

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/09-01/15**

**Date: 2 November 2020**

**PRE-TRIAL CHAMBER II**

**Before:**

**Judge Antoine Kesia-Mbe Mindua, Presiding Judge**

**Judge Tomoko Akane**

**Judge Rosario Salvatore Aitala**

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF**

***THE PROSECUTOR v. PAUL GICHERU AND PHILIP KIPKOECH BETT***

**Under Seal *ex parte***

**only available to the Office of the Prosecutor and the Registry**

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

**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**

**States Representatives**

*Amicus Curiae*

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**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 II** of the International Criminal Court, noting 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 Rome Statute (the ‘Statute’) on 10 February 2016,<sup>1</sup> and regulation 66*bis*(1) of the Regulations of the Court (the ‘Regulations’), as adopted and entered into force on 10 February 2016, issues this ‘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’.

1. On 27 October 2020, the Registry addressed a request for cooperation to the Kingdom of the Netherlands for the arrest of Mr Paul Gicheru (‘Mr Gicheru’), against whom a warrant of arrest was issued on 10 March 2015 by Pre-Trial Chamber II in its previous composition,<sup>2</sup> as well as for searches and seizure.<sup>3</sup>

2. On 30 October 2020, pursuant to the Chamber’s instructions,<sup>4</sup> the Registry submitted a report regarding the possible arrest and surrender of Mr Gicheru.<sup>5</sup>

3. On 2 November 2020, Mr Gicheru surrendered to the authorities of the Kingdom of the Netherlands.

4. The Chamber notes that rule 165(2) of the Rules provides, *inter alia*, that a ‘Chamber composed of one judge from the Pre-Trial Division shall exercise the functions and powers of the Pre-Trial Chamber from the moment of receipt of an application under article 58’ for the purposes of conducting proceedings under article 70 of the Statute. The procedure for constitution of such Chamber is established in regulation 66*bis*(1) of the Regulations, which states that the ‘President of the Pre-Trial Division, at the request of the Pre-Trial Chamber seized of the relevant situation, shall

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<sup>1</sup> See ‘Letter from the President of the International Criminal Court to the President of the Assembly, dated 29 February 2016’ and ‘Report on the adoption by the judges of provisional amendments to rule 165 of the Rules of Procedure and Evidence, dated 29 February 2016’ *annexed to* Report of the Study Group on Governance Cluster I in relation to the provisional amendments to rule 165 of the Rules of Procedure and Evidence, 21 September 2016, ICC-ASP/15/7; Report of the Working Group on Amendments, 8 November 2016, ICC-ASP/15/24, paras. 29-37; Resolution ICC-ASP/15/Res.5, 24 November 2016, para. 125.

<sup>2</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, ICC-01/09-01/15-1-Red).

<sup>3</sup> Request to the Kingdom of the Netherlands for Arrest and Surrender of Paul Gicheru as well as Request for Searches and Seizure, ICC-01/09-01/15-29-US-Exp.

<sup>4</sup> Email sent by Pre-Trial Chamber II on 27 October 2020 at 10:08.

<sup>5</sup> Report of the Registry on Possible Surrender of Paul Gicheru, ICC-01/09-01/15-30-US-Exp.

constitute, in accordance with rule 165(2), a Chamber composed of one judge from the Pre-Trial Division to exercise the functions and powers of the Pre-Trial Chamber from the moment of receipt of an application under article 58 with respect to offences defined in article 70'.

5. The Chamber recalls that the warrant of arrest issued against Mr Gicheru relates to his alleged criminal responsibility for offences against the administration of justice under article 70(1)(c) of the Statute; therefore, rule 165(2) of the Rules and regulation 66bis(1) of the Regulations are applicable in the present case.

**FOR THESE REASONS, THE CHAMBER HEREBY**

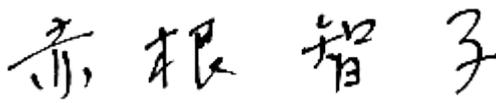
**REQUESTS** the President of the Pre-Trial Division to constitute a Chamber composed of one judge from the Pre-Trial Division to exercise the functions and powers of the Pre-Trial Chamber in the case of *The Prosecutor v. Paul Gicheru and Philip Kipkoech Bett*.

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

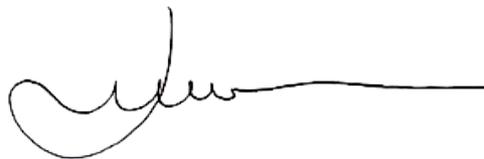


**Judge Antoine Kesia-Mbe Mindua**

**Presiding Judge**



**Judge Tomoko Akane**



**Judge Rosario Salvatore Aitala**

Dated this Monday, 2 November 2020

At The Hague, The Netherlands