UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

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

Date: 24 August 2026

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IN THE APPEALS CHAMBER

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

Registrar: **Mr. Abubacarr M. Tambadou**

Decision of: **24 August 2026**

IN THE MATTER OF PETER ROBINSON

PUBLIC

DECISION ON APPEAL OF DECISION ON THE SUITABILITY OF REFERRAL OF A CASE

Amicus Curiae
Mr. Kenneth Scott

Mr. Peter Robinson

United States of America

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals ("Appeals Chamber" and "Mechanism", respectively)[1] is seised of an appeal[2] filed by the *amicus curiae* directed to prosecute this matter ("*Amicus Curiae*")[3] against the "Decision on the Suitability of Referral of the Case", issued by a Single Judge of the Mechanism ("Referral Judge")[4] *In the Matter of Peter Robinson*, Case No. MICT-25-135-I, on 7 November 2025 ("Impugned Decision"). Mr. Peter Robinson ("Robinson"), the accused in this case, responded on 18 December 2025[5] and the *Amicus Curiae* replied on 22 December 2025.[6]

I. BACKGROUND

2. On 25 June 2021, the Single Judge seised of the case of *Prosecutor v. Anselme Nzabonimpa et al.*, Case No. MICT-18-116-T, pronounced a judgement on charges of contempt against Mr. Augustin Ngirabatware ("Ngirabatware") and four other accused.[7] During his final deliberations, the Single Judge considered that the record before him raised grave concerns of repeated professional and ethical lapses on the part of Robinson, while acting as Ngirabatware's counsel in prior proceedings, giving reason to believe that Robinson may be in contempt of the Mechanism.[8] Consequently, on 20 September 2021, the Single Judge referred the matter to the President of the Mechanism ("President") for designation of another Single Judge to assess whether

[1] Order Assigning Judges to a Bench of the Appeals Chamber, 4 December 2025, p. 1.
[2] Notice of Appeal Against the Decision to Refer the Case and Request to Stay an Order, 24 November 2025 ("Notice of Appeal"); Appeal Brief Regarding Decision to Refer the Case, 8 December 2025 ("Appeal"). *See also* Decision on Motion to Strike Notice of Appeal, 22 December 2025, pp. 1, 3; Motion to Strike Notice of Appeal, 25 November 2025.
[3] *See Prosecutor v. Anselme Nzabonimpa et al.*, Case No. MICT-18-116-R90.1, Decision on Allegations of Contempt, 25 February 2025 ("Decision on Allegations of Contempt"), paras. 4, 41. *See also Prosecutor v. Anselme Nzabonimpa et al.*, Case No. 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, p. 3; *Prosecutor v. Anselme Nzabonimpa et al.*, Case No. MICT-18-116-R90.1, Decision, 30 November 2021, p. 2.
[4] *See In the Matter of Peter Robinson*, Case No. MICT-25-135-I, Order Assigning a Single Judge to Consider a Matter, 3 March 2025 ("Order Assigning Referral Judge"), p. 1.
[5] Response Brief, 18 December 2025 (confidential; public redacted version filed on the same day) ("Response").
[6] Reply Brief – Appeal Regarding Decision to Refer a Case, 22 December 2025 ("Reply").
[7] *See Prosecutor v. Anselme Nzabonimpa et al.*, Case No. MICT-18-116-T, Judgement, pronounced on 25 June 2021 and filed in writing on 20 September 2021("*Nzabonimpa et al.* Trial Judgement"). In particular, the Single Judge found, *inter alia*, that Mr. Dick Prudence Munyeshuli ("Munyeshuli"), an investigator on Ngirabatware's Defence team and acting on Robinson's instructions, disclosed the identity of, and initiated indirect contact with, protected witnesses in violation of protective measures decisions. The Single Judge, however, declined to enter a conviction against Munyeshuli and found that he should instead be warned. *See Nzabonimpa et al.* Trial Judgement, paras. 362-368, 409(ii). On 29 June 2022, the Appeals Chamber reversed Munyeshuli's acquittal and entered a conviction against him for contempt for knowingly and wilfully interfering with the administration of justice and sentenced him to five months of imprisonment. *See Prosecutor v. Marie Rose Fatuma et al.*, Case No. MICT-18-116-A, Judgement, 29 June 2022 ("*Fatuma et al.* Appeal Judgement"), paras. 70-99, 114, 115, 121.
[8] *Prosecutor v. Anselme Nzabonimpa et al.,* Case No. MICT-18-116-T, Order Referring a Matter to the President, 20 September 2021 ("Order of 20 September 2021"), p. 3.

further proceedings under Rule 90 of the Rules of Procedure and Evidence of the Mechanism ("Rules"), or other appropriate disciplinary action against Robinson, are warranted.[9]

3. On 25 February 2025, the Single Judge assigned to the matter issued an order in lieu of indictment against Robinson for contempt of the International Criminal Tribunal for Rwanda ("ICTR") and/or the Mechanism, pursuant to Article 1(4)(a) of the Statute of the Mechanism ("Statute") and Rule 90 of the Rules.[10] The Order in Lieu of Indictment charges Robinson for having – or, alternatively, attempting or inciting others to have – prohibited contact with witnesses subject to protective measures ordered by the ICTR and/or the Mechanism,[11] during his representation of Ngirabatware in prior proceedings.[12] In a separate decision, the Single Judge directed the *Amicus Curiae* to prosecute the matter with respect to nine out of 34 alleged violations,[13] and referred the matter to the President for designation of a Single Judge to conduct the proceedings and determine whether the case should be referred to the authorities of a State in accordance with Article 6 of the Statute.[14] The determination of whether four alleged violations should be subject to disciplinary measures was also deferred to the Single Judge assigned to conduct the proceedings.[15]

4. On 3 March 2025, the President assigned the Referral Judge to, *inter alia*, conduct the proceedings and determine whether the case should be referred to the authorities of a State and whether the four alleged violations should be subject to disciplinary measures.[16] Following submissions from the parties on the suitability of referring the case to a State,[17] on 13 May 2025,

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[9] Order of 20 September 2021, p. 3.
[10] *In the Matter of Peter Robinson*, Case No. MICT-25-135-I, Decision Issuing Order in Lieu of Indictment, 25 February 2025 ("Decision of 25 February 2025"), pp. 2-7 ("Order in Lieu of Indictment"); Decision on Allegations of Contempt, para. 41.
[11] Decision of 25 February 2025, pp. 1, 2, 7.
[12] From at least 15 August 2015 until 19 December 2017, Robinson acted as Ngirabatware's counsel in the case of *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R. *See* Decision on Allegations of Contempt, para. 2; Order in Lieu of Indictment, paras. 2, 3.
[13] Decision on Allegations of Contempt, paras. 4, 38, 41.
[14] Decision on Allegations of Contempt, para. 41.
[15] Decision on Allegations of Contempt, para. 41. In relation to the remainder of Robinson's 21 alleged violations, the Single Judge terminated proceedings in relation to six and warned and reminded Robinson of his obligations with respect to 15. *See* Decision on Allegations of Contempt, para. 41.
[16] Order Assigning Referral Judge, p. 1.
[17] *See In the Matter of Peter Robinson*, Case No. MICT-25-135-I, Order for Submissions, 12 March 2025 ("Order of 12 March 2025"), pp. 1, 2; *In the Matter of Peter Robinson*, Case No. MICT-25-135-I, *Amicus Curiae*'s Submissions on the Suitability of the Referral of the Case, 26 March 2025 (public with confidential and *ex parte* annex), p. 8 (wherein the *Amicus Curiae* requested that the case against Robinson be conducted before the Mechanism); *In the Matter of Peter Robinson*, Case No. MICT-25-135-I, Preliminary Submissions on Referral, 9 April 2025, paras. 1, 17-22 (wherein Robinson argued that the United States of America ("United States") meets the criteria under Article 6(2) of the Statute and requested that it be invited to make submissions); *In the Matter of Peter Robinson*, Case No. MICT-25-135-I, *Amicus* Reply Submission on the Suitability of the Referral of the Case, 15 April 2025, paras. 11, 14, 18 (wherein the *Amicus Curiae* reiterated that the United States has only very small links to the crimes charged and that no sufficient reasons exist to request submissions from the United States).

the Referral Judge invited the United States to provide written submissions on its jurisdiction, willingness, and preparedness to accept the case for trial, considering that the alleged crimes were committed, in part, in the United States and that Robinson is a citizen of, and residing in, the country.[18]

5. On 1 August 2025, the United States filed submissions, stating that it "has not identified a clear jurisdictional basis to criminally prosecute" Robinson in the United States for the conduct described in the Order in Lieu of Indictment, and that, even if such a basis existed, "it is highly likely that any applicable statute of limitations would bar initiation of such a prosecution".[19] It further submitted that, at the state level, state bar organisations license and regulate the conduct of attorneys subject to their jurisdictions and "may investigate alleged misconduct and initiate appropriate administrative disciplinary proceedings".[20] According to the United States, the State Bar of California ("California State Bar"), where Robinson remains licensed, "has informed the United States that [it] has jurisdiction and that it may be possible to refer this matter to appropriate disciplinary proceedings pursuant to [the] provisions of the California Business and Professions Code", and that the State Bar of North Carolina – where Robinson is also licensed and resides – has advised the United States that reciprocal disciplinary penalties may be pursued if the California State Bar imposes penalties.[21]

6. On 7 November 2025, pursuant to Articles 1(4), 6(2), and 6(4) of the Statute and Rule 14 of the Rules, the Referral Judge issued the Impugned Decision, ordering the referral of the case against Robinson to the authorities of the United States for disciplinary proceedings before the California State Bar.[22] The Referral Judge found, *inter alia*, that: (i) neither the Statute nor the 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;[23] (ii) there is discretion to refer the matter for

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[18] *In the Matter of Peter Robinson*, Case No. MICT-25-135-I, Invitation for Submissions, 13 May 2025 ("Order of 13 May 2025"), pp. 2, 3. The Referral Judge further considered that any issuance of an arrest warrant against Robinson, if necessary, would most likely be effectuated by the authorities of the United States in view of Robinson's residence therein. *See* Order of 13 May 2025, p. 3.

[19] *In the Matter of Peter Robinson*, Case No. MICT-25-135-I, Submission of the United States on the Issue of Referral in Response to the Mechanism's Order of 13 May 2025, 1 August 2025 (confidential; public redacted version filed on the same day) ("United States Submission"), p. 1.

[20] United States Submission, p. 1.

[21] United States Submission, p. 1. *See also In the Matter of Peter Robinson*, Case No. MICT-25-135-I, *Amicus Curiae*'s Response to the Submissions of the United States of America on the Referral of the Case, 29 August 2025; *In the Matter of Peter Robinson*, Case No. MICT-25-135-I, Response to the Submission of the United States of America, 29 August 2025; *In the Matter of Peter Robinson*, Case No. MICT-25-135-I, *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; *In the Matter of Peter Robinson*, Case No. MICT-25-135-I, Reply re: Submission of the United States of America, 5 September 2025 (confidential; public redacted version filed on the same day).

[22] Impugned Decision, paras. 18, 19.

[23] Impugned Decision, para. 13.

disciplinary proceedings, upon finding that such referral vindicates the Mechanism's interests, taking into account the interests of justice and expediency;[24] and (iii) such vindication does not need to be exclusively achieved through criminal sanctions.[25] The Referral Judge found that disciplinary proceedings in the United States, given its regulatory framework, would adequately vindicate the Mechanism's interests.[26] In this respect, the Referral Judge considered that the sanctions available in the United States fall within the scope contemplated by Rules 47 and 90(I) of the Rules,[27] and would directly impact Robinson, including his livelihood and reputation.[28] The Referral Judge also noted the Mechanism's available disciplinary proceedings and sanctions upon a finding of misconduct and considered that, "given the current stage of the Mechanism's life cycle", such sanctions "may be insufficient to adequately address the seriousness of the allegations against Robinson".[29]

II. SUBMISSIONS

7. The *Amicus Curiae* requests the Appeals Chamber to reverse the Impugned Decision and order that the case be conducted before the Mechanism.[30] In Ground 1 of the Appeal, the *Amicus Curiae* submits that the Referral Judge erred in law in referring a criminal contempt case to a state bar organisation for the conduct of disciplinary proceedings.[31] The *Amicus Curiae* contends that, contrary to the Referral Judge's finding, the Statute and the Rules do not allow for a criminal case to be referred to a "local professional body for disciplinary proceedings" but "require that a referred criminal case remain criminal".[32] According to the *Amicus Curiae*, the California State Bar is not a national jurisdiction, as required by Article 6 of the Statute, and its disciplinary proceedings are not conducted before a national court with criminal jurisdiction.[33] He argues that, in line with the Mechanism's jurisprudence, the State of referral must have a legal framework criminalising the accused conduct,[34] and that the vindication of the Mechanism's interest can only be achieved

[24] Impugned Decision, para. 15. *See also* Impugned Decision, para. 11.
[25] Impugned Decision, para. 13. The Referral Judge further stated that the only express limitation within the Rules is that the maximum penalty for contempt is a term of imprisonment not exceeding seven years, or a fine not exceeding 50,000 Euros or the equivalent thereof, or both. *See* Impugned Decision, para. 13, *referring to* Rule 90(G) of the Rules.
[26] Impugned Decision, para. 16.
[27] Impugned Decision, para. 13. The Referral Judge considered that Rule 90(I) of the Rules permits a finding of misconduct within the meaning of Rule 47 of the Rules, which in turn enables a Single Judge, with the President's approval, to communicate the misconduct to the professional body regulating the conduct of counsel in the counsel's State of admission. *See* Impugned Decision, para. 13.
[28] Impugned Decision, paras. 13, 16.
[29] Impugned Decision, para. 16.
[30] Notice of Appeal, paras. 8, 11, 13, 15, 18, 22; Appeal, para. 11, p. 27.
[31] Notice of Appeal, paras. 10, 11; Appeal, paras. 13-32.
[32] Appeal, para. 14. *See also* Reply, paras. 2-6.
[33] *See* Appeal, paras. 15-18.
[34] Appeal, paras. 24-27 and references cited therein. *See also* Reply, paras. 10, 11.

through criminal sanctions.[35] The *Amicus Curiae* contends that, by "effectively dismissing the criminal charges", the Referral Judge substituted his own determination for that of the Single Judge who issued the Order in Lieu of Indictment, thereby acting *ultra vires*.[36]

8. In Grounds 2 and 3 of the Appeal, the *Amicus Curiae* submits that the Referral Judge committed discernible errors in his assessment of the interests of justice and expediency and, therefore, erroneously concluded that referring the case to a local professional body sufficiently vindicates the Mechanism's interests.[37] The *Amicus Curiae* contends that, in light of the gravity of the charges against Robinson, the California State Bar penalty structure and disciplinary sanctions – including disbarment or suspension of license to practice law – are insufficient and would have "little to no effect" on Robinson.[38] The *Amicus Curiae* further contends that the Referral Judge failed to sufficiently consider certain factors relating to expediency, which would weigh in favour of conducting the case before the Mechanism, including, *inter alia*, the *Amicus Curiae*'s familiarity with and access to the evidence as well as the potential inability of the California State Bar to investigate, secure witnesses, and adequately deal with related protective measures.[39] In Ground 4 of the Appeal, the *Amicus Curiae* asserts that the Referral Judge also failed to establish the preparedness, willingness, and competence of the California State Bar to accept and adequately address the case.[40]

9. Robinson responds that the Impugned Decision should be affirmed as the *Amicus Curiae* fails to demonstrate that the Referral Judge erred in law or abused his discretion.[41] Regarding Ground 1 of the Appeal, Robinson submits that the Referral Judge correctly found that neither the Statute, the Rules, or the jurisprudence require that the proceedings in the referral State be criminal in nature.[42] Robinson argues that referring a case to a State does not require that proceedings only take place on a national level, but that proceedings can be conducted by a State's "political subdivisions", in this case the California State Bar, which is a body established by the California State Legislature and governed by the Supreme Court of California.[43] As to the argument that the Referral Judge acted *ultra vires*, Robinson responds that the Single Judge who issued the Order in

[35] Appeal, paras. 19-23. *See also* Reply, paras. 7-9.
[36] Appeal, paras. 29-32. *See also* Reply, paras. 12-15.
[37] Notice of Appeal, paras. 12-15; Appeal, paras. 33-68. *See also* Reply, paras. 16-23.
[38] *See* Appeal, paras. 33-42. *See also* Reply, paras. 16-19.
[39] *See* Appeal, paras. 43-68. *See also* Reply, paras. 20-23. The *Amicus Curiae* submits that 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. *See* Reply, para. 21.
[40] Notice of Appeal, paras. 16-18; Appeal, paras. 69-79. *See also* Reply, paras. 24-26.
[41] *See* Response, paras. 44, 60, 61, 68, 75, 76.
[42] *See* Response, paras. 26-39.

Lieu of Indictment and the Referral Judge were tasked to consider different matters.[44] While the former considered bringing criminal charges *versus* conducting disciplinary proceedings before the Mechanism, the latter was specifically assigned to consider conducting a criminal trial before the Mechanism *versus* referring the case for trial in a State.[45]

10. Regarding Grounds 2 and 3 of the Appeal, Robinson responds that the Referral Judge did not abuse his discretion in assessing the interests of the Mechanism, the interests of justice, or the issue of expediency.[46] According to Robinson, the interest of the Mechanism in a contempt case is to ensure compliance with – and deter others from disobeying – its orders and the Rules by holding the alleged contemnor accountable,[47] and that every counsel practicing before the Mechanism 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".[48] Robinson asserts that the Referral Judge – being well aware of the penalty structure for contempt at the Mechanism[49] and balancing the gravity of the alleged conduct against the potential penalties Robinson would face in disciplinary proceedings in the United States[50] – did not abuse his discretion in determining that the interests of the Mechanism would be vindicated by the referral,[51] and that the issue of expediency did not preclude referral of this case.[52] Robinson emphasises the strong statutory preference for referral of a contempt case, which was properly taken into account by the Referral Judge, as well as the Mechanism's practical realities.[53]

11. In response to Ground 4 of the Appeal, Robinson argues that the *Amicus Curiae* raises for the first time on appeal deficiencies in the California State Bar proceedings, that submissions in other contempt referral cases were similarly made through a State's diplomatic authorities rather

[43] *See* Response, paras. 29-32.
[44] *See* Response, para. 40.
[45] *See* Response, paras. 40-44. According to Robinson, the fact that the Single Judge who issued the Order in Lieu of Indictment chose criminal charges over Mechanism disciplinary proceedings for a minority of the allegations "did not preclude [the Referral Judge] from determining that those allegations could be referred for trial by disciplinary authority in the United States" in view of the different context and consequences of the two decisions. Response, para. 43.
[46] *See* Response, paras. 45-68.
[47] Response, para. 46.
[48] Response, para. 58.
[49] Response, para. 35.
[50] *See* Response, paras. 57-59.
[51] *See* Response, paras. 45-60.
[52] *See* Response, paras. 61-68. Robinson asserts that the *Amicus Curiae*'s claims about the time the disciplinary proceedings will take is speculative and that the argument that conducting criminal proceedings at the Mechanism will be more expeditious is contradicted by *Amicus Curiae*'s previous position that the prosecution of this case would involve a massive amount of material and time. *See* Response, paras. 64-66.
[53] *See*, *e.g.*, Response, paras. 1-3, 10, 20, 21, 23, 61, 62, 68.

than the organ responsible for prosecuting the case, and that cases were referred despite reservations related to a State's willingness, preparedness, or legal framework.[54]

III. DISCUSSION

12. The Appeals Chamber recalls that, where an appeal is filed against a decision referring a case to a national jurisdiction, the issue before the Appeals Chamber is not whether the decision was correct, in the sense that the Appeals Chamber agrees with it, but whether in reaching that decision the Single Judge correctly exercised their discretion.[55] The Appeals Chamber will only intervene with the decision of the Single Judge if the decision was based on a discernible error. To demonstrate such error, an appellant must show that the Single Judge: (i) was misdirected as to the legal principles to be applied, or the applicable law; (ii) gave weight to irrelevant considerations or failed to give sufficient weight to relevant considerations; (iii) made an error as to the facts upon which the exercise of discretion relied; or (iv) the decision was so unreasonable and plainly unjust that the Appeals Chamber is able to infer that the Single Judge must have failed to exercise their discretion properly.[56]

13. The Appeals Chamber turns first to the *Amicus Curiae*'s argument that, by referring the matter for disciplinary proceedings before the California State Bar, the Referral Judge effectively dismissed the criminal charges against Robinson, thereby erroneously substituting his own determination for that of the Single Judge who issued the Order in Lieu of Indictment.[57] Pursuant to Article 1(4)(a) of the Statute, the Mechanism has the power to prosecute any person who knowingly and wilfully has interfered with the administration of justice by the Mechanism, the International Criminal Tribunal for the former Yugoslavia ("ICTY"), or the ICTR, and to hold such person in contempt. In accordance with Article 6(2) of the Statute, it is only after an indictment has been confirmed against a person covered by Article 1(4) of the Statute and prior to the commencement of trial, that the Mechanism shall determine whether the case should be referred to the authorities of a State. It follows that instituting contempt proceedings against a person covered by Article 1(4) of the Statute is a necessary precondition to the possible referral of such a case to the authorities of a State. The boundaries of the Referral Judge's discretion should necessarily be considered in this procedural context.

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[54] *See* Response, paras. 69-75.
[55] *In the Case Against Petar Jojić and Vjerica Radeta*, Case 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 ("*Jojić and Radeta* Appeal Decision of 12 December 2018"), para. 13 and references cited therein.
[56] *Jojić and Radeta* Appeal Decision of 12 December 2018, para. 13 and references cited therein.
[57] *See* Appeal, paras. 29-32.

14. In the present case, the Single Judge – specifically assigned to assess whether criminal prosecution for contempt or other disciplinary action against Robinson within the Mechanism framework was warranted[58] – decided to charge Robinson with contempt in relation to some of the alleged violations.[59] In relation to other "derivative violations", he considered it neither necessary nor an efficient use of limited judicial resources to initiate contempt proceedings.[60] The Single Judge opined that a determination whether the "derivative violations" may be subject to disciplinary measures "should be deferred until the conclusion of the contempt proceedings against Robinson" for a decision by the Single Judge assigned to the matter.[61] Subsequently, the President assigned the Referral Judge to, *inter alia*, conduct the proceedings and determine whether the case should be referred to the authorities of a State and whether the "derivative violations" should be subject to disciplinary measures.[62] Against this background, in deciding to refer the entire case to the authorities of a State for the conduct of disciplinary proceedings, the Referral Judge effectively altered the Single Judge's decision charging Robinson with contempt of court in relation to some of the alleged violations, thus exceeding the authority conferred upon him.

15. In the Impugned Decision, the Referral Judge distinguished the referral of a contempt matter from the referral of a case concerning allegations of serious violations of international humanitarian law.[63] In finding that there is no requirement for a referred contempt case to proceed as a criminal trial before the national jurisdiction, the Referral Judge held that:

> 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. Moreover, there is no support that such vindication is exclusively achieved through criminal sanctions.[64]

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[58] *See Prosecutor v. Anselme Nzabonimpa et al.*, Case Nos. MICT-18-116-R90.1 & MICT-18-116-T, Order Assigning a Single Judge to Consider a Matter Pursuant to Rule 90(C), 8 October 2021, p. 1.
[59] *See supra* para. 3.
[60] Decision on Allegations of Contempt, para. 32.
[61] Decision on Allegations of Contempt, paras. 32, 41.
[62] Order Assigning Referral Judge, p. 1, *referring*, *inter alia*, *to* Decision on Allegations of Contempt, para. 41.
[63] *See* Impugned Decision, para. 14 ("[…] [T]he present matter should be distinguished from other referrals previously considered by the Appeals Chamber of the Mechanism, the ICTR, and the [ICTY], where it was held that the State of referral must have a legal framework that 'criminalizes the alleged conducted of the accused'. 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.")
[64] Impugned Decision, para. 13.

16. The Appeals Chamber recalls that the Statute is to be interpreted in good faith in accordance with the ordinary meaning to be given to the terms in their context and in light of its object and purpose.[65] The Appeals Chamber has previously held that a proper construction of the Statute, in accordance with the ordinary meaning to be given to the terms in their context and in light of its object and purpose, is that it provides for the conduct of trials.[66] As recalled above, before proceeding to try persons who have knowingly and wilfully interfered with the administration of justice, the Mechanism shall consider referring the case to the authorities of a State, taking into account the interests of justice and expediency.[67] 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.[68] Accordingly, the Mechanism may only exercise jurisdiction after it has considered whether the case can be transferred to a national jurisdiction for trial.[69]

17. In considering the referral of a case, Article 6(2) of the Statute requires the Mechanism to determine whether the case should be referred to the authorities of a State: (i) where the crime was committed; (ii) where the accused was arrested; or (iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should immediately refer the case "to the appropriate court for trial within that State". The Statute further mandates the monitoring of cases referred to "national courts" and provides for revocation of a referred case "before the accused is found guilty or acquitted by a national court" when it is clear that the conditions for referral of the case are no longer met and it is in the interests of justice.[70] Notably, the Appeals Chamber has held that if a competent domestic court determines that it does not have jurisdiction to prosecute an accused in relation to a referred contempt case, a formal request for deferral may be made in the interests of justice.[71] Accordingly, the Statute explicitly provides that a referred case shall be tried in criminal proceedings before an appropriate national court.

18. The Appeals Chamber considers the distinction drawn in the Impugned Decision between the referral of a contempt matter and the referral of a case concerning allegations of serious violations of international humanitarian law[72] to be unsupported by the language of the Statute and binding appellate jurisprudence. While the Referral Judge correctly observed that Article 6(2) of the

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[65] *See Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38-AR80.3, Decision on Appeals of Further Decision on Félicien Kabuga's Fitness to Stand Trial, 7 August 2023 ("*Kabuga* Appeal Decision of 7 August 2023"), para. 60 and references cited therein.
[66] *Kabuga* Appeal Decision of 7 August 2023, para. 61.
[67] Article 1(4) of the Statute. *See also* Article 6(1) of the Statute.
[68] *Jojić and Radeta* Appeal Decision of 12 December 2018, para. 11.
[69] *Jojić and Radeta* Appeal Decision of 12 December 2018, para. 11. *See also* Article 6(2)(iii) of the Statute.
[70] *See* Articles 6(5), 6(6) of the Statute; Rule 14(C) of the Rules.
[71] *See Jojić and Radeta* Appeal Decision of 12 December 2018, para. 20. *See also* Article 6(6) of the Statute.
[72] *See* Impugned Decision, para. 14.

Statute mirrors the language of Rule 11*bis* of the ICTR and ICTY Rules of Procedure and Evidence regulating the referral of core crimes cases,[73] the inference that the requirements set out therein apply solely to the referral of such cases fails to appreciate the full ambit of Article 6 of the Statute. Article 6(1) of the Statute explicitly provides for the Mechanism's power to refer to national jurisdictions both cases concerning serious violations of international humanitarian law under Article 1(3) of the Statute, as well as cases concerning contempt of court and false testimony under Article 1(4) of the Statute. There is nothing in the text of Article 6(2) of the Statute implicating a differentiation in standards, or the application thereof, between referral of cases involving persons subject to Article 1(3) of the Statute, and those involving persons subject to Article 1(4) of the Statute. Accordingly, the ordinary meaning to be given to the terms of Article 6(2) of the Statute, in their context, is that the requirement of a criminal trial before an appropriate national court applies equally to referral of allegations of contempt as it does to referral of allegations of serious violations of international humanitarian law.[74]

19. In relation to the Statute's object and purpose, as the Referral Judge correctly observed, the Statute indicates a strong preference for referral of a contempt case if all relevant conditions are met.[75] The Appeals Chamber has previously interpreted this to mean that "the Mechanism may only exercise jurisdiction [over a contempt case] after it has considered whether the case can be transferred to a national jurisdiction *for trial*" and that "where a State expresses a willingness and commitment *to try a case over which it has jurisdiction* […] it should be given the opportunity to do so, provided other relevant factors are satisfied".[76] It follows that, with the Statute's strong preference for referral in mind, the requirement of a criminal trial before an appropriate national court with jurisdiction over the case is not limited solely to the referral of cases concerning serious violations of international humanitarian law, but equally applies to the referral of contempt cases.

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[73] *See*, *e.g.*, *The Prosecutor v. Phénéas Munyarugarama*, Case No. ICTR-02-79-R11bis, Decision on the Prosecutor's Request for Referral of the Case to the Republic of Rwanda, 28 June 2012; *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 28 June 2011; *Prosecutor v. Željko Mejakić et al.*, Case No. IT-02-65-PT, Decision on Prosecutor's Motion for Referral of Case Pursuant to Rule 11 *bis*, 20 July 2005 (public with confidential annex); *Prosecutor v. Radovan Stanković*, Case No. IT-96-23-2-PT, Decision on Referral of Case Under Rule 11 *bis*, 17 May 2005 (partly confidential and *ex parte*).

[74] In the same vein, the Appeals Chamber observes that Rule 90(E) of the Rules provides that the Rules "shall apply *mutatis mutandis* to proceedings" under Rule 90 of the Rules, which regulates contempt of court. *See also Fatuma et al.* Appeal Judgement, paras. 93 ("The Appeals Chamber considers that the textual and contextual interpretation of the Rules supports the principle that once a charge is proven beyond reasonable doubt, a finding of guilt follows. Considering that the Rules apply *mutatis mutandis* to proceedings under Rule 90 of the Rules, this principle similarly applies to contempt proceedings."), 94 ("[I]t is well established in the jurisprudence that 'a trial chamber is bound to enter convictions for all distinct crimes which have been proven in order to fully reflect the criminality of the convicted person'. While this principle emanates from jurisprudence concerning the crimes covered by Article 1(1) of the Statute, the Appeals Chamber sees nothing to suggest that the obligation of a single judge to enter a conviction does not equally apply to the crime of contempt, once all the elements of the crime have been proven.").

[75] *See Jojić and Radeta* Appeal Decision of 12 December 2018, para. 11. *See also* Impugned Decision, para. 10.

[76] *Jojić and Radeta* Appeal Decision of 12 December 2018, paras. 11, 21 (emphasis added).

This is also consistent with prior jurisprudence where the requirements set out in Article 6(2) of the Statute have been applied in the context of the referral of contempt cases, involving an examination of whether an adequate legal framework exists in the receiving State criminalizing the accused's conduct and providing for an adequate penalty structure.[77] The application of the requirements set out in Article 6(2) of the Statute in the context of the referral of contempt cases has also been confirmed by the Appeals Chamber.[78]

20. Given the above, the Appeals Chamber considers that a proper construction of the Statute, in accordance with the ordinary meaning to be given to the terms in their context and in light of its object and purpose, provides that cases, including contempt cases, may only be referred to the authorities of a State for criminal trial before an appropriate national court. The Statute does not vest discretion to refer a contempt case to a State that has no criminal jurisdiction over the alleged conduct.

21. Turning to the present case, the United States stated that it "has not identified a clear jurisdictional basis to criminally prosecute" Robinson for the conduct described in the Order in Lieu of Indictment, and that, even if such a basis existed, "it is highly likely that any applicable statute of limitations would bar initiation of such a prosecution".[79] In these circumstances, where it appears that the United States judiciary may not have criminal jurisdiction over the alleged conduct, the Referral Judge exercised discretion that was not conferred upon him by the Mechanism's statutory framework when referring the contempt case for disciplinary proceedings before a state bar organisation. This constitutes an error of law, which invalidates the part of the Impugned Decision ordering the referral of the case for disciplinary proceedings. This finding is without prejudice to the ability of the California State Bar to conduct effective investigations and prosecutions of alleged attorney professional misconduct.[80] It is the disciplinary instead of criminal nature of the proceedings before the State Bar Court of California[81] that prevents the referral of this case in accordance with the Statute.

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[77] *See*, *e.g.*, *In the Matter of François Ngirabatware*, Case No. MICT-24-131-I, Decision on the Suitability of Referral of the Case, 17 September 2024, pp. 3-5; *Prosecutor v. Vojislav Šešelj et al.*, Case No. MICT-23-129-I, Decision on Referral of the Case to the Republic of Serbia, 29 February 2024, paras. 9-19; *In the Case Against Petar Jojić and Vjerica Radeta*, Case No. MICT-17-111-R90, Public Redacted Version of the 12 June 2018 Order Referring a Case to the Republic of Serbia, 12 June 2018, pp. 2, 4.
[78] *Jojić and Radeta* Appeal Decision of 12 December 2018, paras. 12, 14-21.
[79] United States Submission, p. 1.
[80] *See generally* United States Submission, p. 1; Appeal, Annex A, Registry Pagination ("RP.") 53-43. *See also* https://www.statebarcourt.ca.gov/ (accessed on 24 August 2026); State Bar of California, Annual Discipline Report, Fiscal Year 2024, Appendix D.
[81] *See*, *e.g.*, Appeal, Annex A, RP. 53-43; https://www.statebarcourt.ca.gov/ (accessed on 24 August 2026) ("California is the only state with an independent professional court dedicated to ruling on attorney discipline cases. The State Bar

22. The foregoing conclusion adheres strictly to the limitations imposed on the Mechanism's referral authority by its statutory framework, which vests the Mechanism with the power to refer a contempt case to a State only for the conduct of a criminal trial before an appropriate court. As the Appeals Chamber has recalled recently, it is the Statute, as the constitutive instrument of the Mechanism, that defines the scope and limits of its mandate, and the Statute can only be amended or derogated from by means of a United Nations Security Council resolution.[82]

23. In view of the above, the Appeals Chamber does not find it necessary to address the remainder of the *Amicus Curiae*'s arguments alleging errors in the Impugned Decision. As a remedy, the *Amicus Curiae* requests that the Appeals Chamber order that the case be conducted before the Mechanism.[83] As recalled above, the Statute indicates a strong preference for referral and the Mechanism may only exercise jurisdiction after it has considered whether the case can be transferred to a national jurisdiction for trial.[84] In other words, trying the case before the Mechanism shall be a measure of last resort after all efforts in identifying a State that meets the requirements of Article 6(2) of the Statute have been expended.

24. With these considerations in mind, the Appeals Chamber observes that the Referral Judge neither sought confirmation from the United States that its national courts lack jurisdiction to criminally prosecute Robinson or, in the case of jurisdiction, that the applicable statute of limitations indeed bars initiation of such prosecution, nor provided reasons for not considering other States that may satisfy the requirements of Article 6(2) of the Statute.[85] Cognisant of the Referral Judge's organic familiarity with the case, the Appeals Chamber finds it appropriate in these circumstances to remand the matter to the Referral Judge with an instruction to re-examine whether the case can be referred to the authorities of the United States for criminal prosecution and, if not, to determine whether the case can be referred to the authorities of another State for trial pursuant to Article 6 of the Statute.

IV. DISPOSITION

25. For the foregoing reasons, the Appeals Chamber:

GRANTS Ground 1 of the Appeal;

Court hears charges filed by the State Bar's Office of Chief Trial Counsel against attorneys whose actions allegedly involve misconduct.")

[82] *See Kabuga* Appeal Decision of 7 August 2023, para. 68.

[83] Appeal, p. 27.

[84] *See supra* para. 19.

[85] *See* Impugned Decision, paras. 3, 10-18, n. 6; Order of 12 March 2025, pp. 1, 2.

REMANDS the matter to the Referral Judge for further consideration consistent with this Decision; and

DISMISSES as moot the remainder of the Appeal.

Done this 24th day of August 2026
At Arusha,
Tanzania

Judge Graciela Gatti Santana
Presiding Judge

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