

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/09-01/20**  
Date: **25 February 2022**

**TRIAL CHAMBER III**

**Before: Judge Miatta Maria Samba**

**SITUATION IN THE REPUBLIC OF KENYA**

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

**Public**

**Directions for the Defence Evidence Presentation**

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

**The Office of the Prosecutor**

Mr James Stewart

Mr Anton Steynberg

**Counsel for the Defence**

Mr Michael G. Karnavas

Ms Suzana Tomanović

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
for Participation/Reparations**

**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**

**Detention Section**

**Victims Participation and  
Reparations Section**

**Other**

**TRIAL CHAMBER III** of the International Criminal Court, in the case of *The Prosecutor v. Paul Gicheru*, having regard to Articles 64(2) and 67(1)(e) and (g) of the Rome Statute (the ‘Statute’), issues this ‘Directions for the Defence Evidence Presentation’.

1. On 30 September 2021, the Chamber issued its decision on the commencement date of the trial and related deadlines, setting the starting date of trial for 15 February 2022.<sup>1</sup>
2. The Chamber notes that the Office of the Prosecutor (the ‘Prosecution’) commenced the presentation of its evidence on 15 February 2022.<sup>2</sup> Currently, the Chamber is hearing the testimony of the third witness called by the Prosecution.
3. As previously announced,<sup>3</sup> the Chamber will provide further directions regarding the presentation of evidence by the Defence. The Chamber recalls that the Defence has previously stated that it is unable to provide any information on the evidence it would present.<sup>4</sup> However, the Chamber considers that, as the presentation of the evidence by the Prosecution progresses, the Defence is in a position to be able to provide information on a potential Defence case. The Chamber also deems it appropriate to provide guidance on the Defence’s presentation of evidence sufficiently in advance in order to enable the Defence to efficiently plan its case. Lastly, the Chamber considers it necessary to set deadlines for the presentation of evidence by the Defence in order to guarantee the fairness and expeditiousness of the proceedings.
4. Nevertheless, the Chamber stresses that the onus of proof lies with the Prosecution, in accordance with Article 66(2) of the Statute, and that the Accused has the right to remain silent, without such silence being a consideration in the determination of guilt or innocence, pursuant to Article 67(1)(g) of the Statute.

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<sup>1</sup> [Decision Setting the Commencement Date of the Trial and Related Deadlines](#), ICC-01/09-01/20-185.

<sup>2</sup> Transcript of hearing, ICC-01/09-01/20-T-050-Conf-Eng, p. 38 ff.

<sup>3</sup> [Directions on the Conduct of the Proceedings](#), 7 October 2021, ICC-01/09-01/20-189, para. 9.

<sup>4</sup> [Public Redacted Version of “Paul Gicheru’s Submissions in preparation for the First Status Conference,” 10 September 2021, ICC-01/09-01/20-170](#), 14 September 2021, ICC-01/09-01/20-170-Red, para. 8 b).

5. As has been the practice in other cases, the Chamber will instruct the Prosecution to provide a formal notice of completion of evidence presentation at a later point in the proceedings.<sup>5</sup>

6. The Chamber instructs the Defence to formally indicate by 10 March 2022 whether it intends to present evidence. Should the Defence wish to make an opening statement, it is to indicate this as well.

7. The Chamber informs the Defence that, should the Defence wish to present evidence, it is expected to provide the following information ten days after the Prosecution has provided its notification of completion of evidence presentation: (i) the list of witnesses the Defence intends to call and the list of evidence the Defence intends to use; (ii) certification that all necessary witness information forms have been completed and provided to the Victims and Witnesses Unit; (iii) summaries of the anticipated evidence to be provided by the witnesses; (iv) disclosure of all items intended to be used during the presentation of the evidence; (v) any requests for protective measures and motions pursuant to Rule 68 of the Rules of Procedure and Evidence;<sup>6</sup> and (vi) any further request the Defence considers necessary for the presentation of its evidence.

8. In respect of this latter point, the Chamber clarifies that this is the latest point in time when such requests should be done. If the Defence considers it necessary to bring anything to the Chamber's attention which may have an impact on the conduct of its case, it is encouraged to do so as soon as practicable. Equally, the Defence is expected to liaise with the Registry on all matters necessary for its presentation of evidence in a timely manner. Should there be any reason why the Defence cannot meet the deadlines in the preceding paragraph, it is to inform the Chamber as soon as possible.

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<sup>5</sup> See, Prosecution, *Prosecutor v. Jean Pierre Bemba et al.*, [Prosecution's Notice of the Close of its Case-in-Chief](#), 27 November 2015, ICC-01/05-01/13-1499; Prosecution, *Prosecutor v. Dominic Ongwen*, [Notice of the Prosecution's completion of evidence presentation](#), 13 April 2018, ICC-02/04-01/15-1225; Trial Chamber X, *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Decision on the Prosecution's fourth, fifth and sixth requests for the admission of evidence from the bar table](#), 23 February 2022, ICC-01/12-01/18-2127, para. 25 and fn. 22.

<sup>6</sup> Paragraphs 30-31 and 39-40 of the [Directions on the Conduct of the Proceedings](#), ICC-01/09-01/20-189, shall apply *mutatis mutandis*.

9. The Chamber clarifies that the timelines and procedure set out in the Directions on the Conduct of the Proceedings also apply to the presentation of evidence by the Defence.<sup>7</sup> Equally, the procedures concerning expert witnesses and introduction of evidence other than through a witness<sup>8</sup> apply *mutatis mutandis*.

10. Once the Chamber receives the additional information on the possible Defence case, it will issue further instructions as to the timing of the presentation of evidence by the Defence.

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<sup>7</sup> [Directions on the Conduct of the Proceedings](#), 7 October 2021, ICC-01/09-01/20-189, paras 10-29.

<sup>8</sup> [Directions on the Conduct of the Proceedings](#), 7 October 2021, ICC-01/09-01/20-189, paras 32-35 and 37-38.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**INSTRUCTS** the Defence to indicate by 10 March 2022 whether it intends to present any evidence; and

**INSTRUCTS** the Defence, should it intend to present any evidence, to provide the information specified in paragraph 7 above ten days after the Prosecution has formally declared its presentation of evidence to be closed.

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

A handwritten signature in blue ink, appearing to read 'Miatta', is positioned above a horizontal line.

**Judge Miatta Maria Samba**

Dated 25 February 2022

At The Hague, The Netherlands