

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

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

Date: 24 December 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: 24 December 2025

PROSECUTOR

v.

FULGENCE KAYISHEMA

PUBLIC

**FURTHER DECISION ON FULGENCE KAYISHEMA'S
REQUEST FOR REVOCATION OF REFERRAL**

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 (“Rwanda”) 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 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

BEING SEISED OF a motion, filed confidentially on 14 August 2025, in which Kayishema “formally request[ed] 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”) on the basis of four “preliminary grounds”, namely: (i) threats to his physical safety and security at the hands of the Government of Rwanda (“Ground 1”); (ii) risk of political interference in the impartiality and independence of the Rwandan judiciary (“Ground 2”); (iii) inadequate guarantees to an unimpeded right to an adequate defence (“Ground 3”); and (iv) the prospective unavailability of defence witnesses to testify on his behalf (“Ground 4”);¹⁰

NOTING that Kayishema also requested to be allowed to file a “final brief”, with the benefit of remunerated counsel, to provide detailed submissions supporting his preliminary grounds for revocation;¹¹

NOTING that the Prosecution responded on 28 August 2025 opposing the Revocation Request,¹² and that Kayishema replied on 1 September 2025;¹³

NOTING that, on 2 September 2025, Kayishema requested the Trial Chamber to instruct the Registrar of the Mechanism to assign him counsel remunerated under the Mechanism’s legal aid

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 (“Decision of 1 October 2024”), para. 3; Decision of 26 September 2019, para. 11.

⁹ 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; Decision of 1 October 2024, para. 3.

¹⁰ 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, 26-37, 41.

¹¹ See Revocation Request, paras. 27, 28, 41.

¹² 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.

¹³ Defence Request for Leave and Reply to Prosecution Response to Revocation Request, 1 September 2025 (confidential and *ex parte*; reclassified as public on 16 December 2025); Confidential Redacted Version of Defence Request for Leave and Reply to Prosecution Response to Revocation Request, 2 September 2025 (confidential; reclassified as public on 16 December 2025). See Decision on Prosecution Motion for Reclassification of Filings, 16 December 2025 (“Decision of 16 December 2025”), p. 5.

system, pursuant to Rule 46 of the Rules, for the purpose of proceedings concerning the Revocation Request;¹⁴

NOTING that, on 9 October 2025, the Prosecution sought leave to supplement its Response to Revocation Request and annexed “the public response of the Director of Public Prosecutions for the Western Cape to Kayishema’s application for postponement of the South African proceedings” in support of its submission that South African authorities have determined that there is no ongoing threat to Kayishema’s safety;¹⁵

RECALLING that, in the Decision of 29 October 2025, the Trial Chamber, *inter alia*: (i) granted leave and accepted the Prosecution’s Supplemental Response as validly filed;¹⁶ (ii) dismissed Grounds 2 to 4 of the Revocation Request;¹⁷ (iii) dismissed the Request for Assignment of Counsel;¹⁸ (iv) invited the Government of South Africa to file submissions on allegations raised in Ground 1 of the Revocation Request, including on information contained in the South African Prosecutor Affidavit;¹⁹ (v) found it unnecessary to grant Kayishema’s request to submit a “final brief” on Ground 1 of the Revocation Request, while allowing him to file any response to the South African Prosecutor Affidavit submitted in proceedings in South Africa;²⁰ and (vi) remained seised of the matter;²¹

NOTING that, on 28 November 2025, the Government of South Africa filed submissions, annexing the South African Prosecutor Affidavit, and stated that, following investigations, it has been concluded that the threat against Kayishema’s life 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”;²²

NOTING that, on 10 December 2025, Kayishema requested leave and responded, *inter alia*, that: (i) the South African Submission of 28 November 2025 “shed little light on the intelligence

¹⁴ Defence Request for Assignment of Counsel, 2 September 2025 (“Request for Assignment of Counsel”), paras. 1, 28. See also Prosecution Response to Kayishema’s Request for Assignment of Counsel, 11 September 2025.

¹⁵ 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 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”).

¹⁶ Decision of 29 October 2025, n. 32, p. 9.

¹⁷ Decision of 29 October 2025, pp. 7-9.

¹⁸ Decision of 29 October 2025, pp. 8, 9.

¹⁹ Decision of 29 October 2025, pp. 8, 9.

²⁰ Decision of 29 October 2025, p. 8, nn. 50, 53.

²¹ Decision of 29 October 2025, p. 9.

²² 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.

concerning a threat to [his] life while in detention in South Africa” and does not explain why the Government of South Africa took the allegations “so seriously [...] if the threat was simply an unsubstantiated tip from a [rogue] source”; (ii) the South African Prosecutor Affidavit is “second-hand in nature” and “insufficiently specific” for the Defence to properly scrutinize it; and (iii) the Trial Chamber should not defer to South Africa’s position, which repeats the South African Prosecutor Affidavit, that the threat from the Government of Rwanda is unsubstantiated but should assess the facts in line with a “fulsome inquiry” into the matter;²³

BEING SEISED OF a motion, filed by the Prosecution on 18 December 2025, moving to strike the Response to South Africa Submission on the basis that Kayishema has misread and exceeded the authorisation in the Decision of 29 October 2025 to respond to the South African Prosecutor Affidavit, or requesting that leave be rejected in view of Kayishema’s unsubstantiated assertions and that he should have challenged the South African Prosecutor Affidavit in South African proceedings;²⁴

CONSIDERING that the content of the South African Prosecutor Affidavit addresses matters related to Ground 1 of the Revocation Request, that this affidavit was originally filed in South African proceedings, and that Kayishema was allowed to submit before the Mechanism any responses filed in South African proceedings to this affidavit;²⁵

FINDING that, in these circumstances, it is appropriate to dismiss the Motion to Strike and to grant Kayishema leave and accept the Response to South Africa Submissions as validly filed;²⁶

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 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”;²⁷

OBSERVING that Ground 1 of the Revocation Request is based on Kayishema’s claim that “[c]redible information indicates that the [Government of Rwanda] has conspired to kill or seriously

²³ See 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 (“Response to South Africa Submission”), paras. 2-5, 7.

²⁴ See Prosecution Motion to Strike Defence Response to the Submissions of the Government of the Republic of South Africa, 18 December 2025 (“Motion to Strike”), paras. 1-4.

²⁵ Decision of 29 October 2025, p. 8.

²⁶ The Trial Chamber considers that deciding this matter without awaiting Kayishema’s response to the Motion to Strike will not result in any prejudice to him.

²⁷ See also Rule 14(C) of the Rules; Decision of 29 October 2025, pp. 5, 6.

injure [him] and that this threat remains ongoing”, and that such a threat “vitiates, in the strongest possible sense, the existence of grounds justifying a referral and accordingly requires its revocation”,²⁸

OBSERVING that, with respect to this alleged threat, Kayishema has been investigating and seeking information from the Government of South Africa;²⁹

CONSIDERING the official submission from the Government of South Africa, annexing the South African Prosecutor Affidavit, which provides, *inter alia*, that: (i) information of a threat against Kayishema’s life originated from an “unregistered contact” on 27 August 2024, on 30 August 2024 the Western Cape Crime Intelligence of the South African Police Services (“Crime Intelligence”) informed a manager at “Correctional Services” about this threat, and measures were put in place to mitigate any potential threats against Kayishema;³⁰ (ii) to maximize information collection and verification of the alleged threat, the relevant Crime Intelligence capacities, the Crime Intelligence Genocide Team, the State Security Agency, and the Counter-Intelligence: Military were alerted and requested to activate all their relevant assets;³¹ (iii) the investigation concluded that it was “highly unlikely” that the Government of Rwanda would be involved in such a plot, that “no further information on any assassination plot could be substantiated”, and that the “information originated from a rogue source” and was “likely orchestrated by individuals with an ulterior motive”;³² and (iv) as a consequence, Kayishema “is now again being held under the normal terms of his incarceration”,³³

OBSERVING that the contents of the South African Prosecutor Affidavit, as they relate to the alleged threat against Kayishema’s life, were confirmed by the Brigadier and Acting Provincial Head of Crime Intelligence;³⁴

CONSIDERING that, while Kayishema claims that the information contained in the South African Prosecutor Affidavit is insufficient and should not be relied upon,³⁵ he provides no further

²⁸ Revocation Request, paras. 29, 31.

²⁹ See Revocation Request, paras. 29, 30, 38, 41, n. 30. See also Response to South Africa Submission, para. 8; *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. 14, 15, Annexes B, C. See Decision of 16 December 2025, p. 5 (wherein the Presiding Judge ordered Kayishema to file publicly the Motion for Stay and its annexes).

³⁰ See South African Prosecutor Affidavit, paras. 24, 25, 28-30.

³¹ See South African Prosecutor Affidavit, paras. 32-34.

³² See South African Prosecutor Affidavit, paras. 35-39.

³³ South African Prosecutor Affidavit, para. 40.

³⁴ South Africa Submission of 28 November 2025, para. 4, Annex B. See also South African Prosecutor Affidavit, para. 25.

³⁵ See Response to South Africa Submission, paras. 3-5, 7.

information to substantiate his allegation that the Government of Rwanda attempted his “extrajudicial killing” while detained in South Africa;³⁶

CONSIDERING that, in view of the foregoing, Kayishema has failed to demonstrate the existence of an ongoing threat against him by the Government of Rwanda capable of showing that the conditions for referral of the case are no longer met;

FINDING, therefore, that it is appropriate to dismiss Ground 1 of the Revocation Request;

FOR THE FOREGOING REASONS,


HEREBY GRANTS Kayishema’s request for leave and **ACCEPTS** the Response to South Africa Submission as validly filed;

DISMISSES the Motion to Strike; and

DISMISSES Ground 1, and accordingly, the remainder of the Revocation Request.

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

Done this 24th day of December 2025,
At Arusha,
Tanzania



Judge Vagn Joensen
Presiding Judge

[Seal of the Mechanism]

³⁶ See Response to South Africa Submission, para. 6.



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