

UNITED
NATIONS



International Residual Mechanism
for Criminal Tribunals

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

Date: 10 February 2026

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Graciela Gatti Santana, Presiding**
Registrar: **Mr. Abubacarr M. Tambadou**
Decision of: **10 February 2026**

PROSECUTOR

v.

FULGENCE KAYISHEMA

PUBLIC

DECISION ON WITHDRAWAL

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Mr. Fulgence Kayishema:

Mr. Philippe Larochelle
Ms. Kate Gibson

I, GRACIELA GATTI SANTANA, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Presiding Judge in this case;¹

NOTING that, on 22 February 2012, a trial chamber of the International Criminal Tribunal for Rwanda referred the case against Mr. Fulgence Kayishema (“Kayishema” and “*Kayishema case*”, respectively) to the authorities of the Republic of Rwanda (“Rwanda”) for trial before the High Court of Rwanda;²

NOTING that, on 29 October 2025, the Trial Chamber of the Mechanism assigned in the *Kayishema case* issued a decision dismissing, *inter alia*, three of the four grounds submitted by Kayishema in support of his request to revoke the referral of his case and that, on 24 December 2025, it also dismissed the fourth ground put forward by Kayishema;³

RECALLING that, on 15 January 2026, I assigned, in my capacity as President of the Mechanism, a bench of the Appeals Chamber, with me as its Presiding Judge pursuant to Article 12(3) of the Statute of the Mechanism (“Statute”), to consider the Notice of Appeal;⁴

NOTING that, on 2 February 2026, Kayishema filed a motion requesting that I recuse myself and assign another Judge to the Appeals Chamber pursuant to Rule 24(B) of the Rules of Procedure and Evidence of the Mechanism (“Rules”) or, if not, that I assign the matter to the most senior Judge for the purpose of taking the steps under Rules 18(B)(iv) and 22(B) of the Rules to consider my disqualification from sitting on the Appeals Chamber;⁵

NOTING Kayishema’s submissions that: (i) a statement I made as President of the Mechanism in my 12 June 2023 address to the Security Council would be interpreted by a reasonable observer as conveying at least the appearance that I have prejudged the subject-matter of the revocation of the referral of his case and does not convey a neutral factual summary of the Mechanism’s ongoing work and proceedings in the *Kayishema case*; and (ii) while the Appeal had not been filed at the

¹ Order Assigning Judges to a Bench of the Appeals Chamber, 15 January 2026 (“Order of 15 January 2026”), p. 1.

² *Prosecutor v. Fulgence 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. 162, p. 44.

³ *Prosecutor v. Fulgence 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, p. 9; Further Decision on Fulgence Kayishema’s Request for Revocation of Referral, 24 December 2025 (“Decision of 24 December 2025”), p. 6. *See* Defence Notice of Consolidated Appeal Against Decisions on Defence Request for Revocation of Referral, 8 January 2026 (“Notice of Appeal”). On 23 January 2026, Kayishema filed his appeal brief. *See* Defence Appeal Brief Against Decisions on Request for Revocation of Referral, 23 January 2026 (“Appeal”).

⁴ Order of 15 January 2026, pp. 1-2.

⁵ Defence Motion for the Recusal or Disqualification of a Judge from the Appeals Chamber, 2 February 2026 (“Motion”), paras. 1, 11, 13-14, 24-28.

time of my statement, the issue of whether the conditions for the referral of the *Kayishema* case to Rwanda continue to exist and whether it should be revoked were reasonably foreseeable;⁶

RECALLING the high threshold to rebut the presumption of impartiality of Judges and that, in the absence of evidence to the contrary, it must be assumed that the Judges “can disabuse their minds of any irrelevant personal beliefs or predispositions”;⁷

CONSIDERING that my statement was made in the context of reporting to the Security Council, pursuant to Article 32(2) of the Statute, on the Mechanism’s progress of work, which includes developments related to cases referred to national authorities;⁸

CONSIDERING that a reasonable observer would fully appreciate that my statement before the Security Council did not somehow indicate that I had pre-judged whether future circumstances may require revocation of the referral of the *Kayishema* case, especially since I explicitly referred to the fact that the *Kayishema* case will be closely monitored by the Mechanism;

EMPHASIZING that I would adjudicate the Appeal, as member of the Appeals Chamber, with an impartial mind;

OBSERVING that *Kayishema*’s transfer to Rwanda for trial has not been effectuated for more than two and a half years since his arrest and that delays in his transfer appear to be based, in part, on the pendency of the outcome of this Appeal;

CONSIDERING that, in these circumstances, any disqualification proceedings would cause delays in the adjudication of the Appeal and, therefore, in the particular circumstances of this case, the interests of justice are best served by avoiding further delays;

FOR THE FOREGOING REASONS,

DECIDE to WITHDRAW from the Appeals Chamber in the *Kayishema* case.

⁶ Motion, paras. 9-10, 12, 16-23.

⁷ See e.g. *Prosecutor v. Ratko Mladić*, Case Nos. IT-09-92-AR73.6 & IT-09-92-AR73.7, Decision on Ratko Mladić’s Motion for Disqualification of Judge Theodor Meron, 26 October 2016, para. 11.

⁸ The relevant part of my statement reads as follows: “Another significant development concerns the monitoring of three cases referred to the Republic of Rwanda by the ICTR. [...] Based on the reports [...] submitted by our monitors, I would like to commend the efforts of the Rwandan judicial authorities towards guaranteeing due process, and I also acknowledge the cooperation and responsiveness of the Rwandan Ministry of Justice and the Rwandan Correctional Service. I further note the professionalism of the national prosecutorial authorities and the active role undertaken by the Rwandan Bar Association in that regard. The Mechanism observes the encouraging advancements in Rwanda’s ability to discharge cases relating to international crimes efficiently and effectively. It is therefore confident that the Rwandan judiciary will be similarly steadfast during the proceedings on Fulgence Kayishema, which we will be following closely

Done in English and French, the English version being authoritative.

Done this 10th day of February 2026,
At Arusha,
Tanzania.



Judge Graciela Gatti Santana
Presiding Judge

[Seal of the Mechanism]

in line with our monitoring functions as set out in article 6, paragraph 5, of the statute". *See* United Nations Security Council, Verbatim Record of 9344th meeting, 12 June 2023, <https://docs.un.org/en/S/PV.9344>.



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