

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

*No.: ICC-01/09-01/20
Date: 28 January 2022*

TRIAL CHAMBER III (ARTICLE 70)

Before: Judge Miatta Maria Samba

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v. PAUL GICHERU***

Public with Confidential Annex A

**Public redacted version of “Request for disclosure of video recording of P-0800’s
[REDACTED]” 27 January 2022, ICC-01/09-01/20-267-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

Mr. James Stewart

Mr. Anton Steynberg

Counsel for the Defence

Mr. Michael G. Karnavas

Ms. Suzana Tomanović

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 requests Trial Chamber III to order the Office of the Prosecutor (“OTP”) to disclose the video recording of P-0800’s [REDACTED]. This Request is made necessary by the Defence’s continuing obligation to be due diligent. It and Annex A are filed confidentially pursuant to Regulation 23bis(1) since they contain confidential material.

1. [REDACTED].¹ [REDACTED].²
2. Subsequent to the *Ruto and Sang* trial and just prior to the Decision on the Confirmation of Charges in the *Gicheru* case, [REDACTED].³ [REDACTED]⁴ [REDACTED].⁵
3. As part of its due diligence obligations, on 25 January 2022, the Defence requested the OTP to disclose [REDACTED].⁶ [REDACTED]⁷ [REDACTED].⁸
4. The new information that came about during [REDACTED], in particular, [REDACTED], is an integral part of P-0800’s disclosable evidence and is vital to the Defence. Without the video recording, the Defence is unable to determine: (a) how this new information came about; (b) the extent to which P-0800 explained himself; and (c) any contradictions P-0800 may have made in explaining [REDACTED] to OTP investigators.
5. Notably, the 2021 interview seemingly mirrors the [REDACTED]. [REDACTED]⁹ [REDACTED].
6. There is no legal or rational reason why the video recording should not be disclosed. The whole purpose of video-recording [REDACTED] is to ensure transparency. While there may be a legitimate reason why video-recorded [REDACTED] should not automatically be disclosed in the midst of witnesses giving evidence at trial, it makes no sense that a protocol would be put in place to bar access to how the [REDACTED] took place in a *prior case*. This is especially so when there is a high probability of there being fertile ground for relevant and indispensable confrontation. In this case, it should be noted that [REDACTED].

¹ [REDACTED].

² [REDACTED].

³ [REDACTED].

⁴ [KEN-OTP-0160-0290](#) at 292, lns. 65-9.

⁵ [KEN-OTP-0160-0290](#) at 239, lns. 78-82, p. 302-03, ln. 414-16.

⁶ Email from the Defence entitled “[REDACTED]” 25 January 2022 at 10:59.

⁷ Email from the OTP entitled “[REDACTED]” 25 January 2022 at 13:04.

⁸ Email from the OTP entitled “[REDACTED]” 25 January 2022 at 18:16.

⁹ [REDACTED].

7. Neither will the OTP be prejudiced, nor will the Chamber be inconvenienced by granting this Request. If anything, the disclosure of the video recording would only serve to enhance Mr. Gicheru's full enjoyment of his fair trial rights.

WHEREFORE, for all the reasons stated herein, Trial Chamber III should **ORDER** the OTP to disclose the video recording of [REDACTED] to the Defence.

Respectfully submitted, 28 January 2022,
In The Hague, the Netherlands.



Michael G. Karnavas
Counsel for Mr. Paul Gicheru