

**Cour
Pénale
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**International
Criminal
Court**

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Date: 28 April 2022

TRIAL CHAMBER III (ARTICLE 70)

Before: Judge Miatta Maria Samba

SITUATION IN THE REPUBLIC OF KENYA

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

Public

Public Redacted Version of “Defence Bar Table Motion,” 25 April 2022, ICC-01/09-01/20-325-Conf

Source: Counsel for Paul Gicheru

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Mr. Paul Gicheru, through his Counsel (“the Defence”), hereby requests the admission of 74 documents through the bar table. This Bar Table Motion and Annex A are filed confidentially pursuant to Regulation 23bis(1) of the Regulations of the Court since they contain confidential material.

I. BACKGROUND

1. In preparation for the commencement of the trial on 15 February 2022, the Trial Chamber ordered that any party wishing to tender evidence through the bar table must file a written application containing: (a) a short description of the content of each item; (b) an index of the most relevant portions of the document or recording (in the case of a lengthy document); and (c) a short description of relevance and *prima facie* probative value.¹ During the OTP’s case-in-chief, the Trial Chamber heard the testimony of eight OTP witnesses, including P-0800, P-0341, P-0613, P-0274, P-0738, P-0516, and P-0739, whose evidence the Defence seeks to admit through this Bar Table Motion.
2. P-0800 testified as the first OTP witness between 15 and 17 February 2022.² During cross-examination, the Defence questioned P-0800, among other things, on his: (a) relationships and interactions with other OTP witnesses, in particular, P-0516 and P-0613;³ (b) reporting of threats to the OTP and security situation;⁴ (c) relationship with the OTP and [REDACTED];⁵ and (d) affidavit in [REDACTED].⁶
3. P-0341 testified as the second OTP witness between 21 and 22 February 2022.⁷ During cross-examination, the Defence questioned P-0341, among other things, on money deposited in his bank account,⁸ with P-0341 agreeing that there is nothing supporting his claim that the sums of money deposited in his bank account originate from Mr. Gicheru.⁹
4. P-0613 testified as the third OTP witness between 23 and 28 February 2022.¹⁰ During cross-examination, the Defence questioned P-0613, among other things, on her: (a) reporting of security threats and other information to the OTP;¹¹ (b) recruitment of P-0604,

¹ [ICC-01/09-01/20-189](#), para. 37.

² [ICC-01/09-01/20-T-050](#); [ICC-01/09-01/20-T-051](#); [ICC-01/09-01/20-T-052](#).

³ [ICC-01/09-01/20-T-051](#), p. 4, line 11 to p. 6, line 7; p. 108, line 18 to p. 109, line 11; [ICC-01/09-01/20-T-052](#), p. 49, line 6 to p. 50, line 14, p. 53, line 23 to p. 55, line 11.

⁴ [ICC-01/09-01/20-T-051](#), p. 96, line 8 to p. 97, line 16, p. 103, line 25 to p. 104, line 2; [ICC-01/09-01/20-T-052](#), p. 14, line 8 to p. 16, line 4, p. 18, line 19 to p. 25, line 12, p. 47, line 16 to p. 49, line 3.

⁵ [ICC-01/09-01/20-T-052](#), p. 44, line 25 to p. 47, line 11.

⁶ [ICC-01/09-01/20-T-052](#), p. 65, line 14 to p. 99, line 9.

⁷ [ICC-01/09-01/20-T-053](#); [ICC-01/09-01/20-T-054](#).

⁸ [ICC-01/09-01/20-T-054](#), p. 43, line 24 to p. 44, line 4.

⁹ [ICC-01/09-01/20-T-054](#), p. 44, lines 5-8.

¹⁰ [ICC-01/09-01/20-T-055](#); [ICC-01/09-01/20-T-056](#); [ICC-01/09-01/20-T-057](#); [ICC-01/09-01/20-T-058](#).

¹¹ [ICC-01/09-01/20-T-056](#), p. 53, line 10 to p. 57, line 21

- P-0516, and P-0495 as ICC witnesses and her instructions on what to put in their statements to obtain benefits and relocation from the ICC;¹² (c) audio-recording of P-0495 (and P-0495's testimony that P-0613 instructed him to mention the name Gicheru in the recorded conversation);¹³ (d) audio-recorded conversations with P-0019 [REDACTED] (which she was unaware were being recorded);¹⁴ and (e) adoption of two children [REDACTED].¹⁵
5. P-0274 testified as the fourth OTP witness between 28 February and 1 March 2022.¹⁶ During cross-examination, P-0274 claimed that he provided audio-recorded statements to the Legal Representative for Victims ("LRV") and Victims and Witnesses Unit ("VWU") [REDACTED] concerning an incident in 2012 [REDACTED].¹⁷
 6. P-0738 testified as the fifth OTP witness on 3 March 2022.¹⁸ She testified about her contacts with P-0540.¹⁹
 7. P-0516 testified as the seventh OTP witness from 17 to 21 March 2022.²⁰ During cross-examination, the Defence questioned P-0516, among other things, on his: (a) meeting with P-0613 and P-0800, who told him what to put in his statement before meeting with the OTP;²¹ (b) false evidence against Ruto given to the OTP in order to receive benefits from the ICC;²² (c) withdrawal on his own accord because he did not get what he expected;²³ (d) inconsistent statements about meeting an unidentified individual in a hotel who offered him money and why he changed his evidence;²⁴ and (e) inconsistent statements about his process of withdrawing from the ICC and going to [REDACTED] based on his own decision.²⁵
 8. P-0739 testified as the eighth OTP witness from 22 to 24 March 2022.²⁶ During cross-examination, the Defence questioned P-0739, among other things, on his: (a) false

¹² [ICC-01/09-01/20-T-057](#), p. 4, line 6 to p. 26, line 16.

¹³ [ICC-01/09-01/20-T-057](#), p. 26, line 17 to p. 27, line 25.

¹⁴ [ICC-01/09-01/20-T-057](#), p. 38, line 7 to p. 75, line 7.

¹⁵ [ICC-01/09-01/20-T-057](#), p. 89, line 13 to p. 99, line 14.

¹⁶ [ICC-01/09-01/20-T-058](#); [ICC-01/09-01/20-T-059](#).

¹⁷ [ICC-01/09-01/20-T-059](#), p. 53, line 13 to p. 56, line 12, p. 60, line 11 to p. 63, line 15.

¹⁸ [ICC-01/09-01/20-T-060](#).

¹⁹ [ICC-01/09-01/20-T-060](#).

²⁰ [ICC-01/09-01/20-T-063](#); [ICC-01/09-01/20-T-064](#); [ICC-01/09-01/20-T-065](#).

²¹ [ICC-01/09-01/20-T-064](#), p. 4, line 6 to p. 6, line 19, p. 11, line 21 to p. 16, line 19.

²² [ICC-01/09-01/20-T-064](#), p. 17, line 23 to p. 21 line 7.

²³ [ICC-01/09-01/20-T-065](#), p. 6, line 23 to p. 7, line 16.

²⁴ [ICC-01/09-01/20-T-065](#), p. 23, line 10 to p. 29, line 23.

²⁵ [ICC-01/09-01/20-T-065](#), p. 71, line 7 to p. 88, line 23.

²⁶ [ICC-01/09-01/20-T-066](#); [ICC-01/09-01/20-T-067](#); [ICC-01/09-01/20-T-068](#).

statements to the [REDACTED],²⁷ the [REDACTED],²⁸ and [REDACTED];²⁹ (b) false statements to the OTP;³⁰ (c) level of detail in constructing false statements;³¹ (d) motivation for becoming an ICC witness;³² (e) contacts with other OTP witnesses and warning letters from the VWU;³³ (f) personal and financial details;³⁴ and (g) [REDACTED].³⁵

9. On 22 April 2022, the Defence sent Annex A to the OTP, which lists 74 items related to these seven witnesses that the Defence seeks to admit through the bar table, including investigation reports, witness statements, transcripts of interviews, witness-related expense reports, transcripts from the *Ruto and Sang* case, forensic extraction reports, OTP screening notes, email communications, translations of transcripts of audio-recorded telephone calls, and statements given to Kenyan human rights organizations and other entities.
10. The OTP consents to the admission of Items 37, 42, 45, and 63-65 and opposes the admission of all other items.³⁶

II. LAW AND ARGUMENT

11. To be admissible from the bar, evidence must be: (a) *prima facie* relevant to the issues at trial; (b) of probative value; and (c) “sufficiently relevant and probative so as to outweigh any prejudicial effect its admission may cause.”³⁷
12. Evidence is relevant if it is “logically connected to one or more facts at issue” and “has the potential to influence the Chamber’s determination on at least one fact that needs to be determined to resolve the case.”³⁸ The probative value of evidence is determined on factors such as indicia of reliability, trustworthiness, and authenticity.³⁹ When assessing whether the probative value of evidence is outweighed by any prejudicial effect, the Trial Chamber must consider: (a) what causes the prejudice; and (b) who suffers the prejudice.⁴⁰ The

²⁷ [ICC-01/09-01/20-T-067](#), p. 69, line 25 to p. 79, line 25.

²⁸ [ICC-01/09-01/20-T-067](#), p. 70, line 2 to p. 85, line 23.

²⁹ [ICC-01/09-01/20-T-067](#), p. 85, line 24 to p. 94, line 16.

³⁰ [ICC-01/09-01/20-T-068](#), p. 6, line 3 to p. 10, line 16.

³¹ [ICC-01/09-01/20-T-067](#), p. 89, line 6 to p. 94, line 16.

³² [ICC-01/09-01/20-T-067](#), p. 13, line 20 to p. 18, line 17; [ICC-01/09-01/20-T-068](#), p. 10, line 9 to p. 14, line 3.

³³ [ICC-01/09-01/20-T-067](#), p. 11, line 10 to p. 12, line 15, p. 20, line 22 to p. 21, line 21.

³⁴ [ICC-01/09-01/20-T-067](#), p. 49, line 25 to p. 50, line 25, p. 68, lines 8-23; [ICC-01/09-01/20-T-068](#), p. 82, line 13 to p. 90, line 11.

³⁵ [ICC-01/09-01/20-T-068](#), p. 46, line 20 to p. 63, line 10.

³⁶ Annex A.

³⁷ [ICC-01/05-01/08-2721](#), para. 9; [ICC-01/04-01/06-1399](#), paras. 27-31; [ICC-01/09-01/11-1353](#), paras. 14-16.

³⁸ [ICC-01/05-01/08-2012](#), para. 14.

³⁹ [ICC-01/05-01/08-2012](#), para. 15.

⁴⁰ [ICC-01/04-01/07-2635](#), para. 38.

existence and extent of any prejudice is determined on a case-by-case basis, considering the specific characteristics of the evidence and nature of the prejudice alleged.⁴¹

13. Evidence submitted after the testimony of witnesses is admissible, so long as witnesses were provided a “sufficient opportunity to comment on the *information contained* in [the] documents.”⁴² Thus, if the information contained in a document was, at least in part, put to a witness, the probative value of the document is not outweighed by any potential prejudice which could result from its admission.⁴³
14. Prior recorded testimony may also be admitted through the bar table, so long as it is not submitted for the truth of its contents. For example, “[i]f a party wishes to introduce the testimony only with the aim of proving that the witness stated something – irrespective of if it is true or not – or in order to prove inconsistencies in the witness’s statements, it is not necessary to introduce the statements pursuant to Rule 68 of the Rules.”⁴⁴
15. Annex A sets out in detail the relevance, probative value, and authenticity of all items tendered for admission. All items are *prima facie* relevant and are probative of the issues at trial, namely the credibility of the witnesses that testified during the OTP’s case-in-chief. Any prejudice caused by the introduction of these items is substantially outweighed by their probative value. None of the prior recorded testimony listed in Annex A is submitted for the truth of its contents.

Category A: Items associated with P-0800

16. Items 1-9 in Category A of the Annex consists of eight OTP investigation reports (Items 1-8) and a publicly available Judgment of the Court of Appeal at Nairobi [REDACTED].
17. *Relevance and probative value.* Items 1-9 are *prima facie* relevant to the issues at trial since they are probative of P-0800’s credibility as a witness when considering, *inter alia*, his: (a) relationships with other witnesses, in particular P-0516 and P-0613;⁴⁵ (b) reporting of security threats to the OTP;⁴⁶ (c) relationship with the OTP and reasons for leaving his

⁴¹ [ICC-01/04-01/07-2635](#), para. 38.

⁴² [ICC-01/04-02/06-2201](#), para. 7 (emphasis added).

⁴³ See [ICC-01/04-02/06-2201](#), para. 55 (The Trial Chamber admitted a document even though the Defence did not put it to a witness, considering that the information contained in the document, was, at least in part, put to the witness).

⁴⁴ [ICC-01/05-01/13-1478](#), para. 34 (internal footnotes omitted).

⁴⁵ [KEN-OTP-0141-0026-R01](#) (Item 1).

⁴⁶ [KEN-OTP-0106-0530](#) (Item 2); [KEN-OTP-0129-0699-R01](#) (Item 3); [KEN-OTP-0145-0434](#) (Item 4); [KEN-OTP-0116-0497-R01](#) (Item 5); [KEN-OTP-0129-0575](#) (Item 6).

protection location;⁴⁷ and (d) numerous inconsistent statements concerning his affidavit prepared [REDACTED].⁴⁸

18. *Authenticity.* Items 1-8 were prepared by OTP investigators in the ordinary course of their investigation, bear the OTP letterhead, and note the date they were filed and the names of the investigators who prepared them. Item 9 is publicly available online on the official Kenyan National Council for Law Reporting website and includes the case number and name of the ruling.
19. *Lack of prejudice.* The probative value of Items 1-9 outweighs any prejudicial effect. The OTP has been on sufficient notice of the content of these items since Items 1-8 were disclosed by the OTP and Item 9 was disclosed to the OTP on 1 April 2022 after the Defence sought its admission through P-0800.⁴⁹ Any prejudice to P-0800 is *de minimis* considering that he was cross-examined on the information contained in Items 1-9.⁵⁰

Category B: Items associated with P-0341

20. Items 10-12 in Category B of the Annex consists of three OTP investigation reports noting various contacts with P-0341.
21. *Relevance and probative value.* Items 10-12 are *prima facie* relevant to the issues at trial since they are probative of the reliability of P-0341's bank statements and his credibility as a witness.⁵¹ Specifically, P-0341 was instructed by OTP investigators in [REDACTED] to obtain a certified copy of his bank statements in a sealed envelope,⁵² which he failed to do⁵³ until [REDACTED].⁵⁴
22. *Authenticity.* Items 10-12 were prepared by OTP investigators in the ordinary course of their investigation, bear the OTP letterhead, and note the date they were filed and the names of the investigators who prepared them.

⁴⁷ [KEN-OTP-0143-0199-R01](#) (Item 7); [KEN-OTP-0138-0002-R01](#) (Item 8).

⁴⁸ [REDACTED]; [KEN-OTP-0135-0103-R01](#), p. 107, line 160 to p. 108, line 178; [KEN-OTP-0135-0139-R01](#), p. 0148, line 328 to p. 0152, line 475; [KEN-OTP-0135-0155-R01](#), p. 0156, line 14 to p. 0159, line 112, p. 0167, lines 419 to p. 0169, line 467; [KEN-OTP-0135-0213](#), p. 0214, line 29 to p. 0127, line 146; [KEN-OTP-0135-0220](#), p. 0222, line 42 to p. 0223, line 83; [KEN-OTP-0160-0400-R02](#), p. 0421, lines 744 to 761; [KEN-OTP-0160-0468](#), p. 0478, line 347 to p. 0479, line 397; [KEN-OTP-0160-0489](#), p. 0494, line 167 to p. 500, line 369. *See also supra* para. 2.

⁴⁹ Email from the Defence entitled "Defence List of evidence for submission/ P-0800," 18 February 2022, 16:32.

⁵⁰ *See supra*, para. 2.

⁵¹ [KEN-OTP-0159-1384](#) (Item 10); [KEN-OTP-0159-1853](#) (Item 11); [KEN-OTP-0160-1441](#) (Item 12).

⁵² [KEN-OTP-0147-2140-R01](#).

⁵³ [KEN-OTP-0153-0025](#); [KEN-OTP-0159-1384](#) (Item 10).

⁵⁴ [KEN-OTP-0159-1384](#) (Item 10).

23. *Lack of prejudice.* The probative value of Items 10-12 outweighs any prejudicial effect. The OTP has been on sufficient notice of the content of these items since they were generated and disclosed by the OTP. Any prejudice to P-0341 is *de minimis* considering that he was cross-examined on the information contained in Items 10-12.⁵⁵

Category C: Items associated with P-0613

24. Items 13-19 in Category C of the Annex consists of an investigation report (Item 13), one translation of a transcript of an audio-recorded telephone call with P-0019 (Item 14), and five transcripts of testimony from the *Ruto and Sang* case (Items 15-19).
25. *Relevance and probative value.* Items 13-19 are *prima facie* relevant to the issues at trial since they are probative of P-0613's credibility as a witness when considering her: (a) reporting of security threats to the OTP and motivation for becoming an OTP witness;⁵⁶ (b) relationships with other witnesses, including P-0604, P-0019, P-0800, P-0516, and P-0495;⁵⁷ (c) instructions to other witnesses on what to mention in their statements or to investigators to remain relevant to the OTP's investigation, receive benefits, and be relocated;⁵⁸ (d) audio-recorded conversations with P-0019;⁵⁹ and (e) adoption of two children [REDACTED].⁶⁰
26. *Authenticity.* Items 13 was prepared by OTP investigators in the ordinary course of their investigation, bears the OTP letterhead, and notes the date it was filed and the names of the investigators who prepared it. Item 14 was audio-recorded by the [REDACTED] pursuant to a request for assistance from the OTP and was translated by the OTP. Items 15-19 are official English confidential transcripts of the *Ruto and Sang* case that were transferred into the *Gicheru* case on 15 January and 23 August 2021.⁶¹
27. *Lack of prejudice.* The probative value of Items 13-19 outweighs any prejudicial effect. The OTP has been on sufficient notice of the content of these items since they were generated and disclosed by the OTP (Items 13-14) and because the same OTP team led the

⁵⁵ See *supra*, para. 3.

⁵⁶ [KEN-OTP-0134-0210](#) (Item 13).

⁵⁷ [KEN-OTP-0157-3522-R01](#) (Item 14). See also [ICC-01/09-01/20-T-016-CONF-Red-ENG](#) (Item 16); [ICC-01/09-01/20-T-043-CONF-ENG](#) (Item 18); [ICC-01/09-01/20-T-046-CONF-ENG](#) (Item 19).

⁵⁸ [ICC-01/09-01/20-T-016-CONF-Red-ENG](#) (Item 16); [ICC-01/09-01/20-T-042-CONF-ENG](#) (Item 17); [ICC-01/09-01/20-T-043-CONF-ENG](#) (Item 18); [ICC-01/09-01/20-T-046-CONF-ENG](#) (Item 19).

⁵⁹ [KEN-OTP-0157-3522-R01](#) (Item 14).

⁶⁰ [ICC-01/09-01/20-T-015-CONF-Red-ENG](#) (Item 15).

⁶¹ [ICC-01/09-01/11-2043](#); [ICC-01/09-01/20-165](#).

prosecution in the *Ruto and Sang* case (Items 15-19). Any prejudice to P-0613 is *de minimis* considering that she was cross-examined on the information contained in Items 13-19.⁶²

Category D: Items associated with P-0274

28. Item 20 in Category D of the Annex is an OTP witness statement of P-0274 taken between 2 and 4 February 2021.⁶³
29. *Relevance and probative value.* Item 20 is *prima facie* relevant to the issues at trial since it is probative of P-0274's credibility as a witness when considering his claims that: (a) he gave audio-recorded interviews to the LRV and VWU in [REDACTED] in [REDACTED]; and (b) that [REDACTED] took him to Mr. Gicheru's office (a claim that [REDACTED] denied under oath).⁶⁴
30. *Authenticity.* Item 20 was prepared by OTP investigators in the course of their investigation. It is signed by P-0274 and notes the investigators who prepared it, and the date, place, and time of his interview.
31. *Lack of prejudice.* The probative value of Item 20 outweighs any prejudicial effect. The OTP has been on sufficient notice of the content of Item 20 since it was generated and disclosed by the OTP. Any prejudice to P-0274 is *de minimis* considering that he was cross-examined on the information contained in Item 20.⁶⁵

Category E: Items associated with P-0738

32. Items 21-23 in Category E of the Annex consists of two investigation reports and a spreadsheet of OTP witness-related expenses borne by P-0738.
33. *Relevance and probative value.* Items 21-23 are *prima facie* relevant to the issues at trial since they are probative of P-0738's credibility when considering her: (a) reporting of security threats to the OTP and motivation for becoming an OTP witness;⁶⁶ and (b) money received as a result of becoming an OTP witness.⁶⁷
34. *Authenticity.* Items 21 and 22 were prepared by OTP investigators in the ordinary course of their investigation, bear the OTP letterhead, and note the date they were filed and the names of the investigators who prepared them. Item 23 was prepared by the OTP and notes

⁶² See *supra*, para. 4.

⁶³ [KEN-OTP-0159-0986-R01](#) (Item 20).

⁶⁴ [REDACTED].

⁶⁵ See *supra*, para. 5.

⁶⁶ [KEN-OTP-0104-0679](#) (Item 21); [KEN-OTP-0140-0273-R01](#) (Item 22).

⁶⁷ [KEN-OTP-0153-0093](#) (Item 23).

the date, witness expense category, amount, and sub-total and total amounts received by P-0738.

35. *Lack of prejudice.* The probative value of Items 21-23 outweighs any prejudicial effect. The OTP has been on sufficient notice of the content of these items since they were generated and disclosed by the OTP. While the Defence did not cross-examine P-0738, any prejudice to her caused by the introduction of Items 21-23 is *de minimis*.

Category F: Items associated with P-0516

36. Items 24-37 in Category F of the Annex consists of four transcripts from the *Ruto and Sang* trial (Items 24-27), P-0516's OTP witness statement (Item 28), eight transcripts of interview (Items 29-36), and P-0516's witness clarification log in the *Gicheru* case (Item 37).
37. *Relevance and probative value.* Items 24-37 are *prima facie* relevant to the issues at trial since they are probative of P-0516's credibility (as well as P-0613 and P-0800) when considering his: (a) meeting with P-0613 and P-0800, who instructed him on what to put in his statement in order to secure benefits and relocation from the OTP;⁶⁸ (b) false statements against Ruto provided to the OTP in order to receive benefits from the ICC;⁶⁹ (c) statements that he withdrew because he did not get what he expected;⁷⁰ (d) inconsistent statements on meeting an unidentified individual at a hotel who offered him 300,000 Kenyan shillings;⁷¹ and (e) inconsistent statements on his process of withdrawing from the ICC.⁷²
38. *Authenticity.* Items 24-27 are official English confidential transcripts of the *Ruto and Sang* case that were transferred into the *Gicheru* case on 15 January 2021.⁷³ Items 28-37 were prepared by the OTP in the course of its investigation and note the investigators or lawyers who prepared them, and the date, place, and time of the witness's interviews and preparation sessions.
39. *Lack of prejudice.* The probative value of Items 24-27 outweighs any prejudicial effect. The OTP has been on sufficient notice of the content of these items since they were

⁶⁸ [ICC-01/09-01/20-T-003-CONF-Red-ENG](#) (Item 24); [ICC-01/09-01/20-T-004-CONF-Red-ENG](#) (Item 25).

⁶⁹ [ICC-01/09-01/20-T-006-CONF-Red-ENG](#) (Item 27); [KEN-OTP-0087-0031-R05](#) (Item 28).

⁷⁰ [ICC-01/09-01/20-T-005-CONF-Red-ENG](#) (Item 26); [ICC-01/09-01/20-T-006-CONF-Red-ENG](#) (Item 27).

⁷¹ [KEN-OTP-0150-0684-R01](#) (Item 29); [KEN-OTP-0150-0706-R01](#) (Item 30); [KEN-OTP-0160-0188](#) (Item 36); [KEN-OTP-0160-0149](#) (Item 35); [KEN-OTP-0160-1658](#) (Item 37).

⁷² [KEN-OTP-0150-0734-R01](#) (Item 31); [KEN-OTP-0150-0837-R01](#) (Item 32); [KEN-OTP-0160-0078](#) (Item 33); [KEN-OTP-0160-0107](#) (Item 34).

⁷³ [ICC-01/09-01/11-2043](#).

generated and disclosed by the OTP (Items 28-37) and because the same OTP team led the prosecution in the *Ruto and Sang* case (Items 24-27). Any prejudice to P-0516 is *de minimis* considering that he was cross-examined on the information contained in Items 24-37.⁷⁴

Category G: Items associated with P-0739

40. Items 38-74 in Category G of the Annex consists of statements made to [REDACTED] (Items 38-41), OTP screening notes (Item 42), investigation reports (Items 43-47), witness preparation and clarification logs (Items 48, 63-65), P-0739's OTP witness statement (Item 49), email communications (Item 50-51), transcripts of interviews (Items 52-62), [REDACTED] (Items 66-74).
41. *Relevance and probative value.* Items 38-74 are *prima facie* relevant to the issues at trial since they are probative of P-0739's credibility when considering his: (a) admission to giving false evidence against Ruto in his statements to the [REDACTED] and [REDACTED];⁷⁵ (b) admission to giving false evidence to the OTP;⁷⁶ (c) level of detail in constructing false statements;⁷⁷ (d) reporting of security threats and motivation for becoming an OTP witness;⁷⁸ (e) communications and relationships with other witnesses (and communications taking place during [REDACTED]);⁷⁹ (f) prior statements regarding his personal and financial details;⁸⁰ (g) inconsistent statements concerning his [REDACTED];⁸¹ and (h) clarifications offered to his prior statements.⁸²
42. *Authenticity.* Items 38 and 41 are on official [REDACTED] forms which were transferred to OTP investigators. Item 39 is a handwritten statement done at the [REDACTED] (and later given to the [REDACTED]), which P-0739 acknowledges as being his.⁸³ Item 40 is a copy of his handwritten statement done at the [REDACTED], which has false or invented

⁷⁴ See *supra*, para. 7.

⁷⁵ [KEN-OTP-0038-0212-R02](#) (Item 38); [KEN-OTP-0005-0221-R01](#) (Item 39); [KEN-OTP-0141-0307-R01](#) (Item 54); [KEN-OTP-0142-0379-R01](#) (Item 56); [ICC-01/09-01/20-T-032-CONF-ENG](#) (Item 67); [ICC-01/09-01/20-T-035-CONF-ENG](#) (Item 70); [ICC-01/09-01/20-T-036-CONF-ENG](#) (Item 71).

⁷⁶ [KEN-OTP-0086-0048](#) (Item 42); [KEN-OTP-0029-0131-R04](#) (Item 49); [KEN-OTP-0141-0339-R01](#) (Item 55).

⁷⁷ [KEN-OTP-0135-0458-R01](#) (Item 40); [KEN-OTP-0142-0408-R01](#) (Item 43); [KEN-OTP-0142-0440-R01](#) (Item 58); [KEN-OTP-0142-0490-R01](#) (Item 59).

⁷⁸ [KEN-OTP-0087-0098-R01](#) (Item 41); [KEN-OTP-0129-0524](#) (Item 43); [KEN-OTP-0129-0525-R01](#) (Item 44).

⁷⁹ [KEN-OTP-0108-0192](#) (Item 45); [KEN-OTP-0117-0917](#) (Item 46); [KEN-OTP-0134-0196-R01](#) (Item 47); [KEN-OTP-0160-1713-R01](#) (Item 50); [KEN-OTP-0160-1715](#) (Item 51); [KEN-OTP-0141-0251-R01](#) (Item 52); [KEN-OTP-0141-0271-R01](#) (Item 53); [KEN-OTP-0142-0618-R01](#) (Item 60); [KEN-OTP-0142-0649-R01](#) (Item 61); [ICC-01/09-01/20-T-021-CONF-Red-ENG](#) (Item 74).

⁸⁰ [KEN-OTP-0144-0011-R01](#) (Item 62); [ICC-01/09-01/20-T-031-CONF-ENG](#) (Item 66); [ICC-01/09-01/20-T-037-CONF-ENG](#) (Item 72); [ICC-01/09-01/20-T-038-CONF-ENG](#) (Item 73).

⁸¹ [ICC-01/09-01/20-T-033-CONF-ENG](#) (Item 68); [ICC-01/09-01/20-T-034-CONF-ENG](#) (Item 69).

⁸² [KEN-OTP-0148-0098-R01](#) (Item 48); [KEN-OTP-0148-0108-R01](#) (Item 63); [KEN-OTP-0160-1699](#) (Item 64). [KEN-OTP-0160-1703](#) (Item 65).

⁸³ [ICC-01/09-01/20-T-067](#), p. 86, line 5 to p. 89, line 7.

portions marked in green, according to investigators' instructions during P-0739's [REDACTED] interview.⁸⁴ Items 42-65 were prepared by the OTP in the course of its investigation and note the investigators or lawyers who prepared them, and the date, place, and time of the communications, witness interviews, and preparation sessions. Items 66-74 are [REDACTED].⁸⁵

43. *Lack of prejudice.* The probative value of Items 38-74 outweighs any prejudicial effect. The OTP has been on sufficient notice of the content of these items since they were either discovered and disclosed by the OTP (Items 38-41), generated by the OTP (Items 42-65), and [REDACTED] (Items 66-74). Any prejudice to P-0739 is *de minimis* considering that he was cross-examined on the information contained in Items 38-74.⁸⁶

WHEREFORE, for all the reasons stated herein, Trial Chamber III should, **RECOGNIZE** the items contained in Annex A as formally submitted into the record of the case.

Respectfully submitted, 28 April 2022,
In The Hague, the Netherlands.



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⁸⁴ [KEN-OTP-0142-0466-R01](#), p. 0743.

⁸⁵ [ICC-01/09-01/11-2043](#).

⁸⁶ See *supra*, para. 8.