UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

Case No: MICT-12-23-AR14.1

Date: 13 November 2025

Original: English

IN THE APPEALS CHAMBER

Before: **A Bench of the Appeals Chamber**

Registrar: **Mr. Abubacarr M. Tambadou**

THE PROSECUTOR

v.

FULGENCE KAYISHEMA

PUBLIC

DEFENCE NOTICE OF APPEAL AGAINST "DECISION ON FULGENCE KAYISHEMA'S REQUESTS FOR REVOCATION OF REFERRAL AND ASSIGNMENT OF COUNSEL"

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Fulgence Kayishema:

Mr. Philippe Larochelle
Ms. Kate Gibson

I. INTRODUCTION

1. The Defence of Mr. Fulgence Kayishema ("Defence" and "Mr. Kayishema", respectively) hereby provides notice of appeal against the Trial Chamber's "Decision on Fulgence Kayishema's Requests for Revocation of Referral and Assignment of Counsel" dated 29 October 2025 ("Impugned Decision").[1] The Defence brings the present appeal pursuant to Rule 14(E) of the Rules of Procedure and Evidence ("Rules").[2]

2. The Defence challenges the Impugned Decision as a whole on the basis of four (4) errors of law committed by the Trial Chamber. The Defence shall file its Appeal Brief by 28 November 2025, in accordance with Rule 14(E) of the Rules and paragraph 22 of the Practice Direction on Requirements and Procedures for Appeals.[3]

II. PROCEDURAL HISTORY

3. On 22 February 2012, a Trial Chamber of the International Criminal Tribunal for Rwanda referred the case against Mr. Kayishema to the Republic of Rwanda ("Rwanda" and "Referral Decision", respectively).[4]

4. On 24 May 2023, Mr. Kayishema was arrested in the Republic of South Africa ("South Africa") on the basis of a warrant of arrest issued by the International Residual Mechanism for Criminal Tribunals ("the Mechanism").[5]

5. On 14 August 2025, the Defence filed a request to revoke the Referral Decision ("Revocation Request").[6]

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[1] Decision on Fulgence Kayishema's Requests for Revocation of Referral and Assignment of Counsel, 29 October 2025 (public) ("Impugned Decision").
[2] *See Prosecutor v. Stanković*, Case No. MICT-13-51, Decision on Stanković's Appeal against Decision Denying Revocation of Referral and on the Prosecution's Request for Extension of Time to Respond, 21 May 2014, para. 9; *Prosecutor v. Uwinkindi*, Case No. MICT-12-25-AR14.1, Decision on Motions to Strike Notice of Appeal and Appeal Brief, 4 February 2016, para. 6 and fn. 15.
[3] Practice Direction on Requirements and Procedures for Appeals, MICT/10/Rev.1, 20 February 2019, para. 22.
[4] *Prosecutor v. Kayishema*, Case No. ICTR-01-67-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 22 February 2012 ("Referral Decision").
[5] *Prosecutor v. Kayishema*, Case No. MICT-12-23-PT, Decision on a Motion to Lift the Confidentiality of an Arrest Warrant, 7 September 2023, p. 2. *See Prosecutor v. Kayishema*, Case No. MICT-12-23-PT, Warrant of Arrest and Order for Transfer Addressed to All States, 8 March 2019.
[6] Request for Revocation of Referral to the Republic of Rwanda, 14 August 2025 (confidential) ("Revocation Request"). Public redacted version filed 26 August 2025.

6. On 22 August 2025, the President of the Mechanism assigned the Trial Chamber to consider the Revocation Request pursuant to Article 6(6) of the Statute of the Mechanism ("Statute") and Rule 14(C) of the Rules.[7]

7. On 2 September 2025, the Defence filed a request before the Trial Chamber for the assignment of counsel pursuant to Rule 46 of the Rules ("Request for Assignment of Counsel").[8]

8. On 29 October 2025, the Trial Chamber rendered the Impugned Decision, *inter alia* dismissing the Revocation Request in relation to Grounds 2 to 4 thereof and dismissing the Request for Assignment of Counsel in its entirety.[9]

III. GROUNDS OF APPEAL

A. Ground 1: The Trial Chamber Erred in Finding that the Statute Reflects a Preference for the Transfer of Mr. Kayishema's Case

9. The Trial Chamber prefaced its analysis with the finding with respect to the applicable law that "the Statute reflects a clear preference for a case of this nature to be tried in a national jurisdiction".[10] In grounding its analysis in this interpretation of the applicable law, the Trial Chamber committed an error of law.

10. The Defence avers that neither the Statute nor the Rules provide for a presumption or preference in favour of the trial of cases involving core international crimes before national jurisdictions. This error of law resulted in the Trial Chamber adopting a legally flawed approach to its task under Article 6(6) of the Statute and Rule 14(C) of the Rules with respect to the Revocation Request.

B. Ground 2: The Trial Chamber Erred in Dismissing the Revocation Request in Relation to Grounds 2 to 4

[7] Decision Assigning a Trial Chamber to Consider Fulgence Kayishema's Request for Revocation of Referral to the Republic of Rwanda, 22 August 2025.
[8] Defence Request for Assignment of Counsel, 2 September 2025 ("Request for Assignment of Counsel").
[9] Impugned Decision, pp. 7-8, 9.
[10] Impugned Decision, p. 6, *referring to Prosecutor v. Kayishema*, Case No. MICT-12-23-PT, Decision on Urgent Motion for Revocation of Referral and Amendment of Arrest Warrant, 26 September 2019, para. 9; Articles 1(3) and 6(1) of the Statute.

11. The Trial Chamber dismissed the Revocation Request in relation to Grounds 2 to 4 thereof on the basis of the Referral Chamber's "comprehensive assessment" of the prospects of a fair trial in Rwanda and receipt of certain guarantees from Rwanda, on the basis of which, in 2012, it was "persuaded to refer the case to Rwanda".[11] It characterized the Defence submissions of its preliminary grounds for revocation in the Revocation Request as "hypothetical, speculative, and incapable of showing that the conditions for a fair trial in Rwanda … no longer exist".[12]

12. On this basis, the Trial Chamber considered it "appropriate to dismiss Grounds 2 to 4 of the Revocation Request" and found "that it is not in the interests of justice to assign counsel under Rule 46 of the Rules in relation to these grounds".[13]

i. Sub-Ground A: The Trial Chamber Erred in Partially Dismissing the Revocation Request Without Affording the Defence the Opportunity to Make Further Submissions

13. In dismissing the Revocation Request in relation to Grounds 2 to 4 thereto without affording the Defence the opportunity to make further submissions with the benefit of remunerated counsel or, alternatively, through *pro bono* counsel upon being notified that the Trial Chamber had rejected the Request for Assignment of Counsel, constituted an error of law.

14. In failing to afford the Defence such an opportunity to make supplemental submissions to further substantiate submissions within the Revocation Request which were explicitly advanced as preliminary in nature, the Trial Chamber erred in law by failing to respect Mr. Kayishema's right to have adequate time and facilities for the preparation of his defence under Article 19(4)(b) of the Statute and adopting a procedurally unfair procedure for the determination of the Revocation Requests and thus failing to respect

[11] Impugned Decision, p. 7, *referring to* Referral Decision, paras. 17-142, 148-56, 162, 163, p. 44.
[12] Impugned Decision, p. 7, *referring to Prosecutor v. Uwinkindi*, Case No. MICT-12-25, Decision on Request for Revocation of an Order Referring a Case to the Republic of Rwanda, 12 March 2014, p. 3; *Prosecutor v. Munyagishari*, Case No. MICT-12-20, Decision on Second Request for Revocation on an Order Referring a Case to the Republic of Rwanda, 26 June 2014, p. 3; *Prosecutor v. Munyagishari*, Case No. MICT-12-20, Decision on Third Request for Revocation on an Order Referring a Case to the Republic of Rwanda, 8 April 2015, pp. 3, 4.
[13] Impugned Decision, p. 8.

Mr. Kayishema's right to a fair procedure under customary international law, as reflected in various human rights instruments.[14]

ii. Sub-Ground B: The Trial Chamber Erred in Partially Dismissing the Revocation Request on the Basis of the Findings of the Referral Decision

15. In dismissing the Revocation Request in relation to Grounds 2 to 4 thereto on the basis of the findings of the Referral Chamber in the Referral Decision, the Trial Chamber committed an error of law in misapplying itself to the task at hand.

16. In relying on and different to the over-a-decade-old assessment of the Referral Chamber, the Trial Chamber failed to assess whether Mr. Kayishema *will* receive a fair trial in Rwanda *today*. The non-contemporaneous findings of the Referral Decision are not a proper basis on which the Trial Chamber may validly base the necessarily contemporary and *in concreto* assessment demanded of it by Article 6(6) of the Statute and Rule 14(C) of the Rules. Therefore, the Trial Chamber's deference to the Referral Decision's findings and consequent failure to assess whether the conditions currently exist for Mr. Kayishema to receive a fair trial in Rwanda constitute an error of law.

C. Ground 3: The Trial Chamber Erred in Rejecting the Defence Request to Make Further Submissions on Ground 1 of the Revocation Request

17. After *inter alia* inviting the Government of South Africa to provide submissions relating to Ground 1 of the Revocation Request, the Trial Chamber found "that it is unnecessary to grant Kayishema's request to submit a 'final brief' on Ground 1 of the Revocation Request".[15]

18. In failing to afford the Defence such an opportunity to make supplemental submissions to further substantiate Ground 1 of the Revocation Request, which was explicitly advanced as preliminary in nature, the Trial Chamber erred in law by failing to respect Mr. Kayishema's right to have adequate time and facilities for the preparation of his defence under Article 19(4)(b) of the Statute and adopting a procedurally unfair

[14] *See, e.g.*, Article 10 of the Universal Declaration of Human Rights, 10 December 1948; Article 14(1) of the International Covenant on Civil and Political Rights, 16 December 1966; Article 6(1) of the European Convention on the Human Rights, 4 November 1950.
[15] Impugned Decision, p. 8.

procedure for the determination of the Revocation Requests and thus failing to respect Mr. Kayishema's right to a fair procedure under customary international law, as reflected in various human rights instruments.[16]

D. Ground 4: The Trial Chamber Erred in Rejecting the Request for Assignment of Counsel

19. The Trial Chamber found that it was "not in the interests of justice to assign counsel under Rule 46 of the Rules in relation to [Grounds 2 to 4 of the Revocation Request]" on the basis of its above-challenged holding that the findings of the Referral Chamber alleviate the fair trial concerns raised by the Defence in these parts of the Revocation Request.[17] The Trial Chamber also found that "it would not be in the interests of justice to grant assignment of counsel under Rule 46 of the Rules in relation to Ground 1 of the Revocation Request".[18]

20. Having outlined in its Request for Assignment of Counsel why it is necessary to afford Mr. Kayishema legal aid in the context of the Revocation Request, the Defence made clear that it intended to carry out certain further investigative steps to further substantiate all four grounds raised in the Revocation Request, but was, at present, unable to do so given the limitations of acting on a *pro bono* basis. In failing to afford Mr. Kayishema legal aid under Rule 46 of the Rules, the Trial Chamber erred in law by failing (i) to ensure respect for the equality of arms principle and (ii) to safeguard Mr. Kayishema's right to have adequate time and facilities for the preparation of his defence under Article 19(4)(b) of the Statute.

IV. REQUEST FOR RELIEF

21. The Defence respectfully requests that the Appeals Chamber:

REVERSE the Impugned Decision;

INSTRUCT the Registrar to assign Mr. Kayishema counsel in the interests of justice for the purpose of the proceedings concerning the Revocation Request; and

[16] *See supra* note 14.
[17] Impugned Decision, p. 8.
[18] Impugned Decision, p. 8.

REVOKE the Referral Decision; or, alternatively,

REMAND the Revocation Request back to the Trial Chamber for consideration in relation to Grounds 2 to 4 thereto in accordance with the Appeals Chamber's instructions.

Word Count: 1,865 words

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Respectfully submitted this 13 November 2025,
At Montréal, Canada

UNITED NATIONS
International Residual Mechanism
for Criminal Tribunals

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Case Name/ *Affaire* : ***The Prosecutor v. Fulgence Kayishema*** **Case Number/ *Affaire n°* :** **MICT-12-23-AR14.1**

Date Created/ *Daté du* : **13 November 2025** **Date transmitted/ *Transmis le* :** **13 November 2025** **Number of Pages/ *Nombre de pages* :** **7**

Original Language/ *Langue de l'original* : ☒ English/ *Anglais* ☐ French/ *Français* ☐ Kinyarwanda ☐ B/C/S ☐ Other/*Autre* (specify/ *préciser*):

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