

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: English

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  
With Confidential Annexes A-C**

**Public redacted version of “Prosecution’s written submissions on the confirmation of charges”**

**Source: Office of the Prosecutor**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda

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**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. INTRODUCTION

1. The Prosecution files herewith its written submissions on the confirmation of charges as ordered by Pre-Trial Chamber A (Article 70).<sup>1</sup>
2. The Prosecutions requests the Chamber to confirm the charges as contained in Chapter C<sup>2</sup> of the Document Containing the Charges.<sup>3</sup> The Prosecution submits, for reasons set out below, that the charges set forth in the DCC are clear, comprehensively detailed and fully conform to the requirements of the Statute and jurisprudence of the Court. Furthermore, the evidence presented by the Prosecution establishes, to the required standard, that Mr Paul Gicheru<sup>4</sup> is criminally responsible for corruptly influencing eight witnesses charged under each of the alleged modes of liability.

## II. CONFIDENTIALITY

3. This document is filed as “confidential” under regulation 23bis(1) of the Regulations of the Court, since it contains information that may reveal the identity of Prosecution witnesses, confidential evidence and other confidential information related to the Prosecution’s investigations that should not be made available publically. A public redacted version will be filed simultaneously, as ordered by the Chamber.<sup>5</sup>

## III. SUBMISSIONS

### **Nature and gravity of the offences**

4. Gicheru is criminally responsible, as a direct perpetrator, co-perpetrator or accessory, for a concerted campaign of witness interference in the case of *The Prosecutor vs William Samoei Ruto and Joshua Arap Sang*.<sup>6</sup> Through promises and

---

<sup>1</sup> “Chamber”. *Per* ICC-01/09-01/20-T-001-Red-Eng, p. 11, lines 1-15, ICC-01/09-01/20-103 and ICC-01/09-01/20-127.

<sup>2</sup> “Charges”.

<sup>3</sup> ”DCC”, ICC-01/09-01/20-125-Conf-AnxA-Corr2.

<sup>4</sup> “Gicheru”.

<sup>5</sup> ICC-01/09-01/20-127, para. 14.

<sup>6</sup> “Ruto and Sang case”.

actual payments of bribes, threats and intimidation, Gicheru and his associates perverted the course of justice in that case, directly contributing to its collapse.

5. The course of conduct underpinning these charges formed part of a broader pattern of witness intimidation and political pressure undertaken by a broad spectrum of persons with the aim of either stopping or sabotaging the prosecution of the persons charged, including Ruto.<sup>7</sup> However, while Gicheru and his associates were not the only persons attempting to interfere with this case, their actions were undoubtedly the most harmful. They led directly to the withdrawal and/or recanting of at least four vital Prosecution Witnesses,<sup>8</sup> [REDACTED].<sup>9</sup> Efforts to corruptly influence another two<sup>10</sup> were thwarted because the witnesses concerned reported this to the Prosecution. And within this most damaging cabal of witness interference, the evidence establishes that Gicheru played the leading role.
6. The *modus operandi* of Gicheru and his associates was to identify, locate and contact Prosecution witnesses in the *Ruto and Sang* case<sup>11</sup>—[REDACTED]. Once contacted, Prosecution Witnesses were corruptly influenced, either through promises of large payments or threats of harm—or a combination of the two.<sup>12</sup> To achieve these ends Gicheru identified and suborned persons with connections to the OTP investigation, such as [REDACTED] [REDACTED]<sup>13</sup> [REDACTED], leveraging their unique knowledge of and access to Prosecution Witnesses.<sup>14</sup>
7. Through these means, Gicheru and his associates corruptly influenced their targets to withdraw as Prosecution Witnesses<sup>15</sup> and/or recant their prior

---

<sup>7</sup> DCC, paras. 30-32.

<sup>8</sup> P-0397, P-0516, P-0800 and P-495.

<sup>9</sup> [REDACTED].

<sup>10</sup> P-0613 and P-0536.

<sup>11</sup> “Prosecution Witness”, as defined in the DCC, including any “person who knows or is believed to know information that may be relevant to the proceedings before the Court, regardless of whether or not such person has been previously contacted by either party”, *Bemba et al* Appeal Judgment, ICC-01/05-01/13-2275-Red, para. 721.

<sup>12</sup> DCC, paras. 37-39, 44-48.

<sup>13</sup> [REDACTED]

<sup>14</sup> DCC, paras. 42 a)-d), 48.

<sup>15</sup> DCC, paras. 78, 192, 272, 275.

evidence.<sup>16</sup> In some instances, witnesses were also induced to make false allegations attacking the credibility of other Prosecution Witnesses or the integrity of the Prosecution and other staff members of the Office of the Prosecutor.<sup>17</sup> Once successfully corrupted, Prosecution Witnesses were in turn induced to contact further witnesses and the process was repeated.<sup>18</sup>

8. These actions led directly to the withdrawal of some of the Prosecution's most important [REDACTED] witnesses, including P-0397, P-0516, P-0800<sup>19</sup> and P-0495. Since attempts to rely on the prior recorded testimony of these witnesses were rejected by the Appeals Chamber,<sup>20</sup> the Prosecution was deprived of key evidence that severely damaged its case.
9. The importance of preventing and repressing offences such as those before the Chamber cannot be overstated. As observed by the Single Judge of Pre-Trial Chamber II "offences against the administration of justice are of the utmost gravity, even more so when proceedings relating to crimes as grave as those within the jurisdiction of the Court are at stake. They may not only threaten or disrupt the overall fair and efficient functioning of the justice in the specific case to which they refer, but also ultimately undermine the public trust in the administration of justice and the judiciary, most notably when they are committed by highly educated individuals."<sup>21</sup>
10. Indeed, offences such as these strike at the very heart of the Court's unique mandate, to end impunity for the perpetrators of the most serious crimes of concern to the international community, by undermining investigations and prosecutions and allowing such persons to evade criminal liability, and denying

---

<sup>16</sup> DCC, paras. 113, 218-219; *See also* para. 160.

<sup>17</sup> DCC, paras. 218-219.

<sup>18</sup> DCC, paras. 79, 112, 140, 146, 152-155, 193, 213-214, 267-269, 273, 311-312.

<sup>19</sup> Although P-0800 later resumed cooperation with the Prosecution and testified voluntarily, his credibility was significantly compromised.

<sup>20</sup> ICC-01/09-01/11-2024 OA10.

<sup>21</sup> ICC-01/05-01/13-258, para. 16.

justice to victims.<sup>22</sup> They also undermine the Court's truth-seeking function by corrupting the evidence and making it more difficult for a chamber to parse the truth from lies.

11. The present case is also particularly serious in the spectrum of gravity. It involved an organised campaign by Gicheru and his associates to corruptly influence Prosecution Witnesses over a number of months preceding and during the *Ruto and Sang* trial; it involved no fewer than eight Prosecution Witnesses; and it contributed directly to the vacation of the charges in that case,<sup>23</sup> following the withdrawal and recanting of a number of vital Prosecution Witnesses,<sup>24</sup> preventing the Trial Chamber from determining the guilt or innocence of the Accused on the strength of untainted evidence and ultimately denying justice to the victims of the PEV. Gicheru bears particular responsibility for all of this, given the central and essential role he played in the commission of the offences,<sup>25</sup> including as a direct perpetrator.<sup>26</sup>
12. It is thus particularly important that offences such as those concerned in the present case are brought to trial where the evidence can be fully ventilated. Given the additional layer of complexity in the assessment of evidence that is caused by the corrupting of some of the witnesses involved, it is important in cases such as this that the evidence should be fully ventilated and assessed, with the benefit of in person testimony, which allows the Parties and the judges to utilise all the tools and techniques available to determine the truth.<sup>27</sup>

---

<sup>22</sup> See *Bemba et al* ICC-01/05-01/13-T-50-ENG, pp. 3-4: "Although such offences are not the core crimes this Court was established to try, it has become apparent in the short time span of the Court's existence that preventing offences against the administration of justice is of the utmost importance for the functioning of the International Criminal Court. Such offences have this significance because criminal interference with witnesses may impede the discovery of the truth in cases involving genocide, crimes against humanity and war crimes. They have this significance because they may impede justice to victims of the most atrocious crimes. And ultimately they may impede the Court's ability to fulfil its mandate."

<sup>23</sup> ICC-01/09-01/11-2027-Red-Corr, *per* Judge Eboe-Osuji, para. 141. See also majority opinion, paras. 147-148.

<sup>24</sup> ICC-01/09-01/11-2027-Red-Corr, paras. 151-2, 178.

<sup>25</sup> DCC, para. 45.

<sup>26</sup> DCC, para. 33 and Counts 1, 2, 4, 5 and 7.

<sup>27</sup> See *Bemba et al*, Trial Judgment, ICC-01/05-01/13-1989-Red, paras. 202-206; *Prosecutor vs Ongwen*, Trial Judgment, ICC-02/04-01/15-1762-Red, paras. 255-259. For these reasons, and the reasons already set out in the

## **The Charges**

13. The Prosecution has filed detailed and specific charges clearly setting out the material facts<sup>28</sup> underpinning the charges, their legal qualification, and the precise forms of participation alleged, as ordered by the Chamber, and in accordance with regulation 52 of the Regulations of the Court and the guidance provided in the Chambers Practice Manual. The DCC provides a comprehensive narrative and analysis of the facts, supported by references to the main items of evidence relied upon to establish these facts. These charges provide the Defence with the legally required notice of the charges and the facts and circumstances underpinning them.<sup>29</sup>
14. The Prosecution submits that the charges, as pleaded, establish all of the essential elements of the offence of corruptly influencing a witness in contravention of article 70(1)(c) of the Statute to the required level of specificity,<sup>30</sup> and contain all the necessary averments underpinning the modes of liability alleged.

## **The Prosecution evidence**

### *Legal Standard*

15. Article 61(5) requires the Prosecution to support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime (or offence) charged. The jurisprudence of the Court has determined that this burden of proof is met “upon the presentation of concrete and tangible evidence demonstrating a clear line of reasoning underpinning the Prosecution’s

---

DCC (paras. 12-13), the Chamber should be particularly cautious about reaching adverse credibility findings based only upon written documents, unless it is convinced that such evidence is completely incapable of belief.

<sup>28</sup> See *Prosecutor v. Ruto, Kosgey & Sang*, ICC-01/09-01/11-373, paras. 46 and 47; *Prosecutor v. Lubanga*, ICC-01/04-01/06-2205 OA15 OA16, para. 90, fn.163; *Prosecutor v. Muthaura, Kenyatta & Ali*, ICC-01/09-02/11-382-Red, para. 59.

<sup>29</sup> Article 67(1) (a) of the Statute provides that an accused is entitled “[t]o be informed promptly and in detail of the nature, cause and content of the charge”. See also *Prosecutor v. Gbagbo*, ICC-02/11-01/11-572 OA5, para. 36; *Prosecutor v. Lubanga*, ICC-01/04-01/06-3121-Red, para. 119; *Prosecutor v. Lubanga*, OA15 OA16, 8 December 2009, para. 97.

<sup>30</sup> Bearing in mind the nature of the charges and the proximity of the suspect to the alleged events. See *Prosecutor v. Lubanga*, ICC-01/04-01/06-3121-Red, para. 122.

specific allegations”.<sup>31</sup> The evidence presented by the Prosecution is both concrete and tangible, as elaborated below. If accepted by the Trial Chamber, it will establish all of the essential elements of the offences charged.

16. It is not required of the Prosecution to prove guilt beyond reasonable doubt at this stage of the proceedings. That will be determined at trial, if charges are confirmed, when Gicheru’s guilt or innocence is decided.<sup>32</sup> At this stage, what is required of the Chamber is to perform a filtering function to ensure that cases are only committed for trial in respect of those persons “against whom sufficiently compelling charges going beyond mere theory or suspicion have been brought”.<sup>33</sup>
17. As a necessary corollary, even if the Defence were to present evidence or arguments that might raise doubt – even reasonable doubt – as regards any of the essential elements of the charges or modes of liability alleged, or other possible inferences to be drawn from the evidence presented, this alone would be insufficient grounds for the Chamber to decline to confirm the charges.

#### *Nature of the evidence*

18. The Prosecution has provided a comprehensive and detailed narrative of the relevant facts underpinning the charges and modes of liability and the evidence relied upon to establish these facts.<sup>34</sup> However, in its assessment of the evidence, the Chamber should not only examine the details relating to the individual charges and their essential elements, but also step back and consider the evidence

---

<sup>31</sup> ICC-01/04-01/06-803-tEN, paras. 37, 39; ICC-01/04-01/07-717, para. 65; ICC-01/05-01/08-424, paras. 28-29; ICC-02/05-02/09-243-Red, para. 37; ICC-01/09-01/11-373, para. 40; ICC-01/04-01/07-428-Corr, para. 5; ICC-02/05-02/09-243-Red, para. 39; ICC-02/05-03/09-121-Corr-Red, para. 31. *See further* DCC paras. 11-13.

<sup>32</sup> *Prosecutor v. Al Mahdi*, ICC-01/12-01/15-84-Red, 24 March 2016, para. 18; *Prosecutor v. Muthaura, Kenyatta & Ali*, ICC-01/09-02/11-382-Red, para. 52; *Prosecutor v. Ruto, Kosgey & Sang*, ICC-01/09-01/11-373, 23 January 2012, para. 40.

<sup>33</sup> ICC-01/04-01/06-796-Conf-tEN, para. 37; *See also* ICC-02/05-02/09-136, para. 4, ICC-01/09-02/11-382-Red, para. 52, ICC-01/12-01/15-84-Red, para. 15.

<sup>34</sup> DCC, Chapter B, sections II-IX.



as a whole. Viewed holistically, this evidence presented in the DCC, and summarised in the following paragraphs, presents a comprehensive and compelling picture of a concerted scheme to identify, trace and corruptly influence Prosecution Witnesses—with Gicheru at its centre.

19. To assist the Chamber to understand the events and persons involved, the Prosecution submits herewith the following explanatory annexes: Annex A is an updated version of the timeline filed together with the DCC;<sup>35</sup> Annex B is a diagram depicting the persons alleged to be involved in corruptly influencing each witness for which Gicheru is charged; and Annex C is a summary of relevant information pertaining to the persons discussed in the DCC.

#### *Testimonial evidence*

20. The Prosecution has produced direct, testimonial evidence from five witnesses<sup>36</sup> which establishes that Gicheru was personally involved in bribing and/or intimidating them, *inter alia*, to withdraw as Prosecution Witnesses and/or recant their evidence.<sup>37</sup> The corrupt influencing by Gicheru of a sixth witness (P-0495) was witnessed by P-0800, who himself acted as an Intermediary for Gicheru,<sup>38</sup> and corroborated by P-0495's subsequent actions in corruptly influencing P-0613.<sup>39</sup> In the case of the remaining two witnesses,<sup>40</sup> direct witness evidence establishes that they were corruptly influenced by Intermediaries<sup>41</sup> linked to Gicheru, and who explicitly informed them that they were acting on Gicheru's behalf.<sup>42</sup>
21. However, the charges do not rest on the say-so of these witnesses alone. Rather, they are corroborated in several important respects by cogent objective evidence

---

<sup>35</sup> ICC-01/09-01/20-125-Conf-AnxD.

<sup>36</sup> P-0397, P-0516, P-0800, P-0341 and P-0274.

<sup>37</sup> See DCC, paras. 74-80 [P-0397], 107-110 [P-0516], 192-193 [P-0800], 267-270, 272-276 [P-0341], 311-312 [P-0274].

<sup>38</sup> DCC, paras. 211-214.

<sup>39</sup> DCC, paras. 215-216.

<sup>40</sup> P-0613 and P-0536.

<sup>41</sup> P-0540 and P-0495 respectively.

<sup>42</sup> DCC, paras. 146, 155 [P-0615] and 246 [P-0536].

including recorded phone conversations, telecommunication data from witnesses' cell phones, recordings and photographs of in person meetings,<sup>43</sup> bank records,<sup>44</sup> open source material and contact information [REDACTED].

22. The volume and variety of evidence implicating Gicheru in this bribery scheme is simply too comprehensive, compelling and mutually reinforcing to be explained away by criticisms of the credibility or reliability of witnesses or alternative theories. The Prosecution submits that this evidence not only meets the standard of proof required at this stage of the proceedings, but exceeds it by some margin.
23. In the paragraphs that follow, some of the important sources of objective corroboration are discussed in more detail.

*Contemporaneous recordings*

24. Due to the real time, proactive investigative steps undertaken into the ongoing witness bribery activities, the Prosecution was able to document several attempts to corruptly influence Prosecution Witnesses as they happened.<sup>45</sup> Additionally, a number of conversations between intermediaries acting for Gicheru and his associates were recorded by the Prosecution Witnesses they were targeting. In these recordings, the Intermediaries themselves explain important details of the Common Plan to the targeted witnesses in their own words.
25. In particular, P-0540's numerous phone calls with P-0800 and P-0536, and his subsequent face to face meetings with P-0800, comprehensively document his efforts to corruptly influence both of them, and also P-0613. Significantly, P-0540 himself explicitly told P-0800 during their in person, [REDACTED] meeting that he was working for Gicheru, who was trying to locate ICC witnesses

---

<sup>43</sup> Between P-0540 and P-0800: *see* DCC, paras. 185-187; and between P-0495 and P-0613: *see* DCC, paras. 154-155 and 215 respectively.

<sup>44</sup> Of P-0397 and P-0341.

<sup>45</sup> *See* solemn declaration of [REDACTED] KEN-OTP-0159-0884 at 0897, para. 44 *et seq*, where he explains in detail the steps taken to document the witness interference activities as they transpired.

[REDACTED], that payments from Ruto were being channelled through Gicheru<sup>46</sup> and that he would report back to Gicheru on the outcome of his efforts.<sup>47</sup> Similarly, after offering P-0536 bribes to withdraw as a witness and return [REDACTED],<sup>48</sup> P-0540 told her in a [REDACTED] call that upon her return she would be taken to meet Gicheru.<sup>49</sup>

26. P-0495 also confirmed in a [REDACTED] meeting – during which he promised P-0613 cash payments and other benefits if she withdrew as a witness and returned to Kenya – that Gicheru was the person who was giving out the money and that he “had all the authority” and would “arrange everything”.<sup>50</sup> This meeting not only documents P-0495’s efforts to corruptly influence P-0613 in collusion with Gicheru, but also provides corroboration for the fact that he himself was corruptly influenced by Gicheru,<sup>51</sup> as witnessed by P-0800.<sup>52</sup>
27. Significantly, the Defence has not submitted any evidence of their own that could explain why these intermediaries who offered bribes to the Prosecution Witnesses would have falsely claimed – in contemporaneous statements made in the course of the commission of the crimes charged –that they acted on behalf of Gicheru.
28. In other instances, conversations [REDACTED] after the fact provide corroboration for witness evidence of the involvement of Gicheru and [REDACTED] in corruptly influencing Prosecution Witness P-0397.<sup>53</sup> While both Gicheru and [REDACTED] stopped short of admitting corruptly influencing P-0397, their acquiescence and apparent acceptance of P-0397’s narrative of events

---

<sup>46</sup> DCC, para. 185.

<sup>47</sup> DCC, para. 187.

<sup>48</sup> DCC, paras. 244-245.

<sup>49</sup> DCC, paras. 246-247.

<sup>50</sup> DCC, para. 155.

<sup>51</sup> Notwithstanding his subsequent denials to investigators. *See* DCC, para. 216.

<sup>52</sup> DCC, paras. 212-214.

<sup>53</sup> DCC, paras. 83-85.

- in circumstances that would provoke a strong denial from an innocent person
- creates a strong inference of guilt.

#### *Bank records*

29. The evidence reveals that Gicheru and his associates were careful not to leave any financial trail of the bribes paid to the Prosecution Witnesses.<sup>54</sup> Nevertheless, despite instructions from Gicheru to the contrary, two of the corrupted Prosecution Witnesses deposited the proceeds of the bribe payments into their bank accounts. While these were cash deposits that cannot be directly linked to Gicheru, they are clearly large deposits of cash that are not commensurate with the means and status of the witnesses concerned, nor their prior banking history. These deposited amounts therefore corroborate their evidence as to the fact, timing and amount of the bribes allegedly paid to them by Gicheru.

#### **The Defence evidence**

30. The Defence has elected not to submit any evidence of its own for the purposes of the confirmation of charges proceedings,<sup>55</sup> nor to make accompanying written submissions as envisioned by the Chamber.<sup>56</sup> Instead, it relies on (as yet unspecified) evidence contained on the Prosecution's List of Evidence and [REDACTED] of evidence disclosed by the Prosecution.<sup>57</sup>
31. The Prosecution has reviewed the [REDACTED] of Prosecution-disclosed evidence contained on the Defence List of Evidence and considers it more efficient to make substantial written submissions on this material after considering the Defence's submissions thereon. However, the Prosecution can make certain general submissions at this stage based upon the review of this material alone.

---

<sup>54</sup> DCC para. 70 c) and fn 179.

<sup>55</sup> ICC-01/09-01/20-127, para. 14.

<sup>56</sup> ICC-01/09-01/20-127, para. 14.

<sup>57</sup> ICC-01/09-01/20-134, and Conf-AnxA ("Defence LoE").

32. The documents relied upon by the Defence fall into four broad categories, which are discussed in turn below.

*Documents related to other sources of witness interference*<sup>58</sup>

33. The Prosecution recalls that it does not allege that Gicheru and his associates were the only persons engaged in witness interference. It has always been the Prosecution case that the activities of Gicheru and the Common Plan Members<sup>59</sup> formed part of a wider pattern of witness interference.<sup>60</sup> Indeed, at the early stages of the investigation, pressure was applied to suspected Prosecution Witnesses largely by members of the Kalenjin communities and prominent elders. However, as witnesses were relocated away from the source of direct threats, other means of influence had to be found and Gicheru and his associates emerged as one of the chief purveyors of such corrupt influence. According to the available evidence, Gicheru's involvement emerged in 2013, initially overtly through his representation of P-0015 in his withdrawal as a witness, and subsequently covertly from at least April 2013, through the activities detailed in the charges.
34. Further, there is no reason to assume that the witness interference perpetrated by Gicheru and his associates and that perpetrated by other persons are mutually exclusive, so the existence of one does not disprove the other. Thus, the fact that other persons were also engaged in witness interference does not detract from the substantial body of evidence documenting Gicheru's own involvement, as detailed in the DCC and described in the discussion of the Prosecution's evidence above. None of the documents listed provide a factual basis to conclude that any persons other than Gicheru and his associates were responsible for the instances of witness interference for which he has been charged.

---

<sup>58</sup> For instance, Defence LoE, [REDACTED].

<sup>59</sup> DCC, paras. 40 - 43.

<sup>60</sup> DCC, paras. 30-31.

*Documents related to allegations levelled against the Prosecution*<sup>61</sup>

35. From the early stages of the investigation into the PEV, even before the OTP involvement, the suspects and their supporters pushed a narrative that any person who implicated the suspects in the PEV were doing so in the hope of profiting thereby, for instance through witness protection or assistance from NGOs. Once the OTP investigation commenced, similar accusations were levelled against the OTP, to the effect that the OTP used financial incentives to induce witnesses to falsely implicate the suspects.
36. The Prosecution does not yet know whether the Defence intends to advance the argument that the Prosecution deliberately suborned false evidence through promises of financial benefits. However, the Prosecution notes [REDACTED]. The Prosecution notes further that [REDACTED] withdrawal and recanting of his prior statements followed a similar pattern as other witnesses who were subjected to corrupt interference. He was summonsed to testify before in the *Ruto and Sang* case, declared hostile and impeached. Thus, the Prosecution submits that such claims – which are inherently incredible - should be treated with extreme caution until fully ventilated and tested in evidence.
37. The Prosecution also observes that the Defence in the *Ruto and Sang* disavowed evidence by another summonsed witness implicating the Prosecution in such activities.<sup>62</sup>

*Documents related to witness expenses*<sup>63</sup>

38. Another narrative advanced in parallel to the above, was that witnesses duped OTP investigators with false statements in the expectation of financial benefits and a life of ease under the Court's witness protection program. If the purpose of relying on documents relating to witness expenses is to support such an

---

<sup>61</sup> Defence LoE, [REDACTED].

<sup>62</sup> ICC-01/09-01/20-T-017-CONF-ENG, 73 ln. 7 – 10.

<sup>63</sup> Defence LoE, [REDACTED].

argument, the Prosecution submits that a closer inspection and analysis would demonstrate the opposite. Expenses paid were for the reimbursement of necessary expenses incurred as a result of the Prosecution's investigations,<sup>64</sup> necessary security expenses,<sup>65</sup> or reasonable and necessary support for relocated witnesses.

39. In reality, witness protection is far from "a life of ease". To the contrary, witnesses [REDACTED]. Thus, it is vital that witnesses are provided the necessary assistance to ensure that their security requirements and reasonable day to day expenses are met. This responsibility falls chiefly on the Registry through their Victims and Witnesses Section, which is a neutral organ and responsible for Prosecution and Defence witnesses alike. Apart from operational expenses, the Prosecution only covered witness expenses where this was necessary for exigent security reasons, pending an assessment by the VWS and in consultation with them.

*Documents related to witness credibility*<sup>66</sup>

40. In this regard, the Prosecution refers to its overarching submissions on the assessment of witness credibility at the confirmation stage<sup>67</sup> and reiterates its submission that, notwithstanding credibility issues with certain witnesses in other respects, this does not mean that their evidence on issues relevant to this case must simply be dismissed as false—certainly not without a far closer parsing of the evidence, which is only possible once witnesses have an opportunity to testify and address such issues.
41. However, as regards [REDACTED],<sup>68</sup> the Prosecution notes the contradiction between the versions of P-0274 and P-0341 as to whether it was P-0341 or another

---

<sup>64</sup> [REDACTED].

<sup>65</sup> [REDACTED].

<sup>66</sup> Defence LoE, [REDACTED].

<sup>67</sup> DCC, paras. 12-13.

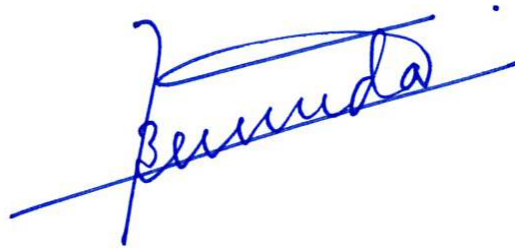
<sup>68</sup> Transcripts of a re-interview of P-0341.

person who brought P-0274 to meet Gicheru. Clearly one of these versions cannot be correct, but it is impossible – at this stage – to determine which. The Prosecution submits that, again, this issue requires further interrogation, both through additional investigation by the Prosecution and by a careful testing of the evidence through oral testimony and against the background of the entirety of the evidence presented to the Trial Chamber, should the charges be confirmed.

42. However, even if the Chamber were to determine that it is unsafe to rely upon P-0274's assertion that it was P-0341 who took him to meet Gicheru, this would not in itself be cause to decline to confirm Count 8, since this does not go directly to the criminal responsibility of Gicheru in respect of the acts personally performed by him.

#### IV. CONCLUSION

43. For the foregoing reasons, the Prosecution requests the Chamber to confirm the charges as contained in Chapter C of the Document Containing the Charges.



---

**Fatou Bensouda, Prosecutor**

Dated this 30<sup>th</sup> day of April 2021  
At The Hague, The Netherlands