

UNITED  
NATIONS



International Residual Mechanism for  
Criminal Tribunals

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

Date: 11 September 2025

Original: English

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**BEFORE THE TRIAL CHAMBER**

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

**Registrar:** Abubacarr M. Tambadou

**PROSECUTOR**

**v.**

**FULGENCE KAYISHEMA**

**PUBLIC**

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**PROSECUTION RESPONSE TO KAYISHEMA'S  
REQUEST FOR ASSIGNMENT OF COUNSEL**

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**The Office of the Prosecutor**

Laurel Baig

**Counsel for Fulgence Kayishema**

Philippe Larochelle  
Kate Gibson

1. Fulgence Kayishema's repeated requests<sup>1</sup> for the assignment of counsel should be denied until he surrenders to Mechanism jurisdiction. Having opposed his transfer to the Mechanism for more than two years since his arrest, Kayishema has no right to be assisted by Mechanism-funded counsel<sup>2</sup> in his ongoing attempts to delay and obstruct the Mechanism's jurisdiction.

2. The Trial Chamber should reject Kayishema's invitation to construe Rule 46 to support the assignment of Mechanism counsel to an indictee who refuses to appear before the Mechanism.<sup>3</sup> The interests of justice<sup>4</sup> do not require such assignment, nor does the "fairness of the proceedings".<sup>5</sup> On the contrary, it is well established that in order to claim the fair trial guarantees under the Mechanism's Statute and Rules, Kayishema must first be under the Mechanism's jurisdiction. Before an indictee submits to Mechanism jurisdiction, the proceedings are not yet *inter partes*.<sup>6</sup> The fact that Kayishema was assigned counsel during the ICTR referral proceedings—while he was still a fugitive—was an exceptional measure which does not create a new, pre-surrender right to Mechanism funding.<sup>7</sup>

3. Kayishema's reliance on European Court of Human Rights jurisprudence is misplaced, as he overlooks a key feature present in each of the cases he cites: the accused had already submitted to the relevant domestic court's jurisdiction.<sup>8</sup> Moreover, he fails to identify any international human rights entitlement to legal aid for an interim procedural step concerning the venue of his case, rather than the substantive determination of criminal charges.

4. Furthermore, Counsel agreed to represent Kayishema *pro bono* before the Mechanism.<sup>9</sup> At the time, Kayishema, who is also represented by domestic counsel in the South African proceedings, had already been challenging his transfer for almost a year. Having failed to identify a single instance of Mechanism or Tribunal accused benefitting from international legal

<sup>1</sup> See generally *Prosecutor v. Fulgence Kayishema*, Case No.MICT-12-23-PT, Defence Request for Review of Decision on Assignment of Counsel, 6 November 2024; 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.

<sup>2</sup> *Contra* Defence Request for Assignment of Counsel, 2 September 2025 ("Request"), paras.14-28.

<sup>3</sup> See Request, paras.14-17.

<sup>4</sup> See Mechanism Rules of Procedure and Evidence, MICT/1/Rev.8, 26 February 2024, Rule 46.

<sup>5</sup> E.g. *Prosecutor v. Ntawukulilyayo*, Case No.MICT-13-34-ES, Decision on Dominique Ntawukulilyayo's Request for Legal Aid, 12 June 2018, para.11.

<sup>6</sup> See e.g. *Prosecutor v. Karadžić & Mladić*, Case Nos. IT-95-5-R61 & IT-95-18-R61 ("*Karadžić & Mladić*"), Decision Rejecting the Request Submitted by Mr. Medvene and Mr. Hanley III Defence Counsels for Radovan Karadžić, 5 July 1996, Registry Pagination ("RP.") D1368/2bis; *Karadžić & Mladić*, Decision Partially Rejecting the Request Submitted by Mr. Igor Pantelić, Counsel for Radovan Karadžić, 2 July 1996 (signed on 27 June 1996), RP.1349/2bis.

<sup>7</sup> *Contra* Request, para.16.

<sup>8</sup> *Contra* Request, paras.18, 25 and references cited therein.

<sup>9</sup> See Registrar's Notice of Recognition of *Pro Bono* Counsel, 9 May 2024, para.2.

aid prior to their initial appearance,<sup>10</sup> Counsel cannot “reasonably expect”<sup>11</sup> that their appointment as *pro bono* counsel will automatically lead the Trial Chamber to order the Registrar to fund the defence team at this stage of the proceedings.

5. Far from being the “appropriate juncture”<sup>12</sup> for the Mechanism to provide legal aid, assigning Mechanism-funded counsel now to assist Kayishema in his persistent refusal to appear before the Mechanism would be contrary to the interests of justice.<sup>13</sup> Counsel told the South African court that he has already prepared an 8,500 word draft of the revocation request,<sup>14</sup> but for strategic reasons chose to file a more limited version before the Mechanism.<sup>15</sup> Without providing any evidence of an objective basis for genuine concern regarding the fairness of his trial in Rwanda, Kayishema has already obtained a lengthy stay of the domestic proceedings in South Africa, delaying the decision on his transfer to the Mechanism. He has also made clear that in fact, he intends to use the evidence gathered and arguments made by Mechanism-funded Counsel to support his opposition to South Africa’s execution of the Mechanism arrest warrant.<sup>16</sup> Providing Mechanism funding for such a fishing expedition would be counterproductive. The Trial Chamber should not permit Kayishema to either secure Mechanism funding for work already completed or instrumentalize Mechanism resources to bolster his efforts to further frustrate its jurisdiction.

6. Rather, the Trial Chamber should seize this opportunity to publicly remind both Kayishema and South Africa of the latter’s indisputable international legal obligation to transfer him to Mechanism custody.

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<sup>10</sup> *Contra* Request, paras.15-16, 23 and references cited therein.

<sup>11</sup> Request, para.25.

<sup>12</sup> Request, para.22.

<sup>13</sup> *Contra* Request, paras.18-27.

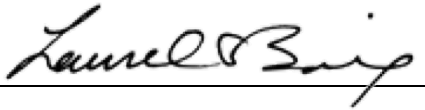
<sup>14</sup> See Prosecution Request for Leave and Supplemental Response to Kayishema Motion for the Assignment of a Trial Chamber, 1 July 2025, Annex A (“South African Postponement Filing”), p.51 (affidavit of Philippe Larochelle), para.54.

<sup>15</sup> See South African Postponement Filing, p.53 (affidavit of Philippe Larochelle), paras.66-67 (“In our respectful view, a proper and comprehensive revocation application could not be prepared without the issuance of legal aid to the Defence. [...] After some discussion amongst the team, we considered the best course of action to be to file a brief revocation application accompanied by a request to submit a more comprehensive supplemental brief upon the allocation of legal aid.”); Public Redacted Version of “Request for Revocation of Referral to the Republic of Rwanda” dated 12 August 2025, 26 August 2025, p.9 (reflecting a word count of 3,496 words).

<sup>16</sup> See South African Postponement Filing, p.12 (affidavit of Corinne Peterson), para.18.2; South African Postponement Filing, p.57 (affidavit of Philippe Larochelle), para.81.

7. For the foregoing reasons, the Request should be denied.

Word Count: 918

A handwritten signature in black ink, reading "Laurel Baig", written over a horizontal line.

Laurel Baig  
Senior Appeals Counsel

Done this 11<sup>th</sup> day of September 2025,  
At Arusha, Tanzania.



## 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 checked="" 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 :	11 September 2025		Date transmitted/ Transmis le :	11 September 2025		Number of Pages/ Nombre de pages :	4
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