

Pursuant to TC III's instruction dated 05.05.2023, this document is reclassified as Public

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/20
Date: 29 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*

Confidential

Prosecution's observations on the reclassification of documents

Source: Office of the Prosecutor

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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

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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I. INTRODUCTION

1. On 31 December 2020, the Chamber ordered the Prosecutor, the Registrar and the Defence “to indicate whether their respective documents (and any annexes) in the case record that are classified as secret, under seal, or confidential may be reclassified as public or otherwise (with or without redactions) by no later than 29 January 2021.”¹
2. Pursuant to this order, the Prosecution indicates seven such documents in the case record that can be reclassified as public or public redacted while two documents in the case records need to remain confidential.

II. CONFIDENTIALITY

3. Under regulation 23bis (2) of the Regulations, this filing is submitted as confidential since it concerns the reclassification of documents of a confidential nature.

III. SUBMISSIONS

4. The Prosecution hereby provides a list of seven documents that are either classified as under seal or confidential and can be reclassified as public, but in five cases discrete redactions are necessary. The Prosecution will file public redacted version of these five documents in due course.
5. Accordingly, the Prosecution requests the Chamber to reclassify the following two documents (but not their annexes) as public: ICC-01/09-01/20-26-Conf and ICC-01/09-01/20-27-Conf. The annexes, ICC-01/09-01/20-26-Conf-AnxA and ICC-01/09-01/20-27-Conf-AnxA, should remain confidential as they relate to confidential correspondence between the Prosecutor and Mr Paul Gicheru.²

¹ ICC-01/09-01/20-75-Conf, paras. 24, 35.

² “Gicheru”.

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6. Regarding the document ICC-01/09-01/20-10-Conf-Exp, the Prosecution submits that redactions are necessary as one paragraph refers to the content of confidential correspondence between the Prosecution and the Government of Kenya.³
7. Regarding ICC-01/09-01/20-22-Conf-Red and ICC-01/09-01/20-24-Conf-Red, further redactions are necessary to preserve the confidentiality of methodologies and strategies employed by the Court to secure the execution of arrest warrants.⁴ In addition, filing these documents without redactions would expose the private personal information regarding Gicheru's children and medical issues.⁵
8. Regarding ICC-01/09-01/20-49-Conf-Red, further redactions are necessary to prevent exposing investigation activities that should remain undisclosed to the public. In addition, one paragraph makes clear that the Prosecution intends to charge additional counts of corruptly influencing, or attempting to corruptly influence, a witness under the article 70(1)(c) arising out of the same course of conduct described in its article 58 request.⁶ The public should not be informed about this intention at the moment as it may impede ongoing investigations and put witnesses and potential witnesses at risk.
9. Regarding ICC-01/09-01/20-81-Conf-Exp, further redactions are necessary as the document includes references to witnesses which should not be disclosed publicly at this stage.⁷
10. The Prosecution submits that the two remaining confidential documents in the court record, ICC-01/09-01/20-28-Conf and ICC-01/09-01/20-59-Conf, need to remain confidential. The confidential classification is still justified on the basis that these filings deal to a great extent with the confidential negotiations with Gicheru leading up to his surrender and the agreement that was finally reached.⁸

³ ICC-01/09-01/20-10-Conf-Exp, para. 4.

⁴ See further: ICC-01/09-01/20-59-Conf, para. 7.

⁵ ICC-01/09-01/20-22-Conf-Red, paras. 5-6; ICC-01/09-01/20-24-Conf-Red, paras. 13-15.

⁶ ICC-01/09-01/20-49-Conf-Red, para. 14.

⁷ ICC-01/09-01/20-81-Conf-Exp., paras. 5-8, 18.

⁸ See also, ICC-01/09-01/20-59-Conf, para. 5.

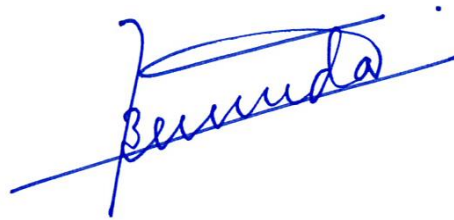
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IV. CONCLUSION

11. In light of the above, unless otherwise directed by the Chamber, the Prosecution intends to file public redacted versions of the Prosecution documents ICC-01/09-01/20-10-Conf-Exp, ICC-01/09-01/20-22-Conf-Red, ICC-01/09-01/20-24-Conf-Red, ICC-01/09-01/20-49-Conf-Red, ICC-01/09-01/20-81-Conf-Exp. (without their annexes) by 30 March 2021.

V. RELIEF

12. The Prosecution accordingly requests the Chamber to reclassify as “public” ICC-01/09-01/20-26-Conf and ICC-01/09-01/20-27-Conf.



Fatou Bensouda, Prosecutor

Dated this 29th day of January 2021
At The Hague, The Netherlands