

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No: MICT-12-23-R14.1

Date: 5 June 2025

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BEFORE THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President

Registrar: Mr. Abubacarr M. Tambadou

THE PROSECUTOR

v.

FULGENCE KAYISHEMA

PUBLIC

**PUBLIC REDACTED VERSION OF MOTION FOR THE ASSIGNMENT OF A
TRIAL CHAMBER TO CONSIDER THE REVOCATION OF THE REFERRAL
DECISION AND RELATED REQUESTS**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Fulgence Kayishema:

Mr. Philippe Larochelle
Ms. Kate Gibson

I. INTRODUCTION

1. The Defence of Mr. Fulgence Kayishema (“Mr. Kayishema” and “Defence”, respectively) hereby requests that the President of the International Residual Mechanism for Criminal Tribunals (“the Mechanism” or “IRMCT” and “the President”, respectively) assign a Trial Chamber pursuant to Rule 14(C) of the IRMCT Rules of Procedure and Evidence (“Rules”) to consider the Defence’s request for the revocation of the “Decision on the Prosecutor’s Request for Referral to the Republic of Rwanda” issued by a Referral Chamber of the International Criminal Tribunal for Rwanda (“ICTR”) on 22 February 2012 (“Referral Decision”), pursuant to Article 6(6) of the Statute of the Mechanism (“the Statute”).
2. The assignment of a Trial Chamber is necessary at this juncture as Mr. Kayishema seeks to request the assignment of counsel in the interest of justice for the specific and limited purpose of assisting him in the preparation and litigation of his revocation request, pursuant to Rule 46 of the Rules. Therefore, in the present filing, the Defence requests that the President assign a Trial Chamber in accordance with Rule 14(C) of the Rules and that this Chamber instruct the Registry to assign counsel to Mr. Kayishema and issue a scheduling order setting out a briefing schedule for the present revocation proceedings.

II. RELEVANT PROCEDURAL HISTORY

3. On 10 June 2001, the ICTR Prosecutor filed an indictment against Mr. Kayishema, alleging his individual criminal responsibility for genocide, complicity in genocide, conspiracy to commit genocide, and extermination as a crime against humanity.¹
4. On 4 July 2001, ICTR Trial Chamber III issued a warrant of arrest for Mr. Kayishema, *inter alia* directing States to transfer Mr. Kayishema to the custody of the ICTR upon his arrest.²

¹ *Prosecutor v. Kayishema*, Case No. ICTR-2001-67-I, Indictment, 10 June 2001.

² *Prosecutor v. Kayishema*, Case No. ICTR-2001-67-I, Warrant of Arrest and Order for Transfer, 4 July 2001.

5. On 16 December 2008, following a request for referral from the ICTR Prosecutor (“First Referral Request”),³ a Referral Chamber of the ICTR denied the transfer of Mr. Kayishema’s case to Rwanda.⁴
6. On 22 February 2012, following a renewed request by the ICTR Prosecutor (“Second Referral Request”),⁵ a Referral Chamber of the ICTR issued the Referral Decision, *inter alia* transferring Mr. Kayishema’s case to Rwanda pursuant to Rule 11*bis* of the ICTR Rules of Procedure and Evidence (“ICTR Rules”).⁶
7. On 4 April 2012, in light of the Referral Decision, the President of the ICTR issued an amended warrant of arrest for Mr. Kayishema, *inter alia* directing States to transfer him to the custody of the Government of Rwanda (“GoR”) upon his arrest.⁷
8. On 7 May 2014, a Single Judge of the Mechanism issued a warrant of arrest for Mr. Kayishema, *inter alia* directing States to transfer him to Rwanda upon his arrest (“2014 Arrest Warrant”).⁸
9. On 7 March 2019, the Office of the Prosecutor of the Mechanism (“Prosecution”) filed (i) a motion to amend the 2014 Arrest Warrant to provide for Mr. Kayishema’s transfer to the custody of the Mechanism rather than Rwanda⁹ and (ii) a request to revoke the referral of Mr. Kayishema’s case to Rwanda on the basis of the fact that Mr. Kayishema had been granted refugee status in the Republic of South Africa (“South Africa”) with respect to Rwanda (“Prosecution Revocation Request”).¹⁰
10. On 8 March 2019, the Duty Judge of the Arusha Branch of the Mechanism (“Arusha Branch” and “Duty Judge”, respectively) issued an amended warrant of arrest for Mr.

³ *Prosecutor v. Kayishema*, Case No. ICTR-2001-67-I, Prosecutor’s Request for the Referral of the Case of Fulgence Kayishema to Rwanda pursuant to Rule 11 *bis* of the Tribunal’s Rules of Procedure and Evidence, 11 June 2010 (with public Annexes A–L).

⁴ *Prosecutor v. Kayishema*, Case No. ICTR-2001-67-I, Decision on the Prosecutor’s Request for Referral of Case to the Republic of Rwanda, 16 December 2008.

⁵ *Prosecutor v. Kayishema*, Case No. ICTR-2001-67-I, Prosecutor’s Request for the Referral of the Case of Fulgence Kayishema to Rwanda pursuant to Rule 11 *bis* of the Tribunal’s Rules of Procedure and Evidence, 4 November 2010 (with public Annexes A–K).

⁶ Referral Decision, p. 44.

⁷ *Prosecutor v. Kayishema*, Case No. ICTR-01-67-R11*bis*, Warrant of Arrest and Order for Transfer, 4 April 2012.

⁸ Warrant of Arrest and Order for Transfer Addressed to All States, 7 May 2014.

⁹ Urgent Motion for Amendment of Arrest Warrant, 7 March 2019 (public redacted version with confidential and *ex parte* Annex).

¹⁰ Urgent Motion for Revocation of Referral and Amendment of Arrest Warrant, 7 March 2019 (public redacted version with confidential and *ex parte* Annex).

Kayishema *inter alia* directing States to transfer him to the custody of the Mechanism upon his arrest (“2019 Arrest Warrant”).¹¹

11. On 26 September 2019, a Trial Chamber of the Mechanism dismissed the Prosecution Revocation Request without prejudice and decided to remain seized of the case.¹²
12. On 24 May 2023, Mr. Kayishema was arrested in South Africa on the basis of the 2019 Arrest Warrant.¹³
13. On 10 October 2024, the Defence filed a notice indicating its intention to seek the revocation of the Referral Decision and requesting the President convene a status conference.¹⁴
14. On 29 October 2024, the President denied the Defence request for a status conference.¹⁵
15. On 6 November 2024, the Defence sought the President’s review of the decision of the Registry denying Mr. Kayishema’s request for the assignment of counsel for the limited purposes of the preparation and litigation of the Revocation Request.¹⁶
16. On 16 December 2024, the President denied the Defence request for review of the Registry’s decision denying Mr. Kayishema’s request for legal aid.¹⁷
17. On 5 March 2025, in response to a Defence motion,¹⁸ the Duty Judge granted an extension of the word limit applicable to the Revocation Request as for the latter to not exceed 8,500 words and that any response filed thereto shall equally not exceed 8,500 words.¹⁹

¹¹ Warrant of Arrest and Order for Transfer Addressed to All States, 8 March 2019.

¹² Decision on Urgent Motion for Revocation of Referral and Amendment of Arrest Warrant, 26 September 2019, para. 12.

¹³ Decision on a Motion to Lift the Confidentiality of an Arrest Warrant, 7 September 2023 (“Decision of 7 September 2023”), p. 2.

¹⁴ Defence Notice of Intention to Seek Revocation of Referral Decision and Request for Status Conference, 10 October 2024 (confidential and *ex parte* with confidential and *ex parte* Annex); Public Redacted Version of Defence Notice of Intention to Seek Revocation of Referral Decision and Request for Status Conference, 10 October 2024 (with confidential and *ex parte* Annex).

¹⁵ Decision on Request for a Status Conference, 29 October 2024.

¹⁶ Defence Request for Review of Decision on Assignment of Counsel, 6 November 2024 (with public Annex A and confidential Annex B).

¹⁷ Decision on Defence Request for Review of Decision on Assignment of Counsel, 16 December 2024 (“Decision of 16 December 2024”), p. 4.

¹⁸ Motion for Variation of Word Limit Applicable to Revocation Request, 24 February 2025.

¹⁹ Decision on Kayishema Motion for Variation of Word Limit, 5 March 2025.

III. SKELETON GROUNDS FOR REVOCATION

18. The Defence intends to argue, in its Revocation Request, that the Referral Decision should be revoked in accordance with Article 6(6) of the Statute and Rule 14(C) of the Rules on the following grounds (collectively, “Skeleton Grounds”).
19. The Skeleton Grounds, set out below, are not substantiated by arguments or any supporting evidence, and do not constitute a Revocation Request, the preparation and filing of which would only be possible if Mr. Kayishema is assigned counsel.

A. Serious Risk of Death or Physical Harm at the Hands of the GoR

20. [REDACTED].²⁰
21. [REDACTED].²¹ [REDACTED].

B. Lack of Independence of Impartiality of the Rwandan Judiciary with Respect to Mr. Kayishema’s Case

22. Mr. Kayishema enjoys a well-established right to be tried before an independent and impartial tribunal,²² with this guarantee lying at the heart of an accused person’s broader right to a fair trial.²³ While the Rwandan Constitution enshrined the independence of the judiciary on paper,²⁴ in proceedings involving the transfer of cases, the relevant chamber must be satisfied that an accused *will* receive a fair trial—that is, that the trial will be fair *in fact*—if transferred and thus must look beyond the text of relevant domestic law and examine the practical reality.²⁵

²⁰ [REDACTED].

²¹ See Motion for Partial and Temporary Stay of Referral Decision, 9 January 2025 (confidential with confidential and *ex parte* Annex A and confidential Annexes B, C, and D), para. 14, Annexes B and C.

²² See International Covenant on Civil and Political Rights, 16 December 1966 (“ICCPR”), Art. 14(1); European Convention on Human Rights, 4 November 1950 (“ECHR”), At. 6(1); American Convention on Human Rights, 21 November 1969 (“ACHR”), Art. 8(1); African Charter on Human and Peoples’ Rights, 27 June 1981 (“AfrCHPR”), Art. 26.

²³ *Prosecutor v. Karadžić*, Case No. MICT-13-55-A, Judgment, 20 March 2019, para. 352; *Prosecutor v. Ngirabatware*, Case No. MICT-12-29-R, Order to Government of the Republic of Turkey for the Release of Judge Aydın Sefa Akay, 31 January 2017, para. 11, and references cited therein.

²⁴ Constitution of the Republic of Rwanda, last amended 2 June 2023, Arts 61 and 150.

²⁵ *Prosecutor v. Stanković*, Case No. IT-96-23/2-AR11bis.1, Decision on Rule 11bis Referral, 1 September 2005 (“*Stanković* Appeal Decision”), para. 19; *Prosecutor v. Janković*, Case No. IT-96-23/2-AR11bis.2, Decision on Rule 11bis Referral, 15 November 2005, para. 54. See also *Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75-AR11bis, Decision on Uwinkindi’s Appeal Against the Referral of his Case to Rwanda and Related Motions, 16

23. The Defence avers that, when considered in conjunction with Skeleton Grounds C and D below, the individual circumstances of Mr. Kayishema's case result in the real and present risk of political interference in the independence and impartiality of the proceedings that contravene Mr. Kayishema's right to a fair trial and thus necessitate the revocation of the Referral Decision.

C. Inadequate Guarantees of the Right to a Defence

24. Mr. Kayishema enjoys the right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.²⁶ While Article 14(4) of Law No. 47/2013 relating to the Transfer of Cases ("Transfer Law") safeguards this right on paper,²⁷ the relevant chamber must be satisfied that the accused will enjoy this right in practice. Issues concerning the resources of defence teams in transferred cases as the concern of the Mechanism insofar as they may affect *inter alia* the adequacy of time and facilities for the preparation of an accused's defence.²⁸
25. The Defence submits that, in reality, in a case such as that of Mr. Kayishema, the accused's right to a defence cannot properly be safeguarded. The Defence observes that the monitoring records in the transferred *Uwinkindi*, *Munyagishari*, and *Ntaganzwa* proceedings evince that the accused in those cases experienced regular and unacceptable impediments and interferences to their right to a defence. It is the Defence's submission that, particularly in light of the authoritarian nature of the GoR and widespread fear on the part of potential witnesses, the present conditions in Rwanda are insufficient to ensure that Mr. Kayishema will enjoy an unimpeded right to an adequate defence. On this basis, the Referral Decision must be revoked.

D. Prospective Unavailability of Defence Witnesses

December 2011 ("*Uwinkindi* Appeal Decision of 16 December 2011"), para. 67 ("[t]he relevant inquiry is a fact-based assessment").

²⁶ ICCPR, Art. 14(3)(d); ECHR, Art. 6(3)(c); ACHR, Art. 8(2)(d); AfrCHPR, Art. 7(c); IRMCT Statute, Art. 19(4)(b).

²⁷ Law No. 47/2013 relating to the Transfer of Cases to the Republic of Rwanda, 16 June 2013 ("Transfer Law"), Art. 14(4).

²⁸ See, e.g., *Uwinkindi* Appeal Decision of 16 December 2011, para. 52; *Uwinkindi* First Revocation Decision, para. 84; *Prosecutor v. Munyagishari*, Case No. MICT-12-20, Decision on Second Request for Revocation of an Order Referring a Case to the Republic of Rwanda, 26 June 2014, p. 3.

26. Mr. Kayishema enjoys the right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.²⁹ The unavailability of witnesses prejudices this right.³⁰ While Article 14(10) of the Transfer Law also safeguards this right on paper,³¹ the relevant chamber must be satisfied that the accused will enjoy this right in practice.
27. Prospective Defence witnesses, both those currently residing in Rwanda and those residing in other States, suffer significant and reasonable fears of retaliation should they testify on behalf of Mr Kayishema. These fears cannot adequately be mitigated against by existing witness protection mechanisms. Such fears, which result in witnesses being less likely to testify, occasion a breach of Mr. Kayishema's right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. On this basis, the Referral Decision must be revoked.

IV. THE ASSIGNMENT OF A TRIAL CHAMBER IS APPROPRIATE AT THE PRESENT JUNCTURE

28. The Defence submits that it is appropriate and in accordance with the relevant provisions of the Statute and Rules for the President to assign a Trial Chamber to consider whether to revoke the Referral Decision.
29. In particular, the assignment of a Trial Chamber is required at the present time so the Chamber can decide whether to instruct the Registry to assign counsel to Mr. Kayishema in the interests of justice pursuant to Rule 46 of the Rules, as requested by the present filing.
30. With regard to the assignment of a Trial Chamber in the context of revocation proceedings, Article 6(6) of the Statute provides, in relevant part, as follows:

[W]here 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

²⁹ See ICCPR, Art. 14(3)(e); ECHR, Art. 6(3)(d); IMRCT Statute, Art. 19(4)(e).

³⁰ See, e.g., *Prosecutor v. Ademi and Norac*, Case No. IT-04-78-PT, Decision for Referral to the Authorities of the Republic of Croatia Pursuant to Rule 11 *bis*, 14 September 2005, para. 49; *Prosecutor v. Hategekimana*, Case No. ICTR-00-55B-R11*bis*, Decision on Prosecutor's Request for the Referral of the Case of Ildephonse Hategekimana to Rwanda, 19 June 2008, para. 61.

³¹ Transfer Law, Art. 14(10).

concerned the opportunity to be heard, revoke the order and make a formal request for deferral.

31. Rule 14(C) of the Rules provides as follows with respect to the President's authority to assign a Trial Chamber in the context of revocation proceedings:

At any time after an order of referral has been issued by the ICTY, the ICTR, or the Mechanism pursuant to Article 6 of the Statute and before the accused is found guilty or acquitted by a court in the State concerned, the President may, *proprio motu* or at the request of the Prosecutor, assign a Trial Chamber that shall decide, pursuant to Article 6, paragraph 6, of the Statute, whether to revoke the order and make a formal request for deferral.

32. Neither Article 6(6) of the Statute nor Rule 14(C) of the Rules precludes the President from assigning a Trial Chamber prior to the formal filing of a revocation request. On the contrary, such an assignment is legally permissible and procedurally appropriate where it serves to safeguard the fairness of prospective revocation proceedings.
33. Article 6(6) merely provides that the "Trial Chamber may ... revoke the order and make a formal request for deferral." This wording presupposes that the merits of revocation requests are to be decided *by* a Trial Chamber but does not require that a formal request be filed as a prerequisite for the assignment of such a Chamber.³²
34. The Defence emphasizes that the fairness of the present revocation proceedings is contingent upon Mr. Kayishema being afforded effective legal assistance in preparing his revocation request.³³ The issue of legal aid is, therefore, not ancillary—it goes to the heart of the integrity and fairness of the proceedings that will ultimately be adjudicated by the Trial Chamber. Therefore, the Trial Chamber has a direct and legitimate interest in considering the Defence request for legal aid as a function of its prerogative to ensure the fairness of proceedings before it,³⁴ including those concerning the revocation of a referral decision.

³² Note also that Article 6(6) of the Statute and Rule 14(C) of the Rules provides for the assignment of a Trial Chamber by the President *proprio motu* without any request by either party.

³³ On the necessity of the assignment of legal aid in the interests of justice, see *infra* Section V.

³⁴ See Article 18(1) of the Statute; Rule 70(B) of the Rules.

35. The Defence accordingly submits that the Trial Chamber should be assigned *now* in order to consider Mr. Kayishema's request for legal aid for the specific and limited purpose of preparing his Revocation Request.
36. The approach adopted in the *Uwinkindi* revocation proceedings is instructive. In that case, the accused merely expressed an intent to challenge the referral of his case on the grounds of alleged violations of his fair trial rights. Although a formal revocation request had not been submitted, nor a written brief in support of his *viva voce* expressed desire for the revocation of his case's referral, the President nonetheless assigned a Trial Chamber pursuant to Rule 14(C) to oversee the matter.³⁵
37. This demonstrates that the President may assign a Trial Chamber under Rule 14(C) before a formal request for revocation is lodged, particularly where there is a good-faith indication of a forthcoming revocation request.
38. Moreover, following the assignment of a Trial Chamber in *Uwinkindi*, the Pre-Trial Judge was actively concerned with the fairness of the proceedings, as evidenced *inter alia* by his instruction for the Registry to assign counsel to the accused and his order for the accused to submit a written brief advancing his argument for revocation once counsel was assigned to him.³⁶
39. The assignment of the present request for the assignment of counsel to a Trial Chamber is more appropriate than its assignment to the Duty Judge. Matters within the competence of the Duty Judge are strictly those "not assigned to a Single Judge or Trial Chamber".³⁷ While previous motions in the present case have been assigned to the Duty Judge for adjudication,³⁸ the present request for legal aid is distinct as it relates directly

³⁵ *Prosecutor v. Uwinkindi*, Case No. MICT-12-25-R14.1, Decision on Request for Revocation and Assignment Order, 13 May 2015, pp. 2–3.

³⁶ *Prosecutor v. Uwinkindi*, Case No. MICT-12-25-R14.1, Scheduling Order, 22 May 2015 ("*Uwinkindi* Scheduling Order"), pp. 1–2.

³⁷ Rule 28 of the Rules. See also *Prosecutor v. Turinabo et al.*, Case No. MICT-18-116, Decision on a Request for a Variation of Nondisclosure Order and for a Public Redacted Version of an Indictment, 5 September 2015, p. 1, fn. 1 ("This case has not yet been assigned to a Single Judge. Accordingly, I have jurisdiction to consider any urgent matters transmitted to me for decision in relation to this case in my capacity as duty judge *until this case is assigned to a Single Judge*" (emphasis added)).

³⁸ See Order Assigning a Single Judge, 27 May 2024; Order Assigning the Duty Judge for the Arusha Branch to Consider a Motion, 21 January 2025 (confidential); Order Assigning the Duty Judge for the Arusha Branch to Consider a Motion, 3 March 2025.

to the revocation of the Referral Decision, a matter that falls within the exclusive purview of a Trial Chamber assigned by the President under Rule 14(C) of Rules.

40. Accordingly, the Defence respectfully requests that the President assign a Trial Chamber at this juncture, not to adjudicate the merits of revocation prematurely, but to ensure that Mr. Kayishema enjoys the specific and limited legal aid necessary to prepare and present his request effectively. This assignment is consistent with the Statute, the Rules, past practice, and fair trial rights of the accused.

V. ASSIGNMENT OF COUNSEL IS NECESSARY IN THE INTERESTS OF JUSTICE

41. Should the President assign a Trial Chamber, the Defence requests that the assigned Chamber instruct the Registry to assign counsel to Mr. Kayishema, renumarated under the Mechanism’s legal aid mechanism for the specific and limited purpose of assisting Mr. Kayishema in the preparation and litigation of his revocation request.
42. Rule 46 of the Rules provides that “[t]he Trial Chamber may, if it decides that it is in the interests of justice, instruct the Registrar to assign a Counsel to represent the interests of the accused.” In fact, international human rights law *requires* the assignment of legal aid where the interests of justice require so.³⁹ In a prior decision denying the assignment of counsel in this case, the President noted that Mr. Kayishema is not precluded from seeking legal aid under Rule 46 of the Rules “at the appropriate juncture”.⁴⁰ Mr Kayishema now needs to prepare and file a Revocation Request on the basis of the above Skeleton Grounds, and requires renumarated legal assistance to do so, making it an appropriate time to make the present request.
43. Furthermore, in the context of Rule 45 *quarter* of the ICTR Rules, which functions *mutandis mutatis* to Rule 46 of the Rules, the ICTR Trial Chamber seized of the First Referral Request in the present case held that “there is no requirement for the accused to be in the custody of the Tribunal for Rule 45 *quarter* [of the ICTR Rules] to apply”.⁴¹ The ICTR Trial Chamber seized of the Second Referral Request similarly affirmed that

³⁹ See, e.g., ICCPR, Art. 14(3)(d); ECHR, Art. 6(3)(c).

⁴⁰ Decision of 16 December 2024, p. 4.

⁴¹ *Prosecutor v. Kayishema*, Case No. ICTR-01-67-R11bis, Decision on the Referral of the Application to Appoint Defence Counsel, 2 May 2008, para. 8.

counsel may be assigned to represent Mr. Kayishema in the interests of justice even when he was not in the custody of the ICTR.⁴²

44. In considering whether the interests of justice require the assignment of legal aid, several factors are relevant: *inter alia* the complexity of the proceedings, the seriousness of the charges against the accused, and the importance of the issues or procedures involved.⁴³
45. The Defence recalls that the Registry assigned Mr. Jean-Bosco Uwinkindi legal aid under Rule 43(A) of the Rules following the assignment of his revocation request to a Trial Chamber by the President.⁴⁴
46. Counsel are assigned in complex post-conviction matters,⁴⁵ such as review proceedings,⁴⁶ to ensure the fairness of such proceedings. While revocation proceedings differ from review proceedings in several important respects, the approach of the Appeals Chamber to the assignment of counsel in review proceedings should be considered as instructive *pari passu* the jurisprudence of the ICTR and the Mechanism on legal aid in referral and revocation proceedings.⁴⁷
47. In this sense, proceedings concerning the revocation of the Referral Decision are sufficiently complex to warrant the assignment of counsel under Rule 46 of the Rules. The Referral Decision was issued more than 13 years ago and the task of making submissions, in sufficient detail, on how the conditions in Rwanda have changed to the detriment of his prospects for a fair trial in this over-a-decade-long period is one of

⁴² *Prosecutor v. Kayishema*, Case No. ICTR-01-67-R11bis, Order for the Assignment of Counsel, 27 July 2011, para. 6.

⁴³ See, e.g., *Pakelli v. Germany*, App. No. 8398/78, Judgment, ECtHR, 25 April 1983, paras 36–38; *Artico v. Italy*, App. No. 6694/74, Judgment, ECtHR, 13 May 1980, para. 34; *Benham v. United Kingdom*, App. No. 19380/92, Judgment, ECtHR (Grand Chamber), 10 June 1996, para. 60.

⁴⁴ *Prosecutor v. Uwinkindi*, Case No. MICT-12-24-R14.1, Decision, 22 June 2015. See *Prosecutor v. Uwinkindi*, Case No. MICT-12-25-R14.1, Decision on Request for Revocation of an Order Referring a Case to the Republic of Rwanda and Assigning a Trial Chamber, 13 May 2015. See also Decision of 16 December 2024, p. 4, fn. 25.

⁴⁵ See *In the Matter of Nzuwonemeye et al.*, Case No. MICT-22-124, Decision on Joint Request for Assignment of Counsel, Extension of Time to File an Appeal, and Scheduling a Status Conference, 15 March 2022, p. 3, and references cited therein.

⁴⁶ See, e.g., *Niyitegeka v. The Prosecutor*, Case No. MICT-12-16-R, Decision on Niyitegeka’s Request for Review and Assignment of Counsel, 13 July 2015 (“*Niyitegeka* Decision”), para. 8; *Prosecutor v. Ntakirutimana*, Case No. MICT-12-17-R, Decision on a Request for Assignment of Counsel, 4 July 2018 (“*Ntakirutimana* Decision”), para. 5, and references cited in both.

⁴⁷ See *Prosecutor v. Ntawukulilyayo*, Case No. MICT-13-34-ES, Decision on Dominique Ntawukulilyayo’s Request For Legal Aid, 12 June 2018 (“*Ntawukulilyayo* Decision”), para. 11 (adopting such an approach with respect to legal aid in early release proceedings).

considerable complexity. It involves an analysis of Rwandan domestic criminal law and procedure in practice, consultation with relevant experts on the Rwandan justice system, the profiling of the experiences of other cases that have been referred from the ICTR to and tried in Rwanda, the collection of affidavits from experts, past defendants in transferred cases, and potential witnesses in the present case, and many hours of work by the Defence.

48. To require Mr. Kayishema to make submissions in support of his request while only enjoying the representation of non-remunerated counsel would unfairly prejudice Mr. Kayishema's right to effective representation and his right to have adequate time and resources to conduct his defence. The assignment of Counsel under such circumstances is thus an imperative of the interests of justice.
49. Furthermore, allowing Mr. Kayishema to submit a more comprehensive brief with the support of remunerated legal representation comports with the comparable procedure in review proceedings, where legal aid is assigned for the purpose of assisting the convicted person in preparing their review request, and it is not expected that the convicted person will be able to present their arguments in full prior to the allocation of legal aid.⁴⁸ In the context of review proceedings, it is only necessary that an applicant supplement their request for legal aid with information as to the potential grounds for review they intend to raise, not that they fully substantiate these potential grounds for review. This is the case even where the convicted person benefits from the representation of *pro bono* counsel prior to the assignment of legal aid.⁴⁹
50. The Defence has submitted sufficient information, in the form of the Skeleton Grounds, on the basis of which the Trial Chamber can consider its request for the assignment of counsel for the purposes of making more detailed submissions.

⁴⁸ See, e.g., *Kamuhanda v. The Prosecutor*, Case No. ICTR-99-544-R, Decision on Motion for Legal Assistance, 21 July 2009, para. 19; *Niyitegeka* Decision, para. 12.

⁴⁹ See *Ntakirutimana* Decision, paras 6–7. See also *Ntawukuliyayo* Decision, paras 12–14 (granting legal aid to a convicted person in early release proceedings despite the fact that he had already filed an application for early release with the assistance of *pro bono* counsel, specifying the grounds he intends to raise).

51. Accordingly, should the President assign a Trial Chamber under Rule 14(C) of the Rules, Mr. Kayishema requests that the Trial Chamber assign Mr. Kayishema counsel in the interests of justice pursuant to Rule 46 of the Rules.⁵⁰

VI. REQUEST FOR SCHEDULING ORDER

52. Should the President assign a Trial Chamber pursuant to Rule 14(C) of the Rules, the Defence further requests that the assigned Chamber issue a scheduling order concerning the conduct of revocation proceedings. The Defence submits the Trial Chamber could consider the scheduling order issued by the Pre-Trial Judge in the *Uwinkindi* revocation proceedings on 22 May 2015 as a model for the conduct of the present proceedings.⁵¹
53. In proceedings concerning referrals to national jurisdictions, the Trial Chamber retains broad authority to issue orders it finds reasonably necessary and solicit information it finds reasonably necessary to assist in determining whether the proceedings following transfer will be fair.⁵² Furthermore, as Rule 14 of the Rules does not prescribe any particular requirements as to what submission and material a Trial Chamber may consider in referral proceedings, Trial Chambers enjoy considerable discretion in authorizing filings by parties and setting schedules in such proceedings.⁵³
54. Accordingly, in order to ensure the orderly conduct of revocation proceedings, the Defence requests that the assigned Trial Chamber issue a scheduling order requiring:
- (i) the Defence to file a Brief in Support of Revocation within a deadline the Chamber considers reasonable following the assignment of counsel by the Registry;

⁵⁰ Cf. *Prosecutor v. Kayishema*, Case No. ICTR-2001-67-I, Referral of the Application to Appoint Defence Counsel, 13 November 2007 (where the ICTR President referred the matter of the assignment of legal aid to Mr. Kayishema in referral proceedings to the Referral Chamber considering the First Referral Request).

⁵¹ See *Uwinkindi* Scheduling Order.

⁵² *Stanković* Appeal Decision, para. 50; *Munyagishari v. The Prosecutor*, Case No. ICTR-01-89-AR11bis, Decision on Bernard Munyagishari's Third and Fourth Motions for Admission of Additional Evidence and on the Appeals Against the Decision on Referral under Rule 11 bis, 3 May 2013, para. 95, and references cited therein.

⁵³ See *Prosecutor v. Kayishema*, Case No. ICTR-2001-67-I, Decision on the Defence's Request for the Extension of Time to File a Comprehensive Response to the Prosecutor's Motion for Referral as Well as to All Other Requests and Briefs Filed in That Motion, 1 July 2008, paras 5–6.

- (ii) the Prosecution, the GoR, and the Government of South Africa⁵⁴ to file Briefs in Response, if any, within a deadline the Chamber considers reasonable following the filing of the Defence Brief; and
- (iii) the Defence file a consolidated reply, if any, to any Briefs in Response within a deadline the Chamber considers reasonable following the filing of any Briefs in Response.

VII. CLASSIFICATION

55. The present filing is classified as confidential as it contains sensitive non-public information regarding the safety and security of Mr. Kayishema.⁵⁵ A public redacted version shall be filed concurrently.

VIII. REQUEST FOR RELIEF

56. On the basis of the foregoing submissions, Mr. Kayishema respectfully requests that the President:

ASSIGN a Trial Chamber to the present revocation proceedings pursuant to Rule 14(C) of the Rules; and

REFER consideration of the request for assignment of counsel and request for a scheduling order to the Trial Chamber assigned to consider the Revocation Request.

57. Furthermore, should the President assign a Trial Chamber as requested, Mr. Kasyishema respectfully requests that the Chamber:

INSTRUCT the Registry to assign him counsel renumarated under the Mechanism's legal aid scheme pursuant to Rule 46 of the Rules; and

ISSUE a scheduling order setting out the briefing schedule proposed in paragraph 63 above, or, in the alternative, a briefing schedule the Chambers sees fit.

⁵⁴ The Defence notes that the observations of the Government of South Africa will particularly aid the Trial Chamber with regard to Skeleton Ground A.

⁵⁵ See Practice Direction on Judicial Records, MICT/42, 25 May 2023, Art. 13(10).

Word Count: 5,207 words



Mr. Philippe Larochelle
Counsel for Fulgence Kayishema

Respectfully submitted this 5 June 2025,
At Montréal, Canada



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Case Name/ Affaire :	The Prosecutor v. Fulgence Kayishema		Case Number/ Affaire n° :	MICT-12-23-R14.1
Date Created/ Daté du :	5 June 2025		Date transmitted/ Transmis le :	5 June 2025
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