

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/09-01/15
Date: 20 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**

Public Redacted Version of 'Decision on Request for Extension of Time and Varying Other Time Limits', 20 November 2020, ICC-01/09-01/15-51-Conf

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

Mr Michael Karnavas

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

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 Request for Extension of Time and Varying Other Time Limits.

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’).¹
2. On 2 November 2020, Mr Gicheru surrendered himself to the authorities of the Kingdom of the Netherlands (‘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.²
4. On 2 November 2020, the President of the Pre-Trial Division constituted the present Chamber pursuant to the aforementioned provisions.³
5. On 3 November 2020, following the completion of domestic proceedings in the Netherlands, Mr Gicheru was surrendered to the Court and arrived at the Court’s Detention Centre.
6. On 5 November 2020, the Chamber received the [REDACTED].⁴
7. On 6 November 2020, in accordance with the Chamber’s order dated 4 November 2020,⁵ 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 Chamber

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, *see* [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 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.

⁴ [REDACTED].

⁵ Order Setting the Date for the Initial Appearance of Mr Gicheru, ICC-01/09-01/15-34.

inter alia ordered: (i) the Prosecutor to submit observations on the progress of her investigation, the disclosure of evidence, and the protection of witnesses by 18 November 2020;⁶ and (ii) the Prosecutor and the Defence to submit observations on the possibility of severing the case against Mr Gicheru from the case against Mr Bett by 20 November 2020 and 26 November 2020 respectively.⁷

8. On 11 November 2020, the Chamber received the ‘OPCD Request for Leave to Appear on the Applicability of Provisional Rule 165’ on behalf of the Office of the Public Counsel for the Defence (the ‘OPCD’ and the ‘OPCD Request’).⁸ The OPCD sought standing to make submissions on the competence of the present Chamber to exercise the powers and functions of the Pre-Trial Chamber under provisional 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’.⁹

9. On 12 November 2020, the Chamber issued the ‘Decision on the Request to Submit Observations on behalf of the Office of the Public Counsel for the Defence’.¹⁰ The Chamber granted leave to the OPCD to submit the observations set out in the OPCD Request by no later than 17 November 2020, and ordered 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 if they so wish.¹¹

10. On 12 November 2020, the Chamber received the [REDACTED].¹²
[REDACTED].¹³

11. On 13 November 2020, the Chamber issued the [REDACTED].¹⁴
[REDACTED].¹⁵

⁶ ICC-01/09-01/15-T-001-CONF-ENG, p. 11, lines 21-23.

⁷ ICC-01/09-01/15-T-001-CONF-ENG, p. 12, lines 5-9.

⁸ ICC-01/09-01/15-40.

⁹ ICC-01/09-01/15-40, para. 1.

¹⁰ ICC-01/09-01/15-43.

¹¹ ICC-01/09-01/15-43, para. 9.

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

12. On 16 November 2020, the Chamber received the ‘Prosecution’s written submissions concerning self-representation, severance of the charges, registration and disclosure of evidence, and other procedural matters pertaining to pre-confirmation proceedings’ (the ‘Prosecutor’s Submissions on Procedural Matters’).¹⁶ First, the Prosecutor requests ‘the Chamber to set a deadline for Gicheru to appoint defence counsel, should he elect to do so’ or, should he choose not to do so or fail to do so by such deadline, to ‘(a) consider assigning legal assistance to Gicheru pursuant to article 67(1)(d), by instructing [the Counsel Support Section] to appoint a suitable associate counsel and the necessary support personnel, which would include—at minimum—a case manager; and (b) direct the Registry to provide Gicheru with the necessary rights and accesses to the Court’s relevant IT tools and platforms usually provided to defence teams, and to provide Gicheru with the necessary training on those systems’.¹⁷ Second, the Prosecutor avers that she ‘has no objection to the severance of the charges against Bett pursuant to article 64(4) [sic] of the Statute and Rule 136 of the Rules’.¹⁸ Third, the Prosecutor requests that the Chamber adopt: (i) the most recent version of the Unified Technical Protocol for the provision of evidence, witness and victims information in electronic form; (ii) the procedure for exceptions to disclosure in the form of redaction of information under rules 81(2) and (4) of the Rules as contained in paragraphs 99 to 101 of the latest version of the Chambers Practice Manual and requests that ‘[t]he Chamber specify that [...] the procedure set out therein applies to both the Prosecutor and the Defence’ and that other redactions ‘be subject to discrete applications for the Chamber’s authorization, redacted versions of which shall also be provided to the receiving party’; and (iii) the Protocol on the handling of confidential information during investigations and contacts between a party and witnesses of other parties from *The Prosecutor v. Bemba et al.* with certain modifications proposed by the Prosecutor.¹⁹ Lastly, the Prosecutor requests that ‘the Chamber set an abbreviated time limit of five days for responses under regulation 24 of the [Regulations]’.²⁰

¹⁶ ICC-01/09-01/15-46.

¹⁷ ICC-01/09-01/15-46, para. 16.

¹⁸ ICC-01/09-01/15-46, para. 18.

¹⁹ ICC-01/09-01/15-46, paras 20-26.

²⁰ ICC-01/09-01/15-46, para. 27.

13. On 17 November 2020, the Chamber received the ‘OPCD Submissions on the Inapplicability of Provisional Rule 165’ (the ‘OPCD Submissions’).²¹

14. On 18 November 2020, the Chamber received the ‘Notification of the Appointment of Mr Michael G. Karnavas as Counsel for Mr Paul Gicheru’.²²

15. On 18 November 2020, the Chamber received the [REDACTED].²³

16. On 20 November 2020, the Chamber received the ‘Request for Extension of Time to Respond to “OPCD Submissions on the Inapplicability of Provisional Rule 165” (ICC-01/09-01/15-47)’ (the ‘Defence Request’).²⁴ The Defence requests a one-week extension of time to respond to the OPCD Submissions.²⁵

17. The Chamber notes regulation 35(2) of the Regulations, which provides that ‘[t]he Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard’.

18. The Chamber considers that it has sufficient information before it to rule on the Defence Request and, thus, does not find it necessary to hear from the other participants on this matter. In view of the recent appointment of Mr Karnavas as counsel for Mr Gicheru and the importance of the issues arising from the OPCD Submissions, the Chamber finds that good cause has been shown to vary the time limit for the Defence. Accordingly, the Defence shall submit a response to the OPCD Submissions and any additional observations that are considered to be relevant to this issue by no later than 27 November 2020 at 16:00 hours.

19. [REDACTED]. The Chamber further observes that the Defence observations on the possibility of severing the case against Mr Gicheru from the case against Mr Bett are due on 26 November 2020 and that the time limit for a Defence response to the Prosecutor’s Submissions on Procedural Matters expires on 27 November 2020.

20. The Chamber considers that the recent appointment of Mr Karnavas and the number of pending filings also require a variation of these time limits. Accordingly, the Chamber *proprio motu* varies these time limits as follows. The time limit for the

²¹ ICC-01/09-01/15-47.

²² ICC-01/09-01/15-48, together with public annex I.

²³ [REDACTED].

²⁴ ICC-01/09-01/15-50.

²⁵ ICC-01/09-01/15-50, p. 6.

Defence [REDACTED]. The time limit for the Defence to respond to the issues arising from the Prosecutor's Submissions on Procedural Matters, including its observations on the possibility of severing the case against Mr Gicheru from the case against Mr Bett, but excluding the issue of Mr Gicheru's representation which is now moot, shall be extended to 4 December 2020 at 16:00 hours.

21. The time limit for the Defence [REDACTED] shall be calculated in accordance with regulations 33 and 34 of the Regulations.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **GRANTS** the Defence Request; the Defence shall submit a response to the OPCD Submissions and any additional observations that are considered to be relevant to this issue by no later than 27 November 2020 at 16:00 hours;
- b) **DECIDES** that the time limit for the Defence [REDACTED]; and
- c) **DECIDES** that the time limit for the Defence to respond to the issues arising from the Prosecutor's Submissions on Procedural Matters, including its observations on the possibility of severing the case against Mr Gicheru from the case against Mr Bett, shall be extended to 4 December 2020 at 16:00 hours.

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



Judge Reine Adélaïde Sophie Alapini-Gansou

Dated this Friday, 20 November 2020

At The Hague, The Netherlands