

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 January 2021

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*

Public

Public redacted version of "Paul Gicheru's Response to the Prosecution's Response to the 'Report on the Registry on the Arrest and Surrender of Mr Paul Gicheru and Request for Guidance on Mr Paul Gicheru's belongings'", 27 November 2020, ICC-01/09-01/20-55-Conf

Source: Counsel for Paul Gicheru

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

The Office of the Prosecutor

Ms. Fatou Bensouda, Prosecutor

Mr. James Stewart

Counsel for the Defence

Mr. Michael G. Karnavas

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
Defence**

States' Representatives

Other

REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Mr. Paul Gicheru, through his Counsel (“the Defence”), hereby Responds to the Office of the Prosecutor’s Response to the “Report of the Registry on the Arrest and Surrender of Mr Paul Gicheru and Request for Guidance on Mr Gicheru’s belongings,”¹ pursuant to the Single Judge’s Decision (“OTP’s Response”).² Due to technical issues, the Defence received access to the OTP’s Response on 26 November 2016, wherein it seeks to have access to Mr. Gicheru’s [REDACTED].³ A reply is necessary because the OTP offers no specific in justifying its request to order the Registry to transmit Mr. Gicheru’s [REDACTED].

I. CONFIDENTIALITY

1. This Response is filed as confidential pursuant to Regulation 23bis(2) of the Regulations of the Court as it relates to previous filings of a similar classification.

II. ARGUMENT

2. Other than asserting in its *ex parte* and under seal Arrest Warrant Application that attempts to influence OTP witnesses [REDACTED] and that [REDACTED]⁴ the OTP offers no compelling facts or evidence warranting an intrusion into the Mr. Gicheru’s [REDACTED]. Unless the OTP provides detailed information in support of its assertions – which may have been provided to the Single Judge confidentially and *ex parte* (which the Defence is not currently privy to) – the only reasonable conclusion is that the OTP is engaging in a fishing expedition in the hopes of finding evidence to support the claimed offences against Mr. Gicheru.
3. Since the OTP requests [REDACTED]⁵ it should make a request pursuant to Article 56: “Where the Prosecutor considers an investigation to present a unique

¹ *Prosecutor v. Gicheru and Bett*, ICC-01/09-01/15, Prosecution’s Response to the “Report of the Registry on the Arrest and Surrender of Mr Paul Gicheru and Request for Guidance on Mr Paul Gicheru’s belongings,” 12 November 2020 (“OTP Response”).

² *Prosecutor v. Gicheru and Bett*, [ICC-01/09-01/15-51-Conf](#), Decision on Request for Extension of Time and Varying Other Time Limits, 20 November 2020, p. 7.

³ *Prosecutor v. Gicheru and Bett*, ICC-01/09-01/15-35, Report of the Registry of the Arrest and Surrender of Mr Paul Gicheru and Request for Guidance on Mr Paul Gicheru’s belongings, 5 November 2020, para. 11.

⁴ OTP Response, para. 9.

⁵ OTP Response, para. 10.

opportunity to ... examine, collect, and test evidence, which may or may not be available subsequently for the purposes of the trial.” Moreover, the OTP has not indicated if the OTP (or another entity) will perform [REDACTED].⁶

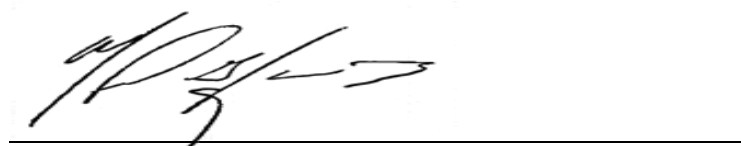
4. The Single Judge should deny the OTP’s request. Alternatively, should the Single Judge be inclined to entertain the OTP’s Request, given its intrusive nature, the Single Judge should order the OTP to provide further particulars and grant leave, which the Defence seeks, to file a supplemental submission.

WHEREFORE, for the above reasons, the Defence respectfully requests the Single Judge to:

- A. **DENY** the OTP’s Request; or
in the alternative
- B. **ORDER** the OTP to provide further specifics behind its request; and
- C. **GRANT** leave to the Defence to file a supplemental submission.

Respectfully submitted, 13 January 2021,

In The Hague, The Netherlands



Michael G. Karnavas
Counsel for Mr. Paul Gicheru

⁶ See *Situation in the Democratic Republic of Congo*, [ICC-01/04-21](#), Decision on the Prosecutor’s Request for Measures under Article 56, 27 April 2005, p. 2-3.