

Annex

Public

**Transmission of Observations Submitted by the Kingdom of the Netherlands
pursuant to Pre-Trial Chamber A's Decision ICC-01/09-01/20-90-Red2 Registry's of
29 January 2021**

No. ICC-01/09-01/20



Ministry of Foreign Affairs

Protocol Department
DPG-Min-BuZa.2021.6473-36

The Ministry of Foreign Affairs presents its compliments to the Registry of the International Criminal Court ('the Court') and, with reference to the latter's Note Verbale NV/2021/EOSS/016/JCA/jt of 29 January 2021 regarding the case of *The Prosecutor v. Paul Gicheru*, has the honour to inform the Court as follows.

The host State has taken note of the 'Public Redacted Version of the "Decision on Mr Gicheru's request for Interim Release", 29 January 2021, ICC-01/09-01/20-90-Conf', notified on 29 January 2021 and registered as ICC-01/09-01/20-90-Red2. Upon the invitation of the Court, the host State provides its observations below as to the possibility of Mr Gicheru temporarily residing in the Netherlands for the purposes of the proceedings in the present case as specified in that decision. The host State regrets that its previous observations provided on 26 November 2020 were not clear in this regard.

For the record, the host State wishes to reiterate its position that in cases of interim release, the host State shall facilitate transfer of the person concerned to a third state and re-entry into the host State in accordance with article 47 of the Headquarters Agreement. It is the understanding of the host State that during this process the person concerned remains at all times under the jurisdiction of the Court and that the interim release will not take effect while the person concerned is in the territory of the host State. Accordingly, the host State is under no obligation to admit persons who have been granted interim release into its territory for the purposes of Court proceedings without such persons being detained.

Since the host State does not take a different view in the case of Mr Gicheru, its response is that it will not be possible for Mr Gicheru to temporarily reside in the Netherlands for the purposes of the proceedings in the present case.

The host State takes this opportunity to refer as well to paragraph 47, indent 8 of the said decision of the Pre-Trial Chamber, and assumes that the Registry will notify the host State as soon as it is known when Mr Gicheru will be travelling to the seat of the Court for the purposes of the proceedings as specified in the decision. In this respect, the host State wishes to draw the Court's attention to the period of at least 15 working days that the host State will require for security assessment and the visa application process if Mr Gicheru is not detained when he travels to the Netherlands.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the Registry of the International Criminal Court the assurances of its highest consideration.

The Hague, 24 February 2021

To the Registry of the International Criminal Court
The Hague

