

Situation in Kenya

Update: November 2020

ICC-01/09

First appearance of Paul Gicheru at the ICC 06 November 2020

WHO IS PAUL GICHERU AND WHAT IS HE SUSPECTED OF?

Paul Gicheru, a lawyer formerly based in Kenya, is suspected of offences against the administration of justice committed in or around 2013 in Kenya consisting in corruptly influencing witnesses of the ICC Prosecution.

Paul Gicheru surrendered on 2 November 2020 to the authorities of The Netherlands pursuant to an ICC [arrest warrant](#) issued under seal on 10 March 2015 against him and Philip Kipkoech Bett, and unsealed on 10 September 2015. On 3 November 2020, Paul Gicheru was transferred to the ICC custody after the completion of the necessary Dutch national proceedings. Philip Kipkoech Bett is not in the ICC's custody.

WHAT HAPPENED AFTER Mr GICHERU'S ARRIVAL AT THE ICC DETENTION CENTRE?

Once a suspect is surrendered to ICC's custody, the Court ensures that the person receives a copy of the warrant of arrest in a language which he fully understands and speaks. Within a reasonable time after his arrival at the Detention Unit of the ICC, the Pre-Trial Chamber holds an initial appearance hearing to verify the identity of the suspect and ensure that he was clearly informed of the charges against him and his rights under the Rome Statute.

WHAT IS AN INITIAL APPEARANCE HEARING?

The suspect's first appearance before the Court takes place shortly after his arrival in The Hague. The initial appearance of Mr Gicheru took place on 6 November 2020 before Judge Reine Adélaïde Sophie Alapini-Gansou, for ICC Pre-Trial Chamber A. Due to the Covid-19 pandemic, the suspect appeared by Video-link from the ICC Detention Centre in The Hague. Mr Gicheru represented himself at this hearing.

The Single Judge verified the identity of the suspect, and ensured that he was clearly informed of the offences against the administration of justice he is alleged to have committed and of his rights under the Rome Statute of the ICC in a language he fully understands and speaks. The judge also set the calendar for the procedure.

WHAT WILL HAPPEN AFTER THE INITIAL APPEARANCE?

From this moment, the suspect will enjoy rights as recognised in the Rome Statute, including the right to have adequate time and facilities for the preparation of his or her Defence and to have the assistance of a Counsel, without payment if the person lacks sufficient means to pay for it.

The confirmation of charges procedure will, in principle, be conducted in writing pursuant to rule 165(3) of the Rules. The Single Judge set provisional dates for the procedure. The Prosecution is to file its document containing the charges by 12 February 2021. The Defence may file a list of evidence by 26 February 2021. The parties shall then file written submissions by 15 March; the Prosecution can file its reply to the Defence submissions by 22 March, and the Defence can reply by 29 March 2021.

The purpose of the confirmation of charges procedure is to determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the offences against the administration of justice charged. If the charges are confirmed, totally or partly, the case will be transferred to a Trial Chamber, which will conduct the subsequent phase of the proceedings: the trial.

WHAT RIGHTS DO SUSPECTS HAVE?

Suspects before the ICC are presumed innocent. Unless exempted by the Judges, they are present in the courtroom during the trial, and they have a right to a public, fair and impartial hearing of their case. To this end, a series of guarantees are set out in the Court's legal documents, including, to mention a few:

- to be defended by the counsel (lawyer) of their choice, present evidence and witnesses of their own and to use a language which they fully understand and speak;
- to be informed in detail of the charges in a language which they fully understand and speak;
- to have adequate time and facilities for the preparation of the defence and to communicate freely and in confidence with counsel;
- to be tried without undue delay;

- not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- to have the Prosecutor disclose to the defence evidence in his possession or control which he believes shows or tends to show the innocence of the suspects or accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence.

WHAT ARE THE CONDITIONS OF DETENTION AT THE ICC DETENTION CENTRE?

The ICC Detention Centre is located within a Dutch prison complex in Scheveningen - on the outskirts of The Hague, in the Netherlands. It functions to hold in safe, secure and humane custody those persons detained under the authority of the ICC. The Detention Centre operates in conformity with the highest international human rights standards for the treatment of detainees, such as the United Nations Standard Minimum Rules. An independent inspecting authority conducts regular and unannounced inspections of the Centre in order to examine how detainees are being held and treated. Detained persons are presumed innocent until proven guilty. If convicted of crimes under the ICC's jurisdiction, they do not serve their sentences at the ICC Detention Centre as it is not a facility made for the purposes of managing a regime of convicted prisoners; they are transferred to a prison outside of The Netherlands to serve their time, subject to an agreement between the ICC and the State of enforcement.

WHO ARE THE JUDGES SITTING IN THIS CASE?

According to the ICC legal texts, for the purposes of conducting proceedings for offences against the administration of justice, the President of the Pre-Trial Division may constitute a Chamber composed of one judge to exercise the functions and powers of the Pre-Trial Chamber. In this case, Pre-Trial Chamber A is composed of Judge Reine Adélaïde Sophie Alapini-Gansou. The ICC Judges are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. All have extensive experience relevant to the Court's judicial activity. The Judges are elected by the Assembly of States Parties on the basis of their established competence in criminal law and procedure and in relevant areas of international law such as international humanitarian law and the law of human rights.

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International Criminal Court: Oude Waalsdorperweg 10, 2597 AK Den Haag, The Hague, The Netherlands. Postal address: Po Box 19519; 2500 CM, The Hague, The Netherlands. Tel. + 31 (0)70 515 8515; Fax. +31 (0)70 515 8555. YouTube: www.youtube.com/IntlCriminalCourt;
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