

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/09-01/15
Date: 7 December 2020

PRE-TRIAL CHAMBER A (ARTICLE 70)

Before: Judge Reine Adélaïde Sophie Alapini-Gansou

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF *THE PROSECUTOR v. PAUL GICHERU AND PHILIP
KIPKOECH BETT***

Confidential

With Under Seal, *ex parte* Prosecution only Annex A

Prosecution's request for reclassification and redactions of Under Seal filings

Source: Office of the Prosecutor

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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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
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States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. In light of the voluntary surrender of Mr Paul Gicheru¹ and in terms of regulation 23bis(3) of the Regulations of the Court,² the Prosecution requests the reclassification of certain filings currently classified as “under seal, *ex parte*”.

II. CONFIDENTIALITY

2. Under regulation 23bis (2) of the Regulations, this filing is submitted as “confidential” since it concerns the reclassification of documents of a confidential nature. Annex A is submitted as “under seal, *ex parte*” since it is an unredacted version of a document currently classified as such.

III. SUBMISSIONS

3. During the course of the discussions between the Prosecution and Gicheru leading up to his voluntary surrender on 2 November 2020, the Prosecution submitted several filings to Pre-Trial Chamber II³ informing it of the progress of such discussions and responding to orders from PTC II. Due to the fact that these filings related to a suspect at large who was not a Party to the proceedings and since the discussions leading up to Gicheru’s surrender were considered sensitive, these filings were classified as “under seal, *ex parte*”.
4. Since Gicheru has since surrendered to the Court on 2 November 2020, the Prosecution considers that the basis for this classification no longer exists, and that the Defence ought now to have access thereto. Accordingly, the Prosecution considers that the following Prosecution filings and decisions of PTC II may now be reclassified as “confidential” in terms of regulation 23bis(3) of the Regulations:

¹ “Gicheru”.

² Regulations”

³ “PTC II”.

ICC-01/09-01/15-26-US-Exp, ICC-01/09-01/15-27-US-Exp and ICC-01/09-01/15-28-US-Exp.

5. The Prosecution submits that a “confidential” classification is justified on the basis that these filings all deal with confidential negotiations with Gicheru leading up to his surrender which, if publicly known, might place him at risk if he were to be granted conditional release. Additionally, certain of the filings contain personal and/or confidential information relating to Gicheru’s family circumstances and health.
6. For the same reasons, the Prosecution requests reclassification as “confidential” of the following orders of PTC II: ICC-01/09-01/15-23-US-Exp and ICC-01/09-01/15-25-US-Exp. The Prosecution submits that this Chamber, now being seized with the case, has the authority to order such reclassification.
7. In respect of the remaining two Prosecution filings,⁴ and a filing by the Registry,⁵ the Prosecution considers that discrete redactions are necessary under rule 81(2) in order to protect further or ongoing investigations. In particular, the Prosecution submits that the proposed redactions are necessary to preserve the confidentiality of methodologies and strategies employed by the Court to secure the execution of arrest warrants, not only in this Situation, but in all situations in which warrants have been issued—or will be issued in future. Should this information be disclosed, this may hamper the Court’s efforts to secure the arrest and surrender of outstanding suspects.
8. Accordingly, the Prosecution will separately file confidential redacted versions of ICC-01/09-01/15-22-US-Exp and ICC-01/09-01/15-24-US-Exp.
9. In respect of the Registry Filing, the Prosecution requests the Chamber to order the Registry to file a confidential redacted version of the filing with one discrete redaction to paragraph 8.c., as highlighted in under seal *ex parte* Prosecution only Annex A.

⁴ ICC-01/09-01/15-22-US-Exp and ICC-01/09-01/15-24-US-Exp.

⁵ ICC-01/09-01/15-21-US-Exp (“Registry Filing”).

IV. RELIEF

10. The Prosecution accordingly requests the Chamber to:

- a. reclassify as "confidential" Prosecution filings ICC-01/09-01/15-26-US-Exp, ICC-01/09-01/15-27-US-Exp and ICC-01/09-01/15-28-US-Exp and PTC II's orders ICC-01/09-01/15-23-US-Exp and ICC-01/09-01/15-25-US-Exp; and
- b. Order the Registry to file a confidential redacted version of Registry filing ICC-01/09-01/15-21-US-Exp, implementing the redactions highlighted in Annex A.



Fatou Bensouda, Prosecutor

Dated this 7th day of December 2020
At The Hague, The Netherlands