

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 9 April 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

Response to the Prosecution's urgent request to order the Defence to file a list of evidence it intends to rely upon in the confirmation proceedings

Source: Counsel for Mr. 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

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

Other

REGISTRY

Registrar

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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 Prosecution’s urgent request to order the Defence to file a list of evidence it intends to rely upon in the confirmation proceedings, in which the Prosecution requests Pre-Trial Chamber A to order the Defence to file a preview of its Table of Authorities in advance of its Written Submissions.¹ This request should be summarily dismissed.

1. The relief sought is not contemplated by the Chamber in its order that “the Defence, *if it desires, may file*, in accordance with Rule 121(6) of the Rules of Procedure and Evidence, evidence, as well as a list of this evidence.”²
2. The purpose of requiring a list of evidence for a hearing is to provide notice to the opposing party of the witnesses and documents that will be called, disclosed, referenced, or used during the hearing.
3. This logic does not apply *mutatis mutandis* when confirmation proceedings are held through written submissions, no new evidence is disclosed, and the Defence relies on evidence disclosed by the Prosecution and cited in its Document Containing the Charges (“DCC”).³
4. The Defence will cite with specificity discrete portions of the Prosecution’s evidence in responding to its allegations in the DCC, sufficiently providing the needle in the haystack, imposing no extraordinary complications that would frustrate or inconvenience the Prosecution in meeting its deadline.
5. The melodramatic urgency of the Prosecution’s request, when apprehended based on the Chamber’s order and Article 61(6)(c) and Rule 121(6), is meritless.

¹ *Prosecution v. Gicheru*, [ICC-01/09-01/20-131](#), Prosecution’s urgent request to order the Defence to file a list of evidence it intends to rely upon in the confirmation of proceedings (“Prosecution Request”), 8 April 2021.

² ICC-01/09-01/15-T-001, p. 11 (emphasis added). When postponing the deadline, the Chamber recalled that “the Defence, if it wishes so, to disclose pieces of evidence and file a list of evidence on 26 February 2021.” *Prosecutor v. Gicheru*, [ICC-01/09-01/20-103](#), Decision on the postponement of the date of filing of written submissions and other related deadlines for the confirmation of charges proceedings, 26 February 2021.

³ See [Prosecution Request](#), paras. 6, 9. Notably, no Table of Authorities is required in advance of motions and appeals, responses, or replies.

6. Considering that most of the evidence has been in the Prosecution's possession since 2015,⁴ that it had five months to further analyze the evidence and draft its 175-page DCC,⁵ and that it will have more than ample opportunity to respond and present its observations on any evidence cited in the 30-page Defence submissions, the Prosecution's claim of prejudice is unsound and unconvincing.

WHEREFORE, for the reasons stated herein, the Chamber should:

- A. Find that the Defence is not in breach of the Chamber's order; and
- B. Summarily dismiss the relief sought by the Prosecution in its urgent request.

Respectfully submitted, 9 April 2021,

In The Hague, the Netherlands.



Michael G. Karnavas
Counsel for Mr. Paul Gicheru

⁴ See *Prosecutor v. Gicheru*, [ICC-01/09-144](#), Prosecution's Application under Article 58(1) of the Rome Statute, 9 February 2015.

⁵ ICC-01/09-01/15-T-001.