

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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N° : ICC-01/09-01/20

Date : 29 March 2022

TRIAL CHAMBER III

Before: Judge Miatta Maria Samba

SITUATION IN THE REPUBLIC OF KENYA

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

Public

With confidential Annexes I - III *Ex Parte* only available to the Registry

Conditions of the Kingdom of the Netherlands for Mr Gicheru's short-term stay in its territory for the purpose of his attendance at trial

Source : The Registry

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

The Office of the Prosecutor

Ms Nazhat Khan

Mr Anton Steynberg

Counsel for the Defence

Mr Michael G. Karnavas

Ms Suzana Tomanović

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**

State Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Mr Pieter Vanaverbeke

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The Registry hereby reports to Trial Chamber III (“Chamber”) on Mr Paul Gicheru (“Mr Gicheru”)’s attendance at his trial, and transmits herewith a Note Verbale the Registry received from the authorities of the Kingdom of the Netherlands (“host State”) on 7 February 2022¹ in response to its cooperation request dated 24 January 2022 in relation to the facilitation of the entry of Mr Gicheru into the territory of the host State in order to attend his trial.²

II. Procedural history

2. On 29 January 2021, Pre-Trial Chamber A issued “Decision on Mr Gicheru’s Request for Interim Release”³ (“Decision”), in which it granted Mr Gicheru’s request for interim release with conditions.
3. On 30 September 2021, the Chamber issued “Decision Setting the Commencement Date of the Trial and Related Deadlines”⁴, according to which *inter alia*, the trial was to commence on 15 February 2022.

III. Classification

4. In accordance with regulation 23bis(1) of the Regulations of the Court, the annexes of the present submission are classified as confidential as they refer to the personal information of Mr Gicheru, and to the operational details for his entry to the host State.

¹ Annex I.

² Annex II.

³ Pre-Trial Chamber A, “Decision on Mr Gicheru’s Request for Interim Release” 29 January 2021, ICC-01/09-01/20-90-Conf. A public redacted version was filed on 29 January 2021, ICC-01/09-01/20-90-Red2.

⁴ Trial Chamber III, “Decision Setting the Commencement Date of the Trial and Related Deadlines”, 30 September 2021, ICC-01/09-01/20-185.

IV. Applicable Law

5. The following provisions are of particular relevance to the present submission: article 21(3) of the Rome Statute, rule 119 of the Rules of Procedure and Evidence, regulation 24 *bis* (1) of the Regulations of the Court, and article 47(2) of the "Headquarters Agreement between the International Criminal Court and the host State" ("Headquarters Agreement").

V. Submissions

6. In order to facilitate Mr Gicheru's travel from the Republic of Kenya ("Kenya") to the host State, to attend his trial at the seat of the Court, the Registry consulted the host State on the modalities of his entry into and stay in the Netherlands during his trial. After consultation with the host State, per the request of the host State in view of the implementation of article 47(2) of the Headquarters Agreement, the Registry sent a Note Verbale dated 24 January 2022 requesting the host State to facilitate the issuance of a visa to Mr Gicheru.⁵
7. On 7 February 2022, the Registry received a communication from the authorities of the host State facilitating the entry of Mr Gicheru into the host State. The host State accepted to facilitate the issuance of the visa under, among others, the following conditions: i) Mr Gicheru "remains at all times under the jurisdiction of the Court"; and ii) "the interim release will not take effect while the person concerned is in the territory of the host State".⁶
8. On 10 February 2022, the Registry transmitted a Note Verbale⁷ in response to the aforesaid communication in which it accepted the conditions presented to secure the Mr Gicheru's entry into, and stay in the Netherlands. Also, the Registry noted its reservations regarding the host State's interpretation of the Decision

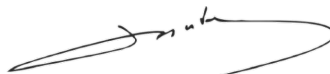
⁵ Annex II.

⁶ Annex I.

⁷ Annex III.

and the implementation of the Decision as required by the host State on its territory.⁸

9. Upon receipt of the visa issued by the host State, Mr Gicheru travelled to the Netherlands on 12 February 2022 to attend his trial.
10. On 25 March 2022, following the conclusion of the presentation of evidence by the Office of the Prosecutor, Mr Gicheru returned to his residence in Kenya, at the address referred in the Decision.⁹
11. The Registry has no incident to report regarding Mr Gicheru's stay in the Netherlands between 12 February 2022 and 25 March 2022. During this period, he was not detained or under house arrest.
12. The Registry takes this opportunity to inform the Chamber that it will continue its discussions with the host State as to the conditions referred to in paragraph 7 above in respect of any future presence of Mr Gicheru in the host State for the purpose of attending his trial, and more generally regarding interim release per article 47(2) of the Headquarters Agreement.



Marc Dubuisson, Director of the Division of Judicial Services
On behalf of
Peter Lewis, Registrar

Dated this 29 March 2022
At The Hague, the Netherlands

⁸ Annex III.

⁹ See Pre-Trial Chamber A, "Decision on Mr Gicheru's Request for Interim Release" 29 January 2021, ICC-01/09-01/20-90-Red2, para. 47.