

**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 Kayishema:

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) (“Motion 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).



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

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

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 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	
Case Name/ Affaire :	The Prosecutor v. Fulgence Kayishema			Case Number/ Affaire n° :	MICT-12-23-R14.1		
Date Created/ Daté du :	1 September 2025		Date transmitted/ Transmis le :	1 September 2025		Number of Pages/ Nombre de pages :	4
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	<input type="checkbox"/> Other/Autre (specify/ préciser):		
Title of Document/ Titre du document :	DEFENCE REQUEST FOR LEAVE AND REPLY TO PROSECUTION RESPONSE TO REVOCATION REQUEST						
Classification Level/ Catégories de classification :	<input type="checkbox"/> Public/ Document public	<input checked="" type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue				
			<input checked="" 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) :				
Document type/ Type de document :							
<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 :						
Original/ Original en :	<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):	
Traduction/ Traduction en :	<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):						