

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/09-01/15**

Date: **30 March 2021**

**PRE-TRIAL CHAMBER II**

**Before:** Judge Antoine Kesia-Mbe Mindua, Presiding Judge  
Judge Tomoko Akane  
Judge Rosario Salvatore Aitala

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF *THE PROSECUTOR v. PAUL GICHERU AND PHILIP  
KIPKOECH BETT***

**Public**

**Public Redacted Version of "Prosecution's Response to 'Transmission of a letter received from Mr Paul Gicheru and observations of the Registry on such a letter' (ICC-01/09-01/15-21-US-Exp)", 5 May 2020, ICC-01/09-01/15-22-US-Exp**

**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

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**

**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**

## INTRODUCTION

1. In light of the Registry's filing [REDACTED],<sup>1</sup> the Office of the Prosecutor<sup>2</sup> hereby confirms its receipt of this letter and updates Pre-Trial Chamber II ("the Chamber") on the steps taken to date in response.

## CLASSIFICATION

2. Pursuant to regulation 23bis(2) of the Regulations of the Court ("RoC"), this response is filed as under seal, *ex parte*, only available to the Office of the Prosecutor, as it responds to a filing of a similar classification.

## SUBMISSIONS

3. The Prosecution confirms that it is in receipt of the above-mentioned letter and is actively pursuing steps to secure the voluntary surrender of Mr Paul Gicheru.<sup>3</sup>
4. Since receipt of the letter, the Prosecution has been in contact with Gicheru, both telephonically and by email, for the following purposes:
  - (i) To obtain further information regarding the alleged "[REDACTED] reasons" for which he seeks to have the warrant of arrest withdrawn in order to establish whether such request is well founded;
  - (ii) To explore any conditions and modalities for his offer to "co-operate and to voluntarily appear before the court"; and
  - (iii) [REDACTED]
  - (iv) [REDACTED]
5. [REDACTED]

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<sup>1</sup> [REDACTED]

<sup>2</sup> "Prosecution" or "OTP".

<sup>3</sup> "Gicheru" or "the Suspect".

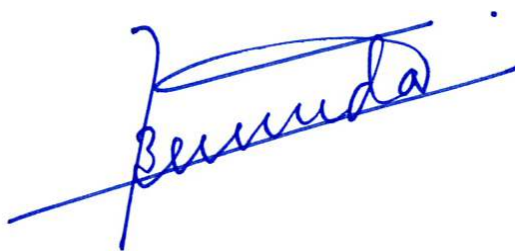
6. The Prosecution has not yet independently verified the information provided by the Suspect. The information is also lacking in some important details and the Prosecution has therefore requested Gicheru to supply:
  - (i) [REDACTED]
  - (ii) [REDACTED]
7. Gicheru has agreed to supply this information, but advises that it might take some time due to COVID-19 related restrictions in Nairobi.
8. But even assuming the information provided to date to be correct, the OTP does not consider this sufficient reason to withdraw the warrant of arrest. The Suspect is by no means unique in having [REDACTED] concerns and [REDACTED] commitments and these should not be a bar to the execution of the warrant of arrest so that he may at last face justice for crimes that touch the core of this Court's ability to fulfil its mandate. Furthermore, there is no guarantee that Gicheru would indeed "co-operate and [...] voluntarily appear before the court" once the warrant was withdrawn, and no way of enforcing cooperation in such event.
9. [REDACTED]
10. [REDACTED]. In this regard [REDACTED], it would be important to know if and when the Registry would be in a position to facilitate his transfer to The Hague should he surrender to the Court, and his possible return to Kenya should he be released under conditions that would permit this.<sup>4</sup>
11. To this end, the Prosecution will request the Registry to provide it with details on the outcome of the assessment that it is conducting "to assess whether and how it can overcome the new operational constraints linked to the COVID-19 global pandemic".<sup>5</sup>

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<sup>4</sup> [REDACTED]

<sup>5</sup> Registry's Observations, para. 8(e).

12. The Prosecution will inform the Chamber of any significant developments.

A handwritten signature in blue ink, appearing to read 'Fatou Bensouda', is written over a horizontal line. The signature is stylized and slanted.

**Fatou Bensouda, Prosecutor**

Dated this 30<sup>th</sup> day of March 2021

At The Hague, The Netherlands