

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/09-01/20  
Date: 3 February 2023

**PRE-TRIAL CHAMBER A**

**Before: Judge Reine Adélaïde Sophie Alapini-Gansou**

**SITUATION IN THE REPUBLIC OF KENYA**

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

**Public  
With confidential annexes I-VII**

**Lesser public redacted version of the "Report of the Registry on the Arrest and Surrender of Mr Paul Gicheru and Request for Guidance on Mr Paul Gicheru's belongings" dated 5 November 2020, ICC-01/09-01/20-35-Conf**

**Source: The Registry**

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

**The Office of the Prosecutor**

Ms Nazhat Shameen Khan

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**

**Others**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

Mr Pieter Vanaverbeke

**Victims and Witnesses Unit**

**Detention Section**

Mr Harry Tjonk

**Victims Participation and Reparations  
Section**

**Other**

## I. Introduction

1. The present report is submitted in the context of the implementation of the “Decision on the ‘Prosecution’s Application under Article 58(1) of the Rome Statute’”,<sup>1</sup> issued by Pre-Trial Chamber II on 10 March 2015, containing a warrant of arrest (“Warrant of Arrest”) against Mr Paul Gicheru (“Mr Gicheru”).

## II. Classification

2. Pursuant to regulation 23 bis(1) of the Regulations of the Court (“RoC”), the present report is classified as confidential because it contains sensitive information on the *modus operandi* of the International Criminal Court (“Court” or “ICC”).
3. The annexes to the present report are classified as confidential since they refer to the officials from the Court and/or from the requested State whose names cannot be made public for security reasons. In addition, the annexes contain detailed and sensitive information on the Court’s operational procedures involving third parties.

## III. Applicable Law

4. The following provisions are of particular relevance to the present submission: articles 59, 89, 91, 92 and 93 of the Rome Statute (“Statute”), rules 117, 176(2), 184 and 187 of the Rules of Procedure and Evidence (“RPE”), regulations 23bis(1) and 32(1) of the RoC and regulations 186 and 192 of the Regulations of the Registry (“RoR”).

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<sup>1</sup> Pre-Trial Chamber II, “Decision on the ‘Prosecution’s Application under Article 58(1) of the Rome Statute’”, 10 March 2015, ICC-01/09-01/15-1-Conf-Exp. Public redacted version of which was registered on 10 September 2020, ICC-01/09-01/15-1-Red.

#### IV. Submissions

##### *A. Notification of the Warrant of Arrest to the Kingdom of the Netherlands (“the Netherlands”)*

5. On 28 October 2020, the Registry notified to the Dutch authorities the [REDACTED] (“Request”).<sup>2</sup> The Registry hereby annexes a note verbale transmitting the Request and its supporting documents as well as a Memorandum of Notification.<sup>3</sup>

##### *B. Arrest and Proceedings in the Custodial State*

6. In the morning of 2 November 2020, Mr Gicheru arrived [REDACTED], where the Dutch authorities executed the Request. In application of the Warrant of Arrest and the Request, a representative of the Office of the Prosecutor (“Prosecution”) was authorized by the Dutch authorities to be present during the arrest for the purpose of observing the searches and seizure of Mr Gicheru carried out by the Dutch authorities.
7. On 2 November 2020, the Dutch authorities informed the Registry that: i) Mr Gicheru would be brought before a national judge on 3 November 2020, at 15:30 who would conduct the proceedings foreseen in article 59 of the Statute; ii) the Dutch proceedings may be over at the end of the afternoon on 3 November 2020; and iii) Mr Gicheru could then be brought to the ICC Detention Centre on 3 November 2020, at between 17:00 and 19:00.

##### *C. Surrender of Mr Gicheru by the Dutch Authorities to the Court*

8. On 3 November 2020, Mr Gicheru was transported [REDACTED] to the ICC Detention Centre, where he arrived at approximately 17.30.

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<sup>2</sup> [REDACTED]

<sup>3</sup> Annex I.

9. [REDACTED] the Dutch authorities (“Dutch Official”) escorted Mr Gicheru into the ICC Detention Centre where he transferred the custody of Mr Gicheru to an ICC Registry Officer. The Registry Officer and the Dutch Official completed the “Report on the Arrest and Surrender Procedure” at 17.55<sup>4</sup> and signed Mr Gicheru’s “Transfer of Custody”<sup>5</sup> form at 18.01.
10. The Dutch Official handed over to the Registry Officer Mr Gicheru’s personal belongings which included a suitcase, a laptop bag and a suit<sup>6</sup> and a small container with medication which the Dutch Official indicated was found on Mr Gicheru during the arrest.<sup>7</sup> The said belongings were then handed over to the ICC Detention Centre for procedures foreseen in regulation 192(1) of the RoR.
11. In addition, the Dutch Official handed over to the Registry Officer a transparent plastic bag containing Mr Gicheru’s personal belongings of which the Dutch authorities set aside when they searched him on 2 November 2020. The said bag contains: i) a plane ticket (boarding pass) Nairobi-Amsterdam; (ii) a passport from the Republic of Kenya issued in the name of Mr Gicheru ; (iii) a national identification card from the Republic of Kenya issued in the name of Mr Gicheru; (iv) a mobile telephone; and (v) a wallet. The part of the bag containing the wallet was sealed (i.e., in a smaller transparent compartment within the bag in question).
12. The Dutch Official explained that, in execution of the Court’s Request in compliance with the Dutch legislation, the national authorities put aside the above-mentioned five items in a plastic bag and transferred it to the ICC for further seizure by the ICC.

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<sup>4</sup> Annex II.

<sup>5</sup> Annex III.

<sup>6</sup> Annex IV.

<sup>7</sup> Annex V.

13. The plastic bag with the aforementioned five items was put by the Registry Officer in a sealed plastic bag which was placed in the Registry vault on the same day, at approximately 19.40.
14. On 5 November 2020, at 15.13 the staff of the Court Management Section (“CMS”) entered the vault where they i) opened the bag, ii) verified the amount of items, iii) counted the money which they found in the wallet; and iv) placed all the items in another sealed plastic bag. [REDACTED]. The “Evidence Receipt and Chain of Custody” form which lists the items is annexed to the present report.<sup>8</sup> The process ended at 15.24 and was filmed and photographs were taken. The said video and photo materials will be placed in the Registry vault at the earliest.

*D. Admission to the Detention Centre*

15. After the formal surrender of Mr Gicheru to ICC custody, the Registry Duty Officer<sup>9</sup>, on 3 November 2020, conducted the admission procedure in English as Mr Gicheru confirmed that English is a language which he fully understands and speaks<sup>10</sup>, in accordance with regulation 186 of the RoR, including the transmission to Mr Gicheru of a folder containing the Court’s basic legal documents, certified copy of the public redacted version of the Warrant of Arrest and the list of counsel. Due to the COVID-19 Pandemic, the admission procedure was conducted *via* video-link.

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<sup>8</sup> Annex VI.

<sup>9</sup> The Registry Duty Officer conducted the ICC Detention Centre admission procedure (see generally regulation 39 of the RoR).

<sup>10</sup> See Annex VII, The “Report on the Arrival of the Person at the ICC Detention Centre” which details all the steps performed during the said admission procedure

## V. Request for Guidance

16. Considering that the Dutch authorities, in applying their domestic law, transmitted the items found on Mr Gicheru pursuant to the Request to the Court, the Registry requests the Chamber's guidance on any action in relation to the objects indicated in paragraph 11 above which are currently in the Registry's vault.



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Marc Dubuisson  
Director of the Division of Judicial Services  
on behalf of the Registrar

Dated this 3 February 2023

At The Hague, the Netherlands