

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **13 June 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

**Decision on Defence Request for the Accused to Attend the Closing Statements
via Video Technology**

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

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TRIAL CHAMBER III of the International Criminal Court, in the case of *The Prosecutor v. Paul Gicheru*, having regard to Rule 134bis of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on Defence Request for the Accused to Attend the Closing Statements via Video Technology’.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 15 March 2015, Pre-Trial Chamber II issued, *inter alia*, an arrest warrant against the Accused.¹ Subsequently, on 2 and 3 November 2021, the Accused surrendered himself and was transferred into the custody of the Court. On 29 January 2021, Pre-Trial Chamber A granted the Defence’s request for interim release.²

2. On 12 May 2022, the Chamber issued a declaration on the closure of the evidence and provided dates for the further stages of the proceedings.³ Therein it set, *inter alia*, the date for the closing statements of the parties on 27 June 2022 (the ‘Closing Statements’) and allotted each party one hour to make their statement.⁴

3. On 9 June 2022, the Defence filed a motion⁵ seeking that the Accused be allowed to attend the Closing Statements via video link (the ‘Request’).⁶ The Defence notes that the Accused has to travel from Kenya to attend the hearing. In this regard, since the Closing Statements will last only two hours, the Defence submits that it would be unreasonable for the Accused to physically attend in the courtroom, particularly given the possibility to be present via video technology.⁷

4. On 10 June 2022, the Office of the Prosecutor (the ‘Prosecution’) filed its response, stating that it does not oppose the Request but seeks that the Chamber orders

¹ Decision on the “Prosecution’s Application under Article 58(1) of the Rome Statute”, (date of the redacted version) 15 September 2015, ICC-01/09-01/20-1-Red.

² Decision on Mr Gicheru’s Request for Interim Release’, 29 January 2021, ICC-01/09-01/20-90-Red2.

³ Declaration on the Closure of the Submission of Evidence and order on Closing Briefs and Closing Statements, ICC-01/09-01/20-329 (‘Declaration on the Closure of the Submission of Evidence’).

⁴ Declaration on the Closure of the Submission of Evidence, ICC-01/09-01/20-329, paras 9 and 10.

⁵ The Defence originally filed the request via email (Email to the Chamber on 7 June 2022, at 16:58) and was ordered by the Chamber to submit a formal filing (Email from the Chamber to the parties on 8 June 2022, at 9:27).

⁶ Request for Leave for Mr. Gicheru to Appear Remotely during the Closing Statements, ICC-01/09-01/20-330.

⁷ In the Request the Defence actually argues the opposite, that ‘...it is not reasonable to conclude that the efforts and costs associated with having Mr. Gicheru attend in person are disproportionate...’. However, the Chamber assumes that this is a drafting mistake and that the Defence’s argument is that the efforts and costs would, indeed, be disproportionate.

that the Accused be present in the courtroom during the delivery of the judgment pursuant to Article 74 of the Rome Statute (the ‘Statute’).⁸

II. ANALYSIS

5. First, the Chamber notes that the Defence does not identify a specific legal basis, such as Rule 134*bis* of the Rules, for its Request. The Chamber encourages the Defence to show more diligence in future submissions, a mere reference to Article 64(2) of the Statute noting the fairness and expeditiousness of the trial is not always sufficient to motivate a request.

6. In respect of applicable law, the Chamber notes that Rule 134*bis* of the Rules is, on its face, only applicable to an accused subject to a summons to appear. However, the Chamber is of the view that it also applies to an accused who has been granted interim release. A chamber’s considerations in respect of the application of this rule is of a similar nature for an accused in either position – justifying the application of Rule 134*bis* of the Rules to an accused granted interim release. Accordingly, the Chamber is of the view that Rule 134*bis* applies in the present instance.

7. In terms of the merits of the Request, the Chamber takes into account the purpose of the hearing, the very limited duration of the Closing Statements and the fact that the Prosecution does not oppose the Request. Accordingly, the Chamber grants the Request pursuant to Rule 134*bis*(2) of the Rules.

8. With regard to the Prosecution’s submission that the Chamber should order the Accused to be present in the courtroom at the moment of the delivery of the judgment pursuant to Article 74 of the Statute, the Chamber notes that this stage of the proceedings has not yet been reached and that, in any case, no request concerning this matter is pending. Accordingly, it is not necessary to rule on this issue at this point in time.

9. The Chamber also notes the relatively late point in time at which the Request was filed. It reminds the Defence that it is its responsibility to liaise with the Registry in order to ensure the attendance of the Accused via video technology. Accordingly, the

⁸ Prosecution’s response to the Defence Request for Leave for Mr. Gicheru to Appear Remotely during the Closing Statements, ICC-01/09-01/20-331, paras 2 and 3.

Defence is ordered to liaise with the Registry as soon as possible to facilitate the Accused's presence via video technology.

10. Should, for any reason, the presence via video link not be feasible it is the Accused's responsibility to ensure that he can attend the Closing Statements physically in the courtroom. In this regard, if the Defence and/or the Registry encounter any problems that will impede the Accused's ability to attend the Closing Statements via video technology, they must inform the Chamber as soon as possible.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request;

ORDERS the Defence and the Registry to proceed in accordance with paragraphs 9 and 10 above.

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



Judge Miatta Maria Samba

Dated 13 June 2022

At The Hague, The Netherlands