

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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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:

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**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**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. INTRODUCTION

1. The Prosecution responds herewith to the “Report of the Registry on the Arrest and Surrender of Mr Paul Gicheru<sup>1</sup> and Request for Guidance on Mr Paul Gicheru’s belonging” filed on 5 November 2020.<sup>2</sup>
2. In its Report, the Registry informed Pre-Trial Chamber A,<sup>3</sup> *inter alia*, of the arrest of Gicheru and the seizure of certain items from him,<sup>4</sup> 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 23*bis*(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 II<sup>5</sup> issued a warrant of arrest for Gicheru, being satisfied that the conditions under article 58(1) of the Statute were fulfilled.<sup>6</sup> She also granted the Prosecution’s request for the suspects to be searched upon arrest and relevant evidence seized.<sup>7</sup>

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<sup>1</sup> “Gicheru”.

<sup>2</sup> ICC-01/09-01/15-35-Conf; “Report” or “Registry Report”.

<sup>3</sup> “The Chamber”.

<sup>4</sup> 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”.

<sup>5</sup> “PTC II”.

<sup>6</sup> ICC-01/09-01/15-1-Conf-Exp.

<sup>7</sup> *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*.<sup>8</sup>
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]<sup>9</sup> the Prosecution observes that the items listed in the Registry Report,<sup>10</sup> including [REDACTED], were seized pursuant to an order for search and seizure issued by the previous Single Judge at the Prosecution's request.<sup>11</sup> 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**".<sup>12</sup> 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.

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<sup>8</sup> ICC-01/09-01/15-32.

<sup>9</sup> [REDACTED].

<sup>10</sup> Report, para. 11.

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

<sup>12</sup> 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).



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**Fatou Bensouda, Prosecutor**

Dated this 12<sup>th</sup> day of January 2021  
At The Hague, The Netherlands