

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 19 July 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 “Urgent Defence Request for an Extension of Time to File its Written Submissions on the Confirmation of Charges,” 21 April 2021, ICC-01/09-01/20-136-Conf

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

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

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 files this Urgent Defence Request for an Extension of Time to File its Written Submissions on the Confirmation of Charges (“Request”). This Request is made necessary because of the Prosecution’s breach of its disclosure obligations under Article 67(2) of the Rome Statute. The Defence requests a one-week extension accompanied by an order directing the Prosecution to comply with its disclosure obligations no later than 23 April 2021. After numerous *inter partes* exchanges to resolve outstanding disclosure issues, it has just become evident that all the disclosure material the Defence is entitled to will not be provided by the Prosecution in a sufficiently expeditious manner so as to allow the Defence to meet its due diligence obligations towards Mr. Gicheru. While a short delay would push the deadlines forward by one week, it is of no fault of the Defence. Granting this Request will cause no prejudice to the Prosecution, and indeed may stimulate it in complying with its disclosure obligations posthaste. This Request and Annex A are filed confidentially *per* Regulation 23bis(1) of the Regulations of the Court since they contain confidential material.

I. FACTS

1. The Defence made several *inter partes* requests to the Prosecution for information, missing documents and exculpatory material in the possession of the Prosecution and material to the preparation of the Defence.¹
2. After a follow-up request sent yesterday for an update on if and when the information requested will be disclosed,² the Prosecution informed the Defence that it will “provide lesser redactions of certain filings, where necessary, by the end of the week,” will respond to requests for Investigators Reports “by COB tomorrow,” is “aiming to disclose tomorrow morning” documents that do not require significant redactions, and will disclose those that require such redactions “before the end of the week.”³

¹ Annex A, p. 2, 5, 10, 13, 18, 35, and 38.

² Annex A, p. 38.

³ Annex A, p. 39.

3. Today, the Defence received a new disclosure batch containing [REDACTED], [REDACTED].⁴

II. ARGUMENT

4. The Prosecution is in breach of its disclosure obligations under Article 67(2) by disclosing all required material on or about the date of filing for the Defence's Written Submissions. It is absurd for the Prosecution to presume that it will be in full compliance of its obligations under Article 67(2) by disclosing all the material it is obligated to do so on or about the day the Defence is required to file its Written Submissions responding to the Prosecution's allegations in its Document Containing the Charges.
5. Alarming, the Lead Prosecutor offers no excuse, let alone an explanation for this late disclosure, bearing in mind that this is the same Lead Prosecutor in the *Ruto and Sang* case, and thus, intimately familiar with the entire case file.
6. This late disclosure, particularly on the eve of a deadline, cannot be viewed as anything other than a tactical move by the Prosecution to frustrate the Defence's ability to diligently represent Mr. Gicheru.
7. Were a request for a short delay not be granted, it may become necessary for the Defence to seek leave to supplement its Written Submissions.
8. Having shown good cause – the Defence's repeated requests for information and the Prosecution's breach of its disclosure obligations – the Chamber has the power under Regulation 35(2) of the Regulations of the Court to extend the deadline for the filing of the Defence's Written Submissions by one week.

⁴ Annex A, p. 45.

WHEREFORE, for the above reasons, the Pre-Trial Chamber should:

- A. GRANT this Request;
- B. ORDER the Prosecution to comply with its disclosure obligations no later than 23 April 2021; and
- C. EXTEND the deadline for the Defence's Written Submissions to 30 April 2021.

Respectfully submitted, 19 July 2021,

In The Hague, the Netherlands.



Michael G. Karnavas
Counsel for Mr. Paul Gicheru