



Original: English

**No. ICC-01/09-01/20
Date: 24 December 2020**

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

Decision on the Prosecutor's Request to Shorten the Time Limit for Responses

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart

Counsel for the Defence

Mr Michael G. Karnavas

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**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

PRE-TRIAL CHAMBER A (ARTICLE 70) of the International Criminal Court issues this Decision on the Prosecutor’s Request to Shorten the Time Limit for Responses.

1. On 10 March 2015, Pre-Trial Chamber II, in its then composition, issued warrants of arrest against Mr Gicheru and Mr Bett for their alleged responsibility for offences against the administration of justice under article 70(1)(c) of the Rome Statute (the ‘Statute’).¹
2. On 2 November 2020, Mr Gicheru surrendered himself to the authorities of the Kingdom of the Netherlands (‘the Netherlands’).
3. On 2 November 2020, Pre-Trial Chamber II requested the President of the Pre-Trial Division to constitute a chamber composed of one judge to exercise the functions and powers of the Pre-Trial Chamber in the present case in accordance with rule 165(2) of the Rules of Procedure and Evidence (the ‘Rules’), as drawn up by the judges of the Court acting under article 51(3) of the Statute on 10 February 2016 (‘Provisional Rule 165’), and regulation 66*bis*(1) of the Regulations of the Court (the ‘Regulations’), which was adopted and entered into force on the same day.²
4. On 2 November 2020, the President of the Pre-Trial Division constituted the present Chamber pursuant to the aforementioned provisions.³
5. On 3 November 2020, following the completion of domestic proceedings in the Netherlands, Mr Gicheru was surrendered to the Court and arrived at the Court’s Detention Centre.
6. On 6 November 2020, in accordance with the Chamber’s order dated 4 November 2020,⁴ Mr Gicheru appeared before the Chamber pursuant to article 60(1) of the Statute and rules 121(1) and 163(1) of the Rules.

¹ Decision on the “Prosecution’s Application under Article 58(1) of the Rome Statute”, ICC-01/09-01/20-1-Conf-Exp; a public redacted version was notified on the same day, *see* ICC-01/09-01/20-1-Red.

² Request to the President of the Pre-Trial Division to constitute a Chamber for the purposes of conducting proceedings under article 70 of the Rome Statute, ICC-01/09-01/20-31-US-Exp.

³ Decision Constituting a Chamber Composed of one Judge from the Pre-Trial Division to Exercise the Powers and Functions of the Pre-Trial Chamber in the Present Case, ICC-01/09-01/20-32.

⁴ Order Setting the Date for the Initial Appearance of Mr Gicheru, ICC-01/09-01/20-34.

7. On 16 November 2020, the Chamber received the ‘Prosecution’s written submissions concerning self-representation, severance of the charges, registration and disclosure of evidence, and other procedural matters pertaining to pre-confirmation proceedings’.⁵ The Prosecutor, *inter alia*, suggests, ‘[i]n accordance with the Chambers Practice Manual and as provided for in the *chapeau* of regulation 34 of the Regulations of the Court, [...] that, the Chamber set an abbreviated time limit of five days for responses under regulation 24 of the [Regulations], that is more compatible with the fast pace of pre-trial proceedings’ (the ‘Prosecutor’s Request’).⁶

8. On 1 December 2020, the Chamber received ‘Paul Gicheru’s Response to the Prosecution’s written submissions concerning severance of the charges, registration and disclosure of evidence, and other procedural matters pertaining to pre-confirmation proceedings’.⁷ The Defence, *inter alia*, submits that ‘[t]he deadline for responses should be 10 days’ as, ‘[g]iven the resource disparity between the OTP and the Defence, short response deadlines would place the Defence at a disadvantage’.⁸

9. On 10 December 2020, the Chamber issued the ‘Decision on the Applicability of Provisional Rule 165 of the Rules of Procedure and Evidence’.⁹ The Chamber found that Provisional Rule 165 is applicable and that it has been properly constituted as a chamber composed of one judge to exercise the functions and powers of the Pre-Trial Chamber in the present case.¹⁰

10. On 11 December 2020, the Chamber issued the ‘Decision Severing the Case against Mr Gicheru’.¹¹

11. The Chamber considers that a time limit of five days for responses would significantly disadvantage the Defence. Balancing the need for expeditious proceedings and the rights of the Defence, the Chamber considers that it is more appropriate to maintain the time limit of 10 days for responses pursuant to regulation 34(b) of the Regulations and to assess, either on the request of a party or *proprio motu*, whether it is necessary to shorten a time limit on a case-by-case basis.

⁵ ICC-01/09-01/20-46.

⁶ ICC-01/09-01/20-46, para. 27.

⁷ ICC-01/09-01/20-56.

⁸ ICC-01/09-01/20-56, para. 5, fn 6.

⁹ ICC-01/09-01/20-61.

¹⁰ ICC-01/09-01/20-61, p. 22.

¹¹ ICC-01/09-01/20-62.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Prosecutor's Request.

Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, appearing to read 'A. Gansou', is written over a solid black horizontal line.

Judge Reine Adélaïde Sophie Alapini-Gansou

Dated this Thursday, 24 December 2020

At The Hague, The Netherlands