

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 20 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

**Prosecution's request for an amendment of the page limits for written submissions
on the confirmation of charges**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

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Mr James Stewart

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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

Amicus Curiae

REGISTRY

Registrar

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Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Pursuant to regulation 37(2) of the Regulations of the Court,¹ the Prosecution requests an amendment of the page limits for its written submissions on the confirmation of charges as ordered by Pre-Trial Chamber A (Article 70)² on 26 March 2021.³
2. Having reviewed the Defence's List of Evidence and in light of the detailed charges and submissions already set out in its charging document,⁴ the Prosecution requests that the Chamber reduce the page limit for its submissions due on 23 April 2021 from 30 pages to 20 pages, and instead increase the page limit for the Prosecution response due on 30 April 2021 to 30 pages.

II. SUBMISSIONS

3. Pursuant to regulation 37(2), the Chamber "may, at the request of a participant, extend the page limit in exceptional circumstances". The current circumstances warrant an extension of the page limit for the following reasons.
4. As the Chamber observed, the legal texts do not make specific provision for the length of written submissions in lieu of oral confirmation presentations.⁵ The Chamber implicitly recognised that such submissions were of an exceptional nature and required more than the 20 page limit for ordinary filings provided for by regulation 37(1).
5. However, while the Defence has yet to advance any submissions on the confirmation of charges, the Prosecution has already set out its proposed charges and analysed the underlying evidence in detail in its charging document. As

¹ "Regulations".

² "Chamber".

³ ICC-01/09-01/20-127, para. 12.

⁴ ICC-01/09-01/20-125.

⁵ ICC-01/09-01/20-127, para. 12.

instructed by the Chamber,⁶ the Prosecution also set out its overarching legal submissions in this document. Additionally, despite having the opportunity to present evidence of its own and to make accompanying written submissions,⁷ the Defence has elected not to do so. The Prosecution has reviewed the 56 items of Prosecution-disclosed evidence and does not consider it necessary to make substantial written submissions on this material before considering the Defence's submissions thereon. In the circumstances, the Prosecution does not consider that it will require more than the normal 20 pages for its written submissions on 23 April 2021.

6. However, since the Prosecution will have only one opportunity to respond to the Defence's 30 page written submissions of 23 April 2021, which may also include objections raised under rule 122(3) of the Rules of Procedure and Evidence, the Prosecution requests that the page limit for its response instead be increased to 30 pages.
7. The Prosecution submits that the proposed amendment to the page limits will enable it to provide the Chamber with more meaningful written submissions, while preserving equality of arms between the parties, since each party will still have a total of 50 pages in which to present their arguments.

III. RELIEF SOUGHT

8. For the foregoing reasons, in terms of regulation 37(2) the Prosecutions requests the Chamber to amend the page limits for its written submissions on the confirmation of charges as follows:
 - a. By reducing the page limit of its written submissions due on 23 April 2021 from 30 pages to 20 pages; and correspondingly

⁶ *Per* email received from the Chamber at 16:28 on 01 February 2021.

⁷ ICC-01/09-01/20-127, para. 14.

- b. By increasing the page limit of its written response due on 30 April 2021 from 20 pages to 30 pages.

A handwritten signature in blue ink, appearing to read 'Fatou Bensouda', is written over a horizontal line.

Fatou Bensouda, Prosecutor

Dated this 20th day of April 2021
At The Hague, The Netherlands