Cour Pénale Internationale



International Criminal Court

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

Date: 12 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 the "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, ICC-01/09-01/20-41-Conf

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

Counsel for the Defence

Mr Michael G. Karnavas

Mr James Stewart Mr Anton Steynberg

Legal Representatives of the Victims Legal Representatives of the Applicants

Unrepresented Victims Unrepresented Applicants

(Participation/Reparation)

The Office of Public Counsel for The Office of Public Counsel for the

Victims Defence

States' Representatives Amicus Curiae

REGISTRY

Registrar Counsel Support Section

Mr Peter Lewis

Victims and Witnesses Unit Detention Section

Victims Participation and Reparations Other

Section

I. INTRODUCTION

- 1. The Prosecution responds herewith to the "Report of the Registry on the Arrest and Surrender of Mr Paul Gicheru¹ and Request for Guidance on Mr Paul Gicheru's belonging" filed on 5 November 2020.²
- 2. In its Report, the Registry informed Pre-Trial Chamber A,³ *inter alia*, of the arrest of Gicheru and the seizure of certain items from him,⁴ including [REDACTION], and sought the Chamber's guidance on any action in relation to these objects.
- 3. The Prosecution requests the Chamber to order the Registry to transmit [REDACTED] to the Prosecution so that it can conduct the necessary examination and analysis [REDACTED] for the purposes of its investigations into alleged offences under article 70 of the Statute.

II. CONFIDENTIALITY

4. Pursuant to regulation 23bis(2) of the Regulations of the Court ("RoC"), this submission is filed as confidential as it relates to previous filings of a similar classification.

III. PROCEDURAL HISTORY

5. On 10 March 2015, the former Single Judge for Pre-Trial Chamber II⁵ issued a warrant of arrest for Gicheru, being satisfied that the conditions under article 58(1) of the Statute were fulfilled.⁶ She also granted the Prosecution's request for the suspects to be searched upon arrest and relevant evidence seized.⁷

_

^{1 &}quot;Gicheru".

² ICC-01/09-01/15-35-Conf; "Report" or "Registry Report".

³ "The Chamber".

⁴ As ordered by the former Single Judge of Pre-Trial Chamber II ("PTC II"), "Decision on the 'Prosecution's Application under Article 58(1) of the Rome Statute", ICC-01/09-01/15-1-Conf-Exp or "Arrest Warrant Decision" or "Article 58 Decision".

^{5 &}quot;PTC II".

⁶ ICC-01/09-01/15-1-Conf-Exp.

⁷ *Ibid.*, paras. 30-31.

- 6. On 2 November 2020, the President of the Pre-Trial Division constituted Pre-Trial Chamber A (Article 70), composed of Judge Reine Adélaïde Sophie Alapini-Gansou, to exercise the powers and functions of the Pre-Trial Chamber in the case of *The Prosecutor v. Paul Gicheru and Philip Kipkoech Bett.*8
- 7. On 5 November 2020, the Registry filed the Registry Report informing the Chamber, *inter alia*, of Gicheru's arrest and the seizure of certain items from him, in compliance with the Arrest Warrant Decision, including [REDACTED]. The Registry further sought the Chamber's guidance on any action in relation to these objects.

IV. SUBMISSIONS

- 8. As foreshadowed in [REDACTED]⁹ the Prosecution observes that the items listed in the Registry Report,¹⁰ including [REDACTED], were seized pursuant to an order for search and seizure issued by the previous Single Judge at the Prosecution's request.¹¹ More specifically, PTC II ordered that appropriate measure be taken for, *inter alia*, "the seizure of any relevant evidence, such as [REDACTED] [...] which are, on reasonable grounds, believed to be used in, connected with, or to provide evidence of, the offences for which these warrants of arrests are issued".¹² The Prosecution considers that [REDACTED] may contain information pertinent to its investigation.
- 9. As described in the Prosecution's Arrest Warrant application, attempts to interfere with Prosecution witnesses in *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* case took place [REDACTED]. [REDACTED]. As such, [REDACTED] have been identified by the Prosecution as a relevant line of investigation.

¹⁰ Report, para. 11.

⁸ ICC-01/09-01/15-32.

⁹ [REDACTED].

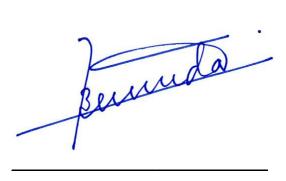
¹¹ Arrest Warrant Decision, paras. 30-31; *See also* Registry Report, para. 5.

¹² Arrest Warrant Decision, p. 19 (emphasis added).

- 10. [REDACTED].
- 11. [REDACTED].
- 12. The Prosecution notes that Gicheru has elected to conduct his own defence in this case to date and has not advised the Prosecution that he has engaged any defence counsel nor sought any independent legal advice. [REDACTED].
- 13. The Prosecution does not object to the return to Gicheru of the remaining items seized from him, subject to any restrictions that may be imposed by the Detention Center.

V. CONCLUSION AND RELIEF SOUGHT

14. In light of the foregoing, the Prosecution respectfully requests the Chamber to order the Registry to transmit [REDACTED], as seized upon Gicheru's surrender, to the Office of the Prosecution for the purpose of conducting investigative activities as described in this filing to meet its obligations under article 54(1)(a).



Fatou Bensouda, Prosecutor

Dated this 12th day of January 2021 At The Hague, The Netherlands