



Original: **English**

No.: ICC-01/09-01/20  
Date: 26 January 2021

**THE APPEALS CHAMBER**

**Before:** Judge Howard Morrison, Presiding  
Judge Chile Eboe-Osuji  
Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balungi Bossa

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF  
*THE PROSECUTOR V. PAUL GICHERU***

**Public**

**Prosecution's Response to OPCD's "Request to Dismiss *In Limine* the  
Prosecution's Arguments on Standing or, in the alternative, Leave to Reply"**

**Source:** Office of the Prosecutor

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

**The Office of the Prosecutor**

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**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants**

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Mr Xavier-Jean Keïta  
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**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**

1. There is no basis to dismiss any part of the Prosecution’s response to the appeal of the Office of Public Counsel for the Defence (“OPCD”), including the objection to its admissibility.<sup>1</sup> It is settled law that the Appeals Chamber—and not the Pre-Trial Chamber<sup>2</sup>—determines the admissibility of its own proceedings, including on matters arising from a Pre-Trial Chamber’s certification under article 82(1)(d).<sup>3</sup> Since both parties challenged OPCD’s standing before the Pre-Trial Chamber,<sup>4</sup> as OPCD acknowledges,<sup>5</sup> recurrence of this issue on appeal was readily foreseeable. There is no justification for OPCD’s failure to address the critical question of standing in its own brief, and thus no basis to seek leave to reply.<sup>6</sup>

2. However, should the Appeals Chamber nonetheless consider that it would be assisted by hearing from OPCD on this issue, the Prosecution respectfully submits that a limit of five pages would be appropriate, given that the Prosecution confined its own observations on standing to a portion (four pages) of its response brief.<sup>7</sup>




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Fatou Bensouda, Prosecutor

Dated this 26<sup>th</sup> day of January 2021

At The Hague, The Netherlands

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<sup>1</sup> *Contra* [ICC-01/09-01/20-86 OA](#) (“Request to Reply”), paras. 1-4.

<sup>2</sup> *Contra* [Request to Reply](#), paras. 4, 8.

<sup>3</sup> *See e.g.* [ICC-01/04-01/06-2799 OA19](#) (“Lubanga Urgent Request for Directions Decision”), para. 8 (reasoning that, where “leave to appeal was improperly granted,” submissions “in relation to proceedings on appeal [are] without foundation and must be rejected”); [ICC-01/04-01/06-2953 A A2 A3 OA21](#) (“Lubanga Reparations Appeal Admissibility Decision”), paras. 10, 64 (rejecting Mr Lubanga’s appeal under article 82(1)(d) of the Statute as inadmissible, notwithstanding certification by the Trial Chamber). *See also* [ICC-01/04-01/07-3424 OA14](#) (“Katanga Detained Witnesses Appeal Admissibility Decision”), para. 29; [ICC-01/04-168 OA3](#) (“DRC Extraordinary Review Appeal Judgment”), paras. 35, 38-39.

<sup>4</sup> *See* [ICC-01/09-01/20-66](#) (“Prosecution ALA Response”), paras. 3-12; [ICC-01/09-01/20-64](#) (“Defence ALA Response”), para. 1. *See also* [ICC-01/09-01/20-68](#) (“Certification Decision”), paras. 24-29.

<sup>5</sup> *See* [Request to Reply](#), paras. 2, 6.

<sup>6</sup> *Contra* [Request to Reply](#), paras. 5-7. *See* [ICC-01/14-01/18-799 OA2](#) (“Yekatom Reply Decision”), para. 8 (citing regulation 24(5)).

<sup>7</sup> *See* [ICC-01/09-01/20-83 OA](#) (“Prosecution Response”), paras. 5-15.