

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/09-01/20

Date: 10 September 2021

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 Confidential *EX PARTE* Annex I
only available to the Office of the Prosecutor**

**Registry Submissions in View of the Upcoming Status Conference in accordance
with "Order Scheduling the First Status Conference" (ICC-01/09-01/20-162)**

Source: Registry

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

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Victims****The Office of Public Counsel for the
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I. Introduction

1. Following its “Order Scheduling the First Status Conference”¹ (“Order”), Trial Chamber III invited the Registry to provide submissions on “[t]ranslation at trial: language to be used during the trial, including languages expected to be used by the witnesses the parties intend to call”,² and on “[p]rotective measures of witnesses (including additional need for redactions, delayed disclosure or referrals to the Court’s witness protection programme)”.³

II. Classification

2. In accordance with regulation 23*bis*(1) of the Regulations of the Court (“RoC”), Annex I to the present observations is classified confidential *ex parte* only available to the Office of the Prosecutor (“Prosecution”), as it refers to personal and case-specific information regarding potential Prosecution witnesses, as well as to the internal operations of the Court.

III. Applicable Law

3. The following provisions are of particular relevance to the present submissions: articles 43, 50, 67(1)(a) and 68 of the Rome Statute (“Statute”), rules 16 to 19, 87 and 88 of the Rules of Procedure and Evidence (“Rules”), regulations 39(1), 40, 41 of the RoC, and regulations 57(1), 58(3), 61, 64(7), 66, 67, 68(4), 69, and 80 to 96 of the Regulations of the Registry (“RoR”).

IV. Submissions

4. The following submissions follow the sequence of criteria listed in the Order and relate to each one in turn.

¹ Trial Chamber III, Order Scheduling the First Status Conference, 17 August 2021, ICC-01/09-01/20-162.

² Trial Chamber III, Order Scheduling the First Status Conference, 17 August 2021, ICC-01/09-01/20-162, para. 1, point D.

³ Trial Chamber III, Order Scheduling the First Status Conference, 17 August 2021, ICC-01/09-01/20-162, para. 1, point E(4).

A. Language to be used during the trial, including languages expected to be used by the witnesses the parties intend to call

5. The parties have informed the Registry that the witnesses they presently intend to call will testify either in English or Swahili. The Registry will be in a position to provide interpretation in these languages, using in-house resources as well as freelancers.
6. For the sake of completeness, if other Kenyan spoken languages were to be spoken, the Registry would not, at this time, be in a position to guarantee that resources would be available to meet interpretation needs.

B. Protective measures of witnesses (including additional need for redactions, delayed disclosure or referrals to the Court's witness protection programme)

Protective measures of witnesses

7. The Registry hereby provides a general description of the measures that the Victims and Witnesses Unit may be put in place to protect witnesses.
8. The non-procedural protective measures implemented by the Registry depend on the level of risk incurred by the witness and range from the implementation of good practices, the set-up of an Initial Response System, an assisted move, an internal resettlement within the relevant country or an international relocation. Internal resettlement and international relocation both require an inclusion of the witnesses into the Court's protection program ("ICCPP"). For international relocations, the Court also needs the cooperation of the relevant partner states that signed a relocation agreement with the Registry or accept to relocate witnesses on their territory on an *ad hoc* basis.
9. The admission of a witness in the ICCPP is a voluntary measure of last resort. Considering the extremely heavy impact an inclusion in the ICCPP has on the life of a person and her/his family members, the Registry always seeks to strike a balance between the intrusiveness of the protection measure and the risk and/or threat that the individual may face. This measure is only applied where

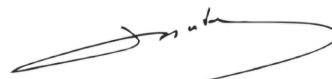
no other alternative protection measure exists and where a person is considered to be severely at risk. An inclusion in the ICCPP also requires that the persons be assessed as suitable for that program from a psychological viewpoint.

Protection referrals

10. The Registry encourages the parties and participants to follow the procedure established in regulations 80(1) and 96(2) of the RoR for any referrals to the ICCPP or other forms of protection of witnesses and victims. Upon receipt of a referral for protection, the Registry performs a threat and risk assessment of the security situation of the referred individual. For the purpose of assessment and recommendation of the appropriate protective measures, the Registry emphasizes that it is essential that the parties provide the Registry with specific information on the nature of the threat or risk the individual could be exposed to. The Registry remains available to assist the parties in that regard and provide them with a protection referral form to facilitate any request.

Specific case related information

11. For the full information of the Chamber, case-related data is provided in Annex I to the present submissions on an *ex parte* basis only available the Prosecution due to the sensitivity and nature of the information pertaining to Prosecution witnesses.



Marc Dubuisson, Director, Division of Judicial Services
per delegation of
Peter Lewis, Registrar

Dated this 10 September 2021

At The Hague, the Netherlands