

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

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

Date: 29 October 2025

Original: English

IN THE TRIAL CHAMBER

Before: Judge Vagn Joensen, Presiding
Judge Claudia Hofer
Judge Fatimata Sanou Touré

Registrar: Mr. Abubacarr M. Tambadou

Decision of: 29 October 2025

PROSECUTOR

v.

FULGENCE KAYISHEMA

PUBLIC

**DECISION ON FULGENCE KAYISHEMA'S REQUESTS FOR
REVOCATION OF REFERRAL AND ASSIGNMENT OF
COUNSEL**

The Office of the Prosecutor

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Fulgence Kayishema

Mr. Philippe Larochelle
Ms. Kate Gibson

THE TRIAL CHAMBER of the International Residual Mechanism for Criminal Tribunals (“Trial Chamber” and “Mechanism”, respectively);¹

RECALLING that, on 4 July 2001, a Judge of the International Criminal Tribunal for Rwanda (“ICTR”) confirmed the indictment against Mr. Fulgence Kayishema (“Kayishema”), charging him with genocide, complicity in genocide, conspiracy to commit genocide, and extermination as a crime against humanity,² and issued a warrant of arrest requesting all member states of the United Nations to search for, arrest, and transfer Kayishema to the custody of the ICTR at its seat in Arusha, the United Republic of Tanzania;³

RECALLING that, on 22 February 2012, a Trial Chamber of the ICTR referred Kayishema’s case to the authorities of the Republic of Rwanda (“Referral Chamber” and “Rwanda”, respectively) for trial before the High Court of Rwanda;⁴

RECALLING the warrants of arrest, issued by the ICTR and the Mechanism after the referral of Kayishema’s case to Rwanda, which directed all member states of the United Nations to search for, arrest, and transfer Kayishema to the Rwandan authorities;⁵

RECALLING that, as an interim measure and to ensure Kayishema’s apprehension, the Duty Judge of the Arusha Branch of the Mechanism (“Duty Judge”) issued an amended warrant of arrest on 8 March 2019, which requested all member states of the United Nations to search for, arrest, and transfer Kayishema to the custody of the Arusha Branch of the Mechanism;⁶

RECALLING that, on 26 September 2019, a Trial Chamber of the Mechanism dismissed without prejudice a request from the Prosecutor of the Mechanism (“Prosecution”) to revoke the referral of

¹ Decision Assigning a Trial Chamber to Consider Fulgence Kayishema’s Request for Revocation of Referral to the Republic of Rwanda, 22 August 2025, pp. 1, 2.

² See *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-I, Indictment, 5 July 2001; *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-I, Decision on the Prosecutor’s *Ex Parte* Request for Search, Seizure Arrest and Transfer, 4 July 2001, p. 4.

³ *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-I, Warrant of Arrest and Order for Transfer, 4 July 2001, pp. 2, 3.

⁴ *The 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.

⁵ See *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-00-67-R11bis, Warrant of Arrest and Order for Transfer, 4 April 2012, pp. 2-4; *The Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Warrant of Arrest and Order for Transfer Addressed to All States, 7 May 2014, pp. 1, 2.

⁶ *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on Urgent Motion for Amendment of Arrest Warrant, 8 March 2019 (confidential and *ex parte*), p. 2; *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Warrant of Arrest and Order for Transfer Addressed to All States, 8 March 2019 (“2019 Arrest Warrant and Order for Transfer”). See also *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on a Motion to Lift the Confidentiality of an Arrest Warrant, 7 September 2023 (“Decision of 7 September 2023”), pp. 2, 3.

Kayishema's case to Rwanda, and affirmed that the conditions set forth in the 2019 Arrest Warrant and Order for Transfer remain in force until further judicial order;⁷

NOTING that Kayishema was arrested on 24 May 2023 in the Republic of South Africa ("South Africa") in accordance with the 2019 Arrest Warrant and Order for Transfer,⁸ and that he remains there pending his transfer to the Arusha Branch of the Mechanism for the purpose of his onward transfer to Rwanda;⁹

NOTING that, on 11 January 2025, Kayishema filed a motion to stay the Referral Decision in order to preserve the objective of his forthcoming revocation request and annexed a confidential and *ex parte* document, to support his claim of a security threat against him at the hands of the Government of Rwanda ("Kayishema *Ex Parte* Filing of 11 January 2025");¹⁰

NOTING that, on 5 March 2025, the Duty Judge issued a decision granting Kayishema an extension of the word limit to file a potential request for revocation of the Referral Decision;¹¹

BEING SEISED OF two motions filed by Kayishema, namely: (i) a motion filed confidentially on 14 August 2025, in which he "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");¹² and (ii) a motion filed on 2 September 2025, in which he requests that the Trial Chamber instruct the Registrar of the Mechanism ("Registrar" or "Registry")

⁷ 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 ("Decision of 26 September 2019"), paras. 7, 9, 11, 12.

⁸ 2019 Arrest Warrant and Order for Transfer, p. 1; Decision of 7 September 2023, p. 2. See also *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-AR53, Decision on Prosecution Appeal of Decision on Reconsideration of Reclassification, 1 October 2024 ("Appeal Decision of 1 October 2024"), para. 3; Decision of 26 September 2019, para. 11.

⁹ See *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on Fulgence Kayishema Motion for Disclosure and Reclassification, 28 June 2024, p. 4. See also Appeal Decision of 1 October 2024, para. 3.

¹⁰ *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Motion for Partial and Temporary Stay of Referral Decision, 11 January 2025 (confidential with confidential and *ex parte* Annex A and confidential Annexes B, C, and D) ("Motion for Stay"), paras. 1, 27, 28, Annex A. On 14 February 2025, the Duty Judge dismissed Kayishema's Motion for Stay on the basis that he had not demonstrated that his transfer to Rwanda was imminent or that the objective of his forthcoming request for revocation of the Referral Decision would be significantly impaired. See *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on Fulgence Kayishema's Motion for Partial and Temporary Stay of Referral Decision, 14 February 2025 (confidential), pp. 4, 5.

¹¹ *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on Kayishema Motion for Variation of Word Limit, 5 March 2025, p. 3. See also *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Motion for Variation of Word Limit Applicable to Revocation Request, 24 February 2025; *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.

¹² Request for Revocation of Referral to the Republic of Rwanda, 14 August 2025 (confidential; public redacted version filed on 26 August 2025) ("Revocation Request"), paras. 2, 41.

to assign him counsel remunerated under the Mechanism’s legal aid system, pursuant to Rule 46 of the Rules, for the purpose of proceedings concerning the Revocation Request;¹³

NOTING that, according to Kayishema, he has standing to seek revocation of the Referral Decision,¹⁴ and that revocation is warranted based on four “preliminary grounds”,¹⁵ namely: (i) the “ongoing threats to his physical safety and security at the hands of the [Rwandan government]” (“Ground 1”);¹⁶ (ii) the “real and present risk of political interference” in the independence and impartiality of the Rwandan judiciary with respect to his case in Rwanda (“Ground 2”);¹⁷ (iii) inadequate guarantees that he “will enjoy an unimpeded right to an adequate defence” given the fact that the monitoring records of prior transferred cases reflect the Rwandan government’s unacceptable interference in the right to a defence (“Ground 3”);¹⁸ and (iv) the prospective unavailability of defence witnesses given their “objectively reasonable fears of retaliation” should they testify on behalf of Kayishema (“Ground 4”);¹⁹

NOTING Kayishema’s request to file a “final brief” to provide detailed submissions supporting his preliminary grounds for revocation²⁰ and for the Governments of Rwanda and South Africa to be invited to provide submissions in response;²¹

NOTING that, in the Request for Assignment of Counsel, Kayishema argues, *inter alia*, that: (i) Rule 46 of the Rules permits the assignment of counsel even when an accused is not in the custody of the Mechanism; (ii) the interests of justice require such assignment as Kayishema’s current *pro bono* counsel cannot be expected to continue “in matters as complex as proceedings concerning the revocation of the over-a-decade-old Referral Decision without resources”; and (iii) denying his request for the assignment of counsel infringes on his right to adequate resources in the preparation of his defence and is antithetical to the principle of equality of arms;²²

¹³ Defence Request for Assignment of Counsel, 2 September 2025 (“Request for Assignment of Counsel”), paras. 1, 28.

¹⁴ See Revocation Request, paras. 24, 25.

¹⁵ See Revocation Request, paras. 26-28, p. 5.

¹⁶ See Revocation Request, paras. 29-31.

¹⁷ See Revocation Request, paras. 32, 33.

¹⁸ See Revocation Request, paras. 34, 35.

¹⁹ See Revocation Request, paras. 35-37.

²⁰ See Revocation Request, paras. 3, 27, 28, 41.

²¹ See Revocation Request, paras. 38, 41.

²² See Request for Assignment of Counsel, paras. 14-27.

NOTING the responses filed by the Prosecution on 28 August 2025 and 11 September 2025, opposing the Revocation Request and the Request for Assignment of Counsel, respectively;²³

NOTING the Prosecution’s submissions that the Revocation Request should be adjudicated and dismissed in its present form and that Kayishema should be immediately transferred to the Mechanism²⁴ since: (i) revocation is a remedy of last resort and Kayishema’s “preliminary grounds” concerning a purported conspiracy to kill him and the alleged violation of his fair trial guarantees are unsubstantiated, speculative, and cannot satisfy his burden of showing that the conditions for referral of his case are no longer met and that revocation is necessary to further the interests of justice;²⁵ and (ii) he has sought to instrumentalise litigation in South Africa and before the Mechanism to impede his transfer and actively delay proceedings in both jurisdictions, ultimately seeking to avoid the Mechanism’s jurisdiction altogether;²⁶

NOTING the Prosecution’s submissions that the Request for Assignment of Counsel should be denied until Kayishema surrenders to the jurisdiction of the Mechanism and that assigning Mechanism-funded counsel to assist his “fishing expedition” and ongoing attempts to delay and obstruct the Mechanism’s jurisdiction would be contrary to the interests of justice;²⁷

NOTING that, on 2 September 2025, Kayishema filed a confidential reply in relation to the Revocation Request,²⁸ describing measures taken following the alleged threats made against him

²³ Prosecution Response to Kayishema’s Request for Revocation of Referral to the Republic of Rwanda, 28 August 2025 (confidential; public redacted version filed on 16 September 2025) (“Response to Revocation Request”), paras. 1, 15; Prosecution Response to Kayishema’s Request for Assignment of Counsel, 11 September 2025 (“Response to Request for Assignment of Counsel”), paras. 1, 7.

²⁴ Response to Revocation Request, paras. 1, 15.

²⁵ Response to Revocation Request, paras. 1, 3, 5-14. The Prosecution contends that, in assessing the interests of justice, the Trial Chamber should take into account the already unprecedented delay in the adjudication of this case caused by Kayishema’s flight from justice. Response to Revocation Request, para. 6. The Prosecution asserts that Kayishema’s unsourced reliance on defence challenges allegedly contained in the monitoring records of prior cases transferred to Rwanda for trial ignores that these proceedings were successfully completed in Rwanda and none of the issues raised therein resulted in revocation. Response to Revocation Request, para. 12. The Prosecution further argues that, in claiming that there is credible information on the purported conspiracy to kill him, Kayishema relies on a prior confidential submission, which was filed *ex parte* to the Prosecution. Response to Revocation Request, para. 9, n. 26, *referring to* Kayishema *Ex Parte* Filing of 11 January 2025. On 23 September 2025, the Prosecution sought, *inter alia*, the reclassification of this filing as public or, alternatively, confidential *inter partes*. See Prosecution Motion for Reclassification of Filings, 23 September 2025 (confidential). A decision adjudicating this matter will be issued in due course.

²⁶ Response to Revocation Request, paras. 3, 4.

²⁷ See Response to Request for Assignment of Counsel, paras. 1-7. The Prosecution contends that Kayishema being assigned counsel during the ICTR referral proceedings, while still a fugitive, was an exceptional measure that does not create a new pre-surrender right to counsel funded by the Mechanism. Response to Request for Assignment of Counsel, para. 2. The Prosecution further contends that Kayishema intends to use the evidence gathered and arguments made by Mechanism-funded counsel to support his opposition to South Africa’s execution of the Mechanism’s arrest warrant. Response to Request for Assignment of Counsel, para. 5, nn. 14-16.

²⁸ Confidential Redacted Version of Defence Request for Leave and Reply to Prosecution Response to Revocation Request, 2 September 2025 (confidential) (“Reply on Revocation Request”), para. 1. The Trial Chamber notes that

while emphasising the ongoing concern about his safety,²⁹ as well as arguing that the Referral Decision no longer represents an accurate and contemporary assessment of the fulfilment of the conditions for referral,³⁰ and that the relevant assessment in revocation proceedings is inherently prospective – serving to prevent anticipated violations of fair trial rights, rather than to remedy them after the fact;³¹

NOTING the Prosecution’s submission, filed on 9 October 2025, seeking leave to supplement its Response to Revocation Request and annexing “the public response of the Director of Public Prosecutions for the Western Cape to Kayishema’s application for postponement of the South African proceedings”, which the Prosecution obtained on 8 October 2025;³²

NOTING that, according to the Prosecution, the South African Prosecutor Affidavit substantiates the Prosecution’s assertion that South African authorities have determined there to be no ongoing threat to Kayishema’s safety³³ as the affidavit has concluded that the threat against his life was “highly unlikely”, that measures taken by the South African Correctional Services to ensure Kayishema’s safety were standard procedure to mitigate potential threats, that further investigation revealed that information about the threat “originated from a rogue source and was without substance”, that “it is the strong suspicion of Crime Intelligence that the threat was likely orchestrated by individuals with an ulterior motive”, and that Kayishema is “now again being held under the normal terms of his incarceration”;³⁴

RECALLING that, in accordance with Article 6(6) of the Statute, a Trial Chamber may – at the request of the Prosecutor or *proprio motu* and upon having given to the State authorities concerned the opportunity to be heard – revoke an order for the referral of a case before a national jurisdiction

Kayishema requested leave to reply to the Response to Revocation Request and, in the present circumstances, considers it appropriate to grant his request for leave and accepts the Reply on Revocation Request as validly filed.

²⁹ See Reply on Revocation Request, paras. 3-6.

³⁰ Reply on Revocation Request, para. 8 (wherein Kayishema states that the Trial Chamber is not tasked with revisiting whether the conditions for referral existed in 2012, but rather to examine if they exist in the present day). *See also* Revocation Request, para. 26.

³¹ Reply on Revocation Request, paras. 9, 10.

³² Prosecution Request for Leave and Supplemental Response to Kayishema Request for Revocation of Referral to the Republic of Rwanda, 9 October 2025 (“Supplemental Response”), paras. 1, 2, Annex (containing the Replying Affidavit of the Director of Public Prosecutions for the Western Cape (“South African Prosecutor”) submitted to the High Court of South Africa, on 26 September 2025, in the case concerning the application for the transfer of Kayishema to the Mechanism (“South African Prosecutor Affidavit”). In light of the importance of the new information provided in the Supplemental Response, the Trial Chamber considers it appropriate to grant the Prosecution’s request for leave and to accept the Supplemental Response as validly filed.

³³ Supplemental Response, para. 2, *referring to* Response to Revocation Request, para. 9.

³⁴ Supplemental Response, para. 2, *referring to* South African Prosecutor Affidavit, p. 8, paras. 30, 31, 38-40. The Prosecution also submits that the Trial Chamber should remind South Africa of its “indisputable international legal obligation to promptly transfer Kayishema to Mechanism custody”. *See* Supplemental Response, para. 4.

issued by the ICTR “where it is clear that the conditions for referral of the case are no longer met and it is in the interests of justice”;³⁵

CONSIDERING that, where matters relate to the fairness of the proceedings, trial chambers have inherent jurisdiction to consider direct requests from accused for revocation of their referred cases;³⁶

FINDING that the Trial Chamber has inherent jurisdiction to consider the Revocation Request as it implicates fair trial issues in future judicial proceedings against Kayishema in Rwanda;

RECALLING that the Statute reflects a clear preference for a case of this nature to be tried in a national jurisdiction,³⁷ that revocation pursuant to Article 6(6) of the Statute is a remedy of last resort constituting a safeguard and “not a panacea”,³⁸ and that the Mechanism’s role is primarily to determine whether the conditions for a fair trial in the domestic jurisdiction no longer exist, rather than to act as an independent level of appellate review for national proceedings;³⁹

RECALLING that a determination on whether to revoke a referred case necessarily involves taking due consideration of the possibility and availability of remedies for any procedural irregularities at the trial and appeal stage of the national proceedings;⁴⁰

RECALLING FURTHER that, pursuant to Rule 46 of the Rules, the Trial Chamber may instruct the Registrar to assign counsel to represent an accused if it decides that it is in the interests of justice, and that it has considerable discretion in determining on a case-by-case basis the existence of reasons warranting the assignment of counsel,⁴¹ including when an accused is not in the custody of the Mechanism;⁴²

³⁵ See also Rule 14(C) of the Rules.

³⁶ See *Prosecutor v. Radovan 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, para. 8 and references cited therein.

³⁷ Decision of 26 September 2019, para. 9; Articles 1(3) and 6(1) of the Statute.

³⁸ See Referral Decision, para. 157. See also *Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25-R14.1, Decision on Uwinkindi’s Request for Revocation, 22 October 2015 (“Uwinkindi Decision of 22 October 2015”), para. 9.

³⁹ See *Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25-AR14.1, Decision on an Appeal Concerning a Request for Revocation of a Referral, 4 October 2016 (“Uwinkindi Decision of 4 October 2016”), para. 12; *Uwinkindi* Decision of 22 October 2015, para. 9.

⁴⁰ See *Uwinkindi* Decision of 4 October 2016, para. 13.

⁴¹ See, e.g., *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, para. 58 and references cited therein; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Decision on Prlić’s Request for Stay of Proceedings, 27 June 2014, para. 12.

⁴² See *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-01-67-R11bis, Order for the Assignment of Counsel, 27 July 2011, paras. 4-7 (wherein, pertaining to Rule 45 *quater* of the Rules of Procedure and Evidence of the ICTR (“ICTR Rules”) – which is equivalent to Rule 46 of the Rules – the ICTR Trial Chamber held that an “accused” under Rule 2(A) of the ICTR Rules is someone “against whom one or more counts in an indictment have been confirmed in accordance with Rule 47” of the ICTR Rules and that “there is no requirement for the accused to be in the custody of the Tribunal

OBSERVING that – after a comprehensive assessment of, *inter alia*, Rwanda’s legal system, penalty structure, fair trial concerns, the independence and impartiality of the judiciary, the availability and protection of witnesses within and outside Rwanda, and the right to an effective defence⁴³ – the Referral Chamber was confident that Kayishema’s case, if referred, would be prosecuted “consistent with internationally recognised fair trial standards enshrined in the Statute of [the ICTR] and other human rights instruments”,⁴⁴ and was persuaded to refer the case to Rwanda after receiving assurances that a robust monitoring mechanism would be provided to ensure that any material violation of Kayishema’s fair trial rights would be promptly brought to the attention of the Mechanism;⁴⁵

NOTING that Kayishema has not been transferred to the Mechanism in accordance with the 2019 Arrest Warrant and Order for Transfer and that proceedings in Rwanda against him have yet to commence;

CONSIDERING that Kayishema’s general submissions, under Grounds 2 to 4 of the Revocation Request, alleging the lack of impartiality of the Rwandan judiciary, inadequate guarantees to his right to an adequate defence, and the prospective unavailability of potential defence witnesses are, at present, hypothetical, speculative, and incapable of showing that the conditions for a fair trial in Rwanda, as thoroughly assessed in the Referral Decision, no longer exist;⁴⁶

CONSIDERING FURTHER that a monitor has been appointed in this case,⁴⁷ that after Kayishema’s transfer to Rwanda and criminal proceedings begin, his fair trial rights would be safeguarded by the monitoring mechanism established under the Referral Decision,⁴⁸ and that he may

for Rule 45 *quater* of the ICTR Rules to apply”); *The Prosecutor v. Charles Sikubwabo*, Case No. ICTR-95-1D-R11bis, Order for the Assignment of Counsel, 27 July 2011, paras. 4-7; *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-01-67-I, Decision on the Referral of the Application to Appoint Defence Counsel, 2 May 2008, para. 8. *Cf. Prosecutor v. Gérard Ntakirutimana*, Case No. MICT-12-17-R, Decision on a Request for Assignment of Counsel, 4 July 2018, paras. 1, 2, 5, 7, 9 (wherein the Appeals Chamber of the Mechanism granted a request for the assignment of counsel at the expense of the Mechanism for the purpose of preparing a request for review by a convicted person who had completed his sentence and was no longer in the custody of the Mechanism).

⁴³ See Referral Decision, paras. 17-142.

⁴⁴ Referral Decision, para. 163.

⁴⁵ See Referral Decision, para. 163. See also Referral Decision, paras. 148-156.

⁴⁶ See Revocation Request, paras. 26-37, p. 5. *Cf. e.g., Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25, Decision on Request for Revocation of an Order Referring a Case to the Republic of Rwanda, 12 March 2014, p. 3; *Prosecutor v. Bernard Munyagishari*, Case No. MICT-12-20, Decision on Second Request for Revocation on an Order Referring a Case to the Republic of Rwanda, 26 June 2014, p. 3; *Prosecutor v. Bernard Munyagishari*, Case No. MICT-12-20, Decision on Third Request for Revocation on an Order Referring a Case to the Republic of Rwanda, 8 April 2015, pp. 3, 4 (wherein the President of the Mechanism dismissed a request for revocation as “not ripe for consideration as a basis for revocation pursuant to Article 6(6) of the Statute” as the fair trial matters were still in the process of being addressed in Rwanda and subject to review through judicial proceedings).

⁴⁷ See *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Order Appointing a Monitor, 17 July 2024, p. 1; *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23, Order Appointing a Monitor, 18 April 2024, p. 1.

⁴⁸ See Referral Decision, paras. 153-156, 163, p. 44.

seek remedies available in Rwanda and before the Mechanism, as a last resort, for any future potential fair trial violations;⁴⁹

FINDING, therefore, that it is appropriate to dismiss Grounds 2 to 4 of the Revocation Request and that it is not in the interests of justice to assign counsel under Rule 46 of the Rules in relation to these grounds;

NOTING that, under Ground 1 of the Revocation Request, Kayishema claims to be the subject of “ongoing threats to his physical safety and security at the hands of the [Rwandan government]”, that the High Court of South Africa has ordered South African authorities to make submissions concerning this matter, and that these threats require revocation of his case to the Mechanism;⁵⁰

NOTING that the South African Prosecutor Affidavit, as annexed to the Prosecution’s Supplemental Response, addresses specifically the alleged threat against Kayishema’s life by the Rwandan government;⁵¹

CONSIDERING that, before deciding on Ground 1 of the Revocation Request, it would be beneficial for the Trial Chamber to receive submissions from the Government of South Africa specifically on the allegations raised in Ground 1 of the Revocation Request, the Kayishema *Ex Parte* Filing of 11 January 2025, and on related information provided in the Prosecution’s Supplemental Response – in particular, those contained in the South African Prosecutor Affidavit;⁵²

CONSIDERING that it would be appropriate to allow Kayishema, if he so wishes, to file before the Mechanism any responses to the South African Prosecutor Affidavit submitted in the proceedings in South Africa;⁵³

FINDING that it is unnecessary to grant Kayishema’s request to submit a “final brief” on Ground 1 of the Revocation Request and that it would not be in the interests of justice to grant assignment of counsel under Rule 46 of the Rules in relation to Ground 1 of the Revocation Request;

⁴⁹ See Referral Decision, paras. 157-159.

⁵⁰ See Revocation Request, paras. 29-31, n. 30, Annex A (containing an order by the Western Cape High Court of South Africa, dated 29 July 2025, ordering, *inter alia*, the South African Prosecutor to file an affidavit concerning the alleged security threats against Kayishema by 26 September 2025, and that Kayishema “may file his further answering affidavit(s), including such evidence as may have been filed before the [Mechanism]” by 31 October 2025).

⁵¹ See South African Prosecutor Affidavit, paras. 24-40.

⁵² The Trial Chamber considers it premature, at this stage, to invite submissions from the Government of Rwanda pursuant to Article 6(6) of the Statute.

⁵³ See *supra*, n. 50.

FOR THE FOREGOING REASONS,

GRANTS Kayishema's request for leave to reply and **ACCEPTS** the Reply on Revocation Request as validly filed;

GRANTS the Prosecution's request for leave and **ACCEPTS** the Supplemental Response as validly filed;

DISMISSES the Revocation Request in relation to Grounds 2 to 4 of the Revocation Request;

DISMISSES the Request for Assignment of Counsel in its entirety;

INSTRUCTS the Registry to serve a copy of the Revocation Request, the present Decision, the Supplemental Response, and the Kayishema *Ex Parte* Filing of 11 January 2025 to the Government of South Africa;

INVITES the Government of South Africa to file submissions, if any, within 21 days of the receipt of the present Decision and relevant documents, in relation to Ground 1 of the Revocation Request and information provided in the Kayishema *Ex Parte* Filing of 11 January 2025, the Prosecution's Supplemental Response, and the South African Prosecutor Affidavit;

REQUESTS the Government of South Africa to protect and maintain the confidential and/or *ex parte* status of documents released pursuant to this Decision; and

REMAINS seised of the matter.

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

Done this 29th day of October 2025,
At Arusha,
Tanzania



Judge Vagn Joensen
Presiding Judge

[Seal of the Mechanism]



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

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		☐ Ex Parte other exclusion/ autre(s) partie(s) exclue(s) (specify/ préciser) :		
Document type/ Type de document :	☐ Motion/ Requête ☐ Judgement/ Jugement/Arrêt ☐ Book of Authorities/ Recueil de sources ☐ Warrant/ Mandat ☒ Decision/ Décision ☐ Submission from parties/ Écritures déposées par des parties ☐ Affidavit/ Déclaration sous serment ☐ Notice of Appeal/ Acte d'appel ☐ Order/ Ordonnance ☐ Submission from non-parties/ Écritures déposées par des tiers ☐ Indictment/ Acte d'accusation			

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

☐ Translation not required/ La traduction n'est pas requise				
☒ 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)				
☐ English/ Anglais ☒ French/ Français ☒ Kinyarwanda ☐ B/C/S ☐ Other/Autre (specify/préciser):				
☐ Filing Party hereby submits both the original and the translated version for filing, as follows/ La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :				
Original/ Original en :	☐ English/ Anglais	☐ French/ Français	☐ Kinyarwanda	☐ B/C/S ☐ Other/Autre (specify/ préciser):
Traduction/ Traduction en :	☐ English/ Anglais	☐ French/ Français	☐ Kinyarwanda	☐ B/C/S ☐ Other/Autre (specify/ préciser):
☐ Filing Party will be submitting the translated version(s) in due course in the following language(s)/ La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s):				
☐ English/ Anglais ☐ French/ Français ☐ Kinyarwanda ☐ B/C/S ☐ Other/Autre (specify/préciser):				