

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/09-01/20

Date: 30 April 2021

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 “Paul Gicheru’s Written Submissions on the Confirmation of Charges,” 30 April 2021

Source: Counsel for Mr. Paul Gicheru

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

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**Victims Participation and Reparations
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Mr. Paul Gicheru, through his Counsel (“the Defence”), hereby presents his Written Submissions on the Confirmation of Charges. The submissions and Annexes A-D are filed confidentially per Regulation 23*bis*(1) since they contain confidential material.

I. OVERVIEW

1. The Office of the Prosecutor’s (“OTP”) Document Containing the Charges (“DCC”) is an alluring house of cards. Flawed, flimsy, and fallacious, all assertions and arguments collapse when the evidence is diligently scrutinized and weighed in context against the deficiencies of the OTP’s witness statements and testimony – individually and collectively. It does not meet the standard of proof.
2. The OTP cherry-picks the evidence, artfully ignoring inconsistencies, improbabilities, contradictions, lack of corroborations, compartmentalizing and presenting it out of context and devoid of relevant evidence.
3. The OTP absurdly claims that the Chamber should ignore the quality of the evidence and essentially make findings and conclusions on the quantity of evidence. Nonsense.
4. Scrupulously considering the evidence claimed by the OTP to demonstrate that Mr. Gicheru, a Kikuyu, was part of a common plan with [REDACTED]¹ to identify, locate, contact, and corruptly influence OTP witnesses to induce them to withdraw from the ICC, the Defence submits:
 - a. The OTP offers no evidence that Mr. Gicheru was “associated with and/or [a] supporter[] of RUTO at the relevant times.”
 - b. [REDACTED]² [REDACTED].
 - c. The OTP offers conjectures that the so-called “managers” (Silas SIMATWO, MP Elisha BUSIENEI, and Isaac MAIYO) and others (J.N. NJUGUNA, Arap MITEI, Gregory MUTAI, another unidentified NJUGUNA, and someone by the name of KOGO, alleged to have been Mr. Gicheru’s bodyguard) were members of or acted pursuant to the alleged common plan, without showing that it made any attempt to contact these individuals.
 - d. The OTP offers hearsay evidence of unavailable witnesses in prior recorded statements which, although they may be admitted even if portions go to the acts and conduct of Mr.

¹ [KEN-OTP-0103-2640-R01](#); KEN-OTP-0080-1255; KEN-OTP-0080-1260; KEN-OTP-0087-1274, p. 1277.

² [KEN-OTP-0160-0043](#) at 1404-5 [REDACTED], 2870-1 [REDACTED], and 4265-6 [REDACTED].

Gicheru, do not afford Mr. Gicheru full enjoyment of his fair trial right of confrontation and denies the Chamber the opportunity to meaningfully assess the value of these witnesses' evidence.

- e. The OTP offers impeached witnesses found to have been incapable of belief by the *Ruto and Sang* Trial Chamber or whose evidence was disregarded by the *Ruto and Sang* Trial Chamber, presumably because it found the evidence to be unreliable, not meriting consideration.
- f. The OTP offers contradictory and inconsistent evidence from unreliable witnesses who frequently contacted each other and schemed together on how to secure benefits from the ICC (see Annex C). [REDACTED]. The OTP claims that these witnesses corroborate each other yet provides no substantiation and no independent indicia of reliability for virtually all of this evidence. Furthermore, the OTP, knowing the unreliability of these witnesses, makes no attempt to verify the veracity of their evidence.
- g. The OTP offers no explanation as to why an *amicus* prosecutor was not appointed as requested by Prosecutor-elect Mr. Karim KHAN Q.C. when acting as RUTO's lawyer, based on his knowledge and good faith belief as an officer of the court³ that "*ICC staff members may have: (i) engaged in sexual relations with the witnesses and their families; (ii) been bribed by witnesses; and (iii) were party to the submission of false financial claims, breaches of VWU protocol by witnesses, and obtaining pecuniary benefit from the false financial claims.*"⁴
- h. [REDACTED]⁵ [REDACTED].

II. STANDARD OF PROOF

- 5. The evidentiary standard of proof is "substantial grounds to believe" through "the presentation of concrete and tangible evidence demonstrating a clear line of reasoning underpinning the Prosecution's specific allegations."⁶ In determining whether the evidence is "sufficiently strong" to warrant a trial,⁷ it is the *quality* of the evidence – not the quantity

³ [ICC Code of Conduct for Counsel](#), Art. 24. See also [UK Bar Standards Board Handbook](#), Rules C3(1) and C6(1)(a).

⁴ [ICC-01/09-01/11-2028](#), para. 2.

⁵ [ICC-01/09-01/11-373](#).

⁶ [DCC](#), para. 11 citing to [ICC-01/04-01/06-803](#), paras. 37, 39.

⁷ [DCC](#), paras. 11-2. See also [ICC-01/04-01/06-803](#), para. 39.

– that is essential for the Chamber’s determination.⁸ The probative value of each piece of evidence must be assessed individually and holistically, considering: (a) the nature of the evidence; (b) its reliability and credibility; (c) its source and the context in which it was obtained; and (d) the nexus to the charges or suspect.⁹ Indicia of reliability such as voluntariness, truthfulness, and trustworthiness must also be considered.¹⁰

6. In determining whether the OTP has presented “sufficiently compelling charges going beyond mere theory or suspicion,”¹¹ the Chamber is “clearly require[d] ... to go beyond looking at the Prosecutor’s allegations ‘on their face’ as is done in confirming an indictment at the ICTY or ICTR.”¹² It *must* assess the evidence as “[a]ny other interpretation would carry the risk of cases proceeding to trial although the evidence is so riddled with ambiguities, inconsistencies, contradictions or doubts as to credibility that it is insufficient to establish substantial grounds to believe the person committed the crimes charged.”¹³
7. In urging the Chamber to assess each witness statement individually and to rely only on certain portions while rejecting others,¹⁴ the OTP – beyond cavil – concedes that: (a) a qualitative analysis is required; and (b) having qualitatively analyzed their evidence, certain witnesses should not be relied on unless corroborated by other evidence.¹⁵ Indeed, “there may be witnesses whose credibility is impugned to such an extent that he or she cannot be relied upon even if other evidence appears to corroborate his or her testimony.”¹⁶
8. The Chamber should reject uncorroborated evidence.¹⁷ Hearsay evidence “is of low probative value” and should not be used to prove allegations to the standard of substantial grounds to believe unless corroborated by other evidence.¹⁸ Anonymous hearsay evidence should only be relied on to the extent it corroborates other evidence or is corroborated by other evidence.¹⁹ And the evidence of a witness whose credibility the Chamber has reservations should only be relied on to the extent that it is corroborated by other evidence.²⁰

⁸ [ICC-01/09-01/11-373](#), para. 68.

⁹ [ICC-01/09-01/11-373](#), para. 68.

¹⁰ [ICC-01/09-01/11-373](#), para. 68.

¹¹ [ICC-01/04-01/06-803](#), para. 39.

¹² [ICC-01/04-01/10-514](#), para. 43.

¹³ [ICC-01/04-01/10-514](#), para. 46. *Contra* [DCC](#), para. 12.

¹⁴ [DCC](#), para. 13.

¹⁵ [DCC](#), para. 13, fn. 26.

¹⁶ [ICC-01/04-02/12-271](#), para. 168. *Contra* [DCC](#), para. 13, citing [ICC-01/05-01/13-1989](#), para. 220.

¹⁷ [DCC](#), para. 12, citing Rule 63(4) of the [Rules of Procedure and Evidence](#), [Bagosora Decision](#), p. 10; [Rwamakuba Decision](#), p. 13.

¹⁸ [ICC-01/09-01/11-373](#), para. 75.

¹⁹ [ICC-01/04-01/07-717](#), para. 140.

²⁰ [ICC-01/05-01/13-1989](#), para. 204; *See also* [ICC-01/09-02/11-382](#), para. 92.

9. “Inconsistencies, contradictions and inaccuracies, if present, are equally important when assessing the reliability of a witness’s statement,” and while they do not automatically render a witness’s evidence unreliable in its entirety, they “may in fact speak in favour of the truthfulness of the witness’s account.”²¹ Also, “inconsistencies in a piece of evidence might be so significant as to bar the Chamber from using it to prove a specific issue.”²² Corruptly influenced witnesses are presumptively, if not irreparably, unreliable.²³ The Chamber *can* and *should* evaluate their credibility, even without their in-person testimony.²⁴
10. In determining whether the evidence is sufficient to warrant a trial, the Chamber must also be mindful of the No Case to Answer standard – “*whether there is evidence on which a reasonable Trial Chamber could convict*”²⁵ – a hurdle the OTP must meet at the close of its evidence at trial. The Trial Chamber’s systematic arrangement with the Pre-Trial Chamber is such that each entails an evaluation of credibility and reliability within its respective remit, with the Trial Chamber inquiring at the close of the OTP case: “*did the case for the prosecution remain as strong as the Pre-Trial Chamber had found it to be when the charges were confirmed?*”²⁶ If *prima facie* the evidence seems insufficient to meet the No Case to Answer standard, it axiomatically is insufficient for confirmation.
11. Pre-Trial Chambers engage in a “qualitative assessment” of each piece of evidence, no less so than Trial Chambers when determining whether a trial on confirmed charges should continue after the OTP’s case.²⁷ While the two procedures differ in nature – in that the OTP presents the entirety of its case and the evidentiary threshold is higher at the No Case to Answer stage²⁸ – they serve the same purpose in discontinuing proceedings “the moment that it has become evident that no finding of guilt beyond all reasonable doubt can follow.”²⁹
12. For the confirmation process to have any meaning, “the Pre-Trial Chamber must ... evaluate the contested evidence and resolve ambiguities, contradictions, inconsistencies or doubts as to credibility introduced by the contestation of the evidence.”³⁰ Thus, a qualitative analysis of the evidence is required to ensure that Mr. Gicheru is not put through the meatgrinder of a trial on unfounded charges only to result in a judgment of acquittal – i.e., the evidence

²¹ [ICC-01/05-01/13-1989](#), para. 204.

²² [ICC-01/09-02/11-382](#), para. 92.

²³ *Contra* [DCC](#), para. 13.

²⁴ [ICC-01/04-01/10-514](#), para. 44.

²⁵ [ICC-01/09-01/11-1334](#), para. 23 (emphasis added).

²⁶ [ICC-01/09-01/11-2027](#) (Reasons of Judge Eboe-Osui), paras. 121-2 (emphasis added).

²⁷ *Id.*, para. 121.

²⁸ [ICC-01/09-01/11-1334](#), para. 14.

²⁹ [ICC-01/09-01/11-2027](#) (Reasons of Judge Fremr), paras. 19, 20; (Reasons of Judge Eboe-Osui), para. 124; [ICC-01/04-01/06-803](#), para. 39.

³⁰ [ICC-01/04-01/10-514](#), para. 40.

taken as a whole is so unsatisfactory and so unreliable that the Trial Chamber would not convict based on that evidence.³¹

III. DRAMATIS PERSONAE

[REDACTED] (P-564)

13. [REDACTED]³² [REDACTED]³³ [REDACTED]³⁴ [REDACTED]³⁵

14. [REDACTED]³⁶ [REDACTED].³⁷ [REDACTED]³⁸ [REDACTED]³⁹ [REDACTED].⁴⁰

15. [REDACTED];⁴¹ [REDACTED];⁴² [REDACTED];⁴³ [REDACTED]⁴⁴ [REDACTED];⁴⁵
[REDACTED].⁴⁶

16. [REDACTED]⁴⁷ [REDACTED]:

a. [REDACTED]⁴⁸

b. [REDACTED].⁴⁹

c. [REDACTED].⁵⁰ [REDACTED].⁵¹

d. [REDACTED]⁵² [REDACTED]⁵³ [REDACTED]⁵⁴

e. [REDACTED].⁵⁵ [REDACTED]⁵⁶

³¹ [ICC-01/04-01/06-803](#), paras. 37-9. *Contra* [DCC](#), para. 12.

³² [KEN-OTP-0096-0104](#).

³³ [KEN-OTP-0115-0289](#).

³⁴ [KEN-OTP-0118-1927](#).

³⁵ [KEN-OTP-0125-0248](#).

³⁶ [KEN-OTP-0096-0104](#), para. 47.

³⁷ [DCC](#), para. 42(a).

³⁸ [KEN-OTP-0096-0104](#), paras. 52, 55.

³⁹ [KEN-OTP-0096-0104](#), para. 54.

⁴⁰ [KEN-OTP-0115-0289](#) at 374-422.

⁴¹ [DCC](#), para. 74.

⁴² [DCC](#), para. 105.

⁴³ [DCC](#), para. 137.

⁴⁴ [DCC](#), paras. 143, 150.

⁴⁵ [DCC](#), para. 178.

⁴⁶ [DCC](#), para. 264.

⁴⁷ [KEN-OTP-0096-0104](#), paras. 49-50. *See also* [KEN-OTP-0082-0260](#).

⁴⁸ [KEN-OTP-0147-2218-R01](#).

⁴⁹ [KEN-OTP-0103-2640-R01](#).

⁵⁰ [KEN-OTP-0094-0002-R01](#).

⁵¹ [KEN-OTP-0094-0002-R01](#).

⁵² [KEN-OTP-0103-3191-R01](#), paras. 5-6.

⁵³ [KEN-OTP-0103-3191-R01](#), para. 8.

⁵⁴ [KEN-OTP-0106-0248-R01](#).

⁵⁵ [KEN-OTP-0097-0408](#), paras. 11-29.

⁵⁶ [ICC-01/09-01/20-119](#), para. 6.

f. [REDACTED].⁵⁷

g. [REDACTED].⁵⁸

17. [REDACTED].⁵⁹ [REDACTED],⁶⁰ [REDACTED].⁶¹

18. [REDACTED].⁶² [REDACTED].⁶³ [REDACTED].

[REDACTED] (P-579)

19. [REDACTED].⁶⁴

20. [REDACTED].⁶⁵ [REDACTED],⁶⁶ [REDACTED].

21. [REDACTED]⁶⁷ [REDACTED]⁶⁸ [REDACTED]⁶⁹ [REDACTED]⁷⁰ [REDACTED]⁷¹
[REDACTED].

22. [REDACTED]⁷² [REDACTED]⁷³ [REDACTED]⁷⁴ [REDACTED]⁷⁵ [REDACTED].

23. [REDACTED].⁷⁶ [REDACTED].⁷⁷ [REDACTED]⁷⁸

24. [REDACTED]⁷⁹ [REDACTED]⁸⁰ [REDACTED].⁸¹ [REDACTED].⁸² [REDACTED]⁸³
[REDACTED].

⁵⁷ [KEN-OTP-0102-0205](#), paras. 29-33.

⁵⁸ [KEN-OTP-0141-0636](#).

⁵⁹ [KEN-OTP-0118-1927](#) at 417-28.

⁶⁰ [KEN-OTP-0115-0289](#) at 351-422.

⁶¹ [KEN-OTP-0115-0289](#) at 794-808.

⁶² [KEN-OTP-0115-0289](#).

⁶³ [KEN-OTP-0125-0248](#) at 269-86.

⁶⁴ [KEN-OTP-0118-1927](#).

⁶⁵ [DCC](#), para. 42(b).

⁶⁶ [KEN-OTP-0117-1071](#); [KEN-OTP-0107-0291](#).

⁶⁷ [DCC](#), para. 72.

⁶⁸ [DCC](#), para. 103.

⁶⁹ [DCC](#), para. 133.

⁷⁰ [DCC](#), para. 175.

⁷¹ [DCC](#), para. 209.

⁷² [KEN-OTP-0117-1071](#).

⁷³ [KEN-OTP-0117-1071](#).

⁷⁴ [KEN-OTP-0117-1071](#).

⁷⁵ [KEN-OTP-0117-1071](#).

⁷⁶ [KEN-OTP-0107-0291](#).

⁷⁷ [KEN-OTP-0117-1071](#).

⁷⁸ [KEN-OTP-0107-0291](#).

⁷⁹ [DCC](#), para. 144, citing [KEN-OTP-0111-0162](#), para. 36.

⁸⁰ [KEN-OTP-0111-0162](#), para. 36.

⁸¹ [KEN-OTP-0118-1927](#) at 731-6.

⁸² [DCC](#), para. 143, fn. 345, citing [KEN-OTP-0118-1927](#), pp. 1950-1.

⁸³ [KEN-OTP-0118-1927](#) at 600.

25. [REDACTED].⁸⁴ [REDACTED].⁸⁵ [REDACTED].⁸⁶

[REDACTED] (P-540)

26. [REDACTED]⁸⁷ [REDACTED],⁸⁸ [REDACTED],⁸⁹ [REDACTED],⁹⁰ [REDACTED].⁹¹

27. [REDACTED],⁹² [REDACTED].⁹³

28. [REDACTED]⁹⁴ [REDACTED],⁹⁵ [REDACTED],⁹⁶ [REDACTED].⁹⁷

29. [REDACTED]⁹⁸ [REDACTED].⁹⁹ [REDACTED]¹⁰⁰ [REDACTED]¹⁰¹ [REDACTED]¹⁰²
[REDACTED].¹⁰³ [REDACTED].

30. [REDACTED].¹⁰⁴ [REDACTED].¹⁰⁵

31. [REDACTED].¹⁰⁶ [REDACTED].¹⁰⁷ [REDACTED].¹⁰⁸ [REDACTED]¹⁰⁹
[REDACTED].¹¹⁰ [REDACTED].¹¹¹

Sammy KOSGEI

⁸⁴ [KEN-OTP-0102-0178](#), paras. 16, 21; [KEN-OTP-0111-0162](#), paras. 22, 46, 48; [KEN-OTP-0111-0557](#), paras. 31, 44, 45.

⁸⁵ [KEN-OTP-0118-1927](#) at 880, 883, 885, 889, 895, 898, 900, 903.

⁸⁶ [KEN-OTP-0111-0557](#), para. 22.

⁸⁷ [KEN-OTP-0114-0198](#); [KEN-OTP-0114-0244](#); [KEN-OTP-0114-0296](#); [KEN-OTP-0114-0291](#).

⁸⁸ [KEN-OTP-0118-1927](#).

⁸⁹ [KEN-OTP-0131-0431](#); [KEN-OTP-0132-0167](#); [KEN-OTP-0104-0917](#); [KEN-OTP-0104-0920](#); [KEN-OTP-0106-0365](#); [KEN-OTP-0106-0371](#); [KEN-OTP-0103-2701](#); [KEN-OTP-0111-0555](#); [KEN-OTP-0106-0365](#); [KEN-OTP-0106-0371](#); [KEN-OTP-0106-0395](#); [KEN-OTP-0106-0396](#); [KEN-OTP-0107-0717](#); [KEN-OTP-0110-0367](#); [KEN-OTP-0109-0015](#); [KEN-OTP-0135-0430](#); [KEN-OTP-0109-0012](#); [KEN-OTP-0111-0152](#); [KEN-OTP-0111-0153](#); [KEN-OTP-0111-0154](#); [KEN-OTP-0111-0155](#); [KEN-OTP-0111-0156](#); [KEN-OTP-0111-0157](#); [KEN-OTP-0111-0158](#).

⁹⁰ [KEN-OTP-0159-1693](#).

⁹¹ [KEN-OTP-0114-0090-R01](#).

⁹² [KEN-OTP-0103-2693-R01](#), para. 20.

⁹³ [KEN-OTP-0114-0090-R01](#) at 48-55; [KEN-OTP-0135-0074](#) at 424-5; [KEN-OTP-0135-0054](#) at 414-5.

⁹⁴ [DCC](#), para. 133.

⁹⁵ [DCC](#), paras. 179-94.

⁹⁶ [DCC](#), paras. 240-7.

⁹⁷ [DCC](#), para. 305.

⁹⁸ [KEN-OTP-0114-0296](#).

⁹⁹ [KEN-OTP-0114-0296](#) at 42.

¹⁰⁰ [KEN-OTP-0114-0296](#) at 46-51.

¹⁰¹ [KEN-OTP-0114-0296](#) at 79-82.

¹⁰² [KEN-OTP-0114-0296](#) at 120.

¹⁰³ [KEN-OTP-0114-0198](#) at 17-8.

¹⁰⁴ [KEN-OTP-0118-1927](#) at 911-1030.

¹⁰⁵ [KEN-OTP-0111-0162](#), para. 53.

¹⁰⁶ [KEN-OTP-0111-0140](#), para. 32.

¹⁰⁷ [KEN-OTP-0111-0140](#), para. 32.

¹⁰⁸ [KEN-OTP-0132-0167](#) at 81-93.

¹⁰⁹ [KEN-OTP-0132-0167](#) at 338.

¹¹⁰ [KEN-OTP-0132-0167](#) at 1056, 1391, 1422.

¹¹¹ [KEN-OTP-0111-0140](#).

32. [REDACTED].¹¹² [REDACTED].¹¹³

33. [REDACTED].¹¹⁴ [REDACTED].¹¹⁵ [REDACTED].

34. [REDACTED].¹¹⁶ [REDACTED].

[REDACTED] (P-397)

35. [REDACTED].¹¹⁷ [REDACTED]¹¹⁸ [REDACTED].¹¹⁹ [REDACTED]¹²⁰ [REDACTED]¹²¹
[REDACTED].¹²²

36. P[REDACTED].¹²³ [REDACTED].¹²⁴ [REDACTED].¹²⁵ [REDACTED]¹²⁶
[REDACTED].¹²⁷

37. [REDACTED].¹²⁸

38. [REDACTED].

39. [REDACTED].¹²⁹ [REDACTED].¹³⁰

40. [REDACTED].¹³¹ [REDACTED]¹³² [REDACTED]¹³³ [REDACTED].

¹¹² [DCC](#), para. 42(d).

¹¹³ [DCC](#), para. 42(d).

¹¹⁴ [DCC](#), para. 42(d); [KEN-OTP-0047-0248](#); [KEN-OTP-0047-0273](#).

¹¹⁵ [KEN-OTP-0047-0273](#).

¹¹⁶ [DCC](#), paras. 262, 264.

¹¹⁷ [KEN-OTP-0125-0322-R01](#); [KEN-OTP-0125-0360-R01](#); [KEN-OTP-0125-0375-R01](#); [KEN-OTP-0125-0402-R01](#); [KEN-OTP-0125-0434-R01](#); [KEN-OTP-0125-0461-R01](#); [KEN-OTP-0125-0488-R01](#); [KEN-OTP-0125-0494-R01](#); [KEN-OTP-0125-0499-R01](#); [KEN-OTP-0125-0505-R01](#); [KEN-OTP-0125-0518-R01](#); [KEN-OTP-0125-0547-R01](#); [KEN-OTP-0125-0571-R01](#).

¹¹⁸ [KEN-OTP-0124-0030](#); [KEN-OTP-0124-0029](#).

¹¹⁹ [KEN-OTP-0124-0021](#).

¹²⁰ [KEN-OTP-0139-0095](#); [KEN-OTP-0139-0097](#).

¹²¹ [KEN-OTP-0143-0185](#).

¹²² [KEN-OTP-0125-0248](#).

¹²³ [KEN-OTP-0074-0264-R01](#), paras. 11-5.

¹²⁴ [KEN-OTP-0125-0322](#) at 995-1011.

¹²⁵ [KEN-OTP-0125-0360](#) at 162; [KEN-OTP-0125-0518](#) at 631.

¹²⁶ [KEN-OTP-0125-0434](#) at 270.

¹²⁷ [KEN-OTP-0125-0518](#) at 924-41; [KEN-OTP-0125-0547](#) at 37-43.

¹²⁸ [DCC](#), paras. 72-80.

¹²⁹ [KEN-OTP-0124-0030](#); [KEN-OTP-0124-0029](#).

¹³⁰ [KEN-OTP-0124-0021](#).

¹³¹ [KEN-OTP-0139-0097](#).

¹³² [KEN-OTP-0139-0093](#).

¹³³ [KEN-OTP-0139-0095](#).

41. [REDACTED].¹³⁴ [REDACTED],¹³⁵ [REDACTED].¹³⁶ [REDACTED].¹³⁷
[REDACTED].¹³⁸ [REDACTED].¹³⁹

[REDACTED] (P-516)

42. [REDACTED],¹⁴⁰ [REDACTED],¹⁴¹ [REDACTED].¹⁴²

43. [REDACTED].¹⁴³ [REDACTED]¹⁴⁴ [REDACTED]¹⁴⁵ [REDACTED].¹⁴⁶
[REDACTED].¹⁴⁷ [REDACTED].¹⁴⁸

44. [REDACTED].¹⁴⁹

45. [REDACTED]¹⁵⁰ [REDACTED]¹⁵¹ [REDACTED].¹⁵² [REDACTED]¹⁵³ [REDACTED]¹⁵⁴

46. [REDACTED].¹⁵⁵ [REDACTED],¹⁵⁶ [REDACTED]¹⁵⁷ [REDACTED].

47. [REDACTED],¹⁵⁸ [REDACTED].¹⁵⁹ [REDACTED],¹⁶⁰ [REDACTED]¹⁶¹
[REDACTED].¹⁶² [REDACTED]¹⁶³ [REDACTED].¹⁶⁴

¹³⁴ [KEN-OTP-0125-0461](#) at 869, 872, 874, 876, 878.

¹³⁵ [KEN-OTP-0143-0185](#) at 174-5.

¹³⁶ [KEN-OTP-0143-0185](#) at 12-4, 83-6.

¹³⁷ [KEN-OTP-0143-0185](#) at 86, 119, 127.

¹³⁸ [KEN-OTP-0129-0567-R01](#).

¹³⁹ [KEN-OTP-0143-0185](#) at 130, 152, 154, 156.

¹⁴⁰ [KEN-OTP-0087-0031-R05](#).

¹⁴¹ [T-002](#); [T-003](#); [T-004](#); [T-005](#); [T-006](#).

¹⁴² [KEN-OTP-0150-0817-R01](#); [KEN-OTP-0150-0837-R01](#); [KEN-OTP-0150-0760-R01](#).

¹⁴³ [KEN-OTP-0087-0031-R05](#), para. 19; [KEN-OTP-0102-0178](#), p. 0178.

¹⁴⁴ [KEN-OTP-0150-0637-R01](#) at 499-500.

¹⁴⁵ [KEN-OTP-0150-0921-R01](#) at 494.

¹⁴⁶ [KEN-OTP-0150-0921-R01](#) at 63-4.

¹⁴⁷ [KEN-OTP-0087-0031-R05](#), paras. 20-2.

¹⁴⁸ [T-004](#), pp. 33-4; [T-003](#), p. 45.

¹⁴⁹ [DCC](#), paras. 106-8.

¹⁵⁰ [T-003](#), p. 67.

¹⁵¹ [T-003](#), pp. 42-4, 51, 55-60, 64, 66-7.

¹⁵² [T-004](#), p. 33.

¹⁵³ [T-004](#), pp. 15-6.

¹⁵⁴ [T-005](#), pp. 71, 73.

¹⁵⁵ [KEN-OTP-0150-0621-R01](#) at 37-8.

¹⁵⁶ [KEN-OTP-0150-0621-R01](#) at 55, 59.

¹⁵⁷ [KEN-OTP-0150-0817-R01](#) at 145-69, 222-3.

¹⁵⁸ [KEN-OTP-0150-0684-R01](#) at 145-52.

¹⁵⁹ [KEN-OTP-0150-0873-R01](#) at 152-3.

¹⁶⁰ [KEN-OTP-0150-0817-R01](#) at 257. *See also* [KEN-OTP-0150-0873-R01](#) at 260.

¹⁶¹ [KEN-OTP-0150-0873-R01](#) at 181-2, 187.

¹⁶² [KEN-OTP-0150-0873-R01](#) at 214.

¹⁶³ [KEN-OTP-0150-0873-R01](#) at 449-55.

¹⁶⁴ [KEN-OTP-0150-0873-R01](#) at 458-66.

48. [REDACTED]¹⁶⁵ [REDACTED]¹⁶⁶ [REDACTED].¹⁶⁷ [REDACTED].¹⁶⁸ [REDACTED]¹⁶⁹
[REDACTED].

[REDACTED] (P-800)

49. [REDACTED],¹⁷⁰ [REDACTED],¹⁷¹ [REDACTED],¹⁷² [REDACTED]¹⁷³
[REDACTED],¹⁷⁴ [REDACTED],¹⁷⁵ [REDACTED],¹⁷⁶ [REDACTED],¹⁷⁷
[REDACTED].¹⁷⁸

50. [REDACTED].¹⁷⁹ [REDACTED],¹⁸⁰ [REDACTED],¹⁸¹ [REDACTED]¹⁸²
[REDACTED],¹⁸³ [REDACTED].¹⁸⁴

51. [REDACTED].¹⁸⁵

52. [REDACTED].¹⁸⁶ [REDACTED].¹⁸⁷

53. [REDACTED],¹⁸⁸ [REDACTED].¹⁸⁹ [REDACTED],¹⁹⁰ [REDACTED].¹⁹¹

¹⁶⁵ [KEN-OTP-0102-0178](#), para. 18; [KEN-OTP-0111-0162](#), para. 36.

¹⁶⁶ [KEN-OTP-0111-0140](#), para. 42.

¹⁶⁷ [KEN-OTP-0102-0178](#), para. 23.

¹⁶⁸ [KEN-OTP-0159-0884](#).

¹⁶⁹ DCC, para. 115.

¹⁷⁰ [KEN-OTP-0111-0140](#); [KEN-OTP-0102-0205](#); [KEN-OTP-0103-2473](#); [KEN-OTP-0106-0388](#); [KEN-OTP-0109-0002](#); [KEN-OTP-0102-0217](#).

¹⁷¹ [KEN-OTP-0138-0092](#); [KEN-OTP-0135-0054](#); [KEN-OTP-0135-0113](#), [KEN-OTP-0135-0103](#), [KEN-OTP-0135-0139](#), [KEN-OTP-0135-0155](#); [KEN-OTP-0135-0200](#).

¹⁷² [KEN-OTP-0144-0272-R01](#).

¹⁷³ [KEN-OTP-0132-0167](#); [KEN-OTP-0111-0555](#); [KEN-OTP-0131-0431](#); [KEN-OTP-0103-2701](#); [KEN-OTP-0104-0917](#); [KEN-OTP-0104-0920](#); [KEN-OTP-0106-0365](#); [KEN-OTP-0106-0371](#); [KEN-OTP-0107-0717](#); [KEN-OTP-0110-0367](#); [KEN-OTP-0109-0015](#); [KEN-OTP-0135-0430](#).

¹⁷⁴ [KEN-OTP-0145-0587](#); [KEN-OTP-0145-0594](#).

¹⁷⁵ [KEN-OTP-0106-0395](#); [KEN-OTP-0106-0396](#); [KEN-OTP-0109-0012](#); [KEN-OTP-0111-0152](#); [KEN-OTP-0111-0153](#); [KEN-OTP-0111-0154](#); [KEN-OTP-0111-0155](#); [KEN-OTP-0111-0156](#); [KEN-OTP-0111-0157](#); [KEN-OTP-0111-0158](#).

¹⁷⁶ [KEN-OTP-0103-3498](#); [KEN-OTP-0103-3497](#); [KEN-OTP-0105-0095](#); [KEN-OTP-0116-0479](#); [KEN-OTP-0116-0482](#); [KEN-OTP-0129-0702](#).

¹⁷⁷ [KEN-OTP-0145-0560](#); [KEN-OTP-0145-0562](#); [KEN-OTP-0145-0554](#); [KEN-OTP-0116-0261](#); [KEN-OTP-0145-0566](#).

¹⁷⁸ [T-026](#); [T-018](#); [T-029](#); [T-027](#); [T-020](#); [T-028](#); [T-030](#).

¹⁷⁹ [KEN-OTP-0082-0250](#), para. 10.

¹⁸⁰ [KEN-OTP-0102-0205](#), paras. 15-6.

¹⁸¹ [KEN-OTP-0103-2473](#), para. 19.

¹⁸² [KEN-OTP-0135-0054](#) at 506-19.

¹⁸³ [KEN-OTP-0135-0041-R01](#) at 189.

¹⁸⁴ [KEN-OTP-0135-0074](#) at 256-8; [KEN-OTP-0135-0054](#) at 404-26.

¹⁸⁵ DCC, paras. 179, 185, 193.

¹⁸⁶ [KEN-OTP-0116-0495-R01](#).

¹⁸⁷ [KEN-OTP-0116-0495-R01](#).

¹⁸⁸ [KEN-OTP-0135-0054](#) at 487, 543-8.

¹⁸⁹ [KEN-OTP-0135-0054](#) at 419-26, 428-37, 655-6.

¹⁹⁰ [KEN-OTP-0135-0103](#) at 182-93.

¹⁹¹ [KEN-OTP-0135-0103](#) at 83-9; [KEN-OTP-0135-0113](#) at 618-24, 667.

54. [REDACTED].¹⁹² [REDACTED].

55. [REDACTED]¹⁹³ [REDACTED],¹⁹⁴ [REDACTED],¹⁹⁵ [REDACTED],¹⁹⁶
[REDACTED].¹⁹⁷ [REDACTED]¹⁹⁸

56. [REDACTED].¹⁹⁹ [REDACTED].²⁰⁰

57. [REDACTED],²⁰¹ [REDACTED]²⁰² [REDACTED]²⁰³ [REDACTED].²⁰⁴
[REDACTED].²⁰⁵ [REDACTED].

[REDACTED] (P-613)

58. [REDACTED]²⁰⁶ [REDACTED],²⁰⁷ [REDACTED]²⁰⁸ [REDACTED],²⁰⁹
[REDACTED],²¹⁰ [REDACTED],²¹¹ [REDACTED],²¹² [REDACTED].²¹³

¹⁹² [KEN-OTP-0144-0272-R01](#) at 232-59.

¹⁹³ [KEN-OTP-0116-0495-R01](#).

¹⁹⁴ [KEN-OTP-0130-0566-R01](#) at 7-13.

¹⁹⁵ [KEN-OTP-0135-0103](#) at 129-32.

¹⁹⁶ [KEN-OTP-0135-0139](#) at 147-66.

¹⁹⁷ [KEN-OTP-0135-0113](#) at 810-9.

¹⁹⁸ [T-020](#), pp. 21, 24.

¹⁹⁹ [KEN-OTP-0103-3498](#); [KEN-OTP-0103-3497](#); [KEN-OTP-0105-0095](#); [KEN-OTP-0116-0479](#); [KEN-OTP-0116-0482](#); [KEN-OTP-0129-0702](#).

²⁰⁰ [KEN-OTP-0145-0560](#); [KEN-OTP-0145-0562](#); [KEN-OTP-0145-0554](#); [KEN-OTP-0116-0261](#); [KEN-OTP-0145-0566](#).

²⁰¹ [ICC-01/09-01/11-2027](#) (Reasons of Judge Eboe-Osuji), para. 1.

²⁰² *Id.* (Reasons of Judge Fremr), paras. 41, 43.

²⁰³ *Id.*, para. 41.

²⁰⁴ *Id.*, para. 39.

²⁰⁵ *Id.*, para. 116.

²⁰⁶ [KEN-OTP-0102-0178](#); [KEN-OTP-0106-0910](#); [KEN-OTP-0111-0162](#); [KEN-OTP-0111-0557](#); [KEN-OTP-0115-0216](#); [KEN-OTP-0118-0137](#); [KEN-OTP-0106-0922](#).

²⁰⁷ [KEN-OTP-0124-0007](#).

²⁰⁸ [KEN-OTP-0129-0740](#).

²⁰⁹ [KEN-OTP-0118-1927](#).

²¹⁰ [KEN-OTP-0118-1927](#).

²¹¹ [KEN-OTP-0111-0178](#); [KEN-OTP-0111-0179](#); [KEN-OTP-0111-0180](#); [KEN-OTP-0111-0181](#); [KEN-OTP-0111-0182](#); [KEN-OTP-0111-0184](#); [KEN-OTP-0111-0185](#).

²¹² [KEN-OTP-0103-3498](#); [KEN-OTP-0117-0897](#); [KEN-OTP-0117-0898](#); [KEN-OTP-0153-0041](#).

²¹³ [T-013](#); [T-014](#); [T-015](#).

59. [REDACTED],²¹⁴ [REDACTED],²¹⁵ [REDACTED],²¹⁶ [REDACTED],²¹⁷
 [REDACTED],²¹⁸ [REDACTED],²¹⁹ [REDACTED],²²⁰ [REDACTED],²²¹
 [REDACTED].²²²

60. [REDACTED].²²³

61. [REDACTED].²²⁴ [REDACTED],²²⁵ [REDACTED].

62. [REDACTED],²²⁶ [REDACTED].²²⁷ [REDACTED].

[REDACTED] (P-604)

63. [REDACTED],²²⁸ [REDACTED],²²⁹ [REDACTED].²³⁰

64. [REDACTED].²³¹ [REDACTED],²³² [REDACTED].²³³

65. [REDACTED].²³⁴

66. [REDACTED],²³⁵ [REDACTED];²³⁶ [REDACTED].²³⁷ [REDACTED];²³⁸
 [REDACTED].²³⁹

²¹⁴ [KEN-OTP-0102-0178](#), p. 0178.

²¹⁵ [KEN-OTP-0102-0178](#), para. 32.

²¹⁶ [KEN-OTP-0102-0178](#), para. 14.

²¹⁷ [KEN-OTP-0102-0178](#), para. 31; [KEN-OTP-0111-0557](#), paras. 57-60; [KEN-OTP-0118-0137](#), paras. 15-16.

²¹⁸ [KEN-OTP-0111-0162](#), para. 52.

²¹⁹ [KEN-OTP-0115-0216](#), para. 19.

²²⁰ [KEN-OTP-0124-0007](#), paras. 14-5.

²²¹ [KEN-OTP-0087-0031-R05](#), para. 19.

²²² [KEN-OTP-0102-0178](#), para. 23; [KEN-OTP-0106-0910](#), para. 25.

²²³ [DCC](#), paras. 113, 141.

²²⁴ *See supra* fns. 206-11.

²²⁵ [KEN-OTP-0130-0540-R01](#) at 396-414, 446-55, 471-3; [KEN-OTP-0135-0113](#) at 810-9.

²²⁶ [ICC-01/09-01/11-2027](#) (Reasons of Judge Eboe-Osuji), para. 1.

²²⁷ *Id.* (Reasons of Judge Fremr), paras. 106-7.

²²⁸ [KEN-OTP-0117-1019-R01](#).

²²⁹ [KEN-OTP-0143-0144-R01](#); [KEN-OTP-0143-0137-R01](#).

²³⁰ [KEN-OTP-0117-1060-R01](#); [KEN-OTP-0129-0414-R01](#); [KEN-OTP-0153-0016](#); [KEN-OTP-0153-0015](#); [KEN-OTP-0153-0052](#).

²³¹ [KEN-OTP-0117-1019-R01](#), paras. 20, 34.

²³² [KEN-OTP-0117-1019-R01](#), para. 11.

²³³ [KEN-OTP-0124-0007](#), paras. 14-5.

²³⁴ [DCC](#), paras. 156-9.

²³⁵ [KEN-OTP-0117-1019-R01](#), para. 19.

²³⁶ [KEN-OTP-0117-1019-R01](#), paras. 21-2.

²³⁷ [KEN-OTP-0117-1019-R01](#), para. 26.

²³⁸ [T-129](#), pp. 76-7.

²³⁹ [T-132](#), pp. 71-3.

67. [REDACTED],²⁴⁰ [REDACTED],²⁴¹ [REDACTED],²⁴² [REDACTED],²⁴³
[REDACTED],²⁴⁴ [REDACTED].

[REDACTED] (P-495)

68. [REDACTED],²⁴⁵ [REDACTED],²⁴⁶ [REDACTED],²⁴⁷ [REDACTED],²⁴⁸
[REDACTED].²⁴⁹

69. [REDACTED],²⁵⁰ [REDACTED],²⁵¹ [REDACTED],²⁵² [REDACTED].²⁵³

70. [REDACTED].²⁵⁴

71. [REDACTED]²⁵⁵ [REDACTED].²⁵⁶ [REDACTED].²⁵⁷ [REDACTED]²⁵⁸ [REDACTED]²⁵⁹

72. [REDACTED],²⁶⁰ [REDACTED].²⁶¹ [REDACTED]²⁶²

73. [REDACTED].²⁶³ [REDACTED].²⁶⁴ [REDACTED].

²⁴⁰ [KEN-OTP-0143-0144-R01](#) at 123-50.

²⁴¹ [KEN-OTP-0143-0144-R01](#) at 157-60.

²⁴² [KEN-OTP-0143-0144-R01](#) at 376-87.

²⁴³ [KEN-OTP-0143-0144-R01](#) at 572-5.

²⁴⁴ [KEN-OTP-0117-1060-R01](#); [KEN-OTP-0129-0414-R01](#); [KEN-OTP-0153-0016](#); [KEN-OTP-0153-0015](#); [KEN-OTP-0153-0052](#).

²⁴⁵ [KEN-OTP-0129-0740](#).

²⁴⁶ [KEN-OTP-0138-0649](#); [KEN-OTP-0138-0650](#); [KEN-OTP-0138-0651](#); [KEN-OTP-0138-0652](#); [KEN-OTP-0138-0653](#); [KEN-OTP-0138-0654](#); [KEN-OTP-0138-0655](#); [KEN-OTP-0138-0656](#); [KEN-OTP-0138-0657](#); [KEN-OTP-0138-0658](#); [KEN-OTP-0138-0659](#); [KEN-OTP-0138-0660](#); [KEN-OTP-0138-0661](#); [KEN-OTP-0138-0662](#); [KEN-OTP-0138-0663](#).

²⁴⁷ [KEN-OTP-0130-0478-R01](#); [KEN-OTP-0130-0507-R01](#); [KEN-OTP-0130-0540-R01](#); [KEN-OTP-0130-0585-R01](#); [KEN-OTP-0130-0563-R01](#); [KEN-OTP-0130-0462-R01](#); [KEN-OTP-0130-0566-R01](#).

²⁴⁸ [KEN-OTP-0145-0587](#); [KEN-OTP-0145-0594](#).

²⁴⁹ [T-024](#); [T-016](#); [T-017](#); [T-025](#).

²⁵⁰ [KEN-OTP-0130-0507-R01](#) at 381; [T-017](#), p. 14.

²⁵¹ [KEN-OTP-0135-0074](#) at 256-8; [KEN-OTP-0135-0054](#) at 404-26.

²⁵² [KEN-OTP-0130-0507-R01](#) at 93-4.

²⁵³ [KEN-OTP-0115-0216](#), para. 19.

²⁵⁴ [DCC](#), paras. 209, 211-5.

²⁵⁵ [KEN-OTP-0129-0740](#).

²⁵⁶ *See supra* fn. 246.

²⁵⁷ [KEN-OTP-0129-0740](#) at 71-85.

²⁵⁸ [KEN-OTP-0129-0740](#) at 105-6.

²⁵⁹ [KEN-OTP-0129-0740](#) at 108-9.

²⁶⁰ [KEN-OTP-0130-0540-R01](#) at 336-46.

²⁶¹ [KEN-OTP-0130-0507-R01](#) at 674-88.

²⁶² [KEN-OTP-0130-0540-R01](#) at 471-3.

²⁶³ [KEN-OTP-0130-0540-R01](#) at 512-22.

²⁶⁴ [KEN-OTP-0145-0594](#) at 105-6.

74. [REDACTED]²⁶⁵ [REDACTED]²⁶⁶ [REDACTED],²⁶⁷ [REDACTED]²⁶⁸
 “[REDACTED]²⁶⁹

[REDACTED] (P-536)

75. [REDACTED],²⁷⁰ [REDACTED],²⁷¹ [REDACTED],²⁷² [REDACTED].²⁷³

76. [REDACTED].²⁷⁴ [REDACTED].²⁷⁵

77. [REDACTED].²⁷⁶ [REDACTED].²⁷⁷ [REDACTED];²⁷⁸ [REDACTED].

78. [REDACTED].²⁷⁹ [REDACTED].

[REDACTED] (P-341)

79. [REDACTED]²⁸⁰ [REDACTED],²⁸¹ [REDACTED],²⁸² [REDACTED].²⁸³

80. [REDACTED].²⁸⁴ [REDACTED],²⁸⁵ [REDACTED],²⁸⁶ [REDACTED],²⁸⁷
 [REDACTED],²⁸⁸ [REDACTED],²⁸⁹ [REDACTED], [REDACTED].²⁹⁰

81. [REDACTED].²⁹¹

²⁶⁵ [T-016](#), p. 64.

²⁶⁶ [T-016](#), p. 63.

²⁶⁷ [T-016](#), pp. 64-5.

²⁶⁸ [T-016](#), p. 66.

²⁶⁹ [T-016](#), p. 69.

²⁷⁰ [KEN-OTP-0118-0011-R01](#); [KEN-OTP-0103-2693-R01](#); [KEN-OTP-0111-0188-R01](#); [KEN-OTP-0111-0201-R01](#).

²⁷¹ [KEN-OTP-0114-0244](#); [KEN-OTP-0114-0296](#), [KEN-OTP-0114-0198](#); [KEN-OTP-0114-0291](#).

²⁷² [KEN-OTP-0153-0044](#).

²⁷³ [T-007](#); [T-022](#); [T-008](#); [T-009](#); [T-010](#); [T-011](#); [T-012](#).

²⁷⁴ [KEN-OTP-0103-2693-R01](#), para. 20.

²⁷⁵ [DCC](#), paras. 244-6.

²⁷⁶ *See supra* fns. 270-1.

²⁷⁷ [T-011](#), pp. 80-1.

²⁷⁸ [KEN-OTP-0153-0044](#).

²⁷⁹ [ICC-01/09-01/11-2027](#).

²⁸⁰ [KEN-OTP-0150-0255-R01](#), [KEN-OTP-0149-0119-R01](#).

²⁸¹ [KEN-OTP-0150-0286-R01](#), [KEN-OTP-0150-0287-R01](#); [KEN-OTP-0150-0288-R01](#).

²⁸² [KEN-OTP-0149-0125](#); [KEN-OTP-0149-0126](#); [KEN-OTP-0150-0283-R01](#); [KEN-OTP-0159-1386](#).

²⁸³ [KEN-OTP-0159-1783-R01](#); [KEN-OTP-0159-1803-R01](#); [KEN-OTP-0159-1833-R01](#).

²⁸⁴ [KEN-OTP-0147-1590-R01](#).

²⁸⁵ [KEN-OTP-0147-2140-R01](#), p. 2140.

²⁸⁶ [KEN-OTP-0150-0255-R01](#), paras. 26, 132.

²⁸⁷ [KEN-OTP-0150-0255-R01](#), para. 34.

²⁸⁸ [KEN-OTP-0150-0255-R01](#), para. 43.

²⁸⁹ [KEN-OTP-0150-0255-R01](#), para. 42.

²⁹⁰ [KEN-OTP-0150-0255-R01](#), para. 43.

²⁹¹ [DCC](#), paras. 262-9.

82. [REDACTED].²⁹² [REDACTED].²⁹³ [REDACTED].²⁹⁴
83. [REDACTED].²⁹⁵ [REDACTED].²⁹⁶ [REDACTED].²⁹⁷ [REDACTED].²⁹⁸
84. [REDACTED].²⁹⁹ [REDACTED];³⁰⁰ [REDACTED].³⁰¹
85. [REDACTED].
86. [REDACTED].³⁰² [REDACTED].
87. [REDACTED].³⁰³ [REDACTED].³⁰⁴ [REDACTED].³⁰⁵ [REDACTED].³⁰⁶ [REDACTED].
88. [REDACTED].³⁰⁷ [REDACTED].³⁰⁸
89. [REDACTED]³⁰⁹ [REDACTED].³¹⁰

[REDACTED] (P-274)

90. [REDACTED]³¹¹ [REDACTED].³¹² [REDACTED].³¹³ [REDACTED].³¹⁴
91. [REDACTED].³¹⁵ [REDACTED].³¹⁶ [REDACTED].³¹⁷ [REDACTED].³¹⁸
92. [REDACTED].³¹⁹

²⁹² *Contra* [DCC](#), para. 261.

²⁹³ [KEN-OTP-0147-1590-R01](#).

²⁹⁴ [KEN-OTP-0147-1590-R01](#).

²⁹⁵ [KEN-OTP-0147-2140-R01](#), p. 2140.

²⁹⁶ [KEN-OTP-0147-2140-R01](#), pp. 2140-1.

²⁹⁷ [KEN-OTP-0147-2140-R01](#), p. 2142.

²⁹⁸ [KEN-OTP-0147-2140-R01](#), p. 2142.

²⁹⁹ [KEN-OTP-0150-0255-R01](#), para. 18.

³⁰⁰ [KEN-OTP-0150-0255-R01](#), paras. 62-5, 71-3, 77, 78-9, 83-91, 97.

³⁰¹ [KEN-OTP-0150-0255-R01](#), para. 88.

³⁰² [KEN-OTP-0150-0286-R01](#), [KEN-OTP-0150-0287-R01](#).

³⁰³ [KEN-OTP-0150-0288-R01](#).

³⁰⁴ [KEN-OTP-0149-0125](#); [KEN-OTP-0149-0126](#); [KEN-OTP-0150-0283-R01](#); [KEN-OTP-0159-1386](#).

³⁰⁵ [KEN-OTP-0150-0255-R01](#), paras. 29-30, 118.

³⁰⁶ [KEN-OTP-0147-2140-R01](#), p. 2140.

³⁰⁷ [KEN-OTP-0150-0285-R01](#).

³⁰⁸ [KEN-OTP-0150-0289-R01](#).

³⁰⁹ [KEN-OTP-0159-1803-R01](#) at 342-54.

³¹⁰ [KEN-OTP-0159-1803-R01](#) at 508-10.

³¹¹ [KEN-OTP-0159-0986-R01](#).

³¹² [KEN-OTP-0150-0345](#); [KEN-OTP-0160-0206](#).

³¹³ [KEN-OTP-0159-1855](#).

³¹⁴ [KEN-OTP-0159-1857](#).

³¹⁵ [KEN-OTP-0150-0345](#).

³¹⁶ [KEN-OTP-0159-0986-R01](#), para. 30.

³¹⁷ [KEN-OTP-0159-0986-R01](#), para. 49.

³¹⁸ [KEN-OTP-0159-0986-R01](#), para. 71.

³¹⁹ [DCC](#), paras. 306-15.

93. [REDACTED].³²⁰ [REDACTED].³²¹ [REDACTED].³²² [REDACTED].

94. [REDACTED],³²³ [REDACTED].³²⁴

Silas SIMATWO, Isaac MAIYO, and MP Elisha BUSIENEI (“Managers”)

95. The OTP claims that SIMATWO, MAIYO, and MP BUSIENEI were “managers” of a common plan.³²⁵ There is no evidence that Mr. Gicheru had any dealings with these individuals concerning any of the witnesses, [REDACTED]. Nor did the OTP make any attempt to contact these individuals and question them in relation to witness interference in the *Ruto and Sang* case, and in particular, Mr. Gicheru. There is no corroborating evidence that Mr. Gicheru was associated with any of these individuals during the relevant period, had contact with any of these individuals concerning the witnesses in relation to the events, or was engaged with these individuals in any common plan to locate and corruptly influence witnesses.

IV. THE CHARGES

96. A qualitative assessment of the evidence, individually and holistically, considering the nature of the evidence, its reliability and credibility, its source and the context in which it was obtained, the nexus to the charges or suspect, and indicia of reliability shows that Mr. Gicheru is not criminally responsible for the offences of corruptly influencing witnesses: (a) under Article 25(3)(a) as a direct perpetrator (Counts 1, 2, 4, 5, 7, and 8 only) or as a direct co-perpetrator (Counts 3 and 6); (b) under Article 25(3)(d) for contributing in any other way to the commission of the charged offences by a group of persons acting pursuant to a common plan; (c) under Article 25(3)(b) for soliciting or inducing the direct perpetrators to commit the charged offences; or (d) under Article 25(3)(c) for aiding, abetting, or otherwise assisting the direct perpetrators in the commission of the charged offences.³²⁶

97. **COUNT 1.** [REDACTED].³²⁷ [REDACTED].³²⁸ [REDACTED].

³²⁰ [KEN-OTP-0159-1803-R01](#) at 500-10.

³²¹ [DCC](#), para. 312; [KEN-OTP-0159-0986-R01](#), para. 62.

³²² [KEN-OTP-0160-0206](#).

³²³ [KEN-OTP-0150-0345](#).

³²⁴ [DCC](#), para. 304.

³²⁵ [DCC](#), para. 40.

³²⁶ *Contra* [DCC](#), para. 33.

³²⁷ *See supra* para. 41. [KEN-OTP-0143-0185](#); [KEN-OTP-0159-0795](#) at 322-424.

³²⁸ [DCC](#), pp. 133-4.

98. **COUNT 2.** [REDACTED].³²⁹ [REDACTED].

99. **COUNT 3.** [REDACTED].³³⁰ [REDACTED].

100. **COUNT 4.** [REDACTED].³³¹ [REDACTED].³³² [REDACTED].

101. **COUNT 5.** [REDACTED].³³³ [REDACTED].³³⁴

102. **COUNT 6.** [REDACTED].³³⁵ [REDACTED].

103. **COUNT 7.** [REDACTED].³³⁶ [REDACTED].

104. **COUNT 8.** [REDACTED].³³⁷ [REDACTED].

V. CONCLUSION AND RELIEF SOUGHT

105. The OTP has effectively presented its case in seeking the confirmation of charges. Assuming the OTP's investigation is largely complete as it should be, having had years to investigate,³³⁸ and assuming, as expected, the OTP has put its best available evidence,³³⁹ the essence of the evidence before the Chamber is insufficient to confirm the charges and should give pause to any expectation that it would sustain a No Case to Answer challenge were the case sent to trial, let alone meet the burden of proof of beyond reasonable doubt required for a conviction. Beneath the surface of the cosmetically impressive 170-page DCC and the OTP's glossy rendition of the events that it claims demonstrates that Mr. Gicheru corruptly influenced OTP witnesses, is a pervading pattern of calculated neglect of evidence, abject disregard of context, and reckless abandonment of fairness and discernment. Irrespective of whether the assertions claimed by the OTP have a whiff of plausibility – as the shine of fool's gold would to the unsophisticated and unwary, considering that much of the evidence is untestable hearsay – were the Chamber to take the OTP's evidence at face value as it claims it must, the confirmation of charges would erroneously be predicated on unsound and erroneous findings of fact and a misapplication of the law, resulting in an erroneous and unsustainable confirmation.

³²⁹ [DCC](#), pp. 138-9.

³³⁰ [DCC](#), pp. 142-3.

³³¹ [ICC-01/09-01/11-2027](#) (Reasons of Judge Fremr), paras. 39, 41, 43, 116.

³³² [DCC](#), pp. 147-8.

³³³ [DCC](#), p. 152.

³³⁴ [T-016](#), p. 64.

³³⁵ [DCC](#), pp. 156-7.

³³⁶ [DCC](#), pp. 159-60.

³³⁷ [DCC](#), pp. 165-6.

³³⁸ [ICC-01/04-01/10-514](#), para. 44.

³³⁹ [ICC-01/09-01/11-153](#), para. 8; [ICC-01/09-02/11-181](#), para. 8.

WHEREFORE, there being no evidence that Mr. Gicheru was a member of any common plan to identify, locate, and corruptly influence OTP witnesses, and there being no concrete evidence linking Mr. Gicheru to any of the events, to any of the so-called “managers,” to any of the witnesses other than P-397, or to any of the advocates who prepared affidavits for withdrawing witnesses, the Chamber should **DECLINE** to confirm the charges against Mr. Gicheru.

Respectfully submitted, 30 April 2021,
In The Hague, the Netherlands.

A handwritten signature in black ink, appearing to read 'M. G. Karnavas', written over a horizontal line.

Michael G. Karnavas
Counsel for Mr. Paul Gicheru