

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

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

Date: 16 December 2025

Original: English

IN THE TRIAL CHAMBER

Before: Judge Vagn Joensen, Presiding

Registrar: Mr. Abubacarr M. Tambadou

Decision of: 16 December 2025

PROSECUTOR

v.

FULGENCE KAYISHEMA

PUBLIC

**DECISION ON PROSECUTION MOTION
FOR RECLASSIFICATION OF FILINGS**

The Office of the Prosecutor

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Fulgence Kayishema

Mr. Philippe Larochelle
Ms. Kate Gibson

I, VAGN JOENSEN, Presiding Judge of the Trial Chamber of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);¹

RECALLING that, on 22 February 2012, a Trial Chamber of the International Criminal Tribunal for Rwanda referred the case against Mr. Fulgence Kayishema (“Kayishema”) – whose indictment for genocide, complicity in genocide, conspiracy to commit genocide, and extermination as a crime against humanity was confirmed on 4 July 2001 – to the authorities of the Republic of Rwanda (“Rwanda”) for trial before the High Court of Rwanda;²

NOTING that Kayishema was arrested on 24 May 2023 in the Republic of South Africa (“South Africa”) in accordance with an arrest warrant and order for transfer issued on 8 March 2019,³ and that he remains there pending his transfer to the Arusha Branch of the Mechanism for the purpose of his onward transfer to Rwanda;⁴

NOTING that, on 11 January 2025, Kayishema filed a motion with confidential and *ex parte* Annex A and confidential Annexes B, C, and D (“Annexes A, B, C, or D” or collectively, “Annexes”), seeking, *inter alia*, to partially and temporarily stay the implementation of the Referral Decision in order to preserve the objective of a potential revocation request based on information from South African officials about threats to his life by the Government of Rwanda;⁵

RECALLING the decision of the Duty Judge of the Arusha Branch of the Mechanism, issued confidentially on 14 February 2025, dismissing the Motion for Stay;⁶

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

³ See *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Warrant of Arrest and Order for Transfer Addressed to All States, 8 March 2019, p. 1; *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, p. 2. See also *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; *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; *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-00-67-R11bis, Warrant of Arrest and Order for Transfer, 4 April 2012, pp. 2-4.

⁴ See Decision on Fulgence Kayishema’s Requests for Revocation of Referral and Assignment of Counsel, 29 October 2025 (“Decision of 29 October 2025”), p. 2; *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-AR53, Decision on Prosecution Appeal of Decision on Reconsideration of Reclassification, 1 October 2024, para. 3.

⁵ See *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, 2, 17, 28.

⁶ 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) (“Decision on Motion for Stay”), pp. 4, 5.

NOTING that, on 14 August 2025, Kayishema “formally request[ed] the revocation of the Referral Decision”, pursuant to Article 6(6) of the Statute of the Mechanism and Rule 14(C) of the Rules of Procedure and Evidence of the Mechanism,⁷ on the basis of four preliminary grounds,⁸ including “ongoing threats to his physical safety and security at the hands of the [Government of Rwanda]” (“Ground 1 of the Revocation Request”);⁹

NOTING the Prosecution’s response, filed on 28 August 2025,¹⁰ and Kayishema’s reply on the Revocation Request, filed confidentially and *ex parte* on 1 September 2025 and confidentially redacted on 2 September 2025;¹¹

BEING SEISED OF a motion, filed confidentially on 23 September 2025, wherein the Prosecution requests that the Motion for Stay, including its Annexes, as well as the Reply on Revocation Request be reclassified as public with redactions where necessary, or alternatively, that Annex A and the *ex parte* version of the Reply on Revocation Request be disclosed *inter partes* to the Prosecution;¹²

NOTING the Prosecution’s submissions, *inter alia*, that: (i) confidential and *ex parte* Annex A should be reclassified as public as it has been repeatedly invoked in various requests before the Mechanism, is a prominent feature in Kayishema’s ongoing attempts to delay and block his transfer to Mechanism custody, and its contents are publicly available through an affidavit signed by Kayishema on 10 June 2025;¹³ and (ii) exceptional reasons no longer exist to keep the Motion for Stay, Annexes B, C, and D, as well as the Reply on Revocation Request confidential as they all rely on and/or summarise Annex A, or are already publicly available;¹⁴

⁷ 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.

⁸ See Revocation Request, paras. 26-37.

⁹ See Revocation Request, paras. 29-31.

¹⁰ 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).

¹¹ Defence Request for Leave and Reply to Prosecution Response to Revocation Request, 1 September 2025 (confidential and *ex parte*); Confidential Redacted Version of Defence Request for Leave and Reply to Prosecution Response to Revocation Request, 2 September 2025 (confidential) (collectively, “Reply on Revocation Request”).

¹² Prosecution Motion for Reclassification of Filings, 23 September 2025 (confidential) (“Motion”), paras. 1, 3, 4, 8, 12-16.

¹³ See Motion, paras. 2, 6-8, 14, *referring to, inter alia*, Prosecution Request for Leave and Supplemental Response to Kayishema Motion for the Assignment of a Trial Chamber, 1 July 2025 (“Prosecution Filing of 1 July 2025”), Annex A, Registry Pagination (“RP.”) 55-52 (containing the Supporting Affidavit signed by Kayishema on 10 June 2025) (“10 June 2025 Affidavit”).

¹⁴ See Motion, paras. 3, 9-11, 15. The Prosecution argues that there is “strong public interest” to lift the confidentiality of the Motion for Stay, Annexes B, C, and D, and the Reply on Revocation Request as they “shed light on the extraordinary delay in Kayishema’s transfer to Mechanism custody”, that making these filings public could also advance the ongoing South African transfer proceedings, and that they reveal that “Kayishema is not being forthcoming to either the Mechanism or the South African court about various aspects of litigation in each jurisdiction”. Motion, para. 3.

NOTING that Kayishema did not respond to the Motion;

RECALLING the Decision of 29 October 2025, *inter alia*, dismissing three grounds of Kayishema’s Revocation Request, inviting the Government of South Africa to file submissions relating to Ground 1 of the Revocation Request, and remaining seised of the matter;¹⁵

NOTING the submissions, filed by the Government of South Africa on 28 November 2025, stating that, following investigations on the alleged threat against Kayishema’s life, it has been concluded – as explained in an affidavit dated 24 September 2025 from the Director of Public Prosecutions for the Western Cape in South African proceedings (“South African Prosecutor Affidavit”) – that the threat was “unsubstantiated and originated from a rogue source”, that “it was highly unlikely that the Government of Rwanda was involved in the alleged threat”, and that Kayishema “was once again held under the normal terms of his incarceration”;¹⁶

RECALLING that all proceedings before the Mechanism shall be public unless exceptional reasons require keeping them confidential;¹⁷

NOTING that in Annex A – a handwritten letter from Kayishema dated 11 September 2024 – and in the 10 June 2025 Affidavit, Kayishema recounted meeting with South African officials on 10 September 2024, who informed him of threats to his life by the Government of Rwanda and the measures they had taken to mitigate such threat;¹⁸

NOTING that Kayishema filed Annex A confidentially and *ex parte* “due to the heightened necessity of ensuring his safety, given the potentially ongoing nature of the threats against him”;¹⁹

CONSIDERING that the 10 June 2025 Affidavit is publicly available;²⁰

CONSIDERING that portions of Annex A contain specific details of measures taken by South African authorities for his safety – such as Kayishema’s new prison registration number, his new

¹⁵ See Decision of 29 October 2025, pp. 8, 9.

¹⁶ See Submissions Pursuant to “Decision on Fulgence Kayishema’s Requests for Revocation of Referral and Assignment of Counsel”, 28 November 2025 (“South Africa Submission of 28 November 2025”), para. 6, Annex A, paras. 24-40. See also Prosecution Request for Leave and Supplemental Response to Kayishema Request for Revocation of Referral to the Republic of Rwanda, 9 October 2025 (“Prosecution Supplemental Response to Revocation Request”), Annex.

¹⁷ *Prosecutor v. Anselme Nzabonimpa et al.*, Case No. MICT-18-116-AR90.1, Decision on Requests for Reclassification of Filings and Extension of Time to File a Response, 9 May 2024, p. 3 and references cited therein.

¹⁸ Compare Annex A with 10 June 2025 Affidavit, paras. 3-10.

¹⁹ Motion for Stay, para. 27, Annex A.

²⁰ The Prosecution Filing of 1 July 2025, which annexed the 10 June 2025 Affidavit, was filed publicly. See Prosecution Filing of 1 July 2025, RP. 55-52. See also Motion, paras. 6, 7, 14.

alias, and the location of the prison to which he was transferred – that are not contained in the 10 June 2025 Affidavit²¹ or otherwise publicly revealed;²²

CONSIDERING, however, that the South African Prosecutor Affidavit, which is publicly available,²³ indicates that the alleged threat against Kayishema by the Government of Rwanda was assessed and determined by South African authorities to “be highly unlikely” and that, consequently, Kayishema is presently being held under the normal terms of his incarceration;²⁴

FINDING that, in view of the foregoing and the lack of objections from Kayishema, no exceptional reasons exist to maintain the confidential and *ex parte* status of Annex A;

OBSERVING that the confidential and *ex parte* version of the Reply on Revocation Request also contains the location of the prison to which Kayishema was transferred;²⁵

FINDING that, in view of the foregoing analysis regarding Annex A, no exceptional reasons exist to maintain the confidential and *ex parte* status of the Reply on Revocation Request;

OBSERVING that: (i) Annex B contains two letters from Kayishema’s Counsel addressing the Registrar of the Mechanism (“Registrar” or “Registry”) and the South African Minister of International Relations and Cooperation with respect to requests for assistance to South Africa regarding threats to Kayishema’s life by the Government of Rwanda; (ii) Annex C is an email correspondence from Kayishema’s Counsel addressing the Registrar and a South African official concerning the same matter, and (iii) Annex D is an order from the High Court of South Africa, dated 23 October 2024, scheduling and postponing Kayishema’s proceedings in South Africa;

NOTING Kayishema’s submission that the Motion for Stay and Annexes B, C, and D were filed confidentially as the “unauthorised disclosure of the information contained therein could reasonably lead to the death or serious harm” to Kayishema;²⁶

CONSIDERING that Annex B is publicly available²⁷ and that, accordingly, no exceptional reasons require keeping it confidential;

²¹ Compare Annex A with 10 June 2025 Affidavit, para. 8.

²² See Motion, para. 7, RP. 262, 259. See also South Africa Submission of 28 November 2025, Annex A, para. 24.

²³ The South Africa Submission of 28 November 2025 and Prosecution Supplemental Response to Revocation Request, both of which annex the same South African Prosecutor Affidavit, were filed publicly.

²⁴ See South Africa Submission of 28 November 2025, para. 6, Annex A, paras. 24-40.

²⁵ See Reply on Revocation Request, para. 5.

²⁶ Motion for Stay, para. 25.

²⁷ See Prosecution Filing of 1 July 2025, RP. 75-73.

CONSIDERING that, given the foregoing analysis regarding Annex A, the underlying basis for the confidential status of the Motion for Stay and Annex C is no longer tenable, and that, accordingly, no exceptional reasons exist to maintain their confidentiality;

CONSIDERING, however, in the interests of privacy, information revealing the personal identities and/or contact details of individuals contained in Annex C may be safeguarded through appropriate redactions;²⁸

CONSIDERING that the contents of Annex D are discussed in the South African Prosecutor Affidavit, which is publicly available,²⁹ and that a review of Annex D does not reveal exceptional reasons to maintain its confidential status;

CONSIDERING, however, that Annex D is a judicial order of the High Court of South Africa and that it would be prudent to obtain its authorisation prior to public disclosure;

FINDING that, in view of the foregoing and the lack of objections from Kayishema, it is appropriate that the Motion for Stay as well as Annexes B and C be filed publicly, with relevant redactions to Annex C, and that Annex D be filed publicly following authorisation from the High Court of South Africa;

CONSIDERING FURTHER that, in view of the foregoing, it is appropriate to lift the confidentiality of the Decision on Motion for Stay;

FOR THE FOREGOING REASONS,

HEREBY GRANT the Motion;

ORDER Kayishema to publicly file, within 21 days of the filing of this Decision, the Motion for Stay, including its Annexes, after redacting information revealing the personal identities and/or contact details of individuals in Annex C, and after obtaining authorisation from the High Court of South Africa with respect to Annex D; and

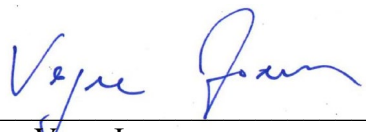
INSTRUCT the Registry to reclassify as public the Reply on Revocation Request and the Decision on Motion for Stay.

²⁸ See *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on Fulgence Kayishema Motion for Disclosure and Reclassification, 28 June 2024, p. 6.

²⁹ See South Africa Submission of 28 November 2025, Annex A, paras. 10.5, 10.6; Prosecution Supplemental Response to Revocation Request, Annex, paras. 10.5, 10.6.

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

Done this 16th day of December 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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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 checked="" type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Prosecution/ Bureau du Procureur	<input type="checkbox"/> Defence/ Défense
			<input type="checkbox"/> Registrar/ Greffier	<input type="checkbox"/> Other/ Autre
Case Name/ Affaire :	Prosecutor v. Fulgence Kayishema		Case Number/ Affaire n° :	MICT-12-23-R14.1
Date Created/ Daté du :	16 December 2026	Date transmitted/ Transmis le :	16 December 2025	Number of Pages/ Nombre de pages : 7
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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Title of Document/ Titre du document :	Decision on Prosecution Motion for Reclassification of Filings			
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Public/ Document public	<input type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue <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) :	
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II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

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<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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