language was repeated by the Single

[41] S/RES/1966 (2010).
[42] *Impugned Decision*, para. 13.
[43] *Amicus brief*, paras. 26-27.
[44] *Impugned Decision*, para. 14.
[45] *Prosecutor v. Mejakic et al*, No. IT-02-65-AR11*bis*.1, *Decision on Joint Defence Appeal Against Decision on Referral under Rule 11bis* (7 April 2006), para. 48.

Judges in the referral decisions for the *Seselj* and *Ngirabatware* contempt cases, there was no possibility or discussion of non-criminal penalties in those cases, nor a holding that a referral could only be made if the referred State conducted criminal proceedings. In fact, both of those cases were referred to the States.[46]

39. Therefore, the Single Judge correctly concluded that the statement from the 2006 *Mejakic et al* case and its progeny did not apply to the 2025 contempt case that was before him.

40. Finally, the *Amicus brief* contends that the Single Judge usurped his authority by referring the case to the United States for disciplinary proceedings after another Single Judge had decided that criminal contempt proceedings should be initiated at the Mechanism.[47] This argument compares apples with oranges. Judge de Prada Solaesa considered criminal contempt charges *vis a vis* disciplinary proceedings at the Mechanism. Judge Masanche was tasked with considering a criminal trial at the Mechanism *vis a vis* referring the case for trial in a State.

41. The consequences of the disciplinary proceedings considered by Judge de Prada Solaesa would be limited to my ability to practice before the Mechanism in its waning days. In contrast, the consequence of disciplinary proceedings in the United States would be to prevent me from practicing law completely, take away my entire professional livelihood, and ruin a professional reputation I have built for over 40 years. As the Single Judge recognized, this is a far more severe punishment.[48]

42. Judge de Prada Solaesa was also not tasked to consider the issue of criminal proceedings versus disciplinary proceedings in the context of the strong preference for referral of cases to States mandated by the Security Council. Had the alternative of referring the case to the United States for disciplinary proceedings been before him, there is good reason to believe that he would have chosen that alternative. A judge of the Appeals Chamber, as well as the Association of Defence Counsel for International Criminal Tribunals ("ADC-ICT"), the International Criminal Court Bar Association ("ICCBA") and European Criminal Bar Association ("ECBA") have all expressed concerns about the appropriateness of criminal proceedings before the Mechanism in this case.[49]

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[46] *Prosecutor v. Seselj et al.*, No. MICT-23-129-I, *Decision on the Referral of the Case to the Republic of Serbia*, (29 February 2024), para.12; *In the matter of Francois Ngirabatware, No. MICT 24-131-I, Decision on the Suitability of the Referral of the Case* (17 September 2024), p. 4.
[47] *Amicus brief*, paras. 29-31.
[48] *Impugned Decision*, paras. 13,16.
[49] *Prosecutor v Nzabonimpa et al*, No. 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), *Dissenting Opinion of Judge Prisca Matimba Nyambe*; *ADC-ICT Request for Leave to Appear* as *Amicus Curiae* (17 March 2025); *ICCBA Request for Leave to Appear as Amicus Curiae* (20 March 2025); *Request for Leave to Appear as Amicus Curiae on Behalf of the European Criminal Bar Association (ECBA)* (22 April 2025).

43. The fact that Judge de Prada Solaesa chose criminal charges over Mechanism disciplinary proceedings for less than 25% of the allegations identified by the *Amicus Curiae* did not preclude Judge Masanche from determining that those allegations could be referred for trial by a disciplinary authority in the United States given the different context and consequences of the two decisions. The decision to refer the case was well within Judge Masanche's authority and discretion.

44. The arguments in the *Amicus brief* do not demonstrate that the Single Judge erred when he concluded as a matter of law that the Statute did not preclude referral of a contempt case to a national jurisdiction for disciplinary proceedings, so long as those proceedings would adequately vindicate the interests of the Mechanism.

2. **The Single Judge did not abuse his discretion in assessing the interests of the Mechanism and the interests of justice**

45. The issue of whether the referral adequately vindicated the interests of the Mechanism and the interests of justice is not a question of law, but a matter of discretion. Therefore, as the *Amicus brief*, recognizes,[50] the Appeals Chamber must find that the Single Judge's decision was so unreasonable and plainly unjust as to constitute an abuse of discretion. This high standard ensures that the Appeals Chamber does not substitute its judgment for that of the Single Judge and gives the Single Judge a wide margin of discretion on such issues.

46. The interests of the Mechanism in a contempt case are to ensure compliance with its orders and Rules by holding the alleged contemnor accountable and thereby deterring others from disobeying such orders and Rules. The *Amicus brief* argues that only imprisonment can accomplish these goals. Yet in the two cases of contempt by lawyers heard by the *ad hoc* Tribunals, no imprisonment was imposed.[51] Thereafter, no criminal contempt cases were brought against lawyers practicing before those Tribunals for the next 24 years. The ICTY's judges believed in 2001 that the interests of the Mechanism could be vindicated by a sentence that did not involve imprisonment, and that such a sentence would be an adequate deterrence. That belief was shown to be correct in the following two decades of practice.

47. During those two decades, there were several opportunities for the *ad hoc* Tribunals and the Mechanism, to vindicate its interests by a criminal prosecution for contempt.

48. In the *Nshogoza* case, where the prosecution contacted defence witnesses in violation of the protective measures order, an ICTR Chamber concluded that pursuit of contempt proceedings was not necessary to achieve the important goals of deterrence and denunciation and declined to

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[50] *Amicus brief*, para. 33.
[51] *Prosecutor v Aleksovski*, No. IT-95-14/1-AR77, *Judgment on Appeal of Anto Nobilo against Finding of Contempt* (30 May 2001); *Prosecutor v Tadic,* No. 94-1-A-AR77, *Appeal Judgment on Allegations of Contempt against Prior Counsel, Milan Vujin* (27 February 2001).

exercise its discretion to initiate contempt investigations or proceedings.[52] Among the considerations were that members of the Office of the Prosecutor may have acted on the mistaken belief that the Appeals Chambers order authorised them to meet with the relevant defence witnesses—the very same belief that I held in this case.[53]

49. In this very case, there were two instances where the Prosecution was shown to have violated the same protective measures that I am accused of violating.

50. First, the Prosecution violated the requirement that it "shall" facilitate a meeting between protected prosecution witnesses and the Defence team when it refused to facilitate an interview between me and the recanting witnesses. Although the Appeals Chamber rejected the Prosecution's refusal as "unduly restrictive and formalistic", it did not deem that the interests of the Mechanism required an investigation, much less a prosecution, for contempt.[54]

51. Second, before the *Nzabonimpa et al* trial, the Prosecution met with protected witnesses in the absence of a representative of the WISP in violation of the protective measures decision.[55] The Prosecution claimed to have the good faith belief that the decision did not apply to proofing sessions.[56] Although, the Single Judge ruled that proofing sessions were indeed included in the protective measures order, he did not consider that the interests of the Mechanism required an investigation or prosecution for contempt for the Prosecution's violation of the protective measure.[57]

52. The charges against me stem from my interpretation of that same protective measures order. If the interests of the Mechanism were vindicated by the non-prosecution of instances when the Prosecution violated that protective measure, then logic dictates those interests would be vindicated by subjecting me to disciplinary proceedings in my State.

53. The *ad hoc* Tribunals and Mechanism have also declined to pursue criminal contempt proceedings in other cases involving contact with protected Prosecution witnesses,[58] disclosure of protected witnesses identities,[59] and refusal to comply with case-management orders.[60] Thus, the

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[52] *Prosecutor v Nshogoza*, No. ICTR-07-91-A, *Decision on Defence Allegations of Contempt by Members of the Prosecution* (25 November 2010), para. 23.
[53] *Id*, para. 24
[54] *Prosecutor v Ngirabatware,* No. MICT-12-29, *Decision on Prosecution's Motion Regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel* (5 May 2016) paras. 11-14
[55] *Prosecution v Nzabonimpa et al*, No. MICT-18-116-T, *Oral Motion and Decision* (26 October 2020), p. 5-7
[56] *Id,* p. 9
[57] *Id,* p. 10
[58] *Prosecutor v Nsengimana*, No. ICTR-01-69-A, *Decision on Prosecution Appeal of Decision Concerning Improper Contact with Prosecution Witnesses* (16 December 2010), para. 39; *Prosecutor v Rukundo*, No. ICTR-2001-70-T, *Decision on the Haguma Report* (14 December 2007), para. 16
[59] *Prosecutor v Akayesu*, No. MICT 13-30-R90.1, *Order Terminating Proceedings and Vacating an Order* (17 October 2016); *Prosecutor v Bizimungu et* al, No. ICTR-99-50-T, *Decision on Prosper Mugiraneza's Motion for an Order Requiring Paul Ng'arua to Show Why He Should not be Held in Contempt of the Tribunal* (12 May 2004), para. 7;

interests of the Mechanism in ensuring compliance with its orders and Rules do not necessarily require a criminal sanction.

54. The *Amicus brief* points to the five-month sentence of imprisonment imposed on my investigator when the Appeals Chamber reversed his acquittal.[61] What he omits is that by the time of that decision, my investigator had already served 13 months in pretrial detention. By imposing a sentence of less than half the time already served, the Appeals Chamber cannot be said to have considered his conduct to be of the utmost gravity.

55. The *Amicus brief* also seeks to paint the allegations against me with a broad brush, to encompass the training and paying of witnesses engaged in by my client and his accomplices.[62] Yet the *Nzabonimpa* judgment is replete with evidence that those activities were actively concealed from me.[63] When the Single Judge found that this "most brazen" scheme criminal scheme involved "instructions provided on what to say to **judicially accountable agents** investigating the case" he was referring to efforts to hide their actions from me. When the Single Judge referred to the employment of a "**shadow defence team**", he was referring to efforts to hide their actions from me.[64] The *Amicus Curiae's* own report contains evidence of this as well.[65] When I learned what my client was doing, I resigned.[66]

56. Thus, when assessing whether the Single Judge erred in determining that the interests of the Mechanism would be vindicated by referral of this case, the Appeals Chamber can be properly guided, not by the expansive presentation of the charges in the amicus brief, but by the precise allegations against me.[67]

57. When balancing the gravity of the alleged conduct against the potential penalties I face in disciplinary proceedings in the United States, the Single Judge correctly observed that:

> [I]f the matter is referred to the United States, Robinson faces the possibility of disbarment or suspension of his license to practice law. To the extent that the *Amicus Curiae* submits that such sanctions are insufficient, I am not persuaded as they would directly impact Robinson, including his livelihood

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Prosecutor v Ntakirutimana, No. ICTR-96-10-T, *Decision on Prosecution Motion for Contempt of Court and on Two Defence Motions for Disclosure etc* (16 July 2001), paras. 9-12.

[60] *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Reconsideration of Order to Reduce Witness List and on Motion for Contempt for Violation of that Order* (1 March 2004), para. 10.

[61] *Amicus brief*, para. 36.

[62] *Id*, paras. 1-2.

[63] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-T, *Judgement* (23 June 2021), paras. 112, 131, 136, 206, 229, 296, 317.

[64] *Id*, paras. 71, 125, 136.

[65] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Amicus Curiae Report to the Single Judge* (13 March 2023), para. 437 (confidential).

[66] *Prosecutor v Ngirabatware*, No. MICT-12-29-R, *Defence Counsel's Motion to Withdraw* (30 November 2017).

[67] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-AR90.1, *Appeal of Decision on Allegations of Contempt* (3 March 2025), paras. 22,29.38, 42-43, 46, 50.

and reputation.[68]

58. Every counsel practicing before the Mechanism, or any other international court or tribunal, would be strongly deterred from violating a court order if they knew they risked being forever barred from the practice of law and would have to face disciplinary proceedings in the jurisdiction where they are licensed. Thus, the interest of the Mechanism in holding persons thought to have violated its orders accountable and thereby deterring others from violating such orders is fully vindicated by the referral.

59. The *Amicus brief* argues that because I am 72 years old, disbarment won't mean much to me.[69] Not so. Judge Theodor Meron was 71 years old when he was first elected as an ICTY judge. His legal career has continued for another 20+ years. I have a strong interest in defending myself in these disciplinary proceedings to preserve my ability to continue to work as a lawyer and to preserve a reputation I have built, brick-by-brick, case-by-case, in the 47 years that I have been a lawyer.

60. The Single Judge's exercise of discretion in finding that the interests of the Mechanism and the interests of justice would be adequately vindicated by the referral was not so unreasonable or plainly unjust as to constitute an abuse of that discretion.

3. **The Single Judge did not abuse his discretion in assessing the issue of expediency**

61. The Single Judge was "not persuaded that the nexus the *Amicus Curiae* identifies between this matter and prior Mechanism proceedings outweighs the preference inherent in the Mechanism's legal framework and jurisprudence to refer cases to a domestic jurisdiction where it is feasible." The *Amicus brief* fails to show that exercise of the Single Judge's discretion was so unreasonable or plainly unjust as to constitute an abuse of his discretion.

62. Once again, the Single Judge took into account the 2025 reality while the *Amicus Curiae* is operating in the 2010s when he was a prosecutor at the Mechanism. The 2025 Mechanism does not even have a budget for a contempt trial and appeal, in which it would have to recruit and staff the prosecution, defence, translators, witness protection officers, video operators, security officers, and other Registry personnel before proceedings could even be contemplated. Its ability to then expeditiously hear and adjudicate a complex contempt trial in 2026 and beyond is doubtful at best.

63. The *Amicus brief* also ignores the time it has already taken the Mechanism to conduct these proceedings since the Single Judge in the *Nzabonimpa et al* case referred this matter in

[68] *Impugned Decision*, para. 13.
[69] *Amicus brief*, para. 42.

September 2021.[70] Most of the delay is attributable to the *Amicus Curiae* himself, who sought six separate extensions of time to complete his report.[71] Indeed, his delay allowed the five-year statute of limitations for criminal prosecution in the United States to lapse.[72]

64. The *Amicus Curiae* makes no mention in his submission to this court of what he previously projected it would take to try the case at the Mechanism; describing a massive amount of material involved in the case, including intercepted telephone calls and texts in the Kinyarwanda language, the voluminous complex, highly-technical communications evidence,[73] requiring extensive technical proof including expert analysis, reports and testimony as well as expensive and time-consuming trips to Rwanda to locate and interview witnesses.[74] His contention that the Mechanism's proceedings in this decade-old case would suddenly become expeditious is self-serving and illusory.

65. The *Amicus brief's* claims that the criminal proceedings in this case at the Mechanism will be more expeditious than disciplinary proceedings is contradicted by what the *Amicus Curiae* previously told Judge Solaesa:

[REDACTED].[75]

66. The arguments in the *Amcius brief* about the time the State disciplinary proceedings would take[76] are purely speculative and if accepted, would preclude the referral of any contempt case. The prosecution at the Mechanism will always know the case better than the State authorities. In the *Ngirabatware* case, the Belgian authorities indicated that if the case were referred to it, they would have to investigate it from scratch. Nevertheless, the Single Judge found that the interests of expediency warranted referral of the case.[77]

67. When a State like the United States, which has a well-functioning, robust, judicial system, and which has been a strong supporter of the Mechanism and *ad hoc* Tribunals for more than three decades, indicates that it is willing and able to accept the referral of a contempt case against one of its citizens, it is not for the Mechanism, or the *Amicus Curiae*, to question the *bona*

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[70] *Prosecutor v Nzabonimpa et al,* No. MICT-18-116-T, *Order Referring a Matter to the President* (20 September 2021).
[71] *Prosecutor v Nzabonimpa et al*, No. MICT-18-116-R90.1, *Decision on Request for Extension of Time,* (1 April 2022)*; Decision on Request for Extension of Time* (28 July 2022)*; Decision on Request for Extension of Time* (28 September 2022)*; Decision on Request for Extension of Time* (29 November 2022)*; Decision on Further Request for Extension of Time* (26 January 2023)*; Decision on Further Request for Extension of Time* (13 February 2023).
[72] *Submission of the United States on the Issue of Referral in Response to the Mechanism Order of 13 May 2025* (1 August 2025), fn.1.
[73] [REDACTED].
[74] [REDACTED].
[75] [REDACTED].
[76] *Amicus brief*, paras. 48-68
[77] *In the matter of Francois Ngirabatware,* No. MICT 24-131-I*, Decision on the Suitability of the Referral of the Case* (17 September 2024), pp. 3-4.

fides of its submissions. I am the first American to be charged at a war crimes tribunal dating all the way back to Nuremburg. The sovereign interests of the United States in trying one of its own citizens cannot be disregarded or defeated by speculative claims that its courts will not be able to expeditiously try the case.

68. Given the strong preference for referral of a contempt case in the Statute, the Single Judge cannot be said to have been unreasonable or plainly unjust when he concluded that the issue of expediency did not preclude referral of this case.

4. **The Single Judge did not abuse his discretion when he failed to consider arguments not presented to him**

69. Despite being given two opportunities to make submissions on the prospect of referring this case to the United States for disciplinary proceedings, it is only on appeal that the *Amicus Curiae* has raised specific alleged deficiencies in the State proceedings.[78] He cannot now complain that the Single Judge abused his discretion by failing to consider matters that were not before him.

70. The *Amicus brief* complains that the Single Judge heard only from the diplomatic authorities of the United States, and not the organ that would be responsible for prosecuting the case.[79] However, this is the case in most referrals. The Single Judge in *Ngirabatware* did not hear from the Ministry of Justice in Belgium, but instead received a submission from the State's liaison with the Mechanism.[80]

71. The *Amicus brief* points to a litany of unresolved issues that may hinder or delay the proceedings in the State, but such issues are inherent in all contempt referrals. Again, in the *Ngirabatware* case, the Belgian submission "emphasises that while, in principle, it has jurisdiction over the offences, trying the case in Belgium would require reopening the investigation and a trial judge is at liberty to reclassify the acts, to hold that they do not constitute offences, or to find that the judge does not have jurisdiction."[81] The Single Judge nevertheless ordered the referral of the case, finding that "Belgium's intention to reopen the investigation does not necessarily preclude the referral of the case to Belgium at this stage and that providing Belgium access to all material supporting the Order in Lieu of Indictment may assist Belgium in its investigation and serve the interest of expediency."[82]

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[78] *Amicus brief*, paras. 76-79.
[79] *Amicus brief*, para. 71.
[80] *In the matter of Francois Ngirabatware,* No. MICT 24-131-I, *Letter from Head of Central Authority for Cooperation with International Criminal Tribunals of the Kingdom of Belgium to the Registrar of the Mechanism concerning the Mechanism's Request for Submissions on Possible Legal Proceedings against François Ngirabatware* (21 August 2024), referred to in the *Decision on the Suitability of the Referral of the Case* (17 September 2024), fn.11.
[81] *Id.*
[82] *In the matter of Francois Ngirabatware,* No. MICT 24-131-I, *Decision on the Suitability of the Referral of the Case* (17 September 2024), p. 5.

72. In the *Seselj* referral decision, the Single Judge had "reservations whether Serbia has sufficiently demonstrated that it has an adequate legal framework, criminalizing most, if not all, of the Accused's conduct as alleged in the Indictment."[83] Nevertheless, he ordered the referral of the case, finding that should the State proceedings fall short, the procedure for revoking the referral provided an adequate safeguard.[84]

73. Likewise, in my case, the United States indicated in its submission that:

> [T]he State Bar of California, where Mr. Robinson was (and remains) licensed at the time of the alleged conduct has informed the United States that that state bar has jurisdiction and that it may be possible to refer this matter to appropriate disciplinary proceedings pursuant to provisions of the California Business and Professions Code."[85]

74. The reservations belatedly raised in the *Amicus brief* are no different than those expressed by the Single Judge in *Seselj* and the Belgian authorities themselves in *Ngirabatware*. They do not outweigh the strong preference for referral of contempt cases found in the Statute.

75. Therefore the Single Judge did not abuse his discretion when ordering the referral without making further direct inquiries of the prosecuting authorities in the State on issues that were not even before him at the time of the decision. The referral decision was not so unreasonable and plainly unjust as to constitute an abuse of his discretion.

Conclusion

76. The *Amicus brief* presents no valid reasons for the Appeals Chamber to reverse the decision of the Single Judge and to launch a contempt trial and appeal at the Mechanism in the waning days of the Mechanism's existence. The decision of the Single Judge should be affirmed.

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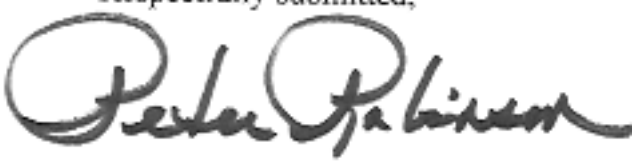
Respectfully submitted,



PETER ROBINSON

[83] *Prosecutor v. Seselj et al.*, No. MICT-23-129-I, *Decision on Referral of the Case to the Republic of Serbia*, (29 February 2024), para.16.
[84] *Id,* para. 18.
[85] *Submission of the United States on the Issue of Referral in Response to the Mechanism's Order of 13 May 2025* (1 August 2025).

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