

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

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

Date: 10 December 2025

Original: English

---

**IN THE TRIAL CHAMBER**

**Before:** Judge Vagn Joensen, Presiding  
Judge Claudia Hoefer  
Judge Fatimata Sanou Touré

**Registrar:** Mr. Abubacarr M. Tambadou

**THE PROSECUTOR**

**v.**

**FULGENCE KAYISHEMA**

***PUBLIC***

---

**DEFENCE RESPONSE TO THE SUBMISSIONS OF THE  
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA  
RESPONSIVE TO THE DECISION OF 29 OCTOBER 2025**

---

**The Office of the Prosecutor:**

**Government of the Republic of South Africa**

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 (“Defence” and “Mr. Kayishema”, respectively) hereby responds to the submissions of the Government of the Republic of South Africa (“the Government” and “South Africa”, respectively) filed pursuant to the Trial Chamber’s decision of 29 October 2025 (“Decision of 29 October 2025”)<sup>1</sup> on 28 November 2025 (“Submissions”).<sup>2</sup>
2. The Defence recalls that, in its Decision of 29 October 2025, the Trial Chamber considered “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”.<sup>3</sup> As the essential core of the Submissions is the same documents referenced by the Trial Chamber, the Defence files the present Response pursuant to the invitation contained in the Decision of 29 October 2025. In the alternative, if the Trial Chamber considers that the present Response falls beyond the scope of that envisioned in its Decision of 29 October 2025, the Defence respectfully requests that the Trial Chamber grant it leave to respond to the Submissions and thus accept the present Response as validly filed.

## II. RESPONSE

3. The Submissions regrettably shed little light on the intelligence concerning a threat to Mr. Kayishema’s life while detention in South Africa, referring to and repeating the scantily detailed submissions of Deputy Director of Public Prosecutions for the Western Cape (“Deputy DPP”) in an affidavit filed in domestic proceedings before the High Court of South Africa (“the Affidavit”).<sup>4</sup>
4. While the Government may have concluded that the threat from the Government of the Republic of Rwanda was “unsubstantiated”,<sup>5</sup> it is not for the Trial Chamber to defer to this consideration, as articulated on a second-hand basis in the Affidavit. Rather, it falls

---

<sup>1</sup> Decision on Fulgence Kayishema’s Requests for Revocation of Referral and Assignment of Counsel, 29 October 2025 (“Decision of 29 October 2025”), pp. 8, 9.

<sup>2</sup> Submissions Pursuant to “Decision on Fulgence Kayishema’s Requests for Revocation of Referral and Assignment of Counsel”, 28 November 2025 (“Submissions”).

<sup>3</sup> Decision of 29 October 2025, p. 8.

<sup>4</sup> See Submissions, Annex A; Prosecution Request for Leave and Supplemental Response to Kayishema Request for Revocation of Referral to the Republic of Rwanda, 9 October 2025, Annex.

<sup>5</sup> Submissions, para. 6. See also Submissions, Annex A, paras. 35-38, 39.3.

to the Trial Chamber to assess the facts of a given matter and reach a well-reasoned conclusion on the basis of such facts, independent of other determinations that may have been reached on the same set of facts by other bodies.<sup>6</sup>

5. The Submissions fail to provide the Trial Chamber with sufficient information on the basis of which it could reach such a reasoned determination as to whether Mr. Kayishema will receive a fair trial in Rwanda. While the Affidavit itself is signed by the Deputy DPP, the information in the Affidavit regarding threats to Mr. Kayishema's life is entirely second-hand in nature, derived exclusively from unspecified and/or anonymous sources within the Government. The information in the Affidavit is insufficiently specific, and its sources are insufficiently detailed for the Defence to properly scrutinize it or for the Trial Chamber to assign probative value to the information as presented in the Affidavit without a more fulsome inquiry into the alleged threats against Mr. Kayishema's life.<sup>7</sup> This fulsome inquiry is what is demanded by a Trial Chamber's responsibility towards an accused in referral proceedings *vis-à-vis* safeguarding the latter's fair trial rights.
6. The Defence recalls the Trial Chamber's positive obligation to be satisfied that accused *will* receive a fair trial in the referral State,<sup>8</sup> which is plainly not the case if the government of that State has attempted the extrajudicial killing of the accused in another State.<sup>9</sup>

---

<sup>6</sup> Cf. *Prosecutor v. Mladić*, Case No. MICT-13-56-A, Judgment, 8 June 2021, para. 231 (“[the Mechanism] is not bound by the findings of other courts – domestic, international, or hybrid”); *Karemera et al. v. Prosecutor*, Case No. ICTR-98-44-AR73.17, Decision on Joseph Nziirera's Appeal of Decision on Admission of Evidence Rebutting Adjudicated Facts, 29 May 2009, para. 21 (stressing that the mechanism of adjudicated facts “does not allow a Chamber to simply defer to the assessment of the evidence by another Chamber”). While these decisions relate to findings by judicial bodies, the same considerations must apply, with equal if not greater force, with respect to findings by executive agencies and departments of foreign States.

<sup>7</sup> Cf., e.g., *Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-T, Judgment, 15 March 2006, para. 272 (“[i]n cases where testimony was based on hearsay, the Chamber noted that to assess its probative value, it wished to know the source of the information, that is, insofar as possible, the identity of the initial source, how he might have learned of the facts, and the number of intermediaries through which the testimony had passed”).

<sup>8</sup> See *Prosecutor v. Stanković*, Case No. IT-96-23/2-AR11bis.1, Decision on Rule 11bis Referral, 1 September 2005, para. 19; *Prosecutor v. Janković*, Case No. IT-96-23/2-AR11bis.2, Decision on Rule 11bis Referral, 15 November 2005, para. 54; *Prosecutor v. Munyakazi*, Case No. ICTR-97-36-R11bis, Decision on the Prosecution's Appeal against Decision on Referral under Rule 11bis, 8 October 2008, para. 4; *Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-R11bis, Decision on the Prosecution's Appeal against Decision on Referral under Rule 11bis, 30 October 2008, para. 4.

<sup>9</sup> Revocation Request, para. 31.

7. While the Government characterizes the steps taken as a result of the threat to Mr. Kayishema's life as ordinary and routine safety measures,<sup>10</sup> the Government's actions appear to go far beyond that which could be reasonably expected in the context of a threat to the life of a detainee. The Submissions do not explain why the Government appears to have taken the allegations in question so seriously and taken such extensive mitigation measures if the threat was simply an unsubstantiated tip from a rough source.
8. In this light, the Defence reminds the Trial Chamber that the Defence has previously attempted to obtain greater detail on the information surrounding the threats to Mr. Kayishema's life while he remains detained in South Africa. The Defence has done so, within the limits of its resources given its continued non-remuneration, through (i) the attempted transmission of a request for assistance addressed to the competent authorities of the Government ("RFA") to the Government through the proper diplomatic channels by the Registry of the Mechanism;<sup>11</sup> and (ii) the direct transmission of the same RFA to representatives of the Government via email.<sup>12</sup> With regard to the first attempt, it does not appear that the Registry took any action to transmit the RFA to the Government, as requested by the Defence. With regard to the second, the Defence received no response from the Government.

Word Count: 1,157 words




---

Mr. Philippe Larochelle  
Counsel for Fulgence Kayishema

Respectfully submitted this 10 December 2025,  
At Montréal, Canada

---

<sup>10</sup> See Submissions, para. 6, Annex A, paras. 27-34, 78.

<sup>11</sup> *Prosecutor v. Kayishema*, Case No. MICT-12-23-PT, Motion for Partial and Temporary Stay of Referral Decision, 9 January 2025 (confidential) ("Defence Request for Stay"), Annex B (confidential), Registry Pagination ("RP.") 719-717.

<sup>12</sup> Defence Request for Stay, Annex C (confidential), RP.715-714.



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

**I - FILING INFORMATION / INFORMATIONS GÉNÉRALES**

<b>To/ À :</b>	IRMCT Registry/ Greffe du MIFRTP		<input checked="" type="checkbox"/> Arusha/ Arusha	<input type="checkbox"/> The Hague/ La Haye
<b>From/ De :</b>	<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
<b>Case Name/ Affaire :</b>	The Prosecutor v. Fulgence Kayishema		<b>Case Number/ Affaire n° :</b> MICT-12-23-R14.1	
<b>Date Created/ Daté du :</b>	10 December 2025	<b>Date transmitted/ Transmis le :</b>	10 December 2025	<b>Number of Pages/ Nombre de pages :</b> 4
<b>Original Language/ Langue de l'original :</b>	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S
	<input type="checkbox"/> Other/Autre (specify/ préciser):			
<b>Title of Document/ Titre du document :</b>	DEFENCE RESPONSE TO THE SUBMISSIONS OF THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA RESPONSIVE TO THE DECISION OF 29 OCTOBER 2025			
<b>Classification Level/ Catégories de classification :</b>	<input checked="" type="checkbox"/> Public/ Document public	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue		
	<input type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu		
		<input type="checkbox"/> Ex Parte Rule 86 applicant excluded/ Article 86 requérant exclu		
		<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ Amicus curiae exclu		
		<input type="checkbox"/> Ex Parte other exclusion/ autre(s) partie(s) exclue(s) (specify/ préciser) :		
<b>Document type/ Type de document :</b>	<input type="checkbox"/> Motion/ Requête <input type="checkbox"/> Judgement/ Jugement/Arrêt <input type="checkbox"/> Book of Authorities/ Recueil de sources <input type="checkbox"/> Warrant/ Mandat <input type="checkbox"/> Decision/ Décision <input checked="" type="checkbox"/> Submission from parties/ Écritures déposées par des parties <input type="checkbox"/> Affidavit/ Déclaration sous serment <input type="checkbox"/> Notice of Appeal/ Acte d'appel <input type="checkbox"/> Order/ Ordonnance <input type="checkbox"/> Submission from non-parties/ Écritures déposées par des tiers <input type="checkbox"/> Indictment/ Acte d'accusation			

**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)
<input type="checkbox"/> English/ Anglais <input checked="" type="checkbox"/> French/ Français <input checked="" type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser):
<input type="checkbox"/> 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 :
<b>Original/ Original en :</b> <input type="checkbox"/> English/ Anglais <input type="checkbox"/> French/ Français <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/ préciser):
<b>Traduction/ Traduction en :</b> <input type="checkbox"/> English/ Anglais <input type="checkbox"/> French/ Français <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/ préciser):
<input type="checkbox"/> 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):
<input type="checkbox"/> English/ Anglais <input type="checkbox"/> French/ Français <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser):