

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 21 June 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 Closing Brief,” 10 June 2022, ICC-01/09-01/20-332-Conf

Source: Counsel for Paul Gicheru

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

The Office of the Prosecutor

Mr. James Stewart

Mr. Anton Steynberg

Counsel for the Defence

Mr. Michael G. Karnavas

Ms. Suzana Tomanović

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

Other

REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Mr. Paul Gicheru, through his Counsel (“the Defence”), hereby files his Closing Brief. This Brief and Annex A are filed confidentially pursuant to Regulation 23*bis*(1) of the Regulations of the Court since they contain confidential material.

I. OVERVIEW

1. Corrupted by tunnel-vision due to a combination of ineptitude, indifference, lack of due diligence, self-imposed restrictions on investigating in the Rift Valley and elsewhere, and with no small measure of pre-conceived result-determinateness, the Office of the Prosecutor (“OTP”) investigators conducted an irreparably flawed investigation, based on the lies, hearsay, and unsubstantiated claims by grifters, opportunists, con-artists, and confabulators of Olympic proportion. Cogently:
 - Witnesses’ backgrounds were not properly investigated, with investigators failing to comprehend their interconnectivity and proclivity for passing information on to each other according to their own motives and goals – obtaining money and relocation from the ICC.
 - Investigators dangled the possibility of being relocated before witnesses when obtaining their evidence.
 - Witnesses who were known to have lied were interviewed an inordinate number of times to smooth out inconsistencies and improbabilities in their evidence or tailor it to the OTP’s case.
 - Witnesses’ accounts were accepted without any double-checking, even when blatantly clear had they been paying attention, that what witnesses were telling them was inconsistent or illogical.
 - No efforts were made to conduct financial investigations, verify telephone evidence, or interview the so-called “managers” and others involved in or assisting what the OTP argues was a common plan to influence witnesses.
 - None of the investigators, other than P-0730 who testified as a summary witness, came to testify at trial based on what they personally performed, observed, and perceived when interviewing witnesses.
2. Inappropriately, the OTP is expecting the Trial Chamber to rely on assumptions and unverifiable hearsay, to accept the word of documented deceivers, to fill in the gaps of its woefully flawed investigation, to overlook its abject failure to adduce credible evidence, and to make unsupported findings that it has met its burden of proving the confirmed counts to the standard of beyond reasonable doubt. The Trial Chamber must not abide. It must acquit on all counts.

II. THE STANDARD OF PROOF AND ASSESSMENT OF EVIDENCE

3. Before Mr. Gicheru may be convicted of any offence, the Trial Chamber must be convinced beyond reasonable doubt of all material facts corresponding to the elements of the offence and modes of liability for which he is charged.¹ Mr. Gicheru incorporates by reference the principles set out in paragraph six of his Trial Brief for how the Trial Chamber should assess the evidence.²
4. When assessing the evidence, the Trial Chamber must carry out a “holistic evaluation and weighing of *all* the evidence taken together in relation to the fact at issue;”³ i.e., the “evidentiary weight of individual items of evidence should not be determined in isolation, but rather in conjunction with other evidence.”⁴ Holistic fact-finding cannot “be used as an excuse or reason for making findings beyond a reasonable doubt on the basis of a collection of weak evidence”⁵ and “cannot cure the weakness of individual items of evidence.”⁶
5. While hearsay is not per se inadmissible before the ICC, it is impermissible to make findings beyond a reasonable doubt based on hearsay evidence – especially where the Trial Chamber does not or cannot establish the reliability of the source of information.⁷ Out-of-court (hearsay) statements that were authenticated by the investigators who took them, such as investigation reports and OTP interviews, neither establish nor guarantee the reliability of the content.⁸
6. Where a factual assertion is based on an inference drawn from circumstantial evidence, it is only established beyond a reasonable doubt *if* it is the only reasonable conclusion that can be drawn from the evidence.⁹ It is not sufficient that a conclusion is merely *a* reasonable conclusion available from circumstantial evidence; the conclusion pointing to the guilt of the accused must be the *only* reasonable conclusion available.¹⁰
7. When faced with conflicting evidence or evidence of inherently low probative value (such as hearsay evidence), the Trial Chamber’s reasoning as to how it reached a given factual conclusion will be of great significance in determining whether that conclusion was

¹ [Rome Statute](#), Art. 66(3). [ICC-01/05-01/08-3636-Red](#), paras. 42, 46; [ICC-01/05-01/13-1989](#), para. 186.

² [ICC-01/09-01/20-253](#), para. 6.

³ [ICC-01/05-01/13-1989](#), para. 188 (internal citations omitted).

⁴ [ICC-01/05-01/08-3636-Anx2](#), para. 15 (separate opinion of Judges Morrison and Van den Wyngaert).

⁵ [ICC-01/05-01/08-3636-Anx2](#), para. 15 (separate opinion of Judges Morrison and Van den Wyngaert).

⁶ [ICC-01/05-01/08-3636-Anx2](#), para. 15 (separate opinion of Judges Morrison and Van den Wyngaert).

⁷ [ICC-01/05-01/08-3636-Anx2](#), para. 8 (separate opinion of Judges Morrison and Van den Wyngaert).

⁸ [ICC-01/05-01/08-3636-Anx2](#), para. 9 (separate opinion of Judges Morrison and Van den Wyngaert).

⁹ [ICC-01/05-01/08-3636-Red](#), para. 42, quoting [ICC-01/05-01/13-2275-Red](#), para. 46.

¹⁰ [ICC-01/05-01/08-3636-Red](#), para. 42, quoting [ICC-01/05-01/13-2275-Red](#), para. 46.

reasonable.¹¹ As a general rule, “where the underlying evidence for a factual conclusion appears on its face weak, more reasoning is required than when there is a sound evidentiary basis.”¹²

III. THE QUALITY OF THE OTP’S INVESTIGATION

8. The OTP’s investigation is a textbook lesson *on how not to* conduct an unbiased, methodical, and diligent investigation where the sole objective is to let the evidence lead where it may, as opposed to having a predestined outcome lead the evidence. Alarming, the OTP is expecting the Trial Chamber to find the needles of truth – if any exist – hidden in the massive haystacks of lies by each witness, inaptly cherry-pick through the witnesses’ accounts with preference accorded to the most recent versions produced through countless and ever-evolving “clarifications,” and to step into the breach and fill in the gaps in the witnesses’ testimony and in its case overall as it relates to the charges and modes of liability. The evidence – if viewed holistically and objectively – does not rise to the level of proof beyond a reasonable doubt.
9. ***The OTP did not investigate in the Rift Valley.*** Investigators were not forbidden by the Kenyan government from investigating in the Rift Valley.¹³ Yet due to a self-imposed policy not to investigate in the Rift Valley,¹⁴ investigators did not visit the alleged crime scene to make simple inquiries.¹⁵ At no point did the Senior OTP Investigation Team Leader request the Integrated Team Leader for an exception to verify particular information.¹⁶ Witnesses’ security concerns – for instance, [REDACTED],¹⁷ [REDACTED]¹⁸ – were never checked,¹⁹ just as other claims were never checked, something that the witnesses knew, thus greenlighting them to lie convincingly with impunity.²⁰ Of its own making, the OTP failed to adduce credible evidence – if such evidence ever existed – showing concretely that witnesses’ security was at risk. The notion

¹¹ [ICC-01/05-01/08-3636-Red](#), para. 43.

¹² [ICC-01/05-01/08-3636-Red](#), para. 43, quoting *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/SC, [Appeal Judgment](#), 23 November 2016, F36, para. 90.

¹³ [T-061](#), p. 61, lines 6-20.

¹⁴ [T-061](#), p. 15, lines 12-19, p. 63, lines 2-19.

¹⁵ [T-061](#), p. 14, line 22 to p. 15, line 11.

¹⁶ [T-061](#), p. 63, lines 22-25.

¹⁷ [T-056](#), p. 53, line 10 to p. 56, line 5. [REDACTED] P-0613 was passing this information on without knowing whether it was true or false.

¹⁸ [KEN-OTP-0105-0095](#), p. 0096. [REDACTED].

¹⁹ No evidence has been presented on whether the OTP ever followed up on P-0613’s claims concerning [REDACTED]. See [T-056](#), p. 53, line 10 to p. 56, line 5. As for P-0800’s claims concerning [REDACTED], P-0730 admitted that the “right thing to do” would have been to have someone deliver [REDACTED] to some place other than the Rift Valley so it could be inspected. This was not done. [T-062](#), p. 20, lines 7 to p. 21, line 25.

²⁰ P-0516 testified that he would place himself into certain areas knowing that the ICC was never going to check. [T-064](#), p. 23, lines 23-25.

that YEBEI's death and [REDACTED] is proof-positive of the security issues faced by the witnesses and their families – and therefore the OTP investigators need not have checked the veracity of the second and third-hand claims – is unsustainable. Aside from the timing of YEBEI's death and [REDACTED], which occurred virtually at the end of the OTP investigation,²¹ no credible evidence was adduced proving that these occurrences were directly and/or exclusively related to any efforts to interfere with the ICC's prosecution of Kenyan Deputy President, William Samoei RUTO.

10. ***The witnesses' backgrounds were not properly investigated.*** There is no evidence that the OTP conducted background checks on the witnesses to see how they were interconnected. P-0730 admitted that it only became apparent later on in the investigation that several witnesses were interconnected through NGOs.²² The investigators were not aware of what these witnesses were saying among themselves, did not have access to the unrecorded conversations that were taking place, and thus cannot say with any degree of certainty that witnesses – such as [REDACTED], [REDACTED], and [REDACTED]²³ – were not colluding to tailor their evidence in order to achieve relocation with all the added benefits (housing, employment, money, opportunities, schooling for the children)²⁴ to non-African States by the ICC.

11. ***Investigators dangled the possibility of relocation before witnesses in attempting to get information from them.*** By dangling the possibility of relocation, the investigators effectively motivated witnesses to tailor their evidence to the extent necessary to achieve their objectives. For instance, P-0274 wanted to have his security concerns [REDACTED] before deciding whether to cooperate with the OTP.²⁵ Investigators informed him that: (a) the OTP could not make any promises; and (b) if he cooperates, an assessment would be done, the outcome of which could not be predicted without knowing what evidence he might provide.²⁶ P-0274 admitted that he tried to get what he wanted from the investigators, otherwise he was not going to be an OTP witness.²⁷ When P-0516 resumed contact with the OTP, investigators commenced with a suspect interview before addressing P-0516's

²¹ See [ICC-01/09-01/20-220-Conf](#), para. 89 (P-0397 disappeared on 8 March 2014). See also ICC Press Release, [ICC deeply concerned with reported death of Mr Meshack Yebei; stands ready to assist Kenyan investigations](#), 6 January 2015 (YEBEI was allegedly abducted on 28 December 2014 and found dead on 2 January 2015).

²² [T-062](#), p. 2, line 18 to p. 3, line 24.

²³ See *infra*, paras. 37, 56, 60.

²⁴ See *infra*, paras. 37, 56, 60. See also, [T-064](#), p. 6, lines 6-13. P-0516 admitted that [REDACTED] and [REDACTED] told him how he could get [REDACTED] and promised him how to make it out of Africa where he could have a better life with employment, money, opportunities, and schooling for the children.

²⁵ [T-059](#), p. 86, line 21 to p. 87, line 9; [KEN-OTP-0160-1489](#).

²⁶ [T-059](#), p. 86, line 21 to p. 87, line 9; [KEN-OTP-0160-1489](#).

²⁷ [T-059](#), p. 101, line 16 to p. 103, line 5.

security concerns,²⁸ with P-0516 repeatedly asking the OTP when his security concerns would be addressed,²⁹ and later admitting that he was willing to say anything in the hopes that the OTP would provide him protection.³⁰

12. ***Witnesses were interviewed an inordinate number of times despite their lies to investigators.*** Witnesses lied on numerous occasions, yet were interviewed and re-interviewed by OTP investigators, who would excuse the lies they were routinely told and encouraged witnesses to simply recalibrate and “clarify” their evidence.³¹ For instance, P-0800, who has admitted to lying to the OTP on numerous occasions, was interviewed by the OTP approximately 58 times,³² and was brought back in 2021 prior to the confirmation process for a 10-hour proofing session,³³ of which 30% of the time was spent going over a single incident and in order to iron out inconsistencies and improbabilities in his statements.³⁴ Reminding P-0800 that there had been “a few highs and lows” in their dealings, OTP investigators told him that “it’s a balancing act:” “*for someone to be credible, they have to be consistent in what they say or if they’ve said something that is not correct or is untrue, we can put that behind us*” so long as “*they can give us a good explanation ... and then the balance goes back.*”³⁵ Other witnesses – P-0341,³⁶ P-0516,³⁷ and P-0613³⁸ – were also contacted and reinterviewed prior to the confirmation process, provided with their prior statements, as well as statements from other witnesses, tainting their memories. Presumably, if witnesses were telling the truth, there would have been no reason to interview them so many times or show them what others might have said, or even intimidate them.³⁹

²⁸ [T-065](#), p. 12, lines 14-21.

²⁹ [T-065](#), p. 12, lines 9-12.

³⁰ [T-065](#), p. 29, lines 3-9.

³¹ See *infra*, paras. 72, 76-86. P-0800 [REDACTED], to the OTP investigators on numerous occasions, and lied to the *Ruto and Sang* Trial Chamber under oath. See *infra*, paras. 51, 57, 61. P-0613 lied in her statement to be admitted into the ICC protection program and lied VWU about having other telephones. See *infra*, paras. 33, 37-44. P-0516 admitted to lying in his 2012 statement to the OTP, continued lying to the OTP in his 2015 and 2021 interviews. See *infra*, paras. 142, 147. P-0739 admitted that all the evidence he gave in the *Ruto and Sang* case from 2010 to 2013 was false.

³² [T-051](#), p. 6, line 9 to p. 7, line 3.

³³ [T-051](#), p. 7, line 16 to p. 8, line 5.

³⁴ [T-051](#), p. 8, lines 6-9.

³⁵ [T-052](#), p. 110, lines 6-21.

³⁶ [KEN-OTP-0159-1803-R01](#), p. 1818, line 500 to p. 1820, line 600. Investigators confronted P-0341 with what P-0274 said when attempting to get him to say that he brought P-0247 to Mr. Gicheru’s office.

³⁷ See *infra*, paras. 42-43. The OTP Senior Trial Lawyer continued pressing P-0516 with P-0397’s statement, despite his unequivocal demands for the interview to stop and to speak with a lawyer.

³⁸ See *infra*, para. 51. Investigators reinterviewed P-0613 in 2021 to question her about her conversations with [REDACTED] and for her to comment on [REDACTED] testimonies that she coached them.

³⁹ See *supra*, fns. 36-37.

13. **No efforts were made to double check and verify what witnesses were telling investigators.** Witnesses' evidence and security claims were accepted by investigators without any double-checking, even when blatantly clear had they been paying attention, that what witnesses were telling them was inconsistent or illogical.⁴⁰ For instance, P-0739 initially gave evidence that after he heard war cries, people were meeting at trading centers to look for Kikuyus and were demolishing houses, burning items, and destroying crops.⁴¹ When P-0739 was reinterviewed, he admitted that he "heard [this] from people, but even the way [he] invented it was not correct."⁴² He explained: "*it does not match with what I told them previously, because I told them that it was very difficult for me to go out, because of the violence. Now in this statement [I am] saying that I saw people gathered at the ground, so this doesn't match with what I told them before....*"⁴³ He expected the investigators to catch his inconsistencies, ask him questions, and discover that he was lying on the same day he gave the evidence.⁴⁴ The investigator responded: "We haven't had a lot of people coming to us specifically to lie about a lot of things."⁴⁵
14. **No efforts were made to conduct a financial investigation.** Because of the OTP's self-imposed policy not to investigate in the Rift Valley, no efforts were made to go to the banks and verify witnesses' banking records or conduct any financial investigation.⁴⁶ The OTP should have conducted financial investigations to accurately determine the source of funds deposited in witnesses' bank accounts. No such financial investigation was done on witnesses such as P-0341 to determine whether he sold property or acquired money from [REDACTED] to create the appearance that money was being funneled to him from Mr. Gicheru, despite being neither a victim nor a witness, and having virtually nothing to testify against RUTO, as was apparent during his first meeting with the OTP.⁴⁷ Despite P-0739's

⁴⁰ See *infra*, para. 37. The OTP never verified any of the information provided by P-0516 in his 2012 statement, for instance that [REDACTED]. See *infra*, para. 58. The OTP never verified P-0613's numerous reports of security threats. See *infra*, paras. 147, 154. The OTP never verified P-0739's 2010 statement, which he later admitted was entirely false, or his claim that he received money from Mr. Gicheru, despite having known his financial situation. As for P-0800's claims concerning [REDACTED], P-0730 admitted that the "right thing to do" would have been to have someone deliver [REDACTED] to some place other than the Rift Valley so it could be inspected. This was not done. [T-062](#), p. 20, line 7 to p. 21, line 25.

⁴¹ [T-068](#), p. 6, line 20 to p. 8, line 3.

⁴² [T-068](#), p. 8, line 4 to p. 9, line 2.

⁴³ [T-068](#), p. 8, line 4 to p. 9, line 2.

⁴⁴ [T-068](#), p. 9, line 3 to p. 10, line 1.

⁴⁵ [T-068](#), p. 9, line 3 to p. 10, line 1.

⁴⁶ See *infra*, para. 25. The OTP never attempted to verify P-0397's claims that the money in his bank account came from Mr. Gicheru. See *infra*, para. 136. The OTP never verified that P-0274 received an [REDACTED]. [T-061](#), p. 16, line 22 to p. 17, line 10. P-0730 testified that "a better method of getting more verifiable bank records is to go to the bank and ask them for those records," but claimed this would not have been possible without endangering the witnesses.

⁴⁷ See *infra*, para. 122.

financial situation being known to investigators in June 2014, none of them bothered to check his financials against his claim that he received 2,000,000 KSh from Mr. Gicheru.⁴⁸

15. ***No effort was made to verify telephone evidence.*** Witnesses admitted to having unrecorded conversations with other OTP witnesses,⁴⁹ yet no efforts were made to intercept telephones to verify the content of unrecorded conversations.⁵⁰ Nor were any efforts made to go to the telephone companies to verify whether telephone numbers actually belonged to the persons claimed by the OTP.⁵¹ Instead, the OTP expects the Trial Chamber to rely on numbers found in contact lists or information obtained from witnesses and speculate that Mr. Gicheru was in contact with the so-called “managers” and others during the relevant time period and for the purposes claimed by the OTP.

16. ***No efforts were made to interview the so-called “managers” and others involved in the common plan to influence witnesses.*** There is no evidence that the OTP ever made any attempts to contact any of the so-called “managers” (Silas SIMATWO and Isaac MAIYO), the so-called “associates” (Elisha BUSIENEI, KOGO, Sammy KOSGEI, and P-0015), or others involved in or assisting what the OTP asserts was a common plan – such as the lawyers that were drafting affidavits ([REDACTED]). The only attempt that can be seen from the available evidence was the OTP’s attempt [REDACTED].⁵² The OTP expects the Trial Chamber to rely on witnesses such as P-0800 – who gave so many inconsistent versions of his meeting at [REDACTED] Advocates⁵³ – to identify members of the alleged common plan, without making any attempts to contact the lawyers, even in the pre-trial stages of this case in 2020 and 2021. Presumably, the OTP assumed that the so-called “managers” and others would not provide any credible evidence, but this does not excuse the OTP from meeting its burden of proof.

17. ***None of the investigators, but for P-0730, came to testify at trial.*** The OTP investigation reports are nothing but hearsay: i.e., notes of what witnesses purportedly told investigators.

⁴⁸ [T-068](#), p. 85, line 12 to p. 89, line 15. See also *infra*, para. 154.

⁴⁹ P-0800 and P-0613 both admitted to having unrecorded conversations with OTP witnesses despite being under instructions not to do so. See *infra*, paras. 59, 80.

⁵⁰ [T-061](#), p. 17, line 17 to p. 18, line 23. P-0730 claimed that he did not pursue requests for telephone intercepts because intercepting conversations is “a very, very high-level intrusion into privacy” and “is only approvable at the very, very highest levels of government....”

⁵¹ [T-061](#), p. 29, line 13 to p. 18, line 14. P-0730 testified that “the traditional way of attributing telephone numbers” would be to contact the telephone company and say, ‘Please tell me who this telephone number is issued or registered to.’” But because of the claimed difficulties in investigating in Kenya, telephone attribution was done by looking at contacts in witnesses’ telephones, looking at what witnesses provided in their statements, checking open-source material, and looking at correspondence.

⁵² [KEN-OTP-0159-0766](#), p. 0773, line 219 to p. 0776, line 342.

⁵³ See *infra*, para. 84.

Having P-0730 testify to give a summary of the nature of the investigation does not transform this hearsay evidence into verifiable evidence.

18. **In sum.** The OTP's investigation was flawed from the outset, resulting in a flawed and fallacious evidentiary record based on the uncorroborated hearsay evidence of unreliable witnesses. Were the Trial Chamber to take the OTP's evidence at face value, to fill in gaps in the OTP's case, to compensate for its deficiencies, and to accept mere assumptions as fact, the trial judgment would erroneously be predicated on unsound and erroneous findings of fact and a misapplication of the law, resulting in an erroneous and unsustainable conviction.

IV. THE QUALITY OF THE OTP'S EVIDENCE

A. [REDACTED] ("P-0397")

19. P-0397 was an OTP witness in the *Ruto and Sang* case.⁵⁴ He provided statements to the OTP concerning meetings held at [REDACTED]⁵⁵ and provided evidence concerning witness interference.⁵⁶ [REDACTED], the OTP interviewed P-0397 as a suspect for a period of two days, for nine hours and 11 minutes, generating 308 pages of evidence.⁵⁷ [REDACTED].⁵⁸
20. [REDACTED].⁵⁹ [REDACTED]⁶⁰ [REDACTED]⁶¹ [REDACTED].⁶² [REDACTED]⁶³ [REDACTED].⁶⁴ [REDACTED],⁶⁵ [REDACTED]⁶⁶ [REDACTED].

P-0397's relationships with other witnesses

⁵⁴ [ICC-01/09-01/20-220-Conf](#), para. 71.

⁵⁵ [KEN-OTP-0074-0264-R01](#).

⁵⁶ See e.g., [KEN-OTP-0159-1059-R01](#).

⁵⁷ [KEN-OTP-0159-1059-R01](#); [KEN-OTP-0159-1004-R01](#); [KEN-OTP-0159-1120-R01](#); [KEN-OTP-0159-1175-R01](#); [KEN-OTP-0159-1148-R01](#); [KEN-OTP-0159-1087-R01](#); [KEN-OTP-0159-1248-R01](#); [KEN-OTP-0159-1186-R01](#); [KEN-OTP-0159-1232-R01](#); [KEN-OTP-0159-1191-R01](#); [KEN-OTP-0159-1365-R01](#); [KEN-OTP-0159-1276-R01](#); [KEN-OTP-0159-1338-R01](#); [KEN-OTP-0159-1377-R01](#); [KEN-OTP-0159-1309-R01](#); [KEN-OTP-0159-1396-R01](#); [KEN-OTP-0159-1402-R01](#); [KEN-OTP-0159-1420-R01](#); [KEN-OTP-0159-1449-R01](#); [KEN-OTP-0159-1473-R01](#); [KEN-OTP-0159-1533-R01](#); [KEN-OTP-0159-1507-R01](#); [KEN-OTP-0159-1514-R01](#); [KEN-OTP-0159-1588-R01](#); [KEN-OTP-0159-1562-R01](#).

⁵⁸ [KEN-OTP-0159-0884](#), para. 86.

⁵⁹ [KEN-OTP-0159-1191-R01](#), p. 1209, line 574, p. 1210, lines 588, 592, 594, p. 1213, line 712, p. 1216, lines 786-87.

⁶⁰ [KEN-OTP-0159-1191-R01](#), p. 1210, line 605.

⁶¹ [KEN-OTP-0159-1191-R01](#), p. 1210, line 619, p. 1211, line 648.

⁶² [KEN-OTP-0159-1191-R01](#), p. 1212, line 678.

⁶³ [KEN-OTP-0159-1191-R01](#), p. 1214, line 734.

⁶⁴ [KEN-OTP-0159-1191-R01](#), p. 1214, lines 742-49.

⁶⁵ [KEN-OTP-0159-1148-R01](#), p. 1169, lines 728-38, p. 1171, lines 793-94.

⁶⁶ [KEN-OTP-0159-1148-R01](#), p. 1169, line 736.

21. P-0397 was friends with [REDACTED]⁶⁷ and knew [REDACTED],⁶⁸ who he met regularly [REDACTED].⁶⁹ He also knew P-0516⁷⁰ and P-0613.⁷¹

What the OTP claimed it would establish through P-0397

22. The OTP claims that between April 2013 and January 2014, Mr. Gicheru with [REDACTED] and [REDACTED], corruptly influenced P-0397 by: (a) offering him a bribe of 5,000,000 KSh in cash instalments; (b) threatening him to withdraw as an OTP Witness and cease cooperating with the ICC, to sign an affidavit to that effect, and to approach other witnesses on behalf of Mr. Gicheru and his associates;⁷² and (c) paying P-0397 a sum of 1,000,000 KSh and directing him to sign an affidavit.⁷³ It submitted P-0397's evidence would establish that:

- a. On 20 April 2013, [REDACTED] and [REDACTED] approached P-0397 at [REDACTED] and told him that there was a group of persons working for RUTO who were instructed to identify witnesses and pay them bribes in order to withdraw.⁷⁴
- b. On or about 26 April 2013, [REDACTED] and [REDACTED] took P-0397 to Mr. Gicheru[REDACTED] where Mr. Gicheru offered P-0397 a bribe in order to withdraw as an OTP witness.⁷⁵
- c. On 27 April 2013 and 30 April 2013, Mr. Gicheru paid P-0397 a total of 1,000,000 KSh, from which P-0397 deposited 900,000 KSh in his bank account.⁷⁶
- d. On 9 May 2013, Mr. Gicheru organized P-0397's withdrawal by introducing him to Advocate [REDACTED] and making him sign an affidavit.⁷⁷
- e. Mr. Gicheru and YEBEI asked P-0397 to approach and corruptly influence P-0516.⁷⁸

⁶⁷ [KEN-OTP-0159-1004-R01](#), p. 1035, lines 1030-33.

⁶⁸ [KEN-OTP-0159-1309-R01](#), p. 1319, line 290.

⁶⁹ [KEN-OTP-0159-1120-R01](#), p. 1128, line 272.

⁷⁰ [KEN-OTP-0159-1044-R01](#), p. 1049, lines 164-66; [KEN-OTP-0159-1420-R01](#), p. 1438, line 629.

⁷¹ [KEN-OTP-0159-1420-R01](#), p. 1446, lines 916-37.

⁷² [ICC-01/09-01/20-220-Conf](#), para. 72.

⁷³ [ICC-01/09-01/20-220-Conf](#), para. 72.

⁷⁴ [ICC-01/09-01/20-220-Conf](#), para. 74.

⁷⁵ [ICC-01/09-01/20-220-Conf](#), paras. 75-76.

⁷⁶ [ICC-01/09-01/20-220-Conf](#), paras. 77-78.

⁷⁷ [ICC-01/09-01/20-220-Conf](#), para. 79.

⁷⁸ [ICC-01/09-01/20-220-Conf](#), para. 81.

- f. On 7 December 2013, P-0397 met with Mr. Gicheru and [REDACTED] where Mr. Gicheru accused P-0397 of still being in contact with the ICC.⁷⁹
- g. On 16 and 17 January 2014, during recorded calls between P-0397 and Mr. Gicheru and P-0397 and YEBEI, Mr. Gicheru and YEBEI did not deny P-0397's agreement to withdraw in exchange for money.⁸⁰

The OTP failed to prove that Mr. Gicheru corruptly influenced P-0397

23. ***There is no reliable evidence that [REDACTED] and [REDACTED] approached P-0397.***⁸¹ Other than his word, there is no evidence that [REDACTED] and [REDACTED] approached P-0397, asked him if he was a witness, and told him that a group of people sent by RUTO was paying witnesses in order to withdraw.⁸² Given P-0397's and [REDACTED]'s unavailability and that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0397 provides concerning this meeting with [REDACTED] and [REDACTED] can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED] and [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] and/or searched for information that could corroborate P-0397's claims. No other evidence was adduced to show that [REDACTED] and [REDACTED] approached P-0397 on behalf of Mr. Gicheru.

24. ***There is no reliable evidence that Mr. Gicheru offered P-0397 a bribe to withdraw.***⁸³ Other than his word, there is no evidence that Mr. Gicheru met with P-0397 privately or in [REDACTED]'s presence⁸⁴ to offer him a bribe. P-0397's possession of Mr. Gicheru's business card does not corroborate P-0397's claim that it was obtained while a bribe was being negotiated.⁸⁵ Mr. Gicheru dealt with P-0397 previously [REDACTED] and may have given him his business card at the time,⁸⁶ or, P-0397 simply pocketed a card from the receptionists – as many clients or potential clients tend to do when visiting a lawyer's office. The fact that [REDACTED]'s telephone number was inserted into [REDACTED]⁸⁷ is irrelevant and does not show that they were in contact during the relevant period or for the purposes claimed by the OTP. Given P-0397's unavailability and that the OTP did not

⁷⁹ [ICC-01/09-01/20-220-Conf](#), para. 82.

⁸⁰ [ICC-01/09-01/20-220-Conf](#), paras. 85, 87.

⁸¹ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 74.

⁸² [KEN-OTP-0159-1232-R01](#), p. 1234, line 5 to p. 1236, line 82; [KEN-OTP-0159-1276-R01](#), p. 1308, lines 1039-47.

⁸³ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 75-76.

⁸⁴ [KEN-OTP-0159-1309-R01](#), p. 1312, line 61 to p. 1315, line 144, p. 1331, lines 724-45; [KEN-OTP-0159-1533-R01](#), p. 1538, lines 135-42, p. 1539, line 169 to p. 1540, line 184.

⁸⁵ [KEN-OTP-0159-1533-R01](#), p. 1545, lines 388-94. *See also* [KEN-OTP-0124-0028](#).

⁸⁶ [KEN-OTP-0159-0795](#), p. 0801, lines 183-87; [KEN-OTP-0159-0766](#), p. 0793, lines 915-16.

⁸⁷ [KEN-OTP-0160-0043](#), at 4265-66.

call [REDACTED] as a witness, none of the hearsay evidence P-0397 provides concerning this meeting can be tested. Aside from the lack of any reliable evidence of any illicit association between Mr. Gicheru and [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] and/or searched for information that could corroborate P-0397's claims. With Mr. Gicheru being a well-known commercial lawyer in Eldoret, and [REDACTED], it is just as plausible that *if* P-0397 saw [REDACTED] in Mr. Gicheru [REDACTED] as claimed (to which no concrete, verifiable evidence exists), that it was purely professional. The OTP adduced no evidence that would diminish or debunk this plausibility. No other evidence was adduced to show that Mr. Gicheru offered P-0397 a bribe.

25. *There is no reliable evidence that Mr. Gicheru paid P-0397 a bribe of 1,000,000 KSh.*⁸⁸

The cash deposits in P-0397's bank account are from origins and for purposes unknown.⁸⁹ P-0397 informed the OTP on 10 May 2013 that he "[REDACTED]" "[REDACTED]," and "[REDACTED]."⁹⁰ P-0397 also insisted that [REDACTED].⁹¹ Previously, he told the OTP that he "[REDACTED]."⁹² The OTP never attempted to verify this information by asking P-0397 to provide his [REDACTED]. P-0397 claimed that, [REDACTED], he left his [REDACTED].⁹³ The OTP investigators knew that P-0397 kept a copy of his deeds but did not bother to verify his previous claims. Despite having claimed to receive 1,000,000 KSh from Mr. Gicheru, and having a balance of 875,059 KSh in his bank account,⁹⁴ P-0397 reached out to the OTP on 16 May 2013 requesting money.⁹⁵ P-0397 also gave inconsistent evidence on [REDACTED] being present when the money was allegedly handed out to him⁹⁶ and when the money was deposited in his bank account.⁹⁷ P-0613's evidence also does not corroborate P-0397's evidence. P-0613 is unreliable and her evidence that [REDACTED] told her that P-0397 was given 500,000 KSh is uncorroborated double hearsay.⁹⁸ When the OTP called P-0397 on 7 May 2013 on the basis of P-0613's report, he told the OTP that "no one had approached him" and "he had not been offered any money."⁹⁹ Given P-0397's unavailability and that the OTP never attempted to verify P-0397's

⁸⁸ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 77-78.

⁸⁹ [KEN-OTP-0124-0021](#).

⁹⁰ [KEN-OTP-0139-0095-R01](#), p. 0095.

⁹¹ [KEN-OTP-0139-0095-R01](#), p. 0096.

⁹² [KEN-OTP-0139-0097](#).

⁹³ [KEN-OTP-0159-1191-R01](#), p. 1204, lines 397-399, p. 1207, lines 493-501. [REDACTED].

⁹⁴ [KEN-OTP-0124-0021](#), p. 0024.

⁹⁵ [KEN-OTP-0103-0081-R01](#), p. 0082, [REDACTED]

⁹⁶ [KEN-OTP-0159-1533-R01](#), p. 1537, lines 101-03 c.f. p. 1539, lines 169-172.

⁹⁷ [KEN-OTP-0159-1309-R01](#), p. 1336, lines 911-14 c.f. [KEN-OTP-0159-1338-R01](#), p. 1341, line 69.

⁹⁸ [KEN-OTP-0111-0162](#), para. 36.

⁹⁹ [KEN-OTP-0139-0097](#), p. 0098.

contradictory information concerning the money in his bank account, the evidence he provides concerning the payment of the bribe cannot be tested. No other evidence was adduced to show that Mr. Gicheru paid P-0397 instalments on any bribe.

26. ***There is no reliable evidence that Mr. Gicheru instructed P-0397 to sign an affidavit of withdrawal.***¹⁰⁰ P-0397's affidavit only shows that [REDACTED] (not [REDACTED]) prepared P-0397's affidavit on 9 May 2013.¹⁰¹ Following the OTP's receipt of P-0397's affidavit on 10 May 2013, P-0397 told OTP investigators that it was necessary to go to his advocate ([REDACTED]) and the press because [REDACTED].¹⁰² The fact that [REDACTED]'s telephone number was inserted [REDACTED]¹⁰³ is irrelevant and does not show that they were in contact during the relevant period or for the purposes claimed by the OTP.¹⁰⁴ Aside from the lack of any reliable evidence of any illicit association between Mr. Gicheru and [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] and/or searched for information that could corroborate P-0397's claims. Nor is there evidence showing that had the OTP attempted to contact [REDACTED], that he would have declined to cooperate. Bearing the burden of proof, it was incumbent on the OTP to make all reasonable and necessary efforts to prove this claim. Given P-0397's unavailability and that the OTP did not call [REDACTED] as a witness, none of P-0397's hearsay evidence concerning the affidavit can be tested. No other evidence was adduced to show that Mr. Gicheru instructed [REDACTED] to prepare an affidavit of withdrawal for P-0397.

27. ***There is no reliable evidence that Mr. Gicheru and YEBEI asked P-0397 to corruptly influence P-0516.***¹⁰⁵ P-0397 gave inconsistent accounts on whether P-0516's name was mentioned during his claimed meeting with Mr. Gicheru and YEBEI or whether he volunteered P-0516's name.¹⁰⁶ P-0516 is unreliable¹⁰⁷ and his evidence does not corroborate P-0397's evidence: P-0516's account is inconsistent with P-0397 on how they met, what the content of their discussion was, and when P-0397 brought P-0516 to Mr. Gicheru[REDACTED].¹⁰⁸ P-0800 is unreliable¹⁰⁹ and his hearsay evidence does not

¹⁰⁰ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 79.

¹⁰¹ [KEN-OTP-0124-0030](#); [KEN-OTP-0124-0029](#).

¹⁰² [KEN-OTP-0139-0095](#).

¹⁰³ [KEN-OTP-0160-0043](#), at 3739-43.

¹⁰⁴ [KEN-OTP-0159-0815](#), p. 0830, lines 501-24.

¹⁰⁵ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 81.

¹⁰⁶ [KEN-OTP-0159-1533-R01](#), p. 1551, lines 576-78 *c.f.* lines 593-601.

¹⁰⁷ *See infra* paras. 36-44.

¹⁰⁸ *See infra* para. 45.

¹⁰⁹ *See infra* paras. 76-86. P-0800 is incapable of belief. He coached other witnesses on what to say to the OTP in order to secure benefits and relocation. He lied to [REDACTED]. He often made himself unavailable and lied

corroborate P-0397's evidence, since he heard about P-0397 [REDACTED], who heard about P-0397 from [REDACTED].¹¹⁰ P-0341 is unreliable and his evidence that he met with P-0397 and P-0516 at Mr. Gicheru [REDACTED] is uncorroborated.¹¹¹ Given P-0397's and YEBEI's unavailability, none of the hearsay evidence P-0397 provides about this meeting can be tested. No other evidence was adduced to show that Mr. Gicheru and YEBEI asked P-0397 to corruptly influence P-0516.

28. ***There is no reliable evidence that Mr. Gicheru threatened P-0397.***¹¹² Other than his word, there is no evidence showing that P-0397 ever met with Mr. Gicheru [REDACTED]. Given P-0397's unavailability and that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0397 provides concerning this meeting can be tested. Aside from the lack of any reliable evidence that Mr. Gicheru had any association with someone named [REDACTED], there is no evidence that the OTP attempted into interview [REDACTED] and/or searched for information that could corroborate P-0397's evidence. No other evidence was adduced to show that Mr. Gicheru and [REDACTED] intimidated P-0397 at the [REDACTED].

29. ***There is no reliable evidence that Mr. Gicheru acknowledged P-0397's scripted words.***¹¹³ P-0397 was scripted by OTP investigators on what to say during the recorded telephone conversation with Mr. Gicheru.¹¹⁴ When asked by the OTP "[i]f you were going to call GICHERU, what would you say?,"¹¹⁵ P-0397 evaded the question and requested instructions from the OTP.¹¹⁶ If one were to believe P-0397's words that he received a bribe from Mr. Gicheru and met him several times, it would be expected that P-0397 would know exactly what to say. During the telephone conversation, P-0397 conjectures about receiving threats because of his involvement with the ICC.¹¹⁷ Mr. Gicheru is non-responsive, neither acknowledging nor accepting P-0397's/OTP's rehearsed assertions.¹¹⁸ This conversation

about his whereabouts. He had several unrecorded conversations with other OTP witnesses and others. He lied to OTP investigators. He failed to disclose his unauthorized meeting with [REDACTED] until caught by OTP lawyers. He lied to the *Ruto and Sang* Trial Chamber under oath. He gave multiple inconsistent versions of his story about [REDACTED]. He had no telephone or email contacts with Mr. Gicheru. Moreover, he lied to this Trial Chamber under oath.

¹¹⁰ P-0800's evidence [REDACTED] [KEN-OTP-0116-0482](#).

¹¹¹ See *infra* para. 115. While P-0341 testified that he met P-0397 and P-0516 at Mr. Gicheru [REDACTED] "many times," neither P-0397 nor P-0516 ever mentioned him.

¹¹² Contra [ICC-01/09-01/20-220-Conf](#), para. 82.

¹¹³ Contra [ICC-01/09-01/20-220-Conf](#), para. 85.

¹¹⁴ [KEN-OTP-0159-1148-R01](#), p. 1173, lines 848-80.

¹¹⁵ [KEN-OTP-0159-1338-R01](#), p. 1363, line 822.

¹¹⁶ [KEN-OTP-0159-1338-R01](#), p. 1363, line 840 ("I want instructions from them.")

¹¹⁷ [KEN-OTP-0143-0185](#), p. 0187, lines 12-4, p. 0189, lines 83-86.

¹¹⁸ [KEN-OTP-0143-0185](#), p. 0189, line 86, p. 0190, lines 119, 127.

cannot be interpreted absent context. [REDACTED].¹¹⁹ Mr. Gicheru tells P-0397 that he would arrange a meeting with [REDACTED].¹²⁰ Considering Mr. Gicheru's prominent position as a lawyer in Eldoret and member of the government at the time and, more importantly, that he represented P-0397 on [REDACTED] issues, it logically flows that he interpreted P-0397's assertions as merely requesting his assistance concerning the threats received.

30. ***There is no reliable evidence that YEBEI acknowledged P-0397's words.***¹²¹ During the recorded conversation with YEBEI, P-0397 conjectures that the 1,000,000 KSh he purportedly received from Mr. Gicheru is giving him trouble, and threatens to go back to the ICC.¹²² YEBEI – who is non-responsive, neither acknowledging nor accepting P-0397's assertions – was never asked by the OTP to explain the telephone conversation.

31. ***In sum.*** Considering P-0397's reluctance to hand over his telephone to OTP investigators, the lack of any verifiable evidence concerning his claimed meetings with Mr. Gicheru, and his unavailability, which deprives Mr. Gicheru of his fair trial right of confrontation, no reliable Trial Chamber would rely on P-0397 to make any findings of fact.

B. [REDACTED] (“P-0516”)

32. P-0516 was an OTP witness in the *Ruto and Sang* case.¹²³ He provided statements to the OTP concerning RUTO's involvement in the planning and funding of the post-election violence (“PEV”),¹²⁴ was interviewed as a suspect concerning witness interference,¹²⁵ and testified before Trial Chamber V between 22 and 26 September 2014.¹²⁶

33. Between 2012 and 2021, the OTP interviewed P-0516 approximately 42 times, over a period of 23 days, for more than 86 hours, generating 593 pages of evidence, excluding his testimony in the *Ruto and Sang* case.¹²⁷ In January 2021, the OTP interrogated him for a period of two days, for more than five hours, during which the OTP Senior Trial Lawyer intimidated P-0516 and tampered with the source of his evidence, i.e., his memory, by reading to him (insisting that he listen to) information he had not previously known, despite

¹¹⁹ [KEN-OTP-0129-0567-R01](#).

¹²⁰ [KEN-OTP-0143-0185](#), p. 0190, line 130, p. 0191, lines 152, 154, 156.

¹²¹ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 87.

¹²² [KEN-OTP-0125-0248](#), p. 0257, line 269 to p. 0258, line 286.

¹²³ [ICC-01/09-01/20-220-Conf](#), para. 104.

¹²⁴ [ICC-01/09-01/20-220-Conf](#), para. 104; [KEN-OTP-0160-1727](#), items 35-40.

¹²⁵ [KEN-OTP-0160-1727](#), items 1-26, 29-34.

¹²⁶ [ICC-01/09-01/20-220-Conf](#), para. 107.

¹²⁷ [KEN-OTP-0160-1727](#), items 1-26, 29-40, 46-48.

P-0516's Duty Counsel being present¹²⁸ (although not being responsive) and despite P-0516's unequivocal notice that he wished for the interview to cease.¹²⁹ Just prior to giving his evidence in the *Gicheru* case, the OTP proofed him for seven days, for a period of 43 hours and 15 minutes,¹³⁰ during which 48 documents were shown to him.¹³¹

P-0516's relationships with other witnesses

34. P-0516 was [REDACTED]¹³² and [REDACTED] neighbor.¹³³ He was a member and known supporter of the [REDACTED],¹³⁴ having cooperated on political issues with [REDACTED].¹³⁵ He worked with [REDACTED].¹³⁶ [REDACTED] introduced P-0516 to [REDACTED] to provide P-0516 with information not known to him and to coach him on how he could deceive the ICC investigators into believing that he was a valued witness against RUTO – as well as a victim whose security was at risk – so as to receive financial and other benefits from the ICC, and more importantly, to be relocated out of Africa.¹³⁷ P-0800 in turn introduced him to the ICC.¹³⁸ He met P-0495 during [REDACTED].¹³⁹

What the OTP claimed it would establish through P-0516

35. The OTP claims that between April and May 2013, Mr. Gicheru, [REDACTED], and [REDACTED] corruptly influenced P-0516 by offering him a bribe of 800,000 KSh to withdraw as an OTP witness in the *Ruto and Sang* case, sign an affidavit withdrawing his prior statement, and approach P-0613.¹⁴⁰ It submitted P-0516's evidence would establish that:

- a. In May 2013, P-0397 approached P-0516 to corruptly influence him, bringing him to Mr. Gicheru's office.¹⁴¹
- b. Mr. Gicheru offered P-0516 a bribe of 800,000 KSh for his withdrawal.¹⁴²

¹²⁸ [T-065](#), p. 34, line 24 to p. 44, line 7.

¹²⁹ [T-065](#), p. 40, line 10 to p. 43, line 23.

¹³⁰ [T-063](#), p. 29, line 6 to p. 31, line 13.

¹³¹ [KEN-OTP-0160-1727](#).

¹³² [T-063](#), p. 57, line 11-24.

¹³³ [T-063](#), p. 23, lines 1-8.

¹³⁴ [T-064](#), p. 50, line 17 to p. 51, line 14. P-0516 testified that since he was belonging to the [REDACTED] he could not go to Mr. RUTO's house because his "followers" could complain, injure him, or attack him because he could be considered as a person that betrays them. This implies that it was known that P-0516 was supporting the [REDACTED].

¹³⁵ [T-063](#), p. 23, lines 1-8.

¹³⁶ [T-064](#), p. 8, lines 10-23.

¹³⁷ [T-064](#), p. 6, lines 6-19, p. 11, line 25 to p. 15, line 20.

¹³⁸ [T-064](#), p. 4, lines 19-21. See also, [KEN-OTP-0141-0026-R01](#).

¹³⁹ [T-064](#), p. 39, lines 16-20.

¹⁴⁰ [ICC-01/09-01/20-220-Conf](#), para. 105.

¹⁴¹ [ICC-01/09-01/20-220-Conf](#), paras. 109-10.

¹⁴² [ICC-01/09-01/20-220-Conf](#), para. 110.

- c. Mr. Gicheru met P-0516 four times, paying him at least 500,000 KSh.¹⁴³
- d. Mr. Gicheru asked P-0516 to approach other witnesses.¹⁴⁴

P-0516 is incapable of belief

36. P-0516 is incapable of belief. He was coached by [REDACTED] in order for him to secure benefits and be relocated out of Africa. He developed a pattern of lies, mixing facts with fiction. He lied in his 2012 statement to the OTP, knowing that his lies could lead to a conviction but lied anyway because he did not want to miss the opportunity of getting benefits and being relocated with his family out of Africa. When he resumed contact with the OTP in 2015, he was pressurized, if not induced, to mention Mr. Gicheru. He continued lying to the OTP in 2015 and in 2021. He also lied to this Trial Chamber under oath.

37. ***P-0516 was coached by [REDACTED] in order to secure benefits and be relocated out of Africa.***¹⁴⁵ P-0516 testified that he was coached [REDACTED] on what to say to the OTP in order to [REDACTED] and be relocated out of Africa.¹⁴⁶ At the time, P-0516 was desperate.¹⁴⁷ He went to [REDACTED] for employment¹⁴⁸ but returned because life was difficult and he was not able to earn enough money.¹⁴⁹ He returned unemployed,¹⁵⁰ propertyless,¹⁵¹ ostracized from his community,¹⁵² and estranged from [REDACTED].¹⁵³ [REDACTED] informed him that in order to benefit from the program, he needed to give the OTP investigators certain information.¹⁵⁴ [REDACTED] helped him with details needed for a plausible and convincing narrative,¹⁵⁵ which P-0516 memorialized in a notebook, which, as he acknowledged, were handy in confabulating a compelling story of him being witness to and a victim of PEV implicating, among others, RUTO.¹⁵⁶ P-0516 confirmed that he needed to provide a “solid story, a believable story, a plausible story.”¹⁵⁷ [REDACTED] told P-0516 that even if he told a lie, “these people” (meaning the ICC)

¹⁴³ [ICC-01/09-01/20-220-Conf](#), paras. 112-13.

¹⁴⁴ [ICC-01/09-01/20-220-Conf](#), para. 115.

¹⁴⁵ [T-064](#), p. 75, line 4 to p. 76, line 10.

¹⁴⁶ [T-064](#), p. 6, line 6-19, p. 11, line 25 to p. 15, line 20. To fully appreciate the reasons for and the extent to which he lied, see [T-064](#), p. 30-87.

¹⁴⁷ [T-064](#), p. 4, lines 22-24.

¹⁴⁸ [T-064](#), p. 10, lines 8-23.

¹⁴⁹ [T-064](#), p. 11, lines 7-16.

¹⁵⁰ [T-064](#), p. 5, lines 4-5.

¹⁵¹ [T-064](#), p. 4, line 25 to p. 5, line 3.

¹⁵² [T-064](#), p. 5, line 20-23.

¹⁵³ [T-065](#), p. 6, lines 15-22.

¹⁵⁴ [T-064](#), p. 14, lines 4-8.

¹⁵⁵ [T-064](#), p. 14, lines 18-22.

¹⁵⁶ [T-064](#), p. 14, line 23 to p. 15, line 3.

¹⁵⁷ [T-064](#), p. 14, lines 14-17.

“could not come to the ground to get the true truth ... they were far away from us.”¹⁵⁸ For instance, he lied about working at the [REDACTED] because [REDACTED] were working there and it would give his account more weight and credibility.¹⁵⁹ The OTP never asked him to prove that he worked for the [REDACTED].¹⁶⁰ He also acknowledged that when he met with the OTP, he had his notebook with the information that [REDACTED] provided him and “was consulting [it] on occasion.”¹⁶¹ Poignantly, when the OTP asked P-0516 for a copy of his notebook, he declined to provide it.¹⁶² Curiously, no evidence was adduced by the OTP showing that investigators ever made any subsequent requests to obtain a copy of the notebook – even after P-0516 testified in *Ruto and Sang* that his narrative was an utter lie,¹⁶³ and even after he was interviewed on subsequent occasions.

38. ***P-0516 developed a pattern of lies, mixing facts with fiction.*** In order to create the perfect lie, which would be credible and plausible, P-0516 mixed identifiable facts/truths with unverifiable fiction/falsehoods.¹⁶⁴ Armed with facts and details from [REDACTED],¹⁶⁵ he embellished and concocted a fanciful narrative,¹⁶⁶ that had the OTP investigators been astute, adept, and attentive, they would have realized that much of what P-0516 was peddling as truthful facts were anything but – though it did serve their purposes: a pattern of either disregarding common sense falsehoods or naively accepting whatever they were being told. Placing himself into certain areas knowing that the ICC was never going to check,¹⁶⁷ he lied with wanton abandon. Taking either public information in the media¹⁶⁸ or common knowledge information because it was easily verifiable and depending on the questions asked by OTP investigators, he would creatively weave a web of lies with remarkably convincing facility.¹⁶⁹ In his own words under oath, “[i]t was known that there were post-election violences ... it was better to consider the issues that happened to make them as true happenings,”¹⁷⁰ such as, for example, [REDACTED] – a common form of punishment.¹⁷¹

¹⁵⁸ [T-064](#), p. 22, line 11 to p. 23, line 7, p. 24, lines 6-10.

¹⁵⁹ [T-064](#), p. 25, line 5 to p. 26, line 14.

¹⁶⁰ [T-064](#), p. 26, lines 17 to p. 27, line 3.

¹⁶¹ [T-064](#), p. 30, line 19 to p. 32, line 14.

¹⁶² [T-064](#), p. 30, line 19 to p. 32, line 14.

¹⁶³ [T-064](#), p. 30-87.

¹⁶⁴ [T-064](#), p. 37, lines 19-25, p. 41, lines 12-15.

¹⁶⁵ [T-064](#), p. 16, lines 9-14.

¹⁶⁶ [T-064](#), p. 16, lines 15-19.

¹⁶⁷ [T-064](#), p. 23, lines 10-25.

¹⁶⁸ [T-064](#), p. 28, lines 5-25.

¹⁶⁹ [T-064](#), p. 28, line 5 to p. 30, line 12.

¹⁷⁰ [T-064](#), p. 28, lines 14-20.

¹⁷¹ [T-064](#), p. 34, line 25 to p. 35, line 17.

39. ***P-0516 lied in his 2012 statement to the OTP.***¹⁷² P-0516 testified under oath before the *Ruto and Sang* Trial Chamber, and before this Trial Chamber, that everything he said to OTP investigators in his 2012 statement was a lie.¹⁷³ In his 2012 statement, he: (a) lied about his place of living¹⁷⁴ and [REDACTED];¹⁷⁵ (b) placed himself into situations that he never witnessed, such as attending meetings at RUTO's place¹⁷⁶ and [REDACTED] house,¹⁷⁷ and being kidnapped for [REDACTED];¹⁷⁸ and (c) implicated people that either he did not know or were not there, such as RUTO,¹⁷⁹ [REDACTED],¹⁸⁰ [REDACTED],¹⁸¹ [REDACTED],¹⁸² [REDACTED],¹⁸³ [REDACTED],¹⁸⁴ and [REDACTED].¹⁸⁵

40. ***P-0516 knew his information could lead to RUTO's conviction, but it was an opportunity not to miss.*** P-0516 testified in the *Ruto and Sang* case and confirmed in this case that "if [he] made such a statement ... [he] was going to enjoy all the benefits [[REDACTED]] had mentioned to [him]."¹⁸⁶ He was informed that the investigation was about RUTO and everything that he would say had to be related to him.¹⁸⁷ P-0516 designed his lies to "prove the guilt of [RUTO's] criminal responsibility,"¹⁸⁸ because for him it was "an opportunity ... not to miss in order to benefit from all those promises."¹⁸⁹

41. ***P-0516 resumed contact with the OTP in 2015 because he wanted to secure the benefits and relocation that he did not receive in 2012.*** After giving his 2012 statement to OTP investigators and testifying in the *Ruto and Sang* case, P-0516 found himself in the same situation as in 2012.¹⁹⁰ He was still unemployed, still had no income, still felt insecure, still remained an outcast in his community, was still in Kenya, and was still desperate for a better life for him and his dependents to be relocated out of Africa.¹⁹¹ He knew that [REDACTED] dreams of relocation had been accomplished and since he never met

¹⁷² [T-064](#), p. 75, line 4 to p. 76, line 10.

¹⁷³ [T-064](#), p. 76, lines 9-10.

¹⁷⁴ [T-064](#), p. 34, lines 5-12.

¹⁷⁵ [T-064](#), p. 34, line 25 to p. 35 line 3.

¹⁷⁶ [T-064](#), p. 41, line 16 to p. 42, line 4, lines 11-13.

¹⁷⁷ [T-064](#), p. 58, line 14-25, p. 63, line 17 to p. 65, line 13.

¹⁷⁸ [T-064](#), p. 69, line 23 to p. 71, line 20, p. 72, line 19 to p. 76, line 10, p. 80, line 18 to p. 85, line 2.

¹⁷⁹ See *infra*, fns. 186-89.

¹⁸⁰ [T-064](#), p. 45, line 17 to p. 46, line 7.

¹⁸¹ [T-064](#), p. 45, line 17 to p. 46, line 7.

¹⁸² [T-064](#), p. 46, line 9 to p. 47, line 1.

¹⁸³ [T-064](#), p. 60, lines 3-23.

¹⁸⁴ [T-064](#), p. 67, line 21 to p. 69, line 8.

¹⁸⁵ [T-064](#), p. 67, line 21 to p. 69, line 8.

¹⁸⁶ [T-064](#), p. 17, line 13 to p. 19, line 1.

¹⁸⁷ [T-064](#), p. 41, line 16 to p. 42, line 4, 11-13.

¹⁸⁸ [T-064](#), p. 18, line 24 to p. 19, line 1.

¹⁸⁹ [T-064](#), p. 19, lines 17-25.

¹⁹⁰ [T-065](#), p. 6, line 4 to p. 8, line 22.

¹⁹¹ [T-065](#), p. 7, line 25 to p. 8, line 22.

[REDACTED] again, he assumed that he had been relocated too.¹⁹² In 2015, claiming his security situation was so serious and that he and his family's well-being so precarious that immediate protection was needed, he contacted the OTP investigators he knew from past activities, informing them that he was willing to meet with them the next day.¹⁹³ Before addressing P-0516's security concerns, the OTP investigators launched into a suspect interview (effectively giving P-0516 no real choice considering the circumstances), lasting a total of nine days before P-0516's security concerns were addressed.¹⁹⁴ During his suspect interview, P-0516 asked the OTP on numerous occasions when the Victims and Witnesses Unit ("VWU") would assess his situation.¹⁹⁵ He admitted that he was willing to say anything in the hopes that he could convince the OTP to provide him with protection.¹⁹⁶ Nine days later, P-0516 got to discuss his security concerns with the VWU.¹⁹⁷ After this interview, he met with the VWU and [REDACTED],¹⁹⁸ just as [REDACTED] had promised him, were he to lie convincingly based on the information they had fed him.¹⁹⁹

42. ***P-0516 was pressurized during his 2015 interview to mention Mr. Gicheru.*** When P-0516 resumed contact with the OTP in 2015, he initially confirmed that he did not know Mr. Gicheru,²⁰⁰ as he testified in *Ruto and Sang*.²⁰¹ Dissatisfied with that answer, the OTP investigators began pressurizing P-0516, who requested to stop the interview and asked to consult with a lawyer.²⁰² After consulting with his lawyer, P-0516 gave OTP investigators what they wanted and claimed that he knew Mr. Gicheru.²⁰³ P-0516 testified that he was willing to say anything to the OTP, hoping that he could get security.²⁰⁴

43. ***P-0516 continued lying to the OTP in 2015 and 2021.*** P-0516 testified that "some words were true, others were not" in his 2015 interview.²⁰⁵ He testified that he thought "if they interview me, they are not going to give me that security[,] [t]his is [why] I started talking all this so that I can see that these people are serious to give me security or not."²⁰⁶ In 2015,

¹⁹² [T-065](#), p. 8, lines 14-22.

¹⁹³ [T-065](#), p. 9, line 21 to p. 10, line 7.

¹⁹⁴ [T-065](#), p. 12, lines 14-21.

¹⁹⁵ [T-065](#), p. 12, lines 9-12.

¹⁹⁶ [T-065](#), p. 28, line 11 to p. 29, line 9.

¹⁹⁷ [T-065](#), p. 12, lines 3-8.

¹⁹⁸ [T-065](#), p. 34, lines 17-20.

¹⁹⁹ [T-065](#), p. 34, lines 21-24.

²⁰⁰ [T-065](#), p. 32, lines 7-13.

²⁰¹ [T-063](#), p. 55, lines 14-21.

²⁰² [T-065](#), p. 32, lines 14-22.

²⁰³ [T-065](#), p. 32, lines 14-22.

²⁰⁴ [T-065](#), p. 28, line 11 to p. 29, line 9.

²⁰⁵ [T-065](#), p. 28, line 9 to p. 21, line 7.

²⁰⁶ [T-065](#), p. 20, line 21 to p. 21, line 7, 13-17.

P-0516 told the OTP that P-0397 brought him to the [REDACTED] to meet with an unknown individual.²⁰⁷ He testified that this meeting “was not true.”²⁰⁸ He lied about the description of the unknown man, the color of his skin, how much hair he had on his head, his language, his teeth, and tribe.²⁰⁹ He also lied when claiming that the unknown individual asked him about P-0613²¹⁰ and that he gave P-0516 50,000 KSh.²¹¹ He lied about the location of his meeting with this unknown individual by mentioning a hotel that he knew was in the vicinity.²¹² When he was brought back in 2021, the OTP Senior Trial Lawyer explained to P-0516 that he remained a suspect, read him his rights, afforded him the opportunity to have a lawyer assigned to him, and signed an agreement.²¹³ During his interview (or rather, interrogation) with the OTP, the OTP Senior Trial Lawyer intimidated P-0516 by telling him that his agreement with the OTP did not prevent him from being prosecuted, cross-examined him with P-0397’s evidence, and told P-0516 that he thought he was lying.²¹⁴ Repeatedly, P-0516 asked the OTP Senior Trial Lawyer to stop the interview, yet the he continued by putting P-0397’s evidence to him.²¹⁵ P-0516 understood from the OTP Senior Trial Lawyer that there were some preconditions to his agreement: if he did not say what the OTP wanted him to say, he could be prosecuted.²¹⁶ Despite this exchange, P-0516 maintained that his meeting with the unknown man actually occurred.²¹⁷

44. ***P-0516 lied under oath about the circumstances of his withdrawal letter.*** P-0516 testified in the *Ruto and Sang* case in 2014 that he [REDACTED],²¹⁸ spoke with a [REDACTED],²¹⁹ and that [REDACTED] sent the withdrawal letter to the OTP.²²⁰ When he was interviewed by the OTP in 2015, he claimed that he met [REDACTED] and that [REDACTED] sent the withdrawal letter.²²¹ Yet in 2021, when the OTP brought P-0516 back to question him about the inconsistencies in his previous statements, P-0516 told the OTP that he met with a [REDACTED] but eventually never wrote an affidavit.²²² In 2022, he initially testified

²⁰⁷ [T-065](#), p. 18, line 14 to p. 19, line 24.

²⁰⁸ [T-065](#), p. 20, line 21 to p. 21, line 7.

²⁰⁹ [T-065](#), p. 21, line 21 to p. 23, line 4.

²¹⁰ [T-065](#), p. 25, lines 9-25.

²¹¹ [T-065](#), p. 29, lines 10-23.

²¹² [T-065](#), p. 32, lines 2-6.

²¹³ [T-065](#), p. 37, lines 17-21.

²¹⁴ [T-065](#), p. 37, line 17 to p. 44, line 2.

²¹⁵ [T-065](#), p. 40, line 10 to p. 43, line 23.

²¹⁶ [T-065](#), p. 38, lines 2-6.

²¹⁷ [T-065](#), p. 36, line 18 to p. 37, line 16.

²¹⁸ [T-065](#), p. 71, lines 7-13.

²¹⁹ [T-065](#), p. 71, lines 7-13.

²²⁰ [T-065](#), p. 74, lines 8-13.

²²¹ [T-065](#), p. 79, lines 12-19.

²²² [T-065](#), p. 85, lines 7-25.

that he went to a [REDACTED], [REDACTED], and eventually never wrote the affidavit,²²³ before changing his answers in cross-examination and claiming that he met with a [REDACTED],²²⁴ as opposed to [REDACTED].²²⁵

The OTP failed to prove that Mr. Gicheru corruptly influenced P-0516

45. ***There is no reliable evidence that P-0397 approached P-0516 to corruptly influence him and brought him to Mr. Gicheru's office.***²²⁶ P-0516 testified that he tends to mix truth with facts in order to fabricate stories²²⁷ and that he lied to the OTP in 2015 when giving his first version of the events surrounding witness interference because he wanted to see if the OTP would give him security.²²⁸ His evidence concerning P-0397's approach to him is also inconsistent: while he testified that P-0397 was [REDACTED],²²⁹ he never mentioned this in his 2015 interview²³⁰ and acknowledged that this had been suggested to him in his 2021 interview.²³¹ P-0516's and P-0397's accounts concerning P-0397's approach are also inconsistent on: (a) how they met;²³² (b) what they discussed;²³³ and (c) what happened afterwards.²³⁴ P-0341's evidence also does not corroborate P-0516's evidence: while P-0341 claims that he met P-0397 and P-0516 at Mr. Gicheru[REDACTED] "many times" and that he "discussed a lot of things" with P-0516,²³⁵ neither P-0397 nor P-0516 ever mentioned P-0341 in their evidence. Given P-0397's unavailability, neither his hearsay evidence nor P-0516's hearsay evidence concerning P-0397's approach can be tested. No other evidence was adduced to show that P-0397 approached P-0516 on behalf of Mr. Gicheru and brought him to his office.
46. ***There is no reliable evidence that Mr. Gicheru corruptly influenced P-0516 by offering him a bribe of 800,000 KSh for his withdrawal.***²³⁶ P-0516 did not testify that Mr. Gicheru offered him a bribe of 800,000 KSh, as the OTP expected him to do.²³⁷ Instead, he claimed

²²³ [T-063](#), p. 49, line 8 to p. 51, line 1.

²²⁴ [T-065](#), p. 74, line 22 to p. 78, line 2.

²²⁵ [T-065](#), p. 74, line 22 to p. 78, line 2.

²²⁶ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 109-10.

²²⁷ [T-065](#), p. 88, lines 17-22

²²⁸ [T-065](#), p. 20, line 21 to p. 21, line 7, 13-17.

²²⁹ [T-063](#), p. 35, lines 3-23.

²³⁰ [T-065](#), p. 55, line 22 to p. 56, line 2.

²³¹ [T-065](#), p. 62, line 11 to p. 63, line 21.

²³² [T-063](#), p. 23, lines 9-24, p. 24, lines 14-22 c.f. [KEN-OTP-0159-1420-R01](#), p. 1438, line 642 to p. 1439, line 655.

²³³ [T-063](#), p. 26, line 21 to p. 28, lines 5-7, p. 32, line 4-13, p. 34, line 13 to p. 35, line 23, p. 44, lines 18-23, *contra* [KEN-OTP-0159-1420-R01](#), p. 1442, lines 758-82, p. 1445, lines 896-901.

²³⁴ [T-063](#), p. 37, lines 7-9, p. 38, lines 12-25 c.f. [KEN-OTP-0159-1533-R01](#), p. 1553, lines 654-57, p. 1557, lines 805-06, 814-15.

²³⁵ [T-053](#), p. 54, line 3 to p. 56, line 15, p. 61, lines 15-20.

²³⁶ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 110.

²³⁷ [ICC-01/09-01/20-220-Conf](#), para. 110 compare with [T-063](#), p. 47, line 13 to p. 48, line 1.

that he had an agreement with P-0397 according to which he would receive 500,000 KSh and never discussed the money with Mr. Gicheru.²³⁸ P-0397's evidence does not corroborate P-0516's claims.²³⁹ P-0397 told the OTP that he did not know how much P-0516 was going to be paid.²⁴⁰ P-0341's evidence that he met with and spoke to P-0397 and P-0516 at Mr. Gicheru[REDACTED] is uncorroborated.²⁴¹ Given P-0397's unavailability, neither his evidence nor P-0516's hearsay evidence and their alleged meeting with Mr. Gicheru can be tested. No other evidence was adduced to show that Mr. Gicheru promised P-0516 800,000 KSh.

47. *There is no reliable evidence that Mr. Gicheru met with P-0516 four times and paid P-0516 at least 500,000 KSh.*²⁴² P-0516's evidence that he met with Mr. Gicheru four times and that Mr. Gicheru paid him 500,000 KSh is uncorroborated.²⁴³ P-0516 testified that he tends to mix truth with facts in order to fabricate stories²⁴⁴ and that he lied repeatedly to the OTP in order to secure benefits and relocation out of Africa.²⁴⁵ P-0397's hearsay evidence does not corroborate P-0516's claims.²⁴⁶ P-0613 is unreliable²⁴⁷ and her evidence is hearsay or double hearsay [REDACTED].²⁴⁸ P-0800 is also unreliable²⁴⁹ and his hearsay

²³⁸ [T-063](#), p. 38, lines 14-20, p. 47, line 13 to p. 48, line 1.

²³⁹ [KEN-OTP-0159-1533-R01](#), p. 1555, line 751 to p. 1557, line 821 c.f. [T-063](#), p. 38, lines 14-20. See also, [T-063](#), p. 47, line 13 to p. 48, line 1.

²⁴⁰ [KEN-OTP-0159-1533-R01](#), p. 1555, line 751 to p. 1557, line 821. P-0397 told the OTP that P-0516 told him after the meeting how much he was going to be paid but he "do[es]n't really know."

²⁴¹ See *infra*, para. 115. While P-0341 claims that he met P-0397 and P-0516 at Mr. Gicheru[REDACTED] "many times" and that he "discussed a lot of things," neither P-0397 nor P-0516 ever mentioned him in their evidence.

²⁴² *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 112-13.

²⁴³ [T-063](#), p. 45, line 20 to p. 47, line 12. There is no reliable evidence that P-0516 met with Mr. Gicheru at any time or that Mr. Gicheru paid him at least 500,000 KSh.

²⁴⁴ [T-065](#), p. 88, lines 17-22.

²⁴⁵ See *supra*, paras. 37-43. P-0516 lied to the OTP in his 2012 statement because he had been promised benefits and relocation. He also lied to the OTP in 2015 because he wanted to assess whether the OTP was serious about his relocation. He maintained his 2015's lies in 2021.

²⁴⁶ [KEN-OTP-0159-1533-R01](#), p. 1557, lines 820-21. P-0397 told the OTP that "[he] think[s] [P-0516] got around ...500,000 or 800,000 shillings," but he "do[es]n't really know."

²⁴⁷ See *infra*, paras. 55-62. P-0613 provided evidence to the OTP only to be relocated and secure benefits, she lied to the Trial Chamber, the OTP, and [REDACTED]. She had unauthorized conversations with other individuals. She coached other witnesses in order for them to receive benefits.

²⁴⁸ [KEN-OTP-0102-0178](#), para. 18. P-0613's evidence that [REDACTED] told her that P-0516 was given 100,000 KSh is uncorroborated double hearsay. This conversation was not recorded. P-0613 received this information from [REDACTED] who claimed he was receiving it [REDACTED] and Mr. Gicheru. [KEN-OTP-0111-0162](#), para. 36. This statement is also different. [KEN-OTP-0160-1349](#), p. 1353, line 84. [REDACTED] statements to P-0613 and the audio-recorded conversations are hearsay. Mr. Gicheru is not mentioned in this conversation as the OTP points out (see [ICC-01/09-01/20-220-Conf](#), fn. 332). [REDACTED] lied to her in the past and does not know whether he could pass information for the truth.

²⁴⁹ See *infra*, paras. 77-86. P-0800 lied to the OTP investigators and the Trial Chambers, he coached other witnesses, avoided the OTP, had unrecorded conversations with OTP witnesses and others, he failed to disclose his unauthorized meeting with [REDACTED], gave inconsistent and unreliable testimony, and had no telephone or email contacts with Mr. Gicheru.

evidence does not corroborate P-0516's evidence.²⁵⁰ No other evidence was adduced to show that Mr. Gicheru met with P-0516 four times and paid him 500,000 KSh.

48. ***There is no reliable evidence that Mr. Gicheru asked P-0516 whether he knew other ICC witnesses or that P-0516 contacted P-0613.***²⁵¹ P-0516 did not testify that Mr. Gicheru asked him to go and look for P-0613, as the OTP expected him to do.²⁵² P-0516 testified that he lied to the OTP in 2015 on meeting an unknown individual [REDACTED] who told him to locate P-0613.²⁵³ P-0516, who tends to mix truth with facts, fabricated this story to secure protection from the OTP.²⁵⁴ P-0613 is unreliable²⁵⁵ and her evidence is inconsistent: while she previously told the OTP that P-0516 approached her to corruptly influence her,²⁵⁶ she testified that he called her to let her know that he had not been fully paid.²⁵⁷ No other evidence was adduced to show that Mr. Gicheru asked P-0516 to locate P-0613.

49. ***In sum.*** Considering P-0516's coaching by [REDACTED] in order for him to secure benefits and relocation out of Africa, his lies to the OTP in 2012, his pattern of telling lies, his false implication of individuals in order to receive benefits, how he was pressurized by the OTP investigators, his continuing lies to the OTP in 2015 and 2021, and his lies under oath about the circumstances of his withdrawal letter, P-0516 is unreliable. No reasonable Trial Chamber would rely on P-0516 to make any findings of fact.

C. [REDACTED] ("P-0613")

50. P-0613 was an OTP witness in the *Ruto and Sang* case.²⁵⁸ She provided statements to the OTP concerning the PEV and meetings allegedly attended by RUTO,²⁵⁹ provided several statements concerning witness interference,²⁶⁰ and testified between 18 and 20 June 2014.²⁶¹

51. Between 2012 and 2022, the OTP interviewed P-0613 approximately 16 times, over a period of 39 days, for more than 173 hours, generating 147 pages of evidence, excluding

²⁵⁰ [KEN-OTP-0160-0468](#), p. 0472, lines 111-20. P-0800's evidence that [REDACTED]

²⁵¹ [ICC-01/09-01/20-220-Conf](#), para. 115.

²⁵² [ICC-01/09-01/20-220-Conf](#), para. 115.

²⁵³ [T-065](#), p. 21, line 8 to p. 24, line 5, p. 25, line 15 to p. 28, line 13.

²⁵⁴ [T-065](#), p. 88, lines 17-22.

²⁵⁵ *See supra*, fn. 247.

²⁵⁶ [KEN-OTP-0102-0178](#), para. 23.

²⁵⁷ [T-055](#), p. 81, line 12 to p. 82, line 2.

²⁵⁸ [T-055](#), p. 6, lines 2-4.

²⁵⁹ [KEN-OTP-0087-0315-R01](#); [KEN-OTP-0109-0360](#).

²⁶⁰ [KEN-OTP-0097-0068](#); [KEN-OTP-0102-0178](#); [KEN-OTP-0106-0910](#); [KEN-OTP-0106-0922](#); [KEN-OTP-0111-0162](#); [KEN-OTP-0111-0557](#); [KEN-OTP-0115-0216](#); [KEN-OTP-0118-0137](#); [KEN-OTP-0124-0007-R01](#); [KEN-OTP-0124-0394](#); [KEN-OTP-0160-0609-R01](#); [KEN-OTP-0160-0625](#).

²⁶¹ [T-055](#), p. 6, lines 5-8.

her testimony in the *Ruto and Sang* case.²⁶² In October 2021, the OTP interviewed her for five days, for more than 12 hours, to question her on the conversations she had [REDACTED] while she was [REDACTED] and to get her comments about [REDACTED] testimonies that she coached them on what to say to investigators.²⁶³ Prior to her testimony in the *Gicheru* case, the OTP proofed her for three days, for a period of 23 hours and 34 minutes, during which time 133 documents were shown to her.²⁶⁴

52. Judge Fremr of the *Ruto and Sang* Trial Chamber, Judge Eboe-Osuji concurring,²⁶⁵ found that her evidence on communications systems between RUTO and “the Network” was speculative and based on uncorroborated hearsay.²⁶⁶

P-0613’s relationships with other witnesses

53. P-0613 knew [REDACTED] and had frequent contacts with him.²⁶⁷ She worked with [REDACTED].²⁶⁸ [REDACTED].²⁶⁹ She had frequent contacts with [REDACTED],²⁷⁰ [REDACTED],²⁷¹ and [REDACTED].²⁷² She met [REDACTED].²⁷³ She knew [REDACTED] and was in contact with him.²⁷⁴ She resided in the same area as [REDACTED].²⁷⁵ She also gave a report to [REDACTED].²⁷⁶

What the OTP claimed it would establish through P-0613

54. The OTP claims that Mr. Gicheru, [REDACTED], [REDACTED], and [REDACTED], with the assistance of P-0800, P-0604, and P-0495, between April and September 2013, corruptly influenced P-0613 by offering her bribes to withdraw as an OTP witness and recant her evidence.²⁷⁷ It submitted P-0613’s evidence would establish that:

²⁶² [KEN-OTP-0087-0315-R01](#); [KEN-OTP-0097-0068](#); [KEN-OTP-0102-0178](#); [KEN-OTP-0106-0910](#); [KEN-OTP-0106-0922](#); [KEN-OTP-0111-0162](#); [KEN-OTP-0109-0360](#); [KEN-OTP-0111-0557](#); [KEN-OTP-0115-0216](#); [KEN-OTP-0118-0137](#); [KEN-OTP-0124-0007-R01](#); [KEN-OTP-0124-0394](#); [KEN-OTP-0160-0609-R01](#); [KEN-OTP-0160-0625](#); [KEN-OTP-0160-1594](#); [KEN-OTP-0160-1587](#).

²⁶³ [KEN-OTP-0160-0609-R01](#); [KEN-OTP-0160-0625](#).

²⁶⁴ [KEN-OTP-0160-1594](#); [KEN-OTP-0160-1587](#).

²⁶⁵ [ICC-01/09-01/11-2027](#) (Reasons of Judge Eboe-Osuji), para. 1.

²⁶⁶ *Id.* (Reasons of Judge Fremr), paras. 105-07.

²⁶⁷ [T-056](#), p. 21, lines 11-22.

²⁶⁸ [T-056](#), p. 18, lines 14-18.

²⁶⁹ [T-056](#), p. 19, line 23 to p. 20, line 13.

²⁷⁰ [T-056](#), p. 19, lines 14-15.

²⁷¹ [T-056](#), p. 23, lines 18-22.

²⁷² [T-056](#), p. 27, lines 11-17.

²⁷³ [T-056](#), p. 20, line 18 to p. 21, line 1; [T-058](#), p. 60, line 25 to p. 61, line 1.

²⁷⁴ [T-056](#), p. 23, lines 12-17.

²⁷⁵ [T-056](#), p. 27, lines 6-10.

²⁷⁶ [T-056](#), p. 100, lines 16-21.

²⁷⁷ [ICC-01/09-01/20-220-Conf](#), para. 136.

- a. Mr. Gicheru offered [REDACTED] a reward of 2,000,000 KSh for P-0613's [REDACTED].²⁷⁸
- b. Between April and September 2013, [REDACTED], [REDACTED], and [REDACTED], acting on behalf of Mr. Gicheru, called P-0613 to corruptly influence her to take a bribe.²⁷⁹
- c. On or about 19 July 2013, Mr. Gicheru instructed [REDACTED] to go to [REDACTED] with a telephone so that P-0613 could talk to "them."²⁸⁰
- d. On or about 22 July 2013, Mr. Gicheru instructed [REDACTED] to go to [REDACTED] to corruptly influence witnesses, including P-0613.²⁸¹
- e. On or about 23 July 2013, Mr. Gicheru met with [REDACTED] to discuss the offer to give to P-0613.²⁸²
- f. P-0516,²⁸³ P-0800,²⁸⁴ and P-0604²⁸⁵ attempted to corruptly influence P-0613 to withdraw as an OTP witness.
- g. On 13 September 2013, P-0495 attempted to corruptly influence P-0613 during an audio-recorded meeting in [REDACTED].²⁸⁶

P-0613 is incapable of belief

55. P-0613 is incapable of belief. She coached other witnesses on what to say concerning the PEV events, lied to the OTP to be admitted into the ICC protection program, and made unsubstantiated claims to the OTP in order to create a record and become an OTP witness. She had unauthorized, unsupervised, and unrecorded conversations with most of the individuals relevant to this case and coached other witnesses to mention Mr. Gicheru and make her claims more credible. She lied to the VWU and was planning on scamming the ICC with [REDACTED]. She also used [REDACTED] to secure benefits from the ICC.

56. ***P-0613 coached other witnesses on what to say concerning the PEV events.***
[REDACTED] and [REDACTED] claimed that P-0613 coached them on what to say to

²⁷⁸ [ICC-01/09-01/20-220-Conf](#), para. 141.

²⁷⁹ [ICC-01/09-01/20-220-Conf](#), para. 168; [ICC-01/09-01/20-125-Conf-AnxD](#), para. 416(ii).

²⁸⁰ [ICC-01/09-01/20-220-Conf](#), para. 147.

²⁸¹ [ICC-01/09-01/20-220-Conf](#), para. 150.

²⁸² [ICC-01/09-01/20-220-Conf](#), para. 166(d); [ICC-01/09-01/20-125-Conf-AnxD](#), para. 414(d).

²⁸³ [ICC-01/09-01/20-220-Conf](#), para. 145.

²⁸⁴ [ICC-01/09-01/20-220-Conf](#), para. 155.

²⁸⁵ [ICC-01/09-01/20-220-Conf](#), para. 168; [ICC-01/09-01/20-125-Conf-AnxD](#), para. 416(v)

²⁸⁶ [ICC-01/09-01/20-220-Conf](#), paras. 158-59.

the investigators to become OTP witnesses. [REDACTED] testified that prior to engaging with the ICC, [REDACTED] introduced him to [REDACTED],²⁸⁷ he had a three-hour meeting with [REDACTED] and [REDACTED],²⁸⁸ and [REDACTED] introduced him to the ICC.²⁸⁹ [REDACTED] and [REDACTED]: (a) offered [REDACTED] the opportunity to get out of Africa and have a better lifestyle;²⁹⁰ (b) told [REDACTED] that he needed to give OTP investigators certain information²⁹¹ in order to benefit from the program²⁹² (i.e. sufficient details for his story to be believable and plausible);²⁹³ and (c) supplied him with the details for his story.²⁹⁴ [REDACTED] and [REDACTED] also told him that he should not be concerned about the ICC verifying the information since they “could not come to the ground to get the true truth ... they were far away from us.”²⁹⁵ [REDACTED] testified that [REDACTED] told him that his statement “shall touch political rallies that [were] attended by Mr Ruto, meetings at Mr Ruto held in his home.”²⁹⁶ [REDACTED] also told him that “once you are a witness, you’re going to be able to get a lot of support” and he will “live a luxurious life ... not here in Africa.”²⁹⁷ When the OTP brought [REDACTED] back for an interview in 2021, she claimed that [REDACTED] and [REDACTED] were lying.²⁹⁸

57. P-0613 lied to the OTP to be admitted into the ICC protection program. Before giving her statement to the OTP, P-0613 was in the [REDACTED] until [REDACTED].²⁹⁹ When P-0613 first met with the OTP in December 2012, she claimed that Orange Democratic Movement (“ODM”) supporters were aggressive towards active or perceived PNU supporters,³⁰⁰ that the Kalenjin community only supported the ODM,³⁰¹ and that she knew that [REDACTED]³⁰² She stated that she had nothing to add or to clarify.³⁰³ The OTP stopped her interview because her information was second-hand and asked her to provide

²⁸⁷ [T-064](#), p. 6, lines 6-19, p. 11, line 3 to p. 15, line 20.

²⁸⁸ [T-064](#), p. 12, line 25 to p. 13, line 3.

²⁸⁹ [T-064](#), p. 4, lines 19-21. See also [KEN-OTP-0141-0026_R01](#).

²⁹⁰ [T-064](#), p. 6, lines 6-13.

²⁹¹ [T-064](#), p. 14, lines 4-8.

²⁹² [T-064](#), p. 14, lines 4-11.

²⁹³ [T-064](#), p. 14, lines 14-17.

²⁹⁴ [T-064](#), p. 14, lines 18-22.

²⁹⁵ [T-064](#), p. 23, lines 2-5, p. 24, lines 6-10.

²⁹⁶ [T-057](#), p. 5, line 2 to p. 10, line 5.

²⁹⁷ [T-057](#), p. 21, line 21 to p. 22, line 19.

²⁹⁸ [KEN-OTP-0160-0609-R01](#), paras. 12-25.

²⁹⁹ [T-056](#), p. 12, line 15 to p. 13, line 1.

³⁰⁰ [KEN-OTP-0087-0315-R01](#), paras. 21, 35.

³⁰¹ [KEN-OTP-0087-0315-R01](#), para. 54.

³⁰² [T-056](#), p. 29, line 24 to p. 32, line 5.

³⁰³ [T-056](#), p. 32, lines 13-17.

the direct source of her information,³⁰⁴ which was [REDACTED], P-0534.³⁰⁵ When the OTP resumed her interview in July 2013, P-0613 asked to have her memory refreshed with her first statement,³⁰⁶ indubitably to plausibly embellish her story by placing herself in the events she previously recounted, to which there is no verifiable evidence of any of it being true. She creatively “clarified”³⁰⁷ that by [REDACTED],³⁰⁸ explaining that to not have gone to the house would have otherwise exposed her to claims of being against the community.³⁰⁹ In this web of “clarifications,” she gave details about [REDACTED],³¹⁰ who, after a hard day’s work of enthusiastically looting, burning, maiming, and terrorizing non-ODM supporters and Kikuyus,³¹¹ [REDACTED].³¹² She claimed that had she not gone to [REDACTED], she might have been “[REDACTED].”³¹³ Strangely, she testified that she did not previously provide this information because she was scared³¹⁴ and did not trust the OTP³¹⁵ – even though the purpose of speaking with the OTP was to get into a protection program and to secure benefits, including relocation out of Africa for her and [REDACTED].³¹⁶ Her new, second version of events is implausible. P-0516 testified that since everyone knew who belonged to which political party,³¹⁷ “[REDACTED]”³¹⁸ at the risk of getting hurt.³¹⁹ It is implausible for someone like P-0613, [REDACTED]³²⁰ and [REDACTED],³²¹ to be [REDACTED]. The more plausible explanation is that when she resumed her interview with the OTP in 2013, P-0613 confabulated this [REDACTED] to appear to have first-hand information desired by the OTP investigators (having previously been rejected over her second-hand information) and asked to review her first interview to refresh her memory, but for to weave in some much-required fiction into the already fictitious story she had already provided to the OTP. And true to the OTP investigators’ *modus operandi*, her new story was accepted without any due diligence, and without

³⁰⁴ [T-056](#), p. 32, line 18 to p. 40, line 22.

³⁰⁵ [KEN-OTP-0087-0315-R01](#), para. 60.

³⁰⁶ [T-056](#), p. 35 lines 18-21.

³⁰⁷ [T-056](#), p. 35, lines 18-21.

³⁰⁸ [T-056](#), p. 35, line 22 to p. 36, line 4.

³⁰⁹ [KEN-OTP-0109-0360](#), paras. 18, 20.

³¹⁰ [T-056](#), p. 36, line 11 to p. 37, line 9.

³¹¹ [T-056](#), p. 39, lines 13-24.

³¹² [T-056](#), p. 39, lines 13-24.

³¹³ [T-056](#), p. 40, lines 17-22.

³¹⁴ [T-056](#), p. 39, lines 9-12.

³¹⁵ [T-056](#), p. 31, lines 18-24.

³¹⁶ *See infra* para. 62.

³¹⁷ [T-064](#), p. 52, line 23 to p. 53, line 17.

³¹⁸ [T-064](#), p. 52, lines 6-13.

³¹⁹ [T-064](#), p. 50, line 17 to p. 53, line 17.

³²⁰ [KEN-OTP-0087-0315-R01](#), para. 14.

³²¹ [KEN-OTP-0087-0315-R01](#), para. 14.

questioning the plausibility of what should have been recognized – as with P-0516 – to be blatant confabulations.

58. ***P-0613 made unsubstantiated claims to the OTP to create a record and make herself more valuable.*** Two months after being rejected by the OTP investigators, P-0613 started passing on information to the OTP,³²² such as [REDACTED].³²³ The OTP never attempted to verify any of these reports.³²⁴ P-0613's information was second or third-hand,³²⁵ [REDACTED].³²⁶ P-0613 mentioned Mr. Gicheru in her reports to the OTP because she heard about him from her friends and associates.³²⁷ P-0613 heard of Mr. Gicheru's name because he was a lawyer and had represented a withdrawing witness,³²⁸ a matter that was widely published.³²⁹ Yet she testified that she never met with Mr. Gicheru, never spoke to him, never saw him.³³⁰ [REDACTED],³³¹ the evidence shows otherwise: [REDACTED].³³² P-0604 testified under oath that P-0613's purpose was to remain relevant to the case by reporting security incidents.³³³ In a conversation she had in 2011, [REDACTED] "asked [her] why [she] had not gone with him and the rest of the witnesses [REDACTED]."³³⁴ It is more than plausible that during this period, P-0613 kept contact with [REDACTED] in order to create a record and make herself valuable to the OTP so as to join [REDACTED]. P-0613, by her own words, "didn't witness a lot that happened really;"³³⁵ she was creating evidence in order to be included in the ICC protection program and make it out of Africa, [REDACTED].

59. ***P-0613 was having unauthorized, unsupervised, and unrecorded conversations.*** P-0613's conversations with other individuals were unauthorized.³³⁶ In one of her reports to the ICC, P-0613 asked the [REDACTED] to "call [P-0516], who she claims had not been in communication with the OTP."³³⁷ When the [REDACTED] asked her whether she "had

³²² [KEN-OTP-0129-0297](#).

³²³ [T-056](#), p. 50, line 7 to p. 79, line 24, p. 58, line 1 to p. 63, line 13, p. 66, line 24 to p. 69, line 14, p. 77, line 22 to p. 80, line 2.

³²⁴ [T-056](#), p. 55, line 18 to p. 56, line 2.

³²⁵ [T-056](#), p. 53, lines 10-25, p. 54, lines 6-11, p. 54, lines 18 to p. 55, line 10, p. 57, lines 2-13.

³²⁶ [KEN-OTP-0149-0308-R01](#).

³²⁷ [T-056](#), p. 18, lines 2-5.

³²⁸ [T-056](#), p. 16, lines 9-11, p. 28, lines 9-15.

³²⁹ [KEN-D32-0001-0001](#).

³³⁰ [T-056](#), p. 15, lines 24-25.

³³¹ [T-056](#), p. 69, lines 4-10, p. 72, lines 7-10.

³³² [T-056](#), p. 112, lines 7-18. [REDACTED]

³³³ [T-057](#), p. 11, lines 8-10.

³³⁴ [KEN-OTP-0102-0178](#), para. 25.

³³⁵ [T-057](#), p. 112, line 22 to p. 113, line 18 ("I didn't witness a lot that happened really.")

³³⁶ [KEN-OTP-0149-0308-R01](#).

³³⁷ [KEN-OTP-0149-0308-R01](#).

been tasked by ID handler to establish communication”³³⁸ she “evaded” the question.³³⁹ P-0613 testified that she did not remember this conversation.³⁴⁰ When put to her that she was acting as an OTP investigator although she had not been asked to establish contact with other witnesses, she avoided answering the question until the Trial Chamber intervened.³⁴¹ [REDACTED].³⁴² P-0613 failed to audio-record many conversations,³⁴³ but nonetheless volunteered the contents of purported unverifiable conversations to the OTP.³⁴⁴ In an investigation report dated October 2013, the OTP memorized that P-0613 stopped having contacts with individuals such as P-0800, YEBEI, [REDACTED], and [REDACTED], because she was asked to do so.³⁴⁵ Yet P-0613 did not record her conversations with P-0800 and [REDACTED], even though she later claimed that they approached her to corruptly influence her.³⁴⁶ With no recordings of P-0613’s unauthorized, unsupervised, and unrecorded conversations, there is no way of knowing with whom P-0613 was communicating, the content of the conversations, and to what extent these conversations informed and influenced her actions (feigned or genuine) and unverifiable claims.

60. ***P-0613 coached other witnesses to mention Mr. Gicheru to make her own claims credible.*** [REDACTED] testified that P-0613 told him to mention Mr. Gicheru, YEBEI, and [REDACTED].³⁴⁷ [REDACTED] testified that P-0613 coached him on what to say during their recorded meeting in [REDACTED].³⁴⁸ He testified that their discussion was “well-planned” so that investigators would release money to P-0613,³⁴⁹ explaining that “since the first recording that we mentioned the name Gicheru, that is when I discovered that the name that is supposed to be used in this discussion was Gicheru. That is why we mention Gicheru, Gicheru at the – all the time.”³⁵⁰ When P-0613 was brought back in 2021, she told the OTP that [REDACTED] and [REDACTED] allegations were false,³⁵¹ yet considering her motivations to make herself valuable to the OTP for the second case (having acknowledged that she had little to offer for the OTP for their case against RUTO

³³⁸ [KEN-OTP-0149-0308-R01](#).

³³⁹ [KEN-OTP-0149-0308-R01](#).

³⁴⁰ [T-056](#), p. 106, lines 10-25.

³⁴¹ [T-056](#), p. 104, line 4 to p. 107, line 20.

³⁴² [KEN-OTP-0106-0910](#), para. 27.

³⁴³ [T-057](#), p. 29, lines 11-18.

³⁴⁴ [T-057](#), p. 30, lines 10-17.

³⁴⁵ [T-057](#), p. 37, lines 11-15; [KEN-OTP-0117-0931-R01](#).

³⁴⁶ [KEN-OTP-0118-0137](#), para. 16. [KEN-OTP-0124-0007-R01](#), para. 22.

³⁴⁷ [T-057](#), p. 10, lines 17-25.

³⁴⁸ [T-057](#), p. 26, line 18 to p. 28, line 1.

³⁴⁹ [T-057](#), p. 27, lines 17-18.

³⁵⁰ [T-057](#), p. 27, lines 6-9.

³⁵¹ [KEN-OTP-0160-0609-R01](#), paras. 12-25.

and SANG), it is just as plausible that during her numerous unauthorized, unsupervised, and unrecorded conversations with witnesses, [REDACTED] and [REDACTED] claims are true.

61. ***P-0613 lied to the VWU and was having unauthorized conversations with [REDACTED] to scam the ICC.*** When P-0613 was [REDACTED], the VWU requested her not to use other telephones or make any unauthorized calls.³⁵² Yet P-0613 had several conversations with [REDACTED].³⁵³ P-0613 was using a private telephone lines to contact people,³⁵⁴ which she never reported to the VWU.³⁵⁵ She testified that she lied to the VWU because she was bored and lonely.³⁵⁶ During these conversations, P-0613 reveals her true character by concocting scams with [REDACTED] on, for instance, providing fake receipts to the VWU for a taxi, in order to get reimbursements.³⁵⁷ In her conversations with [REDACTED], she revealed that she asked for more money from the ICC so that “[REDACTED] won’t use all of it”³⁵⁸ and they could keep it. Similarly, she asked for money to be sent so that [REDACTED] could “save [it] for the holiday.”³⁵⁹ The recorded conversations with [REDACTED] confirm [REDACTED] testimony that P-0613 “was using ... [REDACTED] ... to get some money and that she was claiming that the husband died ... yet she was not married.”³⁶⁰ Since only [REDACTED]’s telephone was tapped,³⁶¹ it is impossible to know with whom P-0613 was having unrecorded telephone conversations and what was being discussed. It is more than plausible that by having unrecorded and unauthorized conversations, P-0613 was concocting her stories that might be of use in securing her out-of-Africa relocation. Her conversations with [REDACTED] reveal the true nature of her base character, her propensity for scheming and scamming, and her ease in pivoting with lies when caught.³⁶²

³⁵² [T-057](#), p. 44, lines 8-23.

³⁵³ [T-056](#), p. 9, lines 5-18. P-0613’s conversations with [REDACTED] generated 1,450 pages of transcripts.

³⁵⁴ [T-057](#), p. 13, lines 9-12, p. 39, lines 7-10.

³⁵⁵ [T-057](#), p. 59, line 16 to p. 60, line 7.

³⁵⁶ [T-057](#), p. 44, lines 11-13.

³⁵⁷ [T-057](#), p. 82, line 16 to p. 87, line 9.

³⁵⁸ [T-057](#), p. 82, line 21 to p. 84, line 14; [KEN-OTP-0157-2975-R01](#), lines 86-120.

³⁵⁹ [T-057](#), p. 86, line 17 to p. 87, line 1; [KEN-OTP-0157-2975-R01](#), p. 2984-85.

³⁶⁰ [T-057](#), p. 14, line 3 to p. 15, line 1.

³⁶¹ [T-057](#), p. 46, lines 5-11.

³⁶² [T-057](#), p. 70, line 19 to p. 71, line 17 (“if they are willing to support why not take the advantage,” “I want them to get shocked when I’m – through with it”); p. 71, line 18 to p. 72, line 10 (“They are forcing people to testify and not treating them well”), p. 73, line 7 to p. 74, line 4 (“they are doing [dodgy] things”), p. 74, line 5-16 (“I will broadcast all over the world”), p. 100, lines 11-19 (“I just want to use them to get money now, I want to be telling them I need money so they can be sending and sending.”)

62. ***P-0613 used [REDACTED] to secure benefits from the ICC.*** P-0613 claimed in 12 different statements, spanning from [REDACTED], that she had [REDACTED].³⁶³ It is only in April 2014, after receiving the [REDACTED], that the OTP discovered that [REDACTED]³⁶⁴ and confronted her with the fact that she never mentioned this before.³⁶⁵ In P-0613's subsequent OTP statements, the mention of [REDACTED] is deleted.³⁶⁶ She testified that she represented that [REDACTED]³⁶⁷ While P-0613 denied that she was using her [REDACTED] to receive more money from the ICC, the evidence shows otherwise:³⁶⁸ she told [REDACTED] in a recorded conversation that: (a) once she has the papers [REDACTED], she would say "bye bye" to the ICC;³⁶⁹ (b) she "just want[s] to use [the VWU] to get money;"³⁷⁰ and (c) and "[REDACTED] will break the world"³⁷¹ if she did not get her money.³⁷² P-0613's claim that she was lying to [REDACTED] because wanted to "explore more"³⁷³ is unsubstantiated; she had not been asked to and was not authorized to have these conversations.³⁷⁴

The OTP failed to prove that Mr. Gicheru corruptly influenced P-0613

63. ***There is no reliable evidence that Mr. Gicheru offered [REDACTED] a reward of 2,000,000 KSh for P-0613's [REDACTED].***³⁷⁵ There is no recording of the telephone call between P-0613 and [REDACTED], where [REDACTED] purportedly informed her that Mr. Gicheru offered him a reward in exchange for P-0613's [REDACTED].³⁷⁶ P-0613 testified that she was not present during the meeting where Mr. Gicheru purportedly tasked [REDACTED],³⁷⁷ does not know whether it actually took place,³⁷⁸ and that [REDACTED] lied to her in the past.³⁷⁹ P-0613 is inconsistent about [REDACTED].³⁸⁰ P-0613's

³⁶³ [KEN-OTP-0129-0546](#). See also cover pages of [KEN-OTP-0087-0315-R01](#); [KEN-OTP-0097-0068](#); [KEN-OTP-0102-0178](#); [KEN-OTP-0106-0910](#); [KEN-OTP-0106-0922](#); [KEN-OTP-0111-0162](#); [KEN-OTP-0109-0360](#); [KEN-OTP-0111-0557](#); [KEN-OTP-0115-0216](#); [KEN-OTP-0118-0137](#); [KEN-OTP-0124-0007](#); [KEN-OTP-0124-0394](#). [REDACTED]; [KEN-OTP-0160-0609-R01](#); [KEN-OTP-0160-0625](#).

³⁶⁴ [KEN-OTP-0129-0546](#).

³⁶⁵ [T-056](#), p. 10, line 21 to p. 11, line 2.

³⁶⁶ [KEN-OTP-0160-0609-R01](#); [KEN-OTP-0160-0625](#).

³⁶⁷ [T-056](#), p. 10, line 24 to p. 11, line 2.

³⁶⁸ [T-055](#), p. 86, lines 16-22; [T-057](#), p. 14, line 12 to p. 15, line 1. See also [KEN-OTP-0129-0546](#).

³⁶⁹ [T-057](#), p. 111, lines 10-17, p. 112, lines 5-15.

³⁷⁰ [T-057](#), p. 100, lines 11-23. See also [KEN-OTP-0157-2975-R01](#), lines 343-8.

³⁷¹ [T-057](#), p. 115, line 14 to p. 116, line 4.

³⁷² [T-057](#), p. 115, line 14 to p. 116, line 4.

³⁷³ [T-057](#), p. 39, line 19 to p. 40, line 5, p. 49, lines 7-10.

³⁷⁴ [T-057](#), p. 44, lines 8-23.

³⁷⁵ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 141.

³⁷⁶ [T-055](#), p. 19, line 9 to p. 20, line 3, p. 22, line 2 to p. 23, line 4; [T-056](#), p. 45 to p. 50, line 5.

³⁷⁷ [T-056](#), p. 16, lines 1-3, p. 49, lines 21-22.

³⁷⁸ [T-056](#), p. 50, lines 1-5.

³⁷⁹ [T-056](#), p. 78, lines 13-20.

³⁸⁰ [KEN-OTP-0102-0178](#), paras. 16-17 c.f. [T-056](#), p. 15, lines 21-22, p. 49, lines 10-16.

testimony that Mr. Gicheru wanted to give [REDACTED]³⁸¹ is also implausible. When pressed in cross-examination, she changed her story.³⁸² P-0800's hearsay evidence that [REDACTED].³⁸³ Considering P-0613's unauthorized, unsupervised, and unrecorded conversations with other witnesses,³⁸⁴ there is no way of knowing whether this conversation took place or the veracity of what was being said. Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0613 provides concerning him can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] concerning this conversation and/or searched for information that could corroborate P-0613's evidence. No other evidence was adduced to show Mr. Gicheru offered [REDACTED] a bribe to find P-0613's [REDACTED].

64. ***There is no reliable evidence that YEBEI approached P-0613 on behalf of Mr. Gicheru.***³⁸⁵ Although P-0613 recorded her conversations with YEBEI, there is no evidence that YEBEI called P-0613 on behalf of Mr. Gicheru. [REDACTED]³⁸⁶ P-0613's claim that [REDACTED].³⁸⁷ Mr. Gicheru is not mentioned in this conversation. [REDACTED]³⁸⁸ P-0613's statement that YEBEI told her that [REDACTED] is also speculative, based on her assumptions and does not reflect the content of the conversation.³⁸⁹ Mr. Gicheru, again, is not mentioned. Given YEBEI's unavailability, none of the hearsay evidence P-0613 provides concerning him can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with YEBEI, there is no evidence that the OTP attempted to interview YEBEI concerning his conversation with P-0613. No other evidence was adduced to show that YEBEI was attempting to approach P-0613 on behalf of Mr. Gicheru.
65. ***There is no reliable evidence that Mr. Gicheru [REDACTED].***³⁹⁰ During an audio-recorded conversation with [REDACTED]³⁹¹ Although P-0613 asked him whether [REDACTED]³⁹² He did not mention Mr. Gicheru. P-0613 testified that [REDACTED].³⁹³

³⁸¹ [T-056](#), p. 15, lines 15-22.

³⁸² P-0613 had an identification card at the time ([T-056](#), p. 14, lines 23-24) and was a registered voter in Kenya ([T-056](#), p. 15, lines 3-5), [REDACTED].

³⁸³ P-0800 received the information from [REDACTED] ([KEN-OTP-0102-0205](#), paras. 15, 38)

³⁸⁴ *See supra*, para. 59.

³⁸⁵ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 136, 146, 147, 153, 154.

³⁸⁶ [KEN-OTP-0160-1325](#), p. 1328, lines 66-67.

³⁸⁷ [KEN-OTP-0106-0922](#), para. 23.

³⁸⁸ [KEN-OTP-0160-1359](#), p. 1361, lines 8-9.

³⁸⁹ [KEN-OTP-0111-0162](#), para. 39.

³⁹⁰ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 147.

³⁹¹ [KEN-OTP-0160-1349](#), p. 1356, lines 201-02.

³⁹² [KEN-OTP-0160-1156](#), p. 1159, lines 42-43.

³⁹³ [T-056](#), p. 78, lines 13-20.

Considering that she did not record all her conversations,³⁹⁴ there is no record of what was being said in other conversations with [REDACTED]. Aside from there being no reliable evidence [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] concerning this conversation. No other evidence was adduced to show that Mr. Gicheru asked [REDACTED].

66. ***There is no reliable evidence that Mr. Gicheru instructed [REDACTED] and corruptly influence P-0613.***³⁹⁵ [REDACTED], Mr. Gicheru is not mentioned.³⁹⁶ The recorded conversation [REDACTED] is suspect and untrustworthy.³⁹⁷ The night before [REDACTED].³⁹⁸ [REDACTED].³⁹⁹ [REDACTED],⁴⁰⁰ [REDACTED]⁴⁰¹ [REDACTED]⁴⁰² [REDACTED], there is no way of knowing what was discussed [REDACTED].⁴⁰³ P-0613 did not record her conversations with P-0800 in which he supposedly attempted to corruptly influence her.⁴⁰⁴ Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0613 provides concerning him can be tested. There being no reliable evidence that Mr. Gicheru had any association with [REDACTED]. No other evidence was adduced to show that Mr. Gicheru instructed [REDACTED] to corruptly influence P-0613.

67. ***There is no reliable evidence that Mr. Gicheru [REDACTED]⁴⁰⁵[REDACTED].⁴⁰⁶*** There is no recording of the conversation in which [REDACTED] purportedly told P-0613 that he would meet with Mr. Gicheru the next day to discuss her.⁴⁰⁷ [REDACTED].⁴⁰⁸ [REDACTED].⁴⁰⁹ [REDACTED].⁴¹⁰ Considering P-0613's unauthorized, unsupervised, and unrecorded conversations with other individuals,⁴¹¹ there is no way of knowing whether what she reported was an accurate reflection of the conversation between her and

³⁹⁴ See *supra*, para. 59.

³⁹⁵ Contra [ICC-01/09-01/20-220-Conf](#), para. 150.

³⁹⁶ [KEN-OTP-0160-1371](#).

³⁹⁷ See *infra*, para. 88.

³⁹⁸ [KEN-OTP-0131-0431](#), p. 0433, lines 27-30.

³⁹⁹ [KEN-OTP-0111-0140](#), para. 33. [T-052](#), p. 56, lines 4-21, p. 58, lines 9-22. See also [KEN-OTP-0160-1944](#), p. 22, lines 8-25.

⁴⁰⁰ [KEN-OTP-0132-0167-R01](#), p. 0179, line 347.

⁴⁰¹ [KEN-OTP-0132-0167-R01](#), p. 0179, line 348.

⁴⁰² [KEN-OTP-0132-0167-R01](#), p. 0179, line 350.

⁴⁰³ [T-051](#), p. 101, line 18 to p. 102, line 11.

⁴⁰⁴ [KEN-OTP-0118-0137](#), para. 16.

⁴⁰⁵ Contra [ICC-01/09-01/20-220-Conf](#), para. 166(d); [ICC-01/09-01/20-125-Conf-AnxA-Corr3](#), para. 414(d).

⁴⁰⁶ Contra [ICC-01/09-01/20-220-Conf](#), para. 166(d); [ICC-01/09-01/20-125-Conf-AnxA-Corr3](#), para. 414(d).

⁴⁰⁷ [KEN-OTP-0111-0162](#), paras. 55-56.

⁴⁰⁸ [KEN-OTP-0111-0162](#), para. 55.

⁴⁰⁹ [KEN-OTP-0111-0162](#), para. 56.

⁴¹⁰ [KEN-OTP-0111-0162](#), para. 55.

⁴¹¹ See *supra*, paras. 59, 61.

[REDACTED]. [REDACTED] do not verify the truth of what was being said during the conversation.⁴¹² Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0613 provides concerning him can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] concerning this conversation and/or searched for information that could corroborate P-0613's evidence. No other evidence was adduced to show that Mr. Gicheru [REDACTED] to discuss the offer to give to P-0613.

68. *There is no reliable evidence that P-0516,⁴¹³ P-0800,⁴¹⁴ and P-0604⁴¹⁵ attempted to corruptly influence P-0613 on behalf of Mr. Gicheru.* Despite having been instructed to,⁴¹⁶ [REDACTED] she claimed attempted to corruptly influence her. **P-0516.** [REDACTED]⁴¹⁷ [REDACTED].⁴¹⁸ P-0516 testified that [REDACTED], along with [REDACTED], coached him on what to say to the OTP to secure benefits and be relocated out of Africa.⁴¹⁹ **P-0800.** P-0613 told the OTP that P-0800 offered her a bribe in exchange for her return to Kenya and recantation of her evidence.⁴²⁰ P-0613 was having frequent contacts with P-0800⁴²¹ but [REDACTED].⁴²² Since P-0613 and P-0800 were in a scheme to extort money from the ICC, their evidence should not be relied on.⁴²³ **P-0604.** P-0613 informed the OTP that [REDACTED] asked P-0604 to locate her, but [REDACTED].⁴²⁴ [REDACTED] testified in *Ruto and Sang* that P-0613 asked him to mention the names of Mr. Gicheru, [REDACTED], and [REDACTED] in order to receive benefits⁴²⁵ and that P-0613 was talking with him on a private telephone line.⁴²⁶ Considering P-0613's unauthorized, unsupervised, and unrecorded calls with other individuals,⁴²⁷ there is no way of knowing whether what P-0613 reported is the real content of her conversations. There

⁴¹² [KEN-OTP-0111-0184](#); [KEN-OTP-0111-0185](#).

⁴¹³ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 145.

⁴¹⁴ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 155.

⁴¹⁵ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 160-63.

⁴¹⁶ [T-057](#), p. 28, lines 5-9.

⁴¹⁷ [KEN-OTP-0102-0178](#), para. 23.

⁴¹⁸ [T-055](#), p. 81, line 12 to p. 82, line 2.

⁴¹⁹ [T-064](#), p. 6, lines 6-19, p. 15, lines 15-20.

⁴²⁰ [KEN-OTP-0118-0137](#), para. 16.

⁴²¹ [T-056](#), p. 27, lines 11-15.

⁴²² [T-056](#), p. 27, lines 11-15. P-0613 told the OTP that [REDACTED] ([KEN-OTP-0118-0137](#), para. 15). The investigators however reported that [REDACTED] ([KEN-OTP-0153-0041](#)).

⁴²³ *See supra*, [REDACTED].

⁴²⁴ [KEN-OTP-0124-0007-R01](#), para. 22.

⁴²⁵ [T-057](#), p. 10, lines 6-25.

⁴²⁶ [T-057](#), p. 12, line 12 to p. 13, line 3.

⁴²⁷ *See supra*, paras. 59, 61.

is no reliable evidence that Mr. Gicheru had any association with these individuals.⁴²⁸ No other evidence was adduced to show that P-0516, P-0800, and P-0604 attempted to corruptly influence P-0613 on behalf of Mr. Gicheru.

69. ***There is no reliable evidence that P-0495 attempted to corruptly influence P-0613 on behalf of Mr. Gicheru.***⁴²⁹ P-0613 did not record any of her conversations with P-0495 prior to [REDACTED].⁴³⁰ During the recorded meeting, P-0613 injects Mr. Gicheru's name and P-0495 asked her questions about him.⁴³¹ P-0495 understands that he has to mention Mr. Gicheru and goes along.⁴³² The recorded conversations between P-0495 and P-0800 after this meeting do not corroborate P-0613's evidence.⁴³³ Mr. Gicheru is not mentioned in these conversations.⁴³⁴ [REDACTED] testified under oath that he never met Mr. Gicheru and that his discussion with P-0613 was well-planned so that investigators could release money to her,⁴³⁵ explaining that *"since the first recording that we mentioned the name Gicheru, that is when I discovered that the name that is supposed to be used in this discussion was Gicheru. That is why we mention Gicheru, Gicheru at the – all the time."*⁴³⁶ Considering P-0613's unauthorized, unsupervised, and unrecorded conversations with P-0495⁴³⁷ there is no way of knowing what was discussed during the previous conversations and whether this conversation was pre-planned, as [REDACTED] suggested. Given that the OTP chose not to call P-0495 as a witness, depriving Mr. Gicheru of his fair trial right of confrontation, the content of this conversation cannot be tested. No other evidence was adduced to show that P-0495 attempted to corruptly influence P-0495 on behalf of Mr. Gicheru.

70. ***In sum.*** Considering that P-0613 coached other witnesses on what to say to the OTP concerning the PEV events, lied to the OTP to integrate into ICC protection program, made unsubstantiated claims to the OTP in order to create a record and make herself more valuable, was having unauthorized, unsupervised, and unrecorded conversations, coached other witnesses to mention Mr. Gicheru, lied to the VWU, was having conversations with

⁴²⁸ See *infra*, para. 196.

⁴²⁹ Contra [ICC-01/09-01/20-220-Conf](#), paras. 158-59.

⁴³⁰ [KEN-OTP-0115-0216-R01](#), paras. 28-34.

⁴³¹ [KEN-OTP-0160-1126](#), p. 1131, lines 119-20.

⁴³² [KEN-OTP-0160-1126](#), p. 1131, line 122.

⁴³³ [KEN-OTP-0145-0594](#); [KEN-OTP-0145-0587](#); [KEN-OTP-0160-1035](#); [KEN-OTP-0160-1423](#); [KEN-OTP-0160-1426](#); [KEN-OTP-0160-1429](#).

⁴³⁴ [KEN-OTP-0145-0594](#); [KEN-OTP-0145-0587](#); [KEN-OTP-0160-1035](#); [KEN-OTP-0160-1423](#); [KEN-OTP-0160-1426](#); [KEN-OTP-0160-1429](#).

⁴³⁵ [T-057](#), p. 27, lines 17-18.

⁴³⁶ [T-057](#), p. 27, lines 6-9.

⁴³⁷ [KEN-OTP-0115-0216-R01](#), paras. 28-34.

[REDACTED] on how to scam the ICC, and used [REDACTED] to secure benefits from the ICC, P-0613 is unreliable. No reasonable Trial Chamber would rely on P-0613 to make any findings of fact.

D. [REDACTED] (“P-0800”)

71. P-0800 was an OTP witness in the *Ruto and Sang* case.⁴³⁸ He provided statements to the OTP concerning the PEV and [REDACTED],⁴³⁹ provided statements concerning witness interference,⁴⁴⁰ and testified before Trial Chamber V between 17 and 26 November 2014.⁴⁴¹
72. Between 2012 and 2021, the OTP interviewed P-0800 approximately 58 times, over a period of 43 days, for more than 164 hours, generating 734 pages of evidence, excluding his testimony in the *Ruto and Sang* case.⁴⁴² In July 2021, the OTP proofed him for three days, for a period of 10 hours,⁴⁴³ of which 30% of the time was spent going over an incident on [REDACTED].⁴⁴⁴ Prior to his testimony in the *Gicheru* case, the OTP proofed him for five days, for a period of 37 hours and 25 minutes, during which time 139 documents were shown to him.⁴⁴⁵
73. Judge Fremr of the *Ruto and Sang* Trial Chamber, Judge Eboe-Osuji concurring,⁴⁴⁶ found that P-0800’s evidence in that case was “incapable of being relied upon by a reasonable Trial Chamber” since he “demonstrated a willingness to lie in return for personal gain and induce others to lie as well, apparently without concern for the significant implications of such dishonesty.”⁴⁴⁷ Aside from P-0800’s evidence “being incapable of belief,” Judge Fremr found that he gave a “highly implausible” account of a cleansing ceremony.⁴⁴⁸

P-0800’s relationships with other witnesses

⁴³⁸ [T-050](#), p. 39, line 15 to p. 40, line 11.

⁴³⁹ [T-050](#), p. 39, lines 15-21.

⁴⁴⁰ [T-050](#), p. 39, line 22 to p. 40, line 7.

⁴⁴¹ [T-050](#), p. 39, line 15 to p. 40, line 11. [KEN-OTP-0160-2109](#); [KEN-OTP-0160-1781](#); [KEN-OTP-0160-1858](#); [KEN-OTP-0160-2137](#); [KEN-OTP-0160-1944](#); [KEN-OTP-0160-2228](#); [KEN-OTP-0160-2316](#); [KEN-OTP-0160-2411](#).

⁴⁴² [T-051](#), p. 6, line 9 to p. 7, line 3.

⁴⁴³ [T-051](#), p. 7, line 16 to p. 8, line 5.

⁴⁴⁴ [T-051](#), p. 8, lines 6-9.

⁴⁴⁵ [KEN-OTP-0160-1549](#); [T-051](#), p. 7, lines 4-9.

⁴⁴⁶ [ICC-01/09-01/11-2027-Red-Corr](#) (Reasons of Judge Eboe-Osuji), para. 1.

⁴⁴⁷ *Id.* (Reasons of Judge Fremr), paras. 41, 43.

⁴⁴⁸ *Id.*, para. 116.

74. P-0800 worked with [REDACTED],⁴⁴⁹ [REDACTED],⁴⁵⁰ and [REDACTED]⁴⁵¹ [REDACTED].⁴⁵² He is “good friend[s]” with [REDACTED], knew him [REDACTED],⁴⁵³ and accompanied him to [REDACTED].⁴⁵⁴ He is also [REDACTED]’s “close friend and colleague,” knowing him since [REDACTED], and [REDACTED].⁴⁵⁵

What the OTP claimed it would establish through P-0800

75. The OTP claims that Mr. Gicheru, together with [REDACTED] and [REDACTED], corruptly influenced P-0800 by offering him a bribe of 1,500,000 to 2,500,000 KSh to withdraw as an OTP witness, recant his evidence, and approach P-0495, and that P-0800 subsequently corruptly influenced P-0495 and assisted him to corruptly influence P-0613.⁴⁵⁶ It submitted P-0800’s evidence would establish that:

- a. P-0800 had phone conversations with [REDACTED] between 30 May and July 2013, some of which P-0800 recorded, including a conversation in which [REDACTED] told P-0800 that he accepted an offer of 1,500,000 KSh to withdraw his assistance to the ICC and asked P-0800 to accept a similar offer that had already been approved.⁴⁵⁷
- b. P-0800 met with [REDACTED], during which [REDACTED] told P-0800 that he was working on behalf of Mr. Gicheru and offered him a bribe to withdraw and locate other witnesses, including P-0613.⁴⁵⁸
- c. P-0800 met with Mr. Gicheru in Nairobi during which Mr. Gicheru offered P-0800 between 1,500,000 and 2,000,000 KSh not to testify in the *Ruto and Sang* case and to contact P-0495 on his behalf to convince him to do the same.⁴⁵⁹
- d. P-0800 located and corruptly influenced P-0495 to meet with Mr. Gicheru and subsequently assisted him to meet P-0613 and corruptly influence her to withdraw as an OTP witness.⁴⁶⁰

⁴⁴⁹ [T-050](#), p. 57, lines 17-25.

⁴⁵⁰ [T-050](#), p. 87, lines 2-4.

⁴⁵¹ [T-050](#), p. 92, lines 3-14.

⁴⁵² [T-050](#), p. 58, lines 7-18, p. 87, lines 2-9.

⁴⁵³ [T-050](#), p. 67, lines 6-16.

⁴⁵⁴ [KEN-OTP-0107-0291](#).

⁴⁵⁵ [KEN-OTP-0103-2473](#), para. 19; [T-050](#), p. 58, lines 10-18.

⁴⁵⁶ [ICC-01/09-01/20-220-Conf](#), para. 179.

⁴⁵⁷ [ICC-01/09-01/20-220-Conf](#), paras. 184, 187.

⁴⁵⁸ [ICC-01/09-01/20-220-Conf](#), paras. 190-92.

⁴⁵⁹ [ICC-01/09-01/20-220-Conf](#), para. 199.

⁴⁶⁰ [ICC-01/09-01/20-220-Conf](#), paras. 197, 219-21.

- e. P-0800 met Mr. Gicheru at [REDACTED] Advocates in Nairobi to [REDACTED].⁴⁶¹
- f. P-0800 was instructed [REDACTED] to go to [REDACTED] and sign an affidavit to withdraw as an OTP witness in the *Ruto and Sang* case, prepared at Mr. Gicheru's request.⁴⁶²
- g. P-0800 received a phone call from P-0495 in September 2014, shortly before P-0495 testified in the *Ruto and Sang* case, in which he told P-0800 that he had been coached on his testimony by a group of 10 lawyers led by Mr. Gicheru.⁴⁶³

P-0800 is incapable of belief

76. P-0800 is incapable of belief. He coached other witnesses on what to say to the OTP in order to secure benefits and relocation. He [REDACTED], and had unrecorded conversations with other OTP witnesses and others while in the protection program. He lied to OTP investigators. He failed to disclose his unauthorized meeting with [REDACTED] until caught by OTP lawyers. He lied to the *Ruto and Sang* Trial Chamber under oath. He gave multiple inconsistent versions of his story about [REDACTED] supporting [REDACTED]. He had no telephone or email contacts with Mr. Gicheru. He lied to this Trial Chamber under oath.

77. ***P-0800 coached other witnesses on what to say to the OTP in order to secure benefits and relocation.*** [REDACTED] testified that prior to engaging with the ICC, he had a three-hour meeting with [REDACTED],⁴⁶⁴ where [REDACTED] and [REDACTED] told him how he could get into the protection program to make it out of Africa and have a better life.⁴⁶⁵ [REDACTED] and [REDACTED] told [REDACTED] that he needed to provide certain information in order to benefit from the program⁴⁶⁶ – sufficient details for his story to be believable and plausible.⁴⁶⁷ Since [REDACTED] could not provide such details based on his own perception and experiences, [REDACTED] and [REDACTED] supplied him with the details for his story,⁴⁶⁸ for instance, mentioning [REDACTED] to show that they

⁴⁶¹ [ICC-01/09-01/20-220-Conf](#), para. 197.

⁴⁶² [ICC-01/09-01/20-220-Conf](#), paras. 197-99.

⁴⁶³ [ICC-01/09-01/20-220-Conf](#), para. 226.

⁴⁶⁴ [T-064](#), p. 11, line 3 to p. 13, line 3.

⁴⁶⁵ [T-064](#), p. 6, lines 6-19. *See also* p. 15, lines 15-20.

⁴⁶⁶ [T-064](#), p. 14, lines 4-11.

⁴⁶⁷ [T-064](#), p. 14, line 12 to p. 15, line 3. *See also id.*, p. 15, lines 4-9.

⁴⁶⁸ [T-064](#), p. 14, line 12 to p. 15, line 3.

were working with the same objectives.⁴⁶⁹ As a consequence, P-0516 lied to the OTP when providing his initial statement in 2012.⁴⁷⁰

78. **P-0800 lied to [REDACTED].** [REDACTED].⁴⁷¹ [REDACTED].⁴⁷² [REDACTED]⁴⁷³ [REDACTED].⁴⁷⁴ [REDACTED].⁴⁷⁵

79. **P-0800 often [REDACTED].** On numerous occasions, [REDACTED].⁴⁷⁶ [REDACTED].⁴⁷⁷ [REDACTED].⁴⁷⁸

80. **P-0800 had several unrecorded conversations with other OTP witnesses and others while in the protection program.** P-0800 had several telephones,⁴⁷⁹ changed SIM cards and phone numbers,⁴⁸⁰ and swapped SIM cards with others, [REDACTED].⁴⁸¹ He admitted to having unrecorded conversations with other witnesses,⁴⁸² and having an unauthorized visit with P-0613 in [REDACTED].⁴⁸³ He also lied under oath about whether he was permitted to contact other OTP witnesses, initially claiming that he was allowed to do so without permission from the OTP,⁴⁸⁴ before being confronted with his previous testimony and admitting that he needed to request permission from the OTP to speak to other witnesses.⁴⁸⁵ With no recordings of these conversations, there is no record of what was being said, and to whom.

81. **P-0800 lied to OTP investigators.** [REDACTED], OTP investigators called P-0800 to arrange for an interview.⁴⁸⁶ During the call, the investigators told P-0800 that he would be interviewed as a suspect (and was thus being audio-recorded for the first time), explained his rights to a lawyer, repeatedly warned him to tell the “complete truth,”⁴⁸⁷ give his “full

⁴⁶⁹ [T-064](#), p. 37, line 19 to p. 38, line 18.

⁴⁷⁰ [T-064](#), p. 17, line 14 to p. 22, line 10.

⁴⁷¹ [KEN-OTP-0116-0495-R01](#), p. 0496.

⁴⁷² [KEN-OTP-0116-0495-R01](#), p. 0496.

⁴⁷³ [KEN-OTP-0116-0495-R01](#), p. 0496.

⁴⁷⁴ [KEN-OTP-0116-0497-R01](#).

⁴⁷⁵ [KEN-OTP-0116-0497-R01](#).

⁴⁷⁶ [KEN-OTP-0138-0626-R01](#); [KEN-OTP-0116-0495-R01](#); [KEN-OTP-0153-0021](#); [T-052](#), p. 34, lines 3-13, p. 43, line 10 to p. 44, p. 43, line 10 to p. 46, line 17; [KEN-OTP-0153-0022](#).

⁴⁷⁷ [T-052](#), p. 34, lines 3-13.

⁴⁷⁸ [KEN-OTP-0107-0289-R01](#); [T-052](#), p. 35, lines 3-22.

⁴⁷⁹ [T-051](#), p. 102, lines 12-24.

⁴⁸⁰ [T-052](#), p. 13, line 18 to p. 16, line 4.

⁴⁸¹ [T-052](#), p. 21, line 14 to p. 23, line 23, p. 28, line 18 to p. 29, line 12.

⁴⁸² [T-052](#), p. 32, line 21 to p. 33, line 23.

⁴⁸³ [T-052](#), p. 54, line 9 to p. 55, line 11.

⁴⁸⁴ [T-052](#), p. 33, lines 13-17.

⁴⁸⁵ [KEN-OTP-0160-2137](#), p. 80, lines 4-7; [T-052](#), p. 53, line 23 to p. 54, line 6.

⁴⁸⁶ [KEN-OTP-0145-0439-R01](#).

⁴⁸⁷ [T-051](#), p. 20, line 24 to 22, line 20.

and frank honesty,”⁴⁸⁸ and to “tell all.”⁴⁸⁹ Investigators also told him that there was “no point of [him] coming to lie” and “to think about it.”⁴⁹⁰ 11 days passed before his in-person interview with the OTP [REDACTED].⁴⁹¹ Again, investigators warned P-0800 to give his “full honesty” and not to tell “half-truths.”⁴⁹² Yet P-0800 lied, [REDACTED].⁴⁹³ While P-0800 initially claimed that the lie was spontaneous,⁴⁹⁴ he admitted that it was detailed⁴⁹⁵ and a story that he clung on to for the entire day.⁴⁹⁶ In crafting his cover story, he included details that could be verified by investigators such as locations and descriptions, mixing them with imaginary conversations.⁴⁹⁷ There were no threats or intimidation from the OTP investigators [REDACTED].⁴⁹⁸ P-0800 knew he would not be arrested,⁴⁹⁹ just as he knew from the outset of his involvement with the OTP that investigators would make no efforts to validate most, if not all of the claims being offered to them.⁵⁰⁰ Rather than attempting to verify P-0800’s evidence, when P-0800 was brought back on [REDACTED] in preparation for the *Gicheru* trial, investigators explained to him that they needed him to be consistent and credible, and that if he provided a good explanation for his lies in his previous statement, the “balance goes back,” and he would be a credible witness.⁵⁰¹ P-0800 understood the investigators’ instructions: since he explained himself to investigators where he had issues, he considered himself an honest and truthful person.⁵⁰²

82. P-0800 failed to disclose his unauthorized meeting with [REDACTED] until caught.

While P-0800 claimed that other than his lie about P-0516, he has been honest with the OTP in all his other dealings,⁵⁰³ he admitted that he did not tell the truth about having an unauthorized meeting with [REDACTED] until his [REDACTED] proofing session in the

⁴⁸⁸ [T-051](#), p. 32, line 15 to p. 33, line 2.

⁴⁸⁹ [T-051](#), p. 36, line 16 to p. 37, line 2, p. 44, lines 13-20.

⁴⁹⁰ [T-051](#), p. 28, lines 1-10.

⁴⁹¹ [T-051](#), p. 26, line 7 to p. 27, line 25, p. 31, lines 8-13.

⁴⁹² [T-051](#), p. 53, line 2 to p. 54, line 9.

⁴⁹³ [T-051](#), p. 15, line 19 to p. 16, line 3.

⁴⁹⁴ [T-051](#), p. 17, lines 8-22.

⁴⁹⁵ [T-051](#), p. 64, lines 3-12.

⁴⁹⁶ [T-051](#), p. 68, line 9 to p. 69, line 8.

⁴⁹⁷ [T-051](#), p. 70, line 4 to p. 76, line 6.

⁴⁹⁸ [T-051](#), p. 88, line 19 to p. 90, line 1.

⁴⁹⁹ [T-051](#), p. 56, line 22 to p. 57, line 22.

⁵⁰⁰ The OTP Senior Investigator on the Kenyan Article 70 case, P-0730 testified that witnesses’ claims could not be verified due to “security limitations,” that investigators had access to the Rift Valley but decided internally to limit themselves, and that witnesses knew that the ICC could not go to certain areas. [T-062](#), p. 17, line 12 to p. 18, line 3, p. 20, line 25 to p. 21, line 13, p. 22, lines 1-14; [T-061](#), p. 61, lines 15-20. Indeed, P-0516 testified that he would place himself into certain areas knowing that the ICC was never going to check. [T-064](#), p. 23, lines 23-25.

⁵⁰¹ [KEN-OTP-0160-0280](#), p. 0286, line 194 to p. 0287, line 237; [T-052](#), p. 110, lines 6-21.

⁵⁰² [T-051](#), p. 3, lines 13-24.

⁵⁰³ [T-051](#), p. 3, lines 13-24.

Ruto and Sang case when OTP lawyers brought it up.⁵⁰⁴ He acknowledged that he should have disclosed the unauthorized meeting prior to this,⁵⁰⁵ as he was instructed to “tell all” in his [REDACTED].⁵⁰⁶ He also lied under oath when he initially claimed that he recorded all of his conversations with [REDACTED],⁵⁰⁷ before being confronted with his prior statement and admitting that there were telephone conversations which he did not record.⁵⁰⁸ There is also no evidence supporting P-0800’s claim that the start of his conversation with [REDACTED] was when he began the audio-recording, and thus there is no way of telling what he and [REDACTED] might have said to each other before starting the recording.⁵⁰⁹

83. *P-0800 lied to the Ruto and Sang Trial Chamber under oath.* In *Ruto and Sang*, Judge Fremr found that P-0800 misled the Court under oath,⁵¹⁰ having testified during direct examination that he witnessed first-hand information that he admitted during cross-examination came from a report prepared by P-0495.⁵¹¹

84. *P-0800 gave multiple inconsistent versions of his story about [REDACTED].* Through the multiple versions of this story provided to OTP investigators and the Trial Chamber, P-0800 was inconsistent on: (a) whether he met [REDACTED] or someone named [REDACTED] Advocates before [REDACTED];⁵¹² (b) whether [REDACTED]⁵¹³ and Mr. Gicheru⁵¹⁴ were present in [REDACTED] Advocates’s office when preparing the affidavit; (c) when he [REDACTED];⁵¹⁵ (d) whether he saw information in the [REDACTED];⁵¹⁶

⁵⁰⁴ [T-051](#), p. 42, lines 3-22, p. 91, lines 11-16.

⁵⁰⁵ [T-051](#), p. 37, lines 8-12.

⁵⁰⁶ [T-051](#), p. 43, line 4 to p. 44, line 12.

⁵⁰⁷ [T-051](#), p. 101, lines 8-12.

⁵⁰⁸ [T-052](#), p. 55, line 13 to p. 56, line 21, p. 58, lines 9-22. *See also* [KEN-OTP-0111-0140](#), para. 33; [KEN-OTP-0160-1944](#), p. 22, lines 8-25.

⁵⁰⁹ [T-051](#), p. 101, line 18 to p. 102, line 11.

⁵¹⁰ [ICC-01/09-01/11-2027-Red-Corr](#), para. 41.

⁵¹¹ [ICC-01/09-01/11-2027-Red-Corr](#), paras. 39-40.

⁵¹² [KEN-OTP-0135-0213](#), p. 0218, lines 156-62. [REDACTED]

⁵¹³ [REDACTED]. [T-052](#), p. 95, line 10 to p. 96, line 16. When confronted with his [REDACTED], he acknowledged that he told the OTP that [REDACTED] was upstairs in the office. [T-052](#), p. 95, line 10 to p. 97, line 17.

⁵¹⁴ P-0800 testified that Mr. Gicheru was not present at [REDACTED], and that they met after the signing and went to lunch [T-052](#), p. 97, line 21 to p. 99, line 9. Yet in [REDACTED], he claimed that he met Mr. Gicheru in [REDACTED]. [KEN-OTP-0135-0139](#), p. 0150, line 380 to p. 0152, line 450.

⁵¹⁵ P-0800 claimed that he signed the affidavit [REDACTED], which is the date investigators asked him to sign the first page and initial the rest of the pages [T-052](#), p. 18, lines 8-11; [KEN-OTP-0130-0087](#); [T-052](#), p. 85, line 23 to p. 84, line 1.

⁵¹⁶ [REDACTED]. [KEN-OTP-0135-0103-R01](#), p. 0107, line 160 to p. 0108, line 178. [T-052](#), p. 66, line 18 to p. 68, line 12. [REDACTED]. [KEN-OTP-0135-0220](#), p. 0222, lines 68-77; [T-052](#), p. 83, line 12 to p. 84, line 20. [REDACTED]. [T-050](#), p. 75, lines 5-9.

and (e) whether he [REDACTED] only the back sheet or whether he [REDACTED] blank pages.⁵¹⁷

85. ***P-0800 had no telephone or email contacts with Mr. Gicheru.*** P-0800 claimed that Mr. Gicheru gave him his landline number to communicate,⁵¹⁸ but admitted that the landline, mobile number, and email would be available on Mr. Gicheru's business card,⁵¹⁹ which anyone could have obtained by visiting Mr. Gicheru[REDACTED]. [REDACTED],⁵²⁰ [REDACTED].⁵²¹ [REDACTED].⁵²² At the beginning of the interview the following day, [REDACTED]⁵²³ In this instance, P-0800 took verifiable facts (that he had an uncle, that his uncle was in the hospital, and that the hospital was in a particular location) and used them to concoct a story on the spot to persuade the OTP investigators that he never received money from Mr. Gicheru.⁵²⁴

86. ***P-0800 lied to this Trial Chamber under oath.*** In his testimony, P-0800 claimed that P-0495 informed him in person that 10 lawyers led by Mr. Gicheru prepared P-0495 on what to say in court,⁵²⁵ and that he informed OTP investigators of this incident in Kenya during a meeting in his own room.⁵²⁶ [REDACTED].⁵²⁷ [REDACTED].⁵²⁸ [REDACTED],⁵²⁹ [REDACTED],⁵³⁰ and [REDACTED]⁵³¹ [REDACTED].⁵³² Importantly, even after this bizarre fiasco (resembling a *Laurel and Hardy* slapstick skit), and despite the extensive resources and costs involved [REDACTED], there was no follow up – no attempt [REDACTED] as had been planned. Yet, the OTP attempts to substitute verifiable evidence

⁵¹⁷ [REDACTED]. [T-052](#), p. 75, line 22 to p. 76, line 25. [REDACTED]. [KEN-OTP-0135-0155](#), p. 0159, lines 130-45. [T-052](#), p. 80, line 23 to p. 82, line 7, p. 86, line 14 to p. 88, line 12, p. 89, lines 14-19; [KEN-OTP-0145-0604](#), p. 0617; [KEN-OTP-0160-2137](#), p. 22, line 1 to p. 23, line 16.

⁵¹⁸ [T-051](#), p. 110, lines 1-15.

⁵¹⁹ [T-051](#), p. 110, line 19 to p. 112, line 8.

⁵²⁰ [KEN-OTP-0160-2316](#), p. 73, line 19 to p. 74, line 11.

⁵²¹ [KEN-OTP-0160-0382](#), p. 0384, line 72 to p. 0386, line 145.

⁵²² [KEN-OTP-0160-0354](#), p. 0359, line 140 to p. 0365, line 376.

⁵²³ [T-051](#), p. 114, line 5 to p. 116, line 14. [KEN-OTP-0160-0382](#), p. 0384, line 72 to p. 0386, line 145; [KEN-OTP-0160-0423](#), p. 0424, lines 19-38.

⁵²⁴ [T-052](#), p. 7, line 23 to p. 11, line 15; [KEN-OTP-0160-0374](#).

⁵²⁵ [T-050](#), p. 91, lines 5-7; [T-052](#), p. 100, lines 2-21.

⁵²⁶ [T-052](#), p. 102, line 12 to p. 103, line 17.

⁵²⁷ [KEN-OTP-0144-0260-R01](#), p. 0264, line 131 to p. 0267, line 238; [KEN-OTP-0144-0272](#), p. 0278-83, lines 226-50, 283-85, 305-95; [KEN-OTP-0160-2316](#), p. 77, line 11 to p. 82, line 19: [REDACTED]

⁵²⁸ [KEN-OTP-0144-0260-R01](#), p. 0268, lines 270-72: [REDACTED]

⁵²⁹ [KEN-OTP-0144-0322-R02](#), p. 0329-31, lines 219-48, 281-305.

⁵³⁰ [KEN-OTP-0144-0322-R02](#), p. 0331, lines 304-06; [KEN-OTP-0144-0333](#), p. 0347-48, lines 498-516.

⁵³¹ [KEN-OTP-0144-0349](#), p. 0350-51, lines 4-36, p. 0353-0354, lines 133-140.

⁵³² [KEN-OTP-0144-0260-R01](#); [KEN-OTP-0144-0272-R02](#); [KEN-OTP-0144-0322-R02](#); [KEN-OTP-0144-0333](#); [KEN-OTP-0144-0349](#).

with outlandish, unsubstantiated claims, and expects the Trial Chamber to overlook all the inconsistencies and confabulations, and unquestioningly accept P-0800's latest version.

The OTP failed to prove that Mr. Gicheru corruptly influenced P-0800

87. ***There is no reliable evidence that [REDACTED] called P-0800 and said he had accepted a bribe and asked P-0800 to do the same.***⁵³³ There is no recording of the phone call P-0800 claims to have had with [REDACTED] on 20 May 2013 where [REDACTED] purportedly told P-0800 that he had accepted a bribe.⁵³⁴ None of the other recorded conversations between P-0800 and [REDACTED] show [REDACTED] claiming that he had been bribed and asking P-0800 to do the same.⁵³⁵ In 2021, P-0800 told investigators that he could not remember if [REDACTED] told him that he got paid, despite their attempt to lead P-0800 by falsely claiming that [REDACTED] said this to P-0800 on tape.⁵³⁶ P-0613's hearsay evidence does not corroborate P-0800's evidence: there is no recording of the telephone conversation where [REDACTED] was hired to encourage P-0800 to withdraw.⁵³⁷ P-0730's evidence also does not corroborate P-0800's evidence (or P-0613's). P-0730's solemn declaration merely repeats what P-0613 told other OTP investigators and as such cannot corroborate P-0613's evidence.⁵³⁸ Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0800, [REDACTED], or P-0613 provide concerning [REDACTED] can be tested. No other evidence was adduced to show that BARASA called P-0800 and said he accepted a bribe and asked P-0800 to do the same.

88. ***There is no reliable evidence that [REDACTED] worked on behalf of Mr. Gicheru and offered P-0800 a bribe to withdraw and locate other witnesses.***⁵³⁹ P-0800 was ordered not to meet with [REDACTED] the night of his arrival in [REDACTED].⁵⁴⁰ Yet unbeknownst to the OTP investigators at the time, he had several unrecorded phone calls with

⁵³³ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 184.

⁵³⁴ [KEN-OTP-0103-2473](#), para. 25.

⁵³⁵ [KEN-OTP-0106-0371](#); [KEN-OTP-0103-2701](#); [KEN-OTP-0104-0917](#); [KEN-OTP-0104-0920](#); [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](#).

⁵³⁶ [KEN-OTP-0160-0354](#), p. 0362, lines 272-81. [REDACTED]. *See also* [KEN-OTP-0103-2473](#), para. 25 [REDACTED].

⁵³⁷ [KEN-OTP-0107-0288](#).

⁵³⁸ [KEN-OTP-0159-0884](#), para. 210.

⁵³⁹ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 190-92.

⁵⁴⁰ [KEN-OTP-0160-0290](#), p. 0305, line 535 to p. 0306, line 578; [KEN-OTP-0160-0308](#), p. 0311, lines 96-109, p. 0316, line 259 to p. 318, line 354; [KEN-OTP-0160-0400-R02](#), p. 0419, line 667 to p. 0421, line 735. *Compare with* [T-051](#), p. 41, lines 3-19 [REDACTED].

[REDACTED] prior to the meeting (with no record of what was being said),⁵⁴¹ and contrary to their instructions, he met with [REDACTED] on [REDACTED].⁵⁴² When OTP lawyers finally confronted him about his unauthorized meeting with [REDACTED], he gave multiple versions of the encounter, claiming: (a) he met [REDACTED];⁵⁴³ and (b) [REDACTED].⁵⁴⁴ Curiously, [REDACTED] is heard in the recording asking P-0800 if he selected a good place to meet the following day to discuss matters that they were already discussing.⁵⁴⁵ There is no way of knowing what was discussed between [REDACTED] and P-0800 when the audio-recorder was not on.⁵⁴⁶ P-0800 failed to disclose his unauthorized meeting with [REDACTED] on [REDACTED] until he was caught by OTP lawyers.⁵⁴⁷ Given that the OTP did not call [REDACTED] as a witness, none of [REDACTED]'s hearsay evidence concerning Mr. Gicheru evidence can be tested. No other evidence was adduced to show that [REDACTED] told P-0800 that he was working on behalf of Mr. Gicheru and offered him a bribe to withdraw.

89. ***There is no reliable evidence that Mr. Gicheru offered P-0800 a bribe.***⁵⁴⁸ There are no recorded telephone calls between P-0800 and [REDACTED] showing that [REDACTED] asked him to meet with Mr. Gicheru. Other than P-0800's word, there is no proof that P-0800 was in contact with Mr. Gicheru,⁵⁴⁹ no proof that he ever met with Mr. Gicheru, no proof that Mr. Gicheru offered him a bribe, and no proof that Mr. Gicheru asked him to corruptly influence other OTP witnesses. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED] – whom P-0800 claims introduced him to Mr. Gicheru at the alleged meeting⁵⁵⁰ – none of the hearsay evidence P-0800 provides concerning [REDACTED] can be tested since the OTP did not call BETT as a witness. P-0613's evidence does not corroborate P-0800's evidence: there is no recording of the telephone conversation where P-0613 claims that P-0800 told her that he had accepted a bribe.⁵⁵¹ P-0613's audio-recorded meeting with P-0495 in [REDACTED]⁵⁵² also does not corroborate P-0800's evidence: P-0495 testified under oath in the *Ruto and*

⁵⁴¹ [KEN-OTP-0111-0140](#), para. 33. [T-052](#), p. 56, lines 4-21, p. 58, lines 9-22. See also [KEN-OTP-0160-1944](#), p. 22, lines 8-25.

⁵⁴² [KEN-OTP-0160-2228](#), p. 6, line 10 to p. 7, line 4; [KEN-OTP-0160-0308](#), p. 0327, line 692 to p. 0329, line 769.

⁵⁴³ [KEN-OTP-0160-0290](#), p. 0306, line 590 to p. 0307, line 612: [REDACTED].

⁵⁴⁴ [KEN-OTP-0160-0308](#), p. 0310, lines 36-48: [REDACTED]

⁵⁴⁵ [KEN-OTP-0131-0431](#), p. 0433, lines 27-30.

⁵⁴⁶ [T-051](#), p. 101, line 18 to p. 102, line 11.

⁵⁴⁷ See *supra*, para. 82.

⁵⁴⁸ Contra [ICC-01/09-01/20-220-Conf](#), para. 199.

⁵⁴⁹ See *supra*, para. 85.

⁵⁵⁰ [KEN-OTP-0135-0113](#), p. 0118, lines 155-70.

⁵⁵¹ [KEN-OTP-0153-0041](#); [KEN-OTP-0118-0137](#), paras. 16-17 ("I did not record this conversation either.")

⁵⁵² [KEN-OTP-0160-1126](#), p. 1129.

Sang trial that his discussion with P-0613 was “well-planned” so the OTP investigators could release money to P-0613.⁵⁵³ No other evidence was adduced to show that Mr. Gicheru offered P-0800 a bribe.

90. ***There is no reliable evidence that P-0800 corruptly influenced P-0495 to meet with Mr. Gicheru and subsequently assisted him to meet P-0613.***⁵⁵⁴ Aside from there being no reliable evidence that P-0800 was ever in contact with Mr. Gicheru,⁵⁵⁵ there are no photographs or audio-recordings showing that P-0800 ever met with Mr. Gicheru, that Mr. Gicheru asked him to locate and corruptly influence P-0495, or that P-0800 approached P-0495. Given that the OTP chose not to call P-0495 as a witness, none of the hearsay evidence P-0800 provides concerning him can be tested. Moreover, P-0495’s evidence does not corroborate P-0800’s evidence. P-0495 testified under oath in the *Ruto and Sang* trial that: (a) he did not know Mr. Gicheru; (b) he never met Mr. Gicheru; (c) that his mentioning of Mr. Gicheru in his audio-recorded meeting with P-0613 in [REDACTED] was “just fabrication for how to get money;” and (d) that his discussion with P-0613 was “well-planned” so that investigators would release money to P-0613.⁵⁵⁶ P-0613’s hearsay evidence also does not corroborate P-0800’s evidence: there is no recording of the telephone conversation where P-0613 claims that P-0800 offered for her to get paid to withdraw as a witness.⁵⁵⁷ No other evidence was adduced to show that P-0800 corruptly influenced P-0495 to meet with Mr. Gicheru and subsequently assisted him to meet P-0613.

91. ***There is no reliable evidence that P-0800 met Mr. Gicheru at [REDACTED].***⁵⁵⁸ While P-0800 claimed in 2014 that he met Mr. Gicheru at [REDACTED]’s office,⁵⁵⁹ he testified that Mr. Gicheru was not present and that they met after the [REDACTED] and went to lunch.⁵⁶⁰ Given the numerous inconsistencies in P-0800’s evidence concerning his claimed meetings at [REDACTED] advocates,⁵⁶¹ his account is wholly untrustworthy. Given that the OTP did not call [REDACTED], [REDACTED], or [REDACTED] as witnesses, none of the hearsay evidence P-0800 provides concerning these individuals can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], [REDACTED], or [REDACTED], there is no evidence that the OTP

⁵⁵³ [T-057](#), p. 26, line 17 to p. 27, line 25.

⁵⁵⁴ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 197, 119, 219-21.

⁵⁵⁵ *See supra*, para. 85.

⁵⁵⁶ [T-057](#), p. 26, line 17 to p. 27, line 25.

⁵⁵⁷ [KEN-OTP-0153-0041](#); [KEN-OTP-0118-0137](#), paras. 16-17.

⁵⁵⁸ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 197.

⁵⁵⁹ [KEN-OTP-0135-0139-R01](#), p. 0150, line 380 to p. 0152, line 475.

⁵⁶⁰ [T-052](#), p. 97, line 21 to p. 99, line 9.

⁵⁶¹ *See supra*, para. 84.

attempted to interview [REDACTED], [REDACTED], or [REDACTED] concerning P-0800 and/or searched for evidence that could corroborate P-0800's evidence. No other evidence was adduced to show that P-0800 met Mr. Gicheru at [REDACTED] Advocates to sign an affidavit supporting [REDACTED].

92. *There is no reliable evidence that [REDACTED] instructed P-0800 to go to [REDACTED] to sign an affidavit of withdrawal prepared at Mr. Gicheru's request.*⁵⁶²

There are no recorded telephone calls between P-0800 and [REDACTED] showing that [REDACTED] instructed P-0800 to go to [REDACTED]. P-0800's affidavit only shows that P-0800 [REDACTED] prepared by [REDACTED] on [REDACTED].⁵⁶³ P-0800's handwritten letter only shows that P-0800 drafted a handwritten letter of withdrawal on [REDACTED].⁵⁶⁴ Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0800 provides concerning him can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any illicit association with [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] and/or searched for information that could corroborate P-0800's evidence. No other evidence was adduced to show that [REDACTED] instructed P-0800 to go to [REDACTED] to sign an affidavit of withdrawal prepared at Mr. Gicheru's request.

93. *There is no reliable evidence that P-0800 received a telephone call from P-0495 in which he told P-0800 he had been coached on his testimony by a group of 10 lawyers led by Mr. Gicheru.*⁵⁶⁵

Aside from the fact that there is no recording of this alleged conversation, P-0800 lied under oath in claiming: (a) that he had an in-person meeting with P-0495 where he told P-0800 that he was coached by 10 lawyers led by Mr. Gicheru; and (b) that he reported this in-person meeting to OTP investigators in his room while [REDACTED].⁵⁶⁶ There is also no evidence that the OTP investigators followed up on P-0800's claimed conversation [REDACTED],⁵⁶⁷ [REDACTED].⁵⁶⁸ No other evidence was adduced to show that P-0800 received a telephone call from P-0495 in which he told P-0800 that he had been coached on his testimony by a group of 10 lawyers led by Mr. Gicheru.

94. *In sum.* Considering P-0800's coaching of other witnesses, [REDACTED], his evasiveness in avoiding the OTP, his lies to OTP investigators, his failure to disclose his unauthorized

⁵⁶² *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 197-98.

⁵⁶³ [KEN-OTP-0145-0562](#).

⁵⁶⁴ [KEN-OTP-0145-0560](#).

⁵⁶⁵ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 226.

⁵⁶⁶ *See supra*, para. 86.

⁵⁶⁷ *See supra*, para. 86.

⁵⁶⁸ *See* [KEN-OTP-0138-0626](#).

meeting with [REDACTED], his lies to the *Ruto and Sang* Trial Chamber, his inconsistent and unreliable testimony, his lack of telephone or email contacts with Mr. Gicheru, and his lies to this Trial Chamber, P-0800 is unreliable. No reasonable Trial Chamber would rely on P-0800 to make any findings of fact.

E. [REDACTED] (“P-0495”)

95. P-0495 was an OTP witness in the *Ruto and Sang* case.⁵⁶⁹ He provided statements to the OTP concerning the PEV,⁵⁷⁰ provided a suspect interview on 13 September 2013,⁵⁷¹ and testified before Trial Chamber V between 16 and 22 September 2014.⁵⁷²

96. P-0495 testified in the *Ruto and Sang* case that his mentioning of Mr. Gicheru in his conversation with [REDACTED] was [REDACTED]⁵⁷³ The OTP requested to admit P-0495’s evidence in this case under Rule 68(2)(d),⁵⁷⁴ but since P-0495 was available and re-contacted the OTP,⁵⁷⁵ the Trial Chamber rejected the request, finding that the OTP merely chose not to request a summons for his appearance.⁵⁷⁶ By confirming that it would not request a summons for P-0495 to testify,⁵⁷⁷ the OTP effectively gave up on P-0495 and deprived Mr. Gicheru of his fair trial right of confrontation. Since none of his statements and interviews were admitted, the OTP relies primarily on P-0800’s and P-0613’s evidence concerning him.⁵⁷⁸

P-0495’s relationships with other witnesses

97. P-0800 testified that [REDACTED]⁵⁷⁹ and [REDACTED].⁵⁸⁰ P-0613 testified that [REDACTED].⁵⁸¹ P-0516 testified that [REDACTED].⁵⁸²

What the OTP claimed it would establish through P-0495

98. The OTP claims that between August and September 2013, Mr. Gicheru and [REDACTED], assisted by P-0800, corruptly influenced P-0495 by offering him a bribe of

⁵⁶⁹ [ICC-01/09-01/20-220-Conf](#), para. 214.

⁵⁷⁰ [ICC-01/09-01/20-220-Conf](#), para. 214.

⁵⁷¹ [ICC-01/09-01/20-220-Conf](#), paras. 219-20, 223, 224, citing [KEN-OTP-0130-0540-R01](#) (not admitted); [KEN-OTP-0130-0507-R01](#) (not admitted); [KEN-OTP-0130-0566-R01](#) (not admitted); [KEN-OTP-0145-0587](#) (not admitted).

⁵⁷² [ICC-01/09-01/20-220-Conf](#), para. 225.

⁵⁷³ [T-057](#), p. 26, line 17 to p. 27, line 20.

⁵⁷⁴ [ICC-01/09-01/20-196-Conf](#).

⁵⁷⁵ [ICC-01/09-01/20-237-Conf](#), para. 3.

⁵⁷⁶ [ICC-01/09-01/20-247-Conf](#), paras. 26-27.

⁵⁷⁷ Email correspondence from OTP to Trial Chamber III and the parties on 10 January 2022, at 17:50.

⁵⁷⁸ [ICC-01/09-01/20-220-Conf](#), paras. 217-26.

⁵⁷⁹ [T-050](#), p. 92, lines 3-14.

⁵⁸⁰ [T-050](#), p. 58, lines 10-16, p. 87, lines 2-9.

⁵⁸¹ [T-056](#), p. 20, line 18 to p. 21, line 1; [T-058](#), p. 60, line 25 to p. 61, line 1.

⁵⁸² [T-064](#), p. 39, line 16 to p. 40, line 5.

between 1,500,000 and 2,500,000 KSh and employment to withdraw as an OTP witness and to corruptly influence other OTP witnesses.⁵⁸³ It submitted P-0495's evidence would establish that:

- a. In August 2013, P-0800 approached P-0495 on behalf of Mr. Gicheru.⁵⁸⁴
- b. Mr. Gicheru offered P-0495 a bribe of between 1,500,000 and 2,500,000 KSh to withdraw as a witness and asked him to approach P-0613.⁵⁸⁵
- c. P-0495 approached P-0613 to persuade her to withdraw.⁵⁸⁶
- d. Mr. Gicheru coached P-0495 on what to say during his testimony.⁵⁸⁷

The OTP failed to prove that Mr. Gicheru corruptly influenced P-0495

99. ***There is no reliable evidence that Mr. Gicheru asked P-0800 to locate P-0495 and bring him to Mr. Gicheru's office.***⁵⁸⁸ The OTP chose not to call P-0495 as a witness and his suspect interviews with the OTP were not admitted.⁵⁸⁹ Aside from there being no reliable evidence that P-0800 was ever in contact with Mr. Gicheru,⁵⁹⁰ there are no photographs or audio-recordings showing that P-0800 ever met with Mr. Gicheru, that Mr. Gicheru asked him to locate and corruptly influence P-0495, or that P-0800 approached P-0495.⁵⁹¹ P-0495 testified under oath in the *Ruto and Sang* trial that: (a) he did not know Mr. Gicheru; (b) he never met Mr. Gicheru; (c) his mentioning of Mr. Gicheru in his audio-recorded meeting with [REDACTED] in [REDACTED] was "just fabrication for how to get money;" and (d) his discussion with [REDACTED] was [REDACTED].⁵⁹² Given that no effort was made to contact [REDACTED] to verify P-0800's allegations, none of the hearsay evidence P-0800 provides concerning [REDACTED] and P-0495 can be tested. No other evidence was adduced to show that Mr. Gicheru asked P-0800 to bring P-0495 to his office.

100. ***There is no reliable evidence that Mr. Gicheru offered P-0495 a bribe to withdraw and instructed him to approach P-0613.***⁵⁹³ None of P-0495's suspect interviews were admitted into evidence.⁵⁹⁴ Other than P-0800's word, there is no evidence that P-0495 met

⁵⁸³ [ICC-01/09-01/20-220-Conf](#), para. 215.

⁵⁸⁴ [ICC-01/09-01/20-220-Conf](#), paras. 218-19.

⁵⁸⁵ [ICC-01/09-01/20-220-Conf](#), para. 221.

⁵⁸⁶ [ICC-01/09-01/20-220-Conf](#), para. 222.

⁵⁸⁷ [ICC-01/09-01/20-220-Conf](#), para. 226.

⁵⁸⁸ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 218-19.

⁵⁸⁹ *See supra*, para. 96.

⁵⁹⁰ *See supra*, para. 85.

⁵⁹¹ *See supra*, para. 90.

⁵⁹² [T-057](#), p. 26, line 17 to p. 27, line 25.

⁵⁹³ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 221.

⁵⁹⁴ *See supra*, para. 96.

with Mr. Gicheru, [REDACTED], and P-0800 in [REDACTED].⁵⁹⁵ P-0613's hearsay evidence does not corroborate P-0800's evidence: there is no recording of the telephone call she claimed to have had with P-0495 where P-0495 purportedly told her that he had been offered 2,500,000 KSh.⁵⁹⁶ Nor was P-0613's telephone data saved to verify whether this conversation actually took place.⁵⁹⁷ Given that the OTP chose not to call P-0495 or [REDACTED] as witnesses, none of the hearsay evidence P-0800 or P-0613 provide about these individuals can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] concerning P-0495 and/or searched for information that could corroborate P-0800's and P-0613's evidence. No other evidence was adduced to show that Mr. Gicheru offered P-0495 a bribe and instructed him to approach P-0613.

101. ***There is no reliable evidence that P-0495 approached P-0613 to corruptly influence her on behalf of Mr. Gicheru.***⁵⁹⁸ None of P-0495's suspect interviews were admitted into evidence.⁵⁹⁹ There is no recording of the conversation P-0613 claimed to have had with P-0495 where he purportedly told her that he had been offered 2,500,000 KSh.⁶⁰⁰ During the recorded meeting, P-0613 injected Mr. Gicheru's name and P-0495 asked her questions about him.⁶⁰¹ P-0495 understood that he had to mention Mr. Gicheru and went along.⁶⁰² The recorded conversations between P-0495 and P-0800 after this meeting do not corroborate P-0613's evidence.⁶⁰³ Mr. Gicheru is not mentioned in these conversations.⁶⁰⁴ P-0495 testified under oath that he never met Mr. Gicheru and that his discussion with [REDACTED] was [REDACTED],⁶⁰⁵ explaining that [REDACTED]⁶⁰⁶ Considering P-0613's unauthorized, unsupervised, and unrecorded calls with other individuals⁶⁰⁷ and that P-0800 and P-0613 were having unrecorded conversations,⁶⁰⁸ there is no way of knowing what was discussed during the previous conversations and whether this conversation was pre-planned, as [REDACTED] testified. Considering that the OTP chose not to call P-0495

⁵⁹⁵ [T-050](#), p. 77, line 9 to p. 78, line 6. *See supra*, para. 90.

⁵⁹⁶ [KEN-OTP-0115-0216-R01](#), paras. 28-34.

⁵⁹⁷ [KEN-OTP-0115-0216-R01](#), para. 34.

⁵⁹⁸ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 222.

⁵⁹⁹ *See supra*, para. 96.

⁶⁰⁰ [KEN-OTP-0115-0216-R01](#), paras. 28-34.

⁶⁰¹ [KEN-OTP-0160-1126](#), p. 1131, lines 118-19.

⁶⁰² [KEN-OTP-0160-1126](#), p. 1131, line 122.

⁶⁰³ [KEN-OTP-0145-0594](#); [KEN-OTP-0145-0587](#); [KEN-OTP-0160-1035](#); [KEN-OTP-0160-1423](#); [KEN-OTP-0160-1426](#); [KEN-OTP-0160-1429](#).

⁶⁰⁴ *Id.*

⁶⁰⁵ [T-057](#), p. 27, lines 17-19.

⁶⁰⁶ [T-057](#), p. 27, lines 6-9.

⁶⁰⁷ *See supra*, para. 59.

⁶⁰⁸ *See e.g.*, [T-057](#), p. 37, lines 11-15; [KEN-OTP-0117-0931-R01](#).

as a witness, none of his statements in the conversation can be tested. No other evidence was adduced to show that P-0495 approached P-0613 to corruptly influence her on behalf of Mr. Gicheru.

102. ***There is no reliable evidence that Mr. Gicheru coached P-0495 on what to say during his testimony.***⁶⁰⁹ The only evidence concerning this event originates from P-0800. Aside from the fact that there is no recording of this alleged conversation, P-0800 lied under oath in claiming: (a) [REDACTED]; and (b) [REDACTED].⁶¹⁰ There is also no evidence that the OTP investigators followed up on P-0800's claimed conversation [REDACTED],⁶¹¹ [REDACTED].⁶¹² Since the OTP chose not to summon P-0495 to give evidence on P-0800's evidence,⁶¹³ it opted to rely on P-0800's contradictory and ludicrous statements and testimony.⁶¹⁴ No other evidence was adduced to show that P-0800 received a telephone call from P-0495 in which he told P-0800 that he had been coached on his testimony by a group of 10 lawyers led by Mr. Gicheru.

103. ***In sum.*** Considering that the OTP chose not to call P-0495 as a witness, that none of his prior recorded statements were admitted into evidence, and that the OTP instead opted to rely on P-0613's and P-0800's unreliable and unverified evidence, no reasonable Trial Chamber would rely on the evidence introduced in Count 5 to make any findings of fact.

F. [REDACTED] ("P-0738")

104. P-0738 was an OTP witness in the *Ruto and Sang* case.⁶¹⁵ [REDACTED] introduced her to the ICC in [REDACTED].⁶¹⁶ She provided statements to the OTP on [REDACTED],⁶¹⁷ provided statements concerning witness interference,⁶¹⁸ and testified before the *Ruto and Sang* Trial Chamber between 17 September and 4 October 2013.⁶¹⁹ The *Ruto and Sang* Trial Chamber did not rely on or mention her evidence.⁶²⁰

What the OTP claimed it would establish through P-0738

⁶⁰⁹ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 226.

⁶¹⁰ *See supra*, para. 86.

⁶¹¹ *See supra*, para. 86.

⁶¹² *See* [KEN-OTP-0138-0626-R01](#).

⁶¹³ *See supra*, para. 96.

⁶¹⁴ *See supra*, para. 86.

⁶¹⁵ [T-060](#), p. 14, lines 11-13.

⁶¹⁶ [KEN-OTP-0103-2693-R01](#), paras. 19-20. [REDACTED].

⁶¹⁷ [REDACTED].

⁶¹⁸ [KEN-OTP-0103-2693-R01](#); [KEN-OTP-0111-0188](#); [KEN-OTP-0111-0201-R01](#); [KEN-OTP-0118-0011-R01](#).

⁶¹⁹ [REDACTED].

⁶²⁰ [ICC-01/09-01/11-2027-Red-Corr](#).

105. The OTP claims that between May and September 2013, Mr. Gicheru corruptly influenced P-0738 through [REDACTED] by offering her a bribe of between 1,400,000 and 1,600,000 KSh to withdraw as an OTP witness.⁶²¹ It submitted P-0738's evidence would establish that:

- a. [REDACTED] was acting on behalf of Mr. Gicheru when he called P-0738 while she was in [REDACTED] to corruptly influence her by offering her a bribe of between 1,400,000 and 1,600,000 KSh.⁶²²
- b. Mr. Gicheru coordinated with [REDACTED] in between his calls with P-0738 in regard to the bribe and other arrangements necessary to bring her [REDACTED].⁶²³

The OTP failed to prove that Mr. Gicheru corruptly influenced P-0738

106. ***There is no reliable evidence that [REDACTED] was acting on behalf of Mr. Gicheru when he called P-0738 and offered her a bribe between 1,400,000 and 1,600,000 KSh.***⁶²⁴

P-0738's statements are based on hearsay evidence from [REDACTED], from which P-0738 recounts and draws assumptions from the telephone conversations she audio-recorded.⁶²⁵ Of the recorded conversations between P-0738 and [REDACTED], only one mentions Mr. Gicheru, in which [REDACTED] asked her whether she knew him.⁶²⁶ During the recorded conversation in which [REDACTED] offered P-0738 a bribe between 1,400,000 and 1,600,000 KSh, Mr. Gicheru is not mentioned.⁶²⁷ Considering that the OTP did not call [REDACTED] as a witness, the OTP's claims that [REDACTED]'s references to [REDACTED]⁶²⁸ [REDACTED]⁶²⁹ and a "lawyer,"⁶³⁰ meant Mr. Gicheru are unverified and unsupported. P-0800 is unreliable⁶³¹ and the recorded conversation between him and [REDACTED] is suspect and untrustworthy.⁶³² There is also no reliable evidence that Mr.

⁶²¹ [REDACTED].

⁶²² [REDACTED].

⁶²³ [REDACTED].

⁶²⁴ [REDACTED].

⁶²⁵ [T-060](#), p. 22, lines 1-17, p. 24, lines 2-13, p. 28, line 17 to p. 30, line 3.

⁶²⁶ [KEN-OTP-0114-0296](#), p. 0299, lines 37-45.

⁶²⁷ [KEN-OTP-0160-0983](#).

⁶²⁸ [KEN-OTP-0160-0983](#) (25 July 2013), p. 0990, line 173.

⁶²⁹ [KEN-OTP-0160-1002](#) (9 August 2013), p. 1005, lines 42-43.

⁶³⁰ [KEN-OTP-0160-0997](#) (28 August 2013), p. 1000, lines 49-50.

⁶³¹ *See supra*, fn. 109.

⁶³² *See supra*, para. 88. P-0800 failed to disclose his unauthorized meeting with [REDACTED] on [REDACTED] until he was caught by OTP investigators. Curiously, [REDACTED] is heard in the recording asking P-0800 if he selected a good place to meet the following day to discuss matters that they were already discussing. When P-0800 finally disclosed this unauthorized meeting to the OTP, he gave multiple versions of the encounter, claiming: (a) he met [REDACTED] at a bus station; and (b) he met [REDACTED] at a restaurant.

Gicheru had any association with [REDACTED].⁶³³ No other evidence was adduced to show that Mr. Gicheru instructed BARASA to offer P-0738 a bribe.

107. ***There is no reliable evidence that Mr. Gicheru coordinated with [REDACTED] in between his calls with P-0738 in regard to the bribe and other arrangements necessary to bring her back to Kenya.***⁶³⁴ P-0738's statements are based on hearsay evidence from [REDACTED], from which P-0738 recounts and draws assumptions from the telephone conversations she audio-recorded.⁶³⁵ There is no evidence that when [REDACTED] told P-0738 "let me first call this lawyer who's dealing with this matter,"⁶³⁶ he was referring to Mr. Gicheru. Considering that the OTP did not call [REDACTED] as a witness, the OTP's claims that [REDACTED]'s references to [REDACTED]⁶³⁷ [REDACTED]⁶³⁸ and a "lawyer,"⁶³⁹ meant Mr. Gicheru are unverified and unsupported. There is also no reliable evidence that Mr. Gicheru had any association with [REDACTED].⁶⁴⁰ No other evidence was adduced to show that Mr. Gicheru coordinated with [REDACTED] regarding P-0738.

108. ***In sum.*** Considering that the OTP did not call [REDACTED] as a witness to testify as to his statements made to P-0738, no reasonable Trial Chamber would rely on his hearsay statements to make any findings of fact beyond a reasonable doubt.

G. [REDACTED] ("P-0341")

109. P-0341 was neither a witness nor a victim in the *Ruto and Sang* case. He applied to be a victim at the ICC twice,⁶⁴¹ but his applications were rejected.⁶⁴² [REDACTED],⁶⁴³ [REDACTED].⁶⁴⁴

110. In [REDACTED], the OTP interviewed P-0341 for a period of five days, for 23 hours and 30 minutes, producing a written statement.⁶⁴⁵ The OTP reinterviewed him as a suspect on [REDACTED] to discuss inconsistencies between his statement and P-0274's

⁶³³ See *infra*, para. 193.

⁶³⁴ *Contra* [REDACTED].

⁶³⁵ [T-060](#), p. 22, lines 1-17, p. 24, lines 2-13, p. 28, line 17 to p. 30, line 3.

⁶³⁶ [KEN-OTP-0160-0997](#), p. 1000, lines 49-50.

⁶³⁷ [KEN-OTP-0160-0983](#) (25 July 2013), p. 0990, line 173.

⁶³⁸ [KEN-OTP-0160-1002](#) (9 August 2013), p. 1005, lines 42-43.

⁶³⁹ [KEN-OTP-0160-0997](#) (28 August 2013), p. 1000, lines 49-50.

⁶⁴⁰ See *infra*, para. 193.

⁶⁴¹ [KEN-OTP-0152-0091-R01](#), p. 0091-98 [REDACTED], p. 0102-09 [REDACTED].

⁶⁴² [T-054](#), p. 45, line 5 to p. 52, line 7; [ICC-01/09-01/11-249](#), para. 59.

⁶⁴³ [T-054](#), p. 52, line 18 to p. 56, line 12; [KEN-OTP-0147-1590-R01](#).

⁶⁴⁴ [T-054](#), p. 57, line 6 to p. 58, line 14; [KEN-OTP-0150-0255-R01](#), para. 76.

⁶⁴⁵ [KEN-OTP-0150-0255-R01](#), p. 0255.

statement.⁶⁴⁶ Prior to his testimony in the *Gicheru* case, the OTP proofed him for a period of three days, for 16 hours and 55 minutes.⁶⁴⁷

P-0341's relationships with other witnesses

111. P-0341 was [REDACTED]'s,⁶⁴⁸ [REDACTED]'s (also known as [REDACTED]), and [REDACTED]'s neighbor.⁶⁴⁹ He campaigned with [REDACTED]⁶⁵⁰ and [REDACTED]⁶⁵¹ for the [REDACTED]. He claims to have known [REDACTED]⁶⁵² and [REDACTED].⁶⁵³ P-0341 knew [REDACTED].⁶⁵⁴ He was also [REDACTED],⁶⁵⁵ and [REDACTED],⁶⁵⁶ including on [REDACTED].⁶⁵⁷

What the OTP claimed it would establish through P-0341

112. The OTP claims that Mr. Gicheru, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and others corruptly influenced P-0341 by: (a) promising him 5,000,000 KSh, a car, a farm, a plot of land, [REDACTED]; (b) paying him bribes between at least 1,000,000 KSh and 2,000,000 KSh; and (c) intimidating him to refuse to become an OTP witness if asked to do so and to stop attending ICC victims meetings, sign pre-prepared or dictated affidavits withdrawing from the ICC process, and to locate, contact, and corruptly influence other OTP witnesses.⁶⁵⁸ It submitted P-0341's evidence would establish that:

- a. P-0341 was a potential witness in the *Ruto and Sang* case.⁶⁵⁹
- b. Mr. Gicheru paid [REDACTED] to locate P-0341 and bring him to [REDACTED].⁶⁶⁰
- c. At a meeting on [REDACTED], Mr. Gicheru along with [REDACTED] and [REDACTED] offered P-0341 a bribe of 5,000,000 KSh and other financial inducements in exchange for withdrawing from the ICC process.⁶⁶¹

⁶⁴⁶ [KEN-OTP-0159-1803-R01](#), p. 1814, lines 367-75.

⁶⁴⁷ [T-053](#), p. 2, lines 21-24.

⁶⁴⁸ [T-053](#), p. 48, lines 8-16; [KEN-OTP-0150-0255-R01](#), para. 34.

⁶⁴⁹ [T-054](#), p. 6, lines 10-24.

⁶⁵⁰ [T-053](#), p. 53, lines 3-12.

⁶⁵¹ [T-054](#), p. 36, lines 18-23.

⁶⁵² [T-053](#), p. 54, lines 3-24; [KEN-OTP-0150-0255-R01](#), para. 43.

⁶⁵³ [T-054](#), p. 23, lines 11-17; [KEN-OTP-0150-0255-R01](#), para. 42.

⁶⁵⁴ [T-054](#), p. 15, lines 9-12.

⁶⁵⁵ [KEN-OTP-0147-1590-R01](#).

⁶⁵⁶ [T-054](#), p. 17, line 15 to p. 18, line 6.

⁶⁵⁷ [T-054](#), p. 77, line 18 to p. 78, line 14; [KEN-OTP-0159-1803-R01](#), p. 1820, lines 570-71, 582-84.

⁶⁵⁸ [ICC-01/09-01/20-220-Conf](#), para. 270.

⁶⁵⁹ [ICC-01/09-01/20-220-Conf](#), paras. 268-69.

⁶⁶⁰ [ICC-01/09-01/20-220-Conf](#), para. 273.

⁶⁶¹ [ICC-01/09-01/20-220-Conf](#), paras. 273-75.

- d. Between [REDACTED] and [REDACTED], Mr. Gicheru paid P-0341 cash instalments on the promised bribe, which he deposited in his bank account.⁶⁶²
- e. Between [REDACTED], Mr. Gicheru called P-0341 [REDACTED] and asked him to sign an affidavit of withdrawal prepared by advocate [REDACTED].⁶⁶³
- f. Between [REDACTED], Mr. Gicheru called P-0341 [REDACTED] and asked him to draft a document stating that he had no evidence against RUTO and was withdrawing from the ICC.⁶⁶⁴
- g. Between [REDACTED] and [REDACTED], Mr. Gicheru instructed P-0341 to approach P-0274 and bring him to Mr. Gicheru [REDACTED] to sign an affidavit of withdrawal from the *Ruto and Sang* case, and also to approach other victims and witnesses.⁶⁶⁵
- h. Mr. Gicheru intimidated P-0341 by: (i) signaling that he could track individuals from his office; and (ii) threatening physical violence against any “white man” with whom P-0341 interacted and stating that RUTO was angry at [REDACTED] for providing information to the OTP.⁶⁶⁶
- i. [REDACTED].⁶⁶⁷

P-0341 is incapable of belief

113. P-0341 is incapable of belief. He lied under oath in falsely claiming that he was a victim and witness in the *Ruto and Sang* case and about meeting P-0397 and P-0516 at Mr. Gicheru [REDACTED]. He gave contradictory testimony on the money deposited in his bank account and had no email or telephone contacts with Mr. Gicheru. He also had a plan with P-0274 to [REDACTED], which included ensuring that Mr. Gicheru is charged.

114. ***P-0341 lied under oath in falsely claiming that he was a victim and witness in the Ruto and Sang case.*** P-0341 falsely claimed that [REDACTED]⁶⁶⁸ – [REDACTED]⁶⁶⁹ [REDACTED].⁶⁷⁰ He also falsely claimed that the reason he was not subsequently

⁶⁶² [ICC-01/09-01/20-220-Conf](#), paras. 279, 283, 285, 288, 290-93, 296.

⁶⁶³ [ICC-01/09-01/20-220-Conf](#), para. 281.

⁶⁶⁴ [ICC-01/09-01/20-220-Conf](#), para. 284.

⁶⁶⁵ [ICC-01/09-01/20-220-Conf](#), paras. 276, 278.

⁶⁶⁶ [ICC-01/09-01/20-220-Conf](#), para. 298(g).

⁶⁶⁷ [ICC-01/09-01/20-220-Conf](#), paras. 274, 287, 297.

⁶⁶⁸ [T-054](#), p. 82, lines 3-19.

⁶⁶⁹ [T-054](#), p.45, line 5 to p. 52, line 7; [ICC-01/09-01/11-249](#), para. 59.

⁶⁷⁰ [T-054](#), p. 57, line 6 to p. 58, line 14; [KEN-OTP-0150-0255-R01](#), para. 76.

interviewed by the OTP was because there was [REDACTED] present during his screening,⁶⁷¹ despite the screening notes showing that he was able to discuss his evidence with the investigators and provided them P-0274's phone number as a lead.⁶⁷²

115. ***P-0341 lied under oath about meeting P-0397 and P-0516 at Mr. Gicheru [REDACTED].*** P-0341 claimed that he met P-0397 and P-0516 at Mr. Gicheru [REDACTED] "many times,"⁶⁷³ emphasizing that he followed P-0397 and P-0516 because they were his [REDACTED].⁶⁷⁴ Neither P-0397 nor P-0516 ever mention P-0341 in their evidence. Furthermore, P-0397 and P-0516 are not [REDACTED] with P-0341: P-0397 [REDACTED],⁶⁷⁵ P-0516 [REDACTED],⁶⁷⁶ and P-0341 [REDACTED].⁶⁷⁷ Considering that P-0341 was in contact with P-0613 by telephone,⁶⁷⁸ and that P-0613 coached other witnesses on what to say in order to receive benefits,⁶⁷⁹ it is plausible that P-0613 told P-0341 to mention these two individuals.

116. ***P-0341 gave contradictory evidence about the money deposited in his bank account.*** P-0341 initially claimed that he deposited 50,000 KSh in his bank account on [REDACTED] July 2013 after receiving 360,000 KSh from [REDACTED] at [REDACTED].⁶⁸⁰ He then changed his answer and claimed that the 300,000 KSh deposited in his bank account on [REDACTED] October 2013 was from the 360,000 KSh he received from [REDACTED] at the [REDACTED], and that this was the final installment he received.⁶⁸¹ Despite his claim that the 300,000 KSh deposit on [REDACTED] October 2013 was the final installment,⁶⁸² he maintained that all sums deposited in his bank account after this date originated from Mr. Gicheru or [REDACTED].⁶⁸³ P-0341's bank records are also suspect: investigators instructed P-0341 to provide certified copies of his bank records in a sealed bank envelope (with a business card stapled to the statement) on 27 March

⁶⁷¹ [T-054](#), p. 53, lines 9-18, p. 59, lines 9-18.

⁶⁷² [T-054](#), p. 55, lines 16-24; [KEN-OTP-0147-1590-R01](#).

⁶⁷³ [KEN-OTP-0150-0255-R01](#), para. 119.

⁶⁷⁴ [T-053](#), p. 54, lines 3-24, p. 55, line 21 to p. 56, line 15.

⁶⁷⁵ [KEN-OTP-0074-0264-R01](#), p. 0264.

⁶⁷⁶ [KEN-OTP-0160-1731](#), p. 1735.

⁶⁷⁷ [KEN-OTP-0150-0255-R01](#), p. 0255.

⁶⁷⁸ [KEN-OTP-0155-4982](#); [T-054](#), p. 36, line 18 to p. 37, line 5.

⁶⁷⁹ [T-064](#), p. 6, lines 6-19, p. 14, lines 12-22, p. 15, lines 15-20, p. 15, lines 4-9.

⁶⁸⁰ [T-053](#), p. 84, lines 4-25; [KEN-OTP-0159-1386](#), p. 1386 ([REDACTED] July 2013 deposit).

⁶⁸¹ [T-053](#), p. 87, lines 8-19; [KEN-OTP-0159-1386](#), p. 1387 ([REDACTED] October 2013 deposit).

⁶⁸² [T-053](#), p. 87, lines 8-19; [KEN-OTP-0159-1386](#), p. 1387 ([REDACTED] October 2013 deposit).

⁶⁸³ [T-053](#), p. 88, lines 4-17 (claiming that the 6,600 KSh deposit on [REDACTED] January 2014 came from Mr. Gicheru or [REDACTED]); [T-053](#), p. 89, lines 5-8 (claiming that the 50,000 KSh deposit on [REDACTED] April 2014 came from Mr. Gicheru or [REDACTED]); [T-053](#), p. 89, lines 9-13 (claiming that the 385 KSh deposit on [REDACTED] April 2014 was either money he pocketed from the remains from Mr. Gicheru, or he may have received another amount).

2014,⁶⁸⁴ which he failed to do. The bank records that P-0341 provided to investigators a year later on 17 February 2015 were not certified copies and there is no business card stapled to the statement.⁶⁸⁵ Also, the number on the bank card P-0341 provided to investigators (which was not photographed by them) does not match his account number.⁶⁸⁶ Other than P-0341's word that the money deposited into his account came from Mr. Gicheru, there is no verifiable proof supporting this claim.

117. ***P-0341 had no telephone or email contacts with Mr. Gicheru.*** While P-0341 claimed that he communicated with Mr. Gicheru several times by telephone,⁶⁸⁷ an examination of his telephone showed no calls between P-0341 and Mr. Gicheru.⁶⁸⁸ The telephone number P-0341 had saved on his phone as "Paulo"⁶⁸⁹ is the same telephone number listed on Mr. Gicheru's business card,⁶⁹⁰ which anyone could have obtained by visiting Mr. Gicheru [REDACTED].

118. ***P-0341 planned with P-0274 to be [REDACTED].*** P-0341 spoke to P-0274 several times about leaving the country.⁶⁹¹ On one occasion, the two met, sat down, spoke, and came up "with a plan to get out of Kenya,"⁶⁹² which included ensuring that Mr. Gicheru is charged.⁶⁹³ While P-0341 claims that P-0274 lied to the OTP to become a witness, get [REDACTED]⁶⁹⁴ – because "*unfortunately, these are things that the [REDACTED], make up to ... yeah, to get further in life*"⁶⁹⁵ – P-0341 showed the same motivation.⁶⁹⁶ Before providing any statement to the OTP, he requested [REDACTED],⁶⁹⁷ and after he provided a statement, he asked the OTP if he could move [REDACTED] of his family members to [REDACTED].⁶⁹⁸

The OTP failed to prove that Mr. Gicheru corruptly influenced P-0341

⁶⁸⁴ [KEN-OTP-0147-2140-R01](#), p. 2142 (noting that "[REDACTED].")

⁶⁸⁵ [KEN-OTP-0159-1386](#). The stamp on the document does not say "certified copy of the original" as would be stated on certified bank records nor is there a business card stapled to the statement. See also [KEN-OTP-0159-1386](#) (mentioning nothing about a business card).

⁶⁸⁶ [KEN-OTP-0159-1384](#).

⁶⁸⁷ [T-053](#), p. 71, lines 9-22.

⁶⁸⁸ [T-054](#), p. 38, line 5 to p. 39, line 2.

⁶⁸⁹ [T-053](#), p. 71, lines 9-15; [KEN-OTP-0155-4982](#) [REDACTED].

⁶⁹⁰ [T-054](#), p. 40, line 18 to p. 41, line 4; [KEN-OTP-0159-0585](#).

⁶⁹¹ [T-054](#), p. 78, lines 8-14.

⁶⁹² [T-054](#), p. 77, line 18 to p. 78, line 7; [KEN-OTP-0159-1803-R01](#), p. 1820, lines 582-84.

⁶⁹³ [T-054](#), p. 77, line 18 to p. 78, line 14. [KEN-OTP-0159-1803-R01](#), p. 1820, lines 570-71, 582-84.

⁶⁹⁴ [T-054](#), p. 80, line 17 to p. 81, line 11.

⁶⁹⁵ [KEN-OTP-0159-1803-R01](#), p. 1829, line 927 to p. 1830, line 930.

⁶⁹⁶ [T-054](#), p. 69, line 17 to p. 70, line 4.

⁶⁹⁷ [T-054](#), p. 69, line 17 to p. 70, line 4, p. 81, line 12 to p. 82, line 2; [KEN-OTP-0153-0031](#).

⁶⁹⁸ [T-054](#), p. 81, line 12 to p. 82, line 2; [KEN-OTP-0153-0031](#).

119. ***There is no reliable evidence that P-0341 was a potential witness in the Ruto and Sang case.***⁶⁹⁹ P-0341 lied under oath about [REDACTED].⁷⁰⁰ Other than [REDACTED], there is no evidence that P-0341 was vocal at victims' meetings, [REDACTED].⁷⁰¹ No other evidence was adduced to show that P-0341 was "believed to know something of relevance" to the *Ruto and Sang* case⁷⁰² or was regarded by Mr. Gicheru as a person possessing relevant information.⁷⁰³
120. ***There is no reliable evidence that Mr. Gicheru paid [REDACTED] to locate P-0341 and bring him to Mr. Gicheru [REDACTED].***⁷⁰⁴ P-0341's claim that [REDACTED] told him that Mr. Gicheru paid him to bring P-0341 to Mr. Gicheru [REDACTED] is uncorroborated hearsay.⁷⁰⁵ There are no recordings of P-0341's claimed conversations with [REDACTED], photographs, or other documentation supporting his claims as to what [REDACTED] told him. Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0341 provides concerning [REDACTED] can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] and/or searched for information that could corroborate P-0341's claims.⁷⁰⁶ No other evidence was adduced to show that Mr. Gicheru paid [REDACTED].
121. ***There is no reliable evidence that Mr. Gicheru, [REDACTED], and [REDACTED], offered P-0341 a bribe of 5,000,000 KSh and other financial inducements to withdraw from the ICC.***⁷⁰⁷ P-0341 lied about [REDACTED]⁷⁰⁸ and about meeting P-0397 and P-0516 at Mr. Gicheru [REDACTED].⁷⁰⁹ He had no evidence in the *Ruto and Sang* case⁷¹⁰ and even claimed to have told Mr. Gicheru, [REDACTED], and [REDACTED] that [REDACTED].⁷¹¹ He also admitted that the telephone number he saved in his phone as "Paulo" is the same number listed on Mr. Gicheru's business card,⁷¹² which anyone could

⁶⁹⁹ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 268-69.

⁷⁰⁰ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 269.

⁷⁰¹ [T-054](#), p. 42, line 2 to p. 43, line 10. When confronted by Defence Counsel and asked whether it was his testimony that he was an OTP witness in the *Ruto and Sang* case, P-0341 refused to answer the question.

⁷⁰² [ICC-01/05-01/13-2275-Red](#), para. 720.

⁷⁰³ [ICC-01/09-01/20-220-Conf](#), paras. 268-69.

⁷⁰⁴ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 273.

⁷⁰⁵ [KEN-OTP-0150-0255-R01](#), para. 57.

⁷⁰⁶ *See infra*, para. 195.

⁷⁰⁷ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 273-75.

⁷⁰⁸ [T-054](#), p. 42, line 2 to p. 43, line 10. *See supra*, fn. 701.

⁷⁰⁹ [T-053](#), p. 54, lines 3-24, p. 55, line 21 to p. 56, line 15.

⁷¹⁰ [KEN-OTP-0147-1590-R01](#).

⁷¹¹ [KEN-OTP-0150-0255-R01](#), para. 47.

⁷¹² [T-054](#), p. 40, line 18 to p. 41, line 4. [KEN-OTP-0159-0585](#).

have obtained by visiting Mr. Gicheru's office (whether or not Mr. Gicheru was there). P-0274's evidence also does not corroborate P-0341's evidence: P-0274 planned with P-0341 to get out of Kenya,⁷¹³ which included ensuring that Mr. Gicheru is charged.⁷¹⁴ P-0274's claim that P-0341 told him that he received 500,000 KSh from Mr. Gicheru is hearsay originating from P-0341.⁷¹⁵ No other evidence was adduced to show that Mr. Gicheru paid P-0341 a bribe to withdraw from the ICC.

122. ***There is no reliable evidence that Mr. Gicheru paid P-0341 instalments on any bribe.***⁷¹⁶ The cash deposits in P-0341's bank account are from origins and for purposes unknown.⁷¹⁷ Considering that P-0341 failed to provide the OTP certified copies of his bank records after a year of avoiding the OTP and failing to attend scheduled interviews,⁷¹⁸ that the number on his bank card does not match his account number,⁷¹⁹ and that the OTP failed to explore this discrepancy or photograph his bank card,⁷²⁰ there is a reasonable suspicion that his bank statements are not authentic. P-0341 also gave inconsistent testimony on the circumstances of the deposits⁷²¹ and admitted that there is nothing tangible to support his claims as to the origins of the deposits.⁷²² No evidence was adduced that the OTP conducted any financial investigation on P-0341 to determine whether he had sold property or acquired money from his [REDACTED] to create the appearance that money was being funneled to him from Mr. Gicheru, despite being [REDACTED], and having [REDACTED].⁷²³ No other evidence was adduced to show that Mr. Gicheru paid P-0341 instalments on any bribe.

123. ***There is no reliable evidence that Mr. Gicheru asked P-0341 to sign an affidavit of withdrawal prepared by [REDACTED] or draft a handwritten statement.***⁷²⁴ P-0341 admitted that there is nothing other than his word supporting his claims that [REDACTED] or drafted a handwritten statement.⁷²⁵ There is no evidence (such as an affidavit or testimony) that the [REDACTED] that P-0341 claimed to have met is the [REDACTED]

⁷¹³ [T-054](#), p. 77, line 18 to p. 78, line 7. [KEN-OTP-0159-1803-R01](#), p. 1820, lines 582-84.

⁷¹⁴ [T-054](#), p. 77, line 18 to p. 78, line 14. [KEN-OTP-0159-1803-R01](#), p. 1820, lines 570-71, 582-84.

⁷¹⁵ [T-058](#), p. 61, lines 8-11.

⁷¹⁶ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 279, 283, 285, 288, 290-93, 296.

⁷¹⁷ [KEN-OTP-0159-1386](#).

⁷¹⁸ [KEN-OTP-0147-2140](#); [KEN-OTP-0159-1384](#).

⁷¹⁹ [KEN-OTP-0159-1384](#).

⁷²⁰ Under Article 54(1)(a) of the [Rome Statute](#), the OTP must extend the investigation to cover all relevant facts and evidence and investigate incriminating and exonerating circumstances equally.

⁷²¹ *See supra*, para. 116.

⁷²² [T-054](#), p. 43, line 17 to p. 44, line 8.

⁷²³ [KEN-OTP-0147-1590-R01](#).

⁷²⁴ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 281, 284.

⁷²⁵ [T-054](#), p. 43, lines 17-23.

who drafted P-0397's affidavit.⁷²⁶ Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0341 provides about him can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any illicit association with [REDACTED] (or [REDACTED]), there is no evidence that the OTP ever attempted to interview him and/or searched for information that could corroborate P-0341's claims.⁷²⁷ No other evidence was adduced to show that Mr. Gicheru asked P-0341 to sign any pre-prepared affidavit or draft a handwritten statement.

124. ***There is no reliable evidence that Mr. Gicheru instructed P-0341 to approach P-0274 or others and bring them to Mr. Gicheru [REDACTED] to sign affidavits of withdrawal.***⁷²⁸ While P-0341 claimed in his statement that Mr. Gicheru asked him to approach P-0274 and others,⁷²⁹ he testified under oath that it was [REDACTED] who asked whether P-0274 and others were witnesses (as opposed to asking P-0341 to bring them to Mr. Gicheru).⁷³⁰ P-0341 also denied bringing P-0274 to Mr. Gicheru [REDACTED].⁷³¹ P-0274's evidence does not corroborate P-0341's evidence. P-0274's claims of what P-0341 told him are uncorroborated hearsay originating from P-0341.⁷³² Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0341 provides concerning him can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with someone named [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] and/or searched for information that could corroborate P-0341's claims.⁷³³ No other evidence was adduced to show that Mr. Gicheru instructed P-0341 to approach P-0274 and other witnesses.

125. ***There is no reliable evidence that Mr. Gicheru intimidated P-0341.***⁷³⁴ Other than his word, there is no evidence showing that P-0341 was ever monitored or tracked,⁷³⁵ or that [REDACTED].⁷³⁶ No other evidence was adduced to show that Mr. Gicheru intimidated P-0341.

⁷²⁶ [KEN-OTP-0124-0029](#). See also [ICC-01/09-01/20-220-Conf](#), para. 281, fn. 696. The OTP assumes that P-0341 met [REDACTED].

⁷²⁷ See *infra*, para. 200.

⁷²⁸ Contra [ICC-01/09-01/20-220-Conf](#), paras. 276, 278.

⁷²⁹ [KEN-OTP-0150-0255-R01](#), para. 69.

⁷³⁰ [T-054](#), p. 13, line 5 to p. 14, line 9, p. 18, lines 7-16.

⁷³¹ [T-054](#), p. 18, lines 17-20, p. 79, line 2 to p. 80, line 4.

⁷³² [T-058](#), p. 61, lines 8-11.

⁷³³ See *infra*, para. 199.

⁷³⁴ Contra [ICC-01/09-01/20-220-Conf](#), para. 298(g).

⁷³⁵ [T-054](#), p. 67, lines 2-16. [KEN-OTP-0150-0255-R01](#), para. 120.

⁷³⁶ [KEN-OTP-0150-0255-R01](#), para. 88.

126. ***There is no reliable evidence that [REDACTED], or [REDACTED] intimidated P-0341.***⁷³⁷ There are no recordings of P-0341's claimed conversations with [REDACTED], photographs, or other documentation showing that he attended any meetings at [REDACTED].⁷³⁸ Given that the OTP did not call [REDACTED] as witnesses, none of the hearsay evidence P-0341 provides concerning these individuals can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] concerning P-0341 and/or searched for information that could corroborate P-0341's evidence.⁷³⁹ No other evidence was adduced to show that Mr. Gicheru intimidated P-0341.

127. ***In sum.*** Considering P-0341's lies under oath about [REDACTED], his lie about meeting P-0397 and P-0516 at Mr. Gicheru [REDACTED], his contradictory evidence concerning his bank account and suspect banking records, his lack of telephone or email contacts with Mr. Gicheru, and his motivation to [REDACTED], P-0341 is unreliable. No reasonable Trial Chamber would rely on P-0341 to make any findings of fact.

H. [REDACTED] ("P-0274")

128. P-0274 [REDACTED].⁷⁴⁰ In 2014 and 2015, he made various complaints to [REDACTED] and [REDACTED] concerning his dissatisfaction with being relocated [REDACTED] and the education of his children.⁷⁴¹ In February 2021, the OTP interviewed him for the very first time for a period of three days, for over seven hours, producing a written statement.⁷⁴² Prior to his testimony in the *Gicheru* case, the OTP proofed him for one day, for a period of five hours and eight minutes.⁷⁴³

P-0274's relationships with other witnesses

129. P-0274 was friends with P-0341, attended victims' meetings together,⁷⁴⁴ and according to [REDACTED], came up with a plan together on how to be relocated outside Kenya, which included ensuring that Mr. Gicheru would be charged.⁷⁴⁵ He was referred to the OTP [REDACTED].⁷⁴⁶ He is a relative of P-0356.⁷⁴⁷ He was friends with [REDACTED],

⁷³⁷ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 274, 287, 297.

⁷³⁸ *See* [ICC-01/09-01/20-220-Conf](#), para. 295, citing [KEN-OTP-0150-0255-R01](#), paras. 112-15.

⁷³⁹ *See infra*, paras. 191, 195, 197.

⁷⁴⁰ [ICC-01/09-01/11-249](#), [REDACTED].

⁷⁴¹ *See e.g.*, [KEN-OTP-0148-0133-R01](#); [KEN-OTP-0148-0138-R01](#); [KEN-OTP-0148-0141-R01](#).

⁷⁴² [T-058](#), p. 89, line 19 to p. 90, line 10; [T-059](#), p. 26, lines 13-25.

⁷⁴³ [KEN-OTP-0160-1605](#); [T-058](#), p. 66, line 11 to p. 67, line 18.

⁷⁴⁴ [T-058](#), p. 60, line 25 to p. 61, line 1; [T-059](#), p. 16, line 9 to p. 17, line 12, p. 21, lines 24-5. *See also* [T-054](#), p. 17, line 15 to p. 18, line 6.

⁷⁴⁵ [T-054](#), p. 78, lines 2-14; [KEN-OTP-0159-1803-R01](#), p. 1820, lines 570-71, 582-84.

⁷⁴⁶ [KEN-OTP-0147-1590-R01](#).

⁷⁴⁷ [ICC-01/09-01/20-220-Conf](#), para. 324.

whom he claims he approached for financial support in 2012.⁷⁴⁸ He knew [REDACTED] as an acquaintance.⁷⁴⁹ He also claimed to be close friends with [REDACTED] when writing a letter to [REDACTED] and [REDACTED] claiming that he would not be safe in [REDACTED].⁷⁵⁰

What the OTP claimed it would establish through P-0274

130. The OTP claims that Mr. Gicheru, along with [REDACTED], and others corruptly influenced P-0274 by: (a) intimidating and threatening him multiple times, including at gunpoint; (b) paying him 30,000 KSh to induce him to withdraw [REDACTED] in the *Ruto and Sang* case, record a [REDACTED] stating that the ICC attempted to coach him to give evidence against RUTO, sign a blank piece of paper, and locate and corruptly influence other OTP witnesses; and (c) promising him at least 2,000,000 KSh.⁷⁵¹ It submitted P-0274's evidence would establish that:

- a. P-0274 was a [REDACTED].⁷⁵²
- b. [REDACTED] intimidated him into making [REDACTED] falsely stating that the ICC was coaching him to give evidence against RUTO and signing a blank page, after which P-0274 received [REDACTED] KSh through [REDACTED].⁷⁵³
- c. Towards the end of 2013, Mr. Gicheru offered P-0274 1,000,000 KSh to stop engaging with the ICC, withdraw from the *Ruto and Sang* case, and locate and corruptly influence other OTP witnesses.⁷⁵⁴
- d. Towards the end of 2013, Mr. Gicheru intimidated P-0274 by promising that he would be safe if he withdrew from the *Ruto and Sang* case and stopped cooperating with the ICC.⁷⁵⁵
- e. In a telephone conversation towards the end of 2013, [REDACTED] offered P-0274 [REDACTED] KSh to locate P-0356.⁷⁵⁶

P-0274 is incapable of belief

⁷⁴⁸ [T-059](#), p. 35, lines 5-18. [REDACTED]. [ICC-01/09-01/20-220-Conf](#), para. 317.

⁷⁴⁹ [T-058](#), p. 62, lines 6-11.

⁷⁵⁰ [T-058](#), p. 106, line 22 to p. 107, line 1; [KEN-OTP-0148-0141-R01](#).

⁷⁵¹ [ICC-01/09-01/20-220-Conf](#), para. 314.

⁷⁵² [ICC-01/09-01/20-220-Conf](#), paras. 312-13.

⁷⁵³ [ICC-01/09-01/20-220-Conf](#), paras. 318-19.

⁷⁵⁴ [ICC-01/09-01/20-220-Conf](#), paras. 322, 327(b).

⁷⁵⁵ [ICC-01/09-01/20-220-Conf](#), paras. 322, 327(c).

⁷⁵⁶ [ICC-01/09-01/20-220-Conf](#), para. 324.

131. P-0274 is incapable of belief. He planned with [REDACTED] to be relocated outside Kenya, which included ensuring that Mr. Gicheru would be charged. Consequently, he lied about meeting Mr. Gicheru. Moreover, his provision of evidence in the *Gicheru* case was a transactional give-and-take with the OTP: providing information in exchange for benefits.

132. ***P-0274 planned with [REDACTED] to be relocated outside Kenya.*** In late 2011, P-0274 was relocated to [REDACTED],⁷⁵⁷ [REDACTED].⁷⁵⁸ Finding that he was “getting very little money,” P-0274 decided to leave [REDACTED] in [REDACTED] 2012 and go to [REDACTED],⁷⁵⁹ where he was in contact with his friend [REDACTED].⁷⁶⁰ Coincidentally, on [REDACTED], [REDACTED] introduced P-0274 to the OTP as a lead who could provide information on [REDACTED].⁷⁶¹ P-0274 and [REDACTED] had spoken several times about leaving the country,⁷⁶² and at one point they met, sat down, spoke, and came up “with a plan to get out of Kenya,”⁷⁶³ which included ensuring that Mr. Gicheru would be charged.⁷⁶⁴

133. ***P-0274 lied about meeting Mr. Gicheru.*** Other than his word,⁷⁶⁵ there is no proof that: (a) P-0274 ever met with Mr. Gicheru;⁷⁶⁶ (b) Mr. Gicheru gave him his phone number;⁷⁶⁷ (c) he saw [REDACTED] at Mr. Gicheru [REDACTED];⁷⁶⁸ (d) Mr. Gicheru offered him 500,000 KSh and more if he contacted other ICC victims and witnesses;⁷⁶⁹ or (e) that Mr. Gicheru gave him 10,000 KSh for transport following the claimed meeting.⁷⁷⁰ P-0341 claims that P-0274 lied to the OTP to become a witness, get out of Africa, and have a better life because “*unfortunately, these are things that the young men, the youth of KENYA, make up to ... yeah, to get further in life.*”⁷⁷¹ While P-0274 claims that P-0341 lied,⁷⁷² it is plausible that both witnesses were lying due to their inability to keep their stories straight.

⁷⁵⁷ [T-059](#), p. 34, lines 2-5.

⁷⁵⁸ [T-058](#), p. 81, lines 3-16.

⁷⁵⁹ [T-058](#), p. 81, lines 10-23, p. 84, lines 7-17.

⁷⁶⁰ [T-059](#), p. 18, line 3 to p. 19, line 5.

⁷⁶¹ [KEN-OTP-0147-1590-R01](#), p. 1591; [T-059](#), p. 19, line 17 to p. 20, line 9.

⁷⁶² [T-054](#), p. 78, lines 2-14.

⁷⁶³ [T-054](#), p. 78, lines 3-7; [KEN-OTP-0159-1803-R01](#), p. 1820, lines 582-84.

⁷⁶⁴ [T-054](#), p. 78, lines 8-14; [KEN-OTP-0159-1803-R01](#), p. 1820, lines 570-71, 582-84.

⁷⁶⁵ [T-058](#), p. 48, lines 12-16.

⁷⁶⁶ [T-059](#), p. 77, line 9 to p. 78, line 7.

⁷⁶⁷ [T-058](#), p. 52, lines 10-19.

⁷⁶⁸ [T-058](#), p. 57, line 22 to p. 58, line 10, p. 62, line 12 to p. 63, line 9.

⁷⁶⁹ [T-058](#), p. 50, lines 16-21.

⁷⁷⁰ [T-058](#), p. 54, lines 2-8.

⁷⁷¹ [T-054](#), p. 80, line 17 to p. 81, line 11; [KEN-OTP-0159-1803-R01](#), p. 1829, line 927 to p. 1830, line 930.

⁷⁷² [T-059](#), p. 77, line 9 to p. 78, line 7.

Indeed, P-0274 admitted speaking to P-0341 on “how to be safe, to be in a safe location,”⁷⁷³ that he was desperate in [REDACTED],⁷⁷⁴ that he hoped to be relocated out of Africa so his children could get a better education,⁷⁷⁵ and that he specifically requested the ICC to relocate to him to an English-speaking first world country.⁷⁷⁶

134. ***P-0274’s providing evidence is a “give and take.”*** In December 2020, OTP investigators contacted P-0274 to gauge his willingness to cooperate in the *Gicheru* case.⁷⁷⁷ While P-0274 wanted to have his security concerns [REDACTED] addressed before deciding whether to cooperate with the OTP, he was informed that: (a) the OTP could not make any promises; and (b) if he cooperates, an assessment would be done, the outcome of which could not be predicted without knowing what evidence he might provide.⁷⁷⁸ [REDACTED],⁷⁷⁹ he wrote a letter to the OTP and [REDACTED] on [REDACTED] July 2021 requesting [REDACTED].⁷⁸⁰ In [REDACTED] August 2021, a [REDACTED] officer requested further documentation from P-0274 showing that [REDACTED].⁷⁸¹ Following the [REDACTED], he wrote to the OTP on [REDACTED] August 2021 withdrawing his participation in the *Gicheru* case, claiming that the [REDACTED] officer harassed him and dismissed his requests without a fair hearing.⁷⁸² He used the system to try to get he wanted, otherwise he was not going to be an OTP witness:⁷⁸³ “*This is about give and take. Listen to me, I listen to you.*”⁷⁸⁴

The OTP failed to prove that Mr. Gicheru corruptly influenced P-0274

135. ***There is no reliable evidence that P-0274 was [REDACTED].***⁷⁸⁵ P-0274 admitted that he [REDACTED].⁷⁸⁶ He wrote multiple letters to the [REDACTED] and the OTP: (a) requesting to [REDACTED];⁷⁸⁷ (b) [REDACTED];⁷⁸⁸ and (c) [REDACTED].⁷⁸⁹ None of

⁷⁷³ [T-059](#), p. 79, lines 12-19. After being confronted with his letters to the ICC, P-0274 admitted that by saying he wanted to be relocated to a “safe country,” he meant a developed, first world, English-speaking country. See [T-058](#), p. 96, line 23 to p. 98, line 20.

⁷⁷⁴ [T-058](#), p. 95, line 22 to p. 96, line 14.

⁷⁷⁵ [T-058](#), p. 98, line 21 to p. 99, line 16.

⁷⁷⁶ [T-058](#), p. 96, line 15 to p. 98, line 20, p. 99, lines 5-16.

⁷⁷⁷ [KEN-OTP-0160-1489](#).

⁷⁷⁸ [T-059](#), p. 86, line 21 to p. 87, line 9; [KEN-OTP-0160-1489](#)

⁷⁷⁹ [T-059](#), p. 88, line 18 to p. 91, line 12; [KEN-OTP-0159-1953](#).

⁷⁸⁰ [T-059](#), p. 87, line 22 to p. 89, line 1; [KEN-OTP-0160-0269-R01](#).

⁷⁸¹ [T-059](#), p. 97, line 2 to p. 100, line 18; [KEN-OTP-0159-1953](#).

⁷⁸² [T-059](#), p. 101, line 16 to p. 102, line 22; [KEN-OTP-0160-0275](#).

⁷⁸³ [T-059](#), p. 102, line 19 to p. 103, line 5.

⁷⁸⁴ [T-059](#), p. 102, line 19 to p. 103, line 5.

⁷⁸⁵ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 312-13.

⁷⁸⁶ [T-058](#), p. 92, lines 6-20.

⁷⁸⁷ [T-058](#), p. 99, line 21 to p. 102, line 3; [KEN-OTP-0148-0138-R01](#).

⁷⁸⁸ [T-058](#), p. 107, lines 2-10; [KEN-OTP-0148-0141-R01](#).

⁷⁸⁹ [T-059](#), p. 5, line 5 to p. 7, line 7; [KEN-OTP-0150-0617-R01](#)

his letters to the [REDACTED] or OTP mention anything about [REDACTED] or being influenced to withdraw from the proceedings. P-0274 also admitted that he was [REDACTED].⁷⁹⁰ No other evidence was adduced to show that P-0274 was “believed to know something of relevance” to the *Ruto and Sang* case⁷⁹¹ or was regarded by Mr. Gicheru as a person possessing relevant information.⁷⁹²

136. ***There is no reliable evidence that [REDACTED] intimidated P-0274 into providing [REDACTED].***⁷⁹³ There is no proof that P-0724 received threats in the form of a letter in 2011 (or proof that he scanned the letter and sent it to the OTP),⁷⁹⁴ no [REDACTED],⁷⁹⁵ no proof of the [REDACTED] KSh [REDACTED] transfer he claims to have gotten after recording the recantation,⁷⁹⁶ no proof that he sent an email to the OTP saying that he needed to speak with someone,⁷⁹⁷ no proof (such as investigation reports) of his claimed contacts with [REDACTED] staff and OTP investigators [REDACTED],⁷⁹⁸ no proof that he provided audio-recorded [REDACTED] with the LRV in [REDACTED],⁷⁹⁹ and no proof that he gave another interview with [REDACTED] officers in [REDACTED].⁸⁰⁰ There is also no evidence that the OTP ever acted on any of the 13 instances in his February 2021 statement where he claims he made representations to the ICC.⁸⁰¹ Given that the OTP did not call [REDACTED] as witnesses (and that [REDACTED]), none of the hearsay evidence P-0274 provides concerning these individuals can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] concerning P-0274, identified [REDACTED], or searched for information that could corroborate P-0274’s evidence.⁸⁰² No other evidence adduced to show that [REDACTED] intimidated P-0274 into providing a [REDACTED].

⁷⁹⁰ [T-059](#), p. 13, lines 15-21.

⁷⁹¹ See [ICC-01/05-01/13-2275-Red](#), para. 720.

⁷⁹² Contra [ICC-01/09-01/20-220-Conf](#), paras. 312-13.

⁷⁹³ Contra [ICC-01/09-01/20-220-Conf](#), paras. 318-19.

⁷⁹⁴ [T-059](#), p. 31, line 17 to p. 32, line 20.

⁷⁹⁵ [T-059](#), p. 44, lines 6-10.

⁷⁹⁶ [T-059](#), p. 49, line 23 to p. 50, line 25.

⁷⁹⁷ [T-059](#), p. 54, line 4 to p. 55, line 1. [REDACTED].

⁷⁹⁸ [T-059](#), p. 54, line 4 to p. 55, line 10, p. 59, lines 6-10, p. 62, lines 5-15. [REDACTED]. [T-059](#), p. 58, lines 16-21. [REDACTED].

⁷⁹⁹ [T-059](#), p. 55, line 8 to p. 56, line 9, p. 60, line 14 to p. 61, line 16, p. 62, lines 5-15. P-0274 claims that he gave an audio-recorded statement to the LRV [REDACTED].

⁸⁰⁰ [T-059](#), p. 61, line 21 to p. 62, line 15. P-0274 claims that he met two [REDACTED] officers and provided a second interview in [REDACTED].

⁸⁰¹ [T-059](#), p. 61, line 21 to p. 62, line 15.

⁸⁰² See *infra*, para. 193.

137. ***There is no reliable evidence that Mr. Gicheru promised to pay P-0274 1,000,000 KSh to withdraw from the Ruto and Sang case and approach other witnesses.***⁸⁰³ Other than his word,⁸⁰⁴ there is no proof that: (a) P-0274 ever met with Mr. Gicheru;⁸⁰⁵ (b) Mr. Gicheru gave him his phone number;⁸⁰⁶ (c) he saw [REDACTED] at Mr. Gicheru [REDACTED];⁸⁰⁷ (d) Mr. Gicheru offered him 500,000 KSh and more if he contacted other ICC victims and witnesses;⁸⁰⁸ or (e) that Mr. Gicheru gave him 10,000 KSh for transport following the claimed meeting.⁸⁰⁹ P-0341's evidence does not corroborate P-0274's evidence: under oath, he denied bringing P-0274 to Mr. Gicheru [REDACTED]⁸¹⁰ – claiming that P-0274 lied to the OTP to have a better life⁸¹¹ – and denied speaking to P-0274 about receiving any money.⁸¹² Given that the OTP did not call [REDACTED] as witnesses, none of the hearsay evidence P-0274 provides concerning these individuals can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] concerning P-0274 and/or searched for information that could corroborate P-0274's evidence.⁸¹³ No other evidence was adduced to show that Mr. Gicheru offered P-0274 1,000,000 KSh to withdraw from the *Ruto and Sang* case and approach other witnesses.
138. ***There is no reliable evidence that Mr. Gicheru intimidated P-0274.***⁸¹⁴ Other than his word, there is no proof that P-0274 met with or was in contact with Mr. Gicheru.⁸¹⁵ Moreover, P-0274 did not testify in accordance with his statement that Mr. Gicheru intimidated him by telling him that he “would now be safe” if he stopped engaging to the ICC as anticipated by the OTP.⁸¹⁶ When asked by the OTP if his “safety situation was part of the conversation with Gicheru,” P-0274 responded “[i]t was not.”⁸¹⁷ No other evidence was adduced to show that Mr. Gicheru intimidated P-0274.

⁸⁰³ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 322, 327(b).

⁸⁰⁴ [T-058](#), p. 48, lines 12-16. P-0274 claims that P-0341 took him to Mr. Gicheru's office.

⁸⁰⁵ [T-059](#), p. 77, line 9 to p. 78, line 7. P-0274 claims that P-0341 brought him to Mr. Gicheru's office.

⁸⁰⁶ [T-058](#), p. 52, lines 10-19. P-0274 claims that Mr. Gicheru gave him his phone number on a piece of paper.

⁸⁰⁷ [T-058](#), p. 57, line 22 to p. 58, line 10, p. 62, line 12 to p. 63, line 9.

⁸⁰⁸ [T-058](#), p. 50, lines 16-21. P-0274 claims that Mr. Gicheru offered him 500,000 and more if he contacted other victims and witnesses.

⁸⁰⁹ [T-058](#), p. 54, lines 2-8. P-0274 claims that Mr. Gicheru gave him 10,000 for transport.

⁸¹⁰ [T-054](#), p. 18, lines 17-23, p. 79, line 2 to p. 80, line 4.

⁸¹¹ [T-054](#), p. 80, line 17 to p. 81, line 11; [KEN-OTP-0159-1803-R01](#), p. 1829, line 927 to p. 1830, line 930.

⁸¹² [T-054](#), p. 18, lines 17-23. *C.f.* [KEN-OTP-0159-1803-R01](#), p. 1828, lines 873-85.

⁸¹³ *See infra*, paras. 189, 193.

⁸¹⁴ *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 322, 327(c).

⁸¹⁵ *See supra*, para. 137.

⁸¹⁶ [ICC-01/09-01/20-220-Conf](#), para. 327(c), citing [KEN-OTP-0159-0986-R01](#) (not admitted). The Trial Chamber denied the admission of P-0274's statements by email decision on 28 March 2022, at 15:05.

⁸¹⁷ [T-058](#), p. 53, lines 5-9.

139. ***There is no reliable evidence that [REDACTED] offered P-0274 a bribe to locate P-0356.***⁸¹⁸ Other than his word,⁸¹⁹ there is no proof that [REDACTED] called P-0274 and offered him 1,000,000 KSh to contact P-0356, such as call data records. P-0274 changed his phone many times and threw away his SIM cards.⁸²⁰ Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0247 provides concerning him can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] and/or searched for information that could corroborate P-0274's evidence.⁸²¹ No other evidence was adduced to show that [REDACTED] contacted P-0274 and offered him a bribe.

140. ***In sum.*** Considering P-0274's plan with [REDACTED] to get out of Kenya, his give-and-take transactional relationship with the OTP, and his lie about meeting Mr. Gicheru, P-0274 is unreliable. No reasonable Trial Chamber would rely on P-0274 to make any findings of fact.

I. [REDACTED] ("P-0739")

141. P-0739 was an OTP witness in the *Ruto and Sang* case.⁸²² He provided statements to the [REDACTED].⁸²³ He also provided various statements to OTP investigators concerning the PEV and testified before Trial Chamber V between [REDACTED].⁸²⁴

142. Between [REDACTED], the OTP interviewed P-0739 seven times, for a period of ten days, for 16 hours and 40 minutes, generating 489 pages of evidence.⁸²⁵ In July 2014, the OTP re-interviewed him for a period of five days, for 28 hours, generating 761 pages of evidence.⁸²⁶ Prior to his testimony in the *Gicheru* case, the OTP proofed him for a period of 11 days, for 78 hours, during which time the OTP refreshed his memory with the various statements he provided.⁸²⁷

⁸¹⁸ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 324.

⁸¹⁹ [T-058](#), p. 59, lines 1-17.

⁸²⁰ [T-059](#), p. 29, line 21 to p. 30, line 7.

⁸²¹ *See infra*, para. 190.

⁸²² [T-066](#), p. 11, lines 15-18.

⁸²³ [T-067](#), p. 69, line 11 to p. 70, line 20.

⁸²⁴ [T-066](#), p. 11, lines 19-24. *See also* [ICC-01/09-01/20-260-Conf](#), para. 20.

⁸²⁵ [T-068](#), p. 14, lines 20-25.

⁸²⁶ [T-067](#), p. 60, line 18 to p. 61, line 2.

⁸²⁷ [T-067](#), p. 72, line 24 to p. 73, line 3; [KEN-OTP-0160-1699](#).

143. In the *Ruto and Sang* case, the leading Prosecuting lawyer for the OTP, Anton Steynberg “[REDACTED].”⁸²⁸ Judge Fremr of the *Ruto and Sang* Trial Chamber, Judge Eboe-Osuji concurring,⁸²⁹ similarly found that [REDACTED].⁸³⁰

P-0739’s relationships with other witnesses

144. P-0739 is good friends with [REDACTED], knowing him since 2000.⁸³¹ He is [REDACTED]’s neighbor, having served as [REDACTED].⁸³² From [REDACTED], he was in the [REDACTED].⁸³³ He was also neighbors with [REDACTED].⁸³⁴

What the OTP claimed it would establish through P-0739

145. The OTP claims that [REDACTED] brought P-0739 to a meeting with Mr. Gicheru, who paid him to withdraw as an OTP witness in the *Ruto and Sang* case.⁸³⁵ It submitted P-0739’s evidence would corroborate other witnesses’ evidence in establishing that:

- a. There was a common plan that encompassed identifying OTP witnesses and offering and/or paying financial benefits in order to induce witnesses to withdraw, refuse to cooperate or cease cooperating with the OTP, and/or recant.⁸³⁶
- b. The common plan members included Mr. Gicheru (a manager),⁸³⁷ [REDACTED] (an intermediary),⁸³⁸ YEBEI (an intermediary),⁸³⁹ and [REDACTED] (an associate).⁸⁴⁰
- c. Mr. Gicheru made an essential contribution to the common plan by: (i) promising and/or paying financial benefits to intermediaries and associates,⁸⁴¹ (ii) negotiating bribes to recant evidence,⁸⁴² and (iii) acting as a conduit for the payment of bribes.⁸⁴³

P-0739 is incapable of belief

⁸²⁸ [ICC-01/09-01/11-2027-Red-Corr](#), [REDACTED].

⁸²⁹ [ICC-01/09-01/11-2027-Red-Corr](#) (Reasons of Judge Eboe-Osuji), para. 1.

⁸³⁰ [ICC-01/09-01/11-2027-Red-Corr](#), [REDACTED]; [T-068](#), p. 90, line 12 to p. 91, line 7.

⁸³¹ [T-066](#), p. 22, lines 9 to 21.

⁸³² [T-066](#), p. 36, lines 13-21.

⁸³³ [T-067](#), p. 3, line 23 to p. 5, line 22.

⁸³⁴ [T-066](#), p. 98, lines 15-19.

⁸³⁵ [ICC-01/09-01/20-220-Conf-AnxB1](#), p. 10, para. 3.

⁸³⁶ [REDACTED].

⁸³⁷ [REDACTED].

⁸³⁸ [REDACTED].

⁸³⁹ [REDACTED].

⁸⁴⁰ [REDACTED].

⁸⁴¹ [REDACTED].

⁸⁴² [REDACTED].

⁸⁴³ [REDACTED].

146. P-0739 is incapable of belief. He admitted to OTP investigators that all of his evidence in the *Ruto and Sang* case from 2010 to 2013 was false and that he had no purpose to prove in the *Ruto and Sang* trial. [REDACTED]. He lied about his [REDACTED], preparing an affidavit for [REDACTED], and approaching P-0019 at Mr. Gicheru's request. He had no telephone contacts with Mr. Gicheru. There is no proof he ever received money from Mr. Gicheru.

147. ***P-0739 admitted to investigators that all his evidence in Ruto and Sang case from 2010 to 2013 was false.***⁸⁴⁴ When P-0739 was reinterviewed in 2014, he explained to investigators how he crafted his story by connecting facts he heard to his own inventions.⁸⁴⁵ For example:

a. P-0739 lied in his statements to the [REDACTED]. P-0739 explained to the investigators that after he heard that the government had a plan to compensate PEV victims, he met with [REDACTED] to "cook some story" so that RUTO would be imprisoned.⁸⁴⁶ [REDACTED] told P-0739 that people from the [REDACTED] were coming and told him to speak with them to discuss property he lost at the time and to provide a statement,⁸⁴⁷ which P-0739 did.⁸⁴⁸ A short time later, he got a phone call from a [REDACTED].⁸⁴⁹ [REDACTED] for P-0739 to say that he saw RUTO distributing guns and gas,⁸⁵⁰ and for him to look for a way of introducing or mentioning about weapons and connecting them to RUTO's allies.⁸⁵¹ Accordingly, P-0739 told the [REDACTED] – individuals connected to RUTO – bringing gas.⁸⁵² P-0739 confirmed that all of this was false.⁸⁵³

b. P-0739 lied in his statement to the [REDACTED]. P-0739 explained to investigators that based on his statement he gave [REDACTED],⁸⁵⁴ he made a another statement at the [REDACTED],⁸⁵⁵ which a lawyer presented to the [REDACTED].⁸⁵⁶ When investigators requested him to go over this statement and

⁸⁴⁴ [T-067](#), p. 80 line 2 to p. 82, line 15, specifically p. 82, lines 2-15.

⁸⁴⁵ [T-067](#), p. 84, lines 6-23.

⁸⁴⁶ [T-067](#), p. 75, line 17 to p. 76, line 12.

⁸⁴⁷ [T-067](#), p. 77, lines 16-22.

⁸⁴⁸ [T-067](#), p. 79, lines 8-25.

⁸⁴⁹ [T-067](#), p. 80, lines 8-25.

⁸⁵⁰ [T-067](#), p. 81, lines 10-24.

⁸⁵¹ [T-067](#), p. 83, lines 2-23.

⁸⁵² [T-067](#), p. 83, lines 2-23.

⁸⁵³ [T-067](#), p. 83, line 24 to p. 84, line 23, p. 85, lines 1-22.

⁸⁵⁴ [T-067](#), p. 88, lines 14-22.

⁸⁵⁵ [T-067](#), p. 86, line 8 to p. 88, line 7.

⁸⁵⁶ [T-067](#), p. 88, line 25 to p. 89, line 5.

mark “invented” or improvised portions in highlights,⁸⁵⁷ he admitted that he invented the portion about guns in RUTO’s house,⁸⁵⁸ that he did not see guns at RUTO’s house (and that the sketches he drew are guns that could be seen on the street),⁸⁵⁹ and that he wanted to connect the gas tanks to the burning of the church in [REDACTED]⁸⁶⁰ (of which he knew nothing about, other than the church had been burned).⁸⁶¹ He expanded the story about guns and gas cylinders into seven paragraphs when providing his OTP statement of [REDACTED] July 2010.⁸⁶²

- c. **P-0739 lied in his July 2010 statement to the OTP.** In going over his [REDACTED] July 2010 statement with investigators,⁸⁶³ P-0739 admitted that paragraph 117 of the statement concerning “war cries” was false and that he expected the OTP investigators to ask him questions concerning this.⁸⁶⁴ He also admitted that paragraph 118 of his statement concerning demolishing, burning, and destruction of [REDACTED] houses, property, and food was false, explaining that it was inconsistent with his previous statements in which he said it would be difficult for him to go out due to the violence.⁸⁶⁵ *“[I]f you see this particular statement it does not match with what I had told them previously, because I told them that it was very difficult for me to go out, because of the violence. Now, in this statement, [I am] saying that I saw people gathering at the ground, so this doesn’t match with what I had told them before....”*⁸⁶⁶ He wondered why the OTP investigators did not catch his lies.⁸⁶⁷ The investigator responded: “We haven’t had a lot of people coming to us specifically to lie about a lot of things.”⁸⁶⁸ While he initially testified that he had no intention of testifying before the ICC and that his plan was to file an asylum application,⁸⁶⁹ he pivoted and changed his answer after the Trial Chamber asked him to clarify and became evasive when Counsel revisited the question.⁸⁷⁰

⁸⁵⁷ [T-067](#), p. 89, line 7 to p. 90, line 11.

⁸⁵⁸ [T-067](#), p. 91, lines 17-25.

⁸⁵⁹ [T-067](#), p. 92, lines 5-23.

⁸⁶⁰ [T-067](#), p. 93, line 17 to p. 94, line 14.

⁸⁶¹ [T-067](#), p. 93, line 17 to p. 94, line 16.

⁸⁶² [T-067](#), p. 93, lines 8-16.

⁸⁶³ [T-068](#), p. 6, line 3 to p. 10, line 14.

⁸⁶⁴ [T-068](#), p. 6, line 14 to p. 8, line 3.

⁸⁶⁵ [T-068](#), p. 8, line 4 to p. 9, line 2.

⁸⁶⁶ [T-068](#), p. 8, lines 20-25.

⁸⁶⁷ [T-068](#), p. 9, line 3 to p. 10, line 1.

⁸⁶⁸ [T-068](#), p. 9, line 3 to p. 10, line 1.

⁸⁶⁹ [T-068](#), p. 10, lines 2-14.

⁸⁷⁰ [T-068](#), p. 10, line 9 to p. 14, line 5.

148. **P-0739 admitted that he had “no purpose to prove” in the Ruto and Sang trial.** When confronted with Trial Chamber V’s assessment of his evidence in the *Ruto and Sang* case – i.e., that he was incapable of belief – P-0739 stated: “*it might happen that there’s nothing because I had no purpose to prove.*”⁸⁷¹
149. **[REDACTED].** [REDACTED];⁸⁷² [REDACTED];⁸⁷³ [REDACTED].⁸⁷⁴ [REDACTED].⁸⁷⁵ [REDACTED];⁸⁷⁶ [REDACTED].⁸⁷⁷
150. **P-0739 lied about being forced to give [REDACTED].** In 2013, after he had been [REDACTED] and after [REDACTED],⁸⁷⁸ P-0739 appeared in a [REDACTED], in which he made accusations against the OTP and complained about his treatment in [REDACTED].⁸⁷⁹ Claiming that [REDACTED] was done under pressure, P-0739 was evasive and refused to answer questions in cross-examination concerning the [REDACTED].⁸⁸⁰ When asked whether some statements [REDACTED] could be true – for instance, that “it [REDACTED].”⁸⁸¹ Despite P-0739’s denial that he organized [REDACTED] shows that P-0739 was lying.⁸⁸² (a) he brought his papers that his lawyer [REDACTED] gave him [REDACTED];⁸⁸³ (b) he [REDACTED];⁸⁸⁴ and (c) he explained how he was [REDACTED].⁸⁸⁵ Through the [REDACTED], P-0739 was making good on his threats to the OTP to go public with his ICC cooperation issues and “clear his name.”⁸⁸⁶
151. **P-0739 lied about [REDACTED] for [REDACTED].** In his [REDACTED] July 2014 interview, P-0739 claimed that [REDACTED] drafted an affidavit, sent it to him by email and that he printed it out, scanned it, [REDACTED], and sent it back to the lawyers by email.⁸⁸⁷ In his *Ruto and Sang* testimony, he claimed that he signed a plain sheet of paper

⁸⁷¹ [T-068](#), p. 90, line 12 to p. 91, line 7.

⁸⁷² [T-067](#), p. 7, line 12 to p. 10, line 14.

⁸⁷³ [T-067](#), p. 10, line 15 to p. 12, line 15; [KEN-OTP-0149-0036](#).

⁸⁷⁴ [T-067](#), p. 20, line 1 to p. 22, line 11; [KEN-OTP-0148-0121](#), p. 0121.

⁸⁷⁵ [T-067](#), p. 22, line 14 to p. 24, line 17; [KEN-OTP-0106-0427](#).

⁸⁷⁶ [T-067](#), p. 33, line 13 to p. 34, line 7.

⁸⁷⁷ [T-067](#), p. 33, line 13 to p. 34, line 21. [REDACTED].

⁸⁷⁸ [KEN-OTP-0116-0187-R01](#), paras. 21-22. [T-068](#), p. 64, lines 3-20.

⁸⁷⁹ [T-068](#), p. 24, line 7 to p. 46, line 8. [KEN-D09-0045-0309](#); KEN-D09-0045-0017 (not uploaded into Nuix).

⁸⁸⁰ [T-068](#), p. 34, lines 2-19, p. 35, lines 20-22, p. 38, lines 7-9, p. 40, lines 13-16.

⁸⁸¹ [T-068](#), p. 34, lines 2-17.

⁸⁸² [T-068](#), p. 42, line 22 to p. 46, line 8.

⁸⁸³ [T-066](#), p. 66, line 11 to p. 67, line 22.

⁸⁸⁴ [T-068](#), p. 24, line 7 to p. 26, line 16; [KEN-D09-0045-0309](#), p. 0319, line 278 to p. 0320, line 301; KEN-D09-0045-0017, from timestamps 21:43 to 23:56.

⁸⁸⁵ [T-068](#), p. 31, line 8 to p. 32, line 16; [KEN-D09-0045-0309](#), p. 0322, line 359 to p. 0323, line 400; KEN-D09-0045-0017, from timestamps 28:53 to 32:34.

⁸⁸⁶ [T-067](#), p. 15, lines 10-17, p. 17, line 21 to p. 18, line 7; [T-068](#), p. 42, line 22 to p. 45, line 2; [KEN-OTP-0105-0138-R01](#), p. 0139.

⁸⁸⁷ [T-068](#), p. 55, line 20 to p. 57, line 8.

and not an affidavit.⁸⁸⁸ During cross-examination in this case, he tried to “repeat[] what [he] said in the other case,” claiming that the 2014 interview “is a lie,” despite the fact that it was audio-recorded.⁸⁸⁹ While he initially claimed that [REDACTED] lied when [REDACTED],⁸⁹⁰ he later admitted – after being shown documentation – that the information concerning [REDACTED] could have only come from him.⁸⁹¹

152. ***P-0739 lied about approaching P-0019 at Mr. Gicheru’s request.*** In direct examination, P-0739 testified that he attended a meeting at [REDACTED], where: (a) he saw [REDACTED] seated with a laptop,⁸⁹² and (b) at Mr. Gicheru’s request, he contacted P-0019, who “[REDACTED].”⁸⁹³ In his 2014 interview, P-0739 could not draw the inside of [REDACTED],⁸⁹⁴ never mentioned seeing [REDACTED] working on a laptop [REDACTED],⁸⁹⁵ and claimed that he only spoke with [REDACTED] about family matters (as he testified in *Ruto and Sang*).⁸⁹⁶ The new details in his testimony were due to his developing memory:⁸⁹⁷ he understood from the OTP investigators that if he learned new details after making his statements, that he should include them in his testimony.⁸⁹⁸

153. ***P-0739 had no telephone contacts with Mr. Gicheru.*** While P-0739 testified that Mr. Gicheru called him on the telephone,⁸⁹⁹ [REDACTED]⁹⁰⁰ – [REDACTED].⁹⁰¹

154. ***There is no proof that P-0739 ever received money from Mr. Gicheru.*** When questioned about his finances, P-0739 testified that: (a) [REDACTED];⁹⁰² (b) [REDACTED];⁹⁰³ and (c) that [REDACTED]⁹⁰⁴ – [REDACTED].⁹⁰⁵ He acknowledged

⁸⁸⁸ [T-068](#), p. 57, lines 9-19, p. 58, lines 10-22.

⁸⁸⁹ [T-068](#), p. 57, line 14 to p. 58, line 6.

⁸⁹⁰ [T-068](#), p. 62, lines 7-25.

⁸⁹¹ [T-068](#), p. 64, lines 3-20.

⁸⁹² [T-066](#), p. 59, line 12 to p. 60, line 2.

⁸⁹³ [T-066](#), p. 94, line 21 to p. 95, line 5.

⁸⁹⁴ [T-068](#), p. 73, line 8 to p. 74, line 14.

⁸⁹⁵ [T-068](#), p. 74, line 24 to p. 75, line 18.

⁸⁹⁶ [T-068](#), p. 76, lines 1-25, p. 78, line 1 to p. 79, line 1.

⁸⁹⁷ [T-068](#), p. 78, line 1 to p. 79, line 1.

⁸⁹⁸ [T-068](#), p. 66, line 8 to p. 68, line 4. P-0739 also included other “details” that he did not include in his 2014 interviews, for example, that he received money together with [REDACTED]. See [T-068](#), p. 79, line 15 to p. 80, line 2.

⁸⁹⁹ [T-066](#), p. 55, lines 16-24.

⁹⁰⁰ [T-068](#), p. 92, line 10 to p. 93, line 14; “[REDACTED]” [KEN-OTP-0148-0986](#). [REDACTED].

⁹⁰¹ [T-068](#), p. 81, line 21 to p. 82, line 20.

⁹⁰² [T-068](#), p. 83, line 2 to p. 85, line 11.

⁹⁰³ [T-068](#), p. 85, line 12 to p. 86, line 12.

⁹⁰⁴ [T-068](#), p. 86, line 13 to p. 88, line 7.

⁹⁰⁵ [T-068](#), p. 88, line 8 to p. 90, line 11.

that there is no evidence to show that he ever received 2,000,000 KSh from Mr. Gicheru.⁹⁰⁶ P-0739's financial situation in June 2014 was known to investigators, yet none of them bothered to check his financials against his claim that he received 2,000,000 KSh from Mr. Gicheru.⁹⁰⁷

There is no reliable evidence that Mr. Gicheru corruptly influenced P-0739

155. ***There is no reliable evidence that [REDACTED] took P-0739 to meet Mr. Gicheru, who paid him to withdraw as an OTP witness.*** P-0739 withdrew from the ICC on his own accord due to the issues he faced [REDACTED] by drafting letters of withdrawal in 2012 and 2013.⁹⁰⁸ Other than his word, there is no proof that P-0739 ever met Mr. Gicheru,⁹⁰⁹ that he ever had any telephone contacts with Mr. Gicheru,⁹¹⁰ or that he ever received money from Mr. Gicheru.⁹¹¹ Considering that the OTP did not call P-0015 as a witness, none of P-0739's hearsay evidence concerning P-0015 can be tested. No other evidence was adduced to show that P-0015 took P-0739 to Mr. Gicheru who paid him to withdraw as an OTP witness.
156. ***P-0739 does not assist in establishing the OTP's claims concerning the common plan, its members, or the alleged contributions of Mr. Gicheru.*** P-0739 lied on numerous occasions to Kenyan organizations, to the OTP, and to this Trial Chamber.⁹¹² He also demanded that the Trial Chamber rescind his testimony unless he is relocated.⁹¹³ There is also no evidence corroborating his claims of being corruptly influenced by Mr. Gicheru. Thus, contrary to what the OTP expected to achieve with this witness, P-0739 does not provide useful information about or assist in establishing the OTP's claims that: (a) there was a common plan; (b) that the common plan members included Mr. Gicheru, [REDACTED]; or (c) that Mr. Gicheru made any contributions, let alone essential ones, to the common plan.⁹¹⁴ These claims will be addressed in more detail in Section V(B).

⁹⁰⁶ [T-068](#), p. 88, line 25 to p. 90, line 11. While P-0739 claimed that there was no proof of money received because [REDACTED] transfers (of which there is also no proof). [T-068](#), p. 53, lines 17-20, p. 90, lines 4-11; [KEN-OTP-0148-0986](#).

⁹⁰⁷ [T-068](#), p. 85, line 12 to p. 89, line 15.

⁹⁰⁸ [T-067](#), p. 29, line 7 to p. 30, line 8; [KEN-OTP-0103-3297](#); [T-066](#), p. 15, line 10 to p. 18, line 5; [KEN-OTP-0116-0254](#).

⁹⁰⁹ [T-066](#), p. 69, line 3 to p. 70, line 10, p. 72, line 3 to p. 75, line 19.

⁹¹⁰ [T-068](#), p. 81, line 21 to p. 82, line 20.

⁹¹¹ [T-068](#), p. 83, line 2 to p. 90, line 11.

⁹¹² *See supra*, para. 153.

⁹¹³ [T-068](#), p. 3, line 2 to p. 4, line 2.

⁹¹⁴ [ICC-01/09-01/20-220-Conf](#), para. 33, fn. 65, para. 36(i), fns. 73, 76, 77, para. 82, fn. 243, para. 49(c), fns. 140, 142, 143, para. 49(f), fn. 146.

157. ***In sum.*** Considering P-0739's admission that all of his evidence in the *Ruto and Sang* case was false, his admission to having no purpose to prove in the *Ruto and Sang* trial, his [REDACTED], his lies about being forced to do [REDACTED], his lies about preparing an affidavit for [REDACTED], his lies about approaching P-0019, and his lack of telephone contacts with Mr. Gicheru and proof of receiving money from Mr. Gicheru, P-0739 is unreliable. No reasonable Trial Chamber would rely on P-0739 to make any findings of fact.

J. [REDACTED] ("P-0730")

158. P-0730 was the Senior OTP Investigation Team Leader in the Article 70 case arising out of the *Ruto and Sang* case from May 2013 to April 2015.⁹¹⁵ At the request of the *Ruto and Sang* OTP team, P-0730 prepared a solemn declaration in April 2015 detailing the conduct of the Article 70 investigations – including the investigation steps taken, the nature of the evidence gathered, and the results of analysis performed on such evidence and data⁹¹⁶ – which was based on reports and evidential products offered by other OTP investigators.⁹¹⁷ The purpose of the solemn declaration was to support the OTP's request to admit the prior recorded testimony of recanting witnesses under Rule 68 in the *Ruto and Sang* case;⁹¹⁸ it was not submitted by the OTP as evidence or admitted as such.⁹¹⁹ Despite having represented his solemn declaration as true, accurate, and complete,⁹²⁰ P-0730 spent several hours reviewing his declaration and pouring over the 269 documents that were provided to him in advance of his six-hour and 49-minute proofing session with the OTP in the *Gicheru* case.⁹²¹

What the OTP claimed it would establish through P-0730

159. The OTP claims P-0730's evidence would establish that: (a) there were obstacles encountered during the OTP's investigation, which required investigators to adapt their investigative methods; and (b) there was a pattern of interference identified in the course of the Article 70 investigation.⁹²²

P-0730 is unreliable

⁹¹⁵ [T-061](#), p. 4, lines 4-9, p. 7, line 21 to p. 9, line 6, p. 11, lines 13-15; [KEN-OTP-0159-2039](#), p. 2044-45.

⁹¹⁶ [KEN-OTP-0159-0884](#), para. 7.

⁹¹⁷ [KEN-OTP-0159-0884](#), para. 11.

⁹¹⁸ [T-061](#), p. 4, lines 10-14; [KEN-OTP-0159-0884](#), para. 6.

⁹¹⁹ [ICC-01/09-01/20-194](#), para. 13, ICC-01/09-01/11-1866-Conf + Annexes. The Defence does not have access to the confidential version of these filings. See also [ICC-01/09-01/11-1938-Conf-Corr.](#)

⁹²⁰ [KEN-OTP-0159-0884](#), paras. 2, 9.

⁹²¹ [T-061](#), p. 53, line 11 to p. 55, line 12; [KEN-OTP-0160-1651](#); [KEN-OTP-0160-1628](#).

⁹²² [ICC-01/09-01/20-220-Conf-AnxB1](#), p. 8.

160. P-0730 is unreliable. The majority of his solemn declaration is effectively a compilation of reports written (not always contemporaneously) by other OTP investigators, based, primarily, on unreliable hearsay evidence. He is a partial OTP employee, vested in a pro-conviction outcome, which, to some extent, may explain certain reckless misrepresentations along with well-rehearsed scripted answers during cross-examination.

161. ***The majority of P-0730's solemn declaration is based on unreliable hearsay evidence collected by other OTP investigators.*** But for interviewing [REDACTED], P-0730 did not go on missions to personally conduct or assist in conducting witness interviews since he was conducting inquiries in the field in other situations.⁹²³ Other than the first seven pages of his solemn declaration, which relate to his involvement and recommendations and in the Kenya Article 70 investigation, the remaining 61 pages is hearsay:⁹²⁴ a compilation of reports produced by other investigators.⁹²⁵ No evidence was adduced to show that the other investigators who drafted the investigation reports were unavailable to testify to the accuracy and truthfulness of the reports. Moreover, much of the underlying investigation reports are hearsay: the investigators who drafted the reports P-0730 relied on were not always the same investigators who had contact with the witnesses (and who noted the information they learned based on their own perceptions, understanding, and memory in the Situation Contact Management System).⁹²⁶ P-0730 admitted that many of the witnesses' accounts were unverified and/or unreliable, testifying that: (a) witnesses' security concerns were not verified due to the OTP's self-imposed policy not to investigate in the Rift Valley;⁹²⁷ (b) investigators did not seek corroboration because they could not prove or disprove what the witnesses were saying without endangering individuals;⁹²⁸ (c) witnesses lied to OTP investigators;⁹²⁹ and (d) witnesses knew that investigators were not operating in the Rift Valley and concocted stories to pass to the OTP.⁹³⁰

⁹²³ [T-061](#), p. 11, lines 7-12.

⁹²⁴ [T-061](#), p. 44, line 9 to p. 45, line 6: "And I think I – I say at paragraph 11 that what I write in here is based on reports and evidential products produced by other investigators ... So I am talking about hearsay." While P-0730 claims that the first 12 pages of his report was based on his own actions, pages 7-12 concerning the "identification of a witness interference scheme" are a summary of the investigation and evidentiary products produced by other OTP investigators. See [KEN-OTP-0159-0884](#), p. 0890-95.

⁹²⁵ [T-061](#), p. 43, lines 8-19, p. 75, line 21 to p. 76, line 5.

⁹²⁶ [T-061](#), p. 50, line 18 to p. 52, line 15.

⁹²⁷ [T-062](#), p. 19, line 23 to p. 21, line 13.

⁹²⁸ [T-062](#), p. 17, line 6 to p. 18, line 3.

⁹²⁹ [T-062](#), p. 8, line 24 to p. 10, line 18.

⁹³⁰ [T-062](#), p. 22, lines 1-14.

162. ***P-0730 is a partial OTP employee acting as a mere summary witness.*** P-0730 has been a member of the OTP since [REDACTED] and despite having moved on to other cases,⁹³¹ he followed up with his colleagues on the *Ruto and Sang* OTP team on the progress of the trial.⁹³² The chronology he prepared in drafting his solemn declaration was used as the basis for the OTP Trial Brief, with 76 of the 280 paragraphs of the solemn declaration appearing in the OTP Trial Brief.⁹³³ During his two-day, six-hour, and 49-minute proofing session with the OTP – with two of his colleagues, investigators [REDACTED] and [REDACTED], being present⁹³⁴ – he was prompted by the OTP lawyers not merely to correct or clarify matters but to supplement his statement by adding new information.⁹³⁵ By informing P-0730 that the Defence may go into certain areas, the OTP lawyers were coaching and tailoring his testimony to fit their narrative, as opposed to providing him an opportunity to refresh his memory.⁹³⁶ P-0730 also had an agenda, delivering lengthy pre-scripted answers: (a) he organized the points he wanted to make; (b) provided exact dates for the information he was prepared to deliver; and (c) did not stop until he finished giving his pre-loaded points.⁹³⁷ He did not testify based on his own memory and recollection but looked for answers in his solemn declaration that he drafted for the OTP so as to stay consistent with the OTP’s theory of the case.⁹³⁸

163. ***P-0730 recklessly misrepresented evidence.*** During the second day of the Defence’s cross-examination, Defence Counsel put to P-0730 that many of the witnesses that he relied on in his solemn declaration were less than candid with the OTP.⁹³⁹ In response, P-0730 stated that he believed that the parts where witnesses were not truthful were “not problematic in relation to the case...”⁹⁴⁰ When asked whether this was his assessment, P-0730 agreed, providing a two-page, pre-loaded explanation, listing the evidence on which he based his report, including “call data records ... from the Dutch authorities which show that Mr Gicheru [was] in touch with [REDACTED] in The Netherlands.”⁹⁴¹ Immediately

⁹³¹ [KEN-OTP-0159-2039](#), p. 2044-45.

⁹³² [T-062](#), p. 22, line 15 to p. 23, line 2.

⁹³³ [T-061](#), p. 55, line 13 to p. 56, line 12.

⁹³⁴ [T-061](#), p. 47, lines 2-16.

⁹³⁵ [T-061](#), p. 64, lines 1-24, p. 73, line 10 to p. 75, line 3.

⁹³⁶ [T-061](#), p. 73, line 10 to p. 75, line 3.

⁹³⁷ [T-062](#), p. 5, line 20 to p. 8, line 20. His answer was pre-scripted: he organized the points he wanted to make (“Number one, ... point 2, ... the third point ...”), he provided exact dates based on documents for information he was prepared to deliver ([T-062](#), p. 6, lines 2, 3, 4, p. 8, line 3); he would not stop until he had finished to give his statement ([T-062](#), p. 6, line 16: “Sorry, I haven’t finished;” [T-062](#), p. 7, line 5: “I have more if I can continue.”).

⁹³⁸ [T-061](#), p. 10, lines 10-21, p. 31, line 24 to p. 2, line 2.

⁹³⁹ [T-062](#), p. 4, line 19 to p. 5, line 1.

⁹⁴⁰ [T-062](#), p. 5, lines 10-13.

⁹⁴¹ [T-062](#), p. 5, line 20 to p. 8, line 20.

after P-0730's testimony, the Defence checked its databases and informed the OTP that it could not locate any transcripts of conversations between [REDACTED] and Mr. Gicheru.⁹⁴² After conducting due-diligence checks, the Defence wrote to the OTP, requesting it to either disclose the call data records or correct the record.⁹⁴³ On 2 April 2022, P-0730 prepared an investigation report in which he admitted that his testimony was false, yet attempted to justify his falsehoods by pivoting with yet more, new founded, and predictably overreaching claims to support what he said in court.⁹⁴⁴ Finding that the report was an attempt to supplement P-0730's testimony and was specifically produced to further the OTP's case strategy, the Trial Chamber rejected the admission of P-0730's report.⁹⁴⁵

There is no reliable evidence supporting P-0730's claims

164. ***There is no reliable evidence that the OTP was prevented from investigating in Kenya.***

While P-0730 claims that the OTP could not investigate in the Rift Valley between 2013 and 2015 because it was under the control of persons sympathetic to RUTO and SANG and that speaking to individuals there "might result in reprisals,"⁹⁴⁶ he admitted that the OTP was not prevented by the Kenyan government from going into the Rift Valley⁹⁴⁷ and that it was an internal policy choice from the OTP not to investigate there.⁹⁴⁸ He also testified that at no point did he go back to the Integrated Team Leader to request any exception to the OTP's self-imposed policy to verify witnesses' claims.⁹⁴⁹ Furthermore, P-0730 presented no concrete information justifying his claims as to the potential risks faced by OTP staff members and witnesses from investigating in the Rift Valley, other than invoking the disappearance of [REDACTED].⁹⁵⁰ No other evidence was adduced through P-0730 to show that the OTP was prevented from investigating in the Rift Valley.

165. ***There is no reliable evidence that there was a pattern of witness interference for which Mr. Gicheru should be held to account.*** Aside from the hearsay nature of P-0730's solemn declaration, he admitted that there were a number of concerns with the underlying witness accounts and a lack of corroboration.⁹⁵¹ P-0730 also agreed that – given that the witnesses: (a) knew that the OTP was not operating in the Rift Valley; (b) had pre-existing

⁹⁴² [ICC-01/09-01/20-321-Conf-AnxA](#), p. 2.

⁹⁴³ [ICC-01/09-01/20-321-Conf-AnxA](#), p. 5.

⁹⁴⁴ [ICC-01/09-01/20-321-Conf](#), para. 15.

⁹⁴⁵ [ICC-01/09-01/20-324](#), para. 12.

⁹⁴⁶ [T-061](#), p. 15, line 20 to p. 16, line 4.

⁹⁴⁷ [T-061](#), p. 61, lines 6-20.

⁹⁴⁸ [T-061](#), p. 15, lines 12-19, p. 63, lines 2-19.

⁹⁴⁹ [T-061](#), p. 63, lines 20-25.

⁹⁵⁰ [T-062](#), p. 21, lines 14-25.

⁹⁵¹ *See supra*, para. 161.

relationships; (c) had unrecorded conversations unbeknownst to the OTP; and (d) had their own agendas – it was possible that witnesses could influence each other on what to say to the OTP in order to get into the ICC protection program,⁹⁵² thus creating a fictitious amalgam of witness interference with Mr. Gicheru at its center. No other evidence was adduced through P-0730 to show that Mr. Gicheru was involved in a pattern of witness interference.

166. ***In sum.*** Considering the hearsay and unreliable nature of P-0730’s solemn declaration, his partiality and pro-conviction inclination, and his reckless misrepresentations with well-rehearsed scripted answers, P-0730 is unreliable. No reasonable Trial Chamber would rely on P-0730 to make any findings of fact.

V. THE CHARGES

A. The OTP misleads the Trial Chamber into overreaching and exceeding the scope of the charges

167. Assuming that the OTP stands by its Trial Brief and argues (as presumed it will) for the Trial Chamber to find that (a) alleged “associates” (BUSIENEI, KOSGEI, P-0397, P-0800, P-0495, P-0516, P-0341, P-0015, P-0017, and KOGO) are members of the common plan so that their acts may be attributed to Mr. Gicheru;⁹⁵³ and (b) Mr. Gicheru is guilty as a direct perpetrator under Article 25(3)(a) for Count 5⁹⁵⁴ – despite the facts and circumstances articulated in the Pre-Trial Chamber’s confirmation decision – it would, impermissibly, be misleading the Trial Chamber into overreaching. Plainly, the OTP: (a) misrepresents ICC jurisprudence; (b) failed to seek an amendment of the charges; (c) misrepresents the recharacterization procedure and failed to pursue it during the course of the trial; (d) impermissibly attempts to turn the Trial Chamber into an Appeals Chamber to review the Pre-Trial Chamber’s findings of facts and conclusions of law; and (e) provides no explanation as to how Mr. Gicheru can be held responsible as a direct perpetrator for Count 5 when the Pre-Trial Chamber expressly declined to confirm this charge.⁹⁵⁵

i. Acts by the alleged associates cannot be attributed to Mr. Gicheru under Article 25(3)(a)

168. The Pre-Trial Chamber found that the alleged associates cannot be qualified as members of the common plan because the OTP did not demonstrate to the required standard (low as

⁹⁵² [T-062](#), p. 22, line 1 to p. 25, line 6.

⁹⁵³ [ICC-01/09-01/20-220-Conf](#), paras. 39-42.

⁹⁵⁴ [ICC-01/09-01/20-220-Conf](#), paras. 29, 233.

⁹⁵⁵ [ICC-01/09-01/20-153-Conf](#), para. 218, fn. 560.

it was) that they made an essential contribution in furtherance of the common plan.⁹⁵⁶ It considered that the OTP's evidence only showed "that each of them intervened only once to contact and try to convince one single other witness (except for P-0800) to meet with Mr. Gicheru or to withdraw as Prosecution witnesses," which fall short of amounting to an "essential contribution."⁹⁵⁷ Consequently, acts by the so-called (and unproved to the requisite standard of beyond reasonable doubt) associates cannot be imputed to Mr. Gicheru under Article 25(3)(a) of the Rome Statute.⁹⁵⁸

169. The OTP, through its Trial Brief (and presumably in submissions to be found in its Closing Brief), misleads and attempts to lure the Trial Chamber into overturning this factual finding by claiming that: (a) it has not been authoritatively decided whether it is necessary to prove that contributions of non-charged co-perpetrators meet the "essential contribution" threshold;⁹⁵⁹ (b) the Pre-Trial Chamber erred in law in finding that an essential contribution must be made to the common plan as a whole;⁹⁶⁰ and (c) the Trial Chamber is free to legally characterize the associates' contributions to the charged offences as "essential" under Regulation 55 of the Regulations of the Court so they can be attributed to Mr. Gicheru under Article 25(3)(a).⁹⁶¹ In doing so, the OTP seeks to secure an unwarranted conviction under Article 25(3)(a):

- a. On Count 1: by imputing KOGO's acts to Mr. Gicheru.⁹⁶²
- b. On Count 2: by imputing P-0397's acts to Mr. Gicheru.⁹⁶³
- c. On Count 3: by imputing P-0800's⁹⁶⁴ and P-0495's⁹⁶⁵ acts to Mr. Gicheru.⁹⁶⁶
- d. On Count 5: by imputing P-0800's acts to Mr. Gicheru.⁹⁶⁷

⁹⁵⁶ [ICC-01/09-01/20-153-Conf](#), para. 200. *See also Id.*, paras. 188-89, 193-94. The Pre-Trial Chamber did not find that [REDACTED] was one of the so-called "managers" or "intermediaries," nor did it find that he was a member of the common plan. The Pre-Trial Chamber also did not find that [REDACTED] were members of the common plan.

⁹⁵⁷ [ICC-01/09-01/20-153-Conf](#), para. 200.

⁹⁵⁸ [ICC-01/09-01/20-153-Conf](#), para. 215.

⁹⁵⁹ [ICC-01/09-01/20-220-Conf](#), para. 40.

⁹⁶⁰ [ICC-01/09-01/20-220-Conf](#), para. 40.

⁹⁶¹ [ICC-01/09-01/20-220-Conf](#), para. 41.

⁹⁶² [ICC-01/09-01/20-220-Conf](#), para. 48(e).

⁹⁶³ [ICC-01/09-01/20-220-Conf](#), para. 48(a); [ICC-01/09-01/20-125-Conf-AnxD](#), para. 398(i).

⁹⁶⁴ [ICC-01/09-01/20-220-Conf](#), para. 48(b); [ICC-01/09-01/20-125-Conf-AnxD](#), para. 416(iii).

⁹⁶⁵ [ICC-01/09-01/20-125-Conf-AnxD](#), para. 416(iv).

⁹⁶⁶ It is unclear whether the OTP seeks to impute P-0516's acts to Mr. Gicheru. In paragraph 48 of [ICC-01/09-01/20-220-Conf](#), he is not listed among the associates claimed to have made an essential contribution, while paragraph 168 makes reference to the acts set out in Chapter C of [ICC-01/09-01/20-125-Conf-AnxD](#), paragraph 416(i), which imputes to Mr. Gicheru P-0516's alleged phone call to P-0613 on 13 May 2013.

⁹⁶⁷ [ICC-01/09-01/20-220-Conf](#), para. 48(b); [ICC-01/09-01/20-125-Conf-AnxD](#), para. 455(i).

e. On Count 7: by imputing KOSGEI's and KOGO's acts to Mr. Gicheru.⁹⁶⁸

f. On Count 8: by imputing P-0341's acts to Mr. Gicheru.⁹⁶⁹

170. The Trial Chamber should disregard these submissions. The OTP: (a) misrepresents ICC jurisprudence; (b) failed to seek an amendment of the charges; (c) misrepresents the recharacterization procedure, and in any event, failed to pursue it during the course of the trial; and (d) impermissibly attempts to turn the Trial Chamber into an Appeals Chamber to review the Pre-Trial Chamber's findings of facts and conclusions of law.

The OTP misrepresents ICC jurisprudence in claiming that it is unnecessary to prove that contributions of non-charged co-perpetrators meet the "essential contribution" threshold

171. A co-perpetrator is, by definition, "one who makes, within the framework of a common plan, an essential contribution with the resulting power to frustrate the commission of the crime;"⁹⁷⁰ their individual contribution must be "such that, without it, the crime could not have been committed or would have been committed in a significantly different way."⁹⁷¹ Co-perpetration "based on joint control over the crime is the co-ordinated essential contribution made by *each co-perpetrator* resulting in the realisation of the objective elements of the crime."⁹⁷²

172. The requirement of an "essential contribution" distinguishes co-perpetration under Article 25(3)(a) from other forms of liability in situations where multiple people are involved in a crime such as aiding, abetting, or otherwise assisting in the commission of a crime under Article 25(3)(c) or contributing in any other way under Article 25(3)(d).⁹⁷³ The contribution of a "co-perpetrator" must necessarily be of greater significance than one who aids, abets, assists, or "contributes in any other way" to the commission of a crime.⁹⁷⁴ The Trial Chamber cannot identify the proper criminal responsibility and ascribe the appropriate blameworthiness absent the "essential contribution" under Article 25(3)(a).⁹⁷⁵

The OTP failed to seek reconfirmation of the charges under Article 61(9) of the Statute

⁹⁶⁸ [ICC-01/09-01/20-220-Conf](#), para. 48(d) and (e). It is unclear whether the OTP seeks to impute BUSIENEI's acts to Mr. Gicheru. In paragraph 48 of the [ICC-01/09-01/20-220-Conf](#), he is not listed among the associates claimed to have made an essential contribution, while paragraph 301 makes reference to the acts set out in Chapter C of [ICC-01/09-01/20-125-Conf-AnxD](#), paragraph 493, which imputes to Mr. Gicheru [REDACTED].

⁹⁶⁹ [ICC-01/09-01/20-220-Conf](#), para. 48(f).

⁹⁷⁰ [ICC-01/04-01/06-3121-Red](#), para. 469.

⁹⁷¹ [ICC-01/09-01/20-153-Conf](#), para. 175, quoting [ICC-01/05-01/13-2275-Red](#), para. 820.

⁹⁷² [ICC-01/04-01/06-803-tEN](#), para. 346 (emphasis added).

⁹⁷³ [ICC-01/04-01/06-3121-Red](#), para. 467; [ICC-01/04-01/06-2842](#), para. 996.

⁹⁷⁴ [ICC-01/04-01/06-2842](#), paras. 996-99; [ICC-01/04-01/06-3121-Red](#), paras. 467-68.

⁹⁷⁵ [ICC-01/04-01/06-3121-Red](#), para. 462; [ICC-01/04-01/06-2842](#), para. 999.

173. Article 61(9) provides the opportunity for the OTP – after the charges are confirmed but prior to the commencement of the trial – to seek the Pre-Trial Chamber’s permission to amend the charges. Corresponding Rule 128 sets out the procedure: the OTP must make a written request to the Pre-Trial Chamber, notice must be given to the accused, and if the amendments constitute additional or more serious charges, the Pre-Trial Chamber has discretion to hold oral hearings.⁹⁷⁶
174. A notable example of the amendment procedure was when the OTP in *Kenyatta* sought to amend the charges to re-insert factual allegations in the Document Containing the Charges that were expressly rejected by the Pre-Trial Chamber due to insufficient evidence.⁹⁷⁷ Since the OTP was attempting to re-insert facts concerning “an already known specific factual allegation for an existing charge” based on new evidence, the Pre-Trial Chamber considered that no hearing was necessary.⁹⁷⁸ Finding that the OTP provided the Pre-Trial Chamber with additional evidence supporting the factual allegation and reasonable justification for continuing its investigation beyond the confirmation hearing, the Pre-Trial Chamber granted the OTP’s requested amendment.⁹⁷⁹
175. Nothing prevented the OTP from going back to the Pre-Trial Chamber with additional evidence to seek an amendment to re-insert factual allegations from its Document Containing the Charges that were rejected by the Pre-Trial Chamber, i.e. that: (a) Busienei was a “manager” of the common plan;⁹⁸⁰ and (b) “intermediaries,” including P-0397, P-0800, P-0495 P-0516, and P-0341 (now characterized as associates in the OTP Trial Brief),⁹⁸¹ made essential contributions to the common plan.⁹⁸² Consciously electing to bypass the Pre-Trial Chamber, the OTP imprudently raised this issue in its Trial Brief by requesting recharacterization.
176. With the OTP having had a full and fair opportunity to put on its case in meeting its burden of proof beyond a reasonable doubt, and having no obstacles before it in presenting new evidence to support these factual allegations, no excuses should be countenanced. The OTP’s plea for the Trial Chamber to impermissibly exceed the scope of the confirmed charges risks luring the Trial Chamber into committing reversible error. Poignantly, it

⁹⁷⁶ [Rule](#) 128(1)-(3) of the Rules of Procedure and Evidence. See also [Rules](#) 121-26.

⁹⁷⁷ [ICC-01/09-02/11-700-Corr](#), paras. 27-28.

⁹⁷⁸ [ICC-01/09-02/11-700-Corr](#), para. 29.

⁹⁷⁹ [ICC-01/09-02/11-700-Corr](#), para. 38.

⁹⁸⁰ [ICC-01/09-01/20-125-Conf-AnxD](#), para. 41(d).

⁹⁸¹ [ICC-01/09-01/20-220-Conf](#), para. 42.

⁹⁸² [ICC-01/09-01/20-125-Conf-AnxD](#), paras. 42(e), 47-48. In the DCC, the OTP stated that “the evidence currently available falls short of establishing” that [REDACTED] made essential contributions to the common plan. *Id.*, para. 43.

highlights the OTP's own overreach and attempt to be relieved of its burden of proof in expecting the Trial Chamber to ignore the absence of credible, reliable, and verifiable evidence necessary in proving beyond a reasonable doubt the allegations and charges against Mr. Gicheru.

The OTP misrepresents the recharacterization procedure, and in any event, did not pursue it during the course of the trial

177. Regulation 55(1) of the Regulations of the Trial Chamber provides authority to “change the legal characterization of the facts” to “accord with the form of participation of the accused under articles 25 and 28” so long as it does not “exceed[] the facts and circumstances described in the charges and any amendment to the charges.”⁹⁸³ The Pre-Trial Chamber's confirmation decision defines the scope of the charges.⁹⁸⁴ Only when a Trial Chamber does not “overstep the factual and circumstantial framework described in the charges,” can Regulation 55 permit any modification to the legal characterizations ascribed to those facts.⁹⁸⁵

178. The OTP is not seeking *legal recharacterization of the charges* from one mode of liability under Article 25 to another since the Pre-Trial Chamber confirmed the charges under Article 25(3)(a) for all counts.⁹⁸⁶ Rather, the OTP is attempting to lure the Trial Chamber into exceeding the scope of the charges as defined by the Pre-Trial Chamber in seeking to include *factual* allegations that were explicitly rejected for insufficient evidence.⁹⁸⁷ The OTP could have availed itself to an amendment procedure with supporting additional evidence.⁹⁸⁸ It consciously did not do so, obviously – if due diligence is presumed (though not necessarily inevitable considering the nature and quality of investigation as demonstrated herein when recounting the testimony of witnesses) – because there is no additional supporting evidence. The OTP's failure to follow the applicable procedure and attempt to introduce factual allegations through the back door is, yet again, indicative of the OTP's wholesale attempt to get the Trial Chamber to look beyond the inadequacies of its case to wrongly secure a conviction.

⁹⁸³ [Regulation 55\(1\)](#) of the Regulations of the Court. See also [Rome Statute](#), Art. 74(2).

⁹⁸⁴ [ICC-01/05-01/08-3343](#), para. 32; [ICC-01/09-01/20-153-Conf](#), para. 24; [ICC-01/12-01/18-1562-Red](#), paras. 4, 92; [ICC-01/04-01/06-3121-Red](#), para. 124.

⁹⁸⁵ [ICC-01/04-01/07-3319-tENG/FRA](#), paras. 10-11.

⁹⁸⁶ [ICC-01/09-01/20-153-Conf](#), p. 78-81.

⁹⁸⁷ [ICC-01/09-01/20-153-Conf](#), para. 200.

⁹⁸⁸ See *supra*, paras. 173-176.

179. Furthermore, the OTP did not pursue recharacterization during the trial. In a three-paragraph contemplative bid in its Trial Brief, the OTP mused of providing notice of possible recharacterization.⁹⁸⁹ Yet at no point during or after the trial did the OTP request recharacterization. By contrast, the OTP in *Ruto and Sang*, which included the Senior Trial Lawyer in this case, repeatedly requested the Trial Chamber to provide notice of possible legal recharacterization at multiple junctures: on 3 July 2012 (prior to the commencement of the trial), on 12 August 2013, and during a status conference on 19 August 2013,⁹⁹⁰ prior to the Trial Chamber providing such notice on 12 December 2013.⁹⁹¹

180. The OTP's failure to raise recharacterization in this case at this late stage in the proceedings should be treated as abandoned. Although recharacterization may be done "at any time during the trial,"⁹⁹² jurisprudence establishes that notice of possible recharacterization should "be given as early as possible."⁹⁹³ Notably, the Trial Chamber has not given any such notice or an opportunity for the Defence to address any possible legal recharacterization through written or oral submissions.

The OTP impermissibly attempts to turn the Trial Chamber into the Appeals Chamber

181. Neither the Rome Statute, the Rules of Procedure and Evidence, nor the Regulations of the Court grant the Trial Chamber authority to review the Pre-Trial Chamber's findings of facts or conclusions of law.⁹⁹⁴ This authority is vested solely in the Appeals Chamber pursuant to Article 82 of the Statute.⁹⁹⁵ Now that the Appeals Chamber has spoken on the applicability of Provisional Rule 165, no interlocutory appeals under Article 82 are permissible⁹⁹⁶ – a position the OTP not only vigorously argued when seeking to have Mr. Gicheru's appeal against the confirmation decision summarily dismissed,⁹⁹⁷ but also acknowledged it in its Trial Brief.⁹⁹⁸

182. The OTP knew from the deliverance of the confirmation decision that any modifications to the facts as found by the Pre-Trial Chamber would be a non-interlocutory appealable issue that must be "reserved for any final appeal under article 81 of the Trial Chamber's judgment on the merits."⁹⁹⁹ Were to now seek recharacterization – as the OTP's Trial Brief

⁹⁸⁹ [ICC-01/09-01/20-220-Conf](#), paras. 39-41.

⁹⁹⁰ [ICC-01/09-01/11-1122](#), paras. 1, 6, 7.

⁹⁹¹ [ICC-01/09-01/11-1122](#).

⁹⁹² [Regulation](#) 55(2) of the Regulations of the Court.

⁹⁹³ [ICC-01/04-01/07-3363](#), para. 24; [ICC-01/09-01/11-1122](#), para. 27.

⁹⁹⁴ [ICC-01/04-168](#), para. 35. See [ICC-01/09-01/20-158](#), paras. 5-7.

⁹⁹⁵ See [Rome Statute](#), Art. 82(1)(d).

⁹⁹⁶ [ICC-01/09-01/20-107](#), para. 112.

⁹⁹⁷ [ICC-01/09-01/20-158](#), para. 3.

⁹⁹⁸ [ICC-01/09-01/20-220-Conf](#), para. 41.

⁹⁹⁹ [ICC-01/09-01/20-158](#), para. 3.

suggest and as is anticipated will be argued by the OTP in its Closing Brief – would be nothing short of a naked attempt to circumvent the process – effectively requesting the Trial Chamber to act as a second instant court to amend the Pre-Trial Chamber’s findings of fact and expand the scope of the facts well beyond what was confirmed by the Pre-Trial Chamber.

183. Any attempts by the OTP to have the Trial Chamber usurp the functions of the Appeals Chamber, abandon its function to strictly adhere to the procedure and jurisprudence, and to go off on a frolic for the benefit of the OTP’s case after the Pre-Trial Chamber has spoken, should be rejected. To do otherwise would amount to a denial of Mr. Gicheru’s fair trial rights and an error of law.

ii. Mr. Gicheru cannot be held responsible as a direct perpetrator for Count 5

184. “[C]ontrary to what the Prosecutor request[ed],” the Pre-Trial Chamber expressly declined to confirm the charge of direct perpetration under Article 25(3)(a) of the Statute for Count 5.¹⁰⁰⁰ Nevertheless, the OTP Trial Brief seeks to hold Mr. Gicheru responsible as a direct perpetrator under Article 25(3)(a) for Count 5.¹⁰⁰¹

185. The Pre-Trial Chamber’s confirmation decision defines the scope of the charges.¹⁰⁰² The ICC’s procedural architecture is such that the OTP formulates the charges,¹⁰⁰³ the Pre-Trial Chamber confirms the charges,¹⁰⁰⁴ and the Trial Chamber convicts or acquits, based on “the facts and circumstances described in the charges and any amendment to the charges”¹⁰⁰⁵ To allow a trial on charges that were expressly denied by the Pre-Trial Chamber, or otherwise unconfirmed, would defeat the purpose of having the Pre-Trial Chamber “ensure that there is a case worthy of trial and to define the parameters of the subject matter of that trial.”¹⁰⁰⁶

186. The Trial Chamber should reject the charge of direct perpetration under Count 5 given that this charge was expressly rejected by the Pre-Trial Chamber. While the inclusion of this charge may have been due to sloppiness in failing to delete a paragraph that was copy pasted from the OTP’s Document Containing the Charges, it cannot be excluded that this

¹⁰⁰⁰ [ICC-01/09-01/20-153-Conf](#), para. 218, fn. 560.

¹⁰⁰¹ [ICC-01/09-01/20-220-Conf](#), paras. 29, 233.

¹⁰⁰² [ICC-01/05-01/08-3343](#), para. 32; [ICC-01/09-01/20-153-Conf](#), para. 24; [ICC-01/12-01/18-1562-Red](#), paras. 4, 92; [ICC-01/04-01/06-3121-Red](#), para. 124.

¹⁰⁰³ [Rome Statute](#), Art. 61(3)(a).

¹⁰⁰⁴ [Rome Statute](#), Art. 61(7); [ICC-01/09-01/20-153-Conf](#), para. 24.

¹⁰⁰⁵ [Rome Statute](#), Article 74(2). See [ICC-01/05-01/08-3636-Anx2](#), para. 19 (separate opinion of Judge Morrison and Van den Wyngaert).

¹⁰⁰⁶ [ICC-01/12-01/18-1562-Red](#), para. 92; [ICC-01/04-01/06-3121-Red](#), para. 124.

is a deliberate attempt by the OTP to mislead the Trial Chamber into exceeding the scope of the charges.

B. Mr. Gicheru was not a member of any common plan

187. There is no reliable evidence that Mr. Gicheru was a member of any common plan to identify, locate, and corruptly influence OTP witnesses. There is no reliable evidence linking Mr. Gicheru to any of the events, to any of the so-called “managers,” “intermediaries” or “associates,” to any of the witnesses (other than P-0397), or to any of the advocates who prepared affidavits for withdrawing witnesses. It is not the Defence’s burden to disprove unsupported OTP claims with evidence to the contrary.

188. ***Mr. Gicheru was not associated with and/or a supporter of RUTO.***¹⁰⁰⁷ The OTP relies on P-0397’s and P-0800’s statements (in which they claim that Mr. Gicheru told them he was a close friend of RUTO and attended Kapsabet High School together),¹⁰⁰⁸ a Kapsabet High School alumni magazine for 2015,¹⁰⁰⁹ the analysis report [REDACTED],¹⁰¹⁰ public source information concerning RUTO’s telephone number,¹⁰¹¹ and the affidavit Mr. Gicheru prepared for P-0015.¹⁰¹² P-0397 and P-0800 are unreliable¹⁰¹³ and their claims that Mr. Gicheru told them are untestable hearsay.¹⁰¹⁴ The alumni magazine does not show that Mr. Gicheru and RUTO were at school together or were ever associated.¹⁰¹⁵ While the analysis report on [REDACTED] claims that Mr. Gicheru had [REDACTED],¹⁰¹⁶ [REDACTED] on which the analysis report is based¹⁰¹⁷ does not contain the [REDACTED].¹⁰¹⁸ P-0015’s affidavit only shows that Mr. Gicheru prepared an affidavit for P-0015 on 7 February 2013.¹⁰¹⁹ No other evidence was adduced to show that Mr. Gicheru was associated with and/or a supporter of RUTO.

¹⁰⁰⁷ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 37(a).

¹⁰⁰⁸ [ICC-01/09-01/20-220-Conf](#), para. 37(a), citing [KEN-OTP-0159-1309-R01](#), p. 1313; [KEN-OTP-0135-0113](#), p. 0019, lines 192-202.

¹⁰⁰⁹ [ICC-01/09-01/20-220-Conf](#), para. 37(a), citing [KEN-OTP-0159-1647](#), p. 1667.

¹⁰¹⁰ [ICC-01/09-01/20-220-Conf](#), para. 37(a), citing [KEN-OTP-0160-0699](#).

¹⁰¹¹ [ICC-01/09-01/20-220-Conf](#), para. 37(a), citing [KEN-OTP-0159-1638](#) (based on information obtained from MZALENDO); [KEN-OTP-0160-0661](#).

¹⁰¹² [ICC-01/09-01/20-220-Conf](#), para. 37(a), citing [KEN-OTP-0116-0206](#).

¹⁰¹³ *See supra*, paras. 20, 23-30, 77-86.

¹⁰¹⁴ [KEN-OTP-0159-1309-R01](#), p. 1313 (P-0397 claims that Mr. Gicheru told him that RUTO was his friend and they went to Kapsabet High School); [KEN-OTP-0135-0113](#), p. 0019, lines 192-202 (P-0800 claims that Mr. Gicheru told him that he went to Kapsabet Boys School).

¹⁰¹⁵ As the OTP acknowledges in footnote 90 of the [ICC-01/09-01/20-125-Conf-AnxD](#), [REDACTED].

¹⁰¹⁶ [KEN-OTP-0160-0699](#), p. 0700.

¹⁰¹⁷ [KEN-OTP-0160-0699](#), p. 0699.

¹⁰¹⁸ [KEN-OTP-0160-0043](#). [REDACTED].

¹⁰¹⁹ [KEN-OTP-0116-0206](#).

189. **Mr. Gicheru was not associated with and/or in contact with SIMATWO for illicit purposes.**¹⁰²⁰ The OTP relies on public source information,¹⁰²¹ media reports,¹⁰²² hearsay statements from [REDACTED]¹⁰²³ and [REDACTED],¹⁰²⁴ and the analysis report [REDACTED].¹⁰²⁵ The public sourced information showing that SIMATWO was the head of the board of directors for AMACO Insurance in 2021¹⁰²⁶ and media reports claiming that RUTO has close connections to AMACO Insurance are irrelevant. These documents neither provide any verification for the assertions that SIMATWO was the head of the board of directors of AMACO during the relevant period nor that RUTO was a major shareholder of AMACO insurance. These documents also do not make any fact in the Confirmation Decision more or less probable. [REDACTED] are unreliable¹⁰²⁷ and their hearsay evidence does not support any conclusion that SIMATWO was “an eye for RUTO.”¹⁰²⁸ The analysis report on [REDACTED] does not show that Mr. Gicheru and SIMATWO were in contact during the relevant period, that the telephone number was used for the purposes claimed by the OTP, or that it was unrelated to Mr. Gicheru’s work as a lawyer or government official.¹⁰²⁹ [REDACTED].¹⁰³⁰ Aside from the lack of any reliable evidence supporting the OTP’s claim that Mr. Gicheru was associated with SIMATWO for illicit purposes, there is no evidence that the OTP ever attempted to interview him. No reliable evidence was adduced to show that Mr. Gicheru was associated with and/or in contact with SIMATWO for illicit purposes.

190. **Mr. Gicheru was not associated with and/or in contact with MAIYO.**¹⁰³¹ The OTP relies on [REDACTED]’s,¹⁰³² [REDACTED]’s,¹⁰³³ [REDACTED]’s,¹⁰³⁴ and [REDACTED]’s¹⁰³⁵ statements, a media article dated [REDACTED] 2010,¹⁰³⁶ and the analysis report [REDACTED].¹⁰³⁷ [REDACTED]’s hearsay statements claiming that

¹⁰²⁰ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 37(b).

¹⁰²¹ [ICC-01/09-01/20-220-Conf](#), para. 37(b), citing [KEN-OTP-0159-1731](#).

¹⁰²² [ICC-01/09-01/20-220-Conf](#), para. 37(b), citing [KEN-OTP-0159-1779](#); [KEN-OTP-0159-1735](#); [KEN-OTP-0159-1780](#); [KEN-OTP-0159-1740](#).

¹⁰²³ [ICC-01/09-01/20-220-Conf](#), para. 37(b), citing [KEN-OTP-0150-0255-R01](#), paras. 15, 44, 53.

¹⁰²⁴ [ICC-01/09-01/20-220-Conf](#), para. 37(b), citing [KEN-OTP-0159-0986-R01](#), para. 55 (not admitted).

¹⁰²⁵ [KEN-OTP-0160-0699](#).

¹⁰²⁶ [KEN-OTP-0159-1731](#) is a screenshot from AMACO Insurance’s website downloaded on 9 March 2021.

¹⁰²⁷ *See supra*, paras. 113-118. [REDACTED].

¹⁰²⁸ [REDACTED].

¹⁰²⁹ [KEN-OTP-0160-0699](#).

¹⁰³⁰ [KEN-OTP-0160-0043](#), at 4265-6.

¹⁰³¹ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 37(c).

¹⁰³² [REDACTED].

¹⁰³³ [REDACTED].

¹⁰³⁴ [REDACTED].

¹⁰³⁵ [REDACTED].

¹⁰³⁶ [KEN-OTP-0047-0098](#).

¹⁰³⁷ [KEN-OTP-0160-0699](#).

MAIYO was the chairman of the Constituencies Development Fund and was one of RUTO's closest allies do not support any connection between Mr. Gicheru, MAIYO, or RUTO.¹⁰³⁸ Aside from relating to facts outside the scope of the charges, the 2010 media article alleging a relationship between RUTO and MAIYO is irrelevant and does not relate to any material fact in the Confirmation Decision. The analysis report on [REDACTED] does not show that Mr. Gicheru and MAIYO were in contact during the relevant period, that the telephone number was used for the purposes claimed by the OTP, or that it was unrelated to Mr. Gicheru's work as a lawyer or government official.¹⁰³⁹ [REDACTED].¹⁰⁴⁰ Aside from the lack of any reliable evidence supporting the OTP's claim that Mr. Gicheru was associated with MAIYO, there is no evidence that the OTP ever attempted to interview him. No reliable evidence was adduced to show that Mr. Gicheru was associated with and/or in contact with MAIYO for illicit purposes.

191. **Mr. Gicheru is not associated with and/or in contact with YEBEI.**¹⁰⁴¹ The OTP relies on a recorded conversation between P-0397 and YEBEI.¹⁰⁴² In the conversation, P-0397 claims that Mr. Gicheru gave him 1,000,000 KSh, conjectures that this money is giving him trouble, and threatens to go back to the ICC.¹⁰⁴³ YEBEI – who is non-responsive, neither acknowledging nor accepting P-0397's/OTP's rehearsed assertions – tells P-0397 that Mr. Gicheru is not picking up his telephone.¹⁰⁴⁴ Aside from the fact that YEBEI was never asked by the OTP to explain the telephone conversation, it does not support a conclusion beyond a reasonable doubt that Mr. Gicheru was ever in contact with YEBEI. No reliable evidence was adduced to show that Mr. Gicheru was associated with and/or in contact with YEBEI for illicit purposes.

192. **Mr. Gicheru was not associated with and/or in contact with BETT.**¹⁰⁴⁵ The OTP relies on [REDACTED]'s statement¹⁰⁴⁶ and the analysis report on [REDACTED].¹⁰⁴⁷ [REDACTED] is unreliable¹⁰⁴⁸ and his hearsay and speculative evidence does not support

¹⁰³⁸ [REDACTED].

¹⁰³⁹ [KEN-OTP-0160-0699](#).

¹⁰⁴⁰ [KEN-OTP-0160-0043](#) at 2870-71.

¹⁰⁴¹ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 38(a).

¹⁰⁴² [ICC-01/09-01/20-220-Conf](#), para. 87, citing [KEN-OTP-0125-0248](#).

¹⁰⁴³ [KEN-OTP-0125-0248](#), p. 0269-86.

¹⁰⁴⁴ [KEN-OTP-0125-0248](#), p. 0256, lines 220-24.

¹⁰⁴⁵ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 38(b).

¹⁰⁴⁶ [ICC-01/09-01/20-220-Conf](#), para. 38(b), citing [KEN-OTP-0160-0338](#), p. 0347.

¹⁰⁴⁷ [KEN-OTP-0160-0699](#).

¹⁰⁴⁸ *See supra*, paras. 77-86.

his claim that BETT was answerable to Mr. Gicheru.¹⁰⁴⁹ The analysis report on [REDACTED] does not show that Mr. Gicheru and BETT were in contact during the relevant period, that the telephone number was used for the purposes claimed by the OTP, or that it was unrelated to Mr. Gicheru's work as a lawyer or government official.¹⁰⁵⁰ [REDACTED],¹⁰⁵¹ after they were co-defendants in the Kenyan High Court.¹⁰⁵² No reliable evidence was adduced to show that Mr. Gicheru was associated with BETT for illicit purposes.

193. **Mr. Gicheru was not associated with and/or in contact with BARASA.**¹⁰⁵³ The OTP relies on the analysis report on [REDACTED].¹⁰⁵⁴ The analysis report on [REDACTED] does not show that Mr. Gicheru and BARASA were in contact during the relevant period, that the telephone number was used for the purposes claimed by the OTP, or that it was unrelated to Mr. Gicheru's work as a lawyer or government official¹⁰⁵⁵ or BARASA's work as a journalist. [REDACTED].¹⁰⁵⁶ No reliable evidence was adduced to show that Mr. Gicheru was associated with and/or in contact with BARASA for illicit purposes.

194. **Mr. Gicheru was not associated with and/or in contact with BUSIENEI for illicit purposes.**¹⁰⁵⁷ The OTP relies on the analysis report on [REDACTED]¹⁰⁵⁸ and the conversation between Mr. Gicheru and P-0397.¹⁰⁵⁹ The analysis report on does not show that Mr. Gicheru and MAIYO were in contact during the relevant period, that the telephone number was used for the purposes claimed by the OTP, or that it was unrelated to Mr. Gicheru's work as a lawyer or government official.¹⁰⁶⁰ The conversation between P-0397 and Mr. Gicheru cannot be interpreted absent context. P-0397 had [REDACTED].¹⁰⁶¹ Mr. Gicheru tells P-0397 in the conversation that he would [REDACTED] to assist as the local MP in Eldoret in persuading [REDACTED] to cease against P-0397.¹⁰⁶² Aside from the lack of any reliable evidence that Mr. Gicheru was in contact with BUSIENEI for illicit

¹⁰⁴⁹ [KEN-OTP-0160-0338](#), p. 0347. P-0800 claims that he came to know [REDACTED] traveled [REDACTED] without informing Mr. Gicheru and speculates [REDACTED] was answerable to Mr. Gicheru.

¹⁰⁵⁰ [KEN-OTP-0160-0699](#).

¹⁰⁵¹ [KEN-OTP-0160-0043](#) at 4093-94.

¹⁰⁵² See *Republic of Kenya v. Gicheru and BETT*, Misc. Crim. Appl .No. 193 of 2015, [2017] eKLR, available at <http://kenyalaw.org/caselaw/cases/view/143873/>.

¹⁰⁵³ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 38(c).

¹⁰⁵⁴ [KEN-OTP-0160-0699](#).

¹⁰⁵⁵ [KEN-OTP-0160-0699](#).

¹⁰⁵⁶ [KEN-OTP-0160-0043](#) at 822-23.

¹⁰⁵⁷ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 42(a).

¹⁰⁵⁸ [ICC-01/09-01/20-220-Conf](#), para. 42(a), citing [KEN-OTP-0160-0699](#).

¹⁰⁵⁹ [ICC-01/09-01/20-220-Conf](#), paras. 85, 87, citing [KEN-OTP-0143-0185](#).

¹⁰⁶⁰ [KEN-OTP-0160-0699](#).

¹⁰⁶¹ [KEN-OTP-0129-0567-R01](#).

¹⁰⁶² [KEN-OTP-0143-0185](#), p. 0190, line 130, p. 0191, lines 152, 154, 156.

purposes, there is no evidence that the OTP attempted to interview him. No reliable evidence was adduced to show that Mr. Gicheru was associated with and/or in contact with BUSIENEI for illicit purposes.

195. **Mr. Gicheru was not associated with Sammy Kiptanui KOSGEI.** The OTP relies on [REDACTED]'s statement.¹⁰⁶³ [REDACTED] is unreliable¹⁰⁶⁴ and his evidence is uncorroborated hearsay.¹⁰⁶⁵ Considering that the OTP never called KOSGEI as a witness, the hearsay evidence [REDACTED] provides concerning KOSGEI cannot be tested. Aside from the lack of any reliable evidence that Mr. Gicheru was in contact with KOSGEI, there is no evidence that the OTP attempted to interview him. No reliable evidence was adduced to show that Mr. Gicheru was associated with and/or in contact with KOSGEI for illicit purposes.

196. **Mr. Gicheru was not in contact with any of the OTP witnesses, but for P-0397.** The OTP relies on P-0397's,¹⁰⁶⁶ P-0613's,¹⁰⁶⁷ P-0495's,¹⁰⁶⁸ P-0274's,¹⁰⁶⁹ and P-0341's¹⁰⁷⁰ statements. Mr. Gicheru was in contact with P-0397, but not for the purposes claimed by the OTP.¹⁰⁷¹ P-0613, P-0274, and P-0341 are unreliable and there is no reliable evidence such as call data records or audio-recordings showing that these witnesses were ever in contact with Mr. Gicheru.¹⁰⁷² None of P-0495's prior statements were admitted.¹⁰⁷³ No reliable evidence was adduced to show that Mr. Gicheru was ever in contact with any of the witnesses, but for P-0397.

¹⁰⁶³ [ICC-01/09-01/20-220-Conf](#), para. 42(b).

¹⁰⁶⁴ [REDACTED].

¹⁰⁶⁵ [REDACTED].

¹⁰⁶⁶ [ICC-01/09-01/20-220-Conf](#), para. 42(c), citing [KEN-OTP-0159-1232-R01](#); [KEN-OTP-0159-1338-R01](#); [KEN-OTP-0159-1533-R01](#); [KEN-OTP-0159-1562-R01](#).

¹⁰⁶⁷ [ICC-01/09-01/20-220-Conf](#), para. 42(c), citing [KEN-OTP-0111-0162](#), paras. 53, 55; [KEN-OTP-0102-0178](#), para. 20.

¹⁰⁶⁸ [ICC-01/09-01/20-220-Conf](#), para. 42(c), citing [KEN-OTP-0130-0507-R01](#) (not admitted).

¹⁰⁶⁹ [ICC-01/09-01/20-220-Conf](#), para. 42(c), citing [KEN-OTP-0159-0986-R01](#) (not admitted).

¹⁰⁷⁰ [ICC-01/09-01/20-220-Conf](#), para. 42(c), citing [KEN-OTP-0150-0255-R01](#), paras. 51-52, 59-60, 134.

¹⁰⁷¹ See *supra*, paras. 29. Mr. Gicheru was assisting P-0397 [REDACTED].

¹⁰⁷² See *supra*, paras. 55-62. P-0613 is unreliable because she (a) coached other witnesses; (b) lied to OTP investigators; (c) made unsubstantiated claims to make herself valuable; (d) was having unauthorized, unsupervised, and unrecorded conversations; (e) lied to [REDACTED]; (f) with [REDACTED] had a plan of scamming the ICC; and (g) used [REDACTED] to secure benefits. See *supra*, paras. 131-134. P-0274 is unreliable because he (a) had a plan with P-0341 to get out of Africa; (b) he had a give-and-take transactional relationship with the OTP; and lied about meeting with Mr. Gicheru. See *supra*, paras. 113-118. P-0341 is unreliable because he (a) lied about being a victim and witness in the *Ruto and Sang* case and meeting P-0397 and P-0516 at Mr. Gicheru [REDACTED]; (b) he gave contradictory evidence concerning his bank account; (c) he had no contacts with Mr. Gicheru; and (d) his motivation was to be relocated.

¹⁰⁷³ See *supra*, para. 96.

197. **Mr. Gicheru was not involved with P-0015, other than preparing an affidavit for him as a legal practitioner.**¹⁰⁷⁴ The OTP relies on [REDACTED]’s statement.¹⁰⁷⁵ [REDACTED] is unreliable and his claims that P-0015 took him to meet Mr. Gicheru are uncorroborated.¹⁰⁷⁶ [REDACTED] did not provide any useful information concerning the alleged common plan or its members.¹⁰⁷⁷ The extent of Mr. Gicheru’s involvement with P-0015 was drafting an affidavit for him in February 2013.¹⁰⁷⁸ No reliable evidence was adduced to show that Mr. Gicheru was involved with P-0015, other than preparing an affidavit for him.
198. **Mr. Gicheru was not associated with and/or in contact with P-0017.**¹⁰⁷⁹ The OTP relies on an investigation report (claiming that P-0017 told [REDACTED] he was looking for new witnesses to withdraw),¹⁰⁸⁰ [REDACTED]’s statement (claiming that Mr. Gicheru told him he [REDACTED]),¹⁰⁸¹ and [REDACTED]’s statement ([REDACTED]).¹⁰⁸² Aside from [REDACTED] being unreliable,¹⁰⁸³ none of their statements claim that Mr. Gicheru was associated with and/or was ever in contact with P-0017. No reliable evidence was adduced to show that Mr. Gicheru was associated with and/or in contact with P-0017 for illicit purposes.
199. **KOGO is unidentified.**¹⁰⁸⁴ The OTP relies on the analysis report on [REDACTED] showing that a “KOGO” was [REDACTED].¹⁰⁸⁵ Aside from the fact that [REDACTED] does not show that Mr. Gicheru and a person named “KOGO” were in contact during the relevant period,¹⁰⁸⁶ there is no evidence that the OTP attempted to identify KOGO, verify that [REDACTED] to the KOGO claimed by the OTP, or that it attempted to interview him. No reliable evidence was adduced to show that Mr. Gicheru was associated with and/or in contact with a person named KOGO for illicit purposes.
200. **Others alleged to have been involved in the common plan.** While the OTP does not allege that [REDACTED], or another unidentified [REDACTED] were members of the

¹⁰⁷⁴ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 42(d).

¹⁰⁷⁵ [REDACTED].

¹⁰⁷⁶ [REDACTED].

¹⁰⁷⁷ *See supra*, fn. 1076.

¹⁰⁷⁸ [KEN-OTP-0116-0206](#).

¹⁰⁷⁹ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 42(e).

¹⁰⁸⁰ [REDACTED].

¹⁰⁸¹ [REDACTED].

¹⁰⁸² [REDACTED].

¹⁰⁸³ [REDACTED].

¹⁰⁸⁴ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 42(f).

¹⁰⁸⁵ [ICC-01/09-01/20-220-Conf](#), para. 42(f), citing [KEN-OTP-0160-0699](#).

¹⁰⁸⁶ [KEN-OTP-0160-0699](#).

common plan, it relies on the analysis report on [REDACTED] showing that [REDACTED]'s and [REDACTED]'s telephone numbers were saved in his contact list to show an association.¹⁰⁸⁷ Aside from the fact that the analysis report does not show that Mr. Gicheru was in contact with [REDACTED] or [REDACTED] during the relevant period and for purposes unrelated to Mr. Gicheru's work as a lawyer or government official, there is no evidence that the OTP ever attempted to interview any of these lawyers and/or searched for evidence that would verify claims made by witnesses that these lawyers were acting under instructions from Mr. Gicheru. No reliable evidence was adduced to show to that Mr. Gicheru was associated with and/or in contact with any of the lawyers who prepared affidavits on behalf of withdrawing witnesses for illicit purposes.

201. ***In sum.*** Considering that the OTP failed to prove beyond a reasonable doubt that Mr. Gicheru was associated with, in contact with, or ever had any agreement with any of the so-called "managers," "intermediaries," "associates," or others, it failed to prove beyond a reasonable doubt that Mr. Gicheru was a member of any common plan.

C. Mr. Gicheru is not guilty of any of the counts

i. Count 1

202. Mr. Gicheru did not commit any of the specific acts alleged in the OTP Trial Brief under Count 1. He did not solicit or induce [REDACTED] and [REDACTED] to approach P-0397. He did not offer P-0397 a bribe of 5,000,000 KSh. He did not pay P-0397 instalments on any bribe. He did not arrange for [REDACTED] to prepare an affidavit of withdrawal for P-0397. He did not solicit P-0397 to approach and corruptly influence P-0516. Nor did he threaten or intimidate P-0397 with [REDACTED] by accusing him of being in touch with the ICC and trying to have RUTO arrested. Considering that the OTP failed to prove any of these acts beyond a reasonable doubt, the Trial Chamber should find Mr. Gicheru NOT GUILTY of corruptly influencing P-0397: (a) as a direct perpetrator or co-perpetrator under Article 25(3)(a);¹⁰⁸⁸ (b) as a solicitor or inducer of the offence under Article 25(3)(b);¹⁰⁸⁹ (c) as an aider, abettor, or assister to the offence under Article 25(3)(c);¹⁰⁹⁰ or (d) as a contributor in any other way to the offence under Article 25(3)(d).¹⁰⁹¹

¹⁰⁸⁷ [ICC-01/09-01/20-220-Conf](#), paras. 80, 198, citing [KEN-OTP-0160-0699](#).

¹⁰⁸⁸ For acts described *infra* in paras. 203-08. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 93-96.

¹⁰⁸⁹ For acts described *infra* in para. 203. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 99-100.

¹⁰⁹⁰ For acts described *infra* in paras. 204-08. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 101-03.

¹⁰⁹¹ For acts described *infra* in paras. 203-208. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 97-98.

203. **Mr. Gicheru did not solicit or induce [REDACTED] and [REDACTED] to approach P-0397.**¹⁰⁹² The OTP relies on P-0397's suspect interviews.¹⁰⁹³ P-0397's claim that [REDACTED] and [REDACTED] approached him is uncorroborated.¹⁰⁹⁴ Given P-0397's and [REDACTED]'s unavailability and that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0397 provides concerning [REDACTED] and [REDACTED] can be tested. There is also no reliable evidence that Mr. Gicheru had any association with [REDACTED] and [REDACTED].¹⁰⁹⁵ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru solicited or induced [REDACTED] and [REDACTED] to approach P-0397 is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, solicited or induced [REDACTED] and [REDACTED] to approach P-0397.

204. **Mr. Gicheru did not offer P-0397 a bribe of 5,000,000 KSh.**¹⁰⁹⁶ The OTP relies on P-0397's suspect interviews and his bank records.¹⁰⁹⁷ P-0397's claim that Mr. Gicheru offered him a bribe of 5,000,000 KSh is uncorroborated.¹⁰⁹⁸ P-0397's description of Mr. Gicheru's office and his business card do not corroborate his claims that he was in Mr. Gicheru's office and that Mr. Gicheru gave him his business card while a bribe was being negotiated.¹⁰⁹⁹ Given P-0397's unavailability and that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0397 provides concerning his claimed meetings with Mr. Gicheru can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any illicit association with [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] and/or searched for information that could corroborate P-0397's claims.¹¹⁰⁰ The evidence claimed by the OTP to prove beyond a

¹⁰⁹² *Contra* [ICC-01/09-01/20-220-Conf](#), para. 92(a); [ICC-01/09-01/20-153-Conf](#), paras. 62-63.

¹⁰⁹³ [ICC-01/09-01/20-220-Conf](#), para. 74, citing [KEN-OTP-0159-1276-R01](#), p. 1307-08; [KEN-OTP-0159-1232-R01](#), p. 1234-36; [KEN-OTP-0159-1309-R01](#), p. 1311.

¹⁰⁹⁴ *See supra*, paras. 23. Other than for P-0397's word, there is no evidence that [REDACTED] approached P-0397, asked him if he was a witness, and told him that a group of people sent by RUTO was paying witnesses in order to withdraw.

¹⁰⁹⁵ *See supra*, paras. 191-92.

¹⁰⁹⁶ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 92(b); [ICC-01/09-01/20-153-Conf](#), para. 66.

¹⁰⁹⁷ [ICC-01/09-01/20-220-Conf](#), para. 76, citing [KEN-OTP-0159-1309-R01](#), p. 1314-15, 1331-32, 1342-43.

¹⁰⁹⁸ *See supra*, para. 24. Other than for P-0397's word, there is no evidence that Mr. Gicheru met with P-0397 privately or in [REDACTED]'s presence to offer him a bribe.

¹⁰⁹⁹ *See supra*, para. 24. The fact that P-0397 had Mr. Gicheru's business card and provided a description of Mr. Gicheru's office does not corroborate that he was in Mr. Gicheru's office and he was provided with the card while a bribe was negotiated. Mr. Gicheru told the OTP that he knew P-0397 from [REDACTED] and may have given him his card.

¹¹⁰⁰ *See supra*, para. 189. The OTP Senior Investigator P-0730's vague and unsupported claims that there was a lack of cooperation by the Kenyan authorities does not support the OTP's inaction or justify it being given the benefit of the doubt that it be absolved of its obligation to prove its case beyond a reasonable doubt – which, unquestionably, includes verifying essential facts necessary to support and validate claims intrinsic to any and all

reasonable doubt that Mr. Gicheru offered P-0397 a bribe of 5,000,000 KSh is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, offered P-0397 a bribe.

205. **Mr. Gicheru did not pay P-0397 instalments on any bribe.**¹¹⁰¹ The OTP relies on P-0397's suspect interviews, P-0397's bank accounts, and P-0613's reports to the OTP.¹¹⁰² P-0397's bank statements do not corroborate his claim that Mr. Gicheru paid him two instalments of 600,000 KSh and 400,000 KSh [REDACTED].¹¹⁰³ P-0613 is unreliable¹¹⁰⁴ and her evidence that [REDACTED] told her that P-0397 was give 500,000 KSh is double hearsay.¹¹⁰⁵ Given P-0397's unavailability, none of the evidence he provides concerning the money he claimed to have received from Mr. Gicheru can be tested. The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru paid P-0397 instalments on a bribe is uncorroborated, unverifiable and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, paid P-0397 a bribe.

206. **Mr. Gicheru did not arrange for [REDACTED] to prepare an affidavit of withdrawal for P-0397.**¹¹⁰⁶ The OTP relies on P-0397's suspect interviews,¹¹⁰⁷ P-0397's affidavit of withdrawal,¹¹⁰⁸ and [REDACTED].¹¹⁰⁹ P-0397's affidavit does not corroborate P-0397's claim that Mr. Gicheru instructed [REDACTED] to prepare an affidavit for P-0397's withdrawal.¹¹¹⁰ The fact that [REDACTED]'s phone number was found in [REDACTED]

counts. See [T-061](#), p. 12, line 23 to p. 15, line 15, p. 60, line 22 to p. 61, line 20; [T-062](#), p. 19, line 23 to p. 20, line 6.

¹¹⁰¹ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 92(b), (c) and (d); [ICC-01/09-01/20-153-Conf](#), paras. 67-68.

¹¹⁰² [ICC-01/09-01/20-220-Conf](#), paras. 77-78, citing [KEN-OTP-0159-1309-R01](#), p. 1313-15; [KEN-OTP-0159-1338-R01](#), p. 1340-41, 1355-56; [KEN-OTP-0159-1533-R01](#), p. 1537; [KEN-OTP-0124-0021](#), p. 0023. See also, [ICC-01/09-01/20-220-Conf](#), para. 88, citing [KEN-OTP-0129-0298-R01](#).

¹¹⁰³ See *supra*, para. 25. The cash deposits in P-0397's bank account are from origins and for purposes unknown. On [REDACTED], he told the OTP that he [REDACTED]. Although his bank account showed a positive balance of [REDACTED], he still requested the OTP to provide him money because he was struggling financially.

¹¹⁰⁴ See *supra*, fn. 1072.

¹¹⁰⁵ See *supra*, paras. 25. P-0613's evidence is double hearsay: she claims to have received the information from [REDACTED] who received it from someone else. P-0613 testified that [REDACTED] could lied to her. When the OTP contacted P-0397 on the basis of P-0613's report, he told the OTP that he had not been approached nor any money had been offered to him.

¹¹⁰⁶ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 92(e); [ICC-01/09-01/20-153-Conf](#), para. 69.

¹¹⁰⁷ [ICC-01/09-01/20-220-Conf](#), paras. 79-80, citing [KEN-OTP-0159-1309-R01](#), p. 1315; [KEN-OTP-0159-1338-R01](#), p. 1344-46; [KEN-OTP-0159-1276-R01](#), p. 1300-04.

¹¹⁰⁸ [ICC-01/09-01/20-220-Conf](#), paras. 79-80, citing [KEN-OTP-0124-0030](#); [KEN-OTP-0099-0286](#).

¹¹⁰⁹ [ICC-01/09-01/20-220-Conf](#), paras. 79-80, citing [KEN-OTP-0160-0699](#), p. 0701.

¹¹¹⁰ See *supra*, paras. 26. The affidavit only shows that [REDACTED] prepared P-0397's affidavit. When contacted by the OTP, P-0397 told them that it was necessary to go to the advocate because he was suffering financially at the hands of the ICC.

also does not corroborate P-0397's claims.¹¹¹¹ Given P-0397's unavailability and that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0397 provides concerning [REDACTED] can be tested. Aside from the lack of any reliable evidence showing any illicit association between Mr. Gicheru and [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] and/or searched for information that could corroborate P-0397's claims.¹¹¹² The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru arranged for [REDACTED] to prepare an affidavit of withdrawal is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, arranged for [REDACTED] to prepare P-0397's affidavit of withdrawal.

207. *Mr. Gicheru did not solicit P-0397 to approach and corruptly influence P-0516.*¹¹¹³

The OTP relies on P-0397's and P-0516's suspect interviews,¹¹¹⁴ P-0800's reports to the OTP,¹¹¹⁵ and P-0341's statement.¹¹¹⁶ P-0397's claim that Mr. Gicheru and YEBEI asked him to approach P-0516 is uncorroborated.¹¹¹⁷ P-0516 is unreliable¹¹¹⁸ and his evidence does not corroborate P-0397's evidence.¹¹¹⁹ P-0800's evidence is unreliable¹¹²⁰ and his evidence in double hearsay.¹¹²¹ P-0341 is unreliable¹¹²² and his evidence does not corroborate P-0397's evidence.¹¹²³ Given P-0397's unavailability, none of the hearsay evidence he provides concerning P-0516 can be tested. The evidence claimed by the OTP

¹¹¹¹ See *supra*, para. 26.

¹¹¹² See *supra*, para. 200.

¹¹¹³ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 92(f); [ICC-01/09-01/20-153-Conf](#), paras. 76-77.

¹¹¹⁴ [ICC-01/09-01/20-220-Conf](#), para. 81, citing [KEN-OTP-0159-1232-R01](#), p. 1238-39; [KEN-OTP-0159-1338-R01](#), p. 1352-53; [KEN-OTP-0159-1533-R01](#), p. 1556-57; [KEN-OTP-0150-0837-R01](#), p. 0855, line 624 (not admitted); [KEN-OTP-0150-0817-R01](#), p. 0821-24 (not admitted).

¹¹¹⁵ [ICC-01/09-01/20-220-Conf](#), para. 81, citing [KEN-OTP-0150-0255-R01](#), para. 119.

¹¹¹⁶ [ICC-01/09-01/20-220-Conf](#), para. 88, citing [KEN-OTP-0116-0482](#).

¹¹¹⁷ See *supra*, para. 27. Other than P-0397's words, there is no evidence of the meeting between P-0397, Mr. Gicheru, and YEBEI.

¹¹¹⁸ See *supra*, paras. 36-44. P-0516 lied to the OTP in 2012, 2015, and 2021 concerning the PEV and the witness interference. He developed a pattern of lies, mixing facts with fiction. Although he knew in 2012 that the information he was giving could lead to a conviction, he kept lying because it was an opportunity not to miss. He lied under oath concerning his withdrawal letter and the lawyer he met.

¹¹¹⁹ See *supra*, para. 45. P-0397 and P-0516's accounts are inconsistent on how they met, what they discussed about, when P-0397 brought him at Mr. Gicheru [REDACTED], and P-0397's involvement.

¹¹²⁰ See *supra*, paras. 77-86. P-0800 lied to the OTP investigators and the Trial Chambers, coached other witnesses, avoided the OTP, had unrecorded conversations with OTP witnesses and others, failed to disclose his unauthorized meeting with [REDACTED], gave inconsistent and unreliable testimony, and had no telephone or email contacts with Mr. Gicheru.

¹¹²¹ See *supra*, para. 27. P-0800 received information [REDACTED] who received it from "a source working at Gicheru's office."

¹¹²² See *supra*, fn. 1072.

¹¹²³ See *supra*, para. 115. P-0341 lied under oath that he met with P-0397 and P-0516 at Mr. Gicheru [REDACTED]. Neither P-0397 nor P-0516 ever mentioned him. Also, his claim that he followed P-0397 and P-0516 because they were [REDACTED] is false since [REDACTED].

to prove beyond a reasonable doubt that Mr. Gicheru asked P-0397 to approach and corruptly influence P-0516 is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others solicited P-0397 to approach and corruptly influence P-0516.

208. **Mr. Gicheru did not threaten or intimidate P-0397 with [REDACTED] by accusing him of being in touch with the ICC and trying to have RUTO arrested.**¹¹²⁴ The OTP relies on P-0397's suspect interview.¹¹²⁵ P-0397's claims that Mr. Gicheru threatened or intimidated him are uncorroborated.¹¹²⁶ Aside from there being no reliable evidence that Mr. Gicheru had any association with someone named [REDACTED],¹¹²⁷ there is no evidence that the OTP ever attempted to interview him and/or searched for information that could corroborate P-0397's claims. The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru intimidated P-0397 is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, threatened or intimidated P-0397.

ii. Count 2

209. Mr. Gicheru did not commit any of the specific acts alleged in the OTP Trial Brief under Count 2. He did not solicit or induce P-0397 to approach P-0516. He did not offer P-0516 a bribe of 800,000 KSh. He did not pay P-0516 a bribe of 500,000 KSh. Nor did he not solicit or induce P-0516 to locate P-0613. Considering that the OTP failed to prove any of these acts beyond a reasonable doubt, the Trial Chamber should find Mr. Gicheru NOT GUILTY of corruptly influencing P-0516: (a) as a direct perpetrator or co-perpetrator under Article 25(3)(a);¹¹²⁸ (b) as a solicitor or inducer of the offence under Article 25(3)(b);¹¹²⁹ (c) as an aider, abettor, or assister to the offence under Article 25(3)(c);¹¹³⁰ or (d) as a contributor in any other way to the offence under Article 25(3)(d).¹¹³¹

¹¹²⁴ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 92(g); [ICC-01/09-01/20-153-Conf](#), para. 70.

¹¹²⁵ [ICC-01/09-01/20-220-Conf](#), para. 82, citing [KEN-OTP-0159-1338-R01](#), p. 1347-49.

¹¹²⁶ *See supra*, para. 28. Other than his words, P-0397 provided nothing showing that he actually met with Mr. Gicheru and [REDACTED] at the [REDACTED] on 7 December 2013 and that Mr. Gicheru threatened or intimidated him.

¹¹²⁷ *See supra*, para. 99.

¹¹²⁸ For acts described *infra* in paras. 210-13. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 124-27.

¹¹²⁹ For acts described *infra* in para. 210. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 130-31.

¹¹³⁰ For acts described *infra* in paras. 210-13. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 132-34.

¹¹³¹ For acts described *infra* in paras. 210-13. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 128-29.

210. **Mr. Gicheru did not solicit or induce P-0397 to approach P-0516.**¹¹³² The OTP relies on P-0397's and P-0516's suspect interviews,¹¹³³ P-0800's reports to the OTP,¹¹³⁴ and P-0341's statement.¹¹³⁵ P-0397's claim that Mr. Gicheru and YEBEI asked him to approach P-0516 is uncorroborated.¹¹³⁶ P-0516 is unreliable¹¹³⁷ and his evidence does not corroborate P-0397's claims that he had a meeting with Mr. Gicheru and YEBEI,¹¹³⁸ nor that P-0397 approached him.¹¹³⁹ P-0800's evidence is unreliable¹¹⁴⁰ and his evidence is corroborated.¹¹⁴¹ P-0341 is unreliable and his evidence does not corroborate P-0397's evidence.¹¹⁴² Given P-0397's unavailability, none of the hearsay evidence he provides concerning P-0516 can be tested. The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru asked P-0397 to approach and corruptly influence P-0516 is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, solicited or induced P-0397 to approach P-0516 and that he consequently did it.

211. **Mr. Gicheru did not offer P-0516 a bribe of 800,000 KSh.**¹¹⁴³ The OTP relies on P-0516's¹¹⁴⁴ and P-0397's¹¹⁴⁵ suspect interviews and P-0341's statement.¹¹⁴⁶ P-0516 is unreliable and did not testify that Mr. Gicheru offered him a bribe of 800,000 KSh,¹¹⁴⁷ as the OTP expected him.¹¹⁴⁸ P-0397's evidence does not corroborate P-0516's claims.¹¹⁴⁹ P-

¹¹³² *Contra* [ICC-01/09-01/20-220-Conf](#), para. 123(a); [ICC-01/09-01/20-153-Conf](#), para. 76.

¹¹³³ [ICC-01/09-01/20-220-Conf](#), para. 81, citing [KEN-OTP-0159-1232-R01](#), p. 1238-39; [KEN-OTP-0159-1338-R01](#), p. 1352-53; [KEN-OTP-0159-1533-R01](#), p. 1556-57; [KEN-OTP-0150-0837-R01](#), p. 0855, line 624 (not admitted); [KEN-OTP-0150-0817-R01](#), p. 0821-24 (not admitted).

¹¹³⁴ [ICC-01/09-01/20-220-Conf](#), para. 88, citing [KEN-OTP-0116-0482](#).

¹¹³⁵ [ICC-01/09-01/20-220-Conf](#), para. 81, citing [KEN-OTP-0150-0255-R01](#), para. 119.

¹¹³⁶ *See supra*, para. 23. Other than P-0397's words, there is no evidence of the meeting between P-0397, Mr. Gicheru, and YEBEI.

¹¹³⁷ *See supra*, fn. 1118.

¹¹³⁸ *See supra*, para. 45. P-0516 did not testify as to a meeting between Mr. Gicheru, P-0397, and YEBEI.

¹¹³⁹ *See supra*, para. 45. P-0397 and P-0516's accounts are inconsistent on how they met, what they discussed about, when P-0397 brought him at Mr. Gicheru [REDACTED], and P-0397's involvement.

¹¹⁴⁰ *See supra*, fn. 1120.

¹¹⁴¹ *See supra*, para. 27. P-0800 received information from [REDACTED] who received it from "[REDACTED]."

¹¹⁴² *See supra*, fn. 1072, para. 115.

¹¹⁴³ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 123(b); [ICC-01/09-01/20-153-Conf](#), para. 80.

¹¹⁴⁴ [ICC-01/09-01/20-220-Conf](#), para. 110, citing [KEN-OTP-0160-0078](#), p. 0092-93, 0097-98 (not admitted); [KEN-OTP-0150-0817-R01](#), p. 0823, 0824 (not admitted); [KEN-OTP-0150-0837-R01](#), p. 0842, 0846, 0849-50 (not admitted); [KEN-OTP-0160-0107](#), p. 0118, 0127-28 (not admitted); [KEN-OTP-0150-0760-R01](#), p. 0775-76 (not admitted).

¹¹⁴⁵ [ICC-01/09-01/20-220-Conf](#), para. 110, citing [KEN-OTP-0159-1533-R01](#), p. 1556-57.

¹¹⁴⁶ [ICC-01/09-01/20-220-Conf](#), para. 110, citing [KEN-OTP-0150-0255-R01](#), para. 119.

¹¹⁴⁷ *See supra*, fn. 1118, para. 46. P-0516 testified that he did not discuss with Mr. Gicheru, there were only greetings. P-0516 testified that he had an agreement with P-0397, which contradicts P-0397's testimony.

¹¹⁴⁸ [ICC-01/09-01/20-220-Conf](#), para. 110.

¹¹⁴⁹ *See supra*, para. 46. P-0397 told the OTP that he brought P-0516 to discuss with Mr. Gicheru the amount he would receive and P-0516 told him later how much he was offered. P-0516 testified that he never discussed the money with Mr. Gicheru because he had an agreement with P-0397.

0341 is unreliable and his evidence does not corroborate P-0516's claims.¹¹⁵⁰ Given P-0397's unavailability, none of the hearsay evidence he provides concerning P-0516 can be tested. The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru offered P-0516 a bribe of 800,000 KSh is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, offered P-0516 a bribe of 800,000 KSh.

212. **Mr. Gicheru did not pay P-0516 a bribe of 500,000 KSh.** The OTP relies on P-0516¹¹⁵¹ and P-0397's¹¹⁵² suspect interviews, P-0613's recorded conversation with [REDACTED],¹¹⁵³ and P-0800's statement.¹¹⁵⁴ P-0516 is unreliable and his claim that Mr. Gicheru paid him a bribe of 500,000 KSh is uncorroborated.¹¹⁵⁵ P-0613¹¹⁵⁶ and P-0800¹¹⁵⁷ are unreliable. P-0613's,¹¹⁵⁸ P-0800's,¹¹⁵⁹ and P-0397's¹¹⁶⁰ evidence does not corroborate P-0516's claim. The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru paid P-0516 a bribe of 500,000 KSh is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, paid P-0516 a bribe of 500,000 KSh.

213. **Mr. Gicheru did not solicit or induce P-0516 to locate P-0613.** The OTP relies on P-0516's suspect interview¹¹⁶¹ and P-0613's statement.¹¹⁶² P-0516 is unreliable and he did not testify that Mr. Gicheru asked him to approach P-0613, as the OTP expected him.¹¹⁶³ However, he lied about the unknown man asking him to locate P-0613.¹¹⁶⁴ P-0613 is

¹¹⁵⁰ See *supra*, fn. 1027, para. 115.

¹¹⁵¹ [ICC-01/09-01/20-220-Conf](#), para. 112, citing [KEN-OTP-0150-0817-R01](#), p. 0823-24 (not admitted); [KEN-OTP-0150-0837-R01](#), p. 0839-41, 0851, 0857 (not admitted); [KEN-OTP-0160-0078](#), p. 0098, line 699 (not admitted); [KEN-OTP-0160-0107](#), p. 0126, lines 665-73 (not admitted); [KEN-OTP-0160-0107](#) (not admitted).

¹¹⁵² [ICC-01/09-01/20-220-Conf](#), para. 112, citing [KEN-OTP-0159-1533-R01](#), p. 1558-59.

¹¹⁵³ [ICC-01/09-01/20-220-Conf](#), paras. 112, 114, citing [KEN-OTP-0111-0162](#), p. 0169, para. 36; [KEN-OTP-0102-0178](#), p. 0181, paras. 18, 22.

¹¹⁵⁴ [ICC-01/09-01/20-220-Conf](#), para. 114. [KEN-OTP-0160-0468](#), p. 0471-72, lines 109-20; [KEN-OTP-0111-0140](#), p. 0148, para. 42.

¹¹⁵⁵ See *supra*, fn. 1118, para. 47. Other than P-0516's words, there is no tangible evidence that he met with Mr. Gicheru and he paid him 500,000 KSh.

¹¹⁵⁶ See *supra*, fn. 1072.

¹¹⁵⁷ See *supra*, fn. 1120.

¹¹⁵⁸ See *supra*, para. 47. P-0613's evidence is double hearsay she received from [REDACTED], for which there is no recording.

¹¹⁵⁹ See *supra*, para. 47. P-0800's evidence concerning P-0516 is hearsay he received from [REDACTED].

¹¹⁶⁰ See *supra*, para. 47. P-0397's evidence is hearsay and he "do[es]n't really know" if P-0516 got money.

¹¹⁶¹ [ICC-01/09-01/20-220-Conf](#), para. 115, citing [KEN-OTP-0150-0837-R01](#), p. 0859 (not admitted).

¹¹⁶² [ICC-01/09-01/20-220-Conf](#), para. 115, citing [KEN-OTP-0102-0178](#), para. 23.

¹¹⁶³ See *supra*, fn. 1118, para. 48 *contra* [ICC-01/09-01/20-220-Conf](#), para. 115.

¹¹⁶⁴ See *supra*, paras. 43, 48.

unreliable and her evidence does not corroborate P-0516's evidence.¹¹⁶⁵ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru asked P-0516 to locate P-0613 is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, asked P-0516 to locate P-0613.

iii. Count 3

214. Mr. Gicheru did not commit any of the specific acts alleged in the OTP Trial Brief under Count 3. He did not offer [REDACTED] 2,000,000 KSh to obtain P-0613's [REDACTED]. He did not solicit [REDACTED] to take a mobile phone to P-0613 so she could be contacted in order to make a financial offer. He did not solicit or induce [REDACTED] to travel to [REDACTED] to corruptly influence P-0613 and others. He did not instruct [REDACTED] to meet him to discuss P-0613. Nor did he instruct P-0495 to contact P-0613 to corruptly influence her to withdraw as an OTP witness. Considering that the OTP failed to prove any of these acts beyond a reasonable doubt, the Trial Chamber should find Mr. Gicheru NOT GUILTY of corruptly influencing P-0613: (a) as a direct perpetrator under Article 25(3)(a);¹¹⁶⁶ (b) as a solicitor or inducer of the offence under Article 25(3)(b);¹¹⁶⁷ (c) as an aider, abettor, or assister to the offence under Article 25(3)(c);¹¹⁶⁸ or (d) as a contributor in any other way to the offence under Article 25(3)(d).¹¹⁶⁹

215. **Mr. Gicheru did not offer [REDACTED] 2,000,000 KSh to obtain P-0613's [REDACTED].**¹¹⁷⁰ The OTP relies on P-0613's¹¹⁷¹ and P-0800's statements.¹¹⁷² P-0613 is unreliable¹¹⁷³ and her evidence that [REDACTED] told her that Mr. Gicheru was looking for her [REDACTED] is uncorroborated hearsay.¹¹⁷⁴ P-0800's evidence is unreliable¹¹⁷⁵ and does not corroborate P-0613's claims.¹¹⁷⁶ Given that the OTP did not call

¹¹⁶⁵ See *supra*, fn. 1072, para. 48.

¹¹⁶⁶ For acts described *infra* in paras. 215-19. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 167-69.

¹¹⁶⁷ For acts described *infra* in paras. 217-19. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 172-74.

¹¹⁶⁸ For acts described *infra* in paras. 217-19. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 175-77.

¹¹⁶⁹ For acts described *infra* in paras. 215-19. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 170-71.

¹¹⁷⁰ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 166(a); [ICC-01/09-01/20-153-Conf](#), para. 109.

¹¹⁷¹ [ICC-01/09-01/20-220-Conf](#), para. 141, citing [KEN-OTP-0102-0178](#), para. 16; [KEN-OTP-0106-0910](#), para. 19; [KEN-OTP-0103-3498](#); [KEN-OTP-0117-0897](#); [KEN-OTP-0102-0205](#), para. 38.

¹¹⁷² [ICC-01/09-01/20-220-Conf](#), para. 141, citing [KEN-OTP-0102-0205](#), para. 38.

¹¹⁷³ See *supra*, fn. 1072.

¹¹⁷⁴ See *supra*, para. 63. There is no recording of the phone call between P-0613 and [REDACTED]. P-0613 was not present during the meeting and does not know whether this meeting took place. P-0613 testified that [REDACTED] could lied to her and does not know whether he could pass false information for the truth.

¹¹⁷⁵ See *supra*, fn. 1120.

¹¹⁷⁶ See *supra*, para. 63. P-0800's evidence is hearsay and, like P-0613's evidence, originates [REDACTED].

[REDACTED] as a witness, none of the hearsay evidence P-0613 provides concerning him can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], there is no evidence that the OTP ever attempted to interview [REDACTED] after his meeting with the OTP, and/or searched for information that could corroborate P-0613's claims.¹¹⁷⁷ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru offered [REDACTED] 2,000,000 KSh to obtain P-0613's [REDACTED] is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, offered [REDACTED] a reward for P-0613's [REDACTED].

216. ***Mr. Gicheru did not solicit [REDACTED] to take a mobile phone to P-0613 so she could be contacted in order to make a financial offer.***¹¹⁷⁸ The OTP relies on P-0613's statements and recorded conversations between [REDACTED] and P-0613.¹¹⁷⁹ P-0613 is unreliable¹¹⁸⁰ and her evidence that [REDACTED] told her that he had to take a mobile phone to her so she could be contacted for a financial offer is hearsay.¹¹⁸¹ Given that the OTP did not call [REDACTED] as a witness, none of the hearsay statement he provides in this conversation can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], there is no evidence that the OTP ever attempted to interview [REDACTED] after his meeting with the OTP, and/or searched for information that could corroborate P-0613's claims.¹¹⁸² The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru asked [REDACTED] to take a mobile phone to P-0613 so she could be contacted for a financial offer is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, asked [REDACTED] to take a mobile phone to P-0613 to be contacted for a financial offer.

217. ***Mr. Gicheru did not solicit or induce [REDACTED] to travel to [REDACTED] to corruptly influence P-0613 and others.***¹¹⁸³ The OTP relies on P-0613's statement,¹¹⁸⁴ P-

¹¹⁷⁷ See *supra*, para. 192. [KEN-OTP-0107-0291](#).

¹¹⁷⁸ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 166(b); [ICC-01/09-01/20-153-Conf](#), para. 110.

¹¹⁷⁹ [ICC-01/09-01/20-220-Conf](#), para. 147, citing [KEN-OTP-0111-0162](#), paras. 37-38; [KEN-OTP-0118-1927](#) (not admitted, enhanced versions admitted [KEN-OTP-0160-1349](#) and [KEN-OTP-0160-1156](#)); [KEN-OTP-0111-0557](#), paras. 22, 62.

¹¹⁸⁰ See *supra*, fn. 1072.

¹¹⁸¹ See *supra*, para. 65. P-0613 drew an assumption from the recorded conversation with [REDACTED]. Mr. Gicheru is not even mentioned during the conversation.

¹¹⁸² See *supra*, para. 192. [KEN-OTP-0107-0291](#).

¹¹⁸³ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 166(c); [ICC-01/09-01/20-153-Conf](#), para. 111.

¹¹⁸⁴ [ICC-01/09-01/20-220-Conf](#), para. 151, citing [KEN-OTP-0111-0162](#), paras. 52-54.

0800's statement,¹¹⁸⁵ a recorded conversation between [REDACTED] and P-0613,¹¹⁸⁶ and a recorded conversation between P-0800 and [REDACTED].¹¹⁸⁷ P-0613 is unreliable¹¹⁸⁸ and her evidence that [REDACTED] approached her to corruptly influence her is hearsay.¹¹⁸⁹ P-0800 is unreliable and his evidence does not corroborate P-0613.¹¹⁹⁰ Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence [REDACTED] provides in this conversation can be tested. There is also no reliable evidence that Mr. Gicheru had any association with Mr. Gicheru.¹¹⁹¹ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru asked [REDACTED] to go to [REDACTED] and corruptly influence witnesses is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, asked [REDACTED] to travel to [REDACTED] to corruptly influence P-0613 and others.

218. ***Mr. Gicheru did not instruct [REDACTED] to meet him to discuss P-0613.***¹¹⁹² The OTP relies on P-0613's statements and metadata of her phone call with [REDACTED].¹¹⁹³ P-0613 is unreliable¹¹⁹⁴ and her evidence that [REDACTED] told her that he will meet with Mr. Gicheru to discuss P-0613 is uncorroborated.¹¹⁹⁵ Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0613 provides can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], there is no evidence that the OTP ever attempted to interview [REDACTED] after his meeting with the OTP, and/or searched for information that could

¹¹⁸⁵ [ICC-01/09-01/20-220-Conf](#), paras. 150-151, citing [KEN-OTP-0103-2473](#), para. 28; [KEN-OTP-0111-0140](#), paras. 43-54.

¹¹⁸⁶ [ICC-01/09-01/20-220-Conf](#), para. 151, citing [KEN-OTP-0118-1927](#) (not admitted, enhanced versions admitted [KEN-OTP-0160-1349](#) and [KEN-OTP-0160-1156](#)).

¹¹⁸⁷ [ICC-01/09-01/20-220-Conf](#), para. 150, citing [KEN-OTP-0132-0167](#), p. 0189, 0206, 0218-20.

¹¹⁸⁸ See *supra*, fn. 1072.

¹¹⁸⁹ See *supra*, para. 66. P-0613 drew assumptions from these conversations. Mr. Gicheru's name is never mentioned in the conversation with [REDACTED].

¹¹⁹⁰ See *supra*, fn. 1120, para. 88. Despite being ordered not to meet with [REDACTED] at his arrival in [REDACTED], P-0800 had several unrecorded phone calls with him and met with him on the night of his arrival. He provided multiple versions of the meeting. There is no way of knowing what was discussed between [REDACTED] and P-0800 when the tape-recorder was not on. He did not tell the OTP that he had this meeting with [REDACTED] until he got caught by the OTP.

¹¹⁹¹ See *supra*, para. 193.

¹¹⁹² *Contra* [ICC-01/09-01/20-220-Conf](#), para. 166(d). This act is not included in [ICC-01/09-01/20-153-Conf](#).

¹¹⁹³ [ICC-01/09-01/20-220-Conf](#), para. 152, citing [KEN-OTP-0111-0162](#), paras. 55-56; [KEN-OTP-0111-0184](#); [KEN-OTP-0111-0185](#).

¹¹⁹⁴ See *supra*, fn. 1072.

¹¹⁹⁵ See *supra* paras. 59, 67. There is no recording of this conversation and P-0613 volunteered the discussion to the OTP. Since P-0613 was having unauthorized, unsupervised, and unrecorded calls with other individuals, there is no way of knowing whether she reported the true content of the conversation between her and [REDACTED]. P-0613 testified that [REDACTED] lied to her and could have passed false information for the truth.

corroborate P-0613's claims.¹¹⁹⁶ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru asked [REDACTED] to meet with him so that they could discuss P-0613 is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, asked [REDACTED] to meet to discuss P-0613.

219. ***Mr. Gicheru did not instruct P-0495 to contact P-0613 to corruptly influence her to withdraw.***¹¹⁹⁷ The OTP relies on P-0613's statements,¹¹⁹⁸ her conversations with P-0495,¹¹⁹⁹ and P-0495's conversations with P-0800.¹²⁰⁰ P-0613 is unreliable and her evidence that P-0495 approached her on behalf of Mr. Gicheru is hearsay.¹²⁰¹ P-0800 is unreliable and his evidence does not corroborate P-0613's claims.¹²⁰² Given that the OTP chose not to call P-0495 as a witness, none of the hearsay evidence P-0613 provides concerning him can be tested. Aside from there being no evidence that Mr. Gicheru instructed P-0495 and P-0800 to corruptly influence P-0613, there is no evidence that the OTP ever attempted to search for information that could corroborate P-0613's claims. The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru asked P-0800 and P-0495 to corruptly influence P-0613 is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, asked P-0800 and P-0495 to corruptly influence P-0613.

iv. Count 4

220. Mr. Gicheru did not commit any of the specific acts alleged in the OTP Trial Brief under Count 4. He did not solicit or induce [REDACTED] to contact P-0800 and corruptly influence him to withdraw. He did not solicit or induce [REDACTED] to contact P-0800 and persuade him to meet with Mr. Gicheru. He did not offer P-0800 a bribe or ask P-0800. He did not solicit or induce P-0800 to contact and corruptly influence P-0495. Nor did Mr. Gicheru arrange for P-0800 to sign an affidavit prepared by [REDACTED]. Considering that the OTP failed to prove any of these acts beyond a reasonable doubt, the Trial Chamber

¹¹⁹⁶ See *supra*, para. 192. [KEN-OTP-0107-0291](#).

¹¹⁹⁷ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 166(e); [ICC-01/09-01/20-153-Conf](#), para. 112.

¹¹⁹⁸ [ICC-01/09-01/20-220-Conf](#), paras. 158-59, citing [KEN-OTP-0115-0216-R01](#), paras. 66, 74-80.

¹¹⁹⁹ [ICC-01/09-01/20-220-Conf](#), paras. 158-59, citing [KEN-OTP-0129-0740](#) (not admitted, the enhanced version admitted [KEN-OTP-0160-1126](#)).

¹²⁰⁰ [ICC-01/09-01/20-220-Conf](#), paras. 158-59, citing [KEN-OTP-0145-0587](#); [KEN-OTP-0145-0594](#).

¹²⁰¹ See *supra*, fn. 1072, para. 69. P-0613 injected Mr. Gicheru's name in the conversation. P-0495 later testified that [REDACTED].

¹²⁰² See *supra*, fn. 1120, para. 69. Mr. Gicheru is never mentioned in P-0800's conversations with P-0495. Since P-0613 and P-0800 were having unauthorized, unsupervised, and unrecorded calls, there is no way of knowing what was discussed.

should find Mr. Gicheru NOT GUILTY of corruptly influencing P-0800: (a) as a direct perpetrator or co-perpetrator under Article 25(3)(a);¹²⁰³ (b) as a solicitor or inducer of the offence under Article 25(3)(b);¹²⁰⁴ (c) as an aider, abettor, or assister to the offence under Article 25(3)(c);¹²⁰⁵ or (d) as a contributor in any other way to the offence under Article 25(3)(d).¹²⁰⁶

221. **Mr. Gicheru did not solicit or induce [REDACTED] to contact P-0800 and corruptly influence him to withdraw.**¹²⁰⁷ The OTP relies on P-0800's statement,¹²⁰⁸ his recorded conversations with [REDACTED],¹²⁰⁹ an investigation report memorializing a call with P-0613,¹²¹⁰ P-0730's solemn declaration (recounting what P-0613 told investigators),¹²¹¹ and the recording of P-0800's unauthorized meeting with [REDACTED].¹²¹² P-0800 is unreliable and his claim that [REDACTED] told him that he accepted a bribe and requested him to do the same is uncorroborated.¹²¹³ P-0613's hearsay evidence does not corroborate P-0800's evidence.¹²¹⁴ Nor does P-0730's solemn declaration which repeats P-0613's hearsay evidence.¹²¹⁵ The recording of P-0800's unauthorized meeting with [REDACTED] is also suspect and untrustworthy:¹²¹⁶ there is no way of knowing what was discussed between [REDACTED] and P-0800 when the tape-recorder was not on and whether the

¹²⁰³ For acts described *infra* in paras. 221-25. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 203-06.

¹²⁰⁴ For acts described *infra* in para. 221. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 209-10.

¹²⁰⁵ For acts described *infra* in paras. 222-25. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 211-13.

¹²⁰⁶ For acts described *infra* in paras. 221-25. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 207-08.

¹²⁰⁷ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 202(a); [ICC-01/09-01/20-153-Conf](#), para. 118.

¹²⁰⁸ [ICC-01/09-01/20-220-Conf](#), para. 184, citing [KEN-OTP-0103-2473](#), para. 29.

¹²⁰⁹ [ICC-01/09-01/20-220-Conf](#), paras. 187-89, citing [KEN-OTP-0106-0371](#); [KEN-OTP-0103-2701](#); [KEN-OTP-0104-0917](#); [KEN-OTP-0104-0920](#); [KEN-OTP-0106-0365](#); [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](#).

¹²¹⁰ [KEN-OTP-0107-0288](#).

¹²¹¹ [KEN-OTP-0159-0884](#), para. 210, describing [KEN-OTP-0107-0288](#).

¹²¹² [ICC-01/09-01/20-220-Conf](#), para. 150, citing [KEN-OTP-0131-0431](#).

¹²¹³ *See supra*, fn. 1120, para. 87. There is no recording of the phone call P-0800 claims to have had with [REDACTED] on 20 May 2013 where [REDACTED] purportedly told P-0800 that he had accepted a bribe. None of the other recorded conversations between P-0800 and [REDACTED] show [REDACTED] claiming that he had been bribed and asking P-0800 to do the same.

¹²¹⁴ *See supra*, para. 87. There is no recording of the telephone call where [REDACTED] purportedly told P-0613 that [REDACTED] was hired to encourage P-0800 to withdraw.

¹²¹⁵ *See supra*, para. 87. P-0730's evidence also does not corroborate P-0800's evidence (or P-0613's). P-0730's solemn declaration merely repeats what P-0613 told other OTP investigators and as such cannot corroborate P-0613's claims.

¹²¹⁶ *See supra*, para. 88. P-0800 failed to disclose his unauthorized meeting with [REDACTED] on 20 July 2013 until he was caught by OTP investigators. Curiously, [REDACTED] is heard in the recording asking P-0800 if he selected a good place to meet the following day to discuss matters that they were already discussing. When P-0800 finally disclosed this unauthorized meeting to the OTP, he gave multiple versions of the encounter, claiming: (a) he met [REDACTED] at a bus station; and (b) he met [REDACTED] at a restaurant.

two planned to invoke Mr. Gicheru's name.¹²¹⁷ Given [REDACTED]'s unavailability, none of the hearsay evidence P-0800, P-0613, or P-0730 provide concerning him can be tested. The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru solicited or induced [REDACTED] to contact and corruptly influence P-0800 is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, solicited or induced [REDACTED] to contact and corruptly influence P-0800.

222. ***Mr. Gicheru did not solicit or induce [REDACTED] to contact P-0800 and persuade him to meet with Mr. Gicheru.***¹²¹⁸ The OTP relies on P-0800's suspect interviews.¹²¹⁹ P-0800 is unreliable and his claim that [REDACTED] called him and offered to meet with Mr. Gicheru is uncorroborated.¹²²⁰ Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], none of the hearsay evidence P-0800 provides concerning [REDACTED] can be tested. The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru solicited or induced [REDACTED] to contact and corruptly influence P-0800 is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, solicited or induced [REDACTED] to contact and corruptly influence P-0800.

223. ***Mr. Gicheru did not offer P-0800 a bribe.***¹²²¹ The OTP relies on P-0800's suspect interviews,¹²²² P-0613's statement,¹²²³ and an audio-recorded conversation between P-0613 and P-0495.¹²²⁴ P-0800 is unreliable and his evidence that Mr. Gicheru offered him a bribe is uncorroborated.¹²²⁵ P-0613's hearsay evidence does not corroborate P-0800's

¹²¹⁷ See *supra*, paras. 88. Given that P-0800 had several unrecorded phone calls with [REDACTED] prior to the unauthorized meeting, there is no way of knowing what [REDACTED] and P-0800 discussed prior to having the meeting. [T-052](#), p. 56, lines 4-21, p. 58, lines 9-22. See also [KEN-OTP-0160-1944](#), p. 22, lines 8-25; [T-051](#), p. 101, line 18 to p. 102, line 11.

¹²¹⁸ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 202(b); [ICC-01/09-01/20-153-Conf](#), para. 118.

¹²¹⁹ [ICC-01/09-01/20-220-Conf](#), para. 199, citing [KEN-OTP-0135-0103-R01](#); [KEN-OTP-0135-0113](#); [KEN-OTP-0160-0338](#); [KEN-OTP-0160-0468](#).

¹²²⁰ See *supra*, fn. 1120, para. 89. There are no recorded telephone calls between P-0800 and [REDACTED] showing that [REDACTED] asked him to meet with Mr. Gicheru, and other than P-0800's word, there is no proof that P-0800 was in contact with Mr. Gicheru no proof that he ever met with Mr. Gicheru, no proof that Mr. Gicheru offered him a bribe, and no proof that Mr. Gicheru asked him to corruptly influence other OTP witnesses.

¹²²¹ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 202(c); [ICC-01/09-01/20-153-Conf](#), para. 119.

¹²²² [ICC-01/09-01/20-220-Conf](#), paras. 199, 202(c), citing [KEN-OTP-0135-0113](#); [KEN-OTP-0160-0354](#).

¹²²³ [ICC-01/09-01/20-220-Conf](#), para. 155, citing [KEN-OTP-0118-0137](#), para. 16; [KEN-OTP-0153-0041](#).

¹²²⁴ [ICC-01/09-01/20-220-Conf](#), para. 158, citing [KEN-OTP-0160-1126](#), p. 1129.

¹²²⁵ See *supra*, fn. 1120, para. 89. There are no recorded telephone calls between P-0800 and [REDACTED] showing that [REDACTED] asked him to meet with Mr. Gicheru, and other than P-0800's word, there is no proof

evidence.¹²²⁶ Nor does her audio-recorded conversation with P-0495, which P-0495 testified under oath was pre-planned.¹²²⁷ Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], none of the hearsay claims P-0800 provides concerning [REDACTED] can be tested. The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru offered P-0800 a bribe is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, offered P-0800 a bribe.

224. ***Mr. Gicheru did not solicit or induce P-0800 to locate and corruptly influence P-0495.***¹²²⁸ The OTP relies on P-0800's suspect interviews,¹²²⁹ P-0495's suspect interviews (which were not admitted),¹²³⁰ and P-0613's statement.¹²³¹ P-0800 is unreliable and his claims that Mr. Gicheru requested him to locate and corruptly influence P-0495 is uncorroborated.¹²³² P-0495's admissible evidence does not corroborate P-0800's evidence.¹²³³ Given that the OTP chose not to call P-0495 as a witness, none of the hearsay evidence P-0800 provides about him can be tested. P-0613's hearsay evidence also does not corroborate P-0800's evidence.¹²³⁴ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru solicited or induced P-0800 to locate and corruptly influence P-0495 is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either

that P-0800 was in contact with Mr. Gicheru, no proof that he ever met with Mr. Gicheru, no proof that Mr. Gicheru offered him a bribe, and no proof that Mr. Gicheru asked him to corruptly influence other OTP witnesses.

¹²²⁶ See *supra*, para. 89. There is no recording of the telephone call where P-0613 claims that P-0800 told her that he had accepted a bribe.

¹²²⁷ See *supra*, para. 89. P-0495 testified under oath in the *Ruto and Sang* trial that his discussion with P-0613 was "well-planned" so the OTP investigators could release money to P-0613.

¹²²⁸ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 202(d); [ICC-01/09-01/20-153-Conf](#), para. 119.

¹²²⁹ [ICC-01/09-01/20-220-Conf](#), paras. 199, 202(d), citing [KEN-OTP-0160-0290](#); [KEN-OTP-0135-0113](#); [KEN-OTP-0160-0354](#); [KEN-OTP-0160-0468](#).

¹²³⁰ [ICC-01/09-01/20-220-Conf](#), paras. 199, 219-20, citing [KEN-OTP-0130-0507-R01](#) (not admitted); [KEN-OTP-0130-0540-R01](#) (not admitted). The Trial Chamber denied the admission of P-0495's prior recorded testimony under Rule 68(2)(d), finding that the OTP failed to use all reasonable efforts at its disposal to obtain P-0495's attendance. [ICC-01/09-01/20-247-Conf](#), para. 26. Subsequently, the OTP declined to call P-0495 as a witness.

¹²³¹ [ICC-01/09-01/20-220-Conf](#), para. 155, citing [KEN-OTP-0118-0137](#), para. 16; [KEN-OTP-0153-0041](#), p. 0041-42.

¹²³² See *supra*, fn. 1120, para. 90. Aside from there being no reliable evidence that P-0800 was ever in contact with Mr. Gicheru, there are no photographs or audio recordings showing that P-0800 ever met with Mr. Gicheru, that Mr. Gicheru asked him to locate and corruptly influence P-0495, or that P-0800 approached P-0495. P-0800 also lied about having a conversation with P-0495 where he purportedly told P-0800 that he was coached by 10 lawyers led by Mr. Gicheru.

¹²³³ See *supra*, paras. 89-90. P-0495 testified under oath in the *Ruto and Sang* trial that: (a) he did not know Mr. Gicheru; (b) he never met Mr. Gicheru; (c) that his mentioning of Mr. Gicheru in his audio-recorded meeting with [REDACTED] and (d) that his discussion with [REDACTED].

¹²³⁴ See *supra*, para. 90.

acting alone or in concert with others, solicited or induced P-0800 to locate and corruptly influence P-0495.

225. *Mr. Gicheru did not arrange for P-0800 to sign an affidavit prepared by [REDACTED].*¹²³⁵ The OTP relies on P-0800's suspect interviews,¹²³⁶ his affidavit prepared by [REDACTED],¹²³⁷ and a handwritten letter.¹²³⁸ P-0800 is unreliable and his claim that Mr. Gicheru arranged for him to sign an affidavit prepared by [REDACTED] is uncorroborated.¹²³⁹ Considering [REDACTED]'s unavailability, none of the hearsay evidence P-0800 provides concerning him can be tested. Aside [REDACTED] there being no reliable evidence that Mr. Gicheru had any illicit association with [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] and/or searched for information that could corroborate P-0800's claims.¹²⁴⁰ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru arranged for P-0800 to sign an affidavit of withdrawal with [REDACTED] is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, arranged for P-0800 to sign an affidavit of withdrawal with [REDACTED].

v. Count 5

226. Mr. Gicheru did not commit any of the specific acts alleged in the OTP Trial Brief under Count 5. He did not solicit or induce P-0800 to locate P-0495 and bring him to meet Mr. Gicheru. He did not offer P-0495 a bribe of between 1,500,00 KSh and 2,500,00 KSh in order to withdraw and instructed him to locate P-0613. Nor did he coach P-0495 on what to say in court. Considering that the OTP failed to prove any of these acts beyond a reasonable doubt, the Trial Chamber should find Mr. Gicheru NOT GUILTY of corruptly influencing P-0495: (a) as a direct perpetrator or co-perpetrator under Article 25(3)(a),¹²⁴¹ as a solicitor or inducer to the offence under Article 25(3)(b),¹²⁴² as an aider, abettor, or

¹²³⁵ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 202(e); [ICC-01/09-01/20-153-Conf](#), para. 120.

¹²³⁶ [ICC-01/09-01/20-220-Conf](#), para. 197, citing [KEN-OTP-0135-0155](#); [KEN-OTP-0145-0560](#); [KEN-OTP-0145-0562](#); [KEN-OTP-0145-0566](#).

¹²³⁷ [ICC-01/09-01/20-220-Conf](#), para. 197, citing [KEN-OTP-0135-0155](#); [KEN-OTP-0145-0562](#); [KEN-OTP-0145-0566](#).

¹²³⁸ [ICC-01/09-01/20-220-Conf](#), para. 197, citing [KEN-OTP-0145-0560](#).

¹²³⁹ *See supra*, fn. 1120, para. 92. There are no recorded telephone calls between P-0800 and [REDACTED] showing that [REDACTED] instructed P-0800 to go to [REDACTED]. P-0800's affidavit only shows that P-0800 [REDACTED] prepared by [REDACTED] on [REDACTED]. P-0800's handwritten letter only shows that P-0800 drafted a handwritten letter of withdrawal on [REDACTED].

¹²⁴⁰ *See supra*, para. 200, fn. 1100.

¹²⁴¹ For acts described *infra* in paras. 227-30. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 233-36.

¹²⁴² For acts described *infra* in paras. 227-30. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 239-40.

assister to the offence under Article 25(3)(c);¹²⁴³ and as a contributor in any other was to the offence under Article 25(3)(d).¹²⁴⁴

227. **Mr. Gicheru did not solicit or induce P-0800 to locate P-0495 and bring him to meet Mr. Gicheru.**¹²⁴⁵ The OTP relies on P-0800's suspect interviews¹²⁴⁶ and P-0495's suspect interviews.¹²⁴⁷ None of P-0495's suspect interviews were admitted into evidence.¹²⁴⁸ P-0800 is unreliable and his claims that Mr. Gicheru requested him to locate and corruptly influence P-0495 is uncorroborated.¹²⁴⁹ P-0495's admissible evidence does not corroborate P-0800's evidence.¹²⁵⁰ P-0495 testified under oath in the *Ruto and Sang* trial that he did not know Mr. Gicheru, never met Mr. Gicheru, and when he mentioned Mr. Gicheru in [REDACTED]¹²⁵¹ Given that the OTP chose not to call P-0495 as a witness,¹²⁵² none of the hearsay evidence P-0800 provides about him can be tested. The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru solicited or induced P-0800 to locate and corruptly influence P-0495 is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, solicited or induced P-0800 to locate and corruptly influence P-0495.

228. **Mr. Gicheru did not offer P-0495 a bribe of between 1,500,000 KSh and 2,500,000 KSh in order to withdraw and instructed him to locate P-0613.**¹²⁵³ The OTP relies on P-0800's suspect interviews¹²⁵⁴ and P-0613's statement.¹²⁵⁵ P-0800 is unreliable and his evidence that he met with Mr. Gicheru, [REDACTED], and P-0495 in [REDACTED] is

¹²⁴³ For acts described *infra* in paras. 227-30. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 241-43.

¹²⁴⁴ For acts described *infra* in paras. 227-30. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 237-38.

¹²⁴⁵ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 232(a); [ICC-01/09-01/20-153-Conf](#), paras. 119, 124.

¹²⁴⁶ [ICC-01/09-01/20-220-Conf](#), paras. 218-19, citing [KEN-OTP-0135-0113](#), p. 0117, 0118, 0121-22; [KEN-OTP-0160-0354](#), p. 0358-59, 0361, 0369-70; [KEN-OTP-0160-0290](#), p. 0295; [KEN-OTP-0135-0200](#), p. 0208; [KEN-OTP-0135-0103-R01](#), p. 0107.

¹²⁴⁷ [ICC-01/09-01/20-220-Conf](#), paras. 218-19, citing [KEN-OTP-0130-0540-R01](#), p. 0542 (not admitted); [KEN-OTP-0130-0507-R01](#), p. 0515-16, 0518, 0527-28, 0531 (not admitted).

¹²⁴⁸ *See supra*, para. 96.

¹²⁴⁹ *See supra*, fn. 1120, paras. 85-86, 90. Aside from there being no reliable evidence that P-0800 was ever in contact with Mr. Gicheru, there are no photographs or audio recordings showing that P-0800 ever met with Mr. Gicheru, that Mr. Gicheru asked him to locate and corruptly influence P-0495, or that P-0800 approached P-0495. P-0800 also lied about having a conversation with P-0495 where he purportedly told P-0800 that he was coached by 10 lawyers led by Mr. Gicheru.

¹²⁵⁰ *See supra*, para. 90.

¹²⁵¹ [T-057](#), p. 26, line 17 to p. 27, line 25.

¹²⁵² *See supra*, para. 96.

¹²⁵³ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 232(b); [ICC-01/09-01/20-153-Conf](#), para. 124.

¹²⁵⁴ [ICC-01/09-01/20-220-Conf](#), para. 221, citing [KEN-OTP-0135-0113](#), p. 0121, 0131-32, 0134-35; [KEN-OTP-0160-0354](#), p. 0357, 0359, 0363; [KEN-OTP-0160-0400-R02](#), p. 0418-19, 0422.

¹²⁵⁵ [ICC-01/09-01/20-220-Conf](#), para. 221, citing [KEN-OTP-0115-0216-R01](#), paras. 29-31.

uncorroborated.¹²⁵⁶ During the audio-recorded call between P-0495 and P-0800, Mr. Gicheru's name is not even mentioned.¹²⁵⁷ P-0613 is unreliable and her evidence P-0495 told her that he had been offered 2,500,000 KSh is uncorroborated.¹²⁵⁸ P-0613's audio-recorded meeting with P-0495 is also suspect and untrustworthy, since P-0495 testified in the *Ruto and Sang* trial that he did not know Mr. Gicheru, he never met Mr. Gicheru, and that mentioning Mr. Gicheru it was all [REDACTED].¹²⁵⁹ Given that the OTP chose not to call P-0495 as a witness,¹²⁶⁰ none of the hearsay evidence P-0800 and P-0613 provide about him can be tested. The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru offered P-0495 a bribe of between 1,500,000 KSh and 2,500,000 KSh in order to withdraw is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, offered P-0495 a bribe to withdraw and instructed him to approach P-0613.

229. **Mr. Gicheru did not coach P-0495 on what to say in court.**¹²⁶¹ The OTP relies on P-0800's suspect interview.¹²⁶² P-0800 is unreliable and his evidence that Mr. Gicheru coached P-0495 on what to say during his testimony is inconsistent and uncorroborated.¹²⁶³ Given that the OTP chose not to call P-0495 as a witness,¹²⁶⁴ none of the hearsay evidence P-0800 provide about him can be tested. The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru coached P-0495 on what to say during his in-court testimony is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, coached P-0495 on what to say during his in-court testimony.

vi. Count 6

¹²⁵⁶ See *supra*, fn. 1120, para. 90.

¹²⁵⁷ See *supra*, para. 69.

¹²⁵⁸ See *supra*, fn. 1072, para. 90. There is no recording of the phone call P-0613 claimed to have had with P-0495 where P-0495 purportedly told her that he had been offered 2,500,000 KSh. Nor was P-0613's telephone data saved to verify whether this conversation actually took place.

¹²⁵⁹ See *supra*, paras. 69, 90.

¹²⁶⁰ See *supra*, para. 96.

¹²⁶¹ Contra [ICC-01/09-01/20-220-Conf](#), para. 232(c); [ICC-01/09-01/20-153-Conf](#), para. 125.

¹²⁶² [ICC-01/09-01/20-220-Conf](#), para. 226, citing [KEN-OTP-0144-0272-R02](#), p. 0283-85.

¹²⁶³ See *supra*, fn. 1120, paras. 86, 93. There is no recording of this conversation. P-0800 lied under oath that: (a) [REDACTED]; and (b) [REDACTED]. There is also no evidence that the OTP investigators followed up on P-0800's claimed conversation [REDACTED].

¹²⁶⁴ See *supra*, para. 96.

230. Mr. Gicheru did not commit any of the specific acts alleged in the OTP Trial Brief under Count 6. He did not induce or solicit [REDACTED] to locate and contact P-0738 and corruptly influence her. Nor did he coordinated with [REDACTED] concerning P-0738's bribe. Considering that the OTP failed to prove any of these acts beyond a reasonable doubt, the Trial Chamber should find Mr. Gicheru NOT GUILTY of corruptly influencing P-0738: (a) as a co-perpetrator under Article 25(3)(a);¹²⁶⁵ as a solicitor or inducer to the offence under Article 25(3)(b);¹²⁶⁶ as an aider, abettor, or assister to the offence under Article 25(3)(c);¹²⁶⁷ as a contributor in any other way to the offence under Article 25(3)(d).¹²⁶⁸

231. **Mr. Gicheru did not induce or solicit [REDACTED] to locate and contact P-0738 to corruptly influence her.**¹²⁶⁹ The OTP relies on P-0738's statements¹²⁷⁰ and her audio-recorded conversations with [REDACTED].¹²⁷¹ P-0738's evidence is hearsay based on her conversations with [REDACTED].¹²⁷² P-0800 is unreliable and the recorded conversation between him and [REDACTED] is suspect and untrustworthy.¹²⁷³ Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence [REDACTED] provides in these conversations can be tested. There is also no evidence that Mr. Gicheru had any association with [REDACTED].¹²⁷⁴ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru induced or solicited [REDACTED] to locate and contact P-0738 to corruptly influence her is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, induced or solicited [REDACTED] to locate and corruptly influence P-0738.

¹²⁶⁵ For acts described *infra* in paras. 231-32. *Contra* [REDACTED].

¹²⁶⁶ For acts described *infra* in para. 231. *Contra* [REDACTED].

¹²⁶⁷ For acts described *infra* in paras. 231-32. *Contra* [REDACTED].

¹²⁶⁸ For acts described *infra* in paras. 231-32. *Contra* [REDACTED].

¹²⁶⁹ [REDACTED].

¹²⁷⁰ [REDACTED].

¹²⁷¹ The OTP cites to P-0738's statements and not the actual conversations which are [KEN-OTP-0160-0983](#) (25 July 2013); [KEN-OTP-0160-0997](#) (28 August 2013); [KEN-OTP-0114-0296](#) (29 August 2013); [KEN-OTP-0114-0419](#) (4 September 2013).

¹²⁷² *See supra*, paras. 106-107. [REDACTED]'s evidence in these conversations is hearsay. In only one of these conversations he mentions Mr. Gicheru only to ask P-0738 whether she knew him. There is no evidence that his references to "[REDACTED]," "[REDACTED]," "lawyer," are to Mr. Gicheru.

¹²⁷³ *See supra*, fn. 1120, para. 88. P-0800 failed to disclose his unauthorized meeting with [REDACTED] on 20 July 2013 until he was caught by OTP investigators. Curiously, [REDACTED] is heard in the recording asking P-0800 if [REDACTED] to discuss matters that they were already discussing. When P-0800 finally disclosed this unauthorized meeting to the OTP, he gave multiple versions of the encounter, claiming: (a) he met [REDACTED] at a bus station; and (b) he met [REDACTED] at a restaurant.

¹²⁷⁴ *See supra*, para. 193.

232. **Mr. Gicheru did not coordinate with [REDACTED] concerning P-0738's bribe.**¹²⁷⁵

The OTP relies on P-0738's statement¹²⁷⁶ and her audio-recorded conversations with [REDACTED].¹²⁷⁷ P-0738's evidence is hearsay based on her conversations with [REDACTED].¹²⁷⁸ Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence [REDACTED] provides in these conversations can be tested. There is also no evidence that Mr. Gicheru had any association with [REDACTED].¹²⁷⁹ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru coordinated with [REDACTED] concerning P-0738's bribe her is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, coordinated with [REDACTED] concerning P-0738's bribe.

vii. Count 7

233. Mr. Gicheru did not commit any of the specific alleged acts in the OTP Trial Brief under Count 7. He did not solicit, induce, or pay [REDACTED] to locate P-0341 and bring him to his [REDACTED]. He did not offer P-0341 a bribe. He did not pay P-0341 cash instalments on any bribe. He did not ask P-0341 to sign an affidavit of withdrawal prepared by [REDACTED] or draft a handwritten statement stating that he had no evidence against RUTO and was withdrawing from the ICC. He did not instruct P-0341 to approach P-0274 and bring him to Mr. Gicheru [REDACTED] to sign an affidavit of withdrawal and approach other witnesses. He also did not intimidate P-0341. Considering that the OTP failed to prove any of these acts beyond a reasonable doubt, the Trial Chamber should find Mr. Gicheru NOT GUILTY of corruptly influencing P-0341: (a) as a direct perpetrator or co-perpetrator under Article 25(3)(a);¹²⁸⁰ (b) as a solicitor or inducer of the offence under Article 25(3)(b);¹²⁸¹ (c) as an aider, abettor, or assister to the offence under Article 25(3)(c);¹²⁸² and as a contributor in any other way to the offence under Article 25(3)(d).¹²⁸³

¹²⁷⁵ [REDACTED].

¹²⁷⁶ [REDACTED].

¹²⁷⁷ [REDACTED].

¹²⁷⁸ See *supra*, paras. 106-107. [REDACTED]'s evidence in these conversations is hearsay. In only one of these conversations he mentions Mr. Gicheru only to ask P-0738 whether she knew him. There is no evidence that his references [REDACTED], "lawyer," are to Mr. Gicheru.

¹²⁷⁹ See *supra*, para. 193.

¹²⁸⁰ For acts described *infra* in paras. 234-39. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 299-303.

¹²⁸¹ For acts described *infra* in paras. 234, 236. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 306-08.

¹²⁸² For acts described *infra* in paras. 234-39. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 309-11.

¹²⁸³ For acts described *infra* in paras. 234-39. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 304-05.

234. **Mr. Gicheru did not solicit, induce, or pay [REDACTED] to approach P-0341.**¹²⁸⁴ The OTP relies on P-0341's statement.¹²⁸⁵ P-0341 is unreliable and his claim that [REDACTED] told him that he was paid by Mr. Gicheru to bring him to Mr. Gicheru'[REDACTED] is uncorroborated hearsay.¹²⁸⁶ Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0341 provides concerning [REDACTED] can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] and/or searched for information that could corroborate P-0341's claims.¹²⁸⁷ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru solicited, induced, or paid [REDACTED] to approach P-0341 is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, approached P-0341.

235. **Mr. Gicheru did not offer P-0341 a bribe.**¹²⁸⁸ The OTP relies on P-0341's statement,¹²⁸⁹ [REDACTED],¹²⁹⁰ and P-0274's statement.¹²⁹¹ P-0341 is unreliable and his statements that Mr. Gicheru, along with [REDACTED] and [REDACTED] offered him a bribe are uncorroborated.¹²⁹² P-0274's evidence does not corroborate P-0341's evidence.¹²⁹³ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru offered P-0341 a bribe is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, acting alone or in concert with others, offered P-0341 a bribe.

¹²⁸⁴ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 298(a); [ICC-01/09-01/20-153-Conf](#), para. 139.

¹²⁸⁵ [ICC-01/09-01/20-220-Conf](#), para. 273, citing [KEN-OTP-0150-0255-R01](#), para. 57; [KEN-OTP-0159-1833](#), p. 1841, lines 264-66 (not admitted). P-0341 claims that [REDACTED] told P-0341 that Mr. Gicheru paid him to bring P-0341.

¹²⁸⁶ *See supra*, fn. 1072, para. 120.

¹²⁸⁷ *See supra*, para. 195, fn. 1100.

¹²⁸⁸ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 298(b); [ICC-01/09-01/20-153-Conf](#), paras. 139-40.

¹²⁸⁹ [ICC-01/09-01/20-220-Conf](#), paras. 274-77, citing [KEN-OTP-0150-0255-R01](#), paras. 42-43, 46-52. P-0341 claims that Mr. Gicheru met with P-0341 [REDACTED] along with [REDACTED], who offered him 5,000,000 KSh, a car, property, and [REDACTED] and jobs upon graduation in exchange for withdrawing from the ICC, signing affidavits, and approaching other OTP witnesses.

¹²⁹⁰ [ICC-01/09-01/20-220-Conf](#), para. 277, citing [KEN-OTP-0155-4982](#). P-0341 has the number [REDACTED] saved in his telephone as "Paulo."

¹²⁹¹ [ICC-01/09-01/20-220-Conf](#), para. 320, citing [KEN-OTP-0159-0986-R01](#), para. 49 (not admitted). P-0274 claims that P-0341 told him that Mr. Gicheru paid him 500,000 KSh and promised to pay him a further 500,000 KSh for not providing evidence against RUTO.

¹²⁹² *See supra*, para. 117. P-0341 did not have contacts with Mr. Gicheru, admitting that the telephone number he saved in his phone as "Paulo" is the same number listed on Mr. Gicheru's business card, which anyone could have obtained by visiting Mr. Gicheru's office (whether or not Mr. Gicheru was there).

¹²⁹³ P-0274's claim that P-0341 told him that he received 500,000 KSh from Mr. Gicheru is hearsay originating from P-0341. [T-058](#), p. 61, lines 8-11.

236. **Mr. Gicheru did not pay P-0341 cash instalments on any bribe.**¹²⁹⁴ The OTP relies on P-0341's statement and his bank records.¹²⁹⁵ P-0341 is unreliable and his bank statements do not corroborate his claims that the cash deposits originated from Mr. Gicheru or [REDACTED].¹²⁹⁶ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru paid P-0341 instalments on a bribe is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, paid P-0341 instalments on any bribe.

237. **Mr. Gicheru did not ask P-0341 to sign a pre-prepared affidavit of withdrawal or draft a handwritten statement.**¹²⁹⁷ The OTP relies on P-0341's statement.¹²⁹⁸ P-0341 is unreliable and his claims that Mr. Gicheru asked him to sign a pre-prepared affidavit and draft a handwritten statement are uncorroborated.¹²⁹⁹ Given [REDACTED]'s unavailability, none of the hearsay evidence P-0341 provides concerning him can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED], there is no evidence that the OTP ever attempted to interview him and/or searched for information that could corroborate P-0341's claims.¹³⁰⁰ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru asked P-0341 to sign a pre-prepared affidavit of withdrawal or draft a handwritten statement is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, asked P-0341 to sign any affidavit of withdrawal or draft a handwritten statement.

238. **Mr. Gicheru did not instruct P-0341 to approach and corruptly influence P-0274 or other witnesses.**¹³⁰¹ The OTP relies on P-0341's and P-0274's statements.¹³⁰² P-0341 is

¹²⁹⁴ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 298(c); [ICC-01/09-01/20-153-Conf](#), paras. 141-42, 144-47.

¹²⁹⁵ [ICC-01/09-01/20-220-Conf](#), paras. 279, 283, 285, 292-293, 296, citing [KEN-OTP-0159-1386](#).

¹²⁹⁶ *See supra*, paras. 116, 122. The cash deposits in P-0341's bank account are from origins and for purposes unknown. [KEN-OTP-0159-1386](#). P-0341 failed to provide the OTP his bank records (after avoiding the OTP and failing to attend scheduled interviews), gave inconsistent testimony on the circumstances of the deposits, and admitted that there is nothing tangible to support his claims as to where the money came from.

¹²⁹⁷ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 298(d)-(e).

¹²⁹⁸ [ICC-01/09-01/20-220-Conf](#), paras. 281, 283, citing [KEN-OTP-0150-0255-R01](#), paras. 68, 70.

¹²⁹⁹ P-0341 admitted that there is nothing other than his word supporting his claims that he signed a pre-prepared affidavit or drafted a handwritten statement. [T-054](#), p. 43, lines 17-23.

¹³⁰⁰ No evidence was adduced from P-0730 as to why there was no attempt made to contact [REDACTED]. While the OTP will likely claim that it did not follow up on this for security purposes to protect the identity of P-0341, even assuming this is true, this does not absolve them of their due diligence obligations and of their burden of proof. *See also*, paras. 200, fn. 1100.

¹³⁰¹ *Contra* [ICC-01/09-01/20-220-Conf](#), para. 298(f).

¹³⁰² [ICC-01/09-01/20-220-Conf](#), paras. 278, 282, citing [KEN-OTP-0150-0255-R01](#), paras. 69, 70; [KEN-OTP-0159-0986-R01](#), paras. 66-67 (not admitted).

unreliable and his claims that Mr. Gicheru asked him to approach P-0274 and others is inconsistent and uncorroborated.¹³⁰³ He also denied bringing P-0274 to Mr. Gicheru [REDACTED].¹³⁰⁴ P-0274's evidence also does not corroborate P-0341.¹³⁰⁵ Given that the OTP did not call [REDACTED] as a witness, none of the hearsay evidence P-0341 provides concerning him can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with someone named [REDACTED], there is no evidence that the OTP attempted to interview [REDACTED] and/or searched for information that could corroborate P-0341's claims.¹³⁰⁶ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru instructed P-0341 to approach and corruptly influence P-0274 and others is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, instructed P-0341 to approach and corruptly influence P-0274 or other witnesses.

239. **Mr. Gicheru did not intimidate P-0341.**¹³⁰⁷ The OTP relies on P-0341's statements.¹³⁰⁸ P-0341 is unreliable and his claims that Mr. Gicheru intimidated him are uncorroborated.¹³⁰⁹ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru intimidated P-0341 is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, intimidated P-0341.

viii. Count 8

240. Mr. Gicheru did not commit any of the specific acts alleged in the OTP Trial Brief under Count 8. He did not intimidate or threaten P-0274 at gunpoint. He did not offer P-0274 a bribe of 1,000,000 KSh to stop engaging with the ICC and to locate and approach other OTP witnesses. Nor did he intimidate P-0274 by promising that he would be safe if he stopped engaging with the ICC and approached other OTP witnesses. Considering that the OTP failed to prove any of these acts beyond a reasonable doubt, the Trial Chamber should find Mr. Gicheru NOT GUILTY of corruptly influencing P-0274: (a) as a direct perpetrator

¹³⁰³ See *supra*, paras. 116, 122.

¹³⁰⁴ [T-054](#), p. 18, lines 17-23, p. 79, line 2 to p. 80, line 4.

¹³⁰⁵ P-0274's claims of what P-0341 told him are uncorroborated hearsay originating from P-0341. [T-058](#), p. 61, lines 8-11.

¹³⁰⁶ See *supra*, para. 199.

¹³⁰⁷ Contra [ICC-01/09-01/20-220-Conf](#), para. 298(g).

¹³⁰⁸ [ICC-01/09-01/20-220-Conf](#), paras. 276, 287, citing [KEN-OTP-0150-0255-R01](#), paras. 52, 86; [KEN-OTP-0159-1803-R01](#), p. 1831, lines 971-72.

¹³⁰⁹ See *supra*, para. 126. [T-054](#), p. 69, lines 2-16.

or co-perpetrator of the offence under Article 25(3)(a);¹³¹⁰ (b) as a solicitor or inducer of the offence under Article 25(3)(b);¹³¹¹ (c) as an aider, abettor, or assister to the offence under Article 25(3)(c);¹³¹² or (d) as a contributor to the commission of the offence under Article 25(3)(d).¹³¹³

241. **Mr. Gicheru did not intimidate or threaten P-0274 at gunpoint.** The OTP relies on P-0274's statement.¹³¹⁴ P-0274 is unreliable.¹³¹⁵ His claim that [REDACTED] intimidated at gunpoint into providing [REDACTED] is uncorroborated.¹³¹⁶ Given [REDACTED]'s unavailability, none of the hearsay evidence P-0274 provides concerning these individuals can be tested. Aside from there being no reliable evidence that Mr. Gicheru had any association with [REDACTED] there is no evidence that the OTP attempted to interview [REDACTED], identify [REDACTED], and/or searched for information that could corroborate P-0274's claims.¹³¹⁷ The evidence claimed by the OTP to prove beyond a reasonable doubt that [REDACTED] intimidated P-0274 into providing [REDACTED] is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, intimidated P-0274 at gunpoint.

242. **Mr. Gicheru did not offer P-0274 a bribe to stop engaging with the ICC and locate other OTP witnesses.** The OTP relies on P-0274's and P-0341's statements.¹³¹⁸ P-0274 is unreliable and his claims that Mr. Gicheru and [REDACTED] offered him bribes to stop engaging with the ICC and locate other witnesses are uncorroborated.¹³¹⁹ There is no

¹³¹⁰ For acts described *infra* in paras. 241-243. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 328-31.

¹³¹¹ For acts described *infra* in paras. 241. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 334-35.

¹³¹² For acts described *infra* in paras. 241-43. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 336-38.

¹³¹³ For acts described *infra* in paras. 241-43. *Contra* [ICC-01/09-01/20-220-Conf](#), paras. 332-33.

¹³¹⁴ [ICC-01/09-01/20-220-Conf](#), paras. 317-18, citing [KEN-OTP-0159-0986-R01](#) (not admitted).

¹³¹⁵ *See supra*, fn. 1072.

¹³¹⁶ *See supra*, para. 136. There is no proof that he received threats in the form of a letter in 2011 (or proof that he scanned the letter and sent it to the OTP), [REDACTED], no proof of the [REDACTED] transfer he claims to have gotten after recording the recantation, no proof that he sent an email to the OTP saying that he needed to speak with someone, no proof (such as investigation reports) of his claimed contacts with [REDACTED] staff and OTP investigators in [REDACTED], no proof that he provided audio-recorded interviews with the Legal Representatives of Victims in [REDACTED], and no proof that he gave another interview with [REDACTED] officers in [REDACTED]. There is also no evidence that the OTP ever acted on any of the 13 instances in his February 2021 statement where he claims he made representations to the ICC.

¹³¹⁷ *See supra*, para. 193, fn. 1100.

¹³¹⁸ *See* [ICC-01/09-01/20-220-Conf](#), paras. 320-22, citing [KEN-OTP-0159-0986-R01](#) (not admitted), [KEN-OTP-0150-0255-R01](#), and [KEN-OTP-0159-1803-R01](#).

¹³¹⁹ *See supra*, fn. 1072, para. 137, 139. Other than his word, there is no proof that: (a) P-0274 ever met with Mr. Gicheru; (b) Mr. Gicheru gave him his phone number; (c) he saw [REDACTED]; (d) Mr. Gicheru offered him 500,000 and more if he contacted other ICC victims and witnesses; (e) that Mr. Gicheru gave him 10,000 KSh for transport following the claimed meeting; or (f) [REDACTED] called P-0274 and offered him a bribe to approach P-0356.

evidence that P-0274 was a potential witness in the *Ruto and Sang* case.¹³²⁰ Given that the OTP did not call [REDACTED] none of the hearsay evidence P-0274 provides concerning these individuals can be tested. Aside from there being no reliable that Mr. Gicheru had any association with [REDACTED] there is no evidence that the OTP attempted to interview [REDACTED] and/or searched for information that could corroborate P-0274's claims.¹³²¹ P-0341's evidence also does not corroborate P-0274's evidence.¹³²² The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru or [REDACTED] offered P-0274 a bribe to stop engaging with the ICC and locate other witnesses is uncorroborated, unverifiable, and untrustworthy. No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, offered P-0274 a bribe.

243. **Mr. Gicheru did not intimidate P-0274.** The OTP relies on P-0274's statement.¹³²³ P-0274 is unreliable and his evidence that he was ever in touch with Mr. Gicheru is uncorroborated.¹³²⁴ Moreover, P-0274 did not testify in accordance with his statement that Mr. Gicheru intimidated him by telling him that he "would now be safe" if he stopped engaging to the ICC as anticipated by the OTP.¹³²⁵ The evidence claimed by the OTP to prove beyond a reasonable doubt that Mr. Gicheru intimidated P-0274 was not admitted.¹³²⁶ No inference can be drawn by this Trial Chamber or any other reasonable trier of fact that Mr. Gicheru, either acting alone or in concert with others, intimidated P-0274.

VI. CONCLUSION

244. The OTP's case is awash with astonishing lies, conjectures, innuendo, assumptions, gaps, and unverifiable hearsay – the product of a shabby, amateurish, and result-determinative investigation, that, from the outset, was dependent on and became wedded to individuals with low morals, high desires, and exceptional motivation to do and say whatever it took to hoodwink the OTP investigators into providing them financial benefits and relocation out of Africa. The OTP has not met its burden of proof as shown herein and

¹³²⁰ See *supra*, para. 135. P-0274 admitted that he was not an OTP witness in the *Ruto and Sang* case, did not have evidence against RUTO or SANG, did not request to be an OTP witness, did not represent himself to be an OTP witness, and was just one of 327 victims admitted to participate in the *Ruto and Sang* case.

¹³²¹ See *supra*, fn. 1100, paras. 189, 190, 193, 199.

¹³²² See *supra*, para. 137. Under oath, P-0341 denied bringing P-0274 to Mr. Gicheru's office – claiming that P-0274 lied to the OTP to have a better life – and denied speaking to P-0274 about receiving any money.

¹³²³ [ICC-01/09-01/20-220-Conf](#), para. 327(c), citing [KEN-OTP-0159-0986-R01](#) (not admitted).

¹³²⁴ See *supra*, para. 137. There is no proof that P-0274 ever met Mr. Gicheru, that Mr. Gicheru ever gave P-0274 his telephone number, or that he ever called P-0274.

¹³²⁵ [ICC-01/09-01/20-220-Conf](#), para. 327(c). When asked by the OTP if his "safety situation was part of the conversation with Gicheru," P-0274 responded "[i]t was not." [T-058](#), p. 53, lines 5-9.

¹³²⁶ The Chamber denied the admission of P-0274's statements by email decision on 28 March 2022.

when the entire record of all admitted evidence is carefully scrutinized and properly assessed. The Trial Chamber should find Mr. Gicheru **NOT GUILTY** on all counts.

Respectfully submitted, 21 June 2022,
In The Hague, the Netherlands.



Michael G. Karnavas
Counsel for Mr. Paul Gicheru