

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

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

Date: 24 March 2026

Original: English

IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
Judge Florence Rita Arrey
Judge Liu Daqun
Judge Seon Ki Park
Judge Seymour Panton

Registrar: Mr. Abubacarr M. Tambadou

Decision of: 24 March 2026

PROSECUTOR

v.

FULGENCE KAYISHEMA

PUBLIC

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

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Mr. Fulgence Kayishema:

Mr. Philippe Larochelle
Ms. Kate Gibson

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively)¹ is seised of an appeal filed by Mr. Fulgence Kayishema (“Kayishema”) on 23 January 2026² against the “Decision on Fulgence Kayishema’s Requests for Revocation of Referral and Assignment of Counsel” issued on 29 October 2025 (“First Impugned Decision”) and the “Further Decision on Fulgence Kayishema’s Request for Revocation of Referral” issued on 24 December 2025 (“Second Impugned Decision”) (collectively, “Impugned Decisions”) by the Trial Chamber of the Mechanism (“Trial Chamber”).

I. BACKGROUND

2. On 4 July 2001, a Judge of the International Criminal Tribunal for Rwanda (“ICTR”) confirmed the indictment against Kayishema, charging him with genocide, or in the alternative complicity in genocide, conspiracy to commit genocide, and extermination as a crime against humanity.³ On the same day, the ICTR Judge issued a warrant of arrest, requesting all Member States of the United Nations to search for, arrest, and transfer Kayishema to the custody of the ICTR at its seat in Arusha, the United Republic of Tanzania.⁴ On 22 February 2012, an ICTR Trial Chamber referred the case against Kayishema, while he remained at large, to the authorities of the Republic of Rwanda (“Rwanda”) for trial before the High Court of Rwanda.⁵ Following the referral of the case, the ICTR, and subsequently the Mechanism, issued new warrants of arrest providing for Kayishema’s arrest and transfer to the custody of the authorities of Rwanda.⁶

3. On 7 March 2019, the Prosecutor of the Mechanism (“Prosecution”) requested the issuance of an amended warrant of arrest providing for Kayishema’s arrest and transfer to the Mechanism, instead of Rwanda, on the basis that a key partner could no longer assist in the tracking and

¹ Order Assigning Judges to a Bench of the Appeals Chamber, 15 January 2026, pp. 1, 2; Order Replacing a Judge, 10 February 2026, pp. 1, 2. *See also* Defence Motion for the Recusal or Disqualification of a Judge from the Appeals Chamber, 2 February 2026; Decision on Withdrawal, 10 February 2026 (“Withdrawal Decision”). Following the Withdrawal Decision, Judge Carmel Agius was elected Presiding Judge of the Appeals Chamber in this case, pursuant to Rule 24(C) of the Rules of Procedure and Evidence of the Mechanism (“Rules”).

² Defence Appeal Brief Against Decisions on Request for Revocation of Referral, 23 January 2026 (“Appeal”). *See also* Defence Notice of Consolidated Appeal Against Decisions on Defence Request for Revocation of Referral, 8 January 2026 (“Consolidated Notice of Appeal”).

³ *See The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-I, Decision on the Prosecutor’s *Ex Parte* Request for Search, Seizure Arrest and Transfer, 4 July 2001, para. 3, p. 4. *See also The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-I, Indictment, dated 10 June 2001 and filed on 5 July 2001 (“Indictment”).

⁴ *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-I, Warrant of Arrest and Order for Transfer, 4 July 2001, pp. 2, 3.

⁵ *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-R11bis, Decision on Prosecutor’s Request for Referral to the Republic of Rwanda, 22 February 2012 (“Referral Decision”), paras. 2, 162, p. 44.

⁶ *See The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-00-67-R11bis, Warrant of Arrest and Order for Transfer, 4 April 2012, pp. 2, 4; *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Warrant of Arrest and Order for Transfer Addressed to All States, 7 May 2014, pp. 1, 2.

apprehension of Kayishema as long as the warrant of arrest provided for his transfer to Rwanda.⁷ On 8 March 2019, the Duty Judge of the Arusha Branch of the Mechanism (“Arusha Branch”) granted the Prosecution’s request and, as an interim measure and to ensure Kayishema’s apprehension and trial, amended the warrant of arrest, requesting all Member States of the United Nations to search for, arrest, and transfer Kayishema to the custody of the Arusha Branch.⁸ On 26 September 2019, a Trial Chamber of the Mechanism dismissed, without prejudice, the Prosecution’s request for revocation of the referral of Kayishema’s case to Rwanda, while affirming that the conditions set forth in the 2019 Arrest Warrant remain in force.⁹

4. On 24 May 2023, Kayishema was arrested in the Republic of South Africa (“South Africa”) pursuant to the 2019 Arrest Warrant.¹⁰ Since his arrest, Kayishema has been a party to the proceedings before the High Court of South Africa on matters unrelated to the charges in the Indictment and remains there, pending his transfer to the Arusha Branch solely for the purpose of his onward transfer to Rwanda.¹¹

5. On 11 January 2025, Kayishema filed a motion for partial and temporary stay of the Referral Decision until at least 28 February 2025, submitting that there was information on an alleged threat to his life in South Africa by the Government of Rwanda.¹² On 14 February 2025, the Duty Judge of the Arusha Branch dismissed Kayishema’s Motion for Stay, considering that Kayishema had not

⁷ *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Urgent Motion for Revocation of Referral and Amendment of Arrest Warrant, 7 March 2019 (confidential and *ex parte*). See also *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on a Motion to Lift the Confidentiality of an Arrest Warrant, 7 September 2023 (“Decision of 7 September 2023”), p. 1.

⁸ See *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on Urgent Motion for Amendment of Arrest Warrant, 8 March 2019 (confidential and *ex parte*), p. 2; *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Warrant of Arrest and Order for Transfer Addressed to All States, 8 March 2019 (confidential and *ex parte*; made public pursuant to the Decision of 7 September 2023) (“2019 Arrest Warrant”). See also Decision of 7 September 2023, p. 2.

⁹ See *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on Urgent Motion for Revocation of Referral and Amendment of Arrest Warrant, 26 September 2019 (confidential and *ex parte*; made public pursuant to a decision dated 7 November 2024), paras. 1, 9, 11, 12. See also *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on Remand Concerning Decision on Reclassification, 7 November 2024 (confidential and *ex parte*).

¹⁰ Decision of 7 September 2023, p. 2.

¹¹ *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on Fulgence Kayishema Motion for Disclosure and Reclassification, 28 June 2024, p. 4.

¹² *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-R14.1, Defence Notice of Compliance with Decision on Reclassification, 2 February 2026 (“Notice of Compliance”), Annex A (“Motion for Stay”), paras. 1, 2, 10-23, 28; *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Defence Notice of Intention to Seek Revocation of Referral Decision and Request for Status Conference, 11 October 2024 (confidential and *ex parte*), paras. 1, 2, 6, 7, 20. See also First Impugned Decision, p. 2, n. 10.

demonstrated that his transfer to Rwanda was imminent or that, consequently, the objective of his forthcoming request for revocation of the referral of his case would be significantly impaired.¹³

6. On 14 August 2025, Kayishema filed a request for revocation of the referral of his case, raising four grounds,¹⁴ and, on 2 September 2025, filed a related request for the assignment of counsel at the Mechanism’s expense.¹⁵ On 9 October 2025, the Prosecution filed affidavits from authorities of South Africa, indicating that the threat against Kayishema’s life was “highly unlikely” and that information about it originated from “a rogue source and was without substance”.¹⁶

7. On 29 October 2025, the Trial Chamber issued the First Impugned Decision, dismissing: (i) the Revocation Request in relation to Grounds 2, 3, and 4, which pertained to Kayishema’s submissions on the Rwandan judiciary’s alleged lack of independence and impartiality, inadequate guarantees for the right to an adequate defence, and prospective unavailability of defence witnesses; and (ii) in its entirety the request for assignment of counsel at the Mechanism’s expense.¹⁷ The Trial Chamber remained seised of Ground 1 of the Revocation Request, concerning Kayishema’s claims of ongoing threat to his physical safety and security by the Government of Rwanda, and invited the Government of South Africa to file submissions in relation thereto.¹⁸

8. On 13 November 2025, Kayishema filed a notice of appeal against the First Impugned Decision.¹⁹ On 25 November 2025, the President of the Mechanism (“President”) declined to compose a bench of the Appeals Chamber, considering that the Trial Chamber remained seised of the

¹³ *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-PT, Decision on Fulgence Kayishema’s Motion for Partial and Temporary Stay of Referral Decision, 14 February 2025 (confidential; made public pursuant to a decision dated 16 December 2025), pp. 2, 4, 5.

¹⁴ *Prosecutor v. Fulgence 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 on 26 August 2025) (“Revocation Request”), paras. 2, 41. *See also* *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-R14.1, Prosecution Response to Kayishema’s Request for Revocation of Referral to the Republic of Rwanda, 28 August 2025 (confidential) (“Prosecution Response of 28 August 2025”); *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-R14.1, Defence Request for Leave and Reply to Prosecution Response to Revocation Request, 1 September 2025 (confidential and *ex parte*).

¹⁵ *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-R14.1, Defence Request for Assignment of Counsel, 2 September 2025 (“Request for Assignment of Counsel”), paras. 1, 28. *See also* *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-R14.1, Prosecution Response to Kayishema’s Request for Assignment of Counsel, 11 September 2025.

¹⁶ *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-R14.1, Prosecution Request for Leave and Supplemental Response to Kayishema Request for Revocation of Referral to the Republic of Rwanda, 9 October 2025, para. 2, Annex (“Affidavits from South Africa”), Registry Pagination 283. *See also* Prosecution Response of 28 August 2025, para. 9.

¹⁷ *See* First Impugned Decision, pp. 3, 8, 9.

¹⁸ First Impugned Decision, pp. 8, 9.

¹⁹ *Prosecutor v. Fulgence 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, paras. 1, 2, 21.

Revocation Request, and instructed Kayishema to file a notice of appeal, if any, following the final adjudication by the Trial Chamber of his Revocation Request.²⁰

9. On 24 December 2025, having received submissions from the Government of South Africa²¹ and Kayishema’s submissions in response thereto,²² the Trial Chamber issued the Second Impugned Decision, dismissing the remaining Ground 1 of the Revocation Request.²³ In doing so, the Trial Chamber considered that Kayishema had failed to demonstrate the existence of an ongoing threat against him by the Government of Rwanda, which was capable of showing that the conditions for referral of the case were no longer met.²⁴

10. Kayishema filed the Consolidated Notice of Appeal on 8 January 2026 and his Appeal on 23 January 2026, raising three grounds of appeal in relation to the Impugned Decisions.²⁵ The Prosecution filed a response on 5 February 2026.²⁶ Kayishema did not file a reply.

II. DISCUSSION

A. Preliminary Matters

11. Kayishema submits that an appeal against the Impugned Decisions lies as of right pursuant to Rule 14(E) of the Rules, and requests that the Appeals Chamber consider the entirety of his Appeal, including his arguments challenging the Trial Chamber’s denial of his request for assignment of counsel at the Mechanism’s expense.²⁷ He further argues that, in view of the President’s decision not to compose a bench to adjudicate his initial appeal,²⁸ the Appeals Chamber should consider his

²⁰ *Prosecutor v. Fulgence 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 (“Decision of 25 November 2025”), p. 2. *See also* *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-AR14.1, Prosecution Motion to Strike Kayishema’s Notice of Appeal, 19 November 2025, paras. 1-4.

²¹ *Prosecutor v. Fulgence 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 (“South Africa Submission”). The Appeals Chamber notes that the Affidavits from South Africa filed by the Prosecution on 9 October 2025 were filed again as part of the South Africa Submission. *See* South Africa Submission, Annexes A and B. *See also supra* para. 6, n. 16.

²² *Prosecutor v. Fulgence 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 (“Defence Response to South Africa Submission”). On 18 December 2025, the Prosecution filed a motion to strike the Defence Response to South Africa Submission, which was dismissed by the Trial Chamber in the Second Impugned Decision. *See* *Prosecutor v. Fulgence Kayishema*, Case No. MICT-12-23-R14.1, Prosecution Motion to Strike Defence Response to the Submissions of the Government of the Republic of South Africa, 18 December 2025; Second Impugned Decision, p. 4.

²³ Second Impugned Decision, p. 6.

²⁴ Second Impugned Decision, p. 6.

²⁵ *See* Appeal, paras. 29-55. *See also* Consolidated Notice of Appeal, paras. 19-24.

²⁶ Prosecution Response Brief to Defence Consolidated Appeal, 5 February 2026 (“Response”).

²⁷ Consolidated Notice of Appeal, paras. 15, 17, 18; Appeal, paras. 14, 20-27.

²⁸ *See supra* para. 8.

consolidated Appeal admissible, despite being filed out of time with regard to the First Impugned Decision.²⁹ In response, the Prosecution does not contest the timeliness of the Appeal in relation to the First Impugned Decision and refrains from taking a position on Kayishema’s remaining arguments with regard to the admissibility of the Appeal.³⁰

12. The Appeals Chamber recalls that appeals from decisions on requests for revocation lie as of right and follow the same procedure as set out in Rule 14(E) of the Rules for appeals from decisions on referral of cases to national jurisdictions.³¹ Pursuant to this Rule, a notice of appeal shall be filed within 15 days of the issuance of the decision, with an appeal brief to follow within 15 days of the filing of the notice of appeal.³² The Appeals Chamber notes that, while Kayishema filed his initial notice of appeal against the First Impugned Decision within the prescribed time limit, the President declined to compose a bench and, instead, instructed Kayishema to file a new notice of appeal, if any, following the Trial Chamber’s final adjudication of the Revocation Request.³³ In these circumstances, the Appeals Chamber considers both the Consolidated Notice of Appeal and the Appeal against the Impugned Decisions to be validly filed, and will proceed to consider the Appeal in its entirety.

B. Standard of Review

13. The Appeals Chamber recalls that, where an appeal is filed against a decision denying a request for revocation of a referral, the issue before the Appeals Chamber is not whether the decision was correct, in the sense that it agrees with that decision, but whether the trial chamber has correctly exercised its discretion in reaching that decision.³⁴ A party challenging such a decision must show that the trial chamber: (i) misdirected itself either as to the legal principle to be applied, or as to the law, which is relevant to the exercise of its discretion; (ii) gave weight to irrelevant considerations or failed to give sufficient weight to relevant considerations; (iii) made an error as to the facts upon which it has exercised its discretion; or (iv) its decision was so unreasonable and plainly unjust that

²⁹ Consolidated Notice of Appeal, para. 16; Appeal, paras. 15-19.

³⁰ Response, para. 3, n. 10.

³¹ See *Prosecutor v. Radovan 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 (“*Stanković* Decision of 21 May 2014”), para. 9, n. 26.

³² In circumstances where the accused was not present or represented when the decision was pronounced, the time limit runs from the date on which the accused was notified of the decision. See Rule 14(E) of the Rules.

³³ See *supra* para. 8; Decision of 25 November 2025, p. 2, n. 9 (wherein the President held that “Kayishema may seek appellate review of *any* findings of the Trial Chamber in relation to the Revocation Request once the Trial Chamber has definitively adjudicated the matter” (emphasis added)).

³⁴ See *Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25-AR14.1, Decision on an Appeal Concerning a Request for Revocation of a Referral, 4 October 2016 (“*Uwinkindi* Decision of 4 October 2016”), para. 7; *Stanković* Decision of 21 May 2014, para. 12.

the Appeals Chamber is able to infer that the trial chamber must have failed to exercise its discretion properly.³⁵

C. The Appeal

14. Kayishema submits that the Trial Chamber erred in law in finding that the Statute of the Mechanism (“Statute”) reflects a preference for referral of core crimes cases under Article 1(3) of the Statute to national jurisdictions for trial.³⁶ He argues that, while such preference exists in relation to the referral of contempt cases under Article 1(4) of the Statute, the distinct language of Article 1(3) of the Statute indicates that there is no such preference for cases involving core crimes.³⁷ Rather, according to Kayishema, the language in Article 1(3) of the Statute that all reasonable efforts to refer the case be exhausted reflects the requirement for “exhaustion of certain procedural steps before the Mechanism can exercise its jurisdiction rather than establishing a statutory presumption in favour of referral of core crime cases”.³⁸

15. Kayishema also argues that, in denying his request for assignment of counsel at the Mechanism’s expense and depriving him of an opportunity to supplement his submissions following such assignment, the Trial Chamber placed him at a substantial disadvantage *vis-à-vis* the Prosecution, thereby violating the principle of equality of arms and Kayishema’s right to be heard.³⁹ Emphasizing the substantial resources at the Prosecution’s disposal, Kayishema argues that *pro bono* counsel, however competent or committed, face a number of limitations, including in relation to managing competing obligations, hiring support staff, and time and capacity to engage in “extensive evidentiary review or prolonged investigations”.⁴⁰

16. Finally, Kayishema submits that the Trial Chamber erred in law in relying on findings in the Referral Decision concerning the suitability of the referral of his case to Rwanda.⁴¹ Kayishema argues that the Trial Chamber, instead, was required to conduct a contemporary assessment and determine whether the conditions for the referral of his case to Rwanda are presently met, in the sense that he will receive a fair trial.⁴² According to Kayishema, the Trial Chamber’s dismissal of his submissions

³⁵ *Uwinkindi* Decision of 4 October 2016, para. 7; *Stanković* Decision of 21 May 2014, para. 12.

³⁶ Consolidated Notice of Appeal, paras. 19, 20; Appeal, paras. 29, 30, *referring to* First Impugned Decision, p. 6.

³⁷ Appeal, paras. 30-34, 38.

³⁸ Appeal, para. 35. *See also* Appeal, paras. 33, 36-38.

³⁹ Consolidated Notice of Appeal, paras. 21, 22; Appeal, paras. 41-48.

⁴⁰ Appeal, para. 44.

⁴¹ Consolidated Notice of Appeal, paras. 23, 24; Appeal, paras. 49-51.

⁴² Appeal, paras. 52, 53.

as being “hypothetical” and “speculative”, relying on jurisprudence related to cases that had already been transferred to Rwanda, illustrates that it misapplied the relevant legal principles.⁴³

17. As a remedy, Kayishema requests that the Appeals Chamber reverse the Impugned Decisions, instruct the Registrar to assign him counsel for the purpose of proceedings on the Revocation Request, and remand the Revocation Request to the Trial Chamber for consideration in accordance with the Appeals Chamber’s instructions, including authorizing the Defence to file further submissions in support of the Revocation Request with the benefit of remunerated counsel.⁴⁴

18. In response, the Prosecution submits that the Appeal should be dismissed in its entirety.⁴⁵ According to the Prosecution, Kayishema fails to explain how the Trial Chamber’s observation regarding a statutory preference for referral of core crimes cases had an impact on its denial of Kayishema’s revocation request.⁴⁶ In this regard, the Prosecution points out that the Trial Chamber was considering whether Kayishema’s case should be revoked from, not referred to, Rwanda and argues that, in any event, the Trial Chamber’s observation was correct in view of other statutory provisions, including Article 6 of the Statute.⁴⁷

19. The Prosecution further responds that the Trial Chamber did not commit any procedural error or deny any rights to which Kayishema is entitled.⁴⁸ In relation to the denial of Kayishema’s request for the assignment of counsel at the Mechanism’s expense, the Prosecution argues that Kayishema’s request was premature, given that he is currently actively engaged in litigation before national courts aimed at obstructing his transfer to the Mechanism.⁴⁹ Finally, the Prosecution submits that revocation is a remedy of last resort and that the Trial Chamber rightly focused on the fact that Kayishema has not yet been transferred to the Mechanism’s custody and that proceedings in Rwanda have not yet commenced.⁵⁰

20. The Appeals Chamber is not persuaded by Kayishema’s arguments that the Trial Chamber erred in recalling that the Statute reflects a preference for a case of this nature to be tried in a national jurisdiction.⁵¹ In doing so, the Trial Chamber correctly relied on Articles 1(3) and 6(1) of the Statute,⁵² which provide, in relevant parts, that the Mechanism may only proceed to try persons

⁴³ Appeal, paras. 54, 55.

⁴⁴ Consolidated Notice of Appeal, para. 25; Appeal, para. 56.

⁴⁵ Response, para. 3.

⁴⁶ Response, paras. 9, 10, 14.

⁴⁷ See Response, paras. 2, 10-13.

⁴⁸ Response, paras. 15-17, 20, n. 45.

⁴⁹ Response, paras. 18, 19. See also Response, paras. 1, 4-8.

⁵⁰ Response, paras. 2, 21-23.

⁵¹ See First Impugned Decision, p. 6.

⁵² First Impugned Decision, p. 6, n. 37.

indicted by the ICTR who are not among the most senior leaders “after it has *exhausted all reasonable efforts* to refer the case”⁵³ and “*shall undertake every effort*” to refer cases involving such persons to the authorities of a State.⁵⁴ The two provisions, which are to be read in conjunction,⁵⁵ demonstrate an indisputable preference for the referral of cases involving persons covered by Article 1(3) of the Statute to national jurisdictions. The Appeals Chamber finds that Kayishema’s submissions, isolating portions of Article 1(3) of the Statute to make a contrived distinction between his case and contempt cases under Article 1(4) of the Statute, are without merit.

21. The Appeals Chamber turns next to Kayishema’s contentions that, in denying his requests for legal aid and for an opportunity to supplement his submissions following the assignment of counsel, the Trial Chamber violated the principle of equality of arms and Kayishema’s right to be heard. The Appeals Chamber notes that Kayishema requested the assignment of counsel remunerated by the Mechanism after filing the Revocation Request, wherein he described his submissions as “preliminary grounds”, requesting to file a “supplemental brief” or a “final brief” with the benefit of a remunerated counsel.⁵⁶ Having considered the totality of Kayishema’s submissions, the Trial Chamber found in the First Impugned Decision that it was not in the interests of justice to assign Kayishema counsel under the Mechanism legal aid scheme, dismissed, in part, the Revocation Request, and denied Kayishema’s request to submit a “final brief” on the remainder of the Revocation Request.⁵⁷

22. The Appeals Chamber is not convinced by Kayishema’s submissions that, in doing so, the Trial Chamber violated the principle of equality of arms and Kayishema’s right to be heard. It is well established that the principle of equality of arms requires a trial chamber to ensure that neither party is put at a disadvantage when presenting its case.⁵⁸ It does not require, however, material equality between the parties in terms of financial or human resources.⁵⁹ Therefore, there is no merit in Kayishema’s submission that his rights were violated simply because *pro bono* counsel does not have the same access to staffing resources, funding, or infrastructure as the Prosecution.⁶⁰ In addition, Kayishema fails to show that, in the particular circumstances of this case, there was a need for

⁵³ Article 1(3) of the Statute (emphasis added).

⁵⁴ Article 6(1) of the Statute (emphasis added).

⁵⁵ See Article 1(3) of the Statute, which contains an explicit reference to Article 6 of the Statute.

⁵⁶ Request for Assignment of Counsel, paras. 18, 20; Revocation Request, paras. 3, 27, 28, 41.

⁵⁷ First Impugned Decision, p. 8.

⁵⁸ *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Judgement, 20 October 2010 (“*Kalimanzira Appeal Judgement*”), para. 34 and references cited therein.

⁵⁹ See, e.g., *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Judgement, 20 March 2019, para. 147; *Kalimanzira Appeal Judgement*, para. 34 and references cited therein.

⁶⁰ See Appeal, para. 44.

“extensive evidentiary review or prolonged investigations”.⁶¹ As noted by the Trial Chamber, although the alleged plot by the Government of Rwanda to kill Kayishema in South Africa was initially deemed highly unlikely by the South African authorities, it was nevertheless investigated and confirmed to be unsubstantiated.⁶² Kayishema’s generalised arguments are insufficient to demonstrate that the Trial Chamber erroneously exercised its discretion in determining that the interest of justice did not warrant assignment of counsel at the Mechanism’s expense.

23. The Appeals Chamber further recalls that, in principle, trial chambers enjoy considerable discretion in relation to the management of proceedings before them.⁶³ The record demonstrates that the Trial Chamber afforded Kayishema ample time and opportunity to substantiate his claims. To this end, the Trial Chamber not only granted Kayishema leave to file a reply, thus considering his additional arguments in support of the Revocation Request, but further allowed him to supplement his submissions on the allegation of a threat to his life.⁶⁴ In addition, the Trial Chamber accepted as validly filed and considered Kayishema’s response to the South Africa Submission filed before the Mechanism.⁶⁵ The Appeals Chamber considers that it was well within the Trial Chamber’s discretion to find that allowing additional briefing would not in any way assist in the adjudication of the Revocation Request.

24. Similarly unpersuasive is Kayishema’s assertion that the Trial Chamber erred in relying on findings in the Referral Decision on the suitability of the referral of his case to Rwanda. Pursuant to Article 6(6) of the Statute, an order referring a case to a national jurisdiction may be revoked “where it is clear that the conditions for referral of the case are no longer met and it is in the interests of justice”. The Trial Chamber correctly articulated the applicable law in that the Mechanism’s role is primarily to determine whether the conditions for a fair trial in the domestic jurisdiction no longer exist, and that revocation is a safeguard and remedy of last resort.⁶⁶ The Trial Chamber was also cognizant that the existence of domestic remedies for any procedural irregularities in the national proceedings, or the lack thereof, is relevant to the consideration of a revocation request.⁶⁷

⁶¹ See *supra* para. 15.

⁶² See First Impugned Decision, pp. 2, 5, 8; Second Impugned Decision, pp. 3-5. See also Notice of Compliance, Annex B; Affidavits from South Africa; South Africa Submission, Annexes A and B; Second Impugned Decision, p. 5, n. 29 and references cited therein.

⁶³ See *Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38-AR80.3, Decision on Appeals of Further Decision on Félicien Kabuga’s Fitness to Stand Trial, 7 August 2023, para. 58 and references cited therein.

⁶⁴ See First Impugned Decision, p. 8 (wherein the Trial Chamber considered it “appropriate to allow Kayishema, if he so wishes, to file before the Mechanism any responses to the [Affidavits from South Africa] submitted in the proceedings in South Africa”); Second Impugned Decision, pp. 3, 4, 6.

⁶⁵ See Second Impugned Decision, pp. 3, 4, 6.

⁶⁶ First Impugned Decision, p. 6, referring to Referral Decision, para. 157; *Uwinkindi* Decision of 4 October 2016, para. 12.

⁶⁷ First Impugned Decision, p. 6, referring to *Uwinkindi* Decision of 4 October 2016, para. 13.

25. While, as a starting point, the Trial Chamber took note of the ICTR Trial Chamber’s determination, at the time of the issuance of the Referral Decision, that Kayishema’s case would be prosecuted in Rwanda consistent with internationally recognized fair trial standards, its inquiry for the purpose of adjudicating the Revocation Request did not stop there.⁶⁸ The Trial Chamber continued by considering Kayishema’s submissions concerning the current situation in Rwanda, and particularly the alleged lack of impartiality of the Rwandan judiciary, inadequate guarantees to his right to an adequate defence, and the prospective unavailability of defence witnesses.⁶⁹ In this context, the Trial Chamber referenced Kayishema’s submission relying on the monitoring records of prior referred cases,⁷⁰ none of which were revoked by the Mechanism. Having found his arguments “incapable of showing” that the conditions for a fair trial in Rwanda no longer existed, the Trial Chamber denied the Revocation Request in its entirety.⁷¹ The Trial Chamber’s characterisation of Kayishema’s arguments as “hypothetical” and “speculative”⁷² demonstrates that the Trial Chamber was not convinced of the merits of his arguments. It does not indicate a misapplication of the legal standard, as claimed by Kayishema. Accordingly, Kayishema fails to show any error in this regard.

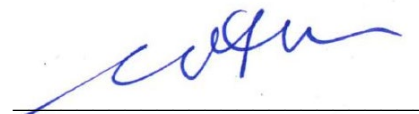
26. In view of the above considerations, the Appeals Chamber concludes that Kayishema has failed to demonstrate any error in the Impugned Decisions.

III. DISPOSITION

27. For the foregoing reasons, the Appeals Chamber hereby **DISMISSES** the Appeal in its entirety.

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

Done this 24th day of March 2026,
At Arusha,
Tanzania



Judge Carmel Agius
Presiding Judge

[Seal of the Mechanism]

⁶⁸ First Impugned Decision, p. 7, referring to Referral Decision, paras. 17-142, 148-156, 163.

⁶⁹ First Impugned Decision, p. 7, referring to Grounds 2, 3, and 4 of the Revocation Request. See also First Impugned Decision, p. 3.

⁷⁰ See First Impugned Decision, p. 3, referring to Revocation Request, para. 35.

⁷¹ First Impugned Decision, pp. 7, 9; Second Impugned Decision, p. 6.

⁷² See First Impugned Decision, p. 7.



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 checked="" type="checkbox"/> Chambers/ Chambre	<input 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 :	24 March 2026	Date transmitted/ Transmis le :	24 March 2026	Number of Pages/ Nombre de pages :	11			
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 :	Decision on Fulgence Kayishema's Appeal Against Decisions on Defence Requests for Revocation of Referral and Assignment of Counsel							
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Public/ Document public	<input type="checkbox"/> Confidential/ Confidentiel	<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		
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"/> Order/ Ordonnance	<input 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 checked="" type="checkbox"/> Decision/ Décision	<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 type="checkbox"/> Translation not required/ La traduction n'est pas requise
<input checked="" 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 checked="" 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):