

**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***

Public

Public Redacted Version of “Response to Further Observations Submitted by the Kenyan Authorities pursuant to Pre-Trial Chamber A’s Order ICC-01/09-01/20-76 of 31 December 2020”, 21 January 2021, ICC-01/09-01/20-85-Conf

Source: Counsel for Paul Gicheru

Document to be notified in accordance with regulation 31 of the *Regulations of the****Court to:*****The Office of the Prosecutor**

Ms. Fatou Bensouda, Prosecutor

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****Other****REGISTRY**

Registrar

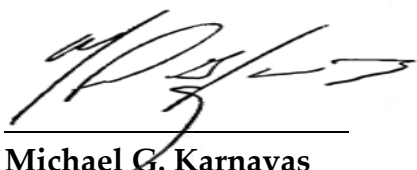
Mr. Peter Lewis

Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section****Other**

Mr. Paul Gicheru, through his Counsel (“the Defence”), hereby responds to the Further Observations Submitted by the Kenyan Authorities pursuant to Pre-Trial Chamber A’s Order ICC-01/09-01/20-76 of 31 December 2020.¹ The Attorney General has noted that Kenya is, in principle, able to enforce any conditions that the Chamber imposes.² The Prosecutor supports Mr. Gicheru’s provisional release and is confident that Mr. Gicheru can abide by the [REDACTED] conditions.³ Waiting for Kenya to provide further observations on its willingness and ability to enforce potential conditions of release spelled out by the Single Judge over two months ago⁴ would only delay the matter and serves no purpose. The Single Judge should immediately order Mr. Gicheru’s provisional release in accordance with the Court’s jurisprudence in *Bemba et al.*, where the Single Judge ordered Fidèle Babala Wandu’s provisional release despite the Democratic Republic of Congo’s professed inability to enforce conditions of provisional release under Rule 119.⁵ This Response is filed as confidential pursuant to Regulation 23bis(1) of the Regulations of the Court as it contains confidential material.

Respectfully submitted, 29 January 2021,

In The Hague, the Netherlands.



Michael G. Karnavas
Counsel for Mr. Paul Gicheru

¹ *Prosecutor v. Gicheru*, [ICC-01/09-01/20-82-Anx](#), Further Observations Submitted by the Kenyan Authorities pursuant to Pre-Trial Chamber A’s Order ICC-01/09-01/20-76 of 31 December 2020, 21 January 2021.

² *Id.*, para. 9.

³ *Prosecutor v. Gicheru*, [ICC-01/09-01/20-38-Conf](#), The Accused Person’s Request for Interim Release under the Provisions of Article 60(2) of the Rome Statute, 9 November 2020; *Prosecutor v. Gicheru*, [ICC-01/09-01/20-39-Conf](#), Prosecution’s response to “The Accused Person’s [Urgent] Request for Interim Release under the Provisions of Article 60(2) of the Rome Statute,” 11 November 2020; *Prosecutor v. Gicheru*, [ICC-01/09-01/20-58](#), Prosecution’s Response to the observations submitted by the Republic of Kenya and the Kingdom of the Netherlands and associated requests, 4 December 2020, para. 18.

⁴ *Prosecutor v. Gicheru*, [ICC-01/09-01/20-42](#), Order Inviting Observations Pursuant to Rule 119(3) of the Rules of Procedure and Evidence and Regulation 51 of the Regulations of the Court, para. 11.

⁵ *Prosecutor v. Bemba et al.*, [ICC-01/05-01/13-703](#), Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, 21 October 2014, p. 6; *Prosecutor v. Bemba et al.*, [ICC-01/05-01/13-694-Anx3](#), Transmission of the observations submitted by the Congolese authorities on the “Decision requesting observations from States for the purpose of the review of the detention of the suspects pursuant to regulation 51 of the Regulations of the Court,” 16 October 2014.