

Annex A

Public-redacted

[Redacted]

From: [Redacted]

Sent: 21 January 2021 11:09

To: [Redacted]

[Redacted]

Cc: [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Subject: RE: decision on part of Prosecution request ICC-01/09-01/11-2041-Conf-Restriction of access to the documents

This message is sent on behalf of Judge Reine Alapini-Gansou, Pre-Trial Chamber A.

The Chamber notes the email of the Prosecutor dated 15 January 2020 at 15:25 (see below).

Therefore, the **Chamber instructs the Registrar**, to reclassify the transcripts ICC-01/09-01/11-T-141 to -T-145 and related documents (see email of Trial Chamber IV to the Prosecution, the Defence of Mr Gicheru and the Registry; 7 January 2021, at 11:08; contained in ICC-01/09-01/11-2043-Conf-Anxl) under the following classification : **'Confidential'** and hereby to grant access to the Defence.

Best regards,

Judge Reine Alapini-Gansou.

[REDACTED]

From: [REDACTED]
Sent: 01 February 2021 16:28
To: [REDACTED]
Cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: RE: Urgent: Request for further guidance on pre-confirmation documents.

This message is sent on behalf of Judge Reine Alapini-Gansou, Pre-Trial Chamber A.

In response to the email below, the Chamber recalls that during the first appearance hearing, it ordered the Prosecutor to file the Document containing the Chargers (the "DCC") and the list of evidence by 12 February 2021 at the latest, and written submissions by 15 March 2021 at the latest.

As regards the DCC, the Prosecutor shall "combine [in it] the charges and the narrative and analysis of the facts and evidence into a single document" *including their legal qualification (and the arguments in support of the proposed legal qualification(s))*. The Chamber recalls that pursuant to Rule 121-3 of the Rules of Procedure and Evidence, Mr. Gicheru is entitled to receive "no later than 30 days before the date of the confirmation hearing" (replaced, in the present case, by the filing of written submissions), "a detailed description of the charges". The "charges" are constituted of both the facts *and* their legal qualification as regards the offences alleged and the precise form of participation, in accordance with regulation 52 of the Regulations of the Court. The DCC should provide an exhaustive view of the Prosecutor's case in order to allow the defence 30 days to prepare a response to any argument presented by the Prosecutor, including any legal argument.

As a result, no new argument, be it factual or legal, should be raised in the written submissions the Prosecutor has been requested to file by 15 March 2021 at the latest. The purpose of these written submissions is mainly to afford the Prosecutor an opportunity to make observations on the evidence the defence may present by 26 February 2021 at the latest.

As to the structure of the DCC, the Chamber notes that "the narrative and analysis of the facts" related to each charge should be supported by a footnote referring to the evidence in support thereof (preferably with hyperlinks). In this regard, and for more details, the Chamber refers to the decision rendered by PTC I in the *Al Hassan* case entitled *Décision relative à la requête de la défense concernant le délai de dépôt par le Procureur du document contenant un état détaillé des charges*, ICC-01/12-01/18-143-tENG, para. 29.

Finally, the Chamber recalls once again that it ordered the Prosecutor to file the DCC and the list of evidence by 12 February 2021 at the latest, and written submissions on 15 March 2021 at the latest. Therefore, the Prosecutor has not been ordered to produce, and shall not file, any other (additional) document than the ones specifically mentioned by the Chamber (see for example the mention of a "pre-confirmation brief" in the Prosecutor's email below).

Best regards,

Judge Reine Alapini-Gansou.

[REDACTED]

From: [REDACTED]
Sent: 09 February 2021 17:15

To: [REDACTED]
[REDACTED]
[REDACTED]

Cc: [REDACTED]
[REDACTED]

Subject: RE: Message to the Honorable Single Judge of Pre-Trial Chamber A from Counsel representing Mr. Gicheru

After having carefully reviewed the submissions presented in the Defence's "Request for Extension of Time Limits to File the Defence List of Evidence and Response to the Document Containing the Charges," (ICC-01/09-01/20-96-Conf) and the 'Prosecution's Response to the Defence's "Request for Extension of Time Limits to File the Defence List of Evidence and Response to the Document Containing the Charges,"' (ICC-01/09-01/20-97-Conf-Red), Pre-Trial Chamber A hereby *suspends* the deadlines (as indicated during Mr Gicheru's initial appearance) for the filing of:

- the Document Containing the Charges, the List of Evidence and the disclosure of any remaining items of evidence;
- the Defence's List of Evidence;
- both parties' written submissions;
- the Prosecutor's response; and
- the Defence's reply.

Pre-Trial Chamber A will communicate a new schedule for the filing of these documents and the disclosure of (any remaining items of) evidence in due course.

Judge Alapini-Gansou

[REDACTED]

From: [REDACTED]
Sent: 17 February 2021 12:18
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: The Prosecutor v. Paul Gicheru: ICC-01/09-01/20-90-Conf-Red - Confidential Redacted Version of 'Decision on Mr Gicheru's Request for Interim Release', 29 January 2021, ICC-01/09-01/20-90-Conf

The Prosecution is hereby instructed to file, by Tuesday 23 February 2021, a formal submission, in accordance with para. 51 of the Chamber's 'Decision on Mr Gicheru's Request for Interim Release', dated 29 January 2021 (ICC-01/09-01/20-90-Conf), indicating whether/when [REDACTED].

Furthermore, the Prosecution is instructed to provide an update on the progress made as regards the [REDACTED].

The Defence may file a response by Tuesday, 2 March 2021.

Judge Alapini Gansou

[REDACTED]

From: [REDACTED]
Sent: 09 March 2021 17:13
To: [REDACTED]
Cc: [REDACTED]

Subject: [REDACTED]

Dear Counsel for the Prosecution,

the Chamber hereby grants the Request.

Judge Alapini-Gansou

From: Steynberg, Anton <Anton.Steynberg@icc-cpi.int>

Sent: 09 March 2021 13:54

To: [REDACTED]
[REDACTED]

Cc: [REDACTED]
[REDACTED]
[REDACTED]

Subject: Redactions to names of [REDACTED]

Importance: High

Dear Pre-Trial Chamber A,
Your Honour,

I write to request authorisation to apply non-standard redactions in several documents to be disclosed by the 12 March deadline relating to [REDACTED]. As per the email chain below, the Defence does not oppose this in principle. I do so by way of email in light of the impending deadline and the fact that the issue has already been agreed *inter partes*.

While these redactions do not technically fall under the scope of the standard A2 redactions authorised by the protocol, [REDACTED].

Since [REDACTED] – the Prosecution is of the view that they would seldom, if ever, be material to the preparation of the defence.

If any objections to specific redactions arise in future, we will try to resolve these *inter partes*, [REDACTED].

I trust that this will be in order.

Kind regards,
Anton Steynberg

[REDACTED]

From: [REDACTED]
Sent: 15 March 2021 11:42
To: Court Management-Court Records
Cc: [REDACTED]
Subject: FW: Inadvertant Disclosure
Attachments: KEN-OTP-0100-0221.pdf

Dear colleagues,

Kindly proceed with the re-disclosure of the item of evidence as indicated in Counsel for the Prosecution's email.

[REDACTED]

On behalf of Judge Alapini

[REDACTED]

From: [REDACTED]
Sent: 21 April 2021 14:47
To: [REDACTED]
Cc: [REDACTED]

Subject: FW: The Prosecutor v. Paul Gicheru: ICC-01/09-01/20-135 - Prosecution's request for an amendment of the page limits for written submissions on the confirmation of charges

Dear Counsel for the Prosecution,

With regard to your request of 20 April 2021 for an extension of the page limit (ICC-01/09-01/20-135), pursuant to regulation 37(2) of the Regulations of the Court, regarding the Prosecutor's response due on 30 April 2021, the Chamber considers such request to be premature as the content of the Defence's submissions is not yet known. Regarding the page limit for the 23 April 2021 filing, the Chamber considers that it is up to the Prosecution to make use or not of the 30 pages allotted.

Finally, the Chamber notes the late filing of the request, which leaves the Defence with little time to respond and the Chamber to issue a written decision. In light of the foregoing, the Chamber issues this decision by email and, as there is no prejudice accrued to the Defence, without the Defence's response.

Judge Alapini Gansou, Pre-Trial Chamber A (Article 70)

[REDACTED]

From: [REDACTED]
Sent: 23 April 2021 09:45
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: The Prosecutor v. Paul Gicheru: ICC-01/09-01/20-137-Conf +Conf-AnxA - Prosecution's Response to the "Urgent Defence Request for an Extension of Time to File its Written Submissions on the Confirmation of Charges"

Regarding the Urgent Defence Request for an Extension of Time to File its Written Submissions on the Confirmation of Charges (ICC-01/09-01/20-136-Conf), the Chamber considers that good cause within the meaning of regulation 35(2) of the Regulations of the Court (the 'Regulations') has been shown and accordingly extends the deadline for the Defence to file its Written Submissions on the Confirmation of Charges to Friday, 30 April 2021. However, in keeping with the Chamber's intention to receive the parties' Written Submissions simultaneously, the deadline for the Prosecution is extended to 30 April 2021 as well.

Furthermore, the Prosecution is instructed to file its response on 7 May 2021 at the latest and the Defence is instructed to file its reply on 17 May 2021 at the latest. The Chamber will issue its Decision on the confirmation of charges within 60 days of receipt of the Defence's reply in accordance with regulation 53 of the Regulations.

Finally, the Prosecution is instructed to complete the disclosure of evidence by Monday, 26 April 2021 at the latest.

Judge Alapini-Gansou, PTC A (Article 70)

[REDACTED]

From: [REDACTED]

Sent: 10 May 2021 11:14

To: [REDACTED]

Cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: RE: Message to the Honorable Single Judge of Pre-Trial Chamber A from Counsel representing Mr. Gicheru

At the outset, the Chamber notes the Defence's contention that 'the difference of pages afforded to the parties [...] hardly displays or envisages equality of arms'.

While it is unclear, again, whether the Defence refers to the Chamber's decisions in this regard or the Court's legal framework more generally, the Chamber notes that in its decisions, it followed the relevant provisions of the Regulations of the Court. Furthermore, as pointed out by the Prosecution, it was up to the Defence to seek an extension of the page-limit at the earliest opportunity. The Chamber notes however, that the Defence has not availed itself of this opportunity up until this point although it has been aware of the page limit for several weeks now. Moreover, the Chamber considers that the Defence should have explained in detail and at the earliest opportunity the reasons why 'the difference in pages afforded [...] hardly displays or envisages equality of arms' as opposed to raising the issue at this point and in this manner. It behoves the Defence to apply more diligence and to address the Chamber in a more respectful manner.

With regard to the purpose of the Defence's reply, which consists of one single document, the Chamber notes that it has clearly stated that the Prosecutor's response and the Defence's reply constitute the 'closing arguments'. While the closing arguments generally comprise a summary of the parties' respective cases and views of the evidence, it is up to the Defence to use the allotted page limit in its reply to address any issues it deems pertinent.

Notwithstanding the aforementioned, the Chamber notes that in light of the simultaneous filings of the parties' written submissions, the Defence's reply indeed constitutes the first opportunity to respond to both the Prosecution's written observations and its response. Furthermore, the Chamber notes that it accorded the Prosecution an extension of the page limit with regard to its DCC.

Accordingly, the Chamber finds it appropriate to grant the Defence an additional 10 pages for its reply, making it a total of 30 pages, which is due on 17 May 2021.

The Chamber underlines, however, that it will not consider similar requests from the Defence for Mr. Gicheru in the future.

Judge Alapini-Gansou, PTC A (Article 70)

[REDACTED]

From: [REDACTED]

Sent: 17 May 2021 10:04

To: [REDACTED]
[REDACTED]

Cc: [REDACTED]
[REDACTED]

Subject: RE: Urgent Message to the Honorable Single Judge of Pre-Trial Chamber A from Counsel representing Mr. Gicheru

Dear Counsel for the Defence,

With regard to the Defence 13 May 2021 Request for an extension of time (the 'Request'), having considered the arguments presented by the Defence and the Prosecution's response, the Chamber finds that the Defence has shown good cause within the meaning of Regulation 35(2) of the Regulations of the Court and, thereby, grants the Request. Consequently, the Defence is instructed to file a reply to the Prosecution's 7 May 2021 Response (ICC-01/09-01/20-145-Conf) on 19 May 2021 at the latest.

Kind regards,

[REDACTED] on behalf of Judge Alapini

[REDACTED]

From: [REDACTED]
Sent: 07 July 2021 11:38
To: [REDACTED]
Cc: [REDACTED]
Subject: Order concerning redactions to the Document Containing the Charges (ICC-01/09-01/20-125-AnxA-Corr-Red)

Dear Prosecution,

Pre-Trial Chamber A (the 'Chamber') has blocked access to the public redacted version of the Document containing the Charges (ICC-01/09-01/20-125-AnxA-Corr-Red, the 'DCC') after having discovered information that should not be available to the public.

However, as an preliminary matter, the Chamber notes that the confidential version and the public redacted version of the DCC have not the same number of paragraphs and footnotes (521 and 517 paragraphs, respectively and 782 and 773 footnotes, respectively).

This discrepancy happened during the implementation of the redactions, when the Prosecution merged several paragraphs into one and deleted footnotes while implementing the redactions (e.g. paragraphs 144 and 145 of the confidential version were merged into one single paragraph 144 of the pub-red version; several footnotes were omitted).

The consequence of this is that citations to paragraphs of the public-redacted version do not lead to the same part of the confidential version (and vice versa). This needs to be remedied.

The Chamber instructs the Prosecution to correct this discrepancy when implementing the additional redactions indicated below, so that the public-redacted version of the DCC has the same number of paragraphs and footnotes as the confidential version.

Further, the Prosecution is ordered to additionally redact the information listed below.

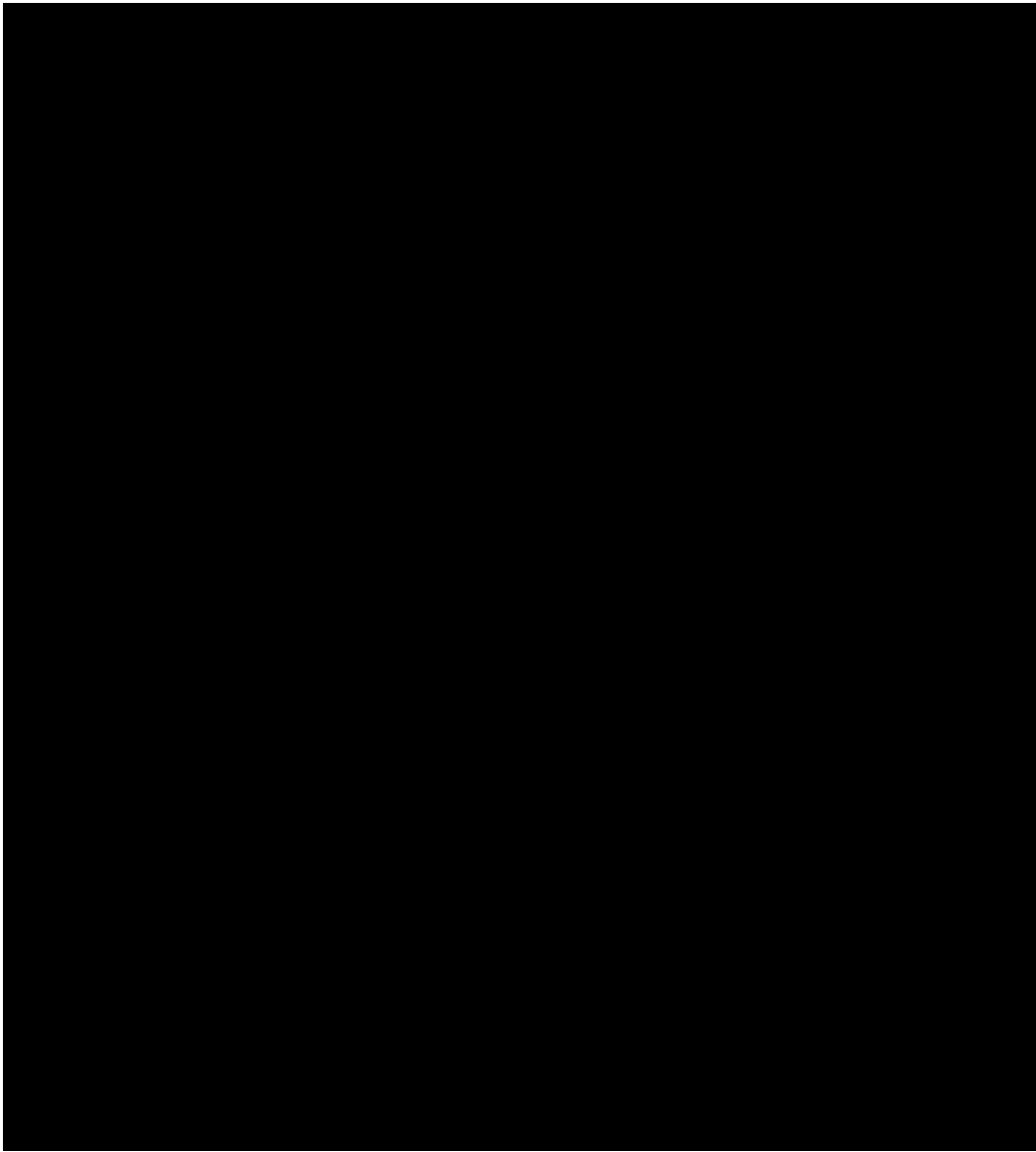
The Chamber has taken its decisions based on the redactions made by the OTP and in order to ensure consistency. The Chamber notes the relative high number of additional redactions. It reminds the OTP of its duty towards its witnesses and expects that the Prosecution will demonstrate more diligence and care when producing public-redacted versions of its filings in the future.

Due to the number of discrepancies, the Chamber could not always determine the strategy behind the Prosecution's redactions. Keeping in mind its obligation to protect the safety of the witnesses of the Court, the Chamber has taken a broad approach when deciding whether specific information should be redacted. Should the Prosecution consider, after having assessed the redactions in place, that certain information need not to be redacted, it can make a filing in this regard.

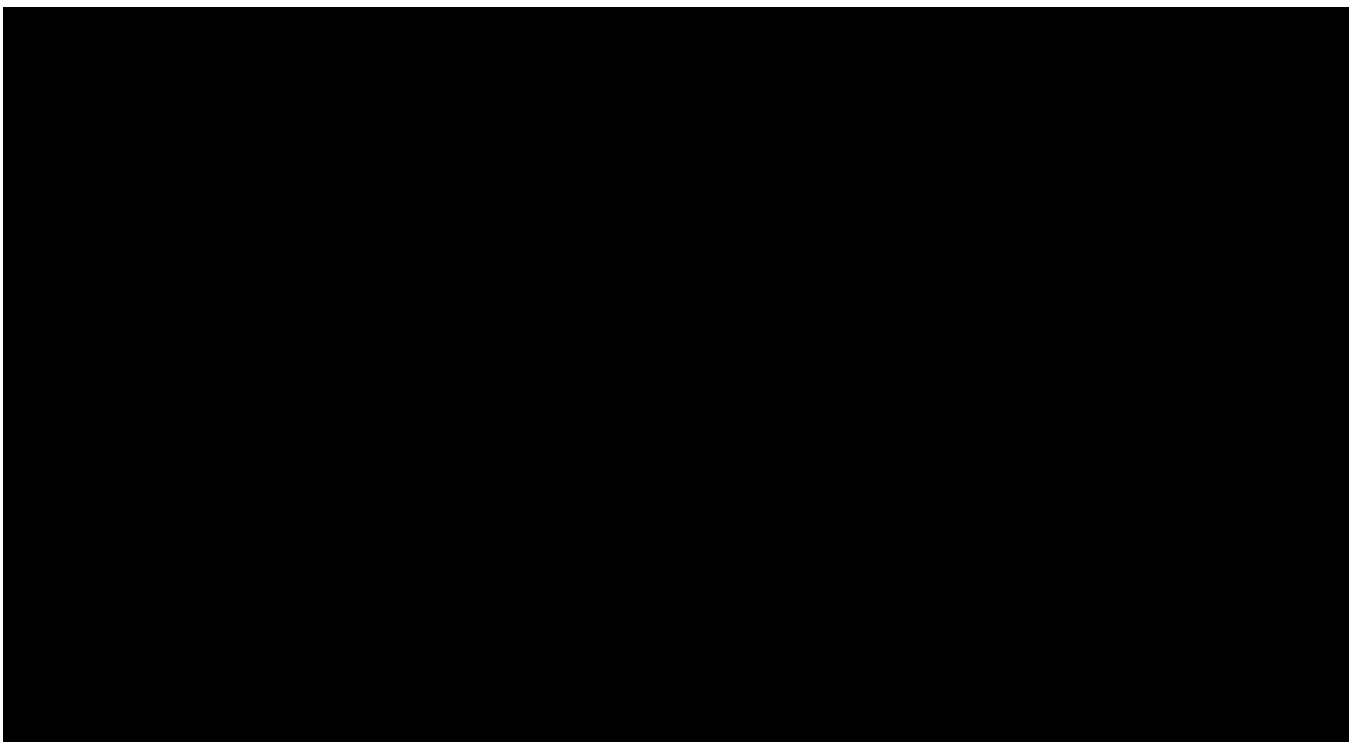
The additional redactions specified below are to be implemented in the latest confidential corrected version of the DCC (ICC-01/09-01/20-125-Conf-AnxA-Corr3).

The additional redactions and the corrections of the paragraphs and footnotes are to be implemented as soon as possible and by no later than Monday, 12 July 2021, COB.

Kind regards,



Further redactions:





[REDACTED]

From: [REDACTED]
Sent: 12 July 2021 11:34
To: [REDACTED]
Cc: [REDACTED]
Subject: Further redaction requested - RE: Order concerning redactions to the Document Containing the Charges (ICC-01/09-01/20-125-AnxA-Corr-Red)
Importance: High

This email is sent on behalf of Judge Reine Alapini-Gansou, Pre-Trial Chamber A.

Dear Office of the Prosecutor,

The Chamber hereby further requests that the words [REDACTED] ([REDACTED] of confidential corrected version of the DCC, ICC-01/09-01/20-125-Conf-AnxA-Corr3) be also redacted in the public redacted version of the DCC to be filed today.

Judge Reine Alapini-Gansou.

[REDACTED]

From:

[REDACTED]
12 July 2021 16:30

Sent:

To:

Cc:

[REDACTED]

Subject:

Decision on the confirmation of charges

The parties are hereby informed that Pre-Trial Chamber A (Article 70) will issue its decision on the confirmation of the charges in the *Gicheru* case on Thursday, 15 July 2021.

Furthermore, the parties are requested to file a public redacted version of documents ICC-01/09-01/20-136 and ICC-01/09-01/20-137, respectively, by Friday, 23 July 2021.

Judge Alapini, Pre-Trial Chamber A (Article 70)