

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/09-01/20

Date: 26 March 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

Order related to the confirmation of charges proceedings

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 Order related to the confirmation of charges proceedings.

1. On 10 March 2015, Pre-Trial Chamber II, in its then composition, issued warrants of arrest against Paul Gicheru ('Mr Gicheru') and Philipp Kipkoech 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 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.
4. On 6 November 2020, Mr Gicheru appeared before the Chamber pursuant to article 60(1) of the Statute and rules 121(1) and 163(1) of the Rules of Procedure and Evidence² (the 'Rules' and the 'First Appearance Hearing', respectively). During the First Appearance Hearing, the Chamber decided that, as per rule 165(3) of the Rules, as amended by the judges on 10 February 2016 pursuant to article 51(3) of the Statute, no confirmation hearing should be held in the present case, and that parties should instead file written submissions (the 'Written Submissions'), on 15 March 2021 at the latest.³
5. On 26 February 2021, the Chamber issued the 'Decision on the postponement of the date of filing of written submissions and other related deadlines for the confirmation of charges proceedings' and set new dates for the confirmation proceedings.⁴ The Chamber ordered, pursuant to rule 121 of the Rules: (1) the Prosecutor to file its

¹ Decision on the 'Prosecution's Application under Article 58(1) of the Rome Statute', ICC-01/09-01/15-1-Conf-Exp; a public redacted version was notified on the same day, see [ICC-01/09-01/15-1-Red](#).

² [Order Setting the Date for the Initial Appearance of Mr Gicheru](#), ICC-01/09-01/15-34.

³ ICC-01/09-01/15-T-001-CONF-ENG, p. 10, line 4 – p. 11, line 12. The Chamber is referring to public portion of the transcripts.

⁴ [ICC-01/09-01/20-103](#). See also Defence, Request for Extension of Time Limits to File the Defence List of Evidence and Response to the Document Containing the Charges, 5 February 2021, ICC-01/09-01/20-96-Conf, together with confidential annexes A, C and D and Public Annex B, a public redacted version was notified on 9 February 2021, see [ICC-01/09-01/20-96-Red](#); Prosecution, Prosecution's Response to the Defence 'Request for Extension of Time Limits to File the Defence List of Evidence and Response to the Document Containing the Charges', 8 February 2021, a public redacted version was notified the next day, see [ICC-01/09-01/20-97-Red2](#).

Document containing the charges (the ‘DCC’) and the list of evidence on 12 March 2021 at the latest; (2) the Defence, if it wishes so, to disclose pieces of evidence and file a list of evidence on 8 April 2021 at the latest; (3) both parties to file Written Submissions on 23 April 2021 at the latest; (4) the Prosecutor to file a response on 30 April 2021 at the latest; and (5) the Defence to file a reply on 7 May 2021 at the latest.⁵

6. On 9 March 2021, the Chamber issued the ‘Decision on the Prosecutor Request for an Extension of the Page Limit of the Document Containing the Charges’.⁶

7. On 8 March 2021, the Appeals Chamber issued the ‘Judgment on the appeal of the Office of Public Counsel for the Defence against the decision of Pre-Trial Chamber A of 10 December 2020 entitled “Decision on the Applicability of Provisional Rule 165 of the Rules of Procedure and Evidence”’,⁷ in which it confirmed the Chamber’s determination that rule 165 of the Rules, as amended by the judges on 10 February 2016, is applicable.⁸

8. On 12 March 2021, the Chamber received the ‘Prosecution’s submission of the document containing the charges, the list of evidence and related annexes’.⁹

9. In order to ensure the smooth conduct of the present proceedings, the Chamber considers it appropriate, at this stage, to provide the following clarifications and orders.

1. Written submission in lieu of a Confirmation Hearing

10. The Chamber recalls that as per rule 165(3) of the Rules: ‘For purposes of article 61, the Pre-Trial Chamber [...] may make any of the determinations set forth in that article on the basis of written submissions, without a hearing, unless the interests of justice otherwise require.’ On this basis, the Chamber determined during the First Appearance Hearing that no confirmation hearing should be held in the present case, and that the parties should instead file written submissions.¹⁰

⁵ ICC-01/09-01/15-T-001-CONF-ENG, p.11, lines 1 – 15. The Chamber is referring to public portions of the transcripts.

⁶ [ICC-01/09-01/20-108](#). See also Prosecutor, [Prosecution’s Urgent Request for an Extension of the Page Limit for the filing of its Document Containing the Charges](#), 5 March 2021, ICC-01/09-01/20-106; Email from the Defence, 5 March 2021, at 14:31.

⁷ [ICC-01/09-01/20-107](#).

⁸ [ICC-01/09-01/20-107](#), para. 117.

⁹ [ICC-01/09-01/20-125](#), together with public [annex C2](#) and confidential annexes A, B, C1, C3 and D.

¹⁰ See above para. 4.

11. The Chamber further recalls that both parties are required to file their Written Submissions on the same day (23 April 2021) at the latest, and that therefore, the Chamber deemed it necessary to give both parties the opportunity to respond to the other party's submissions and arguments. As a consequence, the Chamber ordered the Prosecutor to file a response on 30 April 2021 at the latest and the Defence to file a reply on 7 May 2021 at the latest.¹¹ The Chamber considers that these submissions together replace the Confirmation Hearing, with the 23 April 2021 submissions constituting the presentation of the main arguments and the submissions due on 30 April and on 7 May 2021, respectively, constituting the 'closing arguments'.

2. Page limit for the Written Submissions due on 23 April 2021

12. Second, the Chamber notes that no specific page limit is prescribed by the Court's legal texts with respect to the Written Submissions referred to in rule 165(3) of the Rules. Regulation 37(1) of the Regulations of the Court (the 'Regulations') would therefore apply, setting a 20-page limit. However, pursuant to said regulation, the Chamber may order a different page limit, and in the present circumstances, deems it necessary to do so and provide the parties with a 30-page limit for the Written Submissions due on 23 April 2021 at the latest.

3. Rule 122(3) of the Rules in the present proceedings

13. Third, the Chamber recalls that under rule 122(3) of the Rules, at the Confirmation Hearing and '[b]efore hearing the matter on the merits, the Presiding Judge of the Pre-Trial Chamber shall ask the Prosecutor and the person whether they intend to raise objections or make observations concerning an issue related to the proper conduct of the proceedings prior to the confirmation hearing.' In order to protect the parties' right to raise objections in the absence of a confirmation hearing, the Chamber invites the parties to include in their Written Submissions, as a preliminary matter, any objections or observations they might have concerning the conduct of the proceedings.

¹¹ ICC-01/09-01/15-T-001-CONF-ENG, p.11, lines 1 – 15. The Chamber is referring to public portions of the transcripts.

4. Public Redacted versions of the parties' filings

14. Fourth, the Chamber recalls the importance of the principle of the publicity of proceedings, enshrined in articles 64(7) and 67(1) of the Statute, and orders the Prosecutor to file a public redacted version of its DCC on Thursday 8 April 2021 at the latest. If the Defence intends to submit written submissions together with its list of evidence, due on 8 April 2021 at the latest, it is also required to file a public redacted version of this document on Thursday 15 April 2021 at the latest. The parties shall also file, simultaneously with the confidential version of the document, a public redacted version of the 23 April 2021 submissions and the response and reply thereto, due respectively on 30 April 2021 and 7 May 2021 at the latest.

5. 60-day deadline pursuant to regulation 53 of the Regulations

15. Finally, as noted above, the parties' submissions of 23 and 30 April and 7 May 2021, together, replace the Confirmation Hearing.

16. Pursuant to regulation 53 of the Regulations, the Chamber is due to deliver its decision pursuant to article 61(7)(a) and (b) of the Statute 'within 60 days from the date the confirmation hearing ends'. Considering the above, the Chamber will deliver its decision 60 days starting from the date of the filing of the last written submission, namely 7 May 2021. Accordingly, the Chamber will render its decision pursuant to article 61(7)(a) and (b) of the Statute on Tuesday 6 July 2021 at the latest.

FOR THESE REASONS, THE CHAMBER HEREBY

SETS a 30-page limit for the Written Submissions due on 23 April 2021;

ORDERS the parties to raise any objection or observation on the conduct of the proceedings under rule 122(3) of the Rules in their Written Submissions due on 23 April 2021; and

ORDERS the parties to file public redacted versions of their documents in accordance with the deadlines set by the Chamber at paragraph 14 of the present order.

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



Judge Reine Adélaïde Sophie Alapini-Gansou

Dated 26 March 2021

At The Hague, The Netherlands