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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***

Public

Public Redacted Version of "The Accused Person's Request for Interim Release under the Provisions of Article 60(2) of the Rome Statute", 9 November 2020, ICC-01/09-01/20-38-Conf

Source: Paul Gicheru (Accused Person)

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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Mr. James Stewart
Mr. Anton Steynberg

Counsel for the Defence

Mr. Michael G. Karnavas

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Other

Judge Reine Adélaïde Sophie
Alapini-Gansou
Pre-Trial Chamber II
Presidency

REGISTRY

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Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

TO: THE HONOURABLE JUDGE

THE ACCUSED PERSON'S REQUEST FOR INTERIM RELEASE

INTRODUCTION

1. The accused person appeared in court for a hearing for the initial appearance on Friday 6th November, 2020 at 16:00 hours, in Court Room I pursuant to an order issued by the pre-trial chamber 1 on 4th November 2020.
2. During the initial appearance, the charges were read out and explained to the accused person and his rights under the provisions of articles 60, 66 and 67 of the Rome statute were also read out and explained to him including the right to apply for an order of interim release.
3. The parties to this case were directed to file a written request in the event that the accused person desired to apply for interim release.
4. Having elected to apply for an order of interim release, the accused person submits as follows in support of request for interim release.
5. Under the Provisions of Article 60(2) of the Rome Statute, an accused person is entitled to apply for an order of interim release pending the confirmation of charges and his trial for the alleged offences.

6. Further, under the provisions of the Rome Statute and the International Law generally, an accused person can only be deprived of his/her liberty if it is established that: -
 - (a) If the accused person is released, he will fail to appear at the trial and is therefore a flight risk;
 - (b) If the accused person is released, he may commit further offences;
 - (c) If the accused person is released, he may obstruct the course of justice.
7. While considering a request for interim release, the following factors are relevant to the interim release inquiry: -
 - (a) The circumstances of the accused's surrender;
 - (b) Any personal guarantees offered by the accused person;
 - (c) The accused person's degree of cooperation with the prosecution.
8. Under the provisions of Rule 119 of the Rules of Procedure and Evidence made under the provisions of Article 51 of the Rome statute, the chamber may set one or more conditions restricting liberty.

GROUND FOR SEEKING RELEASE.

SECTION A

9. **[REDACTED]**;

- (a) As indicated by the prosecutor a fact which was confirmed by the accused person during the initial appearance on 6th November 2020, [REDACTED]. [REDACTED].
- (b) [REDACTED] the office of the prosecutor does not object to the accused person's interim release [REDACTED].
- (c) The accused person submits that [REDACTED] affords the accused person the right to a speedy and a fair trial as set out in the provisions of articles 60, 66 and 67 of the Rome Statute.
- (d) [REDACTED]. [REDACTED].¹
- (e) [REDACTED].
- (f) The accused person urges the chamber to [REDACTED] and make appropriate orders in terms of the outstanding issues set out in (e) above.

10. If the court exercise its discretion to [REDACTED].

SECTION B

11. However, for the purposes of completeness of the record and in the event that the court needs to consider any other factors or grounds the accused person urges the chamber to consider the following factors: -

¹ [REDACTED].

(i) **The accused person is not a flight risk;**

- (a) The accused person voluntarily surrendered to the court at his own cost and was not arrested. He is further ready to continue voluntarily appearing in court if and when required;
- (b) The accused person has continued cooperating with the court and the office of the prosecutor. ([REDACTED]);²
- (c) The above actions demonstrate that the accused person is not a flight risk and will attend court if and when required.

(ii) **The accused person will not interfere with the course of justice;**

- a) Under the Provisions of Articles 66 and 67(2)(i) of the Rome Statute, the burden of proving any facts or the existence of any circumstances during the trial or at any stage of the proceedings the court lies with the prosecution which must prove such facts or circumstances beyond reasonable doubt.
- b) There is no evidence or other material which has been placed before the chamber to show that the accused person has interfered with or may interfere with any witnesses.
- c) The charges against the accused person have not been confirmed and disclosure has not been made through the supply of the list of witnesses,

² [REDACTED].

the witness statements and the evidence against the accused person. The accused person is not therefore in possession of the knowledge of the material, facts and conditions that can make him interfere with the witnesses or evidence. [REDACTED].

d) The accused person reiterates his undertaking not to interfere in any way with this case a fact which has been captured in [REDACTED].

12. In addition to the absence of any grounds to establish that the accused person is a flight risk or will commit further offences or may interfere with the course of justice, the accused person requests the court to consider the following further factors.

The presumption of innocence and the burden of proof;

13. Under the Provisions of Article 66 of the Rome Statute, everyone is presumed innocent until proved guilty before the court in accordance with the applicable law. The Rome Statute further places the burden of proving guilt of the accused person beyond reasonable doubt on the prosecution.

14. In addition to Article 66 of the Rome Statute, Article 21 of the said statute binds the court to adhere to International Human Rights norms even in the context of interim release whereas Article 67 of the Statute sets out the Rights of an accused person.

15. The Provisions of Articles 21, 66 and 67 of the Rome Statute together with the International Human Rights norms implicate a number of human rights

including the presumption of innocence, the rights to liberty and freedom from arbitrary detention and to a speedy and fair trial which rights the court should uphold in order to achieve its objective of promoting respect for human rights and the rule of law by granting the accused person an interim release since the issue of his guilt has not been determined yet.

16. Detention or arrest is also a severe infringement of the right to liberty and security of the person as set out in Article 9 of **The International Convention on Civil and Political Rights (ICCPR)** and Article 5 of **The European Convention on Human Rights (ECHR)**. Article 9 of the ICCPR also forbids arbitrary arrest or detention. In the absence of proof of any ground for detention by the prosecution, the court should therefore lean towards upholding the right to liberty and the security of the person by granting an order of interim release.

17. The right of a criminal defendant to a fair trial is also one of the core human rights guaranteed by the International Human Rights instruments including the ICCPR, the ECHR and others. It encompasses a variety of procedural concepts such as an accused's right to have his or her case adjudicated upon by an impartial court or tribunal and also includes the right of an accused person to be allowed a fair opportunity to defend himself or herself against charges.

Detention in the circumstances of this case will seriously affect the accused person's defence preparation [REDACTED]. [REDACTED]. The accused person further invites the chamber to consider the fact that the accused person

is a resident of the Republic of Kenya where the alleged offences are said to have been committed. The accused person will therefore in all likelihood have to obtain evidence and other material to be used in his defense from Kenya. Owing to the distance between Kenya and the seat of the court in Netherlands, the accused person will be handicapped and the accused person's right and the ability to prepare for his defence will be adversely affected if the accused person remains in detention.

18. **[REDACTED]**

[REDACTED].

[REDACTED]. [REDACTED]³ [REDACTED]⁴ [REDACTED].

[REDACTED].

[REDACTED].

[REDACTED]. [REDACTED].

THE RELIEFS SOUGHT: -

The accused person therefore requests the chamber to grant him an order of interim release [REDACTED] on such terms as the chamber may determine.

³ [REDACTED].

⁴ [REDACTED].

A handwritten signature in black ink, appearing to be 'P. Gicheru', is written over a horizontal line. The signature is stylized and somewhat cursive.

**SIGNED BY: PAUL GICHERU
(ACCUSED PERSON)**

Dated at the Hague Netherlands this 15th day of January, 2021