



Original: **English**

No.: **ICC-01/09-01/15**

Date: **30 March 2021**

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

SITUATION IN THE REPUBLIC OF KENYA

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

Public

Public Redacted Version of “Prosecution’s Response to ‘Transmission of a letter received from Mr Paul Gicheru and observations of the Registry on such a letter’ (ICC-01/09-01/15-21-US-Exp)”, 5 May 2020, ICC-01/09-01/15-22-US-Exp

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

Ms Fatou Bensouda
Mr James Stewart
Mr Anton Steynberg

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

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

INTRODUCTION

1. In light of the Registry's filing [REDACTED],¹ the Office of the Prosecutor² hereby confirms its receipt of this letter and updates Pre-Trial Chamber II ("the Chamber") on the steps taken to date in response.

CLASSIFICATION

2. Pursuant to regulation 23bis(2) of the Regulations of the Court ("RoC"), this response is filed as under seal, *ex parte*, only available to the Office of the Prosecutor, as it responds to a filing of a similar classification.

SUBMISSIONS

3. The Prosecution confirms that it is in receipt of the above-mentioned letter and is actively pursuing steps to secure the voluntary surrender of Mr Paul Gicheru.³
4. Since receipt of the letter, the Prosecution has been in contact with Gicheru, both telephonically and by email, for the following purposes:
 - (i) To obtain further information regarding the alleged "[REDACTED] reasons" for which he seeks to have the warrant of arrest withdrawn in order to establish whether such request is well founded;
 - (ii) To explore any conditions and modalities for his offer to "co-operate and to voluntarily appear before the court"; and
 - (iii) [REDACTED]
 - (iv) [REDACTED]
5. [REDACTED]

¹ [REDACTED]

² "Prosecution" or "OTP".

³ "Gicheru" or "the Suspect".

6. The Prosecution has not yet independently verified the information provided by the Suspect. The information is also lacking in some important details and the Prosecution has therefore requested Gicheru to supply:

(i) [REDACTED]

(ii) [REDACTED]

7. Gicheru has agreed to supply this information, but advises that it might take some time due to COVID-19 related restrictions in Nairobi.

8. But even assuming the information provided to date to be correct, the OTP does not consider this sufficient reason to withdraw the warrant of arrest. The Suspect is by no means unique in having [REDACTED] concerns and [REDACTED] commitments and these should not be a bar to the execution of the warrant of arrest so that he may at last face justice for crimes that touch the core of this Court's ability to fulfil its mandate. Furthermore, there is no guarantee that Gicheru would indeed "co-operate and [...] voluntarily appear before the court" once the warrant was withdrawn, and no way of enforcing cooperation in such event.

9. [REDACTED]

10. [REDACTED]. In this regard [REDACTED], it would be important to know if and when the Registry would be in a position to facilitate his transfer to The Hague should he surrender to the Court, and his possible return to Kenya should he be released under conditions that would permit this.⁴

11. To this end, the Prosecution will request the Registry to provide it with details on the outcome of the assessment that it is conducting "to assess whether and how it can overcome the new operational constraints linked to the COVID-19 global pandemic".⁵

⁴ [REDACTED]

⁵ Registry's Observations, para. 8(e).

12. The Prosecution will inform the Chamber of any significant developments.

A handwritten signature in blue ink, appearing to read 'Fatou Bensouda', is written over a horizontal line.

Fatou Bensouda, Prosecutor

Dated this 30th day of March 2021

At The Hague, The Netherlands