

UNITED
NATIONS

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



International Residual Mechanism for
Criminal Tribunals

Date: 5 February 2026

Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Graciela Gatti Santana, Presiding
Judge Carmel Agius
Judge Florence Rita Arrey
Judge Liu Daqun
Judge Seon Ki Park

Registrar: Abubacarr M. Tambadou

PROSECUTOR

v.

FULGENCE KAYISHEMA

PUBLIC

**PROSECUTION RESPONSE BRIEF TO DEFENCE
CONSOLIDATED APPEAL**

The Office of the Prosecutor

Serge Brammertz
Laurel Baig

Counsel for Fulgence Kayishema

Philippe Laroche
Kate Gibson

I. OVERVIEW

1. During the nearly three years since his arrest in South Africa in May 2023, Fulgence Kayishema has repeatedly sought various forms of relief from the Mechanism, despite not being in Mechanism custody and not having a case pending before it.¹ Both before the Mechanism and the South African courts, he has pursued litigation tactics aimed at delaying and/or thwarting his transfer to the Mechanism. After retaining Mechanism *pro bono* counsel in May 2024,² Kayishema has repeatedly tried to claim fair trial rights to which he is not yet entitled³ while simultaneously seeking to obstruct his transfer.⁴

2. Kayishema misconstrues the central question addressed in the Impugned Decisions.⁵ Revocation is not the same as referral. Once a case has been referred, it is well-established that the Mechanism's function in relation to revocation is more limited. The Mechanism's role is not to repeatedly investigate the original premise of the referral or to act as an independent level of appellate review for national jurisdictions, but rather to determine whether the conditions for a fair trial in the relevant jurisdiction no longer exist.⁶ Mere conjecture and speculation cannot trigger a fresh assessment of the referral conditions. Instead, the Trial Chamber must consider whether "it is clear that the conditions for referral of the case are no longer met and it is in the interests of justice" to revoke the case.⁷ That determination "must necessarily take due consideration" of the availability of potential remedies at the national level.⁸ The Rwandan courts are the primary venue for addressing any anticipatory fair trial concerns Kayishema may have. Revocation by the Mechanism is a remedy of last resort.⁹

¹ Decision on Defence Request for Review of Decision on Assignment of Counsel, 16 December 2024 ("Funding Review Decision"), p.3.

² Registrar's Notice of Recognition of Pro Bono Counsel, 9 May 2024.

³ See below paras.15-20.

⁴ Motion for Disclosure and Reclassification, 21 May 2024 (public with confidential Annexes A to C); Public Redacted Version of Defence Notice of Intention to Seek Revocation of a Referral Decision and Request for Status Conference, 11 October 2024 ("Status Conference Motion"); Motion for Partial and Temporary Stay of Referral Decision, 11 January 2025 (confidential with confidential and ex parte Annex A and confidential Annexes B, C and D; public redacted version filed 3 February 2026) ("Stay Motion").

⁵ Decision on Fulgence Kayishema's Requests for Revocation of Referral and Assignment of Counsel, 29 October 2025 ("First Impugned Decision"); Further Decision on Fulgence Kayishema's Request for Revocation of Referral, 24 December 2025 ("Second Impugned Decision") (collectively, "Impugned Decisions").

⁶ See *Prosecutor v. Uwinkindi*, Case No.MICT-12-25-AR14.1, Decision on an Appeal Concerning a Request for Revocation of a Referral, 4 October 2016 ("Uwinkindi Appeal Decision"), para.12, quoting *Prosecutor v. Uwinkindi*, Case No.MICT-12-25-R14.1 ("Uwinkindi"), Decision on Uwinkindi's Request for Revocation, 22 October 2015 ("22 October 2015 Uwinkindi Decision"), para.9.

⁷ Mechanism Statute, Art.6(6).

⁸ 22 October 2015 Uwinkindi Decision, para.9.

⁹ 22 October 2015 Uwinkindi Decision, para.9; Uwinkindi Appeal Decision, para.12.

3. Even if Kayishema is granted standing to request revocation or to appeal the denial of that request while obstructing Mechanism jurisdiction,¹⁰ none of his grounds of appeal show any error in the Trial Chamber’s exercise of its discretion. Kayishema put forward no credible evidence—and no evidence at all in relation to Revocation Grounds 2 to 4—supporting his speculative claims that the referral conditions no longer exist. His appeal should be dismissed.

II. KAYISHEMA CONTINUES TO ATTEMPT TO INSTRUMENTALIZE THE MECHANISM AGAINST THE SOUTH AFRICAN COURT AND ITSELF

4. Rather than submitting to Mechanism custody, Kayishema is tactically seeking to play the Mechanism and the South African court against each other in order to further delay or ultimately prevent his transfer. Kayishema has used the possibility of revocation to repeatedly delay the South African transfer proceedings, which remain adjourned.

5. Even before Kayishema announced on 10 October 2024 his intention to file a future revocation request,¹¹ his Mechanism counsel had advised his domestic counsel to delay his South African transfer proceedings on this basis.¹² The South African court adjourned the proceedings for more than nine months, ordering Kayishema to file the revocation request by 28 February 2025.¹³ Yet, Kayishema did not meet the South African deadline, despite successfully seeking an extension of words (to 8,500) from the Mechanism just before the deadline expired¹⁴ and despite advising Kayishema’s domestic counsel a week prior to the deadline that the revocation request would be filed on time.¹⁵ Although Kayishema’s Mechanism counsel later attested to the South African court that by 31 March 2025, the Defence team had prepared an 8,500 word draft of his revocation request,¹⁶ he did not file it. Kayishema

¹⁰ The Prosecution does not challenge the timeliness of Kayishema’s appeal of the First Impugned Decision. *See* Defence Appeal Brief Against Decisions on Request for Revocation of Referral, 23 January 2026 (“Appeal”), paras.14-19. The Prosecution does not intend to respond to paragraphs 20 to 27 of the Appeal because none of Kayishema’s grounds of appeal directly challenge the Trial Chamber’s decision on the request for assignment of counsel. *See* Appeal, paras.20-27.

¹¹ Status Conference Motion, para.2.

¹² Annex A to Prosecution Request for Leave and Supplemental Response to Kayishema Motion for the Assignment of a Trial Chamber, 1 July 2025 (“Annex A to Prosecution Supplemental Response”), p.12 (affidavit of Corinne Petersen), para.20.

¹³ *See* Annex A to Prosecution Supplemental Response, p.13 (affidavit of Corinne Petersen), para.21 (“[O]n 23 October 2024, the Court postponed this matter to 30 July 2025. The order required, *inter alia*, that the revocation request be filed by 28 February 2025 [...].”).

¹⁴ Motion for Variation of Word Limit Applicable to Revocation Request, 24 February 2025; Decision on Motion for Variation of Word Limit Applicable to Revocation Request, 5 March 2025, p.3.

¹⁵ Annex A to Prosecution Supplemental Response, p.61 (affidavit of Philippe Laroche), para.99; Annex A to Prosecution Supplemental Response, p.14 (affidavit of Corinne Petersen), para.26.1-26.7.

¹⁶ Annex A to Prosecution Supplemental Response, p.51 (affidavit of Philippe Laroche), para.54.

then used this inaction to seek a further postponement of the South African proceedings to 26 March 2026.¹⁷

6. On 5 June 2025, Kayishema tried again¹⁸ to obtain Mechanism funding, claiming that “many hours of work by the Defence” would be required to enable his lawyers to complete the “complex” tasks required to file a revocation request.¹⁹ In this motion, he described the nature of his future revocation request in “skeleton grounds” that “do not constitute a Revocation Request”,²⁰ without mentioning that he had already prepared the 8,500 word draft. Four days later, on 9 June 2025, Mechanism counsel swore an affidavit submitted to the South African court stating that he had *already* filed the revocation request, which reportedly contained three annexes.²¹ When the Revocation Request was eventually filed on 14 August 2025, it contained submissions largely identical to the “skeleton grounds” he had previously submitted and only one annex.²² The Revocation Request was unsupported by any evidence other than a cross reference to Kayishema’s own previously-filed affidavit, concerning the alleged threat against him, relating to Revocation Ground 1.²³

7. These developments demonstrate that Kayishema has not been forthcoming or transparent before either the Mechanism or the South African court.²⁴ Not only does he seek Mechanism funding to supplement his Mechanism submissions, his Mechanism counsel explained to the South African court that he intends to use Mechanism funding to gather evidence and prepare a supplemental brief which would then be used to oppose the execution

¹⁷ See Annex A to Prosecution Supplemental Response, pp.1-2 (Notice of Application for Postponement), para.1.

¹⁸ See Defence Request for Review of Decision on Assignment of Counsel, 6 November 2024 (public with public Annex A and confidential Annex B), para.4; Funding Review Decision, p.3.

¹⁹ Motion for the Assignment of a Trial Chamber to Consider the Revocation of the Referral Decision and Related Requests, 5 June 2025 (confidential with public redacted version filed on the same day) (“Trial Chamber Motion”), para.47. *Also* Trial Chamber Motion, paras.2, 19, 29, 39, 41-51, 56-67.

²⁰ Trial Chamber Motion, para.19.

²¹ Compare Annex A to Prosecution Supplemental Response, p. 62 (affidavit of Philippe Laroche of 9 June 2025), para. 103 (“Ultimately, the Revocation Request was finalized and filed on 5 June 2025”) *with* Trial Chamber Motion (9 June 2025), para.19. *Also* Annex A to Prosecution Supplemental Response, pp.55-56 (affidavit of Philippe Laroche), para. 76, fn 50 (referring to confidential and *ex parte* Annexes A to C) and fn 51 (referring to confidential and *ex parte* Annex A and confidential Annexes B and C). *See also* Annex A to Prosecution Supplemental Response, p.52 (affidavit of Philippe Laroche), para.64 (stating that 8,500 words was insufficient to contain “all the evidence which was relevant to the revocation request”).

²² Compare Trial Chamber Motion, paras.32-37 *with* Request for Revocation of Referral to the Republic of Rwanda, 14 August 2025 (confidential with confidential Annex A and public redacted version filed 26 August 2025) (“Revocation Request”), paras.22-27.

²³ See Second Impugned Decision, pp.5-6, *citing inter alia* Submissions Pursuant to “Decision on Fulgence Kayishema’s Requests for Revocation of Referral and Assignment of Counsel”, 28 November 2025, Annex A.

²⁴ See also Prosecution Request for Leave and Supplemental Response to Kayishema Motion for the Assignment of a Trial Chamber, 1 July 2025.

of the Mechanism's arrest warrant.²⁵ Kayishema's domestic counsel explained that the plan was: "For the international team to receive [Mechanism] legal aid, collate supplementary evidence on unfairness in Rwandan genocide trials and related issues, and place it before this [South African] Court."²⁶

8. Furthermore, although the Revocation Request referred to forthcoming submissions from South African authorities concerning the alleged "assassination attempts" against Kayishema,²⁷ it was the Prosecution (not Kayishema) who presented these materials to the Trial Chamber.²⁸ The South African prosecutor explained in his affidavit that "there is no threat of assassination"²⁹ and that it was "the strong suspicion of Crime Intelligence that the threat was likely orchestrated by individuals with an ulterior motive".³⁰ The Prosecution understands that Kayishema did not respond to this affidavit in South Africa, and he now appears to have abandoned his Revocation Ground 1, since he does not challenge the Trial Chamber's determination on appeal.³¹

III. APPEAL GROUND 1: THE TRIAL CHAMBER CORRECTLY ACKNOWLEDGED THE MECHANISM'S STATUTORY PREFERENCE FOR TRANSFERRING ARTICLE 1(3) CASES

9. Kayishema fails to show error in the Trial Chamber's observation that "the Statute reflects a clear preference for a case of this nature to be tried in a national jurisdiction".³² He does not explain how the Trial Chamber's acknowledgement had any impact on its decision to reject his request for revocation.

10. The Trial Chamber was not considering whether Kayishema's case should be referred to a national jurisdiction, but whether it should be revoked from Rwanda, where it had already

²⁵ Annex A to Prosecution Supplemental Response, p.57 (affidavit of Philippe Larochelle), para.81. *See also* Annex A to Prosecution Supplemental Response, p.12 (affidavit of Corinne Petersen), para.18.2, pp.19-20, paras.43-44; p.20, para.46 (referring to placing the evidence collected by Kayishema's Mechanism counsel before the South African court).

²⁶ Annex A to Prosecution Supplemental Response, p.24 (affidavit of Corinne Petersen), para. 62.1.

²⁷ Public Redacted Version of "Request for Revocation of Referral to the Republic of Rwanda" dated 12 August 2025, 26 August 2025, fn 30 (referring to Annex A to the Request).

²⁸ Annex to Prosecution Request for Leave and Supplemental Response to Kayishema Request for Revocation of Referral to the Republic of Rwanda, 9 October 2025, para.38.

²⁹ Annex to Prosecution Request for Leave and Supplemental Response to Kayishema Request for Revocation of Referral to the Republic of Rwanda, 9 October 2025, p.8 (heading).

³⁰ Annex to Prosecution Request for Leave and Supplemental Response to Kayishema Request for Revocation of Referral to the Republic of Rwanda, 9 October 2025, para.38.

³¹ Appeal, paras.29-55.

³² First Impugned Decision, p.6, *referring to, inter alia*, Mechanism Statute Articles 1(3) and 6(1). *Contra* Appeal, paras.29-38.

been referred by an ICTR Trial Chamber in 2012.³³ As the Trial Chamber correctly observed, revocation is a “remedy of last resort” and the Mechanism’s role is not to act as an independent level of appellate review for national proceedings.³⁴ Rather, the question for the Trial Chamber was whether “it is clear that the conditions for referral of the case are no longer met and it is in the interests of justice” to revoke the case.³⁵

11. In any event, the Trial Chamber’s statement was correct: the Mechanism Statute does reflect a preference for referring core crimes cases not covered by Article 1(2), which pertains to cases involving persons “who are among the most senior leaders”³⁶ indicted by the ICTY and ICTR.³⁷ By contrast, Article 1(3) makes clear that the Mechanism’s power to try ICTY and ICTR indictees who are not among the most senior leaders is contingent upon the Mechanism having “exhausted all reasonable efforts to refer the case” as set out in Statute Article 6.

12. Kayishema fails to acknowledge this key distinction between Articles 1(2) and 1(3), attempting instead to artificially ascribe meaning to the differences between Articles 1(3) and 1(4) through an irrelevant pontification on academic scholarship and treaty interpretation.³⁸ The contingency described in Article 1(3) may be textually distinct from the preference in Article 1(4) favouring the referral of contempt cases, but that disparity merely reflects the fact that the respective sub-paragraphs pertain to different types of cases. While Kayishema refers to “the deliberate statutory architecture by which [the two types of] referrals … are treated separately”,³⁹ he overlooks the fact that the referral procedure set out in Article 6 applies to Article 1(3) and Article 1(4) referrals alike.⁴⁰

13. Moreover, Article 6(1) expressly requires that the Mechanism “undertake every effort to refer” Article 1(3) cases in accordance with the procedure defined in the remainder of the Article. This is consistent with the language used by the UN Security Council when it “urge[d] the Tribunals and the Mechanism to actively undertake every effort to refer those cases which

³³ *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”), para.163.

³⁴ First Impugned Decision, p.6.

³⁵ Mechanism Statute, Art.6(6).

³⁶ Mechanism Statute, Art.1(2).

³⁷ Mechanism Statute, Art.1(3).

³⁸ Appeal, paras.31, 33-37.

³⁹ Appeal, para.37.

⁴⁰ See Mechanism Statute, Article 6(1).

do not involve the most senior leaders suspected of being responsible for crimes to national jurisdictions".⁴¹

14. Kayishema fails to articulate how the Trial Chamber's acknowledgement of this "clear preference" constituted error or had any impact on the outcome of its Decision.

IV. APPEAL GROUND 2: THE TRIAL CHAMBER PROPERLY CONSIDERED KAYISHEMA'S SUBMISSIONS

15. The Trial Chamber did not commit any procedural error or deny Kayishema any rights to which he is presently entitled.

16. Kayishema fails to identify any procedure which required the Trial Chamber to permit him to supplement his Revocation Request before it ruled.⁴² The Mechanism Rules do not provide for a multi-step revocation procedure.⁴³ Kayishema had an opportunity to submit evidence supporting his claim that the conditions for referral are no longer met. Rather than doing so, Revocation Grounds 2 to 4 contained "hypothetical, speculative" submissions, which the Trial Chamber deemed "incapable" of meeting the Article 6(6) standard.⁴⁴

17. Moreover, in relation to Revocation Ground 1, the Trial Chamber did permit supplemental briefing.⁴⁵ However, the only substantive evidence presented to support Kayishema's allegation of an ongoing threat against him by the Government of Rwanda was Kayishema's own declaration, submitted *ex parte* the Prosecution in support of a previous filing.⁴⁶ That alleged threat was later proven to be neither credible nor reliable.⁴⁷

18. Kayishema fails to show that the Trial Chamber disregarded any rights to which he is entitled. Kayishema is in South Africa where he is actively engaged in litigation before the

⁴¹ United Nations Security Council Res. 1966 (22 December 2010), UN Doc. S/RES/1966, para.11.

⁴² Although Kayishema technically requests the Trial Chamber to permit a "final brief," elsewhere in his Revocation Request he was merely seeking to "reserve his right" to seek leave to submit a future supplemental/final brief. *Compare* Revocation Request, para.41 with paras.3, 27.

⁴³ *Compare* Rule 14(C) with Rule 147 (as amended 4 September 2025) (with Rule 147 providing for a two-step process).

⁴⁴ First Impugned Decision, p.7.

⁴⁵ First Impugned Decision, p.9; Second Impugned Decision, p.6 (granting Kayishema's request for leave to respond to the submissions of the Government of South Africa).

⁴⁶ See Revocation Request, fn 29, *citing* confidential *ex parte* Annex A to the Stay Motion. Confidential and *ex parte* Annex A was ultimately declassified on 16 December 2025. See Decision on Prosecution Motion for Reclassification of Filings, 16 December 2025, p. 4. However, the Prosecution only obtained access to that annex on 2 February 2026.

⁴⁷ See Second Impugned Decision, pp.5-6, *citing inter alia* Submissions Pursuant to "Decision on Fulgence Kayishema's Requests for Revocation of Referral and Assignment of Counsel", 28 November 2025, Annex A.

national courts aimed at obstructing his transfer to the Mechanism.⁴⁸ It is therefore premature for him to claim legal aid or other rights or entitlements that may be available to accused persons who are being tried before the Mechanism.⁴⁹ Moreover, the caselaw that he relies on concerns the substantive determination of criminal charges, not an interim procedural step concerning the venue of his case.

19. The present situation can be readily distinguished from the small number of cases in which duty counsel were appointed to facilitate ICTR litigation by representing the theoretical interests of fugitives without taking instructions from them.⁵⁰ In contrast, Kayishema, who has been arrested but not yet transferred, is already represented by defence counsel in South Africa. In addition, he has retained *pro bono* counsel to represent him before the Mechanism. Kayishema intends to submit the evidence gathered with Mechanism funds to the South African courts in support of his efforts to oppose the execution of the Mechanism's arrest warrant.⁵¹ Providing Mechanism funding for such a fishing expedition would be unreasonable and not in the interests of justice. It is not for the Mechanism to fund litigation in South Africa that seeks

⁴⁸ See above paras.4-8.

⁴⁹ See *Prosecutor v. Karadžić and Mladić*, Case Nos. IT-95-5-R61 & IT-95-18-R61 ("Karadžić and Mladić"), Decision Partially Rejecting the Request Submitted by Mr. Igor Pantelić, Counsel for Radovan Karadžić, 2 July 1996 (noting that the then-fugitive Karadžić "ha[d] the right to appear, accompanied by his counsel, before the Tribunal; that if he were to do so, the nature of the proceedings would alter and would become a *inter partes* trial, with all the guarantees which are an inherent part of a fair trial", rejecting Karadžić's counsel Pantelić's request for disclosure of the Rule 61 hearing evidence, and permitting him to be present in the courtroom for the reading of the indictments); *Karadžić and Mladić*, Decision Rejecting the Request Submitted by Mr. Medvene and Mr. Hanley III Defence Counsels for Radovan Karadžić, 5 July 1996 (rejecting the identical requests of Karadžić's additional counsel Medvene and Hanley III but permitting them to be present for the reading of the indictments); *Karadžić and Mladić*, Decision Rejecting the Application by Messrs Medvene and Hanley Seeking Leave to File Briefs Challenging the Fairness of the Statute and the Rules of Procedure and Evidence, 24 July 1996 (rejecting the request of Medvene and Hanley III to file briefs challenging the fairness of the ICTY Statute and Rules). See also Decision on Fulgence Kayishema Motion for Disclosure and Reclassification, 28 June 2024, p.4 (finding that Kayishema's request for disclosure of supporting materials was premature in view of the fact that he has not yet had an initial appearance and is to be transferred to Mechanism custody solely for the purpose of his transfer to Rwanda); Decision on Request for Status Conference, 29 October 2024, p.3 (finding request for status conference premature); Decision on Fulgence Kayishema's Motion for Partial and Temporary Stay of Referral Decision, 14 February 2025, p.4 (finding request for stay premature).

⁵⁰ Compare *Prosecutor v. Kabuga*, Case No. ICTR-98-44B, Designation of a Trial Chamber to Consider the Prosecutor's Request for Preservation of Evidence by Special Deposition for a Future Trial, 15 February 2011, p.2; *Prosecutor v. Bizimana*, Case No. ICTR-98-44F-71bis, Designation of a Trial Chamber to Consider the Prosecutor's Request for Preservation of Evidence by Special Deposition for a Future Trial, 15 February 2011, p.2; *Prosecutor v. Mpiranya*, Case No. ICTR-00-56A, Designation of a Trial Chamber to Consider the Prosecutor's Request for Preservation of Evidence by Special Deposition for a Future Trial, 17 February 2011, p.2; *Prosecutor v. Ntaganzwa*, Case No. ICTR-96-9-I, Order Designating a Trial Chamber to Consider the Prosecutor's Request for the Referral of the Case of Ladislas Ntaganzwa [sic] to Rwanda Pursuant to Rule 11 bis, 4 April 2012, p.2; *Prosecutor v. Kayishema*, Case No. ICTR-2001-67-I, Decision on the Referral of the Application to Appoint Defence Counsel, 2 May 2008, p.5; *Prosecutor v. Kayishema*, Case No. ICTR-01-67-R11bis, Order for the Assignment of Counsel, 27 July 2011, p.3.

⁵¹ See above para.7.

to undermine the Mechanism’s authority and South Africa’s indisputable international legal obligation to transfer Kayishema.

20. Kayishema fails to show how the Trial Chamber’s approach constituted error.

V. APPEAL GROUND 3: THE TRIAL CHAMBER’S CONSIDERATION OF THE REFERRAL DECISION WAS CONSISTENT WITH THE STATUTE

21. Kayishema mischaracterises the logic underpinning the Trial Chamber’s dismissal of Revocation Grounds 2 to 4.⁵² Since his case was referred to Rwanda in 2012, Kayishema is now in a different procedural posture: that of revocation. The fact that he successfully evaded arrest for over a decade post-referral does not entitle him to now revisit that determination by requesting revocation based on the passage of time and/or mere speculation.

22. The Trial Chamber’s conclusion that it was appropriate to dismiss those grounds did not rest primarily on its observation regarding the Referral Decision. Rather, the Trial Chamber rightly focused on the fact that Kayishema has not yet been transferred to Mechanism custody and the proceedings in Rwanda have not yet commenced.⁵³ The Trial Chamber therefore considered Kayishema’s submissions under Revocation Grounds 2 to 4 “general [...] hypothetical, speculative, and incapable” of demonstrating that the conditions for referral are no longer met.⁵⁴ The Trial Chamber further considered that after his transfer to Rwanda and the commencement of the proceedings against him, Kayishema will be able to first seek remedies for any potential fair trial violations from the Rwandan courts before resorting to the Mechanism.⁵⁵ Kayishema fails to show error with this approach.

23. Furthermore, as the Trial Chamber correctly noted, following a “comprehensive assessment” of Rwanda’s legal system, the Referral Chamber concluded in 2012 that if Kayishema were transferred to Rwanda, he would be prosecuted consistent with internationally recognised fair trial standards.⁵⁶ Between 2012 and 2023, three other cases referred by the ICTR to the Rwandan courts were successfully tried to completion.⁵⁷ Despite the filing of multiple revocation requests before the Mechanism, no Trial Chamber found that the conditions for

⁵² Appeal, paras.50-55.

⁵³ First Impugned Decision, pp.7-8.

⁵⁴ First Impugned Decision, p.7.

⁵⁵ First Impugned Decision, pp.7-8.

⁵⁶ First Impugned Decision, p.7, *citing* Referral Decision, paras. 17-142, 163.

⁵⁷ See *In the Matter of Jean Uwinkindi*, Case No.MICT-12-25, Final Combined Monitoring Reports for October 2021 to March 2022, 5 April 2022; *In the Matter of Bernard Munyagishari*, Final Combined Monitoring Report from September 2021 to March 2022, 5 April 2022; *In the Matter of Ladislas Ntaganzwa*, Combined Monitoring Report for July to September 2023, 10 October 2023.

referral were no longer met.⁵⁸ Contrary to Kayishema's assertions, he cannot now trigger a fresh assessment of the referral conditions by simply pointing to the passage of time and/or requesting revocation based on mere allegation and speculation.⁵⁹ The revocation jurisprudence does not allow for prospective requests based on unsubstantiated fears about future violations.⁶⁰

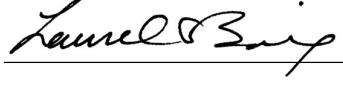
24. Because revocation is a remedy of last resort, Kayishema must show that a present violation of his fair trial rights cannot be remedied in Rwanda. He has failed to show any error in the Trial Chamber's determination that he did not do so.

VI. CONCLUSION

25. Since his arrest, Kayishema has sought to play the Mechanism judges against their South African counterparts. The Appeals Chamber should definitively refuse to fund the fishing expedition Kayishema requests and should remind South Africa of its obligation to immediately transfer him to Mechanism custody.

26. For the reasons set out above, Kayishema's appeal should be denied.

Word Count: 4,103



Laurel Baig
Senior Appeals Counsel

Dated this 5th day of February 2026
At Arusha, Tanzania

⁵⁸ See *Prosecutor v. Munyagishari*, Case No.MICT-12-20 ("Munyagishari"), Decision on Request for Revocation of an Order Referring a Case to the Republic of Rwanda, 13 March 2014; *Munyagishari*, Decision on Second Request for Revocation of an Order Referring a Case to the Republic of Rwanda, 26 June 2014; *Munyagishari*, Decision on Third Request for Revocation of an Order Referring a Case to the Republic of Rwanda, 8 April 2015; 22 October 2015 *Uwinkindi* Decision; *Prosecutor v. Uwinkindi*, Case No.MICT-12-25-R14.3, Decision on Requests for Revocation of an Order Referring a Case to the Republic of Rwanda, 26 April 2017.

⁵⁹ Appeal, paras.52-55.

⁶⁰ See above, fn 58.



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 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-AR14.2 | | |
| Date Created/ Daté du : | 5 February 2026 | Date transmitted/ Transmis le : | 5 February 2026 | Number of Pages/ Nombre de pages : 10 | | |
| 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 : | PROSECUTION RESPONSE BRIEF TO DEFENCE CONSOLIDATED APPEAL | | | | | |
| Classification Level/ Catégories de classification : | <input checked="" type="checkbox"/> Public/ Document public | <input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue <input 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/ Ordinance | <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 checked="" type="checkbox"/> Translation not required/ La traduction n'est pas requise |
| <input 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 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 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): |