

PUBLIC

REDACTED

Version of

ICC-01/09-01/20-28-Conf-Anx1

28 September 2020

Annex 1

**Cour
Pénale
Internationale**



**International
Criminal
Court**

No. : ICC-01/09-01/15

**SITUATION IN THE REPUBLIC OF KENYA
IN THE CASE OF THE PROSECUTOR v. PAUL GICHERU AND PHILIP KIPKOECH
BETT**

Agreement on Voluntary Surrender and Interim Release

Introduction

1. This document constitutes the Agreement on Voluntary Surrender and Interim Release (hereinafter "Agreement") between Paul GICHERU and the Prosecutor of the International Criminal Court ("PROSECUTOR"; and together "PARTIES"). This Agreement sets forth in its entirety the understanding of the PARTIES as to the conditions under which Paul GICHERU will voluntarily surrender to the International Criminal Court ("Court") and which, in turn, the PROSECUTOR will agree to his interim release.

Intent

2. It is the shared intention of the PARTIES that:
 - 2.1. If Paul GICHERU voluntarily surrenders to the Court pursuant to the warrant of arrest ("Warrant"),¹ he will be brought before Pre-Trial Chamber II, or such other Chamber to which the matter may be assigned ("Chamber"), for his first appearance at the earliest opportunity, at which time he may apply for interim release pursuant to article 60(2) of the Statute; and
 - 2.2. If the conditions agreed between the PARTIES and listed in Annex A ("Conditions") are acceptable to the Chamber, that Paul GICHERU will be conditionally released forthwith, pending his trial.

~~IP~~

14/9/2020.

¹ Issued on 10 March 2015 by the former Single Judge for Pre-Trial Chamber II, ICC-01/09-01/15-1-Conf-Exp.

[Signature]
21 Sept 2020

3. The PARTIES acknowledge that the decision on interim release lies in the hands of the Chamber, which will determine whether the conditions under article 58(1) of the Statute are satisfied.

Agreement

4. The terms of the Agreement are as follows:

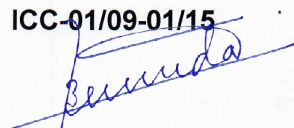
- 4.1. Paul GICHERU will voluntarily surrender to the Court in The Hague on a mutually suitable date no later than **2 November 2020** ("Agreed Date"), pursuant to the Warrant.
- 4.2. The PARTIES will confirm the Agreed Date through an exchange of letters, taking into account any obstacles presented by the Covid-19 situation. Should no such agreement be reached prior to **2 November 2020**, however, Paul GICHERU will surrender to the Court on that date.
- 4.3. To the extent that any case or appeal that he has brought, or participated in, that is currently pending before any court in the Republic of Kenya may be an obstacle to his voluntary surrender, Paul GICHERU will formally abandon or withdraw such case or appeal prior to his surrender to the Court in The Hague.
- 4.4. Upon Paul GICHERU's voluntary surrender to the Court in The Hague, the PROSECUTOR will agree to his conditional release at the earliest possible opportunity, subject to the Conditions listed in Annex A.
- 4.5. Paul GICHERU further agrees that, upon his conditional release, he will abide by the Conditions listed in Annex A, or such further or alternative conditions as the Chamber may impose.

Voluntariness

5. Paul GICHERU acknowledges that he has entered into this Agreement freely and voluntarily, that no threats were made to induce him to surrender to the Court or agree to the Conditions, and that the only promises made to him by the PROSECUTOR or her representatives are those set forth in this Agreement.
6. Paul GICHERU acknowledges that his rights to legal representation under the Statute have been explained to him and understands that he has the right to be legally represented in his negotiations with the PROSECUTOR that preceded this agreement and that representatives of the PROSECUTOR have explained that they would approach the Registry to appoint Defence Counsel for this purpose, if he so wished. Paul GICHERU further records that he is a qualified legal practitioner and has elected to represent himself during these negotiations, without prejudice to his right to request legal representation when he appears before the Court.

Agreement Not Binding on the Court
or on Other Jurisdictions

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ICC-01/09-01/15

 21 Sept 2020

September 2020

7. The PARTIES acknowledge that no term or condition of this Agreement is binding on the Chamber, or any other chamber of the Court which might in future rule on the issues covered herein.
8. The PARTIES also acknowledge that the Chamber will make the final determination on interim release, pursuant to article 60(2), and may reject or amend the Conditions.
9. The PARTIES further acknowledge that this Agreement does not bind other Organs of the Court or any other national or international authorities or organisations.

Whole Agreement

10. This document constitutes the whole Agreement between the PROSECUTOR and Paul GICHERU. Except as expressly set forth herein, there are no additional terms, understandings, or agreements between the PARTIES.

Variation

11. No amendments or variations to this Agreement shall have any force or effect unless in writing and signed by both PARTIES.

Breach

12. Should Paul GICHERU fail to voluntarily surrender to the Court in The Hague on the Agreed Date, or such other date as may be agreed pursuant to paragraph 11 above, this agreement shall become null and void.
13. Paul GICHERU acknowledges that, upon his conditional release, if he fails to comply with any condition set out in Annex A, the Chamber may:
 - 12.1. Declare the financial security provided for in Annex A forfeit to the Court; and
 - 12.2. At the request of the PROSECUTOR, or on its own initiative, issue a warrant for the arrest of Paul GICHERU under rule 119(4) of the Rules of Procedure and Evidence ("Rules").

Amendment of Conditions

14. The PARTIES acknowledge that the Chamber may decide to vary the conditions of release under rule 119(2) at any time, at the request of Paul GICHERU, the PROSECUTOR, or on its own initiative, subject to the provisions of rule 119(3).

Declaration of Paul GICHERU

15. I, Paul GICHERU, have carefully reviewed every part this Agreement and Annex A thereto in English, a language which I fully understand. I understand the consequences

14
 ICC-01/09-01/15

Paul Gicheru

21 Sept 2020

14/9/2020³

September 2020

of entering into this Agreement and of surrendering to the Court. No promises have been made to me by the Prosecutor or her representatives, other than those contained in this Agreement. Furthermore, no one has threatened me or forced me in any way to enter into this Agreement, which I enter into freely and voluntarily, of sound mind and not under the influence of any intoxicating substance. I understand the terms of this Agreement, and I agree to each of the terms.



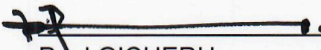
Paul GICHERU,

14/9/2020

Date

Signatures

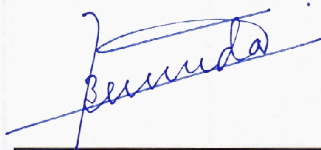
16. The undersigned PARTIES fully agree to each and every term and condition of this Agreement:



Paul GICHERU

14/9/2020.

Date



Fatou Bensouda
PROSECUTOR

21 Sept 2020

Date

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Internationale**



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Annex A

Conditions of Interim Release under Article 60(2) and Rule 119

1. Paul GICHERU:

- 1.1. Shall provide financial security to the Registrar in the form of cash or bank order to the value of **KSH 1,000,000 (one million Kenyan shillings)**;
- 1.2. Shall comply fully with all orders issued in this case, and surrender himself immediately to the relevant authorities if required by the Chamber;
- 1.3. Shall appear before the Chamber at the date, time place and in the manner ordered by the Chamber and shall remain in attendance until excused;
- 1.4. Shall not obstruct or endanger the investigation or the court proceedings, and shall not engage in any activities, directly or indirectly, that are prohibited under article 70 of the Rome Statute;
- 1.5. Shall not contact, directly or indirectly, any Prosecution witnesses or victims in this case, except through counsel authorised to represent him before this Court and in accordance with the applicable protocols;
- 1.6. Shall not, directly or through any other person, make any public statements, social media post, or communicate with the media about the merits of the case.

Domicile

2. When not present in the Netherlands for the purposes of court proceedings and subject to Condition 3 below, Paul GICHERU shall reside in the Republic of Kenya at the following address(es) for the duration of the proceedings, unless otherwise authorised in advance by the Chamber.

ICC-01/09-01/15

21 Sept 2020

14/9/2020⁵

September 2020

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International travel

3. Paul GICHERU:

- 3.1. Shall provide the Registrar with copies of all passports, visas, identity documents and any other travel documents issued to him;
- 3.2. Shall not travel internationally except to the countries listed below ("List"):
 - 3.2.1. [REDACTED];
 - 3.2.2. The Netherlands;
- 3.3. Shall inform the Registrar or his delegate, no later than seven (7) days prior to any international travel to a country on the List, of the purpose of the trip, the dates of travel, itinerary, the address(es) where he will reside during the trip and the means by which he may be contacted.
- 3.4. May, upon good cause shown, request the Chamber not later than fourteen (14) days prior to intended travel to add a further country/countries to the List;

Reporting and communication

4. Paul GICHERU shall report once a week to the Registrar or his delegate, to the person(s) and on the date and time and in the manner to be determined by the Registrar, which may include the use of video conferencing technology.
5. Paul GICHERU shall provide the Registrar with all mobile and other telephone numbers. Paul GICHERU shall ensure that at least one of his mobile telephone number remains active and with sufficient credit to be reachable at any time.

14/9/2020.

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