



**Original: English**

**No. ICC-01/09-01/15  
Date: 12 November 2020**

**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 AND PHILIP KIPKOECH BETT***

**Urgent  
Public**

Decision on the Request to Submit Observations on behalf of  
the Office of the Public Counsel for the Defence

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**

**Amicus Curiae**

**REGISTRY**

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**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 Decision on the Request to Submit Observations on behalf of the Office of the Public Counsel for the Defence (the ‘OPCD’).

1. On 10 March 2015, Pre-Trial Chamber II, in its then composition, issued warrants of arrest against Mr Gicheru and Mr Bett for their alleged responsibility for offences against the administration of justice under article 70(1)(c) of the Rome Statute (the ‘Statute’).<sup>1</sup>
2. On 2 November 2020, Mr Gicheru surrendered himself to the authorities of the Kingdom of the Netherlands.
3. On 2 November 2020, Pre-Trial Chamber II requested the President of the Pre-Trial Division to constitute a chamber composed of one judge to exercise the functions and powers of the Pre-Trial Chamber in the present case in accordance with rule 165(2) of the Rules of Procedure and Evidence (the ‘Rules’), as drawn up by the judges of the Court acting under article 51(3) of the Statute on 10 February 2016, and regulation 66*bis*(1) of the Regulations of the Court (the ‘Regulations’), which was adopted and entered into force on the same day.<sup>2</sup>
4. On 2 November 2020, the President of the Pre-Trial Division constituted the present Chamber pursuant to the aforementioned provisions.<sup>3</sup>
5. On 3 November 2020, following the completion of domestic proceedings in the Kingdom of the Netherlands, Mr Gicheru was surrendered to the Court and arrived at the Court’s Detention Centre.
6. On 6 November 2020, in accordance with the Chamber’s order dated 4 November 2020,<sup>4</sup> Mr Gicheru appeared before the Chamber pursuant to article 60(1) of the Statute and rules 121(1) and 163(1) of the Rules (the ‘6 November 2020 Hearing’).

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<sup>1</sup> 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.](#)

<sup>2</sup> 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.

<sup>3</sup> 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, ICC-01/09-01/15-32.

<sup>4</sup> Order Setting the Date for the Initial Appearance of Mr Gicheru, ICC-01/09-01/15-34.

7. On 11 November 2020, the Chamber received the ‘OPCD Request for Leave to Appear on the Applicability of Provisional Rule 165’ (the ‘OPCD Request’).<sup>5</sup> The OPCD seeks standing to make submissions on the competence of the present Chamber to exercise the powers and functions of the Pre-Trial Chamber under rule 165 of the Rules and regulation 66*bis*(1) of the Regulations ‘in line with its mandate to represent and protect the rights of Mr Philip Kipkoech Bett, an unrepresented suspect and party in this case, and any potential suspects who are, or would be, subject to charges of Article 70’.<sup>6</sup>

8. The Chamber recalls that, at the 6 November 2020 Hearing, it invited Mr Gicheru and the Prosecutor to submit written observations in relation to the same issue if they so wish.<sup>7</sup>

9. In these specific circumstances, and noting the importance of the issue under consideration for the conduct of the proceedings in the present case, the Chamber considers it appropriate to: (i) grant leave to the OPCD to submit the observations set out in the OPCD Request; and (ii) order Mr Gicheru and the Prosecutor to submit a response to the OPCD’s observations as well as any additional observations that are considered to be relevant to this issue if they so wish.

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<sup>5</sup> ICC-01/09-01/15-40.

<sup>6</sup> OPCD Request, ICC-01/09-01/15-40, para. 1.

<sup>7</sup> ICC-01/09-01/15-T-001-CONF-FRA, pp 17-18.

**FOR THESE REASONS, THE CHAMBER HEREBY**

- a) **GRANTS LEAVE** to the OPCD to submit the observations set out in the OPCD Request by no later than 17 November 2020 at 16:00 hours; and
- b) **ORDERS** Mr Gicheru and the Prosecutor to submit a response to the OPCD's observations and any additional observations that are considered to be relevant to this issue by no later than 20 November 2020 at 16:00 hours if they so wish.

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



**Judge Reine Adélaïde Sophie Alapini-Gansou**

Dated this Thursday, 12 November 2020

At The Hague, The Netherlands