

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

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

Date: 4 July 2025

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President

Registrar: Mr. Abubacarr M. Tambadou

Decision of: 4 July 2025

PROSECUTOR

v.

FULGENCE KAYISHEMA

PUBLIC

**DECISION ON FULGENCE KAYISHEMA'S MOTION
FOR THE ASSIGNMENT OF A TRIAL CHAMBER**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Mr. Fulgence Kayishema:

Mr. Philippe Larochelle
Ms. Kate Gibson

I, GRACIELA GATTI SANTANA, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively);

RECALLING that, on 22 February 2012, a Trial Chamber of the International Criminal Tribunal for Rwanda (“ICTR”) referred the case against Mr. Fulgence Kayishema (“Kayishema”) to the authorities of the Republic of Rwanda (“Rwanda”) for trial before the High Court of Rwanda;¹

RECALLING that, on 26 September 2019, a Trial Chamber of the Mechanism dismissed without prejudice the motion of the Office of the Prosecutor of the Mechanism (“Prosecution”) for the revocation of the Referral Decision;²

RECALLING that, on 24 May 2023, Kayishema was arrested in the Republic of South Africa, where he remains pending his transfer to the custody of the Mechanism for the purpose of his onward transfer to Rwanda;³

RECALLING that, on 11 October 2024, Kayishema, with the assistance of *pro bono* Counsel recognised by the Mechanism, filed a notice of intention to seek revocation of the Referral Decision;⁴

RECALLING that, on 16 December 2024, I denied Kayishema’s request for review of an administrative decision of the Registrar of the Mechanism rejecting the assignment of Counsel, observing that Kayishema is benefitting from *pro bono* legal assistance and is not precluded from seeking legal aid pursuant to Rule 46 of the Rules of Procedure and Evidence of the Mechanism (“Rules”) at the appropriate juncture;⁵

BEING SEISED of a motion filed on 5 June 2025, wherein Kayishema requests, *inter alia*, that I assign, pursuant to Rule 14(C) of the Rules, a Trial Chamber and refer his requests: (i) for the assignment of Counsel under the Mechanism’s legal aid system for the purpose of assisting him in

¹ *Prosecutor v. Fulgence Kayishema*, Case No. ICTR-01-67-R11bis, Decision on Prosecutor’s Request for Referral to the Republic of Rwanda, 22 February 2012 (“Referral Decision”), para. 162, p. 44.

² See *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on Urgent Motion for Revocation of Referral and Amendment of Arrest Warrant, 26 September 2019, paras. 9, 12.

³ *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on Fulgence Kayishema Motion for Disclosure and Reclassification, 28 June 2024, pp. 2, 4.

⁴ *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Public Redacted Version of Defence Notice of Intention to Seek Revocation of Referral Decision and Request for Status Conference, 11 October 2024, paras. 1-2, 20. A confidential and *ex parte* version was filed on the same day.

⁵ *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on Defence Request for Review of Decision on Assignment of Counsel, 16 December 2024, p. 4.

the preparation and litigation of his request for revocation of the Referral Decision; and (ii) for a briefing schedule for the revocation proceedings;⁶

NOTING Kayishema’s submission that such assignment of Counsel is, at this juncture, necessary, appropriate, and consistent with the Statute of the Mechanism (“Statute”), the Rules, prior practice, and fair trial rights;⁷

NOTING the Prosecution’s response filed on 19 June 2025, arguing that the Motion should be rejected, *inter alia*, because Kayishema has not yet submitted to the Mechanism’s jurisdiction, and the assignment of Counsel at the expense of the Mechanism at this stage is neither in the interests of judicial efficiency nor justice;⁸

NOTING Kayishema’s request for leave to file a reply filed on 26 June 2025,⁹ and the Prosecution’s request for leave to file a supplemental response filed on 1 July 2025;¹⁰

FINDING that the Request to Reply and the Request for Supplemental Response have not persuaded me that additional submissions are necessary in deciding the Motion and therefore are dismissed;

NOTING that, pursuant to Rule 14(C) of the Rules, at any time after an order of referral has been issued by the International Criminal Tribunal for the former Yugoslavia, the ICTR, or the Mechanism 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 of the Mechanism, assign a Trial Chamber that shall decide whether to revoke the order and make a formal request for deferral;¹¹

⁶ Motion for the Assignment of a Trial Chamber to Consider the Revocation of the Referral Decision and Related Requests, 5 June 2025 (confidential) (“Motion”), paras. 1-2, 56. *See* Motion, paras. 41, 51-52, 57. A public redacted version was filed on the same day. The Motion exceeds the prescribed word limit and Kayishema has neither sought prior authorisation nor provided an explanation of the exceptional circumstances that necessitated this oversized filing. However, I consider that it is in the interests of justice to exceptionally accept the Motion as validly filed. *See* Practice Direction on Lengths of Briefs and Motions, MICT/11/Rev.1, 20 February 2019, Articles 15, 17.

⁷ Motion, paras. 2, 28-38, 40. *See* Motion, paras. 39, 42-50.

⁸ Prosecution Response to Kayishema Motion for the Assignment of a Trial Chamber to Consider the Revocation of the Referral Decision and Related Requests, 19 June 2025 (confidential) (“Response”), paras. 1, 12-20. *See* Response, para. 3.

⁹ Request for Leave to Reply and Reply to Prosecution Response to Defence Motion for Assignment of Trial Chamber and Related Requests, 26 June 2025 (confidential) (“Request to Reply”).

¹⁰ Prosecution Request for Leave and Supplemental Response to Kayishema Motion for the Assignment of a Trial Chamber, 1 July 2025 (“Request for Supplemental Response”).

¹¹ *See also* Article 6(6) of the Statute.

CONSIDERING that the assignment of a Trial Chamber is a procedural step in the context of revocation proceedings¹² that should not be undertaken in the abstract or in anticipation of such proceedings that may or may not materialise;

CONSIDERING that Kayishema, who continues to benefit from *pro bono* legal assistance, has affirmatively indicated that the Motion is not a request for revocation of the Referral Decision;¹³

CONSIDERING further that Kayishema may seek all appropriate relief, including the assignment of Counsel under Rule 46 of the Rules, in conjunction with or following any request for revocation of the Referral Decision that may be assigned to a Trial Chamber pursuant to Rule 14(C) of the Rules;

FINDING that, in the particular circumstances of this case, Kayishema has not demonstrated that a Trial Chamber should be assigned pursuant to Rule 14(C) of the Rules;

FOR THE FOREGOING REASONS,

HEREBY DENY the Motion.

Done in English and French, the English version being authoritative.

Done this 4th day of July 2025,
At Arusha,
Tanzania.



Judge Graciela Gatti Santana
President

[Seal of the Mechanism]

¹² See *Prosecutor v. Jean 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 (assigning a Trial Chamber to consider a request for revocation raised by Mr. Jean Uwinkindi).

¹³ Motion, paras. 18-19, 41-42.



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