

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/20
Date: 15 November 2021

TRIAL CHAMBER III

Before: Judge Miatta Maria Samba

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF *THE PROSECUTOR v. PAUL GICHERU*

**Public
with confidential annex 1**

Public redacted version of “Addendum to the ‘Prosecution application for the introduction of prior recorded testimony of Witness P-0397 pursuant to rule 68(2)(c), and alternatively 68(2)(d)’”

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

Mr James Stewart

Mr Anton Steynberg

Counsel for the Defence

Mr Michael G. Karnavas

Ms Suzana Tomanović

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

I. SUBMISSIONS

1. The Prosecution requests to add the transcripts and translations of the enhanced audio recorded [REDACTED] of Witness P-0397 to be introduced as part his prior recorded testimony, pursuant to Rule 68(2)(c) or (d) of the Rules of Procedure and Evidence.
2. As previously indicated,¹ the Prosecution seeks to submit additional material associated with P-0397's prior recorded testimony,² namely newly registered transcripts and translations that were produced pursuant to the enhancement of the underlying audio files. These could not be completed in time to include in the original application. These items have been disclosed to the Defence on 8 and 12 November 2021.
3. The Prosecution notes that only tracks one to four of audio recording KEN-OTP-0124-0018,³ and tracks eight to twelve of KEN-OTP-0124-0019⁴ were enhanced.⁵ Consequently the new transcripts and translation listed in annex 1 only relate to those enhanced tracks. Each track correspond to one new transcript and one new translation.⁶ Therefore the Prosecution does not seek to "substitute"⁷ the former transcripts and translations which compile all the tracks of the two audio recordings,⁸ but rather to add the new material corresponding to the enhanced tracks only.
4. The Prosecution notes that of the nine tracks that were enhanced, and the corresponding transcripts and translations, only three contain significant content.⁹ The remaining material is included for completeness and to exclude the possibility of other potentially exonerating [REDACTED].

¹ ICC-01/09-01/20-193-Conf, para. 8.

² ICC-01/09-01/20-193-Conf and its annex A.

³ Item 10 of table II of ICC-01/09-01/20-193-Conf-AnxA.

⁴ Item 13 of table II of ICC-01/09-01/20-193-Conf-AnxA.

⁵ KEN-OTP-0160-0221 at 0221.

⁶ By contrast, there is only one former transcript and one former translation compiling all of the tracks for each of the two audio files.

⁷ Contrary to what was originally foreseen in ICC-01/09-01/20-193-Conf, para. 8.

⁸ Items 11, 12, 14, and 15 of table II of ICC-01/09-01/20-193-Conf-AnxA.

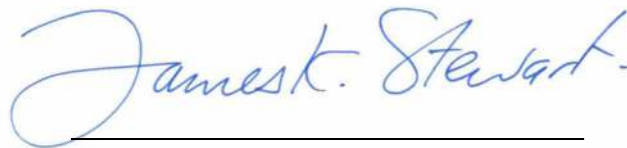
⁹ Tracks 4 of KEN-OTP-0124-0019 (KEN-OTP-0160-0802 / KEN-OTP-0160-0833), 11 (KEN-OTP-0160-0866 / KEN-OTP-0160-0870) and 12 (KEN-OTP-0160-0818 / KEN-OTP-0160-0853).

II. CONFIDENTIALITY

5. These submissions as classified as confidential pursuant to Regulation 23bis(2) of the Regulations of the Court as they refer to a confidential filing. A public redacted version is filed simultaneously.

III. CONCLUSION AND RELIEF SOUGHT

6. For the foregoing reasons, the Prosecution requests the Chamber to add this material to the prior recorded testimony of Witness P-0397, and recognise it as formally submitted into evidence, pursuant to rule 68(2)(c), and alternatively 68(2)(d).



James Stewart, Deputy Prosecutor

Dated this 15th day of November 2021
At The Hague, The Netherlands