

**UNITED  
NATIONS**



International Residual Mechanism for  
Criminal Tribunals

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

Date: 18 December 2025

Original: English

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**BEFORE THE TRIAL CHAMBER**

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

**Registrar:** Abubacarr M. Tambadou

**PROSECUTOR**

**v.**

**FULGENCE KAYISHEMA**

**PUBLIC**

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**PROSECUTION MOTION TO STRIKE DEFENCE RESPONSE  
TO THE SUBMISSIONS OF THE GOVERNMENT OF THE  
REPUBLIC OF SOUTH AFRICA**

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**The Office of the Prosecutor**

Laurel Baig

**Counsel for Fulgence Kayishema**

Philippe Larochelle  
Kate Gibson

1. The Prosecution moves to strike Kayishema’s most recent Filing,<sup>1</sup> the latest in his series of attempts to instrumentalize litigation before the Mechanism and South African courts in an effort to frustrate his transfer to Mechanism custody.
2. Rather than providing the Trial Chamber with any responsive pleading that he may have already filed in the South African proceedings regarding the alleged security threat against him,<sup>2</sup> Kayishema purports to respond to the substance of South Africa’s Submissions<sup>3</sup> at the Mechanism.<sup>4</sup> Kayishema misreads the Trial Chamber’s authorization when suggesting that he should be entitled to respond to South Africa’s Submissions because the “essential core of [South Africa’s] Submissions is the same documents [sic] referenced by the Trial Chamber”.<sup>5</sup> His Filing exceeds the scope of the Chamber’s invitation and should be stricken accordingly.
3. To the extent Kayishema requests leave to respond to South Africa’s Submissions before the Mechanism,<sup>6</sup> that request should be denied. Contrary to Kayishema’s claims,<sup>7</sup> the Trial Chamber should not be drawn into second-guessing a State’s submissions based on Kayishema’s unsubstantiated assertions, no matter how many times they are repeated.<sup>8</sup> Rather, the Trial Chamber should rely on the South African authorities’ confirmation that “it was highly unlikely that the Government of Rwanda was involved in the alleged threat”.<sup>9</sup> This conclusion was based on the sworn evidence of the Deputy Director of Public Prosecutions for the Western Cape that Crime Intelligence had assessed that the information concerning a purported threat originated with a “rogue source” and was “likely orchestrated by individuals with an ulterior motive”.<sup>10</sup> Should Kayishema have wished to challenge the official assessment of a law enforcement source, he should have done so directly before the South African court, not the

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<sup>1</sup> Defence Response to the Submissions of the Government of the Republic of South Africa Responsive to the Decision of 29 October 2025, 10 December 2025 (“Filing”).

<sup>2</sup> Decision on Fulgence Kayishema’s Requests for Revocation of Referral and Assignment of Counsel, 29 October 2025 (“29 October 2025 Decision”), p.8 (authorizing Kayishema to “file before the Mechanism any responses to the South African Prosecutor Affidavit *submitted in the proceedings in South Africa*”) (emphasis added). *Also* 29 October 2025 Decision, p.8, fn.50, 53.

<sup>3</sup> Submissions Pursuant to “Decision on Fulgence Kayishema’s Requests for Revocation of Referral and Assignment of Counsel”, 28 November 2025 (“South Africa’s Submissions”).

<sup>4</sup> *See* Filing, paras.3-8.

<sup>5</sup> Filing, para.2.

<sup>6</sup> Filing, para.2.

<sup>7</sup> Filing, para.4. *Also* Filing, para.6.

<sup>8</sup> *E.g.* 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) (“Stay Motion”), paras.2, 10-16; Request for Revocation of Referral to the Republic of Rwanda, 14 August 2025 (confidential with public redacted version filed 26 August 2025), paras.29-31.

<sup>9</sup> South Africa’s Submissions, para.6.

<sup>10</sup> South Africa’s Submissions, Annex A, para.38. *Also* South Africa’s Submissions, Annex A, paras.35-37, 39.

Mechanism. Once again, Kayishema is raising an issue before the wrong court, seeking to play one jurisdiction against the other.<sup>11</sup> The Trial Chamber should not permit him to do so.

4. For these reasons, the Trial Chamber should either strike or reject Kayishema’s Filing.

Word Count: 739




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Laurel Baig  
Senior Appeals Counsel

Dated this 18th day December 2025  
At The Hague, the Netherlands

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<sup>11</sup> *E.g.* Public Redacted Version of Defence Notice of Intention to Seek Revocation of Referral Decision and Request for Status Conference, 11 October 2024, para.11 (seeking to invoke the Mechanism Rules of Detention while detained in South Africa opposing transfer to the Mechanism); Defence Request for Review of Decision on Assignment of Counsel, 6 November 2024 (seeking the assignment of Mechanism counsel while refusing to surrender to its custody); Public Redacted Version of Motion for the Assignment of a Trial Chamber to Consider the Revocation of the Referral Decision and Related Requests, 5 June 2025 paras.18-51 (providing “skeleton grounds” of a revocation request pending the assignment of Mechanism counsel and seeking the assignment of a Mechanism Trial Chamber while refusing transfer to Mechanism custody); Prosecution Request for Leave and Supplemental Response to Kayishema Motion for the Assignment of a Trial Chamber, 1 July 2025, Annex A, pp.56-57 (affidavit of Philippe Larochelle), paras.80-81 (explaining that it was the Defence strategy to obtain Mechanism funding to file a “supplementary brief” before the Mechanism, which would also be filed before the South African court); Defence Request for Assignment of Counsel, 2 September 2025 (despite not having surrendered to the Mechanism, seeking the assignment of counsel to assist in supplementing the grounds for revocation already submitted). *Also* Stay Motion (requesting a stay of the referral order despite not being in Mechanism custody).



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