

UNITED
NATIONS



International Residual Mechanism
for Criminal Tribunals

Case No: MICT-12-23-AR14.2

Date: 8 January 2026

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 CONSOLIDATED APPEAL AGAINST DECISIONS ON
DEFENCE REQUEST FOR REVOCATION OF REFERRAL**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Fulgence Kayishema:

Mr. Philippe Larochele
Ms. Kate Gibson

I. INTRODUCTION

1. The Defence of Mr. Fulgence Kayishema (“Defence” and “Mr. Kayishema”, respectively) hereby submits its notice of its consolidated appeal against the Trial Chamber’s “Decision on Fulgence Kayishema’s Requests for Revocation of Referral and Assignment of Counsel” dated 29 October 2025 (“First Impugned Decision”)¹ and its “Further Decision on Fulgence Kayishema’s Request for Revocation of Referral” dated 24 December 2026 (“Second Impugned Decision”; collectively, “Impugned Decisions”).²
2. The Defence shall file its Appeal Brief by 23 January 2026, in accordance with Rule 14(E) of the Rules of Procedure and Evidence (“Rules”) and paragraph 22 of the Practice Direction on Requirements and Procedures for Appeals (“Practice Direction on Appeals”).³

II. PROCEDURAL BACKGROUND

3. On 22 February 2012, a Referral Chamber of the International Criminal Tribunal for Rwanda (“ICTR”) referred the case against Mr. Kayishema to the Republic of Rwanda (“Rwanda”).⁴
4. On 26 September 2019 a Trial Chamber of the International Residual Mechanism for Criminal Tribunals (“the Mechanism”) dismissed without prejudice a request from the Office of the Prosecutor of the Mechanism (“Prosecution”) to revoke the referral of Mr. Kayishema’s case to Rwanda.⁵
5. 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 Mechanism.⁶

¹ *Prosecutor v. Kayishema*, Case No. MICT-12-23-R14.1, Decision on Fulgence Kayishema’s Requests for Revocation of Referral and Assignment of Counsel, 29 October 2025 (public) (“First Impugned Decision”).

² *Prosecutor v. Kayishema*, Case No. MICT-12-23-R14.1, Further Decision on Fulgence Kayishema’s Request for Revocation of Referral, 24 December 2025 (public) (“Second Impugned Decision”).

³ Practice Direction on Requirements and Procedures for Appeals, MICT/10/Rev.1, 20 February 2019 (“Practice Direction on Appeals”), para. 22.

⁴ *Prosecutor v. Kayishema*, Case No. ICTR-01-67-R11bis, 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 Urgent Motion for Revocation of Referral and Amendment of Arrest Warrant, 26 September 2019 (“Decision of 26 September 2019”).

⁶ *Prosecutor v. Kayishema*, Case No. MICT-12-23-PT, Decision on a Motion to Lift the Confidentiality of an Arrest Warrant, 7 September 2023 (public), p. 2.

6. On 14 August 2025, the Defence filed a request under Article 6(6) of the Statute of the Mechanism (“Statute”) and Rule 14(C) of the Rules to revoke the Referral Decision.⁷
7. On 22 August 2025, the President of the Mechanism (“President”) assigned the Trial Chamber to consider the Revocation Request.⁸
8. 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.⁹
9. On 29 October 2025, the Trial Chamber rendered the First Impugned Decision, *inter alia* (i) partially dismissing the Revocation Request in relation to Grounds 2 to 4 thereof; (ii) dismissing the Request for Assignment of Counsel in its entirety; and (iii) inviting submissions from the Government of South Africa regarding Ground 1 of the Revocation Request.¹⁰
10. On 13 November 2025, the Defence filed a Notice of Appeal against the First Impugned Decision.¹¹
11. On 19 November 2025, the Prosecution moved to strike the First Notice of Appeal.¹²
12. On 25 November 2025, the President declined to compose a bench of the Appeals Chamber in view of the First Notice of Appeal.¹³
13. On 28 November 2025, the Government of South Africa filed submissions responsive to the First Impugned Decision regarding Ground 1 of the Revocation Request.¹⁴

⁷ *Prosecutor v. Kayishema*, Case No. MICT-12-23-R14.1, Request for Revocation of Referral to the Republic of Rwanda, 14 August 2025 (confidential; public redacted version filed 26 August 2025) (“Revocation Request”).

⁸ *Prosecutor v. Kayishema*, Case No. MICT-12-23-R14.1, Decision Assigning a Trial Chamber to Consider Fulgence Kayishema’s Request for Revocation of Referral to the Republic of Rwanda, 22 August 2025 (public).

⁹ *Prosecutor v. Kayishema*, Case No. MICT-12-23-R14.1, Defence Request for Assignment of Counsel, 2 September 2025 (public) (“Request for Assignment of Counsel”).

¹⁰ First Impugned Decision, pp. 7-8, 9.

¹¹ *Prosecutor v. Kayishema*, Case No. MICT-12-23-AR14.1, Defence Notice of Appeal Against “Decision on Fulgence Kayishema’s Requests for Revocation of Referral and Assignment of Counsel”, 13 November 2025 (public) (“First Notice of Appeal”).

¹² *Prosecutor v. Kayishema*, Case No. MICT-12-23-AR14.1, Prosecution Motion to Strike Kayishema’s Notice of Appeal, 19 November 2025 (public) (“Prosecution Motion to Strike”).

¹³ *Prosecutor v. Kayishema*, Case No. MICT-12-23-AR14.1, Decision in Relation to Defence Notice of Appeal Against “Decision on Fulgence Kayishema’s Requests for Revocation of Referral and Assignment of Counsel”, 25 November 2025 (public) (“Decision of 25 November 2025”), p. 2.

¹⁴ *Prosecutor v. Kayishema*, Case No. MICT-12-23-R14.1, Submissions pursuant to “Decision on Fulgence Kayishema’s Requests for Revocation of Referral and Assignment of Counsel”, 28 November 2025 (public). See

14. On 24 December 2025, the Trial Chamber rendered the Second Impugned Decision, *inter alia* dismissing Ground 1 and accordingly the remainder of the Revocation Request.¹⁵

III. ADMISSIBILITY

15. The Defence brings the present appeal pursuant to Rule 14(E) of the Rules, which the Appeals Chamber has consistently interpreted as being applicable to appeals as of right from decisions on requests for the revocation of a referral to a national jurisdiction.¹⁶ The right to appeal decisions on requests for revocation is now also codified in paragraph 21 of the Practice Direction on Appeals.¹⁷

16. While more than fifteen (15) days have elapsed since the rendering of the First Impugned Decision, the Defence recalls that it filed its First Notice of Appeal against the First Impugned Decision within the prescribed time limit.¹⁸ Following the Prosecution Motion to Strike, the President declined to compose a bench of the Appeals Chamber in view of the First Notice of Appeal and instructed the Defence “to file a notice of appeal, if any, following the final adjudication by the Trial Chamber of his Revocation Request”.¹⁹ The Defence contends that President should have composed a bench of the Appeals Chamber to consider the First Notice of Appeal and the Prosecution Motion to Strike rather than effectively dismissing the First Notice of Appeal on the basis of the same arguments raised in the Prosecution Motion to Strike, usurping the role of the Appeals Chamber.²⁰ Nevertheless, in light of the President’s decision not to compose a bench of the Appeals Chamber in view of the First Notice of

also Prosecutor v. Kayishema, Case No. MICT-12-23-R14.1, 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.

¹⁵ Second Impugned Decision, p. 6.

¹⁶ *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.

¹⁷ Practice Direction on Appeals, para. 21.

¹⁸ First Notice of Appeal (filed on 13 November 2025). *See* Rule 14(E) of the Rules; Practice Direction on Appeals, para. 21.

¹⁹ Decision of 25 November 2025, p. 2. *See* Prosecution Motion to Strike, para. 3.

²⁰ *Cf. In the Matter of Robinson*, Case No. MICT-25-135-AR14.1, Order Assigning Judges to a Bench of the Appeals Chamber, 4 December 2025, p. 1 (assigning a bench of the Appeals Chamber to consider a notice of appeal and a motion by the opposing party to strike the notice of appeal); *In the Matter of Robinson*, Case No. MICT-25-135-AR14.1, Decision on Motion to Strike Notice of Appeal, 22 December 2025, pp. 2-3 (where the Appeals Chamber decided upon the motion to strike after being composed to consider both the notice of appeal and the motion to strike).

Appeal, the Defence submits that the present Notice of Appeal is admissible with respect to the First Impugned Decision.

17. Furthermore, the present appeal is admissible insofar as it concerns aspects of the First Impugned Decision that may be construed as deciding upon the Request for Assignment of Counsel. The Trial Chamber’s approach in the First Impugned Decision rendered the question of the revocation of the Referral Decision inextricably linked to the question of legal aid. Therefore, the manner in which the First Impugned Decision is organized means that the Trial Chamber’s findings on the Revocation Request are not segregable from its findings on the Request for Assignment of Counsel. It would not be logical or in the interests of judicial economy to consider issues within the First Impugned Decision relating to legal aid as subject to a separate avenue of appeal. An appeal against the First Impugned Decision which only targets its findings on the Request for Assignment of Counsel would be deficient, just as an appeal targeting only its findings with respect to the Revocation Request would similarly be deficient, artificially compartmentalizing the intertwined findings of the Trial Chamber.
18. In the alternative, if the Appeals Chamber considers that issues within the First Impugned Decision concerning the Request for Assignment of Counsel are segregable and fall beyond the scope of Rule 14(E) of the Rules, it should nevertheless exercise its jurisdiction to consider the Defence appeal as of right as the issues at hand concern clearly identifiable rights of the accused and thus the proper functioning of the Mechanism.²¹

IV. 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

19. In the First Impugned Decision, the Trial Chamber observed that “the Statute reflects a clear preference for a case of this nature to be tried in a national jurisdiction”.²² The

²¹ See, e.g., *Prosecutor v. Nzuwonemeye*, Case No. MICT-13-43, Decision on the Appeal of the Single Judge’s Decision of 22 October 2018, 17 April 2019, para. 7; *Prosecutor v. Mladić*, Case No. MICT-13-56-A, Decision on Prosecution Appeal of the Acting President’s Decision of 13 September 2018, 4 December 2018, paras. 12, 15; *In the Matter of Nzuwonemeye et al.*, Case No. MICT-22-124, Decision on Motions to Appeal Decision Denying Assignment of Counsel, 27 May 2022, p. 3.

²² First Impugned Decision, p. 6, referring to Decision of 26 September 2019, para. 9; Articles 1(3) and 6(1) of the Statute.

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.

20. The Impugned Decisions were thus tainted by an erroneous interpretation of the applicable law, which resulted in the Trial Chamber adopting a legally flawed approach to its task with respect to the Revocation Request in both Impugned Decisions.²³

B. Ground 2: The Trial Chamber Erred in Dismissing the Revocation Request Without Affording the Defence the Opportunity to Make Supplemental Submissions in Support of the Revocation Request

21. In the Impugned Decisions, the Trial Chamber dismissed all four grounds of the Revocation Request without affording the Defence the opportunity to make submissions with the benefit of remunerated counsel, or alternatively, with regard to Grounds 2 to 4, through *pro bono* counsel upon being notified of the denial of the Request for Assignment of Counsel.²⁴
22. In failing to afford the Defence such an opportunity to make supplemental submissions to further substantiate the Revocation Request, the grounds of which were explicitly advanced as preliminary in nature, the Trial Chamber erred in law by violating the principle of *audi alteram partem* and by failing to respect Mr. Kayishema's right to be heard, right to equality of arms, and right have adequate time and facilities for the preparation of his defence.

C. Ground 3: The Trial Chamber Erred in Partially Dismissing the Revocation Request on the Basis of the Findings of the Referral Decision

23. In the First Impugned Decision, the Trial Chamber dismissed Grounds 2 to 4 of the Revocation Request on the basis of the over-a-decade-old "comprehensive assessment" conducted by the ICTR Referral Chamber, which "was confident that Kayishema's case, if referred, would be prosecuted 'consistent with internationally recognised fair

²³ See First Impugned Decision, pp. 7-8; Second Impugned Decision, pp. 5-6.

²⁴ First Impugned Decision, pp. 8, 9; Second Impugned Decision, p. 6.

trial standards enshrined in the Statute of [the ICTR] and other human rights instruments””.²⁵

24. In deferring to the non-contemporary assessment of the Referral Chamber—conducted over thirteen (13) years ago—the Trial Chamber failed to assess whether Mr. Kayishema *will* receive a fair trial in Rwanda *today* on the basis of the contemporary and *in concreto* assessment demanded of by Article 6(6) of the Statute and Rule 14(C) of the Rules. 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 constituted an error of law.

V. REQUEST FOR RELIEF

25. On the basis of the foregoing, the Defence respectfully requests that the Appeals Chamber:

REVERSE both Impugned Decisions; and

REVOKE the Referral Decision;

Or, alternatively,

REVERSE both Impugned Decisions;

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

REMAND the Revocation Request back to the Trial Chamber for consideration in accordance with the Appeals Chamber’s instructions; and

INSTRUCT the Trial Chamber to authorize the Defence to file further submissions in the support of the Revocation Request with the benefit of remunerated counsel.

Word Count: 2,224 words

²⁵ First Impugned Decision, p. 7 (alteration in original), *referring to* Referral Decision, paras. 17-142, 148-56, 163.



Mr. Philippe Laroche
Counsel for Fulgence Kayishema

Respectfully submitted this 8 January 2026,
At Montréal, Canada



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