**UNITED
NATIONS**

Case No.: MICT-25-135-I

International Residual Mechanism
for Criminal Tribunals

Date: 26 March 2025

Original: English

BEFORE THE SINGLE JUDGE

Before: **Judge Joseph E. Chiondo Masanche**

Registrar: **Mr. Abubacarr Tambadou**

IN THE MATTER OF PETER ROBINSON

**PUBLIC
WITH CONFIDENTIAL AND *EX PARTE* ANNEX**

AMICUS CURIAE'S SUBMISSIONS ON THE SUITABILITY OF THE REFERRAL OF THE CASE

Amicus Curiae

Mr. Kenneth Scott

Mr. Peter Robinson

The *Amicus Curiae* ("*Amicus*") respectfully makes these submissions on the suitability of referring the case *In the Matter of Peter Robinson* to State authorities, pursuant to Articles 1(4) and 6 of the Statute, and the Single Judge's *Order for Submissions* dated 12-March-2025.

1. On 25-February-2025, Judge de Prada Solaesa, in his capacity as Single Judge in the investigation into allegations of contempt against Peter Robinson ("Robinson"), issued his *Decision on Allegations of Contempt* ("Decision") and the *Decision issuing Order in Lieu of Indictment* ("Indictment"), initiating contempt proceedings against Peter Robinson.[1]

2. On 12-March-2025, Judge Chiondo Masanche, the Single Judge appointed to conduct the proceedings *In the Matter of Peter Robinson* ("Single Judge"), ordered *Amicus* to file submissions, within fourteen days, on "the suitability of referring the case to a State and whether such referral would serve the interests of justice and expediency, and respect the rights of an accused to a fair trial, bearing in mind the preference for the referral of contempt cases as envisioned in the Statute".[2] The Single Judge also noted that he would later seek submissions from the relevant State(s), and that *Amicus* would have the opportunity to respond to these submissions.[3]

I. APPLICABLE LAW

3. Article 6(1) of the Statute states that the Mechanism "shall have the power also to refer cases involving persons covered by paragraph 4 of Article 1 [which concerns interference with the administration of justice]".

4. In a previous contempt case, the Appeals Chamber stated: "At the outset, the Appeals Chamber considers that the preference in the Mechanism for contempt cases to be tried by

[1] *Prosecutor v. Nzabonimpa et al.* ("*Nzabonimpa*"), MICT-18-116-R90.1, Decision on Allegations of Contempt, 25-February-2025; *In the Matter of Peter Robinson*, MICT-25-135-I ("*Robinson*"), Decision Issuing Order in Lieu of Indictment, 25-February-2025.

[2] *Robinson*, Order for Submissions, 12-March-2025, p.2.

[3] *Ibid.*, p.2.

national jurisdictions can only be understood as conditional, (...) as various factors specific to a case must be prudently considered."[4]

5. Article 1(4) of the Statute states that the Single Judge in a contempt case shall consider whether to refer the case to the authorities of a State "taking into account the interests of justice and expediency".

6. Pursuant to Article 6(4), the Single Judge can refer the case to a State "after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out."

7. Pursuant to Article 6(2), a contempt case may 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.

8. The referenced State must have "an adequate legal framework criminalising the Accused's conduct charged in the Order in Lieu of Indictment".[5] In the *Šešelj et al.* contempt case, the Single Judge stated "I do not have the authority to decide which law is to be applied if the case were to be referred, since such determination falls within the competence of the relevant domestic court." The Judge also stated, citing the Appeals Chamber:

> [T]he authorities of Serbia need not necessarily proceed under their laws against each act or crime mentioned in the Indictment in the same manner that the Prosecution would before the Mechanism. Nevertheless, I should be satisfied that, if the case were to be referred to

[4] *In the case against Jocić and Radeta*, MICT-17-111-R90-AR14.1, Decision on Republic of Serbia's Appeal Against the Decision Re-Examining the Referral of a Case, 24-February-2020, para.14.

[5] *In the matter of Francois Ngirabatware*, MICT-24-131-I, Decision on the Suitability of Referral of the Case, 17-September-2024, p.4 (*"F.Ngirabatware*").

Serbia, an adequate legal framework exists criminalizing most, if not all, of the Accused's conduct alleged in the Indictment and providing for an adequate penalty structure.[6]

I. THE STATE WITH THE MOST LINKS TO THIS CASE IS THE REPUBLIC OF RWANDA

9. The State which has the most links to the crimes charged in the Indictment, in terms of the underlying facts, is the Republic of Rwanda.

10. Information about the commission of the crimes is included in a confidential and *ex parte* annex.[7]

11. No other State has the same links as Rwanda with the case. Robinson was born in the United States of America.[8] However, he was not arrested there (or anywhere else),[9] and the case has no other strong link to that State.[10] Similarly, one of Robinson's meetings during which he initiated a prohibited contact with ANAE, took place in Uganda, but that State has no other link to the case.[11]

12. In the *Nzabonimpa et al.* case (or *Turinabo et al.*, at the time), which has a strong factual nexus to the present case, the Single Judge considered whether the case should be referred to Rwanda.[12] In that case, Judge Vagn Joensen found that "the record before me raises grave

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6 *Prosecutor v. Šešelj et al.*, MICT-23-129-I, Decision on the Suitability of Referral of the Case, 29-February-2024, paras.12, 16 ("*Šešelj*").

7 The annex refers to information that is confidential or otherwise sensitive. *Amicus* will file a request asking that the Single Judge provides Robinson and the relevant State authorities with the annex.

8 Indictment, para.1.

9 Article 6(2)(ii), Statute.

10 Annex A.

11 Indictment, para.5.

12 *Turinabo et al.*, MICT-18-116-PT, Decision on Suitability of Referral of the Case, 7-December-2018, fn.24 ("*Turinabo*") .

concerns of repeated professional and ethical lapses on the part of Robinson", and referred the matter to the President.[13]

II. THE CASE SHOULD BE CONDUCTED BEFORE THE MECHANISM

The interests of justice and expediency

13. This case, its entire context, procedural history (including the relevant court orders) and evidence are heavily and inextricably connected to several closely-related, indeed "source" cases before the Mechanism and the ICTR.

14. This case has a close nexus to the *Nzabonimpa et al.* contempt case, in which Judge Vagn Joensen determined, based on his review of the case record, that he had "grave concerns" concerning Robinson and referred the matter to the President. Judge Vagn Joensen determined that the *Nzabonimpa et al.* contempt case should be conducted before the Mechanism.[14]

15. The *Nzabonimpa et al*. case is also closely connected to the *Ngirabatware* review case, as the interference with justice scheme in *Nzabonimpa et al.* was aimed at obtaining the review of Ngirabatware's conviction in the *Ngirabatware* genocide case. Robinson's acts and conduct in the Indictment occurred while he was representing Ngirabatware in relation to the review case.[15]

16. The present case's close nexus with the *Nzabonimpa et al.* case, *Ngirabatware* review case, and the *Ngirabatware* genocide case*,* supports the conduct of the present case before the Mechanism. First, in terms of the underlying and related evidence, a great deal of the evidence in the present Robinson case will come from and be based on the records in the closely-related cases, in terms of such things as related procedural history and context, adjudicated facts and transcripts of Mechanism testimony and proceedings, also involving judicial economy.

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[13] *Nzabonimpa*, MICT-18116-T, Order Referring a Matter to the President, 20-September-2021, p.3 (emphasis added).

[14] *Turinabo,* p.5.

[15] Decision, para.2.

Second, it would bring closure to a long history of closely-related Mechanism proceedings, each related to and touching back on the others. As found in *Nzabonimpa et al.*, conducting the proceedings before the Mechanism would "bolster faith in international justice, promote visibility of the criminal process for witness interference [and prohibited witness contacts, like here], and deter similar offences."[16] The Mechanism must be seen as protecting its witnesses and enforcing its protective measures, even after the conclusion of trials. Another review case took place before the Mechanism based on an alleged recantation of witness testimony,[17] and other review cases could still be initiated before the Mechanism.

17. In addition, important evidence obtained during *Amicus* investigation is covered by a Rule 76 Order. The Appeals Chamber determined that this material can be used in the present case given Robinson's consent to its disclosure to *Amicus*. There is no guarantee that Robinson would agree to its full disclosure to State authorities. Indeed, Robinson attempted to bar *Amicus*' use of this material, and the matter had to be settled on appeal. One of the bases for Robinson invoking Rule 76, was the risk of parallel or related proceedings in Rwanda, the State at issue here.[18]

18. Regarding expediency, *Amicus* notes that Judge de Prada Solaesa tailored the Indictment in light of the "expenditure of resources" necessary to prosecute the crimes. Indeed, the Judge considered, in the exercise of his discretion whether to charge Robinson, the Mechanism's expenditure of resources necessary to prosecute various potential violations, and on this and other bases, declined to include various violations in the Indictment.[19]

19. Given that a State is free to determine which law applies to an accused's conduct,[20] the State authorities could decide to indict Robinson, based in part on the Decision, for various

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16 *Turinabo*, fn.24.

17 *Prosecutor v. Ntakirutimana,* MICT-12-27-R, Review Judgement, 22-November-2024.

18 *Nzabonimpa*, MICT-18-115-AR90.1, Decision on Appeal of Decision on the Use of Material Subject to Rule 76 in Further Proceedings, paras.15, 20, 25-26 and fn.8, 10.

19 Decision, paras.24, 26, 32, 37.

20 *Šešelj,* paras.12, 16.

conduct not included in the Indictment, likely making the proceedings longer and more complicated, where the case has already been tailored to proceed before the Mechanism, focusing on only some of the violations demonstrated by the *prima facie* evidence.

20. In addition, *Amicus* notes that the investigation phase before the Mechanism has been completed, and that it could have to be reopened by State authorities to determine which acts, if any, to indict, and pursuant to what laws and classification. In the *François Ngirabatware* case, the Mechanism found that "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."[21] This would necessarily create delays, compared to the present case at the Mechanism where the investigation has been completed and an Indictment has been issued. In *Turinabo et al.*, the Single Judge considered "the strong likelihood that this trial will commence and conclude more expeditiously if retained by the Mechanism. [22]

21. The State authorities would have to learn and prepare the case from scratch, while *Amicus* has detailed knowledge of the case, the evidence and the closely-linked cases, in particular, Ngirabatware's review case and the *Nzabonimpa et al.* case, which both took place before the Mechanism.

22. Given the strong nexus between the present case and other Mechanism cases, as found in *Nzabonimpa et al*, "maintaining jurisdiction will greatly facilitate access of the parties to relevant information in these related cases."[23]

23. Similarly, the admission of evidence from the connected cases before the ICTR and/or the Mechanism, pursuant to Rules 110 and 111 (including transcripts of evidence), and Rule 115(B) (judicial notice of adjudicated facts or of the authenticity of documentary evidence

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21 *F.Ngirabatware*, fn.11.

22 *Turinabo*, pp.4-5.

23 *Turinabo*, p.5.

relating to matters at issue in the current proceedings), would bolster the expediency of the proceedings before the Mechanism.

The State's legal framework

24. The crimes charged against Robinson consist of prohibited contacts with protected ICTR/Mechanism witnesses, in violation of the procedure for such contacts ordered at the ICTR/Mechanism, modified on 5-August-2016 "given the specific circumstances of Ngirabatware's case".[24] Robinson's acts and conduct are therefore closely linked to the Mechanism and its process for contacting protected witnesses set up by Mechanism's orders. In the *Nzabonimpa et al.* case, the Government of Rwanda submitted that: "(i) the case has a close nexus with the ongoing review proceedings in the case of *Prosecutor* v. *Augustin Ngirabatware,* (...) before the Mechanism; and (ii) allegations of contempt of the [ICTR] have a closer connection with the Mechanism than Rwandan courts".[25]

The accused's right to a fair trial

25. Witnesses may be wary to provide evidence for the Defence in Rwanda, particularly in the case of Robinson, given his former role as counsel for a person convicted for his role in the Rwandan genocide, in relation to a case which asked his conviction to be overturned.

26. Such fears of assisting or providing evidence favorable to the Defence are addressed in Annex A to these submissions.

27. In a Decision regarding the referral of a case to Rwanda, the Appeals Chamber found that the Trial Chamber did not err in refusing to refer a case in part because the accused may not obtain the attendance and examination of witnesses under the same conditions as witnesses against the accused. This was despite the fact that Rwanda had laws aimed at facilitating or enforcing the attendance of witnesses:

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[24] Order Referring a Matter to the President, p.2.

[25] *Turinabo,* pp.1-2.

> The Appeals Chamber observes that the information available to the Trial Chamber demonstrates that regardless of whether their fears are well-founded, witnesses in Rwanda may be unwilling to testify for the defence as a result of the fear that they may face serious consequences, including prosecution, threats, harassment, torture, arrest, or even murder. (...)
>
> The Appeals Chamber further considers that in making its finding on the availability of witnesses, the Trial Chamber did take into account the safeguards in Rwandan law to facilitate or if necessary enforce the attendance of witnesses living in Rwanda and abroad, including immunity and safe passage for defence witnesses.[26]

28. The Accused in *Nzabonimpa et al.* submitted that they would not receive a fair trial in Rwanda.[27]

RELIEF SOUGHT

The *Amicus Curiae* respectfully requests that the case titled *In the Matter of Peter Robinson* be conducted before the Mechanism.

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Respectfully submitted this 26-March-2025.

Kenneth Scott
Amicus Curiae

[26] *Prosecutor v. Hategekimana,* ICTR-00-55B-R11bis, Decision on the Prosecution's Appeal Against Decision on Referral under Rule 11bis, 4-December-2008, paras.21-23. *See also Prosecutor v. Kanyarukiga,* ICTR-2002-78-R11*bis*, Decision on the Prosecution's Appeal Against Decision on Referral under Rule 11bis, 30-October-2008, paras.21, 37.

[27] *Turinabo,* fn.16.

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