

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 April 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

Notification Concerning the Defence List of Evidence

Source: Counsel for Mr. 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”), pursuant to Rule 121(6) of the Rules of Procedure and Evidence (“Rules”) and as requested by Pre-Trial Chamber A in its Decision on the postponement of the date of filing of written submissions and other related deadlines for the confirmation of charges proceedings,¹ hereby timely presents his Notification Concerning the Defence List of Evidence.

1. Categorically, the Prosecution bears the burden under Article 61(5) of the Rome Statute of proving “each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crimes charged.” The Prosecution “shall provide” under Rule 121(3) a List of Evidence which it “intends to present at the hearing.”
2. Conversely, the Defence bears no burden of proof. Article 61(6)(c) of the Rome Statute provides that “[a]t the hearing, the person *may* ... [p]resent evidence.”² Only “[i]f the person intends to present evidence under article 61, paragraph 6,” is he or she required under Rule 121(6) to provide a list of that evidence to the Chamber.
3. Consequently, The Defence does not intend to “present evidence” within the meaning of Article 61(6)(c) and Rule 121(6) and intends to rely on evidence presented by the Prosecution in its List of Evidence and other evidence disclosed by the Prosecution. No hearing is being accorded and no witnesses are being called in this truncated confirmation of charges process. Having disclosed the evidence to the Defence, the Prosecution has had ample opportunity to prepare for any Defence reliance on that evidence.

Respectfully submitted, 8 April 2021,

In The Hague, the Netherlands.



Michael G. Karnavas
Counsel for Mr. Paul Gicheru

¹ *Prosecutor v. Gicheru*, [ICC-01/09-01/20-103](#), Decision on the postponement of the date of filing of written submissions and other related deadlines for the confirmation of charges proceedings, 26 February 2021.

² Emphasis added.