



Original: English

No. ICC-01/09-01/15

Date: 6 November 2020

PRESIDENT OF THE PRE-TRIAL DIVISION

Before: Judge Tomoko Akane, President of the Pre-Trial Division

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

THE PROSECUTOR v. PAUL GICHERU AND PHILIP KIPKOECH BETT

Public

Decision Rejecting *in limine* the ‘OPCD Request for Leave to Appear on the Applicability of Provisional Rule 165’

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

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**

Mr Xavier-Jean Keïta
Ms Marie O’Leary

States Representatives

Other

Pre-Trial Chamber A

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

JUDGE TOMOKO AKANE, acting as President of the Pre-Trial Division of the International Criminal Court, hereby renders this decision on the ‘OPCD Request for Leave to Appear on the Applicability of Provisional Rule 165’ of 6 November 2020 (ICC-01/09-01/15-36).

NOTING the warrant of arrest issued on 10 March 2015 by Pre-Trial Chamber II against Mr Paul Gicheru (‘Mr Gicheru’) and Mr Philip Kipkoech Bett for offences against the administration of justice under article 70(1)(c) of the Rome Statute (the ‘Statute’);¹

NOTING that, on 2 November 2020, Mr Gicheru surrendered himself to the authorities of the Kingdom of the Netherlands;

NOTING that, on the same day, Pre-Trial Chamber II requested the President of the Pre-Trial Division to constitute a Chamber to exercise the functions and powers of the Pre-Trial Chamber in the present case;²

NOTING the ‘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’ of 2 November 2020, by which the President of the Pre-Trial Division, acting under rule 165(2) of the Rules of Procedure and Evidence and regulation 66bis(1) of the Regulations of the Court, constituted Pre-Trial Chamber A (Article 70), composed of Judge Reine Adelaïde Sophie Alapini-Gansou, to exercise the functions of the Pre-Trial Chamber in the case of *The Prosecutor v. Paul Gicheru and Philip Kipoech Bett*³ (‘Composition Decision’);

NOTING the ‘OPCD Request for Leave to Appear on the Applicability of Provisional Rule 165’ of 6 November 2020,⁴ with which the Office of Public Counsel for the Defence requests that the President of the Pre-Trial Division ‘recognise OPCD’s mandate, as conferred in RoC 77(4), and grant leave to the OPCD to make submissions on the inapplicability of Provisional Rules 165(2) – and related RoC

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, [ICC-01/09-01/15-1-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-01/09-01/15-31-US-Exp.

³ [ICC-01/09-01/15-32](#).

⁴ ICC-01/09-01/15-36 (‘Request’).

66bis – in the present case seeking appropriate relief’, so as to ‘represent and protect the rights of Mr Philip Kipoech Bett, an unrepresented suspect in the case, and any potential suspects who are, or would be, subject to charges of Article 70’;⁵

CONSIDERING that the Composition Decision was taken as part of the functions of the President of the Pre-Trial Division pursuant to regulation 66bis(1) of the Regulations of the Court and that there are currently no proceedings concerning the case of *The Prosecutor v. Paul Gucheru and Philip Kipoech Bett* pending before the President of the Pre-Trial Division;

CONSIDERING, therefore, that the President of the Pre-Trial Division has no power to rule on the substance of the Request;

**FOR THESE REASONS, THE PRESIDENT OF THE PRE-TRIAL DIVISION
HEREBY**

REJECTS the Request *in limine*.

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



Judge Tomoko Akane
President of the Pre-Trial Division

Dated this Friday, 6 November 2020

At The Hague, The Netherlands

⁵ Request, paras 26 and 1.