



Original : English

N°: ICC-01/09-01/20  
Date: 17 January 2023

**TRIAL CHAMBER III**

**Before: Judge Miatta Maria Samba**

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF  
*THE PROSECUTOR v. PAUL GICHERU***

**Public**  
**With Public Annexes 1 to 38**  
**Confidential Annexes 1-14 and 16-37**  
**Confidential *EX PARTE* Annex 15 only available to the Prosecution and VWS**  
**and**  
**Confidential *EX PARTE* Annex 38 only available to VWS**  
**Registry Report on all Email Decisions in the Gicheru case for 2021 and 2022**

**Source : Registry**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

**The Office of the Prosecutor**

Ms Nazhat Khan

Mr Anton Steynberg

**Counsel for the Defence**

Mr Michael G. Karnavas

Ms Suzana Tomanović

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. Introduction

1. The Registry hereby submits, its report and related 38 annexes consisting of email decisions (“Registry Report on Email Decisions”) pursuant to the “Directions on the Conduct of the Proceedings” (“Directions”),<sup>1</sup> issued on 7 October 2021 by Trial Chamber III (“Chamber”).

## II. Procedural History

2. On 7 October 2021, the Chamber issued its “Directions on the conduct of proceedings”<sup>2</sup> (“Directions”) by which it determined that: “ [...] *to expedite decisions or in order to react to urgent circumstances, the Chamber may issue rulings by way of email sent to the parties. In order to ensure that the principles of fairness and publicity are respected, the Chamber finds it appropriate to adopt a system whereby these email decisions are systematically put on the record of the case.*”<sup>3</sup>
3. The Chamber instructed the Registry to publish uncontested redactions in periodic reports and provided criteria for the application of redactions to these email decisions.<sup>4</sup>
4. The Chamber further specified that the Registry should simultaneously file public and confidential versions of the report.<sup>5</sup>

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<sup>1</sup> Trial Chamber III, Directions on the conduct of proceedings, ICC-01/09-01/20-189, 7 October 2021.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*, para 55.

<sup>4</sup> *Ibid.*, paras 56-57.

<sup>5</sup> *Ibid.*, para 56.

### III. Level of classification

5. Pursuant to regulation 23 bis(1) of the Regulations of the Court, Annexes 1-14 and 16-38 to the present submission are classified as “confidential” because they refer to sensitive information that should not be disclosed to the public, whereas Annexes 15 and 38 are classified as “confidential *ex parte*” as they pertain to confidential matters between interested parties.

### IV. Applicable Law

6. For the purpose of the present submission, the Registry has considered articles 64(7), (10) and 67(1) of the Rome Statute and rule 140 of the Rules of Procedure and Evidence.

### V. Submission

7. In the Directions, the Chamber provided criteria for the application of the redactions to the email decisions. The Registry is instructed *inter alia* to: “[...] apply the following redactions: i) names of Chambers staff members, where applicable; ii) names of Registry staff members, if deemed necessary by the Registry; and iii) any personal email address or other private or personal information. The Registry shall consult the parties on the redactions applied. In case of disagreement, the Chamber will rule.”<sup>6</sup>
8. In order to enable the parties and participants to suggest specific additional redactions, the Registry liaised by way of email with the Office of the Prosecutor (“Prosecution”) and the Defence for Mr. Gicheru.<sup>7</sup>

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<sup>6</sup> *Ibid.*, para 57.

<sup>7</sup> Emails sent by the Registry Court Management Section to the Parties, Participants and the other Registry Sections on 21 October 2022 at 13.09, 13.10, 13.11, 13.12, 13.14, and 13.16, containing confidential and confidential *ex parte* annexes where applicable.

9. Redaction proposals were received from the parties and participants and subsequently considered by the Registry.<sup>8</sup>

10. Accordingly, the Registry applied redactions to the emails set forth in the following 38 annexes:

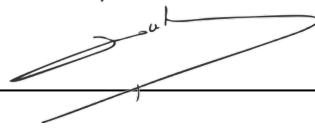
- Annex 1 : Decision dated 27 July 2021, 17:51;
- Annex 2 : Decision dated 17 September 2021, 16:25;
- Annex 3 : Decision dated 25 October 2021, 17:16;
- Annex 4 : Decision dated 26 October 2021, 16:27;
- Annex 5 : Decision dated 29 October 2021, 16:58;
- Annex 6 : Decision dated 03 November 2021, 12:15;
- Annex 7 : Decision dated 05 November 2021, 12:36;
- Annex 8 : Decision dated 08 November 2021, 10:01;
- Annex 9 : Decision dated 08 November 2021, 17:31;
- Annex 10 : Decision dated 11 November 2021, 10:53;
- Annex 11 : Decision dated 12 November 2021, 10:37;
- Annex 12 : Decision dated 12 November 2021, 15:06;
- Annex 13 : Decision dated 01 December 2021, 15:52;
- Annex 14 : Decision dated 02 December 2021, 18:01;
- Annex 15 : Decision dated 08 December 2021, 17:18;

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<sup>8</sup> Subsequent to *inter partes* consultation, the Prosecution sent the Annexes with the agreed upon redactions to the Chamber, the Registry and the parties and participants on 01 November 2022 at 13.44, 13.44, 13.45, 13.45, 13.45, and 16.47. VWS sent *ex parte* Annex 38 with further redactions to the Registry on 16 November 2022 at 10.26.

- Annex 16 : Decision dated 10 December 2021, 14:54;
- Annex 17 : Decision dated 15 December 2021, 12:14;
- Annex 18 : Decision dated 16 December 2021, 10:23;
- Annex 19 : Decision dated 18 January 2022, 09:16;
- Annex 20 : Decision dated 18 January 2022, 13:08;
- Annex 21 : Decision dated 27 January 2022, 11:58;
- Annex 22 : Decision dated 31 January 2022, 17:13;
- Annex 23 : Decision dated 02 February 2022, 19:21;
- Annex 24 : Decision dated 08 February 2022, 20:34;
- Annex 25 : Decision dated 28 February 2022, 11:08;
- Annex 26 : Decision dated 02 March 2022, 11:13;
- Annex 27 : Decision dated 10 March 2022, 14:30;
- Annex 28 : Decision dated 11 March 2022, 13:31;
- Annex 29 : Decision dated 14 March 2022, 16:31;
- Annex 30 : Decision dated 16 March 2022, 17:04;
- Annex 31 : Decision dated 30 March 2022, 14:23;
- Annex 32 : Decision dated 06 April 2022, 12:10;
- Annex 33 : Decision dated 13 April 2022, 13:16;
- Annex 34 : Decision dated 14 April 2022, 10:03;
- Annex 35 : Decision dated 28 April 2022, 14:13;
- Annex 36 : Decision dated 06 May 2022, 10:03;
- Annex 37 : Decision dated 08 June 2022, 09:27; and,
- Annex 38 : Decision dated 04 October 2022, 18:46.

11. The Registry hereby submits with the present report and its 38 annexes, the unredacted versions of email decisions.



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Marc Dubuisson  
Director, Division of Judicial Services  
on behalf of Peter Lewis, Registrar

Dated this 17 January 2023

At The Hague, The Netherlands