

**UNITED -
NATIONS**



International Residual Mechanism
for Criminal Tribunals

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

Date: 26 August 2025

Original: English

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 “REQUEST FOR REVOCATION OF
REFERRAL TO THE REPUBLIC OF RWANDA” DATED 12 AUGUST 2025**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Fulgence Kayishema:

Mr. Philippe Larochelle
Ms. Kate Gibson

I. INTRODUCTION

1. Mr. Fulgence Kayishema (“Mr. Kayishema”) has already given notice that he seeks the revocation of the referral of his case to the Republic of Rwanda (“Rwanda”). He has, accordingly, seized the International Residual Mechanism for Criminal Tribunals (“IRMCT” or “the Mechanism”) with numerous submissions to this end, repeatedly submitting that he is not in the position, as an indigent accused detained in the Republic of South Africa (“South Africa”), to prepare comprehensive submissions in support of the revocation of the decision of 22 February 2012 referring his case to Rwanda (“Referral Decision”)¹ without the assignment of legal aid.
2. All requests for legal aid have been denied. As such, Mr. Kayishema now formally requests the revocation of the Referral Decision pursuant to Article 6(6) of the Statute of the Mechanism (“Statute”) and Rule 14(C) of the Rules of Procedure and Evidence of the Mechanism (“Rules”).
3. In seeking revocation at this time, Mr. Kayishema reserves his right to seize the Trial Chamber assigned to consider the present request with further requests for the assignment of legal aid and for leave to submit a supplemental brief in support of the present request with the benefit of renumeralated counsel in order to safeguard his right to adequate resources in the preparation of his defence.

II. PROCEDURAL BACKGROUND

4. On 10 June 2001, the Prosecutor of the International Criminal Tribunal for Rwanda (“ICTR”) 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.²
5. 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.³

¹ Decision on Prosecutor’s Request for Referral to the Republic of Rwanda, 22 February 2012 (“Referral Decision”).

² Indictment, 10 June 2001.

³ Warrant of Arrest and Order for Transfer, 4 July 2001.

6. On 16 December 2008, following a request for referral from the ICTR Prosecutor (“First Referral Request”),⁴ a Referral Chamber of the ICTR denied the transfer of Mr. Kayishema’s case to Rwanda.⁵
7. On 22 February 2012, following a renewed request by the ICTR Prosecutor (“Second Referral Request”),⁶ 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”).⁷
8. 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.⁸
9. 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”).⁹
10. 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 Rwanda¹⁰ 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 South Africa with respect to Rwanda (“Prosecution Revocation Request”).¹¹
11. On 8 March 2019, the Duty Judge of the Arusha Branch of the Mechanism issued an amended warrant of arrest for Mr. Kayishema *inter alia* directing States to transfer him to the custody of the Mechanism upon his arrest (“2019 Arrest Warrant”).¹²

⁴ 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).

⁵ Decision on the Prosecutor’s Request for Referral of Case to the Republic of Rwanda, 16 December 2008.

⁶ 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).

⁷ Referral Decision, p. 44.

⁸ Warrant of Arrest and Order for Transfer, 4 April 2012.

⁹ Warrant of Arrest and Order for Transfer Addressed to All States, 7 May 2014.

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

¹¹ Urgent Motion for Revocation of Referral and Amendment of Arrest Warrant, 7 March 2019 (public redacted version with confidential and *ex parte* annex).

¹² Warrant of Arrest and Order for Transfer Addressed to All States, 8 March 2019.

12. 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.¹³
13. On 24 May 2023, Mr. Kayishema was arrested in South Africa on the basis of the 2019 Arrest Warrant.¹⁴
14. 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.¹⁵
15. On 29 October 2024, the President denied the Defence request for a status conference.¹⁶
16. 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 a revocation request.¹⁷
17. 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.¹⁸
18. On 5 June 2025, the Defiled filed a "Motion for the Assignment of a Trial Chamber to Consider the Revocation of the Referral Decision and Related Requests" ("Motion of 5 June 2025").¹⁹
19. On 4 July 2025, the President denied the Motion of 5 June 2025.²⁰

III. APPLICABLE LAW

¹³ Decision on Urgent Motion for Revocation of Referral and Amendment of Arrest Warrant, 26 September 2019, para. 12.

¹⁴ Decision on a Motion to Lift the Confidentiality of an Arrest Warrant, 7 September 2023 ("Decision of 7 September 2023"), p. 2.

¹⁵ 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 (public with confidential and *ex parte* annex).

¹⁶ Decision on Request for a Status Conference, 29 October 2024.

¹⁷ Defence Request for Review of Decision on Assignment of Counsel, 6 November 2024 (with public Annex A and confidential Annex B).

¹⁸ Decision on Defence Request for Review of Decision on Assignment of Counsel, 16 December 2024 ("Decision of 16 December 2024"), p. 4.

¹⁹ Motion for the Assignment of a Trial Chamber to Consider the Revocation of the Referral Decision and Related Requests, 5 June 2025 (confidential; public redacted version filed the same day).

²⁰ Decision on Fulgence Kayishema's Motion for the Assignment of a Trial Chamber, 4 July 2025 ("Decision of 4 July 2025").

20. Article 6(6) of the Statute provides that, after a case has been referred to a national jurisdiction by the International Criminal Tribunal for the former Yugoslavia (“ICTY”), the ICTR, or the Mechanism, a Trial Chamber may revoke such a referral if the conditions for referral are no longer met and where it would be in the interests of justice to do so.
21. Furthermore, Rule 14(C) provides that the President may assign a Trial Chamber to decide, pursuant to Article 6(6) of the Statute, whether to revoke the referral order and make a formal request for deferral to the relevant State authorities.
22. In considering whether the conditions for referral are no longer met, it is primarily the responsibility of the Trial Chamber to determine whether the conditions for a fair trial in the domestic jurisdiction no longer exist.²¹
23. While cases involving charges of contempt under Rule 90 are subject to a preference in favour of referral,²² such a preference does not apply to core crimes cases involving alleged offences under Articles 2 to 4 of the ICTR Statute or Articles 2 to 5 of the ICTY Statute.

IV. MR. KAYISHEMA HAS STANDING TO SEEK REVOCATION

24. Mr. Kayishema has standing before the Mechanism to seek the revocation of the Referral Decision. The Appeals Chamber has held that despite the absence of explicit language in the relevant legal texts granting the accused standing to seek the revocation of their case’s referral to a national jurisdiction, Trial Chambers assigned under Rule 14(C) have “inherent jurisdiction” to consider revocation requests lodged by the accused.²³ Moreover, every accused who has sought the revocation of a referral order

²¹ *Prosecutor v. Uwinkindi*, Case No. MICT-12-25-AR14.1, Decision on an Appeal Concerning a Request for Revocation of a Referral, 4 October 2016 (“*Uwinkindi* Revocation Appeal Decision”), para. 12.

²² *See Prosecutor v. Jojić and 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, para. 11; *Prosecutor v. Šešelj et al.*, Case No. MICT-23-129-I, Decision on Referral of the Case to the Republic of Serbia, 29 February 2024, para. 9; *In the Matter of Ngirabatware*, Case No. MICT-24-131-I, Decision on the Suitability of Referral of the Case, 17 September 2024, pp. 3-4.

²³ *Prosecutor v. Stanković*, Case No. MICT-13-51, Decision on Stanković’s Appeal Against Decision Denying Revocation of Referral and on the Prosecution’s Request for Extension of Time to Respond, 21 May 2014 (“*Stanković* Appeal Decision of 21 May 2014”), para. 8.

before either the ICTR or the Mechanism has been considered to have standing to do so, including by the Appeals Chamber with respect to two accused.²⁴

25. Additionally, the Referral Decision provides that “the possibility of revocation of the Accused’s referral should address any failure by the Rwandan authorities” to safeguard Mr. Kayishema’s rights.²⁵ The Referral Chamber quite clearly envisioned Mr. Kayishema’s standing to initiate revocation proceedings himself, explicitly contemplating circumstances in which “revocation is sought *by the Accused*”.²⁶ The ICTR and IRMCT Appeals Chambers have also affirmed that “[t]he existence of fair trial guarantees in the Statute necessarily presumes their proper enforcement.”²⁷ As the mechanism of revocation constitutes a fair trial protection in and of itself,²⁸ Mr. Kayishema must possess standing to seize the Mechanism with a request to revoke the Referral Decision in order for this guarantee to be actualized.

V. PRELIMINARY GROUNDS FOR REVOCATION

26. The conditions for referral to Rwanda are no longer present. In light of the considerable length of time—thirteen (13) years—that has passed since the Referral Decision, the assigned Trial Chamber should assess the conditions for referral *de novo*. However, the Defence submits that the following grounds in particular demonstrate that the conditions for referral to Rwanda are no longer met.
27. The Defence reserves the right to provide detailed submissions in support of the following grounds for revocation of the Referral Decision in a final brief supporting the

²⁴ See, e.g., *Uwinkindi v. Prosecutor*, Case No. ICTR-01-75-AR11bis, Decision on Uwinkindi’s Appeal Against the Referral of his Case to Rwanda and Related Motions, 16 December 2011 (“*Uwinkindi* Referral Appeal Decision”), paras 79, 85; *Stanković* Revocation Appeal Decision, para. 8; *Prosecutor v. Munyagishari*, Case No. MICT-12-20, Decision on Request for Revocation of an Order Referring a Case to the Republic of Rwanda, 13 March 2014, p. 2; *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, p. 2; *Prosecutor v. Uwinkindi*, Case No. MICT-12-25-R14.1, Decision on Uwinkindi’s Request for Revocation, 22 October 2015 (“*Uwinkindi* Revocation Decision”), para. 8.

²⁵ Referral Decision, para. 106. See also *Prosecutor v. Uwinkindi*, Case No. ICTR-2001-75-R11bis, Decision on Prosecutor’s Request for Referral to the Republic of Rwanda, 28 June 2011 (“*Uwinkindi* Referral Decision”), para. 146.

²⁶ Referral Decision, para. 157 (emphasis added).

²⁷ *Rwamakuba v. Prosecutor*, Case No. ICTR-98-44C-A, Decision on Appeal Against Decision on Appropriate Remedy, 13 September 2007, para. 26; *Stanković* Appeal Decision of 21 May 2014, para. 14.

²⁸ *Prosecutor v. Stanković*, Case No. IT-96-23/2-AR11bis.1, Decision on Rule 11bis Referral, 1 September 2005 (“*Stanković* Referral Appeal Decision”), para. 52; *Prosecutor v. Janković*, Case No. IT-96-23/2-AR11bis.2, Decision on Rule 11bis Referral, 15 November 2005 (“*Janković* Referral Appeal Decision”), para. 56; *Uwinkindi* Referral Appeal Decision, para. 83.

present request, with the benefit of renumerated counsel, with leave of the assigned Trial Chamber.

28. This final brief will include both factual and expert evidence on the revocation grounds raised in the present request.

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

29. [REDACTED].²⁹ [REDACTED].³⁰ Affecting Mr. Kayishema’s transfer to Rwanda in light of the ongoing threats to his physical safety and security at the hands of the GoR would violate the principle of *non-refoulement*, whereby a person may not be transferred to a State where there are substantial grounds for believing that there is a real risk that would face a real risk of persecution or other serious harm in that State.³¹
30. [REDACTED].
31. Substantial grounds indicating a real risk that the authorities of the State to which an accused’s case has been referred have attempted to murder the accused and that such a threat is ongoing vitiates, in the strongest possible sense, the existence of grounds justifying a referral and accordingly requires its revocation.

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

32. Mr. Kayishema enjoys a well-established right to be tried before an independent and impartial tribunal,³² with this guarantee lying at the heart of an accused’s broader right to a fair trial.³³ While the Rwandan Constitution enshrined the independence of the judiciary on paper,³⁴ in proceedings involving the transfer of cases, the relevant

²⁹ [REDACTED].

³⁰ See Annex A (Order of 29 July 2025 of the High Court of South Africa, Western Cape), para. 2.1 (ordering the South African authorities to make submissions concerning the assassination attempts against Mr. Kayishema before the High Court of South Africa by 26 September 2025).

³¹ See European Convention on Human Rights, 4 November 1950 (“ECHR”), Art. 3; International Covenant on Civil and Political Rights, 16 December 1966 (“ICCPR”), Art. 7; American Convention on Human Rights, 21 November 1969 (“ACHR”), Art. 22(8); African Charter on Human and Peoples’ Rights, 27 June 1981 (“AfrCHPR”), Art. 12(4); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, Art. 3(1).

³² See ICCPR, Art. 14(1); ECHR, Art. 6(1); ACHR, Art. 8(1); AfrCHPR, Art. 26.

³³ *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 Aydin Sefa Akay, 31 January 2017, para. 11, and references cited therein.

³⁴ Constitution of the Republic of Rwanda, last amended 2 June 2023, Arts 61 and 150.

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.³⁵

33. 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, requiring the revocation of the Referral Decision.

C. Inadequate Guarantees of the Right to a Defence

34. 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.³⁶ While Article 14(4) of Law No. 47/2013 relating to the Transfer of Cases (“Transfer Law”) safeguards this right on paper,³⁷ 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.³⁸
35. 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 demonstrate 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

³⁵ *Stanković* Referral Appeal Decision, para. 19; *Janković* Referral Appeal Decision, para. 54. See also *Uwinkindi* Referral Appeal Decision, para. 67 (“[t]he relevant inquiry is a fact-based assessment”).

³⁶ 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).

³⁷ Law No. 47/2013 relating to the Transfer of Cases to the Republic of Rwanda, 16 June 2013 (“Transfer Law”), Art. 14(4).

³⁸ See, e.g., *Uwinkindi* Referral Appeal Decision, para. 52; *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.

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

36. Mr. Kayishema enjoys the right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.³⁹ The unavailability of witnesses prejudices this right.⁴⁰ While Article 14(10) of the Transfer Law also safeguards this right on paper,⁴¹ the relevant chamber must be satisfied that the accused will enjoy this right in practice.
37. Prospective Defence witnesses, both those currently residing in Rwanda and those residing in other States, hold objectively 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.

VI. SUBMISSIONS BY STATES

38. The Defence submits that, should a Trial Chamber be assigned to consider the present request, the GoR and the Government of South Africa should be invited to provide submissions on the revocation of the Referral Decision in response to the supplemental brief of the Defence.⁴²

VII. CLASSIFICATION

39. The present filing is classified as confidential as it refers to confidential information. A public redacted version shall be filed.

³⁹ See ICCPR, Art. 14(3)(e); ECHR, Art. 6(3)(d); IMRCT Statute, Art. 19(4)(e).

⁴⁰ 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-R11bis, Decision on Prosecutor's Request for the Referral of the Case of Ildephonse Hategekimana to Rwanda, 19 June 2008, para. 61.

⁴¹ Transfer Law, Art. 14(10).

⁴² See *Prosecutor v. Uwinkindi*, Case No. MICT-12-25-R14.1, Scheduling Order, 22 May 2015, p. 1.

VIII. REQUEST FOR RELIEF

40. On the basis of the foregoing, the Mr. Kayishema requests that the President:

ASSIGN the present Revocation Request to a Trial Chamber pursuant to Rule 14(C) of the Rules.

41. Furthermore, Mr. Kayishema requests that the assigned Trial Chamber:

ALLOW the Defence of Mr. Kayishema to file a final brief within a reasonable timeframe to be decided between the parties;

INVITE the Governments of Rwanda and South Africa to participate in the present revocation proceedings in a manner it deems appropriate;

REVOKE the referral of Mr. Kayishema’s case to Rwanda pursuant to Article 6(6) of the Statute and Rule 14(C) of the Rules;

ORDER the GoR to immediately return Mr. Kayishema’s case file, including any material that may have been added to it since its transfer to the GoR pursuant to the Referral Decision, to the Mechanism; and

INSTRUCT the Registry to begin consideration of the practical and logistical requirements for holding pre-trial and trial proceedings in Mr. Kayishema’s case at the Arusha Branch of the Mechanism.

Word Count: 3,496 words



Mr. Philippe Larochelle
Counsel for Fulgence Kayishema

Respectfully submitted this 26 August 2025,
At Montréal, Canada

ANNEX A

**Public Redacted Version of “Request for Revocation of
Referral to the Republic of Rwanda” dated 12 August 2025**

[REDACTED].



TRANSMISSION SHEET FOR FILING OF DOCUMENTS / FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	IRMCT Registry/ Greffe du MIFRTP		<input checked="" type="checkbox"/> Arusha/ Arusha	<input type="checkbox"/> The Hague/ La Haye
From/ De :	<input type="checkbox"/> President/ Président	<input type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Prosecution/ Bureau du Procureur	<input checked="" type="checkbox"/> Defence/ Défense
			<input type="checkbox"/> Registrar/ Greffier	<input type="checkbox"/> Other/ Autre
Case Name/ Affaire :	The Prosecutor v. Fulgence Kayishema		Case Number/ Affaire n° :	MICT-12-23-R14.1
Date Created/ Daté du :	26 August 2025	Date transmitted/ Transmis le :	26 August 2025	Number of Pages/ Nombre de pages : 13
Original Language/ Langue de l'original :	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S
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Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Public/ Document public	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue		
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II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ La traduction n'est pas requise				
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction : (Word version of the document is attached/ La version Word du document est jointe)				
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