

Annex 27

Public

From: Trial Chamber III Communications
Sent: 10 March 2022 14:30
To: Karnavas, Michael; Trial Chamber III Communications
Cc: OTP KEN art70 [REDACTED]; [REDACTED]; Associate Legal Officer-Court Officer; D32 Gicheru Defence team
Subject: RE: Defence Response to Directions on Defence Presentation of Evidence
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Defence,

Thank you for your email. The Chamber orders the Defence to file a formal written submission on the record as soon as possible.

Kind Regards,
Trial Chamber III

From: Karnavas, Michael [REDACTED]
Sent: 10 March 2022 11:43
To: Trial Chamber III Communications <TrialChamberIIICommunications@icc-01/09-01/20-346-anx27-red@un.org>
Cc: OTP KEN art70 [REDACTED]; [REDACTED]; Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer@icc-01/09-01/20-346-anx27-red@un.org>; D32 Gicheru Defence team <D32GicheruDefenceteam@icc-01/09-01/20-346-anx27-red@un.org>
Subject: Defence Response to Directions on Defence Presentation of Evidence

Dear Honorable Judge of Trial Chamber III,

Dear Prosecution,

In accordance with paragraph 8 of the Directions for the Defence Evidence Presentation (ICC-01/09-01/20-292), I inform that the Defence is currently not in a position to declare whether it intends to put on a case, considering that the Prosecution will not rest its case until 24 March 2022 after the testimony of [REDACTED]. Only after hearing the *entirety* of the Prosecution's case and after matters arising during the trial are fully investigated can the Defence make an informed and intelligent decision. For this reason, I am requesting an extension of eight weeks from the close of the Prosecution case scheduled for 24 March 2022 to declare whether the Defence intends to put on a case. This request is made necessary to have adequate time and facilities to [REDACTED] and to prepare for the potential presentation of a Defence case.

As part of my ethical and professional duties of diligence and zealousness in protecting Mr. Gicheru's fair trial rights and providing him a robust and effective defence, I requested approval for a [REDACTED]. CSS granted this request yesterday. Initially, [REDACTED] due to a change in circumstances to ensure the most efficient and appropriate expenditure in light of available funds. Be that as it may, [REDACTED] would nonetheless be required after the conclusion of the Prosecution's case-in-chief. In light of the current

scheduling, [REDACTED] given that there will be no other opportunities to [REDACTED] before the conclusion of the trial.

Failure to carry out [REDACTED] as requested would, in my opinion, amount to nothing short of ineffective assistance of Counsel and lack of due diligence. Absent full appreciation of the witnesses' testimonies and disclosure material, [REDACTED] and absent meaningful consultation with the client, the Defence's ability to make sound strategic decisions would be circumscribed and Mr. Gicheru's fair trial rights would be seriously compromised, thus rendering the proceedings unfair. Accordingly, the Defence proposes the following dates:

- By 16 May 2022, the Defence will inform the Trial Chamber and the Parties whether it intends to present a case; and
- In the affirmative, the Defence will start presenting its case on 30 May 2022.
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No prejudice will be caused to the OTP by granting a modest extension. Should the Defence decide to put on a case, it will strictly comply with the instructions in paragraph 7 of the Directions for the Defence Evidence Presentation, namely, prompt provision of: (i) Defence lists of witnesses and evidence; (ii) all necessary witness information forms; (iii) summaries of anticipated evidence; (iv) disclosure material intended to be used during the presentation of evidence; and (v) any requests for protective measures. The Defence does not anticipate bringing any motions pursuant to Rule 68. Any other requests that may arise will be brought to the Trial Chamber's attention immediately.

Should the Trial Chamber wish the Defence to file a formal written submission, the Defence stands ready to do so.

Sincerely yours,

Michael G. Karnavas

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