

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-12-23-PT

Date: 7 September 2023

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Vagn Joensen
Registrar: Mr. Abubacarr M. Tambadou
Decision of: 7 September 2023

PROSECUTOR

v.

FULGENCE KAYISHEMA

PUBLIC

**DECISION ON A MOTION TO LIFT THE CONFIDENTIALITY
OF AN ARREST WARRANT**

The Office of the Prosecutor:

Mr. Serge Brammertz

I, VAGN JOENSEN, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;¹

RECALLING the indictment against Mr. Fulgence Kayishema (“Kayishema”), confirmed on 4 July 2001 by a judge of the International Criminal Tribunal for Rwanda (“ICTR”), charging Kayishema with genocide, complicity in genocide, conspiracy to commit genocide, and extermination as a crime against humanity;²

RECALLING the warrant of arrest, issued publicly by a judge of the ICTR on 4 July 2001, 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, Tanzania;³

RECALLING that, on 22 February 2012, an ICTR trial chamber referred Kayishema’s case to the authorities of the Republic of Rwanda (“Rwanda”) for trial before the High Court of Rwanda;⁴

RECALLING that, following the decision of 22 February 2012, warrants of arrest were issued by the ICTR and the Mechanism requesting all Member States of the United Nations to search for, arrest, and transfer Kayishema to the custody of the National Public Prosecution Authority of Rwanda;⁵

RECALLING that, on 7 March 2019, the Prosecutor of the Mechanism (“Prosecution”) requested an amended warrant of arrest providing for Kayishema’s immediate arrest and transfer to the Mechanism, instead of Rwanda, on the basis that a key partner who could assist in the tracking and apprehending of Kayishema could no longer assist so long as the arrest warrant provided for his transfer to Rwanda;⁶

¹ See Order Assigning A Single Judge to Consider a Motion, 30 August 2023 (confidential and *ex parte*) (“Order of 30 August 2023”), p. 2.

² *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-I, Indictment, 5 July 2001. See also *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, p. 4.

³ *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-I, Warrant of Arrest and Order for Transfer, 4 July 2001, p. 1.

⁴ *The 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, pp. 44, 45.

⁵ *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-00-67-R11bis, Warrant of Arrest and Order for Transfer, 4 April 2012; Warrant of Arrest and Order for Transfer Addressed to All States, 7 May 2014, p. 1.

⁶ See Urgent Motion for Revocation of Referral and Amendment of Arrest Warrant, 7 March 2019 (confidential and *ex parte*) (“Motion of 7 March 2019”), paras. 1-3, 12. The Prosecution has requested that information related to this assistance remain confidential. See Prosecution Motion to Lift the Confidentiality of the Arrest Warrant Issued on 8 March 2019, 22 August 2023 (confidential and *ex parte*) (“Motion”), para. 1, n. 4.

RECALLING that, on 8 March 2019, as an interim measure and to ensure Kayishema's apprehension and trial, the Prosecution's request was granted⁷ and an amended warrant of arrest was issued requesting all Member States of the United Nations to search for, arrest, and transfer Kayishema to the custody of the Arusha Branch of the Mechanism;⁸

OBSERVING that the 2019 Arrest Warrant was issued on a confidential and *ex parte* basis to protect the secrecy of the Prosecution's ongoing tracking of Kayishema;

RECALLING that, on 29 September 2019, the Trial Chamber of the Mechanism denied without prejudice the Prosecution's request to revoke the referral of Kayishema's case to Rwanda;⁹

OBSERVING that Kayishema was arrested on 24 May 2023 in the Republic of South Africa on the basis of the 2019 Arrest Warrant;¹⁰

BEING SEISED OF a confidential and *ex parte* motion filed by the Prosecution on 22 August 2023 requesting that the confidentiality of the 2019 Arrest Warrant be lifted;¹¹

NOTING the Prosecution's submission that, now that Kayishema has been arrested, there is no reason to maintain the confidentiality of the 2019 Arrest Warrant;¹²

CONSIDERING that all proceedings before the Mechanism shall be public unless exceptional reasons require keeping them confidential;¹³

CONSIDERING that no exceptional reasons require that the 2019 Arrest Warrant remain confidential;

FINDING, therefore, that it is in the interests of justice to lift the confidentiality of the 2019 Arrest Warrant;

⁷ Decision on Urgent Motion for Amendment of Arrest Warrant, 8 March 2019 (confidential and *ex parte*) ("Decision of 8 March 2019"), p. 2.

⁸ Warrant of Arrest and Order for Transfer Addressed to All States, 8 March 2019 (confidential and *ex parte*) ("2019 Arrest Warrant"), p. 1.

⁹ See Decision on Urgent Motion for Revocation of Referral and Amendment of Arrest Warrant, 26 September 2019 (confidential and *ex parte*), para. 12.

¹⁰ See Order of 30 August 2023, p. 1.

¹¹ Motion, para. 1. The Prosecution requests that the Motion of 7 March 2019 and Decision of 8 March 2019 remain confidential as both contain "sensitive information". See Motion, para. 1, nn. 4, 10. The present decision, nevertheless, refers to these filings and non-sensitive information contained in them for context and clarity of the record.

¹² Motion, para. 3.

¹³ See, e.g., *In the Matter of Emmanuel Rukundo*, Case No. MICT-23-128, Decision on an Appeal of a Decision on Request for Temporary Humanitarian Aid, 15 August 2023, n. 3. See also Article 18(4) of the Statute of the Mechanism; Rule 92 of the Rules of Procedure and Evidence ("Rules").

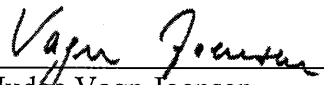
PURSUANT to Rule 55 of the Rules,

GRANT the Motion; and

INSTRUCT the Registrar to lift the confidential and *ex parte* status of the 2019 Arrest Warrant.

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

Done this 7th day of September 2023,
At Arusha,
Tanzania



Judge Vagn Joensen
Single Judge

[Seal of the Mechanism]



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