UNITED NATIONS

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

International Residual Mechanism for Criminal Tribunals

Date: 22 December 2025

Original: English

BEFORE THE APPEALS CHAMBER

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

Registrar: **Mr. Abubacarr Tambadou**

IN THE MATTER OF PETER ROBINSON

PUBLIC

REPLY BRIEF – APPEAL REGARDING DECISION TO REFER THE CASE

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 submits this Brief, in reply to Peter Robinson's 18-December-2025 Response to *Amicus*' Appeal Brief dated 8-December-2025 ("Response" and "Appeal").[1] The Appeal concerns the Single Judge's Decision dated 7-November-2025 referring the Mechanism's criminal charges against Robinson to possible California state bar proceedings (hereinafter "Single Judge" and "Decision").[2]

I. STANDARD OF APPEAL

1. The Response states that under the Appeal's Grounds 2 to 4, *Amicus* must demonstrate that the Decision was so unreasonable and plainly unjust as to constitute an abuse of discretion.[3] However, the standard on appeal, which Robinson acknowledges is correctly set forth in the Appeal, provides four different bases that each demonstrate a discernible error on the basis of which the Decision should be reversed.[4] The Appeal makes clear that Grounds 2 to 4 are not only predicated on the 'unreasonable and plainly unjust decision' basis.[5]

II. THE GROUNDS OF APPEAL

GROUND 1

1. The Statute and Rules provide for the referral of a criminal case to criminal proceedings -- not to State Bar disciplinary proceedings.

2. The Response criticizes the Appeal as lacking "common sense" in arguing that the Statute and Rules "do not allow" the referral of this criminal case to California bar disciplinary

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1 Response; Appeal.

2 Decision.

3 Response, paras.25, 45, 61.

4 Response, para.25; Appeal, para.12.

5 Appeal, paras.12, 33, 44, 73. Ground 1 identifies errors of law, as Robinson acknowledges.

proceedings. Robinson argues that for a referral to local disciplinary proceedings to be against the law, a provision should expressly "prohibit" such referral.[6]

3. The Mechanism's power to refer cases is expressively provided in the Statute. Article 6 is titled "Referral of Cases to National Jurisdictions" and states "The Mechanism shall have the power (…) to refer cases". The Single Judge's referral must be based on the Statute and Rules as falling within the confines of that power. It is Robinson who reasons backwards, on the basis of which a referral is broadly possible, beyond the plain requirements of the Statute and Rules.

4. The Statute and Rules provide for the referral of criminal cases (the Mechanism does not bring non-criminal cases) to "national jurisdictions" for a trial before a "national court", which the California bar is not, being instead a local professional body and "organization".[7] Robinson argues that if referred proceedings can only take place at the "national level" and not in a State's "political subdivisions", "a referral to a large country such as the United States, Germany or France could never be made if the proceedings are held in a state or province."[8] This misses the point. A court in a state or province can be of national jurisdiction when it applies national criminal law. In contrast, the California bar has only limited, non-criminal oversight over a very limited part of the population, in regulating the conduct of its members. It is not a "national jurisdiction."

5. A Mechanism criminal case must also be referred to State authorities.[9] Despite some language in the Decision on which Robinson relies,[10] the Single Judge clearly ordered that the case be transferred to the Office of the Chief Trial Counsel of the California bar, not to State authorities.[11] The USA Submissions did nothing more than invite the Mechanism to contact

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6 Response, paras.27, 44.

7 Appeal, paras.15-16 ; USA Submissions, p.1.

8 Response, para.29.

9 Appeal, para.17.

10 Response, para.28.

11 *See* e.g. Response, para.70, which talks of Belgian Ministry of Justice and liaison officer with the Mechanism, which are part of the Belgian Government and State Authorities as opposed to a Bar association.

the California bar on whether the "requirements" for referral were satisfied and for the possible referral proceedings to be arranged entirely separate from the USA State authorities.[12]

6. Robinson argues that a "case" that can be referred within the scope of the Statute is not accompanied by the word "criminal".[13] The Mechanism, however, only charges criminal cases – there are no other "cases." Pursuant to Article 6(1), only a core crimes or contempt case – i.e., a criminal case – can be referred. The plain intent of the Statute and Rules is that a referral of a criminal "case" must be commensurate with a criminal prosecution.[14]

2. The vindication of the Mechanism's interests here – in this case -- can only be achieved through criminal sanctions.

7. Robinson oversimplifies the Appeal, when stating that *Amicus* argues 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."[15]

8. The Decision erroneously states at paragraph 13 that "there is no support that such vindication [of the Mechanism's interests] is exclusively achieved through criminal sanctions". The Single Judge reasoned that Rule 90(G) only provides for maximum criminal penalties of a certain term of imprisonment and/or fine, and that "the scope [of penalties] contemplated by the Mechanism" also includes non-criminal accountability for misconduct and communication to Robinson's bar association. Therefore, the Decision erroneously found that the referral of a Mechanism criminal case (again, there are no other Mechanism "cases") to a bar association falls within the penalties which sufficiently vindicate the Mechanism's important interests.[16]

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12 Appeal, para.17.

13 Response, para.31.

14 Appeal, para.18.

15 Response, para.33.

16 Appeal, paras.19-20.

9. The Single Judge failed to consider Article 22(1), and only assessed Rule 90(G) in providing the maximum fine and term of imprisonment. As detailed in the Appeal, the applicable law and jurisprudence clearly provide that a criminal conviction must be entered and criminal penalties of imprisonment and/or a fine must be imposed upon a finding of guilt for contempt. If the Judge had not erred in this regard, he would have found support that the Mechanism's interests, concerning charged criminal cases, can only be vindicated by criminal sanctions, and that a referral to Robinson's local bar is only a potential addition to criminal conviction and sanctions, not an alternative within "the scope contemplated by the Mechanism" that can replace a finding of criminal guilt and related sanctions.[17]

3. A State of referral must have a legal framework criminalizing the accused conduct.

10. The Response simply quotes the Single Judge's reasons not to apply clear appellate jurisprudence requiring the criminalization of the referred conduct, and says that the Decision puts that jurisprudence "in its proper context".[18] This is erroneous and does not demonstrate that the Appeal is wrong in explaining that the Decision should have applied the Mechanism's plain jurisprudence.[19]

11. Robinson states that the fact that this jurisprudence was followed in the two other Mechanism contempt cases referred to date is plainly irrelevant because the cases did not involve a "possibility or discussion of non-criminal penalties".[20] Both referrals were very clearly to national courts with criminal jurisdiction. The Single Judge did not rely on the "possibility or discussion of non-criminal penalties" when deciding not to apply the appellate jurisprudence, but on an artificial distinction between "core" cases and criminal contempt cases[21] -- again, there are no other Mechanism "cases."

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17 Appeal, paras.21-23.

18 Response, paras.37-38.

19 Appeal, paras.24-28.

20 Response, para.38.

21 Decision, para.14.

4. The Decision was ultra vires *since the Single Judge was not the charging authority.*

12. The Response wrongly says that *Amicus* "compares apples with oranges" because the mandate of Judge Solaesa, the duly-assigned charging authority in the case, differed from the mandate of the Single Judge to consider the case's referral.[22]

13. The Appeal is entirely cognizant of the fact that the charging and referral processes are not the same thing. However, it is the very bringing of a criminal case (the Mechanism brings no others) that leads to the possibility of a referral to a national criminal jurisdiction for the initiation of "a comparable criminal case".[23] The referral procedure is different than the charging process, but the referral decision must respect the Mechanism's charging decision. Indeed, the Decision fails to consider and show any deference to the fact that Judge Solaesa, the duly-appointed investigating and charging Judge, had already determined that a criminal case is the necessary and proper way to proceed. With respect, the only mandate of the referral judge was to determine whether appropriate criminalized proceedings could (and would be) brought, on sufficient assurances in a national jurisdiction, to vindicate the Mechanism's fundamental judicial and justice interests. The Decision was *ultra vires* in effectively dismissing the properly determined criminal charges against Robinson, while providing no adequate and comparable way forward.[24]

14. The Appeal fully recognizes that Judge Solaesa, in finding that criminal charges were necessary, clearly considered (and balanced) the Mechanism's expenditure of time and resources in going forward with a criminal case. Contrary to Robinson's contentions, *Amicus* has never ignored this balancing act, accounting for the expenditure of resources.[25] The present case cannot be referred, for all of the reasons set out in *Amicus*' referral submissions to the Single Judge and in this Appeal.[26]

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22 Response, para.40.

23 Appeal, para.14.

24 Appeal, paras.29-32.

25 25-February-2025 Decision, paras.9, 24, 26, 28, 32; Appeal, paras.6, 32, 51, 59; Response, para.3.

26 *See* Response, para.1.

15. Robinson entirely speculates, contrary to the case record, that "there is good reason to believe" that Judge Solaesa would have chosen to refer his conduct to California bar proceedings if he had had that possibility.[27] Here, as elsewhere, there is no basis for Robinson's pure speculations as to what a judge was thinking, intending or might otherwise have done. The case record stands. Robinson is criminally charged with a gross obstruction of justice pursuant to Judge Joensen's decision in *Nzabonimpa* to refer his conduct for a criminal investigation for contempt and Judge Solaesa's decision to issue an indictment, after both assessed all of the evidence and considerations.

GROUND 2

16. Robinson says that the Appeal argues that only imprisonment can vindicate the interests of the Mechanism.[28]

17. This is false. Under Ground 2, *Amicus* argues that the interests of justice, the vindication of the Mechanism's interests and appellate jurisprudence require that Robinson's conduct be subject to criminal proceedings. The California bar's "may be possible" administrative process is fundamentally different and fails to address the gravity of Robinson's conduct. The adequate penalty to impose for Robinson's conduct, if proven, can only be established at the end of a trial -- the referral precludes the imposition of a penalty that is comparable to the penalty for, and commensurate with the gravity of the important crime for which Robinson has been duly charged.[29]

18. Robinson's efforts to deny and minimize the gravity of his conduct in the brazen obstruction of justice scheme established in the *Nzabonimpa* contempt case can only be assessed at, or after trial.[30] Suffice it to say at this stage that Judge Joensen, after assessing all the evidence in the *Nzabonimpa* case, called for Robinson to be investigated. In turn, an

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[27] Response, para.42.

[28] Response, para.46.

[29] Appeal, paras.34-40.

[30] Response, paras.52-56.

entirely separate, second judge, Judge Solaesa, found it both necessary and appropriate to bring criminal charges.

19. Robinson's attempt to litigate, in this appellate proceeding, the merits of the charges and evidence against him, including by comparing this case to other cases, is misdirected and, respectfully, should not guide the Chamber in its resolution of the legal issues presented by the Appeal.[31] Those matters, including what Robinson did or didn't do, will be determined by a trial in which all of the evidence will be heard. If there is any comparison to be made, it should be with Robinson's investigator Dick Prudence Munyeshuli's criminal conviction for contempt and his sentence to five months' imprisonment, since it was clearly imposed for conduct directed by Robinson.[32] The Decision's referral of a duly-constituted criminal case to speculative, "may be possible" non-criminal bar proceedings was plain error.

GROUND 3

20. The Appeal identifies various considerations relevant to the interests of expediency that the Single Judge failed to consider or give sufficient weight. Indeed, the Decision either fails to address various considerations identified by *Amicus* in his referral submissions, or dismisses them in bulk, without the necessary specific findings concerning, e.g., the very close nexus between this matter and other very important ICTR and Mechanism cases,[33] a nexus which is overwhelming in this case and directly relevant to many considerations.

21. Robinson argues that expeditious proceedings at the Mechanism are "illusory" given various complex evidence in the case.[34] First, the relevant consideration of Article 1(4) of the Statute is expediency, which is broader and more important than expeditiousness. Second, the relevant consideration is which of the proceedings, at the Mechanism or at local bar proceedings, better serve the interests of expediency. As explained in the Appeal, the complex

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31 Response, paras.46-56.

32 Appeal, para.36.

33 Appeal, paras.43-44.

34 Response, para.64.

evidence would be required at the California level as well, but the Mechanism is much better situated to secure witness evidence and offers various time-saving options for presenting evidence, establishing facts and demonstrating the authenticity of evidence, when these very facts and evidence come from closely-related ICTR/Mechanism cases.[35]

22. The Response falsely claims that *Amicus* previously told Judge Solaesa that all disciplinary proceedings could be more expeditious than criminal proceedings.[36] The clear mandate of the *Amicus* was to report to Judge Solaesa on whether to initiate criminal proceedings or take disciplinary action at the Mechanism. A Mechanism disciplinary action can rely on adjudicated facts, written statements, transcripts and summary evidence presented in other ICTR/Mechanism cases, which would not be the case or would be substantially more difficult in local bar proceedings, something which the Appeal makes clear and the Response does not dispute.[37]

23. The Response criticizes *Amicus* for allowing the five-year statute of limitations for criminal prosecution in the United States to lapse.[38] However, as highlighted in the Appeal, five years had already elapsed for seven of the eight violations charged when Judge Joensen made his important decision to refer Robinson's conduct for the initiation of *Amicus*' investigation.[39] *Amicus* completed the vast majority of his investigation within thirteen or fourteen months after the first case materials were provided to him, when he submitted a report on his investigation on 13-March-2023.

GROUND 4

24. Robinson's contention that the Single Judge cannot be blamed for not considering arguments that were not presented to him is wrong.[40] *Amicus* plainly argued in his referral

35 Appeal, paras.57-66.

36 Response, para.65.

37 Appeal, paras.63-66.

38 Response, para.63.

39 Appeal, para.77 & fn.85.

40 Response, para.69.

submissions, in a section arguing that the conditions for referral were not met and that the California bar had not expressed any commitment whatsoever to process the case – let alone a clear and unequivocal commitment, – that the USA Submissions only stated that disciplinary proceedings "may be possible" and provided contact information for a discussion concerning "the relevant requirements" for referral.[41] The Appeal explains why it was a discernible error for the Decision to omit or disregard these USA submissions, which the California bar should have addressed in a much more direct, candid and clear way, concerning its preparedness, willingness and competence to try the case.[42]

25. In addition, it was plainly apparent in the very brief USA submissions that the only element confirmed was that the California bar – and the North Carolina bar where reciprocal sanctions would have to be taken for any discipline to have any effect on Robinson – only claimed that it "may be possible" for the proceedings to be initiated and pursued. The USA Submissions explicitly provides contact information for the California bar to verify whether the "relevant requirements" for referral are respected – which was never answered beyond the mere possibility of local proceedings.[43]

[41] *Amicus* 5-September-2025 Submissions, para.6; Appeal, paras.72-73.

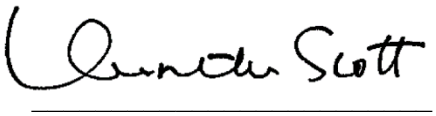
[42] Appeal, paras.74-79.

[43] USA Submissions, p.1.

26. Again, there is nothing in the USA Submissions, implicit or explicit, that sufficiently addresses the California bar's genuine preparedness, willingness and competence to accept the case.[44] Robinson's Response states that the USA authorities were asked for submissions on the USA's jurisdiction, willingness and preparedness to accept the case for trial, and broadly concludes that the USA "answered in the affirmative".[45] This is false -- the USA Submissions were highly qualified, speculative and insufficient.

Word count: 2669 words

Respectfully submitted this 22-December-2025.



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[44] *See* how the Appeals Chamber established willingness and preparedness in *Jojić & Radeta*, para.15 & fn.56.

[45] Response, para.4. *See* also paras.28, 30, 67.

List of abbreviations and citations

From Case no. MICT-25-135-I, *In the Matter of Peter Robinson*

Abbreviations	Citations
Decision	Decision on the Suitability of Referral of the Case, 7-November-2025
Amicus 26-March-2025 Submissions	*Amicus Curiae*'s Submissions on the Suitability of the Referral of the Case, 26-March-2025
USA Submissions	Submission of the United States on the Issue of Referral in Response to the Mechanism's Order of 13 May 2025, 1-August-2025
Amicus 29-August-2025 Submissions	*Amicus Curiae*'s Response to the Submissions of the United States of America on the Referral of the Case, 29-August-2025
Amicus 5-September-2025 Submissions	*Amicus Curiae*'s Reply to Peter Robinson's Response to the Submissions of the United States of America on the Referral of the Case, 5-September-2025

From other Mechanism and ICTY cases

Abbreviations	Citations
25-February-2025 Decision	*Prosecutor v. Nzabonimpa et al.*, MICT-18-116-R90.1, Decision on Allegations of Contempt, 25-February-2025
Appeal	*In the Matter of Peter Robinson*, MICT-25-135-AR14.1, Appeal Brief Regarding Decision to Refer the Case, 8-December-2025
Response	*In the Matter of Peter Robinson*, MICT-25-135-AR14.1, Response Brief, 18-December-2025
Jojić & Radeta	*Prosecutor v. Jojić & 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

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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* : **22 December 2025** **Date transmitted/ *Transmis le* :** **22 December 2025** **Number of Pages/ *Nombre de pages* :** **12**

Original Language/ *Langue de l'original* : ☒ English/ *Anglais* ☐ French/ *Français* ☐ Kinyarwanda ☐ B/C/S ☐ Other/*Autre* (specify/ *préciser*):

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