

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/15
Date: 21 September 2020

PRE - TRIAL CHAMBER II

**Before: Judge Antoine Kesia-Mbe Mindua, Presiding
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**

UNDER SEAL

***EX PARTE* only available to the Office of the Prosecutor**

**With UNDER SEAL, *EX PARTE* only available to the Office of the Prosecutor
Annex 1**

**Prosecution's filing of its Agreement on Voluntary Surrender and Interim Release
with Paul Gicheru**

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

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

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. Further to the Prosecution's filings of 17 July 2020,¹ 28 July 2020² and 6 August 2020,³ informing Pre-Trial Chamber II,⁴ *inter alia*, of the Prosecution's efforts to secure Mr Paul Gicheru's⁵ voluntary surrender to the Court, the Prosecution files herewith the agreement it reached with Gicheru in this respect.

Classification

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

Submissions

3. As foreshadowed in previous Prosecution filings,⁶ the Prosecution has engaged with Gicheru in order to secure his voluntary surrender to the Court. The Prosecution is now in a position to advise the Chamber that an agreement was signed between the Prosecutor and Gicheru. The Prosecution files the agreement, titled "Agreement on Voluntary Surrender and Interim Release"⁷, as Annex 1.
4. The Agreement stipulates that Gicheru will voluntarily surrender to the Court no later than 2 November 2020, pursuant to the warrant of arrest against him.⁸ Upon his first appearance before the Chamber, he may apply for interim release pursuant to article 60(2) of the Statute, which the Prosecution will not oppose subject to the conditions set out in Annex A to the Agreement.⁹
5. The Agreement explicitly acknowledges that it is not binding on the Chamber, as well as that the Chamber will make the final determination on interim release

¹ ICC-01/09-01/15-24-US-Exp.

² ICC-01/09-01/15-26-US-Exp.

³ ICC-01/09-01/15-27-US-Exp.

⁴ "The Chamber".

⁵ "Gicheru".

⁶ ICC-01/09-01/15-24-US-Exp; ICC-01/09-01/15-26-US-Exp; ICC-01/09-01/15-27-US-Exp.

⁷ "The Agreement".

⁸ ICC-01/09-01/15-1-Conf-Exp.

⁹ Annex 1, pp. 5-6.

pursuant to article 60(2), including on any conditions that may be deemed appropriate in the circumstances, under rule 119(2) of the Rules of Procedure and Evidence.

6. The Prosecution advises the Chamber that in parallel to maintaining a direct line of communication with Gicheru, it is also liaising with the Registry to make all the necessary arrangements for his voluntary surrender to the Court.
7. In light of the development noted above, the Prosecution further advises that, to facilitate the expeditiousness and efficiency of the proceedings, the Chamber may consider it appropriate to designate a Single Judge for the present case pursuant to articles 39(2)(b)(iii) and 57(2)(b) of the Statute.
8. The Prosecution will inform the Chamber of any further significant developments. The Prosecution remains available to provide information to the Chamber by way of additional filings, status conference or in-Chamber conference.



Fatou Bensouda, Prosecutor

Dated this 21st day of September 2020
At The Hague, The Netherlands