

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

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

Date: 1 September 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

CONFIDENTIAL AND EX PARTE

**DEFENCE REQUEST FOR LEAVE AND REPLY TO
PROSECUTION RESPONSE TO REVOCATION REQUEST**

Counsel for Fulgence Kavishema:

Mr. Philippe Larochelle
Ms. Kate Gibson

1. Pursuant to Rule 153(A), the Defence of Mr. Fulgence Kayishema (“Mr. Kayishema” and “Defence”, respectively) requests leave of the Trial Chamber to reply to the “Prosecution Response to Kayishema’s Request for Revocation of Referral to the Republic of Rwanda” (“Response”).¹
2. The Defence limits its submissions to arguments raised in the Response which constitute “new submission of law or fact”.² These submissions are filed confidentially and *ex parte* as they refer to a filing bearing this classification.

I. THREATS AGAINST MR. KAYISHEMA

3. The Prosecution claims that “available public information—including public court filings and media coverage of his case that includes photographs of Kayishema and identifies his detention location—suggests that South African authorities have assessed that there is no ongoing concern about his safety”.³ The Prosecution does not base this claim on any information from the South African authorities, but rather speculates on the basis of unspecified open source and/or third party material.
4. By contrast, Mr. Kayishema’s signed declaration of 10 September 2024 (“Declaration”) details information relayed to him directly by South African officials, including the Regional Commissioner of the Department of Correctional Services, which itself was derived from evidence obtained by the Crime Intelligence Division of the South African Police Service.⁴
5. Contrary to the Prosecution’s unsubstantiated assertion that the South African authorities “assessed that there is no ongoing concern about his safety”, the South Africa authorities took the following measures in response to threats in question: (i) assigning Mr. Kayishema a false name and new prison registration number; (ii) transferring Mr. Kayishema to Helderstroom Maximum Security Prison (“Helderstroom Prison”); and (iii) providing Mr. Kayishema instructions to follow in

¹ Prosecution Response to Kayishema’s Request for Revocation of Referral to the Republic of Rwanda, 29 August 2025 (confidential).

² *Nahimana et al. v. Prosecutor*, ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza’s Motion for Leave to Present Additional Evidence Pursuant to Rule 115, 5 May 2006, para. 8.

³ Response, para. 9.

⁴ Motion for Partial and Temporary Stay of Referral Decision, 9 January 2024 (confidential) (“Moton for Stay”), Annex A (confidential and *ex parte*) (“Declaration”).

his interactions with fellow inmates and prison security staff to ensure his safety.⁵ These steps indicate both the perceived credibility of the threats and the authorities' resultant serious concerns about Mr. Kayishema's safety

6. The Prosecution also mischaracterizes the Duty Judge's Decision of 14 February 2025, which denied the Motion for Stay on the basis that it was premature as Mr. Kayishema's transfer to Rwanda was not imminent,⁶ not because he "did not consider that [the information in the Declaration] warranted a stay of the implementation of the Referral Decision".⁷
7. Insofar as the Prosecution takes issue with the fact that the Declaration has not been disclosed *inter partes*, the highly sensitive nature of the threats against Mr. Kayishema, as underscored by the measures taken by the South African authorities, continue to justify its *ex parte* classification.

II. THE PROSECUTION DISTORTS THE REMEDY OF REVOCATION

8. In responding to the preliminary grounds advanced in the Revocation Request, the Prosecution simply refers to the thirteen-year-old findings of the Referral Decision.⁸ In doing so, the Prosecution attempts to rebut the Revocation Request by referring to the very conclusions it impugns. The Referral Decision was issued over a decade ago. It no longer represents an accurate, contemporary assessment of the fulfillment of the conditions for referral. This 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, in 2025.
9. Secondly, in arguing that the Revocation Request should be dismissed on the grounds that Mr. Kayishema's "fair trial rights have not been violated",⁹ the Prosecution imports an erroneous legal standard that distorts the purpose of revocation proceedings. Revocation proceedings seek to assess whether "the conditions for referral of the case are no longer met",¹⁰ with the conditions for referral requiring that a Chamber be

⁵ Declaration, pp. 1-2.

⁶ Decision on Fulgence Kayishema's Motion for Partial and Temporary Stay of Referral Decision, 14 February 2025 (confidential), p. 4.

⁷ Response, para. 9.

⁸ Response, paras 9, 11, 13, 14.

⁹ Response, p. 5, Sub-heading B.

¹⁰ Article 6(6) of the Statute.

“satisfied that the accused *will* receive a fair trial” in the national jurisdiction concerned.¹¹ The primary consideration in revocation proceedings is whether the conditions for a fair trial in the domestic jurisdiction no longer exist.¹²

10. The relevant assessment in referral and revocation proceedings is thus inherently prospective, assessing *ex ante* “whether the accused *will* receive a fair trial, including whether the accused *will* be accorded the rights set out in [Article 19 of the Statute]”,¹³ not *ex post* whether the accused *have* been afforded such rights. In the present context, revocation serves to prevent anticipated violations of Mr. Kayishema’s rights, not remedy them after the fact.

Word Count: 871 words



Mr. Philippe Larochelle
Counsel for Fulgence Kayishema

Respectfully submitted this 1 September 2025,
At Montréal, Canada

¹¹ Article 6(4) of the Statute (emphasis added).

¹² *Prosecutor v. Uwinkindi*, MICT-12-25-AR14.1, Decision on an Appeal Concerning a Request for Revocation of a Referral, 4 October 2016, para. 12.

¹³ *Prosecutor v. Munyakazi*, 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*, ICTR-2002-78-R11bis, Decision on the Prosecution’s Appeal against Decision on Referral under Rule 11bis, 30 October 2008, para. 4 (emphases added).



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