

# Annex 1

Public

[REDACTED]

**From:** Trial Chamber III Communications  
**Sent:** 29 March 2022 13:55  
**To:** OTP KEN art70 [REDACTED]; D32 Gicheru Defence team; Associate Legal Officer-Court Officer  
**Cc:** Trial Chamber III Communications  
**Subject:** Decision on Submitted Materials for P-0730  
**Attachments:** Defence List of items for submission into evidence - P-0730; Prosecution List of items for submission into evidence - P-0730.msg; RE Defence List of items for submission into evidence - P-0730.msg; RE Prosecution List of items for submission into evidence - P-0730.msg

[REDACTED]

Dear Counsel and Registry:

The Defence requests that 3 items are recognised as formally submitted (Email from the Defence, 9 March 2022, 14:04) and the Prosecution requests to recognise 64 items as formally submitted (Email from the Prosecution, 9 March 2022, at 19:08).

The Prosecution submitted a response to the Email of the Defence (Email from the Prosecution, 9 March 2022, at 19:05), stating that it does not object to item 1 and item 3 that the Defence requests to submit, but highlights that they are also on the Prosecution's list of submitted items. With regard to item 2, the Prosecution objects to its submission. It argues that the item does not concern P-0730 and that the witness testified that he was not able to comment on the content of the item.

On 14 March 2022, the Defence submitted a response to the items put forward by the Prosecution (Email from the Defence, 14 March 2022, 10:32), stating that it has no objections to the items submitted by the Prosecution.

First, the Chamber notes that on its list of items it wishes to submit, the Prosecution indicated 15 items which were previously included for recognition as formally submitted with other witnesses. The Prosecution further commented on two of the items submitted by the Defence, stating that the Prosecution requests the Chamber to recognise them as formally submitted as well).

As explained in previous decisions on submitted materials, once an item is recognised as formally submitted there is no need to repeat such request. Therefore, the Registry does not need to mark these items a second time as recognised as formally submitted.

For clarification, the Chamber notes that the description of item 3 of the Defence list ('Witness clarification log', the date in question) matches two items, KEN-OTP-0160-1628 and KEN-OTP-0160-1651. However, since both items are also included on the Prosecution list of submitted materials, they will both be recognised as formally submitted in any case.

#### Item 2 of the Defence list (KEN-OTP-0160-1489)

In respect of KEN-OTP-0160-1489, the Prosecution argues that the Defence 'has not laid a foundation for the submission of the document through this witness'. The Chamber notes that the item was discussed during the testimony of P-0730, that part of the document was read out to the witness during its questioning and that the witness replied. The fact that the witness did not wish to substantively comment on the document – or was not able to – is part of the assessment of the evidence (for instance, this might be a factor in assessing the evidence of the witness or the document itself). Therefore, such silence does not constitute a barrier for recognition as formally submitted. Additionally, P-0730 did comment on the author of the document (ICC-01/09-01/20-T-062-Conf-Eng, page 33, lines 22-24). Accordingly, the Chamber recognises item 2 of the Defence list as formally submitted.

With regards to the items submitted by the Prosecution, the Chamber notes that the Defence does not oppose their recognition as formally submitted.

Further, the items constituting prior recorded testimony fulfil all the requirements of Rule 68(3) of the Rules and their introduction has been authorised by the Chamber (see ICC-01/09-01/20-223). The remainder of the items put forward for submission by the Prosecution have been discussed in one form or another during the witness's testimony.

In summary, for P-0730, the Chamber recognises all items requested by the Defence and all items requested by the Prosecution as formally submitted.

The Registry is directed to proceed in accordance with paragraph 17(iv) of the Directions on the Conduct of the Proceedings, 7 October 2021, ICC-01/09-01/20-189.

Kind regards,  
Trial Chamber III

**From:** Steynberg, Anton  
**Sent:** 09 March 2022 19:08  
**To:** Trial Chamber III Communications  
**Cc:** D32 Gicheru Defence team; [REDACTED]; Associate Legal Officer-Court Officer;  
 OTP KEN art70 [REDACTED]  
**Subject:** Prosecution List of items for submission into evidence - P-0730

Dear Trial Chamber III,  
 Dear Counsel,

Please find below a list of items for witness P-0730 that the Prosecution seeks to formally submit into evidence, as per paragraph 17 (i) of the Directions on the Conduct of the Proceedings (ICC-01/09-01/20-189). These items are also included in the list of material for P-0730 the Prosecution provided to the Chamber and the Defence on Saturday 5 March 2022.

Additionally, the Prosecution seeks to formally submit into evidence P-0730's witness preparation clarification log, signed list of material reviewed and the Protected Information List used during the witness' testimony. These items are being processed for disclosure and should be accessible in eCourt shortly.

**Items of evidence for submission: P-0730**

1. KEN-OTP-0159-0884
2. KEN-OTP-0103-0081-R01
3. KEN-OTP-0103-3497
4. KEN-OTP-0103-3498
5. KEN-OTP-0105-0095
6. KEN-OTP-0107-0288
7. KEN-OTP-0116-0479
8. KEN-OTP-0116-0482
9. KEN-OTP-0116-0500-R01
10. KEN-OTP-0116-0714-R01
11. KEN-OTP-0117-0897 (this item has already been submitted by the Defence through P-0613)
12. KEN-OTP-0117-0898 (this item has already been submitted by the Defence through P-0613)
13. KEN-OTP-0117-0901 (this item has already been submitted by the Defence through P-0613)
14. KEN-OTP-0117-0903
15. KEN-OTP-0117-0915-R01 (this item has already been submitted by the Defence through P-0613)
16. KEN-OTP-0117-0930 (this item has already been submitted by the Defence through P-0613)
17. KEN-OTP-0117-1060-R01
18. KEN-OTP-0117-1071
19. KEN-OTP-0125-0830
20. KEN-OTP-0129-0298-R01 (this item has already been submitted by the Defence through P-0613)
21. KEN-OTP-0129-0414-R01
22. KEN-OTP-0129-0567-R01
23. KEN-OTP-0129-0702
24. KEN-OTP-0135-0472
25. KEN-OTP-0138-0531
26. KEN-OTP-0139-0093-R01
27. KEN-OTP-0139-0095-R01
28. KEN-OTP-0139-0097
29. KEN-OTP-0139-0099-R01
30. KEN-OTP-0139-0101-R01
31. KEN-OTP-0147-2140-R01

32. KEN-OTP-0148-0970-R01
33. KEN-OTP-0149-0308-R01 (this item has already been submitted by the Defence through P-0613)
34. KEN-OTP-0152-0089
35. KEN-OTP-0153-0008
36. KEN-OTP-0153-0009
37. KEN-OTP-0153-0012
38. KEN-OTP-0153-0015
39. KEN-OTP-0153-0016
40. KEN-OTP-0153-0017
41. KEN-OTP-0153-0021 (this item has already been submitted by the Defence through P-0800)
42. KEN-OTP-0153-0022 (this item has already been submitted by the Defence through P-0800)
43. KEN-OTP-0153-0025
44. KEN-OTP-0153-0026-R01
45. KEN-OTP-0153-0027 (this item has already been submitted by the Defence through P-0341)
46. KEN-OTP-0153-0028
47. KEN-OTP-0153-0030
48. KEN-OTP-0153-0035
49. KEN-OTP-0153-0036
50. KEN-OTP-0153-0039
51. KEN-OTP-0153-0040
52. KEN-OTP-0153-0041 (this item has already been submitted by the Defence through P-0613)
53. KEN-OTP-0153-0044
54. KEN-OTP-0153-0048 (this item has already been submitted by the Defence through P-0613)
55. KEN-OTP-0153-0052
56. KEN-OTP-0153-0054-R01
57. KEN-OTP-0138-0652 (this item has already been submitted through P-0613)
58. KEN-OTP-0138-0649 (this item has already been submitted through P-0613)
59. KEN-OTP-0138-0663 (this item has already been submitted through P-0613)
60. KEN-OTP-0107-0291
61. KEN-OTP-0160-1622
62. KEN-OTP-0160-1628
63. KEN-OTP-0160-1651
64. KEN-OTP-0159-2039

**From:** Al-Malt, Noah [REDACTED]  
**Sent:** 14 March 2022 10:32  
**To:** Steynberg, Anton; Trial Chamber III Communications  
**Cc:** D32 Gicheru Defence team; [REDACTED]; Associate Legal Officer-Court Officer; OTP KEN art70 [REDACTED]  
**Subject:** RE: Prosecution List of items for submission into evidence - P-0730

Dear Trial Chamber III,  
Dear Prosecution,

The Defence informs that it has no objections to the Prosecution's list of materials for P-0730 to be submitted into evidence.

Sincerely yours,  
Michael G. Karnavas

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**From:** Steynberg, Anton [REDACTED]  
**Sent:** 09 March 2022 19:08  
**To:** Trial Chamber III Communications <TrialChamberIIICommunications [REDACTED]>  
**Cc:** D32 Gicheru Defence team <D32GicheruDefenceteam [REDACTED]>; Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer [REDACTED]> OTP KEN art70 [REDACTED]  
**Subject:** Prosecution List of items for submission into evidence - P-0730

Dear Trial Chamber III,  
Dear Counsel,

Please find below a list of items for witness P-0730 that the Prosecution seeks to formally submit into evidence, as per paragraph 17 (i) of the Directions on the Conduct of the Proceedings (ICC-01/09-01/20-189). These items are also included in the list of material for P-0730 the Prosecution provided to the Chamber and the Defence on Saturday 5 March 2022.

Additionally, the Prosecution seeks to formally submit into evidence P-0730's witness preparation clarification log, signed list of material reviewed and the Protected Information List used during the witness' testimony. These items are being processed for disclosure and should be accessible in eCourt shortly.

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29. KEN-OTP-0139-0099-R01
30. KEN-OTP-0139-0101-R01
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60. KEN-OTP-0107-0291
61. KEN-OTP-0160-1622
62. KEN-OTP-0160-1628
63. KEN-OTP-0160-1651
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**From:** Steynberg, Anton  
**Sent:** 09 March 2022 19:05  
**To:** Trial Chamber III Communications  
**Cc:** D32 Gicheru Defence team; [REDACTED] Associate Legal Officer-Court Officer; OTP KEN art70 [REDACTED]  
**Subject:** RE: Defence List of items for submission into evidence - P-0730

Dear Trial Chamber III,

Your Honour,

The Prosecution does not object to the submission of items 1 and 3 on the Defence list of items, but observes that these are both items that the Prosecution has already indicated it intended to submit into evidence.

The Prosecution does however object to the submission of item 2 (KEN-OTP-0160-1489). This is an investigator's report drafted and filed by another investigator on 10 January 2022, some seven years after P-0730's involvement in the investigation, concerning a witness with whom P-0730 had no dealings.

When asked to comment on the document, the witness repeatedly stated that he was not in a position to comment on what the author had written (*See* p.33, ln. 21, "I don't think I'm in position to answer what another investigator is saying in his notes..."; and p.34, ln. 20).

Accordingly, the Defence has not laid a foundation for the submission of the document through this witness. The relevant portion has in any event been read into the record.

Yours sincerely,  
Anton Steynberg

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**From:** Amann-Lasnier, Victoria [REDACTED]  
**Sent:** 09 March 2022 14:04  
**To:** Trial Chamber III Communications <TrialChamberIIICommunications [REDACTED]>; OTP KEN art70 [REDACTED]  
**Cc:** D32 Gicheru Defence team <D32GicheruDefenceteam [REDACTED]>; Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer [REDACTED]>  
**Subject:** Defence List of items for submission into evidence - P-0730

Dear Honorable Single Judge of Trial Chamber III,  
Dear Prosecution,

On behalf of Mr. Karnavas, please find enclosed the List of items the Defence formally requests to be submitted into evidence for Witness P-0730 in accordance with paragraph 17 of the Directions (ICC-01/09-01/20-189).

Sincerely yours,  
Victoria Amann-Lasnier

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**From:** Amann-Lasnier, Victoria  
**Sent:** 09 March 2022 14:04  
**To:** Trial Chamber III Communications; OTP KEN art70 [REDACTED]  
**Cc:** D32 Gicheru Defence team; [REDACTED]; Associate Legal Officer-Court Officer  
**Subject:** Defence List of items for submission into evidence - P-0730  
**Attachments:** 220309 - Defence List for admission into evidence.pdf

Dear Honorable Single Judge of Trial Chamber III,  
Dear Prosecution,

On behalf of Mr. Karnavas, please find enclosed the List of items the Defence formally requests to be submitted into evidence for Witness P-0730 in accordance with paragraph 17 of the Directions (ICC-01/09-01/20-189).

Sincerely yours,  
Victoria Amann-Lasnier

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**ICC-01/09-01/20**

***THE PROSECUTOR v. PAUL GICHERU***

**List of items the Defence formally requests to be admitted into evidence for Witness P-0730**

	<b>ERN Number</b>	<b>Title</b>	<b>Type</b>	<b>Date</b>	<b>Relevant excerpt if necessary</b>	<b>Admission into evidence</b>
1.	KEN-OTP-0159-0884	Untitled	ICC Investigation notes / report / correspondence	29/4/2015		Yes
2.	KEN-OTP-0160-1489	INVESTIGATION REPORT / Contacts with [REDACTED]	ICC Investigation notes / report / correspondence	10/1/2022		Yes
3.	N/A	Witness clarification log	ICC witness preparation log / clarification	2, 4/03/2022		Yes