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Before: Judge Reine Adélaïde Sophie Alapini-Gansou

SITUATION IN THE REPUBLIC OF KENYA

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

Public

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

The Office of the Prosecutor

Ms Nazhat Shameen Khan

Mr Anton Steynberg

Counsel for the Defence

Mr Michael G. Karnavas

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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I. Introduction

1. This case concerns offences against the administration of justice committed in respect of witnesses for the Prosecution¹ in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*,² more specifically the corrupt influencing of Prosecution Witnesses through bribery, intimidation, or a combination of both.
2. The evidence establishes that GICHERU and associates engaged in a concerted effort to identify, locate and contact Prosecution Witnesses and then to corruptly influence them to withdraw as Prosecution Witnesses, recant their evidence, and/or to identify, contact and corruptly influence other Prosecution Witnesses. The evidence establishes that the pattern of witness interference described below was conducted for the benefit of, and in coordination with, William Samoei RUTO.³

II. Structure of the Document Containing the Charges⁴

3. As instructed⁵ by Pre-Trial Chamber A (Article 70),⁶ the Prosecution has incorporated into this single document the charges,⁷ the narrative and analysis of

¹ Prosecution witnesses in the *Ruto and Sang* case (including potential witnesses, *see Bemba et al.* AJ, para. 721) are hereinafter referred to as “**Prosecution Witness**” in the singular, or collectively “**Prosecution Witnesses**”.

² ICC-01/09-01/11 (“*Ruto and Sang* case”).

³ **P-0613**, [KEN-OTP-0102-0178](#) at 0181-0182, paras. 18, 29; **P-0397**, [KEN-OTP-0125-0461-R01](#) at 0477; **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; [KEN-OTP-0135-0113](#) at 1120; [KEN-OTP-0135-0200](#) at 0207. *See also* **P-0604**, [KEN-OTP-0143-0144-R01](#) at 0165; **P-0536**/[REDACTED], [KEN-OTP-0114-0244](#) at 0247, Ins. 44-46; *Compare* **P-0536**, [KEN-OTP-0118-0011-R01](#) at 0017, para. 28; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0264, para. 48, at 0265, para. 53, at 0269, paras. 74-75, at 0271, paras. 84, 86; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0990, para. 25, at 0997-0998, paras. 70, 73.

⁴ “**DCC**”.

⁵ *Per* email received at 16:28 on 01 February 2021: “As regards the DCC, the Prosecutor shall ‘combine [in it] the charges and the narrative and analysis of the facts and evidence into a single document’ *including their legal qualification (and the arguments in support of the proposed legal qualification(s))*. The Chamber recalls that pursuant to Rule 121-3 of the Rules of Procedure and Evidence, Mr. Gicheru is entitled to receive ‘no later than 30 days before the date of the confirmation hearing’ (replaced, in the present case, by the filing of written submissions), ‘a detailed description of the charges’. The ‘charges’ are constituted of both the facts *and* their legal qualification as regards the offences alleged and the precise form of participation, in accordance with regulation 52 of the Regulations of the Court. The DCC should provide an exhaustive view of the Prosecutor’s case in order to allow the defence 30 days to prepare a response to any argument presented by the Prosecutor, including any legal argument”.

⁶ “**Chamber**”.

⁷ Including all material facts and their legal qualification (under both article 70 and article 25), and precise form of participation, (“**Charges**”).

the facts and evidence, and the Prosecution's legal arguments on the confirmation of charges.

4. The document is structured thematically as follows: In Chapter A, the Prosecution sets out its overarching legal submissions regarding the confirmation of charges. In Chapter B, the Prosecution provides a narrative and analysis of facts and evidence that explains and supports the charges, with references to the most important items of evidence supporting these facts, and relevant legal analysis. In Chapter C, the Prosecution sets out in detail the Charges that it seeks to have confirmed.

A. LEGAL SUBMISSIONS

I. Jurisdiction

5. Article 70(1) of the Statute gives the Court jurisdiction over offences against its administration of justice. Article 70(2) provides that "[t]he principles and procedures governing the Court's exercise of jurisdiction" are set out in the Rules of Procedure and Evidence ("Rules").
6. Rule 162 of the Rules provides the conditions for the Court's exercise of jurisdiction over article 70 offences. Pre-Trial Chamber II has determined that there are "reasons overwhelmingly militating in favour of the exercise of the jurisdiction of the Court",⁸ which apply equally at present.⁹ No other jurisdictional prerequisite applies.¹⁰

⁸ ICC-01/09-01/15-1-Conf-Exp, para. 7.

⁹ ICC-01/09-144-Conf-Red, para. 14.

¹⁰ Rule 163(2) of the Rules.

II. Nature and purpose of confirmation proceedings

7. The confirmation hearing is not a mini-trial or a “trial before the trial”.¹¹ Instead, it is designed to protect a suspect from wrongful and unfounded charges and to distinguish between those cases that should go to trial and those that should not.¹²
8. The decision on what crime to charge, and how the charges shall be formulated, falls within the responsibility of the Prosecutor.¹³ The primary task of a Pre-Trial Chamber is to confirm the charges, decline to confirm the charges, or adjourn the confirmation proceedings.¹⁴ A Pre-Trial Chamber may order the Prosecutor to remedy any identified deficiency, but this should be strictly limited to what is necessary to make sure that the suspect is informed in detail of the nature, cause and content of the charge (cf. article 67(1)(a) of the Statute).¹⁵ A Pre-Trial Chamber may, however, to the extent necessary, adapt the charges in order to conform to its findings by deleting or adjusting any material fact that is not confirmed as pleaded by the Prosecutor.¹⁶
9. It is essential that a Pre-Trial Chamber’s decision to confirm charges clearly identifies the charges¹⁷ that are confirmed, plainly and unambiguously, separate and distinct from the Chamber’s reasoning and analysis of the evidence.¹⁸ This is vital for the purposes of trial: so the Prosecution can clearly ascertain the charges it needs to prove, the Defence can clearly ascertain the charges against which it must defend its client, and the Trial Chamber can clearly determine the factual parameters of the charges upon which it must rule. The Prosecution submits that

¹¹ ICC-01/04-01/07-412 at p. 4; ICC-01/04-01/07-428-Corr, paras. 5-6; ICC-01/04-01/07-621, para. 66; ICC-01/04-01/07-717, para. 64; ICC-01/09-01/11-221, para. 9; ICC-01/09-02/11-321, para. 8; ICC-01/04-01/07-475, para. 68; ICC-02/11-01/11-T-11-Red-FRA, p. 3; ICC-01/05-01/13-T-3-Red-ENG, p. 9.

¹² ICC-01/04-01/06-803-tEN, para. 37; ICC-01/04-01/07-717, para. 63; ICC-01/04-01/07-428-Corr, para. 5; ICC-01/05-01/08-424, para. 28; ICC-02/05-02/09-243-Red, para. 39; ICC-02/05-03/09-121-Corr-Red, para. 31.

¹³ Chambers Practice Manual (2019) (“CPM”), para. 38.

¹⁴ Article 61(7).

¹⁵ CPM (2019), para. 38.

¹⁶ CPM (2019), para. 64.

¹⁷ *i.e.* The material facts, legal characterisation thereof, and modes of liability.

¹⁸ CPM (2019), paras. 59-62, and 66(vii); The last-mentioned paragraph of the CPM was quoted with approval by the Appeals Chamber in the *Yekatom* case, ICC-01/14-01/18-874 OA2, fn. 115.

these goals are best achieved when the charges confirmed are set out in a self-contained document, encompassing all essential factual and legal allegations, without the need to refer to any other document.

10. In the present case, the Prosecution requests the Chamber to confirm the Charges as set out in Section C below.

III. The Chamber's assessment of the evidence

11. The evidentiary burden established by article 61(7) – to establish substantial grounds to believe that the person committed the charged crimes - is met upon the presentation of concrete and tangible evidence demonstrating a clear line of reasoning underpinning the Prosecution's specific allegations.¹⁹
12. While the Chamber may assess evidence for purposes of confirmation, the Chamber's determinations "will necessarily be presumptive, since the Prosecution will rely on documentary or summary evidence. Therefore, the Chamber should take great care in reaching a finding that a witness is or is not credible."²⁰ It is only in extreme cases where the Prosecution case can be shown to be "riddled with ambiguities, inconsistencies, contradictions or doubts as to credibility"²¹ that the Chamber should decline to rely upon evidence so affected. Furthermore, the Chamber should not reject evidence solely for lack of corroboration, since a reasonable trier of fact may reach findings based on uncorroborated evidence.²² Nor should the mere presence of inaccuracies or inconsistencies automatically render a witness's evidence unreliable in its entirety.²³ Rather, the Chamber should proceed with great caution in seeking to resolve any apparent contradictions in the

¹⁹ ICC-01/04-01/06-803-tEN, paras. 37, 39; ICC-01/04-01/07-717, para. 65; ICC-01/05-01/08-424, paras. 28-29; ICC-02/05-02/09-243-Red, para. 37; ICC-01/09-01/11-373, para. 40; ICC-01/04-01/07-428-Corr, para. 5; ICC-02/05-02/09-243-Red, para. 39; ICC-02/05-03/09-121-Corr-Red, para. 31.

²⁰ ICC-01/04-01/10-514 OA 4, para. 48.

²¹ ICC-01/04-01/10-514 OA 4, para. 46.

²² See rule 63(4) of the Rules of Procedure and Evidence; see also *Bagosora et al.* Decision (ICTR), para. 10; *Rwamakuba* Decision (ICTR), para. 13.

²³ *Bemba et al.* TJ, para. 204.

evidence, because such resolution is impossible without the full airing of the evidence, and careful weighing of the credibility of witnesses. That will occur at trial. The confirmation hearing is not an “end in itself, but rather serves the purpose of filtering out those cases and charges for which the evidence is insufficient to justify a trial”.²⁴

13. Cases involving the offence of corruptly influencing witnesses require a particularly nuanced approach to the assessment of credibility, since cases such as the present will almost inevitably involve witnesses whose evidence has been perverted through the operation of the corrupt influence brought to bear on them by the very persons accused of the offences. However, as emphasised by Trial Chamber VII, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo and 4 others*²⁵ “no witness is *per se* unreliable, including a witness that has previously given false testimony before a court. Instead, each statement made by a witness must be assessed individually. The testimony of one and the same witness may therefore be reliable in one part, but not reliable in another.”²⁶ It follows that evidence given by a witness at a time when he or she was subject to corrupt influence may be found to be unreliable, whereas evidence of the same witness given at a time when he or she was no longer subject to the corrupt influence may be reliable. For these reasons, the Chamber should be particularly cautious about reaching adverse credibility findings, more so since it will not have the opportunity to hear them testify in person, with the attendant benefits for assessing credibility.²⁷

²⁴ ICC-01/04-01/10-514 OA 4, para. 47; Chambers Practice Manual (2019), para. 67.

²⁵ *Bemba et al.* TJ, para. 220.

²⁶ In respect of certain witnesses in this case, the Prosecution will ask the Trial Chamber to rely on only certain portions of their evidence, while rejecting others, as set out in more detail in Section B. In this regard, the existence of adequate corroboration or the presence of other indicia of reliability may play an important role in determining which portions of the evidence may safely be relied upon. *See* ICC-01/04-02/12-271-Corr, para. 168.

²⁷ ICC-01/04-01/10-514 OA 4, para. 48; *Bemba et al.* TJ, para. 203.

IV. Multiple legal characterisations of the same facts

14. At this stage of the proceedings, the Chamber may be presented with facts, supported with evidence, which may satisfy more than one mode of liability or more than one crime.²⁸ When multiple legal characterisations of the same facts are established by the evidence, it is appropriate that the charges be confirmed for all relevant crimes and with all of the various alternative modes of liability available, in order for the Trial Chamber to determine whether any of those legal characterisations is established to the applicable standard of proof at trial.²⁹
15. The Prosecution submits that this approach promotes judicial efficiency and reduces the potential disruptive effect at the trial stage of notification that the legal characterisation of the facts may change. Ultimately, the Trial Chamber is better poised to evaluate which modes of liability may be retained or dismissed, on the basis of the evidence presented by both parties.³⁰ As recently ruled by the Appeals Chamber in the *Yekatom* case, albeit in a slightly different context,³¹ “[t]his core judicial function [of the Trial Chamber] must not be fettered before the trial begins”.³²

V. Essential elements of the offence of corruptly influencing a witness

16. For the purposes of confirming the charges, the Prosecution respectfully requests the Chamber to adopt the essential elements of the offence of corruptly influencing a witness in contravention of article 70(1)(c) as defined by TC VII in the *Bemba et al* case,³³ and confirmed by the Appeals Chamber.³⁴ According to this precedent, “Article 70(1)(c), first alternative, of the Statute (‘corruptly influencing a witness’)

²⁸ ICC-01/04-02/06-309, para. 100.

²⁹ ICC-02/11-02/11-186, para. 133.

³⁰ See further *Delalić* AJ (ICTY), para. 400.

³¹ Related findings by the Pre-Trial Chamber regarding the constituent elements of the crimes charged.

³² ICC-01/14-01/18-874, para. 46.

³³ *Bemba et al.* TJ, especially at paras. 43-50.

³⁴ *Bemba et al.* AJ, pp. 300-333.

proscribes any conduct that may have (or is expected by the perpetrator to have) an impact or influence on the testimony to be given by a witness.”³⁵ In particular:

i. Conduct crime

17. Article 70 (1) (c) of the Statute is a conduct crime and “does not require proof that the conduct had an actual effect on the witness”.³⁶

ii. Influencing

18. “Article 70(1)(c) of the Statute is to be construed broadly, allowing many different modes of commission to be captured thereunder that are capable of influencing the nature of the witness’s evidence”, including bribery, pressuring, intimidating and threatening witnesses.³⁷

iii. Corruptly

19. “The perpetrator’s interference with the ‘witness’, as contemplated under article 70(1)(c) of the Statute, implies that he or she seeks to deter the witness from giving full evidence or seeks in any way to unduly influence the nature of the witness’s testimonial evidence.”³⁸ “The use of the word ‘corruptly’ signifies that the relevant conduct is aimed at contaminating the witness’s testimony.”³⁹

20. The Prosecution submits that, at least in the context of an opposing party’s witness, conduct aimed at preventing a witness from testifying *at all* must also be included in the conduct proscribed.

iv. Witness

21. “Witness” for the purposes of article 70(1)(c) includes potential witnesses. The Appeals Chamber ruled that in this context, the term “witness” must be defined

³⁵ *Bemba et al.* TJ, para. 43.

³⁶ *Id.*, para. 48; *Bemba et al.* AJ, para. 737.

³⁷ *Id.*, para. 45; *Bemba et al.* AJ, paras. 730, 733.

³⁸ *Id.*, para. 44.

³⁹ *Id.*, para. 46.

broadly to include “a person who knows or is believed to know information that may be relevant to the proceedings before the Court, regardless of whether or not such person has been previously contacted by either party.”⁴⁰

v. *Mens rea*

22. There is no special intent requirement for article 70 offences. *Mens rea* is to be determined according to the ordinary requirements under article 30.⁴¹

B. NARRATIVE AND ANALYSIS OF THE FACTS

I. Introduction

23. In this section the Prosecution will provide a narrative and analysis of facts and evidence to explain and support the Charges, with references to the most important items of evidence supporting these facts,⁴² and the relevant legal analysis.⁴³ This is without prejudice to the Chamber’s discretion to consider and rely on any item of evidence, duly disclosed and included on the Prosecution’s List of Evidence, that it considers relevant to any fact in issue, even if not specifically cited.

i. Background to the *Ruto and Sang* case

24. William Samoei RUTO⁴⁴ and Joshua Arap SANG were charged with six counts of crimes against humanity⁴⁵ arising out of the post-election violence⁴⁶ that followed the 2007 general election in Kenya. This election saw the Orange Democratic Movement,⁴⁷ led by Raila ODINGA and *inter alios* RUTO, vying for power against the Party of National Unity,⁴⁸ led by incumbent President Mwai KIBAKI and *inter*

⁴⁰ *Bemba et al.* AJ, para. 721.

⁴¹ *Bemba et al.* TJ, paras. 26, 31; *Bemba et al.* AJ, paras. 676-7

⁴² Or, where appropriate, contradicting the facts.

⁴³ Please note that all references to paginated documents, in particular transcripts of witness interviews, in-court testimony and audio recordings, will include ERN and page number. Line numbers are provided where strictly necessary.

⁴⁴ “RUTO”.

⁴⁵ ICC-01/09-01/11-448.

⁴⁶ Commonly referred to as the “PEV”.

⁴⁷ “ODM”.

⁴⁸ “PNU”.

alios Uhuru KENYATTA. Support for the rival coalitions was split largely along ethnic lines, with the Kalenjin, who formed the majority of the population in the Rift Valley, supporting the ODM, and in particular RUTO. The Kikuyu, Kenya's most populous ethnic group but a minority in the Rift Valley, largely supported the PNU. These political differences heightened existing tensions between the majority Kalenjin population of the Rift Valley and the Kikuyu and other ethnic minorities.

25. Victory by KIBAKI and the PNU in disputed circumstances led to an outbreak of violence across Kenya, which was particularly bloody in the Rift Valley,⁴⁹ where Kalenjin RUTO supporters targeted Kikuyu and other ethnic minorities in the area, assaulting, killing, burning houses and looting businesses. Also targeted were the Kalenjin minority who supported the PNU and were regarded as traitors.⁵⁰

ii. Cooperation issues

26. While the ICC was initially welcomed by the Kenyan authorities,⁵¹ this support soon waned once the identity of the suspects, including RUTO and KENYATTA, became publicly known. Influential politicians, Kenyan media outlets, and social media campaigns collectively rallied public and political opinion against the Court and its perceived supporters within Kenya.

27. [REDACTED]⁵²[REDACTED]⁵³[REDACTED].⁵⁴

28. The result of all this was that the Prosecution met insuperable cooperation challenges that prevented it from accessing potentially valuable sources of objective evidence, such as call data and financial records, and from conducting

⁴⁹ Especially in the Uasin Gishu and Nandi Districts. According to the final report of the Commission of Inquiry into Post-Election Violence (“**CIPEV Report**”) set up to investigate the PEV and its causes, 744 of the reported 1,133 deaths occurred in the Rift Valley, see [KEN-OTP-0001-0364](#) at 0719.

⁵⁰ For an overview and analysis of the PEV and its causes, see the CIPEV Report, in particular Chapters 2, 3 and 10, [KEN-OTP-0001-0364](#) at 0394-0535, 0719-0726.

⁵¹ “Kenya”.

⁵² [REDACTED]

⁵³ [REDACTED]

⁵⁴ [REDACTED]

any investigations requiring coercive state powers, such as phone intercepts or searches.⁵⁵ The same issues also affected the Prosecution's investigation into instances of witness interference, including to some extent the offences charged in this case.⁵⁶ The cooperation challenges and lack of access to important sources of evidence meant that the Prosecution was significantly limited in its ability to conduct investigations inside Kenya. However, the Prosecution was able to adapt its investigative strategy in this case to effectively compensate for these difficulties.⁵⁷

29. [REDACTED].⁵⁸

iii. Witness intimidation and interference

30. Anti-ICC sentiment was particularly fierce in the Rift Valley. Persons cooperating with the ICC, particularly suspected witnesses for the Prosecution, were frequently regarded as traitors and widely vilified and intimidated in public discourse and in the media, leading to an atmosphere of fear and suspicion.⁵⁹ Alongside this general intimidatory climate, it became apparent from the early stages of the OTP's investigation in 2009 that organised efforts were underway to identify, locate and target actual and perceived Prosecution witnesses in both Kenya cases.⁶⁰ This continued unabated throughout the investigation, confirmation proceedings and the *Ruto and Sang* trial. This clear and ongoing pattern of witness interference in the *Ruto and Sang* case was documented in a series of informational and other security-related filings lodged with the relevant Pre-Trial and Trial Chambers.⁶¹ Of particular relevance to the present case, from early in 2013 the Prosecution received

⁵⁵ See for instance ICC-01/09-02/11-982, paras. 48 to 78, read with ICC-01/09-02/11-1037, para. 16.

⁵⁶ [KEN-OTP-0159-0884](#) at 0887-0888, para. 19.

⁵⁷ [KEN-OTP-0159-0884](#) at 0888-0889, para. 20.

⁵⁸ [REDACTED]

⁵⁹ ICC-01/09-01/11-2027-Red-Corr, para. 161.

⁶⁰ The *Ruto and Sang* case, and *The Prosecutor v. Uhuru Muigai Kenyatta*, ICC-01/09-02/11.

⁶¹ [REDACTED]. The filings related to witness interferences stopped in 2013, not because the incidents of witness interference had ceased, but because Trial Chamber V instructed the Prosecution not to submit further informational filings concerning witness security issues unless it wished to request protective measures or other substantive relief.

numerous reports of concerted attempts to identify, contact and corruptly influence Prosecution Witnesses through bribery and intimidation, which ultimately led to the Prosecutor seeking⁶² and obtaining arrest warrants against Walter Osipiri BARASA,⁶³ GICHERU and Phillip BETT.⁶⁴

31. Eventually, this pattern of witness interference caused a number of Prosecution Witnesses to withdraw and/or recant their evidence,⁶⁵ leading to a collapse of the Prosecution case and the vacating of the charges against the Accused, without prejudice to any future prosecution on these charges. The Trial Chamber concluded that “[it] was satisfied that the evidence presented by the Prosecution had amply demonstrated the incidence of witness interference at a disturbing scale”.⁶⁶
32. The Prosecution alleges that the offences charged formed part of the greater pattern of interference of witnesses in the *Ruto and Sang* case and contributed significantly to the vacating of the charges, resulting in a gross miscarriage of justice and a failure of justice for the PEV victims.

II. GICHERU’s Individual Criminal Responsibility Under Article 25

i. Overview of GICHERU’s Individual Criminal Responsibility

33. GICHERU is individually criminally responsible for the offences of corruptly influencing witnesses in contravention of article 70(1)(c): (i) under article 25(3)(a), for committing the charged offences⁶⁷ individually as a direct perpetrator (Counts 1, 2, 4, 5, 7 and 8 only) or jointly with other members of a common plan as a direct co-perpetrator;⁶⁸ (ii) under article 25(3)(d), for contributing, in any other way, to the

⁶² [REDACTED], ICC-01/09-144-Conf-Red.

⁶³ [REDACTED], ICC-01/09-01/13-1-Red2; and [REDACTED] ICC-01/09-144-Conf-Red.

⁶⁴ The Prosecution also sought a warrant of arrest against Meshack YEBEI, together with GICHERU and BETT, but this was subsequently withdrawn, following confirmation of YEBEI’s death, [REDACTED].

⁶⁵ ICC-01/09-01/11-2027-Red-Corr, paras. 151-2, 178.

⁶⁶ *Per* Judge Eboe-Osuji, ICC-01/09-01/11-2027-Red-Corr, para. 141. *See also* majority opinion, paras. 147-148.

⁶⁷ Unless otherwise specified, the offences charged in Counts 1 to 8 under Section C (“Charged Offences”).

⁶⁸ All further references to **co-perpetration** in this document refer to **direct co-perpetration**, unless otherwise specified.

commission of the Charged Offences by a group of persons acting pursuant to a common purpose; (iii) under article 25(3)(b), for soliciting or inducing the direct perpetrators to commit the Charged Offences; or (iv) under article 25(3)(c), for aiding, abetting or otherwise assisting the direct perpetrators in the commission of the Charged Offences.

34. In the sections that follow, the Prosecution will set out and analyse the facts relevant to modes of liability that are common to all incidents charged, more particularly in respect of GICHERU's criminal liability for **co-perpetration** under article 25(3)(a) and contribution to the commission of offences by a group acting with a **common purpose** under article 25(3)(d).

35. GICHERU's criminal liability for **accessorial liability** under articles 25(3)(b) and (c) will be described below in general terms, but set out in more detail under each respective incident, since the relevant facts are more specific to the individual incidents. However, GICHERU's criminal liability for **direct perpetration** under article 25(3)(a) is addressed under the six incidents to which this mode of liability applies.⁶⁹

ii. Facts common to all incidents: article 25(3)(a) – co-perpetration

a. *The Common Plan*

36. The Charged Offences were committed pursuant to, and in the implementation of, an agreement between GICHERU and several persons associated with him in the context of this case, as described below ("the **Common Plan**").

37. The Common Plan encompassed the identification, location and contacting of Prosecution Witnesses,⁷⁰ and offering and/or paying them financial benefits,⁷¹

⁶⁹ Namely, the incidents relating to P-0397, P-0516, P-0800, P-0495, P-0341 and P-0274.

⁷⁰ Any Prosecution Witnesses, as defined above. This included, but was not limited to, the Prosecution Witnesses described under the individual counts, namely **P-0397, P-0516, P-0613, P-0800, P-0495, P-0536, P-0341 and P-0274**.

⁷¹ Including cash payments, land and houses, vehicles, educational support and employment opportunities ("**Bribes**").

and/or threatening or intimidating them,⁷² in order to induce them to withdraw as Prosecution Witnesses, refuse to or cease cooperating with the Prosecution and/or the Court, and/or recant the evidence which they had provided to the Prosecution.⁷³ The ultimate goal of the Common Plan was to undermine the Prosecution case in the *Ruto and Sang* case by preventing Prosecution Witnesses from testifying, either at all or in accordance with the evidence given in their previous statements and/or tarnishing the credibility of the Prosecution and its witnesses.⁷⁴ This included persons having, or believed to have, information relevant to the Prosecution in the *Ruto and Sang* case, such as [REDACTED] P-0341 and P-0274.

38. The Common Plan materialised by April 2013⁷⁵ at the latest and continued until at least the close of the Prosecution's case in *Ruto and Sang* on 10 September 2015.⁷⁶

⁷² In what may be described as a “carrot and stick” approach”, [KEN-OTP-0159-0884](#) at 0894, para. 36.

⁷³ **P-0397**, [KEN-OTP-0125-0360-R01](#) at 0362-0363, 0365-0366; [KEN-OTP-0125-0461-R01](#) at 0473-0475; [KEN-OTP-0125-0518-R01](#) at 0530-0531, 0535-0537, 0539-0542; [KEN-OTP-0125-0402-R01](#) at 0431-0433; [KEN-OTP-0125-0434-R01](#) at 0436-0440, 0449-0451, 0457-0458; [KEN-OTP-0125-0461-R01](#) at 0465-0466, 0476-0477 (see also **P-0397/GICHERU**, [KEN-OTP-0143-0185](#) at 0192-0193, ln. 200-223); [KEN-OTP-0125-0547-R01](#) at 0554; **P-0613**, [KEN-OTP-0102-0178](#) at 0180-1083, paras. 16, 18, 20, 32; [KEN-OTP-0106-0910](#) at 0914, paras. 19-20; [KEN-OTP-0111-0162](#) at 0169-0173, paras. 36, 38, 46-47, 53, 55; [KEN-OTP-0115-0216](#) at 0222-0223, 0225, 0230-0232, paras. 29-31, 47, 74, 77-80; [KEN-OTP-0124-0007](#) at 0011, paras. 19-21, 23; **P-0495**, [KEN-OTP-0130-0507-R01](#) at 0515-0518, 0531; **P-0613/P-0495**, [KEN-OTP-0129-0740](#) at 0743-0745, 0747-0750, 0756; **P-0800**, [KEN-OTP-0111-0140](#) at 0143-0144, 0147-0149, paras. 14, 21-22, 39-45, 49, 54-55; [KEN-OTP-0135-0103](#) at 0105-0106; [KEN-OTP-0135-0113](#) at 0119-0120, 0126, 0131-0132, 0134; [KEN-OTP-0102-0205](#) at 0212-0213, paras. 41-45, 47; [KEN-OTP-0103-2473](#) at 2478-2480, paras. 24-30, 35; **P-0800**/[REDACTED], [KEN-OTP-0132-0167](#) at 0181; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0265, paras. 50-52. See also, **P-0604**, [KEN-OTP-0117-1019-R01](#) at 1022-1025, paras. 19-28, 34-36; [KEN-OTP-0143-0137-R01](#) at 0140-0142; [KEN-OTP-0143-0144-R01](#) at 0148-0157, 0159-0168; **P-0016**, [KEN-OTP-0141-0013](#) at 0014-0017, paras. 9, 12-13, 16, 21, 23-26; [KEN-OTP-0141-0154-R01](#) at 0171-0173, 0179-0180; [KEN-OTP-0141-0197-R01](#) at 0210-0211, 0214-0219; [KEN-OTP-0141-0223-R01](#) at 0227-0228, 0235-0243, 0245; [KEN-OTP-0141-0307-R01](#) at 0329-0332; [KEN-OTP-0141-0381-R01](#) at 0384, 0390; [KEN-OTP-0141-0443-R01](#) at 0454.

⁷⁴ **P-0495/P-0613**, [KEN-OTP-0129-0740](#) at 0755; **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0522-0523; **P-0800**, [KEN-OTP-0135-0113](#) at 0120; [KEN-OTP-0144-0272-R01](#) at 0283-0285.

⁷⁵ For instance, on 20 April 2013 P-0397 was approached by [REDACTED] who told P-0397 that there was a group of persons working for RUTO who were instructed to identify ICC witnesses and offer them bribery payments in exchange for their withdrawal as Prosecution Witnesses (**P-0397**, [KEN-OTP-0125-0360-R01](#) at 0361-0363; [KEN-OTP-0125-0402-R01](#) at 0432-0433) and took him to meet GICHERU [REDACTED] on or about 26 April 2013 ([KEN-OTP-0125-0434-R01](#) at 0436, 0438). On 29 April 2013, P-0800 reported information to investigators that [REDACTED] had been tasked by “RUTO’s people” to locate P-0613 [REDACTED]” (sic), [KEN-OTP-0103-3498](#).

⁷⁶ ICC-01/09-01/11-1954.

39. The existence of the Common Plan can be inferred from the statements and actions of the Common Plan members which clearly demonstrate that they were working in a concerted manner to achieve the common goals described below.

b. The members of the Common Plan

40. The members of the Common Plan⁷⁷ consisted of a network of individuals associated-in-fact and acting jointly, at different levels, to realise the objectives of the Common Plan. These individuals include: (i) **Managers**: GICHERU⁷⁸ and, *inter alios*, Silas Kibet SIMATWO (“SIMATWO”),⁷⁹ Isaac MAIYO (“MAIYO”)⁸⁰ and Elisha Kipkorir BUSIENEI (“BUSIENEI”);⁸¹ (ii) **Intermediaries**: between the Managers and Prosecution Witnesses, including Meshack YEBEI (“YEBEI”),⁸²

⁷⁷ Collectively “Common Plan Members” or “Common Plan Group”.

⁷⁸ **P-0341**, [KEN-OTP-0149-0119-R01](#) at 0122, para. 16; [KEN-OTP-0150-0255-R01](#) at 0258, paras. 15, 38, 44, 46-47, 50-52, 54-57, 59-64, 68-70, 74-75, 77-78, 84, 86-88, 90, 96-97, 99, 129-131, 134; **P-0397**, [KEN-OTP-0125-0322-R01](#) at 0358-0359; [KEN-OTP-0125-0360-R01](#) at 0365; [KEN-OTP-0125-0434-R01](#) at 0436-0439, 0456-0458; [KEN-OTP-0125-0461-R01](#) at 0464-0468, 0474-0477; [KEN-OTP-0125-0248](#) at 0258, Ins. 277-287; [KEN-OTP-0125-0518-R01](#) at 0521-0523, 0530-0531, 0535-0536, 0540-0542; **P-0800**, [KEN-OTP-0135-0103](#) at 0105-0106; [KEN-OTP-0135-0113](#) at 0117-0123, 0126, 0128, 0131-0132, 0134, 0137; [KEN-OTP-0135-0139](#) at 0150-0152; [KEN-OTP-0135-0155](#) at 0156, 0171-0172; [KEN-OTP-0135-0200](#) at 0208; **P-0536**, [KEN-OTP-0118-0011-R01](#), at 0020, para. 48; **P-0495**, [KEN-OTP-0130-0507-R01](#) at 0527-0528; [KEN-OTP-0130-0540-R01](#) at 0550, 0559; **P-0613/P-0495**, [KEN-OTP-0129-0740](#) at 0744-0745, 0747-0750, 0756; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0994, paras. 50-51, 55-57, 60-61. See also, **P-0016**, [KEN-OTP-0141-0013](#) at 0015-0017, paras. 12-13, 14, 23, 26; [KEN-OTP-0141-0154-R01](#) at 0171-0172, 0175, 0179-0180; [KEN-OTP-0141-0197-R01](#) at 0210-0211, 0214-0216, 0218; [KEN-OTP-0141-0223-R01](#) at 0227-0228 (*see also*: audio-video [KEN-OTP-0113-0053](#), Transcript [KEN-OTP-0134-0187](#), English Translation [KEN-OTP-0134-0189](#)).

⁷⁹ **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; [KEN-OTP-0135-0103](#) at 0105; [KEN-OTP-0132-0167](#) at 0172; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0258, paras. 15, 44, 50, 53, 61; **P-0397**, [KEN-OTP-0125-0434-R01](#) at 0438, 0457-0458; [KEN-OTP-0125-0461-R01](#) at 0465-0467; [KEN-OTP-0125-0518-R01](#) at 0524; **P-0613**, [KEN-OTP-0111-0162](#) at 0171, paras. 46-47; [KEN-OTP-0115-0216](#) at 0222, paras. 29-30.

⁸⁰ **P-0613**, [KEN-OTP-0111-0162](#) at 0169, para. 36; [KEN-OTP-0124-0007](#) at 0011, paras. 19-21; **P-0604**, [KEN-OTP-0117-1019-R01](#) at 1023, para. 26; [KEN-OTP-0143-0144-R01](#) at 0151-0153; **P-0341**, [KEN-OTP-0150-0255-R01](#) at paras. 122-123; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0997, paras. 66-67.

⁸¹ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0258, paras. 15, 43-53; **P-0397**, [KEN-OTP-0125-0571-R01](#) at 0599-0600

⁸² Also known as “Kimutai”. **P-0800**, [KEN-OTP-0102-0205](#) at 0208-0210, paras. 23-33; [KEN-OTP-0135-0200](#) at 0204, 0207; **P-0016**, [KEN-OTP-0141-0154-R01](#) at 0172, 0174-0176; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0264, paras. 44, 114, 119; **P-0397**, [KEN-OTP-0125-0360-R01](#) at 0361-0363, 0365-0366; [KEN-OTP-0125-0402-R01](#) at 0431-0433; [KEN-OTP-0125-0434-R01](#) at 0436, 0440-0444, 0449-0451, 0454-0455; [KEN-OTP-0125-0461-R01](#) at 0474-0475; [KEN-OTP-0125-0248](#) at 0258, Ins. 277-287; [KEN-OTP-0125-0518-R01](#) at 0535-0536, 0544.

Philip Kipkoech BETT (“BETT”),⁸³ Walter Osipiri BARASA (“BARASA”)⁸⁴ and Sammy Kiptanui KOSGEI (“KOSGEI”);⁸⁵ and (iii) successfully corrupted Prosecution Witnesses,⁸⁶ including P-0397, P-0800, P-0495, P-0516, and P-0341, who subsequently also acted as Intermediaries and helped to further the objectives of the Common Plan.⁸⁷

41. The Managers consisted of a group of influential people associated with and/or supporters of RUTO at the relevant times. The Managers were:

- a) GICHERU an Eldoret lawyer⁸⁸ who informed both P-0397 and P-0800 that he was a close friend of RUTO and that they had attended Kapsabet High School together,⁸⁹ which is confirmed by open source evidence.⁹⁰ GICHERU represented P-0015, who was one of the first Prosecution Witnesses to withdraw, and he commissioned an affidavit to this effect on 7 February

⁸³ Also known as “Kipseng’erya”. **P-0800**, [KEN-OTP-0135-0103](#) at 0105; [KEN-OTP-0135-0113](#) at 0116-0119; [KEN-OTP-0135-0139](#) at 0149-0150; [KEN-OTP-0135-0155](#) at 0170-0171; [KEN-OTP-0135-0200](#) at 0205, 0208; **P-0613**, [KEN-OTP-0102-0178](#) at 0181, para. 20; **P-0495**, [KEN-OTP-0130-0507-R01](#) at 0529; [KEN-OTP-0130-0540-R01](#) at 0542; **P-0397**, [KEN-OTP-0125-0360-R01](#) at 0361-0363; [KEN-OTP-0125-0434-R01](#) at 0435-0436; [KEN-OTP-0125-0402-R01](#) at 0432-0433; [KEN-OTP-0125-0434-R01](#) at 0440-0444, 0449-0451; [KEN-OTP-0125-0518-R01](#) at 0544; **P-0604**, [KEN-OTP-0117-1019-R01](#) at 1022-1023, paras. 18-24; **P-0016**, [KEN-OTP-0141-0013](#) at 0014-0017, paras. 9, 12, 16; [KEN-OTP-0141-0197-R01](#) at 0218.

⁸⁴ **P-0800**, [KEN-OTP-0103-2473](#) at 2478, paras. 24-30, 35; [KEN-OTP-0106-0388](#) at 0392, paras. 18-21; [KEN-OTP-0109-0002](#) at 0007-0010, paras. 22-40; [KEN-OTP-0111-0140](#) at 0143, paras. 14, 21-22, 39-45, 49, 54-55; [KEN-OTP-0135-0139](#) at 0148-0150; **P-0613**, [KEN-OTP-0111-0162](#) at 0173, para. 53; **P-0536**, [KEN-OTP-0103-2693-R01](#) at 2696, paras. 23-24; [KEN-OTP-0111-0188-R01](#), paras. 18, 20-24; [KEN-OTP-0118-0011-R01](#) at 0014, paras. 14, 16-18, 24, 28, 41, 47-49, 62, 73-74, 86, 93, 102-103, 106; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0263, paras. 42, 124-125; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0990-0992, paras. 26-36. *See also* ICC-01/09-01/13-1-Red2.

⁸⁵ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0263, paras. 36-41, at 0266, para. 57, at 0276, paras. 112-113; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0998, para. 76.

⁸⁶ Collectively: “Corrupted Witnesses”.

⁸⁷ **P-0397**, [KEN-OTP-0125-0360-R01](#) at 0362-0363, 0365-0366; [KEN-OTP-0125-0461-R01](#) at 0473-0475; [KEN-OTP-0125-0518-R01](#) at 0535-0537, 0539-0542; [KEN-OTP-0125-0547-R01](#) at 0554; **P-0613**, [KEN-OTP-0111-0162](#) at 0173, paras. 53, 55; [KEN-OTP-0102-0178](#) at 0181, para. 20; **P-0495**, [KEN-OTP-0130-0507-R01](#) at 0515-0518, 0531, **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0994-0995, paras. 50-51, 55-57; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0265, paras. 51-52, 59-60, at 0280, para. 134.

⁸⁸ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0264, para. 44; [KEN-OTP-0150-0288-R01](#); **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0994, para. 50.

⁸⁹ **P-0397**, [KEN-OTP-0125-0434-R01](#) at 0437; **P-0800**, [KEN-OTP-0135-0113](#) at 0019, Ins. 193-202.

⁹⁰ *See* Kapsabet High School alumni magazine for 2015, [KEN-OTP-0159-1647](#). At 1667, both RUTO and GICHERU are listed as “prominent old boys”. At 1657, a brief biography of RUTO reveals that he graduated as part of the class of 1986, the year when GICHERU turned 14. *See also* web version at https://issuu.com/misoijonathan/docs/the_alumni_khs_at_90.

2013.⁹¹ An initial analysis of the mobile phone seized from GICHERU upon his arrest⁹² indicates that RUTO was saved as a contact.⁹³

- b) SIMATWO was an influential Kenyan businessman and long-time business associate of RUTO. SIMATWO was the head of the board of Directors of AMACO⁹⁴ Insurance,⁹⁵ a firm with which RUTO is reported to have close connections as a major shareholder and former co-owner.⁹⁶ SIMATWO [REDACTED] the he was “an eye of Mr RUTO”.⁹⁷ “Sila Simotwo” is saved as a contact on GICHERU’s mobile phone.⁹⁸
- c) MAIYO was the Chairman of the Constituencies Development Fund (CDF) of Eldoret North, to which position he was appointed when RUTO was MP for the constituency.⁹⁹ He is widely reported to be one of RUTO’s closest allies.¹⁰⁰ “Maiyo Cdf” is saved as a contact on GICHERU’s mobile phone.¹⁰¹
- d) BUSIENEI was a former ODM member¹⁰² and political ally of RUTO. In 2013 he became a Kenyan Member of Parliament (“MP”) for the Turbo

⁹¹ [KEN-OTP-0116-0206](#).

⁹² [KEN-OTP-0159-1641-R01](#).

⁹³ Under the initials “H.E”, possible standing for His Excellency, *see*: [KEN-OTP-0159-1641-R01](#) at 1642.

⁹⁴ African Merchant Assurance Company.

⁹⁵ [KEN-OTP-0159-1731](#) (*See also* web version at <https://www.amaco.co.ke/team/silas-simatwo/>).

⁹⁶ *See* for instance: [KEN-OTP-0159-1779](#) (*See also* web version at <https://www.tuko.co.ke/322587-firm-associated-william-ruto-defends-suspicious-ksh-34-million-payment-mike-sonko.html>); [KEN-OTP-0159-1735](#) (<https://www.capitalfm.co.ke/news/2013/04/ruto-the-self-made-deputy-president/>); [KEN-OTP-0159-1780](#) (<https://www.kdrtv.co.ke/news/rutos-troubles-deepen-as-firm-files-for-bankruptcy/>); [KEN-OTP-0159-1740](#) (<https://www.pd.co.ke/business/personal-finance/why-rutos-amaco-insurance-risks-closure-27513/>).

⁹⁷ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0265, para. 53, at 258, para. 15, at 0264, para. 44. *See also*: **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0995, para. 55.

⁹⁸ [KEN-OTP-0159-1641-R01](#) at 1643.

⁹⁹ **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0997, para. 66; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0277-0278, para. 122.

¹⁰⁰ CIPEV testimony [REDACTED], [KEN-OTP-0007-0852](#) at 0865 [REDACTED] **P-0397**, [KEN-OTP-0074-0264-R01](#) at 0292, para. 142; **P-0516**, [KEN-OTP-0087-0031-R01](#) at 0036, para. 29; K.E. Kariuki, “American Chronicle Writer Threatened by RUTO Allies,” American Chronicle, 12 July 2010, [KEN-OTP-0047-0098](#) at 0098-0099.

¹⁰¹ [KEN-OTP-0159-1641-R01](#) at 1643.

¹⁰² *See* for instance [KEN-OTP-0159-1749](#) (<http://kenyalaw.org/caselaw/cases/view/77490>) where he is cited as one of a number of applicants in a 2011 civil case described as “counsellors nominated by the Orange Democratic Movement); [KEN-OTP-0159-1776](#) (<https://www.standardmedia.co.ke/rift-valley/article/2000075407/ruto-allies-handed-heavy-defeat-in-uasin-gishu>).

constituency.¹⁰³ “Busienei 2 Mp” is saved as a contact on GICHERU’s mobile phone. The associated number [REDACTED] has previously been distributed by the Prosecution to Elisha BUSIENEI.¹⁰⁴

42. The Intermediaries consisted of current or former Prosecution intermediaries or witnesses who – by virtue of their past association with the Prosecution and knowledge of, or association with, Prosecution Witnesses – were in a unique position to identify, locate and persuade Prosecution Witnesses to withdraw as witnesses and/or meet with GICHERU and other Managers. The Intermediaries were:

- a) YEBEI [REDACTED] was a human rights worker [REDACTED]. He introduced witness P-0471, [REDACTED], to the Prosecution. YEBEI gave a witness statement to the Prosecution, who sought in 2013 to add him to its witness list for trial, but this was refused after the Prosecution reported to the Trial Chamber that it had received information regarding his alleged involvement in witness interference.¹⁰⁵ The Prosecution requested PTC II to issue a warrant of arrest for YEBEI, but withdrew the request after confirmation of his death.¹⁰⁶
- b) BETT [REDACTED] was a human rights worker for the Kalenjin Youth Alliance (KALYA)¹⁰⁷ and friend of [REDACTED]. BETT is [REDACTED] and was a childhood friend of YEBEI, who was his neighbour [REDACTED].¹⁰⁸ BETT initially provided information about attempts to interfere with Prosecution Witnesses [REDACTED],¹⁰⁹ [REDACTED], but was subsequently

¹⁰³ [KEN-OTP-0159-1631](https://info.mzalendo.com/person/elisha-kipkorir-busienei/) (<https://info.mzalendo.com/person/elisha-kipkorir-busienei/>); [KEN-OTP-0159-1767](https://uasingishudecides.wordpress.com/category/busienei/) (<https://uasingishudecides.wordpress.com/category/busienei/>); [KEN-OTP-0159-1781](https://www.facebook.com/groups/632310313581348/) (<https://www.facebook.com/groups/632310313581348/>); **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0263, para. 43.

¹⁰⁴ [KEN-OTP-0159-1641-R01](#) at 1642.

¹⁰⁵ ICC-01/09-01/11-762.

¹⁰⁶ ICC-01/09-01/20-1-Red, paras. 1-2.

¹⁰⁷ **P-0613**, [KEN-OTP-0102-0178](#) at 0180, para. 14.

¹⁰⁸ **P-0613**, [KEN-OTP-0102-0178](#) at 0180, para. 15.

¹⁰⁹ Who in turn informed the Prosecution. See **P-0800**, [KEN-OTP-0102-0205](#) at 0208, paras. 23, 29-45.

himself corrupted and co-opted into the Common Plan as an Intermediary. “Phillip Bett” is listed as a contact on GICHERU’s mobile phone under number [REDACTED].¹¹⁰ On 10 March 2015, PTC II issued a warrant for the arrest of BETT,¹¹¹ but to date he has not yet been surrendered to the Court by the Kenyan authorities.

- c) BARASA was a journalist¹¹² from Eldoret and former OTP intermediary. Two phone numbers previously attributed by the Prosecution to BARASA are saved in the contact list on GICHERU’s mobile phone as follows: [REDACTED] saved as “Baraza”¹¹³ and [REDACTED] saved as “Wb”.¹¹⁴ On 2 August 2013, PTC II issued a warrant for the arrest of BARASA,¹¹⁵ but to date he has not yet been surrendered to the Court by the Kenyan authorities.
- d) KOSGEI was a former witness in the CIPEV and Kenya National Commission on Human Rights¹¹⁶ investigations into the PEV, and was provided as a lead to the Prosecution, but never interviewed. KOSGEI previously reported to the KNCHR being threatened due to his involvement with these investigations [REDACTED],¹¹⁷ [REDACTED]. KOSGEI subsequently recanted his evidence to the CIPEV¹¹⁸ and made allegations in the media that he had been coached by [REDACTED].¹¹⁹
- e) Corrupted Witnesses P-0397, P-0800, P-0495 P-0516, and P-0341, described more fully below under the individual incidents concerning them. A contact

¹¹⁰ [KEN-OTP-0159-1641-R01](#) at 1643.

¹¹¹ ICC-01/09-01/20-1-Red.

¹¹² **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0263, para. 42; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0991, para. 30; [KEN-OTP-0153-0497](#).

¹¹³ [KEN-OTP-0159-1693](#).

¹¹⁴ Likely initials for “Walter Barasa”, *see*: [KEN-OTP-0159-1641-R01](#) at 1642.

¹¹⁵ ICC-01/09-01/13-1-Red2.

¹¹⁶ “KNCHR”.

¹¹⁷ [REDACTED], [KEN-OTP-0047-0179-R01](#), paras. 78-79; [KEN-OTP-0047-0248](#), transcription: [KEN-OTP-0124-0317](#); [KEN-OTP-0047-0273](#).

¹¹⁸ [KEN-OTP-0047-0273](#).

¹¹⁹ [REDACTED]; *See* [REDACTED], [KEN-OTP-0047-0179-R01](#), paras. 207, 214, 251-263, and 328-329.

corresponding to Corrupted Witness P-0495 (saved as [REDACTED], under number [REDACTED] was found on GICHERU's mobile phone.

43. Several other individuals were also associated with the activities of the Common Plan and played greater or lesser roles in the events surrounding the corrupt influencing of the eight Prosecution Witnesses. However, the evidence currently available falls short of establishing that they made essential contributions to the Common Plan. These include former Prosecution Witness [REDACTED] (P-0015), CIPEV witness and OTP screened individual [REDACTED] (P-0017) and GICHERU's bodyguard, one "KOGO".

c. The implementation of the Common Plan

44. In order to implement the Common Plan, the various Common Plan Members each provided essential contributions.

45. GICHERU and other Managers were responsible for the essential tasks of directing and coordinating the activities of Common Plan members; deciding which Prosecution Witnesses should be targeted; negotiating and deciding how much they would be offered and/or paid; ensuring that the necessary finances were available to pay the Bribes agreed, or at least a portion thereof;¹²⁰ and intimidating Prosecution Witnesses with threats of adverse consequences if they failed to cooperate.¹²¹

¹²⁰ **P-0397**, [KEN-OTP-0125-0434-R01](#) at 0437-0438, 0456-0457; [KEN-OTP-0125-0518-R01](#) at 0521-0522, 0540; **P-0613**, [KEN-OTP-0111-0162](#) at 0169, para. 36, at 0173, para. 55; [KEN-OTP-0102-0178](#) at 0180-0181, paras. 16, 18; [KEN-OTP-0115-0216](#) at 0231-0232, paras. 76-78; [KEN-OTP-0106-0910](#) at 0914-0915, paras. 20, 22; **P-0613/P-0495**, [KEN-OTP-0129-0740](#) at 0744-0745; **P-0800**, [KEN-OTP-0135-0113](#) at 0121, 0131-0135; [KEN-OTP-0111-0140](#) at 0148, para. 45; **P-0495**, [KEN-OTP-0130-0585-R01](#) at 0590; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0994, paras. 50-51, 55-57, 60-61; **P-0341**, [KEN-OTP-0149-0119-R01](#) at 0122, para. 16; [KEN-OTP-0150-0255-R01](#) at 0258, paras. 15, 44, 46-47, 50-52, 54-57, 59-64, 68-70, 74-75, 77-78, 84, 86-88, 90, 96-97, 99, 129-131, 134; **P-0516**, [KEN-OTP-0150-0837-R01](#) at 0855, ln. 624; [KEN-OTP-0114-0296](#) at 0299, Ins. 49-51, 58, 62-64.

¹²¹ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0265, paras. 51-52, 86-88, 112-113; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0990, paras. 60-61, at 0996, paras. 60-61; **P-0397**, [KEN-OTP-0125-0461-R01](#) at 0469-0471.

46. SIMATWO, MAIYO and BUSIENEI also made essential contributions to the Common Plan *inter alia* by working with GICHERU to coordinate with RUTO¹²² and participated in meetings between GICHERU and Prosecution Witnesses during which they were corruptly influenced.¹²³ In some instances these other Managers contacted Prosecution Witnesses telephonically in furtherance of the Common Plan.¹²⁴
47. Intermediaries made essential contributions to the Common Plan by identifying, locating and contacting Prosecution Witnesses; persuading them, by offering or promising them Bribes, to leave their protection locations and/or meet with GICHERU and other Managers, in order to negotiate the amount and terms of the Bribes, in return for withdrawing as witnesses and/or recanting their evidence,¹²⁵ and conveying threats of adverse consequences should they fail to cooperate.¹²⁶
48. Intermediaries thus provided an essential link between the Managers and the Prosecution Witnesses. By 2013, many Prosecution trial witnesses, particularly linkage witnesses, had been relocated [REDACTED] for their security. Due to the Intermediaries' previous interactions with the ICC and/or their prior association with various witnesses, they were in a unique position to locate and contact

¹²² **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0264, paras. 44 and 48, at 0265, paras. 50 and 53; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0997, paras. 66-67; **P-0397**, [KEN-OTP-0125-0461-R01](#) at 0464-0465; **P-0800**, [KEN-OTP-0132-0167](#) at 0172; [KEN-OTP-0111-0140](#) at 0148, para. 45; [KEN-OTP-0135-0103](#) at 0105.

¹²³ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0263-0265, paras. 43-53; **P-0613**, [KEN-OTP-0115-0216](#) at 0222, paras. 29-30; [KEN-OTP-0124-0007](#) at 0011, paras. 19-21; **P-0604**, [KEN-OTP-0117-1019-R01](#) at 1023, para. 26; **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; **P-0800**[REDACTED], [KEN-OTP-0132-0167](#) at 0172; **P-0613**, [KEN-OTP-0115-0216](#) at 0222, para. 29.

¹²⁴ **P-0604**, [KEN-OTP-0117-1019-R01](#) at 1023, para. 26; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0997, paras. 66-67.

¹²⁵ **P-0397**, [KEN-OTP-0125-0360-R01](#) at 0362-0363; [KEN-OTP-0125-0434-R01](#) at 0435-0436; **P-0613**, [KEN-OTP-0102-0178](#) at 0180-0181, paras. 16, 17; [KEN-OTP-0106-0922](#) at 0926, paras. 16, 19-21; [KEN-OTP-0111-0162](#) at 0169, paras. 36-38, at 0172, paras. 52-53; [KEN-OTP-0106-0910](#) at 0914, para. 19; [KEN-OTP-0111-0557](#) at 0564-0565, paras. 31, 35-36; [KEN-OTP-0124-0007](#) at 0011, para. 19; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0262-0263, paras. 35-38; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0990, paras. 26-36, at 0993, para. 40; **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; [KEN-OTP-0135-0113](#) at 0105, 0114-0115, 0117; [KEN-OTP-0135-0103](#) at 0105, 0108-0109; **P-0800**[REDACTED], [KEN-OTP-0132-0167](#) at 0180. [KEN-OTP-0135-0103](#) at 0105; [KEN-OTP-0135-0103](#) at 0108-0109; **P-0536**, [KEN-OTP-0118-0011-R01](#) at 0014-0033; [KEN-OTP-0114-0296](#) at 0299.

¹²⁶ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0271, paras. 85, at 0276, paras. 112-113; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0990, paras. 26-36.

Prosecution Witnesses and to persuade them to withdraw as witnesses and/or meet with GICHERU and other Managers for this purpose. As witnesses were successfully corrupted, Managers leveraged their relationships with other Prosecution Witnesses to repeat this process.

d. GICHERU's essential contribution to the Common Plan

49. GICHERU made an essential contribution to the Common Plan through the actions specified below,¹²⁷ individually and cumulatively:

- a) Playing the leading role in coordinating the activities of the members of the Common Plan, including by assigning tasks, setting priorities, arranging meetings and providing funds for necessary expenses;¹²⁸
- b) Using his law office, centrally located at Veecam House in Eldoret as an operations centre, from which he was able to direct the activities of Intermediaries and Corrupted Witnesses and leveraging his influence as a prominent member of the community and the legal profession to advance the aims of the Common Plan.¹²⁹
- c) Issuing instructions to Intermediaries and Corrupted Witnesses, in particular to locate, contact and corruptly influence Prosecution Witnesses¹³⁰ and by promising and or paying them financial rewards if they succeeded;¹³¹

¹²⁷ As further detailed in the sections on criminal responsibility under each specific incident.

¹²⁸ **P-0800**, [KEN-OTP-0102-0205](#) at 0212, paras. 41-46; [KEN-OTP-0135-0113](#) at 0131, 0137; **P-0613**, [KEN-OTP-0102-0178](#) at 0180-0181, 0183, paras. 16, 18, 20-21, 32; [KEN-OTP-0111-0162](#) at 0169, 0173, paras. 38, 55; [KEN-OTP-0102-0178](#) at 0180, para. 16; [KEN-OTP-0115-0216](#) at 0231-0232, paras. 76-78; **P-0613**, [KEN-OTP-0115-0216](#) at 0231-0232, para. 77 (“Gicheru is fixing everything”); **P-0613/P-0495**, [KEN-OTP-0129-0740](#) at 0744-0748; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0265, paras. 52-53 (GICHERU was the “focal point”); **P-0536**, [KEN-OTP-0118-0011-R01](#) at 0019-0020, 0024, paras. 41, 48, 65; [KEN-OTP-0114-0296](#) at 0299, lns. 49-51, 58, 62-64.

¹²⁹ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0263, paras. 38-53, 58, 62-63, 68, 71-72, 74, 98; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0995, paras. 55-57; **P-0800**, [KEN-OTP-0102-0205](#) at 0211-0212, paras. 38-45.

¹³⁰ **P-0613**, [KEN-OTP-0102-0178](#) at 0180-0181, paras. 16, 17; [KEN-OTP-0115-0216](#) at 0231, paras. 76-78; [KEN-OTP-0111-0162](#) at 0169, paras. 37-38, at 0173, paras. 55; **P-0613/P-0495**, [KEN-OTP-0129-0740](#) at 0744-0748; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0994, paras. 50-51; **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0534-0535, 0544; **P-0516**, [KEN-OTP-0150-0837-R01](#) at 0859; **P-0800**, [KEN-OTP-0135-0113](#) at 0120, 0126 and 0135-0137.

¹³¹ **P-0397**, [KEN-OTP-0125-0360-R01](#) at 0362-0363, 0365-0366; [KEN-OTP-0125-0461-R01](#) at 0473-0475; [KEN-OTP-0125-0518-R01](#) at 0534, 0543-0544; **P-0800**, [KEN-OTP-0135-0113](#) at 0118, 0126, 0128, 0130, 0134, 0137; **P-0613**, [KEN-OTP-0102-0178](#) at 0180-0181, para. 16; [KEN-OTP-0115-0216](#) at 0231, para. 77; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0265-0266, paras. 50-55, 57-60, 69-70, 94, 97, 106, 115; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0995, paras. 55-57. *See also* **P-0016**, [KEN-OTP-0141-0013](#) at 0016, para. 23.

- d) Meeting in person with certain Prosecution Witnesses¹³² and negotiating and and/or paying Bribes in exchange for their withdrawing as witnesses, ceasing cooperation with the Prosecution and/or the Court,¹³³ and/or recanting their evidence,¹³⁴ and threatening them with adverse consequences if they failed to comply,¹³⁵
- e) Acting as an intermediary between the funders and/or beneficiaries of the Common Plan, including RUTO, and the Intermediaries and Corrupted Witnesses;¹³⁶
- f) Acting as the conduit for the payment of the Bribes to the Corrupted Witnesses;¹³⁷ and
- g) Arranging for Corrupted Witnesses to sign affidavits recording their decisions to withdraw as Prosecution Witnesses and/or recanting the material aspects of

¹³² All except P-0613 and P-0536.

¹³³ **P-0800**, [KEN-OTP-0102-0205](#) at 0211, para. 38 to 0212, para. 45; [KEN-OTP-0135-0113](#) at 1117-1121, 0131, 0134-0135; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0996, paras. 60-61; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0263, paras. 43-44, 49-50, 62-63, 72, 77-78, 90, 96, 102, 104.

¹³⁴ **P-0397**, [KEN-OTP-0125-0322-R01](#) at 0358-0359; [KEN-OTP-0125-0434-R01](#) at 0436-0439, 0451-0457; [KEN-OTP-0125-0461-R01](#) at 0464-0468, 0476-0477; **P-0397/GICHERU**, [KEN-OTP-0143-0185](#) at 0189 (Ins. 83-85), 0190 (Ins. 117-119), 0194 (Ins. 246-249); [KEN-OTP-0125-0518-R01](#) at 0522-0524, 0530-0531, 0541-0544; [KEN-OTP-0125-0547-R01](#) at 0554; **P-0341**, [KEN-OTP-0149-0119-R01](#) at 0122, para. 16; [KEN-OTP-0150-0255-R01](#) at 0265, paras. 51-52, at 0266, paras. 59-60; **P-0800**, [KEN-OTP-0102-0205](#) at 0212-0214, paras. 41-42, 44, 51, 55; [KEN-OTP-0135-0113](#) at 0117-0122, 0134; [KEN-OTP-0135-0200](#) at 0204-0205; **P-0613**, [KEN-OTP-0102-0178](#) at 0183, para. 32; [KEN-OTP-0106-0910](#) at 0914-0915, paras. 20, 22; [KEN-OTP-0115-0216](#) at 0231, paras. 76-78; **P-0613/P-0495**, [KEN-OTP-0129-0740](#) at 0744-0748; **P-0604**, [KEN-OTP-0143-0144-R01](#) at 0148-0150. *See also*, **P-0604**, [KEN-OTP-0117-1019-R01](#) at 1024, para. 35; **P-0016**, [KEN-OTP-0141-0013](#) at 0016, para. 13; [KEN-OTP-0141-0154-R01](#) at 0171-0172, 0174-0175, 0179-0180; [KEN-OTP-0141-0197-R01](#) at 0210-0211, 0218; [KEN-OTP-0141-0381-R01](#) at 0384-0384, 0389-0390; **P-0516**, [KEN-OTP-0150-0817-R01](#) at 0824, 0826; [KEN-OTP-0150-0837-R01](#) at 0839-0841, 0851, 0857; **P-0613**, [KEN-OTP-0111-0162](#) at 0169, para. 36, at 0173, para. 55; [KEN-OTP-0102-0178](#) at 0181, paras. 18, 22.

¹³⁵ **P-0397**, [KEN-OTP-0125-0461-R01](#) at 0469-0471; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0271, paras. 85-88; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0996, paras. 60-64.

¹³⁶ **P-0397**, [KEN-OTP-0125-0461-R01](#) at 0477; **P-0613**, [KEN-OTP-0102-0178](#) at 0181-0182, paras. 18, 29; **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; [KEN-OTP-0135-0113](#) at 1120; [KEN-OTP-0135-0200](#) at 0207. *See also* **P-0604**, [KEN-OTP-0143-0144-R01](#) at 0165; **P-0536/[REDACTED]**, [KEN-OTP-0114-0244](#) at 0247, Ins. 44-46. *Compare* **P-0536**, [KEN-OTP-0118-0011-R01](#) at 0017, para. 28

¹³⁷ **P-0397**, [KEN-OTP-0125-0322-R01](#) at 0358-0359; [KEN-OTP-0125-0434-R01](#) at 0436-0439, 0451-0457; [KEN-OTP-0125-0461-R01](#) at 0464-0468; **P-0341**, [KEN-OTP-0149-0119-R01](#) at 0122, para. 16; [KEN-OTP-0150-0255-R01](#) at 0267, paras. 62-64, 71-73, 78-79, 99-101, 106-108; [KEN-OTP-0149-0125](#), [KEN-OTP-0149-0126](#), [KEN-OTP-0150-0283-R01](#); **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; **P-0613**, [KEN-OTP-0111-0162](#) at 0169, para. 36; [KEN-OTP-0102-0178](#) at 0181, para. 18; [KEN-OTP-0115-0216](#) at 0231-0232, paras. 77-79; **P-0613/P-0495**, [KEN-OTP-0129-0740](#) at 0744-0748; **P-0604**, [KEN-OTP-0143-0144-R01](#) at 0151-0152; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0996, paras. 60-61. *See also*, **P-0516**, [KEN-OTP-0150-0817-R01](#) at 0824, 0826; [KEN-OTP-0150-0837-R01](#) at 0839-0841, 0851, 0857; **P-0016**, [KEN-OTP-0141-0013](#) at 0016-0017, paras. 23, 26; [KEN-OTP-0141-0197-R01](#) at 0209, 0214-0216; [KEN-OTP-0141-0223-R01](#) at 0225-0228; [KEN-OTP-0141-0381-R01](#) at 0397-0398.

the evidence they had previously provided to the Prosecution and/or making false assertions undermining the Prosecution's case in the *Ruto and Sang* case.¹³⁸

50. Without GICHERU's aforementioned contributions to the Common Plan, the commission of the Charged Offences would not have been committed or would have been committed in a significantly different way.

e. Subjective elements of co-perpetration

51. GICHERU meant to engage in his conduct and intended to commit the Charged Offences or was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of offences of the type charged in Counts 1 to 8. GICHERU was aware that the Common Plan included an essential criminal component, namely the commission of the type of offences charged in Counts 1 to 8. He was aware of his essential role in and contribution to the implementation of the Common Plan, as well as the co-perpetrators' joint control over the commission of the Charged Offences.

52. The material facts establishing the existence of the subjective elements of article 25(3)(a) [co-perpetration] are detailed in section vi. below and the sections on criminal responsibility under each specific incident.

iii. Facts common to all incidents: article 25(3)(d) – contributing, in any other way, to the commission of the offences

a. Existence of a Common Purpose to commit the charged offences

53. Alternatively, GICHERU contributed to the commission of the Charged Offences by a group of persons acting pursuant to a common purpose to corruptly influence

¹³⁸ P-0800, [KEN-OTP-0135-0155](#) at 0170-0172; [KEN-OTP-0144-0272-R01](#) at 0283-0285; [KEN-OTP-0145-0560](#); [KEN-OTP-0145-0562](#); P-0341, 0149-0119, para. 63; P-0613, [KEN-OTP-0106-0910](#) at 0914-0915, paras. 20, 22; P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0748; P-0397, [KEN-OTP-0125-0461-R01](#) at 0466-0468. See also P-0604, [KEN-OTP-0143-0144-R01](#) at 0155-0156, 0159-0160; P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, paras. 68, 74-76.

Prosecution Witnesses by committing the types of offences charged in Counts **1 to 8**.¹³⁹ The Common Purpose materialised at the latest extemporaneously when the offences in question were carried out.

54. As described in section II. ii. above, the listed persons participated in a Common Plan to, *inter alia*, corruptly influence Prosecution Witnesses. This Common Plan encompassed the Common Purpose to commit offences within the jurisdiction of the Court, namely corruptly influencing Prosecution Witnesses in contravention of article 70(1)(c) of the Statute.

55. Thus, the members of the Common Plan *ipso facto* also shared the Common Purpose.

b. GICHERU contributed “in any other way” to the commission of the charged offences

56. GICHERU’s contributions to the Common Plan described in section II. ii. above *ipso facto* also amount to contributions “in any other way” to the commission of the Charged Offences under article 25(3)(d).

c. Subjective elements of common purpose liability

57. GICHERU intentionally contributed to the commission of the Charged Offences by the direct perpetrators of the Charged Offences – namely Intermediaries BARASA, BETT, YEBEI, KOSGEI and Corrupted Witnesses P-0397, P-0800, P-0516, P-0495 and P-0341 (“**Direct Perpetrators**”) acting pursuant to the Common Purpose, with the aim of furthering the criminal activity or the criminal purpose of members of the Common Purpose who committed those offences, or in the knowledge of the intention of members of the Common Purpose to commit those offences.

¹³⁹ “Common Purpose” and “Common Purpose Members”.

58. The material facts establishing the existence of the subjective elements of article 25(3)(d) are detailed in section vi. below and the sections on criminal responsibility under each specific incident.

iv. Facts common to all incidents: article 25(3)(b) – (soliciting or inducing the commission of the offences)

a. *GICHERU's acts of solicitation and inducement*

59. Alternatively, GICHERU solicited and/or induced the Direct Perpetrators, including through cash payments or the promise thereof, to corruptly influence Prosecution Witnesses, through the actions specified below,¹⁴⁰ individually and cumulatively:

- a) GICHERU tasked the Direct Perpetrators with locating and contacting and corruptly influencing Prosecution Witnesses.¹⁴¹
- b) GICHERU promised, and/or paid the Direct Perpetrators financial rewards for doing so.¹⁴²
- c) GICHERU authorised the Direct Perpetrators to offer the Prosecution Witnesses Bribes, the details of which would be finalised during their meeting with GICHERU, to induce their cooperation.¹⁴³

¹⁴⁰ As detailed in the sections on criminal responsibility under each specific incident.

¹⁴¹ **P-0397**, [KEN-OTP-0125-0360-R01](#) at 0365; [KEN-OTP-0125-0461-R01](#) at 0473-0475; [KEN-OTP-0125-0518-R01](#) at 0535-0537; **P-0536**, [KEN-OTP-0118-0011-R01](#) at 0020, para. 48; **P-0800**, [KEN-OTP-0111-0140](#) at 0147, paras. 39-45; [KEN-OTP-0135-0113](#) at 0120, lns. 238-243, 0121-0126, 0135-0137; **P-0613**, [KEN-OTP-0102-0178](#) at 0181, para. 20; [KEN-OTP-0111-0162](#) at 0173, para. 55; [KEN-OTP-0115-0216](#) at 0231-0232, paras. 78-79; **P-0495**, [KEN-OTP-0130-0507-R01](#) at 0528, 0531; [KEN-OTP-0130-0540-R01](#) at 0550; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0994, paras. 50-51; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0262, paras. 50-52, 59-60.

¹⁴² **P-0397**, [KEN-OTP-0125-0360-R01](#) at 0362-0363, 0365-0366; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0263, paras. 36-41, at 0266, para. 57.

¹⁴³ **P-0495**, [KEN-OTP-0130-0507-R01](#) at 0528, 0531; [KEN-OTP-0130-0540-R01](#) at 0550; **P-0613**, [KEN-OTP-0115-0216](#) at 0231-0232, paras. 77-79; **P-0613/0495**, [KEN-OTP-0129-0740](#) at 0744-0745; **P-0397**, [KEN-OTP-0125-0360-R01](#) at 0365; [KEN-OTP-0125-0461-R01](#) at 0473-0475; [KEN-OTP-0125-0518-R01](#) at 0535-0540; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0274, paras. 99-101, 106-108.

b. The crime in fact occurred or was attempted

60. As a result of GICHERU's inducement and/or solicitation, the Direct Perpetrators located and contacted Prosecution Witnesses and corruptly influenced them, as detailed more fully in the sections on criminal responsibility set out under each specific incident.

61. Thus, GICHERU's actions had a direct effect on the Charged Offences, which in fact occurred.

c. Subjective elements of solicitation or inducement

62. When acting as aforesaid, GICHERU intended to engage in conduct that constitutes an act of solicitation or inducement and meant to solicit or induce the commission of the offence or was aware that the Direct Perpetrators would, in the ordinary course of events, commit the type of offences charged in Counts **1 to 8**.

63. The material facts establishing the existence of the subjective elements of article 25(3)(b) are detailed in section vi. below and the sections on criminal responsibility under each specific incident.

v. Facts common to all incidents: article 25(3)(c) – aiding, abetting or otherwise assisting in the commission of the offences

a. GICHERU's acts of assistance to the commission of the offences

64. Alternatively, GICHERU aided, abetted or otherwise assisted the Direct Perpetrators for the purpose of facilitating the commission of the Charged Offences through the actions specified below,¹⁴⁴ individually and cumulatively:

¹⁴⁴ As detailed in the sections on criminal responsibility under each specific incident.

- a) coordinating and directing the activities of Direct Perpetrators, including by assigning tasks, setting priorities, arranging meetings and providing funds for necessary expenses;¹⁴⁵
- b) instructing, alternatively encouraging, Direct Perpetrators to identify and locate Prosecution Witnesses,¹⁴⁶ to corruptly influence them and to bring these witnesses to meet GICHERU;¹⁴⁷
- c) meeting with Prosecution Witnesses¹⁴⁸ and negotiating the Bribes to be paid to them in exchange for their withdrawing as witnesses, ceasing cooperation with the Prosecution and/or the Court, and/or recanting their evidence;¹⁴⁹
- d) arranging for Corrupted Witnesses to sign affidavits recording their decisions to withdraw as Prosecution Witnesses and/or recanting the material aspects of the evidence they had previously provided to the Prosecution and/or making false assertions undermining the Prosecution's case in the *Ruto and Sang* case.¹⁵⁰

¹⁴⁵ **P-0800**, [KEN-OTP-0135-0113](#) at 0120-0121, 0126, 0131-0133, 0137. *See also*, **P-0604**, [KEN-OTP-0143-0144-R01](#) at 0148.

¹⁴⁶ **P-0397**, [KEN-OTP-0125-0360-R01](#) at 0365; [KEN-OTP-0125-0461-R01](#) at 0474; [KEN-OTP-0125-0518-R01](#) at 0535-0537, 0540; **P-0800**, [KEN-OTP-0135-0113](#) at 0120-0122, 0126.

¹⁴⁷ **P-0800**, [KEN-OTP-0135-0113](#) at 0120-0122, 0126, 0131-0132, 0134.

¹⁴⁸ All except P-0613 and P-0536.

¹⁴⁹ **P-0397**, [KEN-OTP-0125-0322-R01](#) at 0358-0359; [KEN-OTP-0125-0434-R01](#) at 0436-0439, 0451-0457; [KEN-OTP-0125-0461-R01](#) at 0464-0468; 0476-0477; **P-0397/GICHERU**, [KEN-OTP-0143-0185](#) at 0189 (Ins. 83-85), 1090 (Ins. 117-119), 1094 (Ins. 246-249); [KEN-OTP-0125-0518-R01](#) at 0520-0524, 0530-0531, 0541-0544; [KEN-OTP-0125-0547-R01](#) at 0554; **P-0341**, [KEN-OTP-0149-0119-R01](#) at 0122, para. 16; **P-0800**, [KEN-OTP-0102-0205](#) at 0212, paras. 41-42; [KEN-OTP-0135-0113](#) at 0117-0122, 0131-0132, 0134; [KEN-OTP-0135-0200](#) at 0204-0205; **P-0613**, [KEN-OTP-0102-0178](#) at 1083, para. 32; [KEN-OTP-0106-0910](#) at 0914-0915, paras. 20, 22; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0263, paras. 38, 47, 62-63, 72, 77-78, 90, 96, 102, 104. *See also*, **P-0800**, [KEN-OTP-0102-0205](#) at 0212-0214, paras. 42, 44, 51, 55; **P-0604**, [KEN-OTP-0117-1019-R01](#) at 1024, para. 35; [KEN-OTP-0143-0144-R01](#) at 0148-0150; **P-0613**, [KEN-OTP-0111-0162](#) at 0173, para. 55; **P-0016**, [KEN-OTP-0141-0013](#) at 0016, para. 13; [KEN-OTP-0141-0154-R01](#) at 0171-0172, 0174-0175, 0179-0180; [KEN-OTP-0141-0197-R01](#) at 0210-0211, 0218; [KEN-OTP-0141-0381-R01](#) at 0384-0384, 0389-0390.

¹⁵⁰ **P-0800**, [KEN-OTP-0135-0155](#) at 0170-0172; [KEN-OTP-0145-0560](#); [KEN-OTP-0145-0562](#); **P-0397**, [KEN-OTP-0125-0461-R01](#) at 0466-0468; [KEN-OTP-0124-0030](#); **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0268, paras. 68, 74-76. *See also* **P-0604**, [KEN-OTP-0143-0144-R01](#) at 0155-0156, 0159-0160.

- e) acting as an intermediary between the funders and/or beneficiaries of the Common Plan, including RUTO,¹⁵¹ and the Direct Perpetrators;¹⁵² and/or
- f) acting as the conduit for the payment of the Bribes to the Corrupted Witnesses.¹⁵³

b. Subjective elements of aiding, abetting or otherwise assisting

65. GICHERU was aware that the Direct Perpetrators would, in the ordinary course of events, commit the type of offences charged in Counts **1 to 8**.
66. The material facts establishing the existence of the subjective elements of article 25(3)(c) are detailed in section vi. below and the sections on criminal responsibility under each specific incident.

vi. Statement of Material Facts common to subjective elements

67. Since there is a significant overlap between the subjective elements for the offences charged and the various modes of liability alleged, there is also a substantial overlap of the material facts from which these subjective elements may be inferred. It is thus convenient to group these facts under one heading, to avoid substantial repetition.
68. While subjective elements must ultimately be inferred from an assessment of *all* the evidence before a Chamber, including the entire course of conduct of a suspect/accused, the following facts are particularly material:

¹⁵¹ **P-0800**, [KEN-OTP-0102-0205](#) at 0212, para. 45; [KEN-OTP-0135-0200](#) at 0207; [KEN-OTP-0111-0140](#) at 0148, para. 45; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0269, paras. 71, 74-75, 77, 84, 86-87; **P-0397**, [KEN-OTP-0125-0322-R01](#) at 0359; [KEN-OTP-0125-0360-R01](#) at 0361-0362; [KEN-OTP-0125-0402-R01](#) at 0433; [KEN-OTP-0125-0434-R01](#) at 0437, 0456; [KEN-OTP-0125-0461-R01](#) at 0465. *See also* **P-0016**, [KEN-OTP-0141-0013](#) at 0017, para. 26.

¹⁵² **P-0397**, [KEN-OTP-0125-0461-R01](#) at 0477; **P-0800**, [KEN-OTP-0135-0200](#) at 0208. *See also*, **P-0604**, [KEN-OTP-0143-0144-R01](#) at 0165.

¹⁵³ **P-0397**, [KEN-OTP-0125-0322-R01](#) at 0358-0359; [KEN-OTP-0125-0434-R01](#) at 0436-0439, 0451-0457; [KEN-OTP-0125-0461-R01](#) at 0464-0468; **P-0341**, [KEN-OTP-0149-0119-R01](#) at 0122, paras. 16; **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; **P-0613**, [KEN-OTP-0111-0162](#) at 0169, para. 36; [KEN-OTP-0115-0216](#) at 0231-0232, paras. 77-79. *See also* **P-0016**, [KEN-OTP-0141-0013](#) at 0016-0017, paras. 23, 26; [KEN-OTP-0141-0197-R01](#) at 0209, 0214-0216; [KEN-OTP-0141-0223-R01](#) at 0225-0228; [KEN-OTP-0141-0381-R01](#) at 0397-0398; **P-0604**, [KEN-OTP-0143-0144-R01](#) at 0151-0152.

a. *Intention*

69. GICHERU's intention to engage in his conduct and to commit the Charged Offences, in the sense of: acting with the purposeful will (intent) or desire to bring about the material elements of the offences;¹⁵⁴ and/or intentionally making an essential contribution to the Common Plan;¹⁵⁵ and/or intentionally contributing to the commission of the Charged Offences by the specified persons acting pursuant to the Common Purpose, to further the criminal activity or the criminal purpose of members of the Common Purpose who committed those offences;¹⁵⁶ and/or meant (intended) to induce or solicit;¹⁵⁷ and/or to aid, abet or otherwise assist the Direct Perpetrators to commit those offences;¹⁵⁸ may be inferred in particular from the following facts:

- a) GICHERU's direct involvement in the planning, and the instruction of Intermediaries, to locate and contact Prosecution Witnesses for the purpose of inducing them to withdraw as witnesses;¹⁵⁹
- b) GICHERU's direct involvement in offering and/or paying substantial sums of money and other benefits to Prosecution Witnesses P-0397,¹⁶⁰ P-0800,¹⁶¹ P-

¹⁵⁴ *Per* articles 70(1)(c) and 30(2).

¹⁵⁵ *Per* article 25(3)(a).

¹⁵⁶ *Per* article 25(3)(d).

¹⁵⁷ *Per* article 25(3)(b).

¹⁵⁸ *Per* article 25(3)(c).

¹⁵⁹ **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; [KEN-OTP-0135-0113](#) at 0121-0122, 0126, 0135, 0137; **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0535-0542; **P-0495**, [KEN-OTP-0130-0507-R01](#) at 0527-0528; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0265, paras. 50-52, 84.

¹⁶⁰ **P-0397**, [KEN-OTP-0125-0322-R01](#) at 0358-0359; [KEN-OTP-0125-0434-R01](#) at 0436-0439.

¹⁶¹ **P-0800**, [KEN-OTP-0135-0113](#) at 0117-0120.

0495,¹⁶² P-0516,¹⁶³ P-0341¹⁶⁴ and P-0274¹⁶⁵ that would, in the ordinary course of events, be sufficient to influence the will of a witness;

- c) GICHERU's direct involvement in persuading Prosecution Witnesses to withdraw as witnesses;¹⁶⁶
- d) GICHERU's direct involvement in arranging for Prosecution Witnesses to sign affidavits confirming their decision to withdraw and/or recant their evidence;¹⁶⁷
- e) GICHERU's instructions to Intermediaries and Corrupted Witnesses to locate and contact Prosecution Witnesses in order to corruptly influence them and/or to bring them to meet with him, and his funding of necessary expenses for this purpose;¹⁶⁸
- f) GICHERU's direct involvement in arranging the finances for the payment of Bribes;¹⁶⁹ and

¹⁶² **P-0800**, [KEN-OTP-0135-0113](#) at 0134; **P-0495**, [KEN-OTP-0130-0507-R01](#) at 0528; [KEN-OTP-0130-0540-R01](#) at 0550; **P-0613**, [KEN-OTP-0115-0216](#) at 0231, paras. 76-77. *Contra*: **P-0495**, [KEN-OTP-0130-0540-R01](#) at 0544.

¹⁶³ **P-0397**, [KEN-OTP-0125-0322-R01](#) at 0365-0366; [KEN-OTP-0125-0360-R01](#) at 0365-0366; [KEN-OTP-0125-0461-R01](#) at 0474-0475; [KEN-OTP-0125-0518-R01](#) at 0535-0537, 0541-0542; [KEN-OTP-0125-0461-R01](#) at 0474-0475; **P-0613**, [KEN-OTP-0111-0162](#) at 0169, para. 36; [KEN-OTP-0102-0178](#) at 0181, para. 18. *See also* **P-0800** [KEN-OTP-0111-0140](#) at 0148, para. 42.

¹⁶⁴ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0267, paras. 62-64, 71-73, 78-79, 99-101, 106-108, 117; [KEN-OTP-0149-0119-R01](#) at 0122, paras. 15-16; [KEN-OTP-0149-0125](#); [KEN-OTP-0149-0126](#); [KEN-OTP-0150-0283-R01](#); [KEN-OTP-0159-1386](#).

¹⁶⁵ **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0996, paras. 60-61.

¹⁶⁶ **P-0397**, [KEN-OTP-0125-0322-R01](#) at 0358-0359; [KEN-OTP-0125-0434-R01](#) at 0436-0439; [KEN-OTP-0125-0434-R01](#) at 0456; **P-0397/GICHERU**, [KEN-OTP-0143-0185](#) at 0189 (ln. 83-84), 0190 (ln.117-127); **P-0800**, [KEN-OTP-0135-0113](#) at 0117-0120; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0264, para. 47 and at 0265, para. 58; **P-0536**, [KEN-OTP-0118-0011-R01](#) at 0020, para. 48

¹⁶⁷ **P-0397**, [KEN-OTP-0125-0434-R01](#) at 0439-0440; [KEN-OTP-0125-0461-R01](#) at 0466-0472; [KEN-OTP-0125-0518-R01](#) at 0530-0531; **P-0800**, [KEN-OTP-0135-0155](#) at 0170-0172; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0268, paras. 68; **P-0613**, [KEN-OTP-0106-0910](#) at 0914-0915, paras. 20, 22.

¹⁶⁸ **P-0397**, [KEN-OTP-0125-0461-R01](#) at 0473-0475; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0264, paras. 50-52; **P-0613**, [KEN-OTP-0102-0178](#) at 0180, para. 16; [KEN-OTP-0111-0162](#) at 0169, 0173, paras. 38, 55; **P-0800**, [KEN-OTP-0135-0113](#) at 0121-0122, 0126, 0128, 0131, 0134-0135, 0137.

¹⁶⁹ **P-0613**, [KEN-OTP-0102-0178](#) at 0183, para. 32; **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; [KEN-OTP-0135-0113](#) at 0121-0122, 0126; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0267, paras. 62-64, 71-73, 78-79, 99-100, 106-108, 117; [KEN-OTP-0149-0119-R01](#) at 0122, paras. 15-16; [KEN-OTP-0149-0125](#); [KEN-OTP-0149-0126](#); [KEN-OTP-0150-0283-R01](#); [KEN-OTP-0159-1386](#); **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0994, paras. 51-52, 0996, paras. 58-61.

- g) GICHERU's coordination of the activities of members of the Common Plan and/or Common Purpose and/or Direct Perpetrators.¹⁷⁰

b. Knowledge

70. GICHERU's knowledge that his actions;¹⁷¹ and/or the implementation of the Common Plan¹⁷² and/or Common Purpose;¹⁷³ and/or the actions of the Direct Perpetrators induced or solicited by him;¹⁷⁴ and/or aided, abetted or otherwise assisted by him;¹⁷⁵ would bring about the material elements of the Charged Offences, may be inferred in particular from the following facts:

- a) The facts listed under section a., a) to g) above;
- b) The fact that GICHERU had direct knowledge that P-0397, P-0800, P-0495, P-0516 and P-0341 agreed to withdraw as Prosecution Witnesses and/or to refuse to become witnesses if asked and/or actually signed affidavits to that effect¹⁷⁶ and/or to contact other Prosecution Witnesses and bring them to meet with GICHERU;¹⁷⁷ and
- c) The steps taken by GICHERU to avoid detection, including: refusing to record the agreements with the Corrupted Witnesses in writing;¹⁷⁸ paying Corrupted Witnesses in cash only to avoid bank records;¹⁷⁹ instructing the Corrupted

¹⁷⁰ **P-0800**, [KEN-OTP-0102-0205](#) at 0212-0213, paras. 41-46; [KEN-OTP-0135-0113](#) at 0131, 0137; **P-0274**, [KEN-OTP-0159-0986-R01](#) at 0994, paras. 50-57; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0263, paras. 36-41, 50-52, 57, 59-60, 68, 99-101, 106-108.

¹⁷¹ *Per* articles 70(1)(c) and 30(3).

¹⁷² *Per* article 25(3)(a).

¹⁷³ *Per* article 25(3)(d).

¹⁷⁴ *Per* article 25(3)(b).

¹⁷⁵ *Per* article 25(3)(c).

¹⁷⁶ **P-0397**, [KEN-OTP-0125-0434-R01](#) at 0439-0440; [KEN-OTP-0125-0518-R01](#) at 0530-0531; [KEN-OTP-0125-0461-R01](#) at 0466-0468; **P-0800**, [KEN-OTP-0135-0155](#) at 0171-0172; **P-0613**, [KEN-OTP-0106-0910](#) at 0914-0915, paras. 20, 22.

¹⁷⁷ **P-0397**, [KEN-OTP-0125-0360-R01](#) at 0365-0366; [KEN-OTP-0125-0461-R01](#) at 0474-0475; [KEN-OTP-0125-0518-R01](#) at 0535-0537, 0541; **P-0800**, [KEN-OTP-0135-0113](#) at 0121, 0135.

¹⁷⁸ **P-0397**, [KEN-OTP-0125-0461-R01](#) at 0477.

¹⁷⁹ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0267, paras. 63, 71-72, 77-78, 88, 90, 96, 102; **P-0800**, [KEN-OTP-0135-0139](#) at 0148-0149; **P-0397**, [KEN-OTP-0125-0434-R01](#) at 0439; [KEN-OTP-0125-0461-R01](#) at 0476. *See also* [KEN-OTP-0141-0197-R01](#) at 0218.

Witnesses not to deposit cash payments into their bank accounts;¹⁸⁰ instructing payments to be made through third persons;¹⁸¹ instructing Intermediaries and Corrupted Witnesses to take precautions including when communicating by telephone;¹⁸² and taking measures to ensure that lead counsel for RUTO was not aware of the activities of the Common Plan members.¹⁸³

III. First Incident: Corruptly influencing Witness P-0397

i. Introduction

71. [REDACTED] (P-0397) was a Prosecution Witness who was interviewed by the Prosecution and provided evidence regarding the PEV in [REDACTED], Kenya. He also provided important evidence regarding meetings [REDACTED] at which RUTO allegedly incited and organised violence against ethnic Kikuyu.¹⁸⁴

72. Between April 2013 and January 2014 [REDACTED] in Kenya, GICHERU, together [REDACTED], corruptly influenced P-0397 by offering him a bribe of 5,000,000 KSh in cash instalments and/or threatening him, to withdraw as a Prosecution Witness and cease cooperating with the ICC, to sign an affidavit to that effect and to approach other Prosecution Witnesses on behalf of GICHERU and his associates.¹⁸⁵ GICHERU paid P-0397 a total of 1,000,000 KSh¹⁸⁶ and organised his withdrawal as a Prosecution Witness by directing him to sign an affidavit.¹⁸⁷ Subsequently,

¹⁸⁰ P-0397, [KEN-OTP-0125-0461-R01](#) at 0447-0448; P-0341, [KEN-OTP-0150-0255-R01](#) at 0267, para. 63. *See also* P-0604, [KEN-OTP-0117-1019-R01](#) at 1024-1025, para. 36; P-0613, [KEN-OTP-0115-0216](#) at 0231, para. 76; *see also* [KEN-OTP-0111-0162](#) at 0169, para. 36, 0173, para. 55; P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0744; *Contra* P-0495, [KEN-OTP-0130-0540-R01](#) at 0542-0543, 0557.

¹⁸¹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0273, para. 97.

¹⁸² P-0397/GICHERU, [KEN-OTP-0143-0185](#) at 0187, lns. 12-17, 0190-0191, lns. 131-141; [KEN-OTP-0125-0248](#) at 0262, lns. 422-433, 0263, lns. 457-464.

¹⁸³ P-0800, [KEN-OTP-0111-0140](#) at 0148, paras. 43-45.

¹⁸⁴ P-0397, [KEN-OTP-0074-0264-R01](#) at 0270-0271, paras. 29-33

¹⁸⁵ P-0397, [KEN-OTP-0125-0434-R01](#) at 0437-0439; [KEN-OTP-0125-0461-R01](#) at 0467-0468; [KEN-OTP-0124-0029](#); [KEN-OTP-0125-0248](#) at 0258, 0260, and 0262-0264.

¹⁸⁶ P-0397, [KEN-OTP-0125-0322-R01](#) at 0358-0359; [KEN-OTP-0124-0021](#) at 0023, 0024.

¹⁸⁷ P-0397, [KEN-OTP-0124-0029](#).

GICHERU and [REDACTED] solicited or induced P-0397 to approach and corruptly influence P-0516.¹⁸⁸

ii. Corruptly influencing P-0397

73. On 18 February 2013, P-0397's identity as a Prosecution trial witness was disclosed to the RUTO and SANG Defence.¹⁸⁹ On 20 April 2013, [REDACTED] visited P-0397 [REDACTED].¹⁹⁰ They asked if he was an ICC witness, which P-0397 denied.¹⁹¹ [REDACTED] told P-0397 that there was a group of persons working for RUTO who were instructed to identify ICC witnesses and offer them bribery payments in exchange for their withdrawal as Prosecution Witnesses.¹⁹² P-0397 explained in a later interview with the Prosecution that [REDACTED] "act like brokers; they identify witnesses and tell that group, and then they facilitate by giving of money, and then they also receive their own remuneration."¹⁹³ [REDACTED] told P-0397 that they would return to take P-0397 to meet this group of people, who were based in [REDACTED].¹⁹⁴

74. On or about 26 April 2013, [REDACTED] took P-0397 to GICHERU [REDACTED] [REDACTED].¹⁹⁵ GICHERU spoke to P-0397 privately¹⁹⁶ told him that he (GICHERU) had heard that P-0397 was an ICC witness.¹⁹⁷ GICHERU asked P-0397 to assist him by withdrawing as a witness against RUTO.¹⁹⁸ GICHERU told P-0397 that RUTO wanted P-0397 to identify other Prosecution Witnesses and bring them

¹⁸⁸ P-0397, [KEN-OTP-0125-0360-R01](#) at 0365-0366.

¹⁸⁹ ICC-01/09-01/11-1120-Red2-Corr, para. 38.

¹⁹⁰ P-0397, [KEN-OTP-0125-0402-R01](#) at 0432-0433; [KEN-OTP-0125-0360-R01](#) at 0361-0363.

¹⁹¹ P-0397, [KEN-OTP-0125-0360-R01](#) at 0361-0363.

¹⁹² P-0397, [KEN-OTP-0125-0360-R01](#) at 0361-0363; [KEN-OTP-0125-0402-R01](#) at 0432-0433.

¹⁹³ P-0397, [KEN-OTP-0125-0360-R01](#) at 0362-0363.

¹⁹⁴ P-0397, [KEN-OTP-0125-0434-R01](#) at 0436.

¹⁹⁵ P-0397, [KEN-OTP-0125-0434-R01](#) at 0436 and 0451-0452; [KEN-OTP-0125-0518-R01](#) at 0521.

¹⁹⁶ P-0397, [KEN-OTP-0125-0434-R01](#) at 0437.

¹⁹⁷ P-0397, [KEN-OTP-0125-0434-R01](#) at 0437.

¹⁹⁸ P-0397, [KEN-OTP-0125-0434-R01](#) at 0437, 0456.

to him (GICHERU).¹⁹⁹ GICHERU also said that he was very close friends with RUTO and they had attended Kapsabet High School together.²⁰⁰

75. GICHERU asked P-0397 to state his price in exchange for his withdrawal as an ICC witness.²⁰¹ P-0397 requested 10,000,000 KSh.²⁰² [REDACTED].²⁰³ GICHERU explained that [REDACTED] must be consulted where it concerns money and the amount to be paid to witnesses, and that RUTO had given him [REDACTED] the authority to pay witnesses.²⁰⁴ GICHERU told [REDACTED] that P-0397 was a witness and therefore had to be paid.²⁰⁵ After some negotiation, they agreed on a sum of 5,000,000 KSh²⁰⁶ which GICHERU promised would be paid in cash instalments.²⁰⁷ [REDACTED].²⁰⁸ GICHERU also gave his business card to P-0397,²⁰⁹ who in turn handed it to OTP investigators.²¹⁰

76. The next day, on 27 April 2013, GICHERU paid P-0397 a cash instalment of 600,000 KSh.²¹¹ P-0397 kept 100,000 KSh and deposited the remaining 500,000 KSh into his personal bank account [REDACTED].²¹² He did so as he was afraid of getting robbed, despite GICHERU's warning not to deposit the money in the bank to avoid detection by the "ICC people".²¹³

77. On 30 April 2013, P-0397 met with GICHERU for the second time [REDACTED].²¹⁴ GICHERU paid P-0397 a second cash instalment 400,000 KSh.²¹⁵ [REDACTED], P-

¹⁹⁹ P-0397, [KEN-OTP-0125-0434-R01](#) at 0437.

²⁰⁰ P-0397, [KEN-OTP-0125-0434-R01](#) at 0437. See also [KEN-OTP-0159-1647](#) at 1667; or https://issuu.com/misoijonathan/docs/the_alumni_khs_at_90, p. 40

²⁰¹ P-0397, [KEN-OTP-0125-0434-R01](#) at 0438, 0456-0457.

²⁰² P-0397, [KEN-OTP-0125-0434-R01](#) at 0438.

²⁰³ P-0397, [KEN-OTP-0125-0434-R01](#) at 0438-0439; [KEN-OTP-0125-0518-R01](#) at 0524.

²⁰⁴ P-0397, [KEN-OTP-0125-0461-R01](#) at 0464-0465.

²⁰⁵ P-0397, [KEN-OTP-0125-0434-R01](#) at 0438-0439.

²⁰⁶ P-0397, [KEN-OTP-0125-0434-R01](#) at 0439.

²⁰⁷ P-0397, [KEN-OTP-0125-0434-R01](#) at 0438.

²⁰⁸ P-0397, [KEN-OTP-0125-0461-R01](#) at 0465, lns. 137-138.

²⁰⁹ P-0397, [KEN-OTP-0125-0518-R01](#) at 0529-0530.

²¹⁰ [KEN-OTP-0124-0028](#).

²¹¹ P-0397, [KEN-OTP-0125-0434-R01](#) at 0439.

²¹² P-0397, [KEN-OTP-0125-0461-R01](#) at 0462-0464, corroborated by P-0397's bank statement record, showing he deposited 500,000 KSh [REDACTED], See [KEN-OTP-0124-0021](#) at 0023.

²¹³ P-0397, [KEN-OTP-0125-0461-R01](#) at 0477-0478.

²¹⁴ P-0397, [KEN-OTP-0125-0434-R01](#) at 0438-0439.

²¹⁵ P-0397, [KEN-OTP-0125-0434-R01](#) at 0438-0439.

0397 deposited an amount of 400,000 KSh into his personal bank account.²¹⁶

GICHERU [REDACTED] told P-0397 that they would give him the remaining [REDACTED] later, but never did.²¹⁷

78. On 9 May 2013, GICHERU called an advocate named [REDACTED] [REDACTED].²¹⁸ GICHERU instructed [REDACTED] to prepare an affidavit based on the discussion that GICHERU, [REDACTED].²¹⁹ P-0397 signed a letter giving [REDACTED] the power to act for him before the ICC on this matter.²²⁰ On the same day P-0397 also signed an affidavit stating that he no longer intended to testify against any accused persons before the ICC and wished to withdraw his testimony against them, which was forwarded to the Prosecution by [REDACTED].²²¹ On 14 May 2013, the Prosecution informed the *Ruto and Sang* Chamber of the witness' withdrawal.²²²

79. After P-0397 was paid by GICHERU, GICHERU and YEBEI asked P-0397 to approach P-0516 and ask him to withdraw as a witness. P-0397 knew P-0516 from before and had a better relationship with him than YEBEI, and was therefore considered a "better option" to approach P-0516.²²³ As a result, P-0397 contacted P-0516 and told him that he had heard that he was an ICC witness. P-0397 said that "[t]here is a deal if you agree to it, then you could get money".²²⁴ P-0516 agreed to P-0397's proposal to go to meet GICHERU and get what was promised²²⁵ and subsequently P-0397 took him to GICHERU's office.²²⁶ P-0397 heard that P-0516

²¹⁶ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0522; [KEN-OTP-0125-0461-R01](#) at 0462-0464; corroborated by P-0397's bank statement record, showing he deposited 500,000 KSh [REDACTED], See [KEN-OTP-0124-0021](#) at 0024.

²¹⁷ **P-0397**, [KEN-OTP-0125-0461-R01](#) at 0465, lns 138-139.

²¹⁸ **P-0397**, [KEN-OTP-0125-0434-R01](#) at 0439; [KEN-OTP-0125-0461-R01](#) at 0466-0467.

²¹⁹ **P-0397**, [KEN-OTP-0125-0461-R01](#) at 0466-0468.

²²⁰ [KEN-OTP-0124-0030](#).

²²¹ **P-0397**, [KEN-OTP-0125-0402-R01](#) at 0425-0429; [KEN-OTP-0124-0030](#); [KEN-OTP-0124-0029](#); see also ICC-01/09-01/11-1120-Red2-Corr, para. 40.

²²² ICC-01/09-01/11-1120-Red2-Corr, paras. 38-41.

²²³ **P-0397**, [KEN-OTP-0125-0360-R01](#) at 0365-0366; [KEN-OTP-0125-0461-R01](#) at 0474.

²²⁴ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0540; **P-0516**, [KEN-OTP-0150-0837-R01](#) at 0855, ln. 624.

²²⁵ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0540.

²²⁶ **P-0397**, [KEN-OTP-0125-0360-R01](#) at 0366; **P-0516**, [KEN-OTP-0150-0817-R01](#) at 0821-0824.

had received between 600,000 and 800,000 KSh; although P-0397 was promised more money for approaching P-0516, he did not receive it.²²⁷ Around this time, P-0341 saw P-0397 and P-0516 [REDACTED] several times, together with YEBEI. On one of these occasions, they told P-0341 that they had recanted because of the bribes they received, but complained more had been promised than delivered.²²⁸

80. P-0397 was also threatened by GICHERU, when the latter suspected that he might still be cooperating with the Prosecution. On 7 December 2013, P-0397 met with GICHERU [REDACTED] [REDACTED] [REDACTED]. GICHERU accused P-0397 of still being in touch with the ICC. GICHERU became aggressive, indicating that he believed P-0397 was trying to have him arrested by the ICC. As a result of this exchange, P-0397 felt that he was in danger and could be killed. The meeting ended when GICHERU was calmed down [REDACTED] and P-0397 left the meeting.²²⁹

81. Despite several attempts to clarify the circumstances of his withdrawal,²³⁰ the OTP was unable to meet with P-0397 until his security situation deteriorated, when he agreed to speak with investigators. In December 2013, P-0397 began receiving threats to his life [REDACTED].²³¹ P-0397 heard that RUTO's supporters had convened meetings on [REDACTED], at which [REDACTED]²³² [REDACTED] incited people to target P-0397 [REDACTED] because he was an ICC witness and they believed that he had betrayed them by providing secret information about RUTO.²³³

82. As a result, in January 2014, P-0397 reached out to the Prosecution and investigators met with him on 16 and 17 January and conducted an interview.²³⁴ P-

²²⁷ P-0397, [KEN-OTP-0125-0461-R01](#) at 0475.

²²⁸ P-0341, [KEN-OTP-0150-0255-R01](#) at 0277, para. 119.

²²⁹ P-0397, [KEN-OTP-0125-0461-R01](#) at 0469-0471.

²³⁰ [KEN-OTP-0159-0884](#) at 0902-0903, paras. 68-72.

²³¹ P-0397, [KEN-OTP-0125-0322-R01](#) at 0327-0337, 0347, 0353-0358; [KEN-OTP-0138-0531](#).

²³² [KEN-OTP-0096-0104](#) at 0110, para. 23; P-0397/GICHERU, [KEN-OTP-0143-0185](#) at 0192, lns.174-176.

²³³ P-0397, [KEN-OTP-0125-0322-R01](#) at 0355-0357.

²³⁴ P-0397, [KEN-OTP-0125-0322-R01](#); [KEN-OTP-0125-0360-R01](#); [KEN-OTP-0125-0375-R01](#); [KEN-OTP-0125-0402-R01](#); [KEN-OTP-0125-0434-R01](#); [KEN-OTP-0125-0461-R01](#); [KEN-OTP-0125-0488-R01](#); [KEN-](#)

0397 explained the circumstances relating to his withdrawal as a witness, the payments received from GICHERU and other aspects of the bribery scheme, as described above.

83. On 16 January 2014,²³⁵ and at the request of OTP investigators, P-0397 called GICHERU's official business telephone number. However GICHERU refused to talk on that phone, and called him back using a different number.²³⁶ During this conversation, P-0397 complained to GICHERU that despite the fact that he had agreed to withdraw from the ICC process, he was now struggling "in [GICHERU's] hands" and that he had been "chased away like a wild animal".²³⁷ P-0397 told GICHERU that the money he had received seemed to have caused his problems.²³⁸ GICHERU disagreed with P-0397's assessment, but he did not deny the agreement to withdraw, or question P-0397's statement that he had been paid.²³⁹
84. GICHERU then asked P-0397 whether he wanted a meeting with [REDACTED].²⁴⁰ GICHERU proposed a meeting between them to solve P-0397's problems.²⁴¹ P-0397 agreed to the proposal and stated that otherwise he might start to consider returning to the ICC and requesting their assistance, to which GICHERU responded "[c]an the white people really be human, or?"²⁴² P-0397 also offered to refund the money, but GICHERU told him to "stop".²⁴³
85. Similarly, in a recorded telephone conversation between P-0397 and YEBEI on 17 January 2014, P-0397 reminded YEBEI that the latter took him to GICHERU [REDACTED] where GICHERU promised to pay 5,000,000 KSh, but he had only

[OTP-0125-0494-R01](#); [KEN-OTP-0125-0499-R01](#); [KEN-OTP-0125-0505-R01](#); [KEN-OTP-0125-0518-R01](#); [KEN-OTP-0125-0547-R01](#); and [KEN-OTP-0125-0571-R01](#).

²³⁵ P-0397/GICHERU, [KEN-OTP-0143-0185](#) at 0190, ln.109.

²³⁶ P-0397/GICHERU, [KEN-OTP-0143-0185](#) at 0187.

²³⁷ P-0397/GICHERU, [KEN-OTP-0143-0185](#) at 0189.

²³⁸ P-0397/GICHERU, [KEN-OTP-0143-0185](#) at 0189-0191.

²³⁹ P-0397/GICHERU, [KEN-OTP-0143-0185](#) at 0190, lns. 112-119.

²⁴⁰ P-0397/GICHERU, [KEN-OTP-0143-0185](#) at 0190-0191, lns. 128-154; [KEN-OTP-0125-0571-R01](#) at 0599-0600.

²⁴¹ P-0397/GICHERU, [KEN-OTP-0143-0185](#) at 0191, ln.150-154; [KEN-OTP-0125-0248](#) at 0264, lns. 489-494.

²⁴² P-0397/GICHERU, [KEN-OTP-0143-0185](#) at 0191, lns. 157-161.

²⁴³ P-0397/GICHERU, [KEN-OTP-0143-0185](#) at 0194, lns. 246-249.

received 1,000,000 KSh, which was already creating problems for him.²⁴⁴ YEBEI did not deny this. P-0397 told YEBEI about his encounter with GICHERU [REDACTED] [REDACTED]²⁴⁵ at [REDACTED], Eldoret, on 7 December 2013.²⁴⁶

86. Other Prosecution Witnesses also confirmed that P-0397 had been corruptly influenced by GICHERU and his associates. [REDACTED] one of the Intermediaries, told [REDACTED] that P-0397 had received 500,000 KSh to withdraw as an ICC witness.²⁴⁷ On 7 May 2013, [REDACTED] reported information to the OTP that P-0397 was [REDACTED] “meeting with a lawyer of one of the accused”.²⁴⁸ [REDACTED] also informed [REDACTED] that both P-0397 and P-0516 went to see GICHERU on that day, although [REDACTED] said this was at [REDACTED].²⁴⁹ That same day, on a call with OTP investigators, P-0397 denied being offered any money to withdraw his testimony,²⁵⁰ but subsequently confessed going to a lawyer to withdraw as an ICC witness three days later.²⁵¹ Additionally, P-0341 confirmed having seen P-0397 at GICHERU[REDACTED] on several occasions. And P-0516 also confirmed that P-0397 took him to GICHERU’s office to receive money.²⁵²

87. Due to the assessed risk to his safety, P-0397 was subsequently relocated [REDACTED], [REDACTED].²⁵³ Prosecution investigators were due to meet with him on 10 March 2014.²⁵⁴ However, [REDACTED]²⁵⁵[REDACTED]²⁵⁶

²⁴⁴ **P-0397/YEBEI**, [KEN-OTP-0125-0248](#) at 0255-0260.

²⁴⁵ YEBEI in fact volunteered the name [REDACTED], *See* **P-0397/YEBEI**, [KEN-OTP-0125-0248](#) at 0260, *Ins.* 363-367.

²⁴⁶ **P-0397/YEBEI**, [KEN-OTP-0125-0248](#) at 0260; **P-0397**, [KEN-OTP-0125-0461-R01](#) at 0469-0471.

²⁴⁷ **P-0613**, [KEN-OTP-0111-0162](#) at 0169, para. 36.

²⁴⁸ [KEN-OTP-0129-0298-R01](#).

²⁴⁹ [KEN-OTP-0116-0482](#).

²⁵⁰ [KEN-OTP-0139-0097](#).

²⁵¹ [KEN-OTP-0139-0095](#).

²⁵² **P-0516**, [KEN-OTP-0150-0817-R01](#) at 0821-0824.

²⁵³ [KEN-OTP-0159-0884](#) at 0906, para. 85.

²⁵⁴ [KEN-OTP-0159-0884](#) at 0906, paras. 85-86.

²⁵⁵ [KEN-OTP-0125-0830](#) at 0831-0832.

²⁵⁶ [KEN-OTP-0159-0884](#) at 0907, para. 91(a).

[REDACTED]²⁵⁷ [REDACTED]²⁵⁸ [REDACTED]. As a result, the Prosecution was unable to call P-0397 in the main case against RUTO and SANG.

88. Significantly, [REDACTED], [REDACTED] travelled to [REDACTED] to meet with Prosecution investigators. On [REDACTED], three days after his return, he was approached by [REDACTED], who told him that they knew he “was travelling [REDACTED] to meet the ICC”, and that “the Government were tracking [his] phone.” [REDACTED] that RUTO had sent him to see P-0341 and threatened him, saying [REDACTED].²⁵⁹

iii. GICHERU’s Individual Criminal Responsibility

89. The material facts common to all incidents set out in Part II above are incorporated *mutatis mutandis*.

90. GICHERU performed the following specific acts in relation to the First Incident:

- a) During or before April 2013, GICHERU solicited or induced [REDACTED] to approach P-0397 and persuaded him to meet with GICHERU in [REDACTED], which they in fact did.²⁶⁰
- b) On or about 26 April 2013, [REDACTED] took P-0397 to meet GICHERU [REDACTED] in [REDACTED].²⁶¹ At this meeting GICHERU [REDACTED] offered to pay P-0397 a Bribe of 5,000,000 KSh, in instalments,²⁶² as an inducement to withdraw as a Prosecution Witness,²⁶³ to sign an affidavit to this effect, and to locate other Prosecution Witnesses and bring them to GICHERU.²⁶⁴

²⁵⁷ [KEN-OTP-0159-0884](#) at 0910, para. 93; [KEN-OTP-0144-0168-R01](#) at 0169, para. 6.

²⁵⁸ [KEN-OTP-0159-0884](#) at 0907, paras. 87-90.

²⁵⁹ [P-0341](#), [KEN-OTP-0150-0255-R01](#) at 0275, paras. 112-113.

²⁶⁰ [P-0397](#), [KEN-OTP-0125-0402-R01](#) at 0432-0433; [KEN-OTP-0125-0360-R01](#) at 0361-0363.

²⁶¹ [P-0397](#), [KEN-OTP-0125-0434-R01](#) at 0436 and 0451-0452; [KEN-OTP-0125-0518-R01](#) at 0519-0521.

²⁶² [P-0397](#), [KEN-OTP-0125-0434-R01](#) at 0438-0439.

²⁶³ [P-0397](#), [KEN-OTP-0125-0434-R01](#) at 0437.

²⁶⁴ [P-0397](#), [KEN-OTP-0125-0434-R01](#) at 0437.

- c) On or about 27 April 2013 and at [REDACTED], GICHERU paid P-0397 a cash instalment of 600,000 KSh.²⁶⁵
- d) On or about 30 April 2013 [REDACTED], GICHERU paid P-0397 a second cash instalment of 400,000 KSh.²⁶⁶
- e) On 9 May 2013 and at [REDACTED], GICHERU arranged for advocate [REDACTED] to prepare an affidavit stating that P-0397 no longer intended to testify against any accused persons before the ICC and wished to withdraw his testimony against said persons, and instructed or induced P-0397 to sign it.²⁶⁷
- f) During April or May 2013 and at [REDACTED], GICHERU and YEBEI solicited or induced P-0397 to approach P-0516 and corruptly influence him to meet with GICHERU in order to withdraw as a Prosecution Witness and recant his evidence in return for a cash payment.²⁶⁸
- g) On 7 December 2013 [REDACTED] in Eldoret, GICHERU, [REDACTED], met with P-0397 and threatened or intimidated him, accusing P-0397 of being in touch with the ICC and trying to have him (GICHERU) arrested.

a. *Article 25(3)(a)*

91. GICHERU is criminally responsible as a **direct perpetrator** as a result of the actions described in paragraphs a) to g) above. At all material times, GICHERU intended that his actions would corruptly influence P-0397.

92. Alternatively, GICHERU is criminally responsible as a direct **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II ii. and paragraphs a) to g) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of

²⁶⁵ P-0397, [KEN-OTP-0125-0434-R01](#) at 0439.

²⁶⁶ P-0397, [KEN-OTP-0125-0434-R01](#) at 0438-0439.

²⁶⁷ P-0397, [KEN-OTP-0125-0461-R01](#) at 0466-0468.

²⁶⁸ P-0397, [KEN-OTP-0125-0360-R01](#) at 0365; [KEN-OTP-0125-0461-R01](#) at 0474; [KEN-OTP-0125-0518-R01](#) at 055-0542.

the offence of corruptly influencing P-0397, and nevertheless performed the abovementioned actions with the intent to bring about the material elements of the offence or was aware that this would occur in the ordinary course of the events.

93. GICHERU is thus criminally responsible for the specific acts of corrupt influence performed by the Direct Perpetrators in relation to the First Incident set out in the narrative of the evidence above, and listed in Chapter C below.

94. The subjective elements of co-perpetration may be inferred from the material facts described in Part II vi. above and the specific acts set out in Part II. ii. and paragraphs a) to g) above.

b. Article 25(3)(d)

95. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0397 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to g) above.

96. The subjective elements of common purpose liability may be inferred from the material facts described in Part II vi. above and the specific acts described in Part II. ii. and paragraphs a) to g) above.

c. Article 25(3)(b)

97. Alternatively, GICHERU is criminally responsible for **soliciting** or **inducing** YEBEI [REDACTED] to corruptly influence P-0397, which they duly did, as set out in paragraph a) above. GICHERU knew that his actions would, in the ordinary course of events, lead to YEBEI [REDACTED] committing the offence of corruptly influencing P-0397.

98. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II vi. above and the specific acts described in Part II. ii. and paragraphs a) to g) above.

d. *Article 25(3)(c)*

99. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0397, by acting as a conduit for the funds from RUTO used to bribe him, which provided the means for the offence to be committed, and performing the actions further described in paragraphs b) to g) above. He is further criminally responsible for **abetting** YEBEI [REDACTED] to corruptly influence P-0397 by providing the moral support or encouragement described in paragraph a) above.

100. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to YEBEI [REDACTED] committing the offence of corruptly influencing P-0397.

101. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II vi. above and the specific acts described in Part II. ii. and in paragraphs a) to g) above.

IV. **Second Incident: Corruptly influencing Witness P-0516**

i. **Introduction**

102. [REDACTED] (“P-0516”) was a Prosecution Witness in the *Ruto and Sang* case who gave a statement to the Prosecution providing linkage evidence, which connected RUTO and SANG to the PEV. In particular, he provided evidence on the organisation of the PEV, of SANG and RUTO’s anti-Kikuyu rhetoric, and RUTO’s planning and funding of the PEV.²⁶⁹

103. During the period April to May 2013, in [REDACTED], Kenya, GICHERU [REDACTED] corruptly influenced P-0516 by offering him a bribe of 800,000 KSh to withdraw as a Prosecution Witness in the *Ruto and Sang* case and to sign an

²⁶⁹ P-0516, [KEN-OTP-0087-0031-R01](#).

affidavit withdrawing his prior statement to the Prosecution.²⁷⁰ As requested by GICHERU, P-0516 in turn urged P-0613 to withdraw as a witness.²⁷¹

ii. **Corruptly influencing P-0516**

104. [REDACTED] On 18 February 2013, in anticipation of his testimony in that case, P-0516's identity was disclosed to the Defence. On 6 July 2014, P-0516 was scheduled to attend a meeting with Court officials regarding his scheduled testimony,²⁷² but he failed to do so and ceased all communication. As a result, the ICC Trial Chamber V(A) issued a summons for his appearance in court,²⁷³ where he testified between 22 and 26 September 2014.²⁷⁴ In his testimony, he renounced almost all material portions of his prior statements to the OTP which implicated RUTO or SANG. There are substantial grounds to believe that this recantation was the result of corrupt influence from GICHERU and his associates.

105. During their meeting in April or May 2013²⁷⁵ at GICHERU's office in Eldoret,²⁷⁶ GICHERU asked P-0397 if he knew of other ICC witnesses.²⁷⁷ In P-0397's presence, GICHERU directed YEBEI to locate an ICC witness – referring to P-0516 – [REDACTED]²⁷⁸ P-0397 told them that he had seen P-0516 [REDACTED].²⁷⁹ YEBEI suggested that since he was not on good terms with P-0516, P-0397 should locate him instead and arrange the meeting with GICHERU.²⁸⁰ As a result, GICHERU and YEBEI instructed P-0397 to locate P-0516 and take him to GICHERU [REDACTED].²⁸¹ P-0397 explained that YEBEI told him that he and [REDACTED]

²⁷⁰ **P-0397**, [KEN-OTP-0125-0547-R01](#) at 0552; [KEN-OTP-0125-0518-R01](#) at 0541-0542; [KEN-OTP-0125-0461-R01](#) at 0474-0476; **P-0516**, [KEN-OTP-0150-0817-R01](#) at 0823, 0824; [KEN-OTP-0150-0837-R01](#) at 0849, 0850.

²⁷¹ **P-0516**, [KEN-OTP-0150-0837-R01](#) at 0859; **P-0613**, [KEN-OTP-0102-0178](#) at 0181, para. 23.

²⁷² [KEN-OTP-0159-0884](#) at 0911, para. 102.

²⁷³ ICC-01/09-01/11-1274.

²⁷⁴ ICC-01/09-01/20-T-002-CONF-ENG-ET to T-006-CONF-ENG-ET.

²⁷⁵ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0535-0536.

²⁷⁶ **P-0397**, [KEN-OTP-0125-0461-R01](#) at 0474.

²⁷⁷ **P-0397**, [KEN-OTP-0125-0461-R01](#) at 0473-0475.

²⁷⁸ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0535-0536.

²⁷⁹ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0536.

²⁸⁰ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0535-0536; [KEN-OTP-0125-0360-R01](#) at 0365-0366.

²⁸¹ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0535.

(who P-0397 described as “brokers”)²⁸² received payment for identifying and locating other Prosecution Witnesses.²⁸³

106. Subsequently, in May 2013, P-0397 saw P-0516 [REDACTED].²⁸⁴ P-0397 approached P-0516 and told him about the rumours circulating that he was an ICC witness.²⁸⁵ P-0397 then informed P-0516 that “there is a deal if you agree to it, you could get money”, the exact amount of which he could negotiate with GICHERU.²⁸⁶ P-0516 agreed to meet with GICHERU and P-0397 then reported this to GICHERU, who said he would find a date to meet with P-0516.²⁸⁷

107. A few days later, P-0397 took P-0516 to meet GICHERU at his Eldoret office.²⁸⁸ There GICHERU and P-0516 had a private discussion. According to P-0516, GICHERU offered him a bribe of 800,000 KSh in exchange of his withdrawal as a witness from the RUTO case.²⁸⁹ P-0516 also mentioned to P-0397 the payment amount that he and GICHERU agreed upon, but P-0397 could not recall if the exact amount was 500,000 KSh or 800,000 KSh.²⁹⁰ This is corroborated by P-0341 who saw both P-0397 and P-0516 at GICHERU’s office in Eldoret “many times”.²⁹¹ Each of them told P-0341 that they received money, but complained that more had been promised than delivered, and they were thus considering to “return to the ICC”.²⁹²

108. Thereafter, P-0516 told P-0397 that he went through the same withdrawal process as him (P-0397), and wrote a letter and an affidavit.²⁹³ P-0397 heard

²⁸² **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0544, Ins. 915-923 (note that the English word “broker” used by the witness at ln. 918 was not included in the interpreter’s translation of the witness’ answer).

²⁸³ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0534, 0544.

²⁸⁴ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0536, 0537.

²⁸⁵ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0539.

²⁸⁶ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0540; **P-0516**, [KEN-OTP-0150-0837-R01](#) at 0855, ln. 624.

²⁸⁷ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0537.

²⁸⁸ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0541; **P-0516**, [KEN-OTP-0150-0817-R01](#) at 0821-0822.

²⁸⁹ **P-0516**, [KEN-OTP-0150-0817-R01](#) at 0823, 0824, particularly at Ins. 222-227; [KEN-OTP-0150-0837-R01](#) at 0849, 0850; P-0397, [KEN-OTP-0125-0518-R01](#) at 0541. *Compare with* **P-0516**, [KEN-OTP-0150-0760-R01](#) at 0775-0776; [KEN-OTP-0150-0837-R01](#) at 0842, 0846.

²⁹⁰ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0541.

²⁹¹ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0277, para. 119. P-0341 does not specify dates, but this must have been between April 2013 and April 2014, [REDACTED].

²⁹² **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0277, para. 119.

²⁹³ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0542.

contradictory versions about whether or not P-0516's letter and/or affidavit were sent to the ICC.²⁹⁴ The Prosecution is not in possession of either the letter or the affidavit. P-0516 testified that [REDACTED] Advocates prepared an affidavit on his behalf.²⁹⁵

109. GICHERU met with P-0516 approximately four times in the following weeks and paid him a total of at least 500,000 KSh.²⁹⁶ P-0397, however, did not receive any of the payment he was promised for introducing P-0516 to GICHERU.²⁹⁷ When P-0397 asked for this payment, GICHERU avoided the issue.²⁹⁸

110. P-0516 told investigators that he and P-0397 could not refuse the offer to receive money from GICHERU because otherwise "these people might come after us".²⁹⁹ P-0516 stopped going to GICHERU's office to receive money, despite being paid less than originally promised, because it was becoming dangerous.³⁰⁰ However, P-0516 told P-0397 that he had received the entire payment and that he was not complaining.³⁰¹

111. The corruption of P-0516 is corroborated by various sources. On 29 April 2013, [REDACTED] told [REDACTED] that GICHERU had paid 100,000 KSh to P-0516 and others³⁰² and again on 19 July 2013 [REDACTED] told [REDACTED] that GICHERU had paid P-0516 600,000 KSh;³⁰³ and [REDACTED] told [REDACTED] that P-0516 had been paid.³⁰⁴ By suddenly withdrawing his cooperation with the

²⁹⁴ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0542.

²⁹⁵ [REDACTED]

²⁹⁶ **P-0516**, [KEN-OTP-0150-0817-R01](#) at 0823-0824, 0826; [KEN-OTP-0150-0837-R01](#) at 0839-0841, 0851, 0857; **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0542-0543; **P-0613**, [KEN-OTP-0111-0162](#) at 0169, para. 36; [KEN-OTP-0102-0178](#) at 0181, paras. 18, 22.

²⁹⁷ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0543-0544.

²⁹⁸ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0544.

²⁹⁹ **P-0516**, [KEN-OTP-0150-0837-R01](#) at 0848. *see also* [KEN-OTP-0150-0817-R01](#) at 0823, 0824.

³⁰⁰ **P-0516**, [KEN-OTP-0150-0817-R01](#) at 0823, 0824.

³⁰¹ **P-0397**, [KEN-OTP-0125-0518-R01](#) at 0542-0543.

³⁰² **P-0613**, [KEN-OTP-0102-0178](#) at 0181, para. 18.

³⁰³ **P-0613**, [KEN-OTP-0111-0162](#) at 0169, para. 36 (although on this occasion it is not stated explicitly that GICHERU made this payment, it is clear from the context that this was one of a series of payments made by GICHERU).

³⁰⁴ **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 42.

Prosecution, without explanation, P-0516's behaviour is also indicative of a corruptly influenced witness.³⁰⁵

112. During one of P-0516's meetings with GICHERU, GICHERU asked him whether he knew "other people like you," meaning other witnesses.³⁰⁶ P-0613 stated that in a telephone conversation with P-0516 on 13 May 2013, P-0516 urged her to "come back" because RUTO's people needed witnesses to withdraw from the ICC process.³⁰⁷

113. During his ICC in-court testimony, P-0516 stated that much of the evidence that he provided the Prosecution in his original witness statement was false, and that he had been told by [REDACTED] what to say.³⁰⁸ Based on the available evidence, including P-0516's subsequent admission to having been paid by GICHERU,³⁰⁹ the Prosecution believes that P-0516's recantation during his testimony was the result of the bribery and the continuing influence by GICHERU and the Common Plan Members.

iii. Analysis of P-0516's evidence

114. The Prosecution relies on portions of P-0516's post-testimony statements to the effect that he was promised, and paid, money by GICHERU to corruptly influence him to recant his testimony. The Prosecution considers that although (as shown below) P-0516 has not been completely frank and honest, specifically regarding the extent and purpose of his interactions with GICHERU, the particular circumstances pertaining to this witness, when assessed carefully, show that his evidence may be relied upon by this Chamber and a future Trial Chamber.

115. The contradictions and improbabilities in P-0516's post-testimony statements, coupled with his contradictory prior statements, his refusal to testify until

³⁰⁵ [KEN-OTP-0159-0884](#) at 0911-0912.

³⁰⁶ **P-0516**, [KEN-OTP-0150-0837-R01](#) at 0859.

³⁰⁷ **P-0613**, [KEN-OTP-0102-0178](#) at 0181, para. 23. *Contra* **P-0516**, [KEN-OTP-0150-0837-R01](#) at 0860.

³⁰⁸ *See*, for example, **P-0516**, ICC-01/09-01/20-T-003-CONF-Red-ENG, p. 42 *et seq.*

³⁰⁹ **P-0516**, [KEN-OTP-0150-0817-R01](#) at 0824, 0826; [KEN-OTP-0150-0837-R01](#) at 0839-0841, 0851, 0857.

summonsed to appear, his impeachment during testimony and his admission to having received money from GICHERU but lying about this under oath, are all reasons why P-0516's evidence should be treated with caution. However, the Prosecution submits that his evidence should be accepted by the Chamber where it is adequately corroborated or other reasons exist which adequately reduce the risk of relying on a particular fact.

116. Specifically, as detailed in the previous section, P-0516's admission that he was taken by P-0397 to meet GICHERU, that GICHERU offered and subsequently paid P-0516 a substantial sum of money, that P-0516 then signed an affidavit withdrawing as a Prosecution Witness are all corroborated by other witnesses and may safely be relied upon.

117. Additionally, his admission of receiving money from GICHERU may be regarded as "an admission against interest" which is a further indicia of reliability. An "admission against (penal) interest" is recognised as an indicia of reliability in certain jurisdictions since, as a matter of logic and human experience, it is inherently unlikely that a witness will falsely testify to conduct that may expose them to criminal prosecution or other adverse consequences.³¹⁰

118. However, the Prosecution submits that certain uncorroborated and self-serving aspects of P-0516 should not be accepted by the Chamber.

iv. GICHERU's Individual Criminal Responsibility

119. The material facts common to all incidents set out in Part II above are incorporated *mutatis mutandis*.

120. GICHERU performed the following specific acts in relation to the Second Incident:

³¹⁰ See for instance J Wigmore, Evidence §§ 1455-77 (3d ed. 1940); Particularly where corroborated, see Federal Rules of Evidence, Rule 804(b)(3).

- a) During April and May 2013, GICHERU and YEBEI asked P-0397 to approach P-0516 in order to corruptly influence P-0516 to withdraw as a Prosecution Witness and recant his evidence,³¹¹ which P-0397 did.³¹²
- b) During May to June 2013, P-0397 took P-0516 to meet GICHERU at the latter's office in Veecam House, Eldoret.³¹³ At this meeting, GICHERU offered P-0516 a bribe of 800,000 KSh in exchange for his withdrawal as a Prosecution Witness.³¹⁴ GICHERU met with P-0516 approximately four times over this period and actually paid him a total of at least 500,000 KSh.³¹⁵
- c) GICHERU asked P-0516 whether he knew "other people like you", which P-0516 understood to mean other ICC witnesses.³¹⁶ In accordance with the Common Plan, P-0516 urged P-0613 to "come back" because RUTO's people needed witnesses to withdraw from the ICC process.³¹⁷

a. *Article 25(3)(a)*

121. GICHERU is criminally responsible as a **direct perpetrator** as a result of the specific acts described in paragraphs a) to c) above. At all material times, GICHERU intended that his actions would corruptly influence P-0516.

122. Alternatively, GICHERU is criminally responsible as a direct **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II ii. and paragraphs a) to c) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of corruptly influencing P-0516, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the

³¹¹ P-0397, [KEN-OTP-0125-0518-R01](#) at 0535-0536.

³¹² P-0397, [KEN-OTP-0125-0518-R01](#) at 0537, 0540.

³¹³ P-0397, [KEN-OTP-0125-0518-R01](#) at 0541.

³¹⁴ P-0516, [KEN-OTP-0150-0817-R01](#) at 0823, 0824; P-0397, [KEN-OTP-0125-0518-R01](#) at 0541.

³¹⁵ P-0516, [KEN-OTP-0150-0837-R01](#) at 0839-0841, 0851, 0857; P-0397, [KEN-OTP-0125-0518-R01](#) at 0542-0543; P-0613, [KEN-OTP-0111-0162](#) at 0169, para. 36; P-0613, [KEN-OTP-0102-0178](#) at 0181, paras. 18, 22.

³¹⁶ P-0516, [KEN-OTP-0150-0837-R01](#) at 0858, ln 708 to 0859, ln. 736.

³¹⁷ P-0613, [KEN-OTP-0102-0178](#) at 0181, para. 23. *Contra* P-0516, [KEN-OTP-0150-0837-R01](#) at 0860.

material elements of the offence or was aware that this would occur in the ordinary course of the events.

123. GICHERU is thus criminally responsible for the specific acts of corrupt influence performed by the Direct Perpetrators in relation to the Second Incident set out in the narrative of the evidence above, and listed in Chapter C below.

124. The subjective elements of co-perpetration may be inferred from the material facts described in Part II vi. above and the specific acts set out in paragraphs a) to c) above.

b. Article 25(3)(d)

125. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0516 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to c) above.

126. The subjective elements of common purpose liability may be inferred from the material facts described in Part II vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.

c. Article 25(3)(b)

127. Alternatively, GICHERU is criminally responsible, together with YEBEI, for **soliciting** or **inducing** P-0397 to corruptly influence P-0516, which he duly did, as set out in paragraph a) above. GICHERU knew that his actions would, in the ordinary course of events, lead to P-0397 committing the offence of corruptly influencing P-0516.

128. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II vi. above and the specific acts described in Part II. ii. and paragraphs a) to c) above.

d. *Article 25(3)(c)*

129. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0516, by acting as a conduit for the funds used to bribe him, which provided the means for the offence to be committed, and performing the actions further described in paragraphs b) to c) above. He is further criminally responsible for **abetting** P-0397 to corruptly influence P-0516 by providing the moral support or encouragement described in paragraph a) above.

130. GICHERU intended to facilitate the offence. He knew and intended that this assistance would, in the ordinary course of events, lead to P-0397 committing the offence of corruptly influencing P-0516.

131. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.

V. Third Incident: Corruptly influencing Witness P-0613

i. Introduction

132. [REDACTED] (“P-0613” [REDACTED]) [REDACTED] provided evidence regarding the PEV to the CIPEV³¹⁸ and was a Prosecution Witness.³¹⁹

133. Between April and September 2013, in [REDACTED] GICHERU, [REDACTED] [REDACTED] with the assistance of P-0800, P-0604 and P-0495 corruptly influenced P-0613 by offering her Bribes to withdraw as a Prosecution Witness and

³¹⁸ P-0613, [KEN-OTP-0106-0910](#) at 0913, para. 10.

³¹⁹ P-0613, ICC-01/09-01/20-T-013-CONF-Red-ENG; ICC-01/09-01/20-T-014-CONF-Red-ENG; ICC-01/09-01/20-T-015-CONF-Red-ENG.

to recant her evidence.³²⁰ Despite these attempts, P-0613 testified before ICC Trial Chamber V(a) between 18 and 20 June 2014.³²¹

134. P-0613 became a key target in this case after YEBEI, whom she knew even before 2008,³²² told GICHERU that she was co-operating with the ICC by providing evidence concerning the PEV and introducing other witnesses [REDACTED] to the Prosecution.³²³

ii. Corruptly influencing P-0613

135. On 10 June 2013, P-0613's identity was disclosed to the RUTO and SANG Defence. [REDACTED]. [REDACTED]

136. [REDACTED] [REDACTED] told P-0613 that RUTO had instructed GICHERU to bribe Prosecution Witnesses in exchange for their withdrawal from the case.³²⁴ Based on his conversations with GICHERU [REDACTED], [REDACTED] told P-0613 that GICHERU had paid YEBEI and other ICC witnesses such as P-0397 or P-0516.³²⁵

137. During the same conversation, [REDACTED] told P-0613 that [REDACTED] informed him [REDACTED] that she (P-0613) had gone to [REDACTED] to meet with ICC personnel to provide them with information about the PEV.³²⁶ [REDACTED] also told P-0613 that [REDACTED] was taking ICC witnesses to GICHERU to prepare affidavits for their withdrawal from the ICC process.³²⁷

³²⁰ **P-0613**, [KEN-OTP-0102-0178](#) at 0180-0182, paras. 16-29; [KEN-OTP-0115-0216](#) at 0222-0223, paras. 28-34; [KEN-OTP-0118-0137](#) at 0141, para. 16; [KEN-OTP-0106-0910](#) at 0914-0916, paras. 19-35; [KEN-OTP-0111-0162](#) at 0165-0172, paras. 14-56; [KEN-OTP-0111-0557](#) at 0562, 0564-0565, 0568, paras. 22, 31, 35-37, 54-56; [KEN-OTP-0106-0922](#) at 0926, paras. 16, 19-21; [KEN-OTP-0124-0007](#) at 0011, paras. 19-21; **P-0800**, [KEN-OTP-0111-0140](#) at 0147-0149, paras. 35-44, 49, 54; [KEN-OTP-0103-2473](#) at 2478, para. 28; **P-0495**, [KEN-OTP-0130-0507-R01](#) at 0514-0536; [KEN-OTP-0130-0540-R01](#) at 0541-0561; [KEN-OTP-0130-0563-R01](#) at 0565; [KEN-OTP-0117-0897](#); [KEN-OTP-0103-3498](#).

³²¹ **P-0613**, ICC-01/09-01/20-T-013-CONF-Red-ENG; ICC-01/09-01/20-T-014-CONF-Red-ENG; ICC-01/09-01/20-T-015-CONF-Red-ENG.

³²² **P-0613**, [KEN-OTP-0106-0910](#) at 0913, para. 14.

³²³ **P-0613**, [KEN-OTP-0102-0178](#) at 0180-0181, para. 17.

³²⁴ **P-0613**, [KEN-OTP-0102-0178](#) at 0181-0182, paras. 18, 29.

³²⁵ **P-0613**, [KEN-OTP-0102-0178](#) at 0181, para. 18.

³²⁶ **P-0613**, [KEN-OTP-0102-0178](#) at 0180, para. 16.

³²⁷ **P-0613**, [KEN-OTP-0106-0910](#) at 0914, para. 20.

[REDACTED] further stated that [REDACTED] had instructed him to find P-0613's [REDACTED] for GICHERU.³²⁸ GICHERU himself promised [REDACTED] 2,000,000 KSh for P-0613's [REDACTED].³²⁹ [REDACTED]³³⁰

138. [REDACTED] [REDACTED] told P-0613 that P-0516, P-0397, and P-0571 had gone to GICHERU [REDACTED], to sign affidavits recanting their evidence to the ICC.³³¹

139. [REDACTED] told P-0613 that GICHERU had informed him that the [REDACTED] was tracking her [REDACTED].³³²

140. In May 2013, [REDACTED] told P-0613 that he was looking for new OTP witnesses to persuade them to withdraw.³³³ In another conversation, P-0800's told P-0613 that [REDACTED] had been tasked with encouraging P-0800 to withdraw.³³⁴

141. In a phone conversation on 13 May 2013, P-0516 urged P-0613 to withdraw as a Prosecution Witness.³³⁵

142. On 7 June 2013, YEBEI tried to get into contact with P-0613.³³⁶ On 14 and 17 June 2013, unknown people sent her SMS trying to organise a meeting with her and promising her *inter alia* "[REDACTED]".³³⁷ After some phone calls,³³⁸ on 21 June 2013, [REDACTED] told her he wanted to meet her.³³⁹ They had two further phone

³²⁸ P-0613, [KEN-OTP-0102-0178](#) at 0180, para. 16; [KEN-OTP-0106-0910](#) at 0914, para. 19. See also [KEN-OTP-0103-3498](#); [KEN-OTP-0117-0897](#); P-0800, [KEN-OTP-0102-0205](#) at 0211, para. 38.

³²⁹ P-0613, [KEN-OTP-0102-0178](#) at 0180, para. 16.

³³⁰ P-0613, [KEN-OTP-0102-0178](#) at 0180, para. 17.

³³¹ P-0613, [KEN-OTP-0106-0910](#) at 0914-0915, para. 22.

³³² P-0613, [KEN-OTP-0102-0178](#) at 0181, para. 21; [KEN-OTP-0106-0910](#) at 0914, para. 19; [KEN-OTP-0117-0898](#) at 0898; [KEN-OTP-0117-1071](#) at 1071.

³³³ [KEN-OTP-0107-0288](#).

³³⁴ [KEN-OTP-0107-0288](#).

³³⁵ P-0613, [KEN-OTP-0102-0178](#) at 0181, para. 23. *Contra* P-0516, [KEN-OTP-0150-0837-R01](#) at 0860.

³³⁶ P-0613, [KEN-OTP-0106-0910](#) at 0915, para. 23.

³³⁷ [KEN-OTP-0117-0903](#); P-0613, [KEN-OTP-0106-0910](#) at 0916, paras. 32-35.

³³⁸ P-0613, [KEN-OTP-0106-0910](#) at 0915-0916, para. 30; P-0613/YEBEI, [KEN-OTP-0118-1927](#) at 1929-1932.

³³⁹ P-0613, [KEN-OTP-0106-0922](#) at 0926, para. 16.

conversations that day and [REDACTED] told her “these people” were seeking witnesses.³⁴⁰

143. YEBEI [REDACTED] continued calling P-0613 several times in July 2013.³⁴¹ [REDACTED]³⁴² [REDACTED] also told P-0613 that members of the Common Plan feared her because they believed that she [REDACTED]³⁴³ [REDACTED]³⁴⁴ Later that same day, YEBEI told P-0613 that they were waiting for the person who was organising the money for their trip to go and see her [REDACTED].³⁴⁵

144. [REDACTED] told P-0613 that GICHERU had paid the following witnesses: P-0571 received 400,000 KSh; P-0516 received 600,000 KSh; P-0397 500,000 KSh; and P-0016 had requested 8,000,000 KSh, but they were still negotiating.³⁴⁶ [REDACTED] told P-0613 that she should go to [REDACTED] and receive her payment³⁴⁷ but not to put the cash into a bank account.³⁴⁸

145. On 21 July 2013, during a recorded telephone conversation, [REDACTED] told P-0613 that [REDACTED] had told him that [REDACTED] was in [REDACTED] and asked her if she had met him.³⁴⁹

146. This report is corroborated by the fact that on 21 July 2013, P-0800 and [REDACTED] in fact met [REDACTED]. During these meetings, [REDACTED] offered P-0800 money to assist in locating and corrupting other witnesses,

³⁴⁰ P-0613, [KEN-OTP-0106-0922](#) at 0926, paras. 19-21.

³⁴¹ [KEN-OTP-0153-0040](#); P-0613, [KEN-OTP-0111-0162](#) at 0165-0167, paras. 14-27, 0169, paras. 37-38; P-0613/YEBEI, [KEN-OTP-0118-1927](#) at 1936-1945; [KEN-OTP-0111-0178](#).

³⁴² P-0613, [KEN-OTP-0111-0162](#) at 0169, para. 37.

³⁴³ P-0613, [KEN-OTP-0111-0162](#) at 0169, para. 38.

³⁴⁴ P-0613, [KEN-OTP-0111-0162](#) at 0169, paras. 37-38. This particular segment was not recorded in Telephone Recording P-0613/YEBEI, [KEN-OTP-0118-1927](#). [REDACTED] See [KEN-OTP-0111-0557](#) at 0562, 0569, paras. 22, 62.

³⁴⁵ P-0613, [KEN-OTP-0111-0162](#) at 0169, para. 39; P-0613/YEBEI, [KEN-OTP-0118-1927](#) at 1950-1951; [KEN-OTP-0111-0181](#).

³⁴⁶ P-0613, [KEN-OTP-0111-0162](#) at 0169, para. 36.

³⁴⁷ P-0613, [KEN-OTP-0111-0162](#) at 0169, para. 36.

³⁴⁸ P-0613, [KEN-OTP-0111-0162](#) at 0169, para. 36.

³⁴⁹ P-0613, [KEN-OTP-0111-0162](#) at 0171, para. 49; P-0613/YEBEI, [KEN-OTP-0118-1927](#) at 1954-1955; [KEN-OTP-0111-0182](#).

specifically P-0613.³⁵⁰ [REDACTED]³⁵¹ [REDACTED]³⁵² More specifically, [REDACTED] “everything’s OK” with P-0613.³⁵³ This conversation confirms that GICHERU tasked [REDACTED] with finding and bribing P-0613.

147. The next day on 22 July 2013, [REDACTED] informed P-0613 in a recorded telephone conversation that he was in [REDACTED].³⁵⁴ [REDACTED].³⁵⁵ [REDACTED] explained that he had personally benefitted from “leaving the program” and assured her that everything was very well organised.³⁵⁶ The Prosecution submits that, in context, by “leaving the program” [REDACTED] meant withdrawing as a Prosecution Witness. [REDACTED]³⁵⁷ Following P-0613’s conversation with [REDACTED], she received three text messages later that day from an unknown Kenyan number, which included the following content (*sic*): [REDACTED]³⁵⁸ [REDACTED]

148. Also on [REDACTED] [REDACTED] told P-0613 that GICHERU wanted to meet at 10:00 the next morning [REDACTED] to discuss matters “regarding her” and he [REDACTED] would contact her afterwards.³⁵⁹ [REDACTED] also said that “they” had agreed to pay [REDACTED] 5,000,000 KSh and [REDACTED], and that P-0613 should not put the money in a bank account.³⁶⁰ These words indicate that GICHERU [REDACTED] planned to discuss the exact amount which should be given to P-0613.

³⁵⁰ P-0800, [KEN-OTP-0111-0140](#) at 0147-0149, paras. 35-44, 49; P-0800/[REDACTED], [KEN-OTP-0131-0431](#) at 0451-0457; [KEN-OTP-0111-0159](#).

³⁵¹ P-0800, [KEN-OTP-0111-0140](#) at 0148-0149, paras. 43, 54; P-0800/[REDACTED], [KEN-OTP-0132-0167](#) at 0189, 0206.

³⁵² P-0800, [KEN-OTP-0111-0140](#) at 0149, para. 54.

³⁵³ P-0800/[REDACTED], [KEN-OTP-0132-0167](#) at 0218-0220.

³⁵⁴ P-0613, [KEN-OTP-0111-0162](#) at 0172, paras. 52-53; P-0613/[REDACTED], [KEN-OTP-0118-1927](#) at 1955-1959.

³⁵⁵ P-0613, [KEN-OTP-0111-0162](#) at 0172, para. 53; P-0613/[REDACTED], [KEN-OTP-0118-1927](#) at 1955-1959.

³⁵⁶ P-0613, [KEN-OTP-0111-0162](#) at 0172, para. 53; P-0613/[REDACTED], [KEN-OTP-0118-1927](#) at 1958-1959. See also P-0800, [KEN-OTP-0103-2473](#) at 2478, para. 28.

³⁵⁷ P-0613, [KEN-OTP-0111-0162](#) at 0172, para. 53.

³⁵⁸ P-0613, [KEN-OTP-0111-0162](#) at 0172-0173, para. 54; [KEN-OTP-0111-0178](#); [KEN-OTP-0111-0179](#); [KEN-OTP-0111-0180](#).

³⁵⁹ P-0613, [KEN-OTP-0111-0162](#) at 0173, paras. 55-56; [KEN-OTP-0111-0184](#); [KEN-OTP-0111-0185](#).

³⁶⁰ P-0613, [KEN-OTP-0111-0162](#) at 0173, paras. 55-56.

149. On [REDACTED] arrived [REDACTED] and requested to meet with P-0613.³⁶¹ P-0613 called [REDACTED] who told her that [REDACTED] had given [REDACTED] the money to travel there.³⁶² However, [REDACTED] did not meet P-0613. [REDACTED].³⁶³ On the same day, P-0613 received a text from an unknown number pleading with her to [REDACTED] – meaning to withdraw as an ICC witness – [REDACTED].³⁶⁴

150. On 31 July 2013, [REDACTED] informed P-0613 that P-0397 had told her that people were coming out from “those people”. P-0613 understood “those people” to mean the ICC and that witnesses were leaving the ICC.³⁶⁵ P-0397 warned [REDACTED] that if P-0613 did not leave “those people”, her life would be in danger.³⁶⁶ Upon hearing this, P-0613 called YEBEI to complain about P-0397’s “threats”.³⁶⁷ P-0613 also complained about [REDACTED].³⁶⁸ [REDACTED] had explained to P-0613 earlier that these two men wanted to know P-0613’s whereabouts and claimed that she was working for the ICC and wanted to put “their man” in jail.³⁶⁹ During this conversation with [REDACTED], P-0613 also recalled [REDACTED] refusal to meet with her.³⁷⁰ [REDACTED] told P-0613 that he did not want these things to happen and he wanted “a smooth negotiation”.³⁷¹

151. On 29 August 2013, acting in furtherance of the Common Plan and [REDACTED] instructions, P-0800 called P-0613 to offer her payment in exchange for [REDACTED] [REDACTED] and recantation of her evidence to the Prosecution.³⁷² Around the same time, [REDACTED] told P-0613 that

³⁶¹ P-0613, [KEN-OTP-0111-0557](#) at 0564-0565, 0569, paras. 31, 35-36, 62.

³⁶² P-0613, [KEN-OTP-0111-0557](#) at 0565, para. 35.

³⁶³ P-0613, [KEN-OTP-0111-0557](#) at 0571, para. 75.

³⁶⁴ P-0613, [KEN-OTP-0111-0557](#) at 9565, paras. 37-38; [KEN-OTP-0111-0581](#).

³⁶⁵ P-0613, [KEN-OTP-0111-0557](#) at 0568, para. 54.

³⁶⁶ P-0613, [KEN-OTP-0111-0557](#) at 0568, para. 54.

³⁶⁷ P-0613, [KEN-OTP-0111-0557](#) at 0568, paras. 55-56; P-0613/[REDACTED], [KEN-OTP-0118-1927](#) at 1967-1968.

³⁶⁸ P-0613, [KEN-OTP-0111-0557](#) at 0568, para. 56; P-0613/[REDACTED], [KEN-OTP-0118-1927](#) at 1968.

³⁶⁹ P-0613, [KEN-OTP-0111-0162](#) at 0170, paras. 42-43.

³⁷⁰ P-0613, [KEN-OTP-0111-0557](#) at 0568, para. 56; P-0613/[REDACTED], [KEN-OTP-0118-1927](#) at 1967.

³⁷¹ P-0613, [KEN-OTP-0111-0557](#) at 0568, para. 56; P-0613/[REDACTED], [KEN-OTP-0118-1927](#) at 1969.

³⁷² P-0613, [KEN-OTP-0118-0137](#) at 0141, para. 16. *See also* [KEN-OTP-0153-0041](#) at 0041-0042.

[REDACTED] went to a meeting where the then Deputy President – RUTO – was told that [REDACTED].³⁷³ [REDACTED] said that [REDACTED] was not prepared to bring P-0613 back because he believed that [REDACTED]”³⁷⁴ It may be reasonably inferred that this was a reference to possible arrest by the ICC.

152. On 7 September 2013, P-0495 called P-0613 to inform her that [REDACTED] and P-0800 feared and mistrusted her because they were aware of the fact that she was recording their conversations for the ICC.³⁷⁵ This corroborates [REDACTED] statement about suspicions surrounding P-0613. P-0495 himself attempted to recruit P-0613 telling her [REDACTED] because things were good.³⁷⁶ P-0495 told her about his meeting with [REDACTED] and a governmental official whom he refused to identify.³⁷⁷ During this meeting these two individuals asked P-0495 how he knew P-0613, [REDACTED].³⁷⁸ They instructed P-0495 to locate P-0613 and convince her [REDACTED].³⁷⁹ P-0495 told P-0613 that they were afraid to speak to her directly because she was surrounded by ICC people.³⁸⁰

153. P-0613 jokingly requested a house with a swimming pool, which P-0495 responded was possible as “they” were ready to give her everything.³⁸¹ P-0495 told P-0613 that he was promised money and that she [REDACTED] and do the same thing.³⁸² When P-0613 asked how much she would be paid, P-0495 told her to meet [REDACTED] and the [REDACTED] discuss the amount.³⁸³ P-0495 offered to meet

³⁷³ P-0613, [KEN-OTP-0111-0557](#) at 0569, para. 60.

³⁷⁴ P-0613, [KEN-OTP-0111-0557](#) at 0569, para. 60.

³⁷⁵ P-0613, [KEN-OTP-0115-0216](#) at 0222, para. 28.

³⁷⁶ P-0613, [KEN-OTP-0115-0216](#) at 0222, para. 28.

³⁷⁷ P-0613, [KEN-OTP-0115-0216](#) at 0222, para. 29.

³⁷⁸ P-0613, [KEN-OTP-0115-0216](#) at 0222, para. 29.

³⁷⁹ P-0613, [KEN-OTP-0115-0216](#) at 0222, para. 29.

³⁸⁰ P-0613, [KEN-OTP-0115-0216](#) at 0222, para. 30.

³⁸¹ P-0613, [KEN-OTP-0115-0216](#) at 0222, para. 28.

³⁸² P-0613, [KEN-OTP-0115-0216](#) at 0222, para. 30.

³⁸³ P-0613, [KEN-OTP-0115-0216](#) at 0222, para. 30.

P-0613 in Uganda or to buy her an air ticket to travel to Eldoret to meet them.³⁸⁴ P-0613 told P-0495 that she would consider his offer.³⁸⁵

154. On 13 September 2013, P-0495 and P-0613 met at the [REDACTED]³⁸⁶ During their meeting, which was audio-recorded by P-0613, P-0495 attempted to persuade P-0613 to meet members of the Common Plan in [REDACTED] to directly negotiate the payment amount in exchange for her withdrawal from the ICC.³⁸⁷ P-0495 told P-0613 that they could offer her [REDACTED] [REDACTED].³⁸⁸ P-0495 explained that the amount was subject to negotiation and depended on “your situation and your worth.”³⁸⁹ He told her that P-0800 was paid 1,200,000 KSh based on his children and family situation.³⁹⁰ P-0495 explained that it would be a verbal agreement, with cash payment as the only “surety”, and there would be a meeting with a lawyer to prepare the withdrawal from the ICC process.³⁹¹ Regarding the cash payment, P-0495 told P-0613 not to “make the mistake of putting it in the bank because they will trace the bank”. Rather, she should “[j]ust put it in the mattress and keep quiet.”³⁹² He told her that, “if I get 10 million, you will not notice that I have anything, for sure.”³⁹³

155. P-0495 told P-0613 that the person giving out the money was based in Eldoret.³⁹⁴ P-0613 asked if that person was GICHERU and P-0495 confirmed that it was him.³⁹⁵

³⁸⁴ P-0613, [KEN-OTP-0115-0216](#) at 0222, para. 31.

³⁸⁵ P-0613, [KEN-OTP-0115-0216](#) at 0222-0223, paras. 31-33.

³⁸⁶ P-0613, [KEN-OTP-0115-0216](#) at 0229-0232, paras. 66, 74-80; P-0613/P-0495, [KEN-OTP-0129-0740](#); P-0495, [KEN-OTP-0130-0462-R01](#); [KEN-OTP-0130-0507-R01](#) at 0514-0536; [KEN-OTP-0130-0540-R01](#) at 0541-0561; [KEN-OTP-0130-0563-R01](#) at 0565; [KEN-OTP-0130-0566-R01](#) at 0567-0584; P-0800/P-0495, [KEN-OTP-0145-0587](#) at 0589-0591; P-0495/P-0800, [KEN-OTP-0145-0594](#) at 0598-0600; [KEN-OTP-0138-0650](#); [KEN-OTP-0138-0651](#); [KEN-OTP-0138-0652](#); [KEN-OTP-0138-0653](#); [KEN-OTP-0138-0654](#); [KEN-OTP-0138-0655](#); [KEN-OTP-0138-0656](#); [KEN-OTP-0138-0657](#); [KEN-OTP-0138-0658](#); [KEN-OTP-0138-0659](#); [KEN-OTP-0138-0660](#); [KEN-OTP-0138-0661](#); [KEN-OTP-0138-0662](#); [KEN-OTP-0138-0663](#).

³⁸⁷ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0743; P-0613, [KEN-OTP-0115-0216](#) at 0230, para. 75.

³⁸⁸ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0743; P-0613, [KEN-OTP-0115-0216](#) at 0230, para. 75.

³⁸⁹ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0743, 0752; P-0613, [KEN-OTP-0115-0216](#) at 0230-0231, para. 75.

³⁹⁰ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0743, 0752; P-0613, [KEN-OTP-0115-0216](#) at 0230-0231, para. 75.

³⁹¹ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0744; P-0613, [KEN-OTP-0115-0216](#) at 0231, para. 76.

³⁹² P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0744; P-0613, [KEN-OTP-0115-0216](#) at 0231, para. 76.

³⁹³ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0745.

³⁹⁴ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0744-0745.

³⁹⁵ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0744-0745; P-0613, [KEN-OTP-0115-0216](#) at 0231, para. 77.

P-0495 told her that GICHERU was the person to meet, since he had all the authority and would arrange everything.³⁹⁶ P-0495 explained that “they” were interested in suspending the *Ruto and Sang* case because it was taking too long and their objective was to stop it.³⁹⁷ He told P-0613 that she would be provided with government protection so that she could defect and be protected from others too.³⁹⁸ P-0495 said that GICHERU asked him if P-0613 was educated because, otherwise, they could provide her with a certificate.³⁹⁹

156. On or about 20 September 2013, [REDACTED] called P-0604 to ask him to take [REDACTED] [REDACTED] money - to [REDACTED], who P-0604 understood to be P-0613.⁴⁰⁰ When P-0604 asked about his security, [REDACTED] assured him [REDACTED].⁴⁰¹

157. About twenty minutes later, [REDACTED] called P-0604 and identified himself as [REDACTED].⁴⁰² He expressed gratitude for P-0604 [REDACTED].⁴⁰³ [REDACTED] requested that P-0604 convince P-0613 to go to the [REDACTED] where they would arrange for her transportation.⁴⁰⁴

158. The next day, on or about 21 September 2013, [REDACTED] called P-0604 again to ask if he had called P-0613, as [REDACTED] had requested.⁴⁰⁵ [REDACTED] asked P-0604 to continue his attempts to convince P-0613 [REDACTED].⁴⁰⁶

159. On 23 September 2013, P-0604 called P-0613 and informed her that [REDACTED] wanted him to locate her.⁴⁰⁷ P-0604 also told her that [REDACTED]

³⁹⁶ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0747-0748; P-0613, [KEN-OTP-0115-0216](#) at 0231-0232, paras. 76, 78.

³⁹⁷ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0755.

³⁹⁸ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0747; P-0613, [KEN-OTP-0115-0216](#) at 0232, para. 79.

³⁹⁹ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0748, 0754.

⁴⁰⁰ P-0604, [KEN-OTP-0117-1019-R01](#) at 1022, paras. 21-22; [KEN-OTP-0117-1060-R01](#) at 1060.

⁴⁰¹ P-0604, [KEN-OTP-0117-1019-R01](#) at 1022-1023, paras. 22-23.

⁴⁰² P-0604, [KEN-OTP-0117-1019-R01](#) at 1023, para. 26.

⁴⁰³ P-0604, [KEN-OTP-0117-1019-R01](#) at 1023, para. 26.

⁴⁰⁴ P-0604, [KEN-OTP-0117-1019-R01](#) at 1023, para. 26. [REDACTED], *see*: P-0604, [KEN-OTP-0117-1019-R01](#) at 1022, para. 19; [KEN-OTP-0117-1060-R01](#) at 1060.

⁴⁰⁵ P-0604, [KEN-OTP-0117-1019-R01](#) at 1023, para. 27.

⁴⁰⁶ P-0604, [KEN-OTP-0117-1019-R01](#) at 1023, para. 27.

⁴⁰⁷ P-0613, [KEN-OTP-0124-0007](#) at 0011, para. 19.

arranged a meeting between [REDACTED], P-0604, and [REDACTED] to discuss P-0613.⁴⁰⁸ [REDACTED] gave P-0604 [REDACTED] KSh [REDACTED] to send to P-0613 for her transportation back to the [REDACTED]⁴⁰⁹ P-0604 told her that “these people” (P-0613 got the impression that it was either [REDACTED] were using everyone who knew P-0613 in order to approach her.⁴¹⁰ P-0613 told P-0604 to use the money for himself.⁴¹¹

160. During his ICC testimony, however, P-0604 recanted his previous evidence about the Common Plan and of approaching P-0613 on behalf of Common Plan members. The Prosecution submits that P-0604’s new version of events given in his court testimony was a consequence of bribery and the continuing influence by the members of the Common Plan upon him.⁴¹² This has been confirmed in a subsequent recorded telephone conversation between the Prosecution and P-0604, on 22 October 2014, during which the witness reaffirmed details of the Common Plan and admitted that his courtroom testimony was false and that he was coached on what to say in court by Gicheru and another lawyer, [REDACTED].⁴¹³ P-0604 stated that he had been promised further money and a “letter of employment” after he finished testifying, but had not received this.⁴¹⁴ When P-0604 asked [REDACTED]⁴¹⁵

iii. GICHERU’s Individual Criminal Responsibility

161. The material facts common to all incidents set out in Part II. ii. above are incorporated *mutatis mutandis*.

⁴⁰⁸ P-0613, [KEN-OTP-0124-0007](#) at 0011, paras. 19-20.

⁴⁰⁹ P-0613, [KEN-OTP-0124-0007](#) at 0011, para. 20.

⁴¹⁰ P-0613, [KEN-OTP-0124-0007](#) at 0011, para. 21.

⁴¹¹ P-0613, [KEN-OTP-0124-0007](#) at 0011, para. 21.

⁴¹² In addition, from the end of 2013 onwards, P-0604 repeatedly failed to attend appointments arranged with him and the Prosecution. Unreliability in terms of attending planned meetings indicates that a person has themselves been corrupted. See [KEN-OTP-0129-0414-R01](#) at 0414; [KEN-OTP-0153-0016](#); [KEN-OTP-0153-0015](#); [KEN-OTP-0153-0052](#).

⁴¹³ P-0604, [KEN-OTP-0143-0144-R01](#) at 0148-0149.

⁴¹⁴ P-0604, [KEN-OTP-0143-0144-R01](#) at 0149.

⁴¹⁵ P-0604, [KEN-OTP-0143-0144-R01](#) at 0149.

162. GICHERU performed the following specific acts in relation to the Third Incident:

- a) In late April 2013, GICHERU offered [REDACTED] 2,000,000 KSh to obtain P-0613's [REDACTED].⁴¹⁶
- b) On or before 19 July 2013, GICHERU solicited or induced [REDACTED] to take a mobile phone to P-0613 so that she could be contacted in order to make her a financial offer.⁴¹⁷
- c) On or before 21 July 2013, GICHERU solicited or induced [REDACTED] to [REDACTED] to corruptly influence witnesses, including P-0613, and to report back to him [REDACTED].⁴¹⁸
- d) GICHERU instructed [REDACTED] to meet him on [REDACTED] to discuss P-0613. This followed a series of phone calls between [REDACTED] and P-0613,⁴¹⁹ during which [REDACTED] had tried to persuade her to come and meet with GICHERU in order to negotiate a Bribe.⁴²⁰ [REDACTED] said he would come to meet P-0613 [REDACTED] following this meeting.⁴²¹ It may be inferred in the circumstances that the purpose of the meeting with GICHERU [REDACTED] related to this activity.
- e) In September 2013, GICHERU instructed P-0495, assisted by P-0800, to contact P-0613 to corruptly influence her to withdraw as a Prosecution Witness,⁴²² which P-0495 did.⁴²³

⁴¹⁶ P-0613, [KEN-OTP-0102-0178](#) at 0180, para. 16.

⁴¹⁷ P-0613, [KEN-OTP-0111-0162](#) at 0169, paras. 37-38.

⁴¹⁸ P-0800, [KEN-OTP-0111-0140](#) at 0149, para. 54; P-0800/[REDACTED], [KEN-OTP-0132-0167](#) at 0218-0220.

⁴¹⁹ See P-0613, [KEN-OTP-0111-0162](#) at 0168 to 0172, especially at paras. 34-38.

⁴²⁰ P-0613, [KEN-OTP-0111-0162](#) at 0173, paras. 55-56; [KEN-OTP-0111-0184](#); [KEN-OTP-0111-0185](#).

⁴²¹ P-0613, [KEN-OTP-0111-0162](#) at 0173, para. 55.

⁴²² P-0613, [KEN-OTP-0115-0216](#) at 0231-0232, paras. 76-79; P-0613/0495, [KEN-OTP-0129-0740](#) at 0744-0748, 0754-0755.

⁴²³ P-0613, [KEN-OTP-0115-0216](#) at 0222-0223, paras. 28-33, and 0229-0232, paras. 66, 74-80; P-0613/0495, [KEN-OTP-0129-0740](#); P-0495, [KEN-OTP-0130-0462-R01](#); [KEN-OTP-0130-0507-R01](#) at 0514-0536; [KEN-OTP-0130-0540-R01](#) at 0541-0561; [KEN-OTP-0130-0563-R01](#) at 0565; [KEN-OTP-0130-0566-R01](#) at 0567-0584; P-0800/P-0495, [KEN-OTP-0145-0587](#) at 0589-0592; P-0495/P-0800, [KEN-OTP-0145-0594](#) at 0598-0600; [KEN-OTP-0138-0649](#); [KEN-OTP-0138-0650](#); [KEN-OTP-0138-0651](#); [KEN-OTP-0138-0652](#); [KEN-OTP-0138-0653](#); [KEN-OTP-0138-0654](#); [KEN-OTP-0138-0655](#); [KEN-OTP-0138-0656](#); [KEN-OTP-0138-0657](#); [KEN-OTP-](#)

a. Article 25(3)(a)

163. GICHERU is criminally responsible as a direct **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II. ii. and paragraphs a) to e) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of corruptly influencing P-0613, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the material elements of the offence, or was aware that this would occur in the ordinary course of the events.

164. GICHERU is thus criminally responsible for the specific acts of corrupt influence performed by the Direct Perpetrators in relation to the Third Incident set out in the narrative of the evidence above, and listed in Chapter C below.

165. The subjective elements of co-perpetration may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and paragraphs a) to e) above.

b. Article 25(3)(d)

166. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0613 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to e) above.

167. The subjective elements of common purpose liability may be inferred from the material facts described in Part II vi. above and the specific acts described in Part II. ii. and in paragraphs a) to e) above.

c. Article 25(3)(b)

168. Alternatively, GICHERU is criminally responsible for **soliciting** or **inducing** [REDACTED] to corruptly influence P-0613, as set out in paragraph c) above, which

[0138-0658](#); [KEN-OTP-0138-0659](#); [KEN-OTP-0138-0660](#); [KEN-OTP-0138-0661](#); [KEN-OTP-0138-0662](#); [KEN-OTP-0138-0663](#).

he attempted to do by offering P-0800 money to assist in locating and corrupting P-0613. GICHERU knew that his actions would, in the ordinary course of events, lead [REDACTED] to commit or attempt to commit the offence of corruptly influencing P-0613.

169. GICHERU is also criminally responsible for **soliciting** or **inducing** P-0495, assisted by P-0800, to corruptly influence P-0613, as set out in paragraph e) above, which he duly did. GICHERU knew that his actions would, in the ordinary course of events, lead P-0495 to commit the offence of corruptly influencing P-0613.

170. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II vi. above and the specific acts described in Part II. ii. and paragraphs a) to e) above.

d. Article 25(3)(c)

171. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0613, by acting as a conduit for the funds used to bribe her, which provided the means for the offence to be committed. He is further criminally responsible for **abetting** [REDACTED] and P-0495 to corruptly influence P-0613 by providing the moral support or encouragement described in paragraphs c) and e) above.

172. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to the commission or attempted commission of the offence of corruptly influencing P-0613 by [REDACTED] and/or P-0495.

173. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II vi. above and the specific acts described in Part II. ii. and in paragraphs a) to e) above.

VI. Fourth Incident: Corruptly influencing Witness P-0800

i. Introduction

174. [REDACTED] (“P-0800 [REDACTED]”) was a Prosecution Witness who was interviewed by the Prosecution and provided evidence about RUTO’s [REDACTED] relating to the PEV and SANG provided evidence about murder, persecution and forcible transfer or deportation of civilians in [REDACTED], Kenya.⁴²⁴

175. Between May 2013 and March 2014, [REDACTED] GICHERU, together with [REDACTED], corruptly influenced P-0800 by offering him a Bribe of between 1,500,000 and 2,500,000 KSh to withdraw as a Prosecution Witness and to recant his evidence. At GICHERU’s request, P-0800 subsequently approached and corruptly influenced P-0495 and assisted P-0495 to corruptly influenced P-0613.

ii. Corruptly influencing P-0800

176. [REDACTED] on 11 February 2013, P-0800’s identity was disclosed to RUTO and SANG and their Defence.

177. Since the time he was initially interviewed as an OTP witness, P-0800 was approached on several occasions, directly and indirectly, by persons allegedly acting on RUTO’s behalf to convince him to withdraw from the ICC process. This was followed by several instances of threats and intimidation directed at P-0800 and his family.⁴²⁵ As a result, P-0800 was [REDACTED].

178. On 25 April 2013, [REDACTED] called P-0800 to inform him about attempts by [REDACTED] to convince [REDACTED]⁴²⁶ – who had been interviewed as an ICC witness – to “change his mind and withdraw as an OTP witness”.⁴²⁷ [REDACTED],

⁴²⁴ P-0800, [KEN-OTP-0082-0187](#).

⁴²⁵ P-0800, [KEN-OTP-0082-0187](#) at 0216, paras. 159-161.

⁴²⁶ P-0800, [KEN-OTP-0102-0205](#) at 0208, paras. 32-33.

⁴²⁷ P-0800, [KEN-OTP-0102-0205](#) at 0208-0209, paras. 22-23, 28.

who knew that P-0800 was in contact with the OTP, told P-0800 that he feared for [REDACTED] safety. [REDACTED] believed that RUTO would kill [REDACTED] [REDACTED]⁴²⁸ P-0800 informed the Prosecution of [REDACTED] allegations.⁴²⁹ [REDACTED] also reported that [REDACTED] had disclosed to him information concerning a series of meetings between 26 and 30 April 2013 at [REDACTED] involving *inter alios* GICHERU [REDACTED] and [REDACTED].⁴³⁰ During these meetings, [REDACTED] was paid to recant his testimony.⁴³¹

179. On or about 20 May 2013, [REDACTED] informed P-0800 that [REDACTED] had accepted an offer of 1,500,000 KSh to join the “Big Man[‘s]” team and withdraw his assistance to the ICC.⁴³² P-0800 understood the “Big Man” to refer to RUTO.⁴³³ [REDACTED] asked P-0800 to accept the same offer of 1,500,000 KSh, which had already been approved by the “Big Man”, to withdraw as an ICC witness.⁴³⁴

180. On 29 and 30 May 2013, investigators met with P-0800, who provided the investigators with further details of his contacts with [REDACTED].⁴³⁵ He told investigators that the Kenyan phone number used by [REDACTED] to contact P-0800 was [REDACTED].⁴³⁶ This is in fact one of the contact numbers which [REDACTED] had previously provided to the Prosecution.⁴³⁷

181. [REDACTED]⁴³⁸ [REDACTED].⁴³⁹ It is apparent that he did not have the financial resources to pay bribes of the magnitude being discussed with P-0800,

⁴²⁸ P-0800, [KEN-OTP-0102-0205](#) at 0208, para. 23.

⁴²⁹ P-0800, [KEN-OTP-0102-0205](#) at 0208, para. 23; [KEN-OTP-0102-0217](#).

⁴³⁰ P-0800, [KEN-OTP-0102-0205](#) at 0211, para. 38 to 0212, para. 45.

⁴³¹ P-0800, [KEN-OTP-0102-0205](#) at 0212, para. 42.

⁴³² P-0800, [KEN-OTP-0103-2473](#) at 2478, para. 28.

⁴³³ P-0800, [KEN-OTP-0103-2473](#) at 2478, paras. 26-27. That [REDACTED] was indeed referring to RUTO is confirmed by the fact that RUTO had indeed recently attended a Status Conference at the Court on 14 May 2013, as alluded to by [REDACTED], as well as subsequent events described below.

⁴³⁴ P-0800, [KEN-OTP-0103-2473](#) at 2478, para. 29.

⁴³⁵ These details were captured in a statement which he subsequently signed on 30 May 2013. See P-0800, [KEN-OTP-0103-2473](#).

⁴³⁶ P-0800, [KEN-OTP-0103-2473](#) at 2477-2478, paras. 15, 18, 23-24.

⁴³⁷ See [KEN-OTP-0159-1693](#).

⁴³⁸ See for instance [KEN-OTP-0153-0497](#).

⁴³⁹ See for instance [KEN-OTP-0114-0090-R01](#) at 0096.

and therefore someone else must be providing the finances. This too is consistent with his report to P-0800 that RUTO was the person who would pay the sum offered, through GICHERU.

182. P-0800 clarified that, despite his refusal of [REDACTED] offer, the conversation had not ended [REDACTED].⁴⁴⁰ In the Prosecution's view, this presented a legitimate investigative opportunity to obtain objective confirmation of the Bribe.⁴⁴¹ The Prosecution therefore decided to request P-0800 to call [REDACTED] back and tell him that he had indeed reconsidered [REDACTED] offer and for P-0800 to record the conversation. P-0800 agreed, and on 30 May 2013 he called [REDACTED] and recorded the conversation.⁴⁴² P-0800 told [REDACTED] that he (P-0800) now wished to recant his evidence and return to [REDACTED]. [REDACTED] said that he would be coming to [REDACTED] that same evening and that he would call P-0800 later. No further discussion ensued regarding the details of [REDACTED] offer.⁴⁴³ [REDACTED] did not, however, come to [REDACTED] or call P-0800 later and no meeting ensued at that time. The details of these interactions were then recorded in [REDACTED].⁴⁴⁴

183. After several days without contact, P-0800 again called [REDACTED] at the Prosecution's request and also recorded this conversation.⁴⁴⁵ He enquired why [REDACTED] still had not come to see him and mentioned that he (P-0800) was [REDACTED].⁴⁴⁶ [REDACTED] stated that he would "conclude these things" the

⁴⁴⁰ P-0800, [KEN-OTP-0103-2473](#) at 2479, para. 30.

⁴⁴¹ The Prosecution first determined that the recording of the conversation was lawful under Ugandan law. See section 2 of the Regulation of Interception of Communications Act, 2010, which reads in full: "**Control of interception.** (1) Without prejudice to the provisions of Part VII of the Anti - Terrorism Act, Act 14 of 2002 and subject to subsection (2) of this Act, no person shall- (a) intercept any communication *in the course of its transmission* by means of a telecommunication system or radio communication system *unless-* (i) *he or she is a party to the communication; or (ii) he or she has the consent of the person to whom, or the person by whom, the communication is sent; or (iii) he or she is authorised by warrant.*" (Emphasis added) See [KEN-OTP-0159-1702](#).

⁴⁴² See P-0800/[REDACTED][KEN-OTP-0104-0917](#); [KEN-OTP-0104-0920](#).

⁴⁴³ See P-0800/[REDACTED][KEN-OTP-0104-0920](#) at 0922, lns. 27–34.

⁴⁴⁴ P-0800, [KEN-OTP-0103-2473](#) at 2480, paras. 35-37.

⁴⁴⁵ See P-0800/[REDACTED][KEN-OTP-0106-0365](#); [KEN-OTP-0106-0371](#). See also P-0800, [KEN-OTP-0106-0388](#).

⁴⁴⁶ P-0800/[REDACTED][KEN-OTP-0106-0371](#) at 0373, lns. 9-14.

next day. He added that [REDACTED] and that they ([REDACTED] and RUTO) would meet the next evening [REDACTED].⁴⁴⁷ [REDACTED]⁴⁴⁸ [REDACTED].⁴⁴⁹ [REDACTED] continued to say that “[REDACTED]” and that he would come to see P-0800 [REDACTED]⁴⁵⁰ [REDACTED] also added that [REDACTED].⁴⁵¹ P-0800 understood this to mean that witnesses who agreed to recant would be paid cash, but those who could not return home would be given land elsewhere.

184. Following a series of further phone communications, most recorded by P-0800 or by the Prosecution with P-0800’s consent,⁴⁵² [REDACTED] and P-0800, with the knowledge of the Prosecution, agreed to meet to discuss P-0800’s withdrawal as an ICC witness and the Bribe.⁴⁵³

185. On [REDACTED], [REDACTED] and P-0800 met on three consecutive occasions [REDACTED] which P-0800 recorded and the Prosecution monitored with P-0800’s consent.⁴⁵⁴ During these meetings, [REDACTED] offered P-0800 a bribe of 1,000,000 KSh and informed him that the funds to pay P-0800 and other witnesses were coming from RUTO and revealed explicitly for the first time that the payments would be channelled to them *via* GICHERU.⁴⁵⁵ [REDACTED] also told P-0800 that he was working for GICHERU, who was trying to locate ICC

⁴⁴⁷ **P-0800**/[REDACTED][KEN-OTP-0106-0371](#) at 0373, lns. 17-33.

⁴⁴⁸ See for instance: [KEN-OTP-0159-1696](#). According to this report, he was due to leave [REDACTED], which may explain why [REDACTED] did not visit P-0800 [REDACTED] as arranged.

⁴⁴⁹ See [\[REDACTED\]](#).

⁴⁵⁰ **P-0800**, [KEN-OTP-0106-0388](#) at 0392, para. 19; **P-0800**/[REDACTED], [KEN-OTP-0106-0371](#) at 0373-0374, lns. 33-39.

⁴⁵¹ **P-0800**/[REDACTED][KEN-OTP-0106-0371](#) at 0374, lns. 48-59 (underlined words were uttered in English).

⁴⁵² **P-0800**, [KEN-OTP-0106-0388](#); [KEN-OTP-0109-0002](#); [KEN-OTP-0111-0140](#) at 0143-0146; **P-0800**/[REDACTED][KEN-OTP-0103-2701](#); [KEN-OTP-0104-0917](#); [KEN-OTP-0104-0920](#); [KEN-OTP-0111-0555](#); [KEN-OTP-0106-0365](#); [KEN-OTP-0106-0371](#); [KEN-OTP-0106-0395](#); [KEN-OTP-0106-0396](#); [KEN-OTP-0107-0717](#); [KEN-OTP-0110-0367](#); [KEN-OTP-0109-0015](#); [KEN-OTP-0135-0430](#); [KEN-OTP-0109-0012](#); [KEN-OTP-0111-0152](#); [KEN-OTP-0111-0153](#); [KEN-OTP-0111-0154](#); [KEN-OTP-0111-0155](#); [KEN-OTP-0111-0156](#); [KEN-OTP-0111-0157](#); [KEN-OTP-0111-0158](#). See also [KEN-OTP-0159-0884](#) at 0915, paras. 118-119.

⁴⁵³ **P-0800**, [KEN-OTP-0111-0140](#) at 0146-0147, paras. 33-35.

⁴⁵⁴ **P-0800**, [KEN-OTP-0111-0140](#) at 0147-0150; **P-0800**/[REDACTED][KEN-OTP-0132-0167](#); [KEN-OTP-0131-0431](#); [KEN-OTP-0111-0159](#).

⁴⁵⁵ **P-0800**, [KEN-OTP-0111-0140](#) at 0147 and 0148, paras. 39 and 45.

witnesses within Kenya and in nearby countries⁴⁵⁶ and that [REDACTED] were also working for RUTO trying to locate witnesses.⁴⁵⁷

186. [REDACTED] further told P-0800 that [REDACTED] had been paid 500,000 KSh initially and that he had subsequently received 100,000 KSh⁴⁵⁸ from RUTO.⁴⁵⁹ [REDACTED] also told P-0800 that another ICC witness [REDACTED] – referring to P-0516 – received money, although [REDACTED] did not specify the amount or the purpose of such payment.⁴⁶⁰

187. [REDACTED] further instructed P-0800 [REDACTED].⁴⁶¹ [REDACTED] promised to send P-0800 [REDACTED] KSh [REDACTED] for his transportation back to [REDACTED], together with other ICC witnesses he managed to locate, where they would receive payment.⁴⁶² [REDACTED] told P-0800 that he had to return to [REDACTED] the following day to report to GICHERU about his activities in [REDACTED].⁴⁶³

188. However, notwithstanding P-0800's cooperation with the Prosecution's investigation, he subsequently accepted a Bribe to withdraw as a Prosecution Witness.

189. In early August 2013, shortly before the commencement of the *Ruto and Sang* trial, P-0800 broke off all contact with the VWU and the Prosecution and

⁴⁵⁶ P-0800, [KEN-OTP-0111-0140](#) at 0148, para. 45; P-0800/[REDACTED][KEN-OTP-0132-0167](#) at 0180. See also P-0800, [KEN-OTP-0109-0002](#) at 0007, para. 27.

⁴⁵⁷ P-0800, [KEN-OTP-0111-0140](#) at 0148, para. 45; P-0800/[REDACTED][KEN-OTP-0132-0167](#) at 0203.

⁴⁵⁸ P-0800, [KEN-OTP-0111-0140](#) at 0148, para. 42; P-0800/[REDACTED][KEN-OTP-0132-0167](#) at 0177-0178.

⁴⁵⁹ It is clear from the context that RUTO was the source of the funds. See P-0800, [KEN-OTP-0111-0140](#) at 0148, paras. 39-42.

⁴⁶⁰ P-0800, [KEN-OTP-0111-0140](#) at 0148, para. 42. However, the transcript is somewhat cryptic on this point, compare P-0800/[REDACTED], [KEN-OTP-0132-0167](#) at 0177-0178, lns. 293-299.

⁴⁶¹ P-0800, [KEN-OTP-0111-0140](#) at 0148-0149, paras. 43, 54; P-0800/[REDACTED][KEN-OTP-0132-0167](#) at 0206.

⁴⁶² P-0800, [KEN-OTP-0111-0140](#) at 0149, para. 54.

⁴⁶³ P-0800, [KEN-OTP-0111-0140](#) at 0149, para. 54.

[REDACTED].⁴⁶⁴ Accordingly a summons was subsequently issued by Trial Chamber V(a) for his appearance before the ICC.⁴⁶⁵

190. Subsequently during August 2013, [REDACTED] told P-0613 that P-0800 had met “those people” in [REDACTED], where he was offered 2,000,000 KSh but that P-0800 was still negotiating the amount.⁴⁶⁶ P-0613 stated that P-0800 called her in late August 2013 to say that he had accepted 2,500,000 KSh to recant his testimony.⁴⁶⁷ Similarly, P-0495 stated that P-0800 told him that he (P-0800) had received 1,000,000 KSh from the 2,000,000 KSh that he was offered in exchange for his withdrawal as an ICC witness.⁴⁶⁸ P-0495 further stated that P-0800 told him that he had put the payment he had received for withdrawing from the ICC into the bank and he was planning to use it to buy land, although he expressed doubts as to whether P-0800 was being truthful about having received so much money.⁴⁶⁹

191. Following the abduction of P-0397, the OTP assessed that P-0800 might be at risk and contacted him on [REDACTED] to advise him of the possible risk and offer assistance. P-0800 indicated he wanted OTP assistance and arrangements were made to meet him.⁴⁷⁰

192. P-0800 was thereafter re-interviewed on [REDACTED]. He explained that his withdrawal as an ICC witness had been due to [REDACTED]⁴⁷¹ and because he was offered 2,000,000 KSh and the opportunity to [REDACTED].⁴⁷² However, while P-0800 was promised money by GICHERU, he states that he never received it.⁴⁷³ He explained that the only money GICHERU gave him was 50,000 KSh for his transportation costs to go to [REDACTED] to persuade P-0495 to meet with

⁴⁶⁴ ICC-01/09-01/11-1120-Red2-Corr, paras. 30-32.

⁴⁶⁵ ICC-01/09-01/11-1274-Corr2.

⁴⁶⁶ **P-0613**, [KEN-OTP-0111-0557](#) at 0568-0569, para. 60.

⁴⁶⁷ **P-0613**, [KEN-OTP-0118-0137](#) at 0141, para. 16.

⁴⁶⁸ **P-0495**, [KEN-OTP-0130-0540-R01](#) at 0542 and 0558, lns. 57-58 and 638-660.

⁴⁶⁹ **P-0495**, [KEN-OTP-0130-0540-R01](#) at 0543, lns. 86-87.

⁴⁷⁰ **P-0800**, [KEN-OTP-0138-0092](#) at 0094, lns. 60-63.

⁴⁷¹ **P-0800**, [KEN-OTP-0135-0113](#) at 0114, lns. 15-16.

⁴⁷² **P-0800**, [KEN-OTP-0135-0103](#) at 0105.

⁴⁷³ **P-0800**, [KEN-OTP-0135-0200](#) at 0208, lns. 269-273; [KEN-OTP-0135-0103](#) at 0105.

GICHERU,⁴⁷⁴ and 10,000 KSh to meet with [REDACTED] Advocates in Nairobi⁴⁷⁵ to sign an affidavit [REDACTED],⁴⁷⁶ [REDACTED]⁴⁷⁷ P-0800 explained that he also signed an affidavit to withdraw as an ICC witness at the office of [REDACTED]⁴⁷⁸ and that [REDACTED] had been instructed by GICHERU to prepare that affidavit.⁴⁷⁹

193. P-0800 further informed the Prosecution that [REDACTED] had called him and offered to meet with GICHERU to discuss [REDACTED].⁴⁸⁰ GICHERU had asked [REDACTED] to contact P-0800 and organise a meeting.⁴⁸¹ P-0800 met with GICHERU [REDACTED] in a hotel restaurant in [REDACTED]⁴⁸² and during the meeting GICHERU assured him that his safety and security would be ensured if he withdrew as an ICC witness.⁴⁸³ GICHERU also offered P-0800 between 1,500,000 to 2,000,000 KSh to withdraw as a witness. GICHERU told P-0800 that he was protecting RUTO because they were good friends and they went to the same school.⁴⁸⁴ Subsequently, at GICHERU's request, P-0800 approached P-0495⁴⁸⁵ and took him to meet GICHERU in [REDACTED], where GICHERU offered P-0495 a bribe of 1,500,000 KSh to withdraw as a Prosecution Witness.⁴⁸⁶ P-0800 further

⁴⁷⁴ P-0800, [KEN-OTP-0135-0113](#) at 0121-0122; [KEN-OTP-0135-0200](#) at 0212.

⁴⁷⁵ P-0800, [KEN-OTP-0135-0103](#) at 0107; [KEN-OTP-0135-0200](#) at 0212.

⁴⁷⁶ P-0800, [KEN-OTP-0145-0554](#); [KEN-OTP-0135-0103](#) at 0107; [KEN-OTP-0135-0155](#) at 0156-0158. See [KEN-OTP-0116-0261](#).

⁴⁷⁷ [REDACTED].

⁴⁷⁸ P-0800, [KEN-OTP-0135-0155](#) at 0170. See also: [KEN-OTP-0145-0560](#); [KEN-OTP-0145-0562](#) and [KEN-OTP-0145-0566](#).

⁴⁷⁹ P-0800, [KEN-OTP-0135-0155](#) at 0171.

⁴⁸⁰ P-0800, [KEN-OTP-0135-0103](#) at 0105; [KEN-OTP-0135-0113](#) at 0114-0115, 0117. See also [KEN-OTP-0135-0103](#) at 0108-0109.

⁴⁸¹ P-0800, [KEN-OTP-0135-0103](#) at 0105.

⁴⁸² P-0800, [KEN-OTP-0135-0113](#) at 0117.

⁴⁸³ P-0800, [KEN-OTP-0135-0113](#) at 0118.

⁴⁸⁴ P-0800, [KEN-OTP-0135-0113](#) at 0119. See Kapsabet High School alumni magazine for 2015, [KEN-OTP-0159-1647](#). At 0667, both RUTO and GICHERU are listed as "prominent old boys". At 1657, a brief biography of RUTO reveals that he graduated as part of the class of 1986, the year when GICHERU turned 14. See also web version at https://issuu.com/misoijonathan/docs/the_alumni_khs_at_90.

⁴⁸⁵ P-0495, [KEN-OTP-0130-0507-R01](#) at 0515-0518, 0527-0528.

⁴⁸⁶ P-0800, [KEN-OTP-0135-0113](#) at 0121 to 0134. *Contra* P-0495, [KEN-OTP-0130-0507-R01](#) at 0527.

informed the Prosecution that [REDACTED] had told him that GICHERU was in direct contact with RUTO and worked on the latter's behalf.⁴⁸⁷

194. Between 17 and 26 November 2014, P-0800 testified voluntarily before TC V(a).⁴⁸⁸ During his ICC testimony, P-0800 reaffirmed his previous evidence about the Common Plan under oath, including the involvement of GICHERU, [REDACTED].⁴⁸⁹

iii. GICHERU's Individual Criminal Responsibility

195. The material facts common to all incidents set out in Part II. above are incorporated *mutatis mutandis*.

196. GICHERU performed the following specific acts in relation to the Fourth Incident:

- a) During May 2013, at the latest, GICHERU solicited or induced [REDACTED] to contact P-0800 and corruptly influence him to withdraw as a Prosecution Witness,⁴⁹⁰ [REDACTED].⁴⁹¹
- b) In July 2013, GICHERU solicited or induced [REDACTED]⁴⁹² to contact P-0800 and persuade him to meet with GICHERU in order that GICHERU could corruptly influence P-0800,⁴⁹³ [REDACTED].⁴⁹⁴

⁴⁸⁷ P-0800, [KEN-OTP-0135-0200](#) at 0207.

⁴⁸⁸ P-0800, ICC-01/09-01/20-T-026-CONF-ENG.

⁴⁸⁹ P-0800, ICC-01/09-01/20-T-027-CONF-ENG.

⁴⁹⁰ P-0800, [KEN-OTP-0111-0140](#) at 0148, para. 45.

⁴⁹¹ P-0800, [KEN-OTP-0103-2701](#); [KEN-OTP-0103-2473](#) at 2478, paras. 28-29; [KEN-OTP-0106-0388](#); [KEN-OTP-0109-0002](#); [KEN-OTP-0111-0140](#) at 0143-0147, 0148, paras. 39-45; P-0800/[REDACTED][KEN-OTP-0104-0917](#); [KEN-OTP-0104-0920](#); [KEN-OTP-0111-0555](#); [KEN-OTP-0106-0365](#); [KEN-OTP-0106-0371](#); [KEN-OTP-0106-0395](#); [KEN-OTP-0106-0396](#); [KEN-OTP-0107-0717](#); [KEN-OTP-0110-0367](#); [KEN-OTP-0109-0015](#); [KEN-OTP-0135-0430](#); [KEN-OTP-0109-0012](#); [KEN-OTP-0111-0152](#); [KEN-OTP-0111-0153](#); [KEN-OTP-0111-0154](#); [KEN-OTP-0111-0155](#); [KEN-OTP-0111-0156](#); [KEN-OTP-0111-0157](#); [KEN-OTP-0111-0158](#); [KEN-OTP-0111-0159](#); [KEN-OTP-0132-0167](#); [KEN-OTP-0131-0431](#).

⁴⁹² P-0800, [KEN-OTP-0135-0113](#) at 0118; *Contra* [KEN-OTP-0135-0054](#) at 0068-0069 and [KEN-OTP-0135-0103](#) at 0108 and 0109.

⁴⁹³ P-0800, [KEN-OTP-0135-0113](#) at 0120, Ins. 238-243.

⁴⁹⁴ P-0800, [KEN-OTP-0135-0113](#) at 0116, ln. 85.

- c) In August 2013, GICHERU met P-0800 [REDACTED] at a hotel in [REDACTED]⁴⁹⁵ GICHERU offered P-0800 a Bribe of 2,000,000 KSh in order to withdraw as a Prosecution Witness,⁴⁹⁶ to sign an affidavit to that effect,⁴⁹⁷ and to help to locate other Prosecution Witnesses and persuade them to withdraw.⁴⁹⁸
- d) In particular, GICHERU solicited or induced P-0800 to locate P-0495 and bring him to meet GICHERU so that he could offer a Bribe to persuade P-0495 to withdraw as a Prosecution Witness,⁴⁹⁹ which P-0800 did.⁵⁰⁰ GICHERU was the only person with the authority to discuss the amount of the Bribes.⁵⁰¹ GICHERU gave P-0800 50,000 KSh for expenses in order to travel to find P-0495 [REDACTED] for this purpose.⁵⁰²
- e) In or about [REDACTED],⁵⁰³ GICHERU [REDACTED] arranged for P-0800 to sign an affidavit prepared, under GICHERU's instructions, by [REDACTED] withdrawing as a Prosecution Witness.⁵⁰⁴

a. *Article 25(3)(a)*

197. GICHERU is criminally responsible as a **direct perpetrator** as a result of the specific acts described in paragraphs a) to e) above. At all material times, GICHERU intended that his actions would corruptly influence P-0800.

198. GICHERU is also criminally responsible as a **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II. ii. and paragraphs a) to e) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of

⁴⁹⁵ P-0800, [KEN-OTP-0135-0113](#) at 0117.

⁴⁹⁶ P-0800, [KEN-OTP-0135-0113](#) at 0118.

⁴⁹⁷ P-0800, [KEN-OTP-0135-0113](#) at 0122, Ins. 327-335.

⁴⁹⁸ P-0800, [KEN-OTP-0135-0113](#) at 0121. *See also* P-0800, [KEN-OTP-0135-0113](#) at 0135.

⁴⁹⁹ P-0800, [KEN-OTP-0135-0113](#) at 0121, 0126.

⁵⁰⁰ P-0800, [KEN-OTP-0135-0113](#) at 0134.

⁵⁰¹ P-0800, [KEN-OTP-0135-0113](#) at 0126.

⁵⁰² P-0800, [KEN-OTP-0135-0113](#) at 0121 to 0122.

⁵⁰³ P-0800, [KEN-OTP-0135-0179](#) at 0197 to 0198.

⁵⁰⁴ P-0800, [KEN-OTP-0135-0155](#) at 0070 to 0171.

corruptly influencing P-0800, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the material elements of the offence, or was aware that this would occur in the ordinary course of the events.

199. GICHERU is thus criminally responsible for the specific acts of corrupt influence performed by the Direct Perpetrators in relation to the Fourth Incident set out in the narrative of the evidence above, and listed in Chapter C below .

200. The subjective elements of co-perpetration may be inferred from the material facts described in Part II. vi. above and the specific acts set out in Part II. ii. and paragraphs a) to e) above.

b. Article 25(3)(d)

201. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0800 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to e) above.

202. The subjective elements of common purpose liability may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and paragraphs a) to e) above.

c. Article 25(3)(b)

203. Alternatively, GICHERU is criminally responsible for **soliciting** or **inducing** [REDACTED] to corruptly influence P-0800, which he duly did, as set out in paragraph a) above. GICHERU knew that his actions would, in the ordinary course of events, lead to [REDACTED] committing the offence of corruptly influencing P-0800.

204. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to e) above.

d. *Article 25(3)(c)*

205. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0800, by acting as a conduit for the funds used to bribe him, which provided the means for the offence to be committed, and performing the actions further described in paragraphs b) to e) above. He is further criminally responsible for **abetting** [REDACTED] to corruptly influence P-0800 by providing the moral support or encouragement described in paragraph a) above.

206. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to [REDACTED] committing the offence of corruptly influencing P-0800.

207. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and paragraphs a) to e) above.

VII. Fifth Incident: Corruptly influencing Witness P-0495

i. Introduction

208. [REDACTED] (“P-0495”) [REDACTED] and a Prosecution Witness who was interviewed by the Prosecution and provided key evidence linking RUTO and his criminal network to the PEV crimes committed in Turbo, Kenya.⁵⁰⁵

209. During August to September 2013, in Kenya, GICHERU [REDACTED] assisted by P-0800, corruptly influenced P-0495 by offering him a Bribe of between 1,500,000 and 2,500,000 KSh and employment to withdraw as a Prosecution Witness and to corruptly influence other Prosecution Witnesses.⁵⁰⁶ At GICHERU’s request, P-0495

⁵⁰⁵ **P-0495**, [REDACTED]

⁵⁰⁶ **P-0495**, [KEN-OTP-0130-0540-R01](#) at 0541-0561; [KEN-OTP-0130-0507-R01](#) at 0514-0536; [KEN-OTP-0130-0585-R01](#) at 0589-0590; [KEN-OTP-0130-0563-R01](#) at 0565; [KEN-OTP-0130-0566-R01](#) at 0567-0584; [KEN-OTP-0130-0462-R01](#); **P-0800**, [KEN-OTP-0135-0113](#) at 0121, 0131, 0134-0135; **P-0613**, [KEN-OTP-0115-0216](#) at 0222, 0229-0232, paras. 29-31, 66, 74-80; **P-0613/P-0495**, [KEN-OTP-0129-0740](#) at 0744, 0746, 0752, 0755; **P-0800/P-0495**, [KEN-OTP-0145-0587](#) at 0589-0592; **P-0495/P-0800**, [KEN-OTP-0145-0594](#) at 0596.

subsequently approached P-0613 in order to convince her to meet GICHERU.⁵⁰⁷ Pursuant to instructions of GICHERU in September 2014, he gave false testimony in front of Trial Chamber V(a) when he was summonsed to testify.⁵⁰⁸

ii. **Corruptly influencing P-0495**

210. On 13 March 2013, P-0495's identity was disclosed to RUTO and SANG and their Defence. [REDACTED].

211. In August 2013, GICHERU met P-0800 [REDACTED] at a hotel [REDACTED].⁵⁰⁹ GICHERU asked P-0800 to help to locate other Prosecution Witnesses and persuade them to withdraw.⁵¹⁰ In particular, GICHERU solicited or induced P-0800 to locate P-0495 and bring him to meet GICHERU so that GICHERU could corruptly influence P-0495 to withdraw as a Prosecution Witness, which P-0800 subsequently did.⁵¹¹ P-0800 later told the Prosecution that he was promised money by GICHERU to do this, but he never received it.⁵¹² However, GICHERU gave P-0800 50,000 KSh for expenses to travel [REDACTED] to find P-0495 and corruptly influence him.⁵¹³

212. Later in August 2013, P-0800 approached P-0495 and informed him that P-0495 could receive a payment of up to 2,500,000 KSh from the members of the Common Plan in exchange for his withdrawal as an ICC witness.⁵¹⁴ P-0800 told P-0495 that he must withdraw completely from the ICC, which involved writing a statement to the press, before he could receive the cash payment.⁵¹⁵ P-0800 explained that, once he decides to withdraw, P-0495 would be taken to GICHERU to discuss the

⁵⁰⁷ See above. Third Incident.

⁵⁰⁸ P-0800, [KEN-OTP-0144-0272-R01](#) at 0283-0285.

⁵⁰⁹ P-0800, [KEN-OTP-0135-0113](#) at 0117.

⁵¹⁰ P-0800, [KEN-OTP-0135-0113](#) at 0118.

⁵¹¹ P-0800, [KEN-OTP-0135-0113](#) at 0121-0122; P-0495, [KEN-OTP-0130-0540-R01](#) at 0541-0542.

⁵¹² P-0800, [KEN-OTP-0135-0200](#) at 0208.

⁵¹³ P-0800, [KEN-OTP-0135-0113](#) at 0121; [KEN-OTP-0135-0103](#) at 0107.

⁵¹⁴ P-0495, [KEN-OTP-0130-0540-R01](#) at 0542; [KEN-OTP-0130-0507-R01](#) at 0515-0516, 0531.

⁵¹⁵ P-0495, [KEN-OTP-0130-0540-R01](#) at 0542, 0557.

offer.⁵¹⁶ He explained to P-0495 that GICHERU was responsible for the bribery offers and for paying witnesses.⁵¹⁷

213. P-0495 agreed to P-0800's offer of 2,500,000 KSh in exchange for his withdrawal from the ICC process.⁵¹⁸ P-0800 told P-0495 that he would be paid for locating other witnesses and bringing them "to the table".⁵¹⁹ P-0800 told P-0495 that, since he had "joined them", he should assist them by approaching P-0613 whom he (P-0495) spoke to often.⁵²⁰ P-0495 agreed to travel [REDACTED] to meet P-0613.⁵²¹

214. P-0800 informed P-0495 that GICHERU had instructed him to locate P-0495 and take him to GICHERU.⁵²² Subsequently, P-0800, [REDACTED], and GICHERU met with P-0495 at [REDACTED], to discuss his withdrawal as a Prosecution Witness.⁵²³ [REDACTED] GICHERU and P-0495 discussed the terms of their agreement.⁵²⁴ After the meeting, P-0495 told P-0800 that GICHERU had offered him 1,500,000 KSh to withdraw as an ICC witness.⁵²⁵ In addition, GICHERU instructed P-0495 to find P-0613.⁵²⁶ While at [REDACTED] GICHERU told P-0800 that P-0495 had agreed to find P-0613 and that GICHERU would facilitate P-0495's travel to [REDACTED] where P-0613 was residing at the time.⁵²⁷

215. Subsequently, on 13 September 2013, a controlled face-to-face meeting took place that was arranged by P-0495 to convince P-0613 to withdraw.⁵²⁸ During this

⁵¹⁶ P-0495, [KEN-OTP-0130-0507-R01](#) at 0518, 0527-0528.

⁵¹⁷ P-0495, [KEN-OTP-0130-0507-R01](#) at 0527-0528.

⁵¹⁸ P-0495, [KEN-OTP-0130-0540-R01](#) at 0543.

⁵¹⁹ P-0495, [KEN-OTP-0130-0507-R01](#) at 0534.

⁵²⁰ P-0495, [KEN-OTP-0130-0540-R01](#) at 0543.

⁵²¹ P-0495, [KEN-OTP-0130-0540-R01](#) at 0543.

⁵²² P-0800, [KEN-OTP-0135-0113](#) at 0121.

⁵²³ P-0800, [KEN-OTP-0135-0113](#) at 0131. *Contra* P-0495, [KEN-OTP-0130-0540-R01](#) at 0544.

⁵²⁴ P-0800, [KEN-OTP-0135-0113](#) at 0134.

⁵²⁵ P-0800, [KEN-OTP-0135-0113](#) at 0134.

⁵²⁶ P-0800, [KEN-OTP-0135-0113](#) at 0132, 0134. *See also* P-0613, [KEN-OTP-0115-0216](#) at 0222, paras. 29-31.

⁵²⁷ P-0800, [KEN-OTP-0135-0113](#) at 0135.

⁵²⁸ P-0613, [KEN-OTP-0115-0216](#) at 0229-0232, paras. 66, 74-80; P-0613/P-0495, [KEN-OTP-0129-0740](#); P-0495, [KEN-OTP-0130-0462-R01](#); [KEN-OTP-0130-0507-R01](#) at 0514-0536; [KEN-OTP-0130-0540-R01](#) at 0541-0561; [KEN-OTP-0130-0563-R01](#) at 0565; [KEN-OTP-0130-0566-R01](#) at 0567-0584; [KEN-OTP-0138-0650](#); [KEN-OTP-0138-0651](#); [KEN-OTP-0138-0652](#); [KEN-OTP-0138-0653](#); [KEN-OTP-0138-0654](#); [KEN-OTP-0138-0655](#); [KEN-OTP-0138-0656](#); [KEN-OTP-0138-0657](#); [KEN-OTP-0138-0658](#); [KEN-OTP-0138-0659](#); [KEN-OTP-0138-0660](#); [KEN-OTP-0138-0661](#); [KEN-OTP-0138-0662](#); [KEN-OTP-0138-0663](#).

meeting, which was recorded by P-0613, P-0495 told P-0613 that he had already accepted the offer of 2,500,000 KSh and encouraged her to do the same.⁵²⁹ P-0495 explained that he requested 2,500,000 KSh because that would [REDACTED].⁵³⁰ Additionally, P-0495 stated that he was promised a job offer anywhere even if he did not have the right qualifications.⁵³¹ P-0495 told P-0613 that after accepting the offer of 2,500,000, he agreed to go to convince P-0613 to withdraw as a witness in order to show that he “had really surrendered”.⁵³² In addition, P-0495 told P-0613 that he was offered private security to ensure his safety and peace of mind.⁵³³

216. Immediately following his meeting with P-0613, P-0495 was intercepted and interviewed under caution by OTP investigators; P-0495 admitted to accepting a bribery offer in exchange for his withdrawal from the ICC.⁵³⁴ P-0495 stated that he understood that he would receive his payment of 2,500,000 KSh upon delivering P-0613 to meet with P-0800 and GICHERU in order to discuss her withdrawal from the ICC.⁵³⁵ However, P-0495 denied having met GICHERU or having received any money from him to date.⁵³⁶ P-0495 explained that although he was scheduled to meet P-0800 and GICHERU on 14 September 2013, he had not received the money from P-0800 for his transportation costs nor the bribery payment.⁵³⁷ The Prosecution considers that his denial of meeting GICHERU was false.

217. Also on 13 September 2013, at the request of investigators, P-0495 agreed to make a recorded telephone call to P-0800 in the presence of the OTP investigators.⁵³⁸ P-0800 asked P-0495 for a report of his meeting with P-0613 and told him that

⁵²⁹ P-0613, [KEN-OTP-0115-0216](#) at 0222, para. 30; P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0744, 0752; P-0495, [KEN-OTP-0130-0540-R01](#) at 0542.

⁵³⁰ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0744 and 0755.

⁵³¹ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0744.

⁵³² P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0744, lns 81-88.

⁵³³ P-0613/P-0495, [KEN-OTP-0129-0740](#) at 0746.

⁵³⁴ P-0495, [KEN-OTP-0130-0540-R01](#) at 0549-0550.

⁵³⁵ P-0495, [KEN-OTP-0130-0540-R01](#) at 0550.

⁵³⁶ P-0495, [KEN-OTP-0130-0540-R01](#) at 0544; [REDACTED]

⁵³⁷ P-0495, [KEN-OTP-0130-0540-R01](#) at 0550, 0544.

⁵³⁸ P-0495, [KEN-OTP-0130-0540-R01](#) at 0541, 0554.

“those people” were waiting for him to go there the next day.⁵³⁹ P-0800 told P-0495 that “those people” stated that if P-0495 was concerned about the payment, then he should not be because he would be paid the amount promised.⁵⁴⁰ P-0800 told him that there was a lot of pressure “from above”, which P-0495 interpreted as referring to pressure from GICHERU.⁵⁴¹

218. As a witness in the *Ruto and Sang* case, P-0495 was expected to provide crucial evidence linking RUTO and his criminal network to the crimes committed in [REDACTED], Kenya, as stated in his prior statement to the Prosecution.⁵⁴² He was summoned but during his court testimony between 17 to 22 September 2014, P-0495 provided completely different testimony and repudiated the content of his prior statement by stating that it had been fabricated by the Prosecution itself [REDACTED].⁵⁴³ P-0495 alleged that [REDACTED] briefed him on what to say prior to his meeting with the Prosecution.⁵⁴⁴ P-0495 claimed that he did not know any lawyer by the name GICHERU and that he never received any money for withdrawing as a witness.⁵⁴⁵

219. P-0800 confirmed that P-0495’s recantation resulted from him getting bribed by the members of the Common Plan. In a phone call between 5 and 16 September 2014, P-0495 told P-0800 not to be concerned about him testifying under summons by video link, because “10 lawyers” led by GICHERU would tell him what to say.⁵⁴⁶ The plan was to testify in such a way as to “blame everything” on [REDACTED] and to claim that [REDACTED] had instructed witnesses what to say to OTP investigators.⁵⁴⁷

⁵³⁹ P-0495, [KEN-OTP-0130-0566-R01](#) at 0567-0568; [KEN-OTP-0130-0585-R01](#) at 0589-0590; P-0800/P-0495, [KEN-OTP-0145-0587](#) at 0589-0592.

⁵⁴⁰ P-0800/P-0495, [KEN-OTP-0145-0587](#) at 0592.

⁵⁴¹ P-0495, [KEN-OTP-0130-0585-R01](#) at 0590; P-0800/P-0495, [KEN-OTP-0145-0594](#) at 0596.

⁵⁴² P-0495, [KEN-OTP-0084-0236](#) at 0240-0244, paras. 27-30, 34-35, 38-40, 44-49.

⁵⁴³ P-0495, ICC-01/09-01/20-T-016-CONF-Red-ENG, p. 13; [REDACTED].

⁵⁴⁴ P-0495, [REDACTED]

⁵⁴⁵ P-0495, [REDACTED]

⁵⁴⁶ P-0800, [KEN-OTP-0144-0272-R01](#) at 0283-0284.

⁵⁴⁷ P-0800, [KEN-OTP-0144-0272-R01](#) at 0285.

iii. Analysis of P-0495's evidence

220. As discussed above, on 13 September 2013, P-0495 was caught in the act of corruptly influencing P-0613 and was intercepted by Prosecution investigators immediately after the fact and interviewed under caution.⁵⁴⁸ P-0495 admitted to having been offered a Bribe of 2,500,000 KSh by P-0800, to be paid by GICHERU, in order to withdraw as a Prosecution Witness and to in turn corruptly influence P-0613.⁵⁴⁹ However, he denied actually having met with GICHERU.⁵⁵⁰ This denial is contradicted by P-0800, who confirmed that he himself took P-0495 to meet GICHERU at [REDACTED] [REDACTED].⁵⁵¹

221. P-0495's subsequent behaviour is also indicative of the fact that he was not fully cooperating with the Prosecution. After being interviewed, he fled his hotel room overnight [REDACTED].⁵⁵² He had to be summoned to appear before the Trial Chamber, and in his testimony recanted his previous evidence and was impeached.⁵⁵³ According to a subsequent phone call between P-0495 and P-0800, he was coached by GICHERU and other lawyers as to what to say in his court testimony.⁵⁵⁴

222. The Prosecution submits that P-0495 only admitted that which he was forced to acknowledge, given the circumstances, and sought to minimise his involvement in the bribery scheme-particularly his interaction with GICHERU. The Prosecution will seek to rely on P-0495's evidence only when and to the extent that it is corroborated by other reliable evidence, or when other circumstances reduce the risk of relying on it.

⁵⁴⁸ **P-0495**, [KEN-OTP-0130-0478-R01](#); [KEN-OTP-0130-0507-R01](#); [KEN-OTP-0130-0540-R01](#); [KEN-OTP-0130-0563-R01](#); [KEN-OTP-0130-0566-R01](#).

⁵⁴⁹ **P-0495**, [KEN-OTP-0130-0507-R01](#) at 0515-0518, 0527-0528, 0531-0534.

⁵⁵⁰ **P-0495**, [KEN-OTP-0130-0540-R01](#) at 0544.

⁵⁵¹ **P-0800**, [KEN-OTP-0135-0113](#) at 0131, 0132, 0134-0135.

⁵⁵² [KEN-OTP-0159-0884](#) at 0925, paras. 164-165.

⁵⁵³ **P-0495**, ICC-01/09-01/20-T-016-CONF-Red-ENG, p. 13 [REDACTED].

⁵⁵⁴ **P-0800**, [KEN-OTP-0144-0272-R01](#) at 0283-0285.

223. One such circumstance is the admission against interest⁵⁵⁵ that he accepted a Bribe of 2,500,000 KSh, to be paid by GICHERU, to withdraw as a Prosecution Witness and to corruptly influence P-0613. This fact is corroborated by the reliable and direct evidence from P-0800, P-0613 and the contents of his recorded meeting with her, as detailed above. It is also consistent with P-0495's subsequent behaviour.

iv. GICHERU's Individual Criminal Responsibility

224. The material facts common to all incidents set out in Part II. above are incorporated *mutatis mutandis*.

225. GICHERU performed the following specific acts in relation to the Fifth Incident:

- a) In August 2013, GICHERU met P-0800 [REDACTED] [REDACTED] at [REDACTED] [REDACTED]⁵⁵⁶ GICHERU requested P-0800 to help to locate other Prosecution Witnesses and persuade them to withdraw.⁵⁵⁷ In particular, GICHERU solicited or induced P-0800 to locate P-0495 and bring him to meet GICHERU so that he could corruptly influence P-0495 to withdraw as a Prosecution Witness, which P-0800 did.⁵⁵⁸ GICHERU gave P-0800 50,000 KSh for expenses to travel to [REDACTED] to find P-0495 for this purpose.⁵⁵⁹
- b) Approximately three days later in August 2013, GICHERU met with P-0495, together [REDACTED] and P-0800, at [REDACTED] [REDACTED]. GICHERU offered P-0495 a bribe of between 1,500,000 KSh and 2,500,000 KSh in order to withdraw as a Prosecution Witness and, in turn, to help locate other Prosecution Witnesses and persuade them to withdraw.⁵⁶⁰ In particular, GICHERU instructed P-0459 to locate P-0613 and bring her to meet GICHERU

⁵⁵⁵ See analysis of P-0516's evidence above.

⁵⁵⁶ P-0800, [KEN-OTP-0135-0113](#) at 0117.

⁵⁵⁷ P-0800, [KEN-OTP-0135-0113](#) at 0118.

⁵⁵⁸ P-0800, [KEN-OTP-0135-0113](#) at 0121.

⁵⁵⁹ P-0800, [KEN-OTP-0135-0113](#) at 0121.

⁵⁶⁰ P-0800, [KEN-OTP-0135-0113](#) at 0118-0119, 0131-0132, 0134-0135; P-0613, [KEN-OTP-0115-0216](#) at 0222, para. 30; *Contra* P-0495, [KEN-OTP-0130-0540-R01](#) at 0544.

so that he (GICHERU) could persuade P-0613 to withdraw as a Prosecution Witness.⁵⁶¹

- c) Between 5 and 16 September, before P-0495 was summoned to testify in front of the ICC via video link, GICHERU induced P-0495 to repudiate the content of his prior statement to the Prosecution and to state that it had been fabricated by the Prosecution and [REDACTED].⁵⁶² Further, GICHERU told P-0495 to claim in court that [REDACTED] had instructed witnesses as what to say to OTP investigators.⁵⁶³ P-0495's testimony before the Court between 16 and 22 September 2014 followed GICHERU's script.⁵⁶⁴ GICHERU and other lawyers coached P-0495 prior to his testimony before Trial Chamber V(a).⁵⁶⁵

a. *Article 25(3)(a)*

226. GICHERU is criminally responsible as a **direct perpetrator** as a result of the in paragraph b) to c) above. At all material times, GICHERU intended that his actions would corruptly influence P-0495.

227. Alternatively, GICHERU is criminally responsible as a direct **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II. ii. and paragraphs a) to c) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of corruptly influencing P-0495, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the material elements of the offence or was aware that this would occur in the ordinary course of the events.

⁵⁶¹ **P-0800**, [KEN-OTP-0135-0113](#) at 0132, 0134. *See also* **P-0613**, [KEN-OTP-0115-0216](#) at 0222, paras. 29-31.

⁵⁶² **P-0800**, [KEN-OTP-0144-0272-R01](#) at 0283-0284.

⁵⁶³ **P-0800**, [KEN-OTP-0144-0272-R01](#) at 0285.

⁵⁶⁴ **P-0495**, ICC-01/09-01/20-T-016-CONF-Red-ENG, p. 59-66;[REDACTED].

⁵⁶⁵ **P-0800**, [KEN-OTP-0144-0272-R01](#) at 0283-0285.

228. GICHERU is thus criminally responsible for the specific acts of corrupt influence performed by the Direct Perpetrators in relation to the Fifth Incident set out in the narrative of the evidence above, and listed in Chapter C below.

229. The subjective elements of co-perpetration may be inferred from the material facts described in Part II. vi. above and the specific acts set out in Part II. ii. and paragraphs a) to c) above.

b. Article 25(3)(d)

230. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0495 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to c) above.

231. The subjective elements of common purpose liability may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.

c. Article 25(3)(b)

232. Alternatively, GICHERU is criminally responsible for **soliciting** or **inducing** P-0800 to corruptly influence P-0495, which he duly did, as set out in paragraph a) above. GICHERU knew that his actions would, in the ordinary course of events, lead to P-0800 committing the offence of corruptly influencing P-0495.

233. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.

d. Article 25(3)(c)

234. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0495, by acting as a conduit for the funds used to bribe him, which provided the means for the offence to be committed, and

performing the actions further described in paragraphs b) to c) above. He is further criminally responsible for **abetting** P-0800 to corruptly influence P-0495 by providing the moral support or encouragement described in paragraph a) above.

235. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to P-0800 committing the offence of corruptly influencing P-0495.

236. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.

VIII. Sixth Incident: Corruptly influencing Witness P-0536

i. Introduction

237. [REDACTED] ("P-0536") was [REDACTED] [REDACTED] Prosecution Witness in the *Ruto and Sang* case who was interviewed by the Prosecution and provided evidence about the attack [REDACTED] [REDACTED] by Kalenjin youths, during which Kikuyu residents [REDACTED] [REDACTED]. [REDACTED].⁵⁶⁶ P-0536 testified before Trial Chamber V(a) between 17 September 2013 and 4 October 2013.⁵⁶⁷

238. During the period May to September 2013, at [REDACTED], GICHERU corruptly influenced P-0536, through [REDACTED] by offering her a Bribe of between 1,400,000 and 1,600,000 KSh to withdraw as a Prosecution Witness.⁵⁶⁸

ii. Corruptly influencing P-0536

239. P-0536's identity was disclosed to the Defence on 13 March 2013. [REDACTED].

⁵⁶⁶ [KEN-OTP-0090-0640-R01](#).

⁵⁶⁷ ICC-01/09-01/20-T-007-CONF-ENG to ICC-01/09-01/20-T-012-CONF-ENG.

⁵⁶⁸ **P-0536**, [KEN-OTP-0111-0201-R01](#) at 0206, paras. 22, 26.

240. On 24 May 2013, P-0536 – [REDACTED] – confirmed that [REDACTED] had called her on 21 [REDACTED] to say that he would come to visit her.⁵⁶⁹ Investigators provided P-0536 with a recording device and requested her to record any future conversations with [REDACTED].⁵⁷⁰
241. On 19 July 2013, P-0536 received a series of telephone calls from [REDACTED],⁵⁷¹ from an unconfirmed location, which she recorded.⁵⁷² [REDACTED] again expressed his wish to meet with P-0536 and enquired about her location. She replied (falsely)⁵⁷³ that she was in [REDACTED].⁵⁷⁴ [REDACTED] mentioned, *inter alia*, that he was travelling to [REDACTED] on [REDACTED] July 2013 to see some other people, but that he would come to see her in [REDACTED] thereafter.⁵⁷⁵ This is confirmed by the fact that [REDACTED] subsequently met with P-0800 in [REDACTED] on [REDACTED] July 2013.⁵⁷⁶
242. [REDACTED] did not want to discuss the purpose of the meeting over the phone, but P-0536 understood that he intended to offer her a bribe to withdraw as a Prosecution Witness. [REDACTED]⁵⁷⁷ [REDACTED].⁵⁷⁸ When P-0536 expressed concern that she might be “left out”, [REDACTED] said that that was the reason why he wanted to meet her and would tell her what to do.⁵⁷⁹ Finally, [REDACTED] told P-0536 that “[REDACTED]”.⁵⁸⁰

⁵⁶⁹ P-0536, [KEN-OTP-0103-2693-R01](#) at 2696, paras. 23-25.

⁵⁷⁰ [KEN-OTP-0159-0884](#) at 0896, para. 43.

⁵⁷¹ P-0536, [KEN-OTP-0111-0188-R01](#) at 0191-0193, paras. 17-24.

⁵⁷² P-0536, [KEN-OTP-0111-0188-R01](#) at 0191-0193, paras. 19, 20 and 24; [KEN-OTP-0153-0044](#); P-0536/[REDACTED][KEN-OTP-0114-0198](#).

⁵⁷³ As she was instructed to do, [REDACTED] by ICC investigators. [KEN-OTP-0159-0884](#) at 0898, para. 52.

⁵⁷⁴ P-0536, [KEN-OTP-0111-0188-R01](#) at 0192, para. 18; P-0536/[REDACTED], [KEN-OTP-0114-0198](#) at 0200.

⁵⁷⁵ P-0536, [KEN-OTP-0111-0188-R01](#) at 0193, paras. 23-24; P-0536/[REDACTED], [KEN-OTP-0114-0198](#) at 0204.

⁵⁷⁶ P-0800, [KEN-OTP-0111-0140](#) at 0147, paras. 35-39.

⁵⁷⁷ P-0536/[REDACTED][KEN-OTP-0114-0198](#) at 0204-0205.

⁵⁷⁸ P-0536, [KEN-OTP-0111-0188-R01](#) at 0193, para. 23.

⁵⁷⁹ P-0536, [KEN-OTP-0111-0188-R01](#) at 0193, para. 23; P-0536/[REDACTED][KEN-OTP-0114-0198](#) at 0205.

⁵⁸⁰ P-0536, [KEN-OTP-0111-0188-R01](#) at 0193, para. 24; *See also* P-0536/[REDACTED][KEN-OTP-0114-0198](#) at 0204-0205, 0208.

243. On [REDACTED], [REDACTED] told P-0800 that he (P-0800) and [REDACTED] were the biggest concern and that each of them would therefore receive over 1,000,000 KSh to withdraw.⁵⁸¹ Although [REDACTED] did not mention P-0536 by name, he stated that he had been in touch with her and [REDACTED].⁵⁸² This corroborates P-0536's version of the telephone call she received from [REDACTED] on [REDACTED] July 2013.⁵⁸³ [REDACTED] also correctly described her [REDACTED]⁵⁸⁴ [REDACTED] further requested P-0800 [REDACTED] to locate an ICC witness,⁵⁸⁵ which was clearly a reference to P-0536.

244. On [REDACTED] July 2013, [REDACTED] called P-0536 three times. These telephone calls were all recorded.⁵⁸⁶ During the third conversation, [REDACTED] explicitly promised P-0536 that, if she [REDACTED] agreed to withdraw from the case, they would be relocated and each would receive a payment of 700,000 KSh, making a total of 1,400,000 KSh.⁵⁸⁷ [REDACTED] told P-0536 that he ([REDACTED]) could speak to "these people" to even increase the amount to 800,000 KSh each, making a total of 1,600,000 KSh.⁵⁸⁸ [REDACTED] assured P-0536 that she would be paid in cash.⁵⁸⁹ [REDACTED] promised P-0536 that she would be relocated to an area where she could start her life afresh.⁵⁹⁰

245. In August 2013, P-0536 recorded various telephone calls and messages between her and [REDACTED].⁵⁹¹ On 9 August 2013, [REDACTED] told P-0536 that he had

⁵⁸¹ P-0800, [KEN-OTP-0111-0140](#) at 0147, paras. 39-41.

⁵⁸² P-0800, [KEN-OTP-0111-0140](#) at 0147, para. 40.

⁵⁸³ P-0536, [KEN-OTP-0111-0188-R01](#) at 0192, para. 18.

⁵⁸⁴ P-0800, [KEN-OTP-0111-0140](#) at 0147, para. 40; P-0800/[REDACTED][KEN-OTP-0132-0167](#) at 0186, 0204, 0208, 0215.

⁵⁸⁵ P-0800, [KEN-OTP-0111-0140](#) at 0149, para. 55; P-0800/[REDACTED][KEN-OTP-0132-0167](#) at 0215. *See also* P-0536, [KEN-OTP-0118-0011-R01](#) at 0017, para. 28 and at 0025, para. 74; [KEN-OTP-0111-0188-R01](#) at 0192, para. 18.

⁵⁸⁶ P-0536, [KEN-OTP-0111-0201-R01](#) at 0204-0207, paras. 15-27; P-0536/[REDACTED][KEN-OTP-0114-0198](#) at 0206-0216.

⁵⁸⁷ P-0536, [KEN-OTP-0111-0201-R01](#) at 0206, para. 22; P-0536/[REDACTED], [KEN-OTP-0114-0198](#) at 0213, 0215.

⁵⁸⁸ P-0536, [KEN-OTP-0111-0201-R01](#) at 0206, para. 26; P-0536/[REDACTED][KEN-OTP-0114-0198](#) at 0215.

⁵⁸⁹ P-0536, [KEN-OTP-0111-0201-R01](#) at 0206, para. 22; P-0536/[REDACTED], [KEN-OTP-0114-0198](#) at 0212.

⁵⁹⁰ P-0536, [KEN-OTP-0111-0201-R01](#) at 0206, para. 21; P-0536/[REDACTED], [KEN-OTP-0114-0198](#) at 0212.

⁵⁹¹ *See*, P-0536, [KEN-OTP-0118-0011-R01](#) at 0014-0022, paras. 14-55.

spoken to the people who would give her a new life and that he would come to see her [REDACTED] with 1,600,000 KSh.⁵⁹² When P-0536 asked if RUTO agreed to their return, [REDACTED] responded that “[REDACTED]”.⁵⁹³

246. On [REDACTED] August 2013, [REDACTED] explained to P-0536 that the ICC could not prosecute her for withdrawing as a witness and P-0536 reminded [REDACTED].⁵⁹⁴ [REDACTED] then told P-0536 that [REDACTED] and had no issues.⁵⁹⁵ [REDACTED] told P-0536 that GICHERU, the lawyer, could be trusted and [REDACTED].⁵⁹⁶ When P-0536 asked [REDACTED] why the lawyer could not come to take her, [REDACTED] explained that “they” did not want him (GICHERU) to be exposed on this issue and that he had been working and settling all these issues.⁵⁹⁷ [REDACTED] told P-0536 that they would conclude this issue by cash payment.⁵⁹⁸ [REDACTED] explained to P-0536 that “they” were serious and that they would not pay her in [REDACTED] but rather somewhere else.⁵⁹⁹

247. [REDACTED] made various attempts to come to meet P-0536 at [REDACTED],⁶⁰⁰ for the purposes of [REDACTED] to meet with GICHERU.⁶⁰¹ [REDACTED].⁶⁰² However, [REDACTED] was either unable or unwilling to travel to the [REDACTED] to meet P-0536 and on [REDACTED] September 2013, investigators instructed her to break off contact with [REDACTED].⁶⁰³

⁵⁹² P-0536, [KEN-OTP-0118-0011-R01](#) at 0016 to 0017, para. 28; P-0536/[REDACTED], [KEN-OTP-0114-0244](#) at 0246.

⁵⁹³ P-0536/[REDACTED], [KEN-OTP-0114-0244](#) at 0247, lns. 47-49; Compare P-0536, [KEN-OTP-0118-0011-R01](#) at 0017, para. 28.

⁵⁹⁴ P-0536, [KEN-OTP-0118-0011-R01](#) at 0020, para. 47; P-0536/[REDACTED][KEN-OTP-0114-0296](#) at 0298.

⁵⁹⁵ P-0536/[REDACTED], [KEN-OTP-0114-0296](#) at 0298.

⁵⁹⁶ P-0536, [KEN-OTP-0118-0011-R01](#) at 0020, para. 48; P-0536/[REDACTED][KEN-OTP-0114-0296](#) at 0299. See also P-0536/[REDACTED], [KEN-OTP-0114-0244](#) at 0247[REDACTED]

⁵⁹⁷ P-0536, [KEN-OTP-0118-0011-R01](#) at 0020, para. 48; P-0536/[REDACTED], [KEN-OTP-0114-0296](#) at 0299.

⁵⁹⁸ P-0536, [KEN-OTP-0118-0011-R01](#) at 0021, para. 48; P-0536/[REDACTED][KEN-OTP-0114-0296](#) at 0299[REDACTED]

⁵⁹⁹ P-0536, [KEN-OTP-0118-0011-R01](#) at 0021, para. 49; P-0536/[REDACTED][KEN-OTP-0114-0296](#) at 0300.

⁶⁰⁰ [REDACTED], P-0536, [KEN-OTP-0118-0011-R01](#) at 0019, paras. 37-38.

⁶⁰¹ P-0536, [KEN-OTP-0118-0011-R01](#) at 0015, para. 16 *et seq.*

⁶⁰² [KEN-OTP-0159-0884](#) at 0900, paras. 58-59.

⁶⁰³ P-0536, [KEN-OTP-0118-0011-R01](#) at 0032-0033, paras. 111, 118.

iii. GICHERU's Individual Criminal Responsibility

248. The material facts common to all incidents set out in Part II. above are incorporated *mutatis mutandis*.

249. GICHERU performed the following specific acts in relation to the Fifth Incident:

- a) During or before May 2013, GICHERU induced or solicited [REDACTED] to locate and contact witness P-0536 and corruptly influence her to withdraw as a Prosecution Witness, which [REDACTED] did.⁶⁰⁴
- b) GICHERU coordinated with [REDACTED] in between his calls with P-0536 in regard to P-0536's Bribe and other arrangements necessary to bring her back [REDACTED].⁶⁰⁵

a. Article 25(3)(a)

250. GICHERU is criminally responsible as a **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II. ii. and paragraphs a) to b) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of corruptly influencing P-0536, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the material elements of the offence or was aware that this would occur in the ordinary course of the events.

251. GICHERU is thus criminally responsible for the specific acts of corrupt influence performed by the Direct Perpetrators in relation to the Sixth Incident set out in the narrative of the evidence above, and listed in Chapter C below.

252. The subjective elements of co-perpetration may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to b) above.

⁶⁰⁴ P-0536, [KEN-OTP-0118-0011-R01](#) at 0019-0020, 0024, paras. 41, 48, 65; *See also* P-0536, [KEN-OTP-0111-0201-R01](#) at 0206-0207, paras. 22-26; P-0536, [KEN-OTP-0118-0011-R01](#) at 0020, para. 48.

⁶⁰⁵ P-0536, [KEN-OTP-0118-0011-R01](#) at 0019-0020, 0024, paras. 41, 48, 65; P-0536/[REDACTED][KEN-OTP-0114-0291](#) at 0294; [KEN-OTP-0114-0296](#) at 0299, 0301.

b. Article 25(3)(d)

253. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0536 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to b) above.

254. The subjective elements of common purpose liability may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and paragraphs a) to b) above.

c. Article 25(3)(b)

255. Alternatively, GICHERU is criminally responsible for **soliciting** or **inducing** [REDACTED] to corruptly influence P-0536, as set out in paragraph a) above, as a result of which, during the period [REDACTED] May to September 2013, [REDACTED] phoned P-0536 several times while P-0536 was in [REDACTED], and corruptly influenced her.⁶⁰⁶ GICHERU knew that his actions would, in the ordinary course of events, lead to [REDACTED] committing the offence of corruptly influencing P-0536.

256. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and paragraphs a) to b) above.

d. Article 25(3)(c)

257. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0536, by acting as a conduit for the funds used to bribe him, which provided the means for the offence to be committed. He is further criminally responsible for **abetting** [REDACTED] to corruptly influence

⁶⁰⁶ P-0536, [KEN-OTP-0111-0201-R01](#) at 0206-0207, paras. 22-26; as described further in section ii. above.

P-0536 by providing the moral support or encouragement described in paragraphs a) to b) above.

258. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to [REDACTED] committing the offence of corruptly influencing P-0536.

259. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to b) above.

IX. Seventh Incident: Corruptly influencing Witness P-0341

i. Introduction

260. [REDACTED] (“P-0341”[REDACTED]) was a potential witness in the *Ruto and Sang* case, [REDACTED]⁶⁰⁷ [REDACTED] in the context of the Kenya situation.

261. P-0341 is a Kalenjin from [REDACTED] Kenya. [REDACTED] during the 2007 general elections and, in the violence that ensued, [REDACTED].⁶⁰⁸ After the PEV, P-0341 filed a victim application form with the Court, [REDACTED].⁶⁰⁹ [REDACTED] P-0341 continued to publically condemn the violence on multiple occasions during ICC victims meetings, [REDACTED].⁶¹⁰ Prosecution investigators conducted a short screening meeting on [REDACTED];⁶¹¹ but did not subsequently interview him.⁶¹² Although P-0341 was not a Prosecution trial witness, he was regarded by GICHERU as a person who knew information relevant to the proceedings before the Court, and in particular information detrimental to RUTO

⁶⁰⁷ “[REDACTED]”.

⁶⁰⁸ **P-0341**, [KEN-OTP-0147-1590-R01](#).

⁶⁰⁹ [REDACTED].

⁶¹⁰ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0260, paras. 24-25; [KEN-OTP-0150-0285-R01](#).

⁶¹¹ **P-0341**, [KEN-OTP-0147-1590-R01](#).

⁶¹² **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0269, para. 76.

in the *Ruto and Sang* case. P-0341 was therefore a potential witness in the *Ruto and Sang* case for the purpose of article 70 proceedings.⁶¹³

262. On or about just prior to 24 April 2013 to mid-April 2014, in Eldoret, Kenya, GICHERU, [REDACTED] and others corruptly influenced P-0341 by (i) promising him 5,000,000 KSh, a car, a farm, a plot of land in town, [REDACTED], (ii) paying him bribes of between at least 1,000,000 KSh and 2,000,000 KSh, and (iii) intimidating him to refuse to become a Prosecution Witness if asked to do so, to cease to attend ICC victims meetings in the same case, to sign pre-prepared or dictated affidavits recording his withdrawal from the ICC process, and to locate, contact and/or corruptly influencing other Prosecution Witnesses.

ii. Corruptly influencing P-0341

263. From 2011 onwards, P-0341 was approached at several PEV victims meetings by different individuals who promised RUTO's financial assistance if he withdrew from the ICC process.⁶¹⁴

264. [REDACTED]⁶¹⁵ [REDACTED].⁶¹⁶ On [REDACTED] April 2013, [REDACTED] brought P-0341 to GICHERU [REDACTED].⁶¹⁷ [REDACTED].⁶¹⁸ At [REDACTED], P-0341 recognised [REDACTED] from previous [REDACTED].⁶¹⁹ [REDACTED], P-0516, and P-0397 [REDACTED], were also present on the premises.⁶²⁰

265. GICHERU, [REDACTED] spoke to P-0341 alone and enquired whether he was a an ICC witness. P-0341 responded that he was just a victim.⁶²¹ They asked him not to go to any more meetings relating to the ICC and advised him he should not

⁶¹³ *Bemba et al.* AJ, para. 721.

⁶¹⁴ P-0341, [KEN-OTP-0150-0255-R01](#) at 0260-262, paras. 26-33.

⁶¹⁵ “[REDACTED] [REDACTED], see P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 70; and at 0278, paras. 126-127. See also: P-0800, [KEN-OTP-0102-0205](#) at 0210, para. 34.

⁶¹⁶ P-0341, [KEN-OTP-0150-0255-R01](#) at 0262, para. 36; [KEN-OTP-0149-0119-R01](#) at 0122, para. 16.

⁶¹⁷ P-0341, [KEN-OTP-0150-0255-R01](#) at 0263, paras. 37-41; [KEN-OTP-0150-0286-R01](#); [KEN-OTP-0150-0287-R01](#).

⁶¹⁸ P-0341, [KEN-OTP-0150-0255-R01](#) at 0266, para. 57.

⁶¹⁹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0263, para. 42.

⁶²⁰ P-0341, [KEN-OTP-0150-0255-R01](#) at 0263, para. 43.

⁶²¹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0264, para. 47.

become a witness if asked to by the ICC, as they were worried that there were a lot of new ICC witnesses coming forward.⁶²² They said that [REDACTED].⁶²³ [REDACTED] [REDACTED], which P-0341 took as a threat.⁶²⁴

266. In exchange for not attending ICC meetings, [REDACTED] promised that P-0341 would be given a car, another farm, a plot of land in town, and that [REDACTED]. He also promised P-0341 that he would be paid 5,000,000 KSh.⁶²⁵

267. GICHERU, [REDACTED] [REDACTED] asked P-0341 to approach perceived ICC witnesses in Kenya and abroad to convince them to withdraw from the case,⁶²⁶ citing notably [REDACTED].⁶²⁷ [REDACTED] requested that P-0341 bring P-0274, [REDACTED], to GICHERU [REDACTED] to sign an affidavit of withdrawal from the *Ruto and Sang* case.⁶²⁸ Fearful, P-0341 accepted but did not intend to deliver.⁶²⁹ GICHERU told P-0341 that he had already sent other people to track the individuals he had asked P-0341 to locate.⁶³⁰ P-0341 understood this as a veiled threat, signalling to P-0341 that GICHERU would be able to find him anywhere if he turned and chose to be an ICC witness.⁶³¹

268. P-0341 agreed not to attend any more ICC meetings, but continued to do so.⁶³² [REDACTED] RUTO was pleased with the agreement reached with P-0341.⁶³³ [REDACTED] gave P-0341 10,000 KSh for his transport and lunch, and told him

⁶²² P-0341, [KEN-OTP-0150-0255-R01](#) at 0264, para. 47.

⁶²³ P-0341, [KEN-OTP-0150-0255-R01](#) at 0264, para. 46.

⁶²⁴ P-0341, [KEN-OTP-0150-0255-R01](#) at 0264, para. 48.

⁶²⁵ P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, para. 49.

⁶²⁶ P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, para. 50.

⁶²⁷ [REDACTED]; P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, para. 52.

⁶²⁸ P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, para. 51.

⁶²⁹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, para. 51. *Contra* P-0274, [KEN-OTP-0159-0986-R01](#) at 0995, paras. 55-58.

⁶³⁰ P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, para. 52.

⁶³¹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, para. 52.

⁶³² P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, para. 53.

⁶³³ P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, para. 53.

that GICHERU would [REDACTED].⁶³⁴ GICHERU scheduled another appointment with P-0341, and entered his number in his phone.⁶³⁵

269. Between [REDACTED] April and [REDACTED] May 2013 [REDACTED] [REDACTED], GICHERU requested P-0341 to come [REDACTED] to receive money.⁶³⁶ However, GICHERU never paid him, explaining each day that there was no money left to give because many people were being bought to withdraw from the ICC proceedings.⁶³⁷ GICHERU repeatedly reminded P-0341 about the conditions of their agreement: to refrain from any involvement in the RUTO case, to not attend ICC meetings, to refuse to be on a witness list or give information about RUTO.⁶³⁸ GICHERU also asked P-0341 to bring him perceived ICC witnesses, notably [REDACTED], promising “something special” in exchange,⁶³⁹ and again requested that P-0341 bring P-0274 [REDACTED].⁶⁴⁰ By asking P-0341 to come [REDACTED] regularly, GICHERU was monitoring him, and kept doing so throughout the relevant period.⁶⁴¹

270. On 2 May 2013 [REDACTED], GICHERU paid P-0341 500,000 KSh and told him to return later to sign the affidavit.⁶⁴² GICHERU instructed him not to deposit the money in the bank because “the ICC” could inspect those records.⁶⁴³ Despite this, however, P-0341 opened a bank account and deposited 300,000 KSh.⁶⁴⁴ P-0341 spent the remaining 200,000 KSh.⁶⁴⁵

⁶³⁴ P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, para. 53.

⁶³⁵ P-0341, [KEN-OTP-0150-0255-R01](#) at 0265-0266, paras. 54-56; [KEN-OTP-0150-0288-R01](#).

⁶³⁶ P-0341, [KEN-OTP-0150-0255-R01](#) at 0266, para. 58.

⁶³⁷ P-0341, [KEN-OTP-0150-0255-R01](#) at 0266, para. 58.

⁶³⁸ P-0341, [KEN-OTP-0150-0255-R01](#) at 0266, para. 59.

⁶³⁹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0266, para. 59.

⁶⁴⁰ P-0341, [KEN-OTP-0150-0255-R01](#) at 0266, para. 60.

⁶⁴¹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0266, para. 58, at 0273, para. 98.

⁶⁴² P-0341, [KEN-OTP-0150-0255-R01](#) at 0267, paras. 62-63; [KEN-OTP-0149-0119-R01](#) at 0122, para. 16.

⁶⁴³ P-0341, [KEN-OTP-0150-0255-R01](#) at 0267, para. 63.

⁶⁴⁴ P-0341, [KEN-OTP-0150-0255-R01](#) at 0267, para. 64; [KEN-OTP-0149-0119-R01](#) at 0122, paras. 15-16, [KEN-OTP-0149-0125](#); [KEN-OTP-0149-0126](#) at 0126; [KEN-OTP-0150-0283-R01](#) at 0283; [KEN-OTP-0159-1386](#) at 1386.

⁶⁴⁵ P-0341, [KEN-OTP-0150-0255-R01](#) at 0267, para. 65.

271. Between 2 and 7 May 2013, P-0341 contacted an “ICC Victim Representative” and informed them that he had received money in exchange for not attending ICC meetings.⁶⁴⁶
272. One day [REDACTED] May 2013, GICHERU summoned P-0341 in to this office. GICHERU called an advocate by the name of [REDACTED] affidavit.⁶⁴⁷ GICHERU asked P-0341 to sign the document and told him it was a withdrawal from the entire ICC process.⁶⁴⁸ [REDACTED]. GICHERU said that P-0341 should not [REDACTED] any longer.⁶⁴⁹ P-0341 did not receive a copy of the document he signed.⁶⁵⁰ GICHERU paid for P-0341’s transportation.⁶⁵¹ GICHERU also requested that P-0341 announce his withdrawal to the media, as [REDACTED] had done before him.⁶⁵² P-0341 stalled, trying to gain time. GICHERU told him RUTO was asking why this had not occurred yet.⁶⁵³
273. Around the same time, GICHERU told P-0341 he had asked P-0274 to bring him P-0356,⁶⁵⁴ in exchange for 5,000,000 KSh.⁶⁵⁵
274. On [REDACTED] May 2013, GICHERU summoned P-0341 to his office and paid him 500,000 KSh.⁶⁵⁶ P-0341 deposited 300,000 KSh into his bank account and kept 200,000 KSh for [REDACTED].⁶⁵⁷
275. One day between 9 May and 19 July 2013, GICHERU summoned P-0341 [REDACTED] and asked him to draft a handwritten affidavit.⁶⁵⁸ He said that RUTO

⁶⁴⁶ P-0341, [KEN-OTP-0150-0255-R01](#) at 0258, para. 15, at 0267-268, paras. 66-67.

⁶⁴⁷ P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 68.

⁶⁴⁸ P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 68.

⁶⁴⁹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 68.

⁶⁵⁰ P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 68.

⁶⁵¹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 68.

⁶⁵² P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 70.

⁶⁵³ P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 70.

⁶⁵⁴ Not to be confused with Prosecution Witness P-0536.

⁶⁵⁵ P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 69. *See also* P-0274, [KEN-OTP-0159-0986-R01](#) at 0997, paras. 66-67 stating that [REDACTED].

⁶⁵⁶ P-0341, [KEN-OTP-0150-0255-R01](#) at 0269, paras. 71-72.

⁶⁵⁷ P-0341, [KEN-OTP-0150-0255-R01](#) at 0269, para. 73; [KEN-OTP-0149-0126](#) at 0126; [KEN-OTP-0150-0283-R01](#) at 0283, [KEN-OTP-0159-1386](#) at 1386.

⁶⁵⁸ P-0341, [KEN-OTP-0150-0255-R01](#) at 0269, para. 74.

had requested this second document.⁶⁵⁹ GICHERU instructed P-0341 to write that he had no evidence against RUTO and that he was withdrawing from the ICC proceedings.⁶⁶⁰ P-0341 complied because he was afraid for his family if he refused.⁶⁶¹ He never received a copy.⁶⁶² A couple of days later, GICHERU informed P-0341 that RUTO was pleased when he received the affidavit, and had instructed GICHERU to pay P-0341 more money.⁶⁶³

276. On [REDACTED] July 2013 [REDACTED], GICHERU gave 100,000 KSh to P-0341, who deposited half of it on his personal bank account and kept the rest.⁶⁶⁴

277. That month, P-0341 [REDACTED].⁶⁶⁵ [REDACTED].⁶⁶⁶

278. In August or September 2013, GICHERU asked P-0341 to meet him [REDACTED] [REDACTED].⁶⁶⁷ He was accompanied by [REDACTED]⁶⁶⁸ [REDACTED]. [REDACTED].⁶⁶⁹ [REDACTED].⁶⁷⁰ [REDACTED].⁶⁷¹ GICHERU said RUTO was very angry because he had given [REDACTED].⁶⁷²

279. GICHERU asked P-0341 to be a witness in support of RUTO.⁶⁷³ P-0341 argued that it would mean giving contradictory information to [REDACTED].⁶⁷⁴ [REDACTED]⁶⁷⁵ [REDACTED].⁶⁷⁶ P-0341 felt very threatened during the entire

⁶⁵⁹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0269, para. 74.

⁶⁶⁰ P-0341, [KEN-OTP-0150-0255-R01](#) at 0269, para. 75.

⁶⁶¹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0269, paras. 75-76.

⁶⁶² P-0341, [KEN-OTP-0150-0255-R01](#) at 0269, para. 75.

⁶⁶³ P-0341, [KEN-OTP-0150-0255-R01](#) at 0269-270, paras. 75, 77.

⁶⁶⁴ P-0341, [KEN-OTP-0150-0255-R01](#) at 0270, paras. 78-79; [KEN-OTP-0149-0126](#); [KEN-OTP-0150-0283-R01](#), [KEN-OTP-0159-1386](#) at 1386.

⁶⁶⁵ P-0341, [KEN-OTP-0150-0255-R01](#) at 0270, para. 80.

⁶⁶⁶ P-0341, [KEN-OTP-0150-0255-R01](#) at 0270, paras. 80-82.

⁶⁶⁷ P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 83.

⁶⁶⁸ P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 83.

⁶⁶⁹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 84.

⁶⁷⁰ P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 85.

⁶⁷¹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 86.

⁶⁷² P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 86.

⁶⁷³ P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 87.

⁶⁷⁴ P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 87.

⁶⁷⁵ P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 88.

⁶⁷⁶ P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 88.

meeting.⁶⁷⁷ GICHERU paid P-0341 between 100,000 KSh and 200,000 KSh and told him [REDACTED].⁶⁷⁸

280. Sometime later, P-0341 participated in a PEV victims meeting [REDACTED].⁶⁷⁹

A month later, GICHERU summoned P-0341 [REDACTED], furious. He asked him not to interact with white people as GICHERU said they “spy” for the ICC.⁶⁸⁰ GICHERU gave him some money.⁶⁸¹

281. Around October 2013, [REDACTED]. He was very reluctant to meet her because of GICHERU’s previous threats.⁶⁸² [REDACTED].⁶⁸³ He told [REDACTED] he had been paid in exchange for withdrawing from the ICC process.⁶⁸⁴ [REDACTED].⁶⁸⁵ A week later, GICHERU summoned P-0341.⁶⁸⁶ GICHERU accused him of meeting ICC Prosecution individuals.⁶⁸⁷ P-0341 responded that he only met [REDACTED].⁶⁸⁸ GICHERU appeared sceptical but gave P-0341 150,000 KSh.⁶⁸⁹

282. Subsequently, GICHERU paid P-0341, several times more.⁶⁹⁰ Nervous about being monitored by Prosecution investigators, GICHERU made the payments through [REDACTED].⁶⁹¹

283. On [REDACTED] October 2013, GICHERU directed P-0341 to meet [REDACTED] to receive money.⁶⁹² [REDACTED] gave him 350,000 KSh. P-0341 deposited 300,000 KSh and kept the rest.⁶⁹³ [REDACTED] also received money

⁶⁷⁷ P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 88.

⁶⁷⁸ P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 88.

⁶⁷⁹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0272, para. 89.

⁶⁸⁰ P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 90.

⁶⁸¹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 90.

⁶⁸² P-0341, [KEN-OTP-0150-0255-R01](#) at 0272, para. 92.

⁶⁸³ P-0341, [KEN-OTP-0150-0255-R01](#) at 0272, para. 92.

⁶⁸⁴ P-0341, [KEN-OTP-0150-0255-R01](#) at 0272-0273, paras. 92-93; [KEN-OTP-0150-0289-R01](#).

⁶⁸⁵ P-0341, [KEN-OTP-0150-0255-R01](#) at 0272, para. 92.

⁶⁸⁶ P-0341, [KEN-OTP-0150-0255-R01](#) at 0273, paras. 94-95.

⁶⁸⁷ P-0341, [KEN-OTP-0150-0255-R01](#) at 0273, para. 96.

⁶⁸⁸ P-0341, [KEN-OTP-0150-0255-R01](#) at 0273, para. 96.

⁶⁸⁹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0273, para. 96.

⁶⁹⁰ P-0341, [KEN-OTP-0150-0255-R01](#) at 0273, para. 97.

⁶⁹¹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0273, para. 97.

⁶⁹² P-0341, [KEN-OTP-0150-0255-R01](#) at 0274, para. 99.

⁶⁹³ P-0341, [KEN-OTP-0150-0255-R01](#) at 0274, para. 101; [KEN-OTP-0149-0126](#); [KEN-OTP-0150-0283-R01](#); [KEN-OTP-0159-1386](#) at 1387.

[REDACTED] [REDACTED] that day.⁶⁹⁴ After that, GICHERU gave P-0341 between 20,000 KSh and 100,000 KSh [REDACTED] on several occasions,⁶⁹⁵ always enquiring whether P-0341 had been in contact with ICC representatives.⁶⁹⁶

284. On [REDACTED] April 2014, GICHERU directed P-0341 to go to the [REDACTED], where [REDACTED] paid him 100,000 KSh.⁶⁹⁷ P-0341 deposited 50,000 KSh into his bank account and kept the rest.⁶⁹⁸

285. After depositing the money, P-0341 departed to meet with OTP investigators in [REDACTED]. [REDACTED].⁶⁹⁹ [REDACTED].⁷⁰⁰ [REDACTED].⁷⁰¹

286. [REDACTED] [REDACTED].⁷⁰² [REDACTED]⁷⁰³ [REDACTED].⁷⁰⁴ [REDACTED] [REDACTED].⁷⁰⁵ [REDACTED].⁷⁰⁶ [REDACTED] threatened P-0341, saying [REDACTED].⁷⁰⁷ [REDACTED].⁷⁰⁸ [REDACTED].⁷⁰⁹ After this, GICHERU attempted to meet with P-0341 [REDACTED] but P-0341 never went back there.⁷¹⁰

287. In total, GICHERU paid P-0341 approximately 2,000,000 KSh, but in any event, no less than the 1,000,000 KSh that he deposited into his bank account.⁷¹¹

⁶⁹⁴ P-0341, [KEN-OTP-0150-0255-R01](#) at 0274, paras. 99-100.

⁶⁹⁵ P-0341, [KEN-OTP-0150-0255-R01](#) at 0274, paras. 102-104.

⁶⁹⁶ P-0341, [KEN-OTP-0150-0255-R01](#) at 0274, para. 103.

⁶⁹⁷ P-0341, [KEN-OTP-0150-0255-R01](#) at 0275, para. 106.

⁶⁹⁸ P-0341, [KEN-OTP-0150-0255-R01](#) at 0275, para. 108; [KEN-OTP-0150-0283-R01](#); [KEN-OTP-0159-1386](#) at 1390.

⁶⁹⁹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0275, paras. 109-110, at 0259, paras. 15-17.

⁷⁰⁰ P-0341, [KEN-OTP-0150-0255-R01](#) at 0259, para. 17, at 0274, paras. 109-111.

⁷⁰¹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0275, para. 111.

⁷⁰² P-0341, [KEN-OTP-0150-0255-R01](#) at 0276, para. 112.

⁷⁰³ Referred to as [REDACTED], *see* P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 70: “[...] [REDACTED]”; at 0278, paras. 126-127.

⁷⁰⁴ P-0341, [KEN-OTP-0150-0255-R01](#) at 0276, para. 112.

⁷⁰⁵ P-0341, [KEN-OTP-0150-0255-R01](#) at 0276, para. 112.

⁷⁰⁶ P-0341, [KEN-OTP-0150-0255-R01](#) at 0276, para. 112.

⁷⁰⁷ P-0341, [KEN-OTP-0150-0255-R01](#) at 0276, para. 113. [REDACTED], *see* III. First incident.

⁷⁰⁸ P-0341, [KEN-OTP-0150-0255-R01](#) at 0276, para. 113. [REDACTED].

⁷⁰⁹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0276, para. 113.

⁷¹⁰ P-0341, [KEN-OTP-0150-0255-R01](#) at 0276, paras. 114-115.

⁷¹¹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0277, para. 117.

iii. GICHERU's Individual Criminal Responsibility

288. The material facts common to all incidents set out in Part II above are incorporated *mutatis mutandis*.

289. GICHERU performed the following specific acts in relation to the Seventh Incident:

- i. At some stage prior to [REDACTED] April 2013, GICHERU solicited or induced, and subsequently paid, [REDACTED] to locate P-0341 and bring him to GICHERU [REDACTED], [REDACTED], Kenya, [REDACTED].⁷¹²
- ii. On 24 April 2014, GICHERU met P-0341 at [REDACTED]⁷¹³ [REDACTED].⁷¹⁴ At this meeting P-0341 was offered a Bribe of 5,000,000 KSh and other financial inducements, such as a car, property [REDACTED].⁷¹⁵ In return P-0341 was asked to withdraw as a victim, refuse to become an ICC witness if asked, sign affidavits to this effect, and approach other Prosecution Witnesses and convince them to withdraw as witnesses.⁷¹⁶
- iii. Between 24 April 2013 and 3 April 2014, GICHERU met with P-0341 on several occasions and paid him cash instalments of the promised Bribe, in particular:
 - (i) on 2 May 2013 and at [REDACTED], GICHERU paid P-0341 500,000 KSh;⁷¹⁷
 - (ii) on 9 May 2013 and at [REDACTED], GICHERU paid P-0341 another 500,000 KSh;⁷¹⁸
 - (iii) on 19 July 2013 and [REDACTED], GICHERU paid P-0341 100,000 KSh;⁷¹⁹
 - (iv) on [REDACTED] October 2013 and at the [REDACTED],

⁷¹² **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0263, paras. 36-41, at 0266, para. 57; [KEN-OTP-0150-0286-R01](#); [KEN-OTP-0150-0287-R01](#).

⁷¹³ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0263, paras. 37-39.

⁷¹⁴ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0263-0264, paras. 43-45.

⁷¹⁵ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0265, para. 49.

⁷¹⁶ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0264, para. 47, at 0265, paras. 50-52.

⁷¹⁷ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0267, paras. 62-64; [KEN-OTP-0149-0119-R01](#) at 0122, paras. 15-18; [KEN-OTP-0149-0125](#); [KEN-OTP-0149-0126](#) at 0126; [KEN-OTP-0150-0283-R01](#) at 0283; [KEN-OTP-0159-1386](#) at 1386.

⁷¹⁸ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0269, paras. 71-73; [KEN-OTP-0149-0126](#) at 0126; [KEN-OTP-0150-0283-R01](#) at 0283; [KEN-OTP-0159-1386](#) at 1386.

⁷¹⁹ **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0270, paras. 78-79; [KEN-OTP-0149-0126](#) at 0126; [KEN-OTP-0150-0283-R01](#); [KEN-OTP-0159-1386](#) at 1386.

- Eldoret, GICHERU paid P-0341 350,000 KSh [REDACTED];⁷²⁰ and (v) on [REDACTED] April 2014 and at the [REDACTED] Eldoret, GICHERU paid P-0341 100,000 KSh, again [REDACTED].⁷²¹ In addition, GICHERU paid P-0341 several smaller amounts, bringing the total to approximately 2,000,000 KSh.⁷²²
- iv. Between [REDACTED] May 2013, GICHERU called P-0341 [REDACTED] [REDACTED] and asked him to sign an affidavit to withdraw from the ICC, [REDACTED].⁷²³
 - v. Between 9 May and 19 July 2013, GICHERU again called P-0341 [REDACTED] and asked him to draft a document in his own handwriting stating that P-0341 had no evidence against RUTO and was withdrawing from the ICC.⁷²⁴
 - vi. Between 24 April 2013 and 3 April 2014, GICHERU instructed P-0341 to approach P-0274 and bring him to GICHERU [REDACTED] to sign an affidavit of withdrawal from the *Ruto and Sang* case,⁷²⁵ and also to approach other ICC victims and witnesses.⁷²⁶
 - vii. GICHERU intimidated P-0341, in particular (i) not to become a witness for the Prosecution by signalling he could track individuals anywhere, on 24 April 2013 [REDACTED],⁷²⁷ (ii) not to cooperate with the Prosecution if requested to become a witness for RUTO by threatening physical violence against any “white man” with whom P-0341 interacted, and stating that RUTO was very angry at [REDACTED] for providing information to the Prosecution.⁷²⁸

⁷²⁰ P-0341, [KEN-OTP-0150-0255-R01](#) at 0274, paras. 99-101; [KEN-OTP-0149-0126](#) at 0127; [KEN-OTP-0150-0283-R01](#); [KEN-OTP-0159-1386](#) at 1387.

⁷²¹ P-0341, [KEN-OTP-0150-0255-R01](#) at 0275, paras. 106-108; [KEN-OTP-0149-0126](#) at 0127; [KEN-OTP-0150-0283-R01](#); [KEN-OTP-0159-1386](#) at 1390.

⁷²² P-0341, [KEN-OTP-0150-0255-R01](#) at 0277, para. 117.

⁷²³ P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 68.

⁷²⁴ P-0341, [KEN-OTP-0150-0255-R01](#) at 0269-0270, paras. 74-77.

⁷²⁵ P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, para. 51.

⁷²⁶ P-0341, [KEN-OTP-0150-0255-R01](#) at 265, paras. 51-52, 59-60.

⁷²⁷ P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, para. 52.

⁷²⁸ P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, paras. 86-88.

a. *Article 25(3)(a)*

290. GICHERU is criminally responsible as a **direct perpetrator** as a result of the specific acts described in paragraphs a) to g) above. At all material times, GICHERU intended that his actions would corruptly influence P-0341.

291. Alternatively, GICHERU is criminally responsible as a **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II. ii. and paragraphs a) to g) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of corruptly influencing P-0341, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the material elements of the offence or was aware that this would occur in the ordinary course of the events.

292. GICHERU is thus criminally responsible for the specific acts of corrupt influence performed by the Direct Perpetrators in relation to the Seventh Incident set out in the narrative of the evidence above, and listed in Chapter C below.

293. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of corruptly influencing P-0341, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the material elements of the offence or was aware that this would occur in the ordinary course of the events.

294. The subjective elements of co-perpetration may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to g) above.

b. *Article 25(3)(d)*

295. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0341 by the

Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to g) above.

296. The subjective elements of common purpose liability may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and paragraphs a) to g) above.

c. Article 25(3)(b)

297. Alternatively, GICHERU is criminally responsible for **soliciting** or **inducing** [REDACTED] to corruptly influence P-0341, which he duly did, as set out in paragraph a) above. GICHERU knew that his actions would, in the ordinary course of events, lead to [REDACTED] committing the offence of corruptly influencing P-0341.

298. In addition, GICHERU is criminally responsible for **soliciting** or **inducing** [REDACTED] to corruptly influenced P-0341, which he duly did, as set out in paragraph c) above. GICHERU knew that his actions would, in the ordinary course of events, lead to [REDACTED] committing of the offence of corruptly influencing P-0341.

299. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and paragraphs a) to g) above.

d. Article 25(3)(c)

300. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0341, by acting as a conduit for the funds used to bribe him, which provided the means for the offence to be committed, and performing the actions further described in paragraphs b) to g) above. He is further criminally responsible for **abetting** [REDACTED] to corruptly influence P-0341 by providing the moral support or encouragement described in paragraph a) above.

301. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to [REDACTED] committing the offence of corruptly influencing P-0341.

302. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to g) above.

X. Eighth Incident: Corruptly influencing Witness P-0274

i. Introduction

303. [REDACTED] (“P-0274”) [REDACTED].⁷²⁹

304. P-0274 is a [REDACTED] [REDACTED] from [REDACTED] who was attacked during the PEV in 2007 for supporting the PNU.⁷³⁰ [REDACTED].⁷³¹ [REDACTED]. [REDACTED].⁷³² P-0274 was regarded by GICHERU as a person who knew information relevant to the proceedings before the Court, and in particular information detrimental to RUTO in the *Ruto and Sang* case. P-0274 was therefore a potential witness in the *Ruto and Sang* case for the purpose of article 70 proceedings.⁷³³

305. From April or May 2012 to 2014, [REDACTED], Kenya, GICHERU, [REDACTED], and others corruptly influenced P-0274 by (i) promising him at least 2,000,000 KSh; (ii) intimidating and threatening him multiple times, including at gunpoint; and (iii) paying him 30,000 KSh to induce him to withdraw as a victim from the *Ruto and Sang* case, to [REDACTED] stating that the ICC attempted to coach him to give evidence against RUTO, to sign a blank piece of paper, and to locate, contact and/or corruptly influence Prosecution Witnesses.

⁷²⁹ “[REDACTED]”.

⁷³⁰ P-0274, [KEN-OTP-0159-0986-R01](#) at 0988, para. 12.

⁷³¹ P-0274, [KEN-OTP-0159-0986-R01](#) at 0988, para. 12.

⁷³² P-0274, [REDACTED].

⁷³³ *Bemba et al.* AJ, para. 721.

ii. Corruptly influencing P-0274

306. In 2011, after the suspects were named in the ICC Kenya situation proceedings, P-0274 received a letter threatening: [REDACTED]”.⁷³⁴ [REDACTED].⁷³⁵ He also reported the letter to ICC staff, [REDACTED].⁷³⁶

307. In 2012, P-0274 approached a friend, [REDACTED]⁷³⁷[REDACTED].⁷³⁸ On that occasion, [REDACTED] told P-0274 that he was close to RUTO, [REDACTED].⁷³⁹

308. [REDACTED]⁷⁴⁰ [REDACTED].⁷⁴¹ [REDACTED].⁷⁴² [REDACTED].⁷⁴³ [REDACTED].⁷⁴⁴ [REDACTED].⁷⁴⁵ [REDACTED].⁷⁴⁶ [REDACTED].⁷⁴⁷ [REDACTED].⁷⁴⁸ [REDACTED].⁷⁴⁹ [REDACTED].⁷⁵⁰

309. [REDACTED]. Following this, P-0341 received 30,000 KSh [REDACTED],⁷⁵¹ which P-0274 used to move back to [REDACTED].

310. After the 2013 elections in Kenya that saw RUTO become Deputy Prime Minister, P-0274 started to receive threats again.⁷⁵² P-0341, [REDACTED] told P-0274 that GICHERU had paid him (P-0341) 500,000 KSh, and promised to pay a further 500,000 KSh for not providing information against RUTO to the ICC, and be left in peace.⁷⁵³ [REDACTED] with P-0274 and told P-0341 “they did not have to

⁷³⁴ P-0274, [KEN-OTP-0159-0986-R01](#) at 0989, para. 17.

⁷³⁵ P-0274, [KEN-OTP-0159-0986-R01](#) at 0989, paras. 18-19.

⁷³⁶ P-0274, [KEN-OTP-0159-0986-R01](#) at 0989-0990, paras. 17-22.

⁷³⁷ P-0274, [KEN-OTP-0159-0986-R01](#) at 0990, para. 24: “[REDACTED]”

⁷³⁸ P-0274, [KEN-OTP-0159-0986-R01](#) at 0990, para. 23.

⁷³⁹ P-0274, [KEN-OTP-0159-0986-R01](#) at 0990, para. 25.

⁷⁴⁰ P-0274, [KEN-OTP-0159-0986-R01](#) at 0999, para. 83; [KEN-OTP-0159-1001](#).

⁷⁴¹ P-0274, [KEN-OTP-0159-0986-R01](#) at 0990, para. 26.

⁷⁴² P-0274, [KEN-OTP-0159-0986-R01](#) at 0991, paras. 29-30,

⁷⁴³ P-0274, [KEN-OTP-0159-0986-R01](#) at 0991, para. 33.

⁷⁴⁴ P-0274, [KEN-OTP-0159-0986-R01](#) at 0992, para. 34.

⁷⁴⁵ P-0274, [KEN-OTP-0159-0986-R01](#) at 0992, para. 34.

⁷⁴⁶ P-0274, [KEN-OTP-0159-0986-R01](#) at 0992, para. 35.

⁷⁴⁷ P-0274, [KEN-OTP-0159-0986-R01](#) at 0992, para. 36.

⁷⁴⁸ P-0274, [KEN-OTP-0160-0206](#).

⁷⁴⁹ P-0274, [KEN-OTP-0159-0986-R01](#) at 0992, para. 37.

⁷⁵⁰ P-0274, [KEN-OTP-0159-0986-R01](#) at 0993, para. 42.

⁷⁵¹ P-0274, [KEN-OTP-0159-0986-R01](#) at 0993, paras. 40-41.

⁷⁵² P-0274, [KEN-OTP-0159-0986-R01](#) at 0994, para. 49.

⁷⁵³ P-0274, [KEN-OTP-0159-0986-R01](#) at 0994, paras. 50-51.

worry” about P-0274 anymore.⁷⁵⁴ P-0341 subsequently introduced P-0274 to two individuals who confirmed that GICHERU had given them 500,000 KSh each, and were promised another 500,000 KSh for not speaking to the ICC.⁷⁵⁵

311. Towards the end of 2013, P-0341 brought P-0274 to GICHERU [REDACTED], where P-0274 recognised [REDACTED] leaving the room.⁷⁵⁶ Once in his presence, GICHERU explained to P-0274 that “they” wanted to pay people so that the latter would stop assisting the ICC.⁷⁵⁷ GICHERU said they needed to reach everyone involved in the *Ruto and Sang* case, that the “big man, *Mkubwa*”, which P-0274 understood to mean RUTO, wanted “no stone left unturned”.⁷⁵⁸

312. GICHERU told P-0274 that he would pay him 500,000 KSh on the spot and 500,000 KSh later if he stopped engaging with the ICC and withdrew from the proceedings.⁷⁵⁹ He added P-0274 would then “be safe”.⁷⁶⁰ GICHERU asked him to approach other witnesses, and gave him 10,000 KSh transport money and his mobile phone number.⁷⁶¹ P-0274 felt uneasy about the meeting and reported what had occurred to an ICC staff member.⁷⁶²

313. [REDACTED] later [REDACTED] phoned P-0274 and asked him to meet with GICHERU.⁷⁶³ Scared, P-0274 switched off his phone and did not attend the meeting.⁷⁶⁴ When P-0274 turned the phone back on, he saw that he had received a threatening text message saying that “they” knew that he was giving information

⁷⁵⁴ P-0274, [KEN-OTP-0159-0986-R01](#) at 0994-0995, para. 52.

⁷⁵⁵ P-0274, [KEN-OTP-0159-0986-R01](#) at 0995, para. 54.

⁷⁵⁶ P-0274, [KEN-OTP-0159-0986-R01](#) at 0995, paras. 55-57.

⁷⁵⁷ P-0274, [KEN-OTP-0159-0986-R01](#) at 0996, paras. 58-59.

⁷⁵⁸ P-0274, [KEN-OTP-0159-0986-R01](#) at 0996, para. 58.

⁷⁵⁹ P-0274, [KEN-OTP-0159-0986-R01](#) at 0996, para. 60.

⁷⁶⁰ P-0274, [KEN-OTP-0159-0986-R01](#) at 0996, para. 60.

⁷⁶¹ P-0274, [KEN-OTP-0159-0986-R01](#) at 0996, para. 61; P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 69.

⁷⁶² P-0274, [KEN-OTP-0159-0986-R01](#) at 0996, para. 62.

⁷⁶³ P-0274, [KEN-OTP-0159-0986-R01](#) at 0996, para. 63.

⁷⁶⁴ P-0274, [KEN-OTP-0159-0986-R01](#) at 0996, para. 64.

to the ICC about their elder and knew where he lived.⁷⁶⁵ P-0274 changed his number and did not interact with GICHERU again.⁷⁶⁶

314. [REDACTED], [REDACTED] contacted P-0274 and offered him 1,000,000 KSh to approach [REDACTED] P-0356.⁷⁶⁷ [REDACTED].⁷⁶⁸ [REDACTED] came to P-0274 [REDACTED] and told him that RUTO wanted to meet him. This terrified P-0274.⁷⁶⁹

315. In [REDACTED], P-0274 and his family were relocated by the ICC.⁷⁷⁰ [REDACTED].⁷⁷¹ [REDACTED].⁷⁷²

iii. GICHERU's Individual Criminal Responsibility

316. The material facts common to all incidents set out in Part II. above are incorporated *mutatis mutandis*.

317. GICHERU performed the following specific acts in relation to the Eighth Incident:

- i. On 24 April 2013 and between 25 April and 2 May 2013, [REDACTED] in [REDACTED], GICHERU directed P-0341 to locate, approach and bring P-0274 [REDACTED],⁷⁷³ which he did at the end of 2013.⁷⁷⁴
- ii. Towards the end of 2013, at his office in Eldoret, GICHERU promised to pay P-0274 1,000,000 KSh to stop engaging with the ICC, withdraw from the *Ruto and Sang* case, and to locate and approach other Prosecution Witnesses.⁷⁷⁵

⁷⁶⁵ P-0274, [KEN-OTP-0159-0986-R01](#) at 0996, para. 64.

⁷⁶⁶ P-0274, [KEN-OTP-0159-0986-R01](#) at 0997, para. 65.

⁷⁶⁷ P-0274, [KEN-OTP-0159-0986-R01](#) at 0997, paras. 66-67. *See also*: P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 69, stating that GICHERU told P-0341 that he promised money to P-0274 for bringing him P-0356.

⁷⁶⁸ P-0274, [KEN-OTP-0159-0986-R01](#) at 0997, para. 68.

⁷⁶⁹ P-0274, [KEN-OTP-0159-0986-R01](#) at 0997, para. 70.

⁷⁷⁰ P-0274, [KEN-OTP-0159-0986-R01](#) at 0998, para. 73.

⁷⁷¹ P-0274, [KEN-OTP-0159-0986-R01](#) at 0998, para. 73.

⁷⁷² P-0274, [KEN-OTP-0159-0986-R01](#) at 0998, para. 73.

⁷⁷³ P-0274, [KEN-OTP-0159-0986-R01](#) at 0994, paras. 50-52, 55, 58; P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, paras. 51, 59-60.

⁷⁷⁴ P-0274, [KEN-OTP-0159-0986-R01](#) at 0995, paras. 55-57. *Contra*: P-0341, [KEN-OTP-0150-0255-R01](#) at 0280, para. 134.

⁷⁷⁵ P-0274, [KEN-OTP-0159-0986-R01](#) at 0996, paras. 60-61.

iii. Towards the end of 2013, [REDACTED] in [REDACTED], GICHERU intimidated P-0274 by promising he “would now be safe” if he stopped engaging with the ICC, withdrew from the *Ruto and Sang* case, and located and approached other Prosecution Witnesses.⁷⁷⁶ The implied threat was that, to the contrary, if he did not do these things, he would not be safe – another example of the “carrot and stick” approach.

a. *Article 25(3)(a)*

318. GICHERU is criminally responsible as a **direct perpetrator** as a result of the specific acts described in paragraphs a) to c) above. At all material times, GICHERU intended that his actions would corruptly influence P-0274.

319. Alternatively, GICHERU is criminally responsible as a **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II. ii. and paragraphs a) to c) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of corruptly influencing P-0274, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the material elements of the offence or was aware that this would occur in the ordinary course of the events.

320. GICHERU is thus criminally responsible for the specific acts of corrupt influence performed by the Direct Perpetrators in relation to the Eighth Incident set out in the narrative of the evidence above, and listed in Chapter C below.

321. The subjective elements of co-perpetration may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.

⁷⁷⁶ P-0274, [KEN-OTP-0159-0986-R01](#) at 0996, paras. 60-61.

b. Article 25(3)(d)

322. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0274 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to c) above.

323. The subjective elements of common purpose liability may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and paragraphs a) to c) above.

c. Article 25(3)(b)

324. GICHERU is criminally responsible for **soliciting** or **inducing** P-0341 to corruptly influence P-0274, which he duly did, as set out in paragraph a) above. GICHERU knew that his actions would, in the ordinary course of events, lead to P-0341 committing the offence of corruptly influencing P-0274.

325. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and paragraphs a) to c) above.

d. Article 25(3)(c)

326. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0274, by acting as a conduit for the funds which were to be used to bribe him, which provided the means for the offence to be committed, and performing the actions further described in paragraphs b) to c) above. He is further criminally responsible for **abetting** P-0341 to corruptly influence P-0274 by providing the moral support or encouragement described in paragraph a) above.

327. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to P-0341 committing the offence of corruptly influencing P-0274.

328. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.

C. MATERIAL FACTS AND LEGAL CHARACTERISATION OF THE CHARGES

I. The Accused

329. Mr Paul GICHERU,⁷⁷⁷ was born on 28 of November 1972, in Nandi district in the Republic of Kenya and is a Kenyan national. At the time of his surrender, GICHERU: resided at [REDACTED]; held a Kenyan passport, [REDACTED]; practiced as an advocate with offices both at Veecam House, 3rd Floor, Oloo Street, P.O. Box 1342-30100 in Eldoret and Rooms 9-12, Victoria Towers, Nairobi; and held the position of Board Chairman of the Kenyan Export Processing Zones Authority (EPZA).

II. Statement of Material Facts: Common to Modes of Liability Under Article 25

i. Overview of GICHERU's Individual Criminal Responsibility

330. GICHERU is individually criminally responsible for the offences of corruptly influencing witnesses in contravention of article 70(1)(c): (i) under article 25(3)(a), for committing the charged offences ("**Charged Offences**") individually as a direct perpetrator (**Counts 1, 2, 4, 5, 7 and 8** only) or jointly with other members of a common plan as a direct co-perpetrator;⁷⁷⁸ (ii) under article 25(3)(d), for contributing, in any other way, to the commission of the Charged Offences by a group of persons acting pursuant to a common purpose; (iii) under article 25(3)(b),

⁷⁷⁷ "GICHERU".

⁷⁷⁸ All further references to **co-perpetration** in this document refer to **direct co-perpetration**, unless otherwise specified.

for soliciting or inducing the direct perpetrators to commit the Charged Offences; or (iv) under article 25(3)(c), for aiding, abetting or otherwise assisting the direct perpetrators in the commission of the Charged Offences.

331. In the sections that follow, the Prosecution will set out and analyse the facts relevant to modes of liability that are common to all incidents charged, more particularly in respect of GICHERU's criminal liability for **co-perpetration** under article 25(3)(a) and contribution to the commission of offences by a group acting with a **common purpose** under article 25(3)(d).

332. GICHERU's criminal liability for **accessorial liability** under articles 25(3)(b) and (c) will be described below in general terms, but set out in more detail under each respective incident, since the relevant facts are more specific to the individual incidents. However, GICHERU's criminal liability for **direct perpetration** under article 25(3)(a) is addressed under the six incidents to which this mode of liability applies.⁷⁷⁹

ii. Facts common to all incidents: article 25(3)(a) – co-perpetration

a. *The Common Plan*

333. The Charged Offences were committed pursuant to, and in the implementation of, an agreement between GICHERU and several persons associated with him in the context of this case, as described below ("the **Common Plan**").

334. The Common Plan encompassed the identification, location and contacting of Prosecution Witnesses,⁷⁸⁰ and offering and/or paying them financial benefits,⁷⁸¹ and/or threatening or intimidating them, in order to induce them to withdraw as Prosecution Witnesses, refuse to or cease cooperating with the Prosecution and/or the Court, and/or recant the evidence which they had provided to the Prosecution.

⁷⁷⁹ Namely, the incidents relating to P-0397, P-0516, P-0800, P-0495, P-0341 and P-0274.

⁷⁸⁰ [REDACTED]. This included, but was not limited to, the Prosecution Witnesses described under the individual counts, namely **P-0397, P-0516, P-0613, P-0800, P-0495, P-0536, P-0341 and P-0274**.

⁷⁸¹ Including cash payments, land and houses, vehicles, educational support and employment opportunities ("**Bribes**").

The ultimate goal of the Common Plan was to undermine the Prosecution case in the *Ruto and Sang* case by preventing Prosecution Witnesses from testifying, either at all or in accordance with the evidence given in their previous statements and/or tarnishing the credibility of the Prosecution and its witnesses. This included persons having, or believed to have, information relevant to the Prosecution in the *Ruto and Sang* case, such as [REDACTED] P-0341 and P-0274.

335. The Common Plan materialised by April 2013 at the latest and continued until at least the close of the Prosecution's case in *Ruto and Sang* on 10 September 2015.

336. The existence of the Common Plan can be inferred from the statements and actions of the Common Plan members which clearly demonstrate that they were working in a concerted manner to achieve the common goals described below.

b. The members of the Common Plan

337. The members of the Common Plan ("**Common Plan Members**" or "**Common Plan Group**") consisted of a network of individuals associated-in-fact and acting jointly, at different levels, to realise the objectives of the Common Plan. These individuals include: (i) **Managers**: GICHERU and, *inter alios*, Silas Kibet SIMATWO ("**SIMATWO**"), Isaac MAIYO ("**MAIYO**") and Elisha Kipkorir BUSIENEI ("**BUSIENEI**"); (ii) **Intermediaries**: between the Managers and Prosecution Witnesses, including Meshack YEBEI ("**YEBEI**"), Philip Kipkoech BETT ("**BETT**"), Walter Osipiri BARASA ("**BARASA**") and Sammy Kiptanui KOSGEI ("**KOSGEI**"); and (iii) successfully corrupted Prosecution Witnesses ("**Corrupted Witnesses**"), including P-0397, P-0800, P-0495, P-0516, and P-0341, who subsequently also acted as Intermediaries and helped to further the objectives of the Common Plan.

338. The Managers consisted of a group of influential people associated with and/or supporters of RUTO at the relevant times. The Managers were:

- a) GICHERU an Eldoret lawyer who informed both P-0397 and P-0800 that he was a close friend of RUTO and that they had attended Kapsabet High School

together, which is confirmed by open source evidence. An initial analysis of the mobile phone seized from GICHERU upon his arrest indicates that RUTO was saved as a contact. GICHERU represented P-0015, who was one of the first Prosecution Witnesses to withdraw, and he commissioned an affidavit to this effect on 7 February 2013.

- b) SIMATWO was an influential Kenyan businessman and long-time business associate of RUTO. SIMATWO was the head of the board of Directors of AMACO Insurance, a firm with which RUTO is reported to have close connections as a major shareholder and former co-owner. SIMATWO [REDACTED] was “an eye of Mr RUTO”. “Sila Simotwo” is saved as a contact on GICHERU’s mobile phone.
- c) MAIYO was the Chairman of the Constituencies Development Fund (CDF) of Eldoret North, to which position he was appointed when RUTO was MP for the constituency. He is widely reported to be one of RUTO’s closest allies. “Maiyo Cdf” is saved as a contact on GICHERU’s mobile phone.
- d) BUSIENEI was a former ODM member and political ally of RUTO. In 2013 he became a Kenyan Member of Parliament (“MP”) for the Turbo constituency. “Busienei 2 Mp” is saved as a contact on GICHERU’s mobile phone. The associated number [REDACTED] has previously been attributed by the Prosecution to Elisha BUSIENEI.

339. The Intermediaries consisted of current or former Prosecution intermediaries or witnesses who – by virtue of their past association with the Prosecution and knowledge of, or association with, Prosecution Witnesses – were in a unique position to identify, locate and persuade Prosecution Witnesses to withdraw as witnesses and/or meet with GICHERU and other Managers. The Intermediaries were:

- a) YEBEI [REDACTED] was a human rights worker [REDACTED]. He introduced witness P-0471, [REDACTED], to the Prosecution. YEBEI gave a

witness statement to the Prosecution, who sought in 2013 to add him to its witness list for trial, but this was refused after the Prosecution informed the Trial Chamber of information it had received regarding his alleged involvement in witness interference. The Prosecution requested PTC II to issue a warrant of arrest for YEBEI, but withdrew the request after confirmation of his death.

- b) BETT [REDACTED] was a human rights worker for the Kalanjin Youth Alliance (KALYA) and friend of [REDACTED]. BETT [REDACTED] was a childhood friend of YEBEI, who was his neighbour in [REDACTED]. BETT initially provided information about attempts to interfere with Prosecution Witnesses [REDACTED], but was subsequently himself corrupted and co-opted into the Common Plan as an Intermediary. "Phillip Bett" is listed as a contact on GICHERU's mobile phone under number [REDACTED]. On 10 March 2015, PTC II issued a warrant for the arrest of BETT, but to date he has not yet been surrendered to the Court by the Kenyan authorities.
- c) BARASA was a journalist from Eldoret and former OTP intermediary. Two phone numbers previously attributed by the Prosecution to BARASA are saved in the contact list on GICHERU's mobile phone as follows: [REDACTED] saved as "Baraza" and [REDACTED] saved as "Wb". On 2 August 2013, PTC II issued a warrant for the arrest of BARASA, but to date he has not yet been surrendered to the Court by the Kenyan authorities.
- d) KOSGEI was a former witness in the CIPEV and Kenya National Commission on Human Rights investigations into the PEV, and was provided as a lead to the Prosecution, but never interviewed. KOSGEI previously reported to the KNCHR being threatened due to his involvement with these investigations [REDACTED]. KOSGEI subsequently recanted his evidence to the CIPEV and made allegations in the media that he had been coached by [REDACTED].

e) Corrupted Witnesses P-0397, P-0800, P-0495 P-0516, and P-0341, described more fully below under the individual incidents concerning them. A contact corresponding to Corrupted Witness P-0495 (saved as [REDACTED], under number [REDACTED]) was found on GICHERU's mobile phone.

340. Several other individuals were also associated with the activities of the Common Plan and played greater or lesser roles in the events surrounding the corrupt influencing of the eight Prosecution Witnesses. However, the evidence currently available falls short of establishing that they made essential contributions to the Common Plan. These include former Prosecution Witness [REDACTED] (P-0015), CIPEV witness and OTP screened individual [REDACTED] (P-0017) and GICHERU's bodyguard, one "KOGO".

c. The implementation of the Common Plan

341. In order to implement the Common Plan, the various Common Plan Members each provided essential contributions.

342. GICHERU and other Managers were responsible for the essential tasks of directing and coordinating the activities of Common Plan members; deciding which Prosecution Witnesses should be targeted; negotiating and deciding how much they would be offered and/or paid; ensuring that the necessary finances were available to pay the Bribes agreed, or at least a portion thereof; and intimidating Prosecution Witnesses with threats of adverse consequences if they failed to cooperate.

343. SIMATWO, MAIYO and BUSIENEI also made essential contributions to the Common Plan *inter alia* by working with GICHERU to coordinate with RUTO and participated in meetings between GICHERU and Prosecution Witnesses during which they were corruptly influenced. In some instances these other Managers contacted Prosecution Witnesses telephonically in furtherance of the Common Plan.

344. Intermediaries made essential contributions to the Common Plan by identifying, locating and contacting Prosecution Witnesses; persuading them, by offering or promising them Bribes, to leave their protection locations and/or meet with GICHERU and other Managers, in order to negotiate the amount and terms of the Bribes, in return for withdrawing as witnesses and/or recanting their evidence; and conveying threats of adverse consequences should they fail to cooperate.

345. Intermediaries thus provided an essential link between the Managers and the Prosecution Witnesses. [REDACTED], many Prosecution trial witnesses, particularly linkage witnesses, had been relocated [REDACTED] for their security. Due to the Intermediaries' previous interactions with the ICC and/or their prior association with various witnesses, they were in a unique position to locate and contact Prosecution Witnesses and to persuade them to withdraw as witnesses and/or meet with GICHERU and other Managers for this purpose. As witnesses were successfully corrupted, Managers leveraged their relationships with other Prosecution Witnesses to repeat this process.

d. GICHERU's essential contribution to the Common Plan

346. GICHERU made an essential contribution to the Common Plan through the actions specified below, individually and cumulatively:

- a) Playing the leading role in coordinating the activities of the members of the Common Plan, including by assigning tasks, setting priorities, arranging meetings and providing funds for necessary expenses;
- b) Using his law office, centrally located at Veecam House in Eldoret as an operations centre, from which he was able to direct the activities of Intermediaries and Corrupted Witnesses and leveraging his influence as a prominent member of the community and the legal profession to advance the aims of the Common Plan.

- c) Issuing instructions to Intermediaries and Corrupted Witnesses, in particular to locate, contact and corruptly influence Prosecution Witnesses and by promising and or paying them financial rewards if they succeeded;
- d) Meeting in person with certain Prosecution Witnesses and negotiating and and/or paying Bribes in exchange for their withdrawing as witnesses, ceasing cooperation with the Prosecution and/or the Court, and/or recanting their evidence, and threatening them with adverse consequences if they failed to comply;
- e) Acting as an intermediary between the funders and/or beneficiaries of the Common Plan, including RUTO, and the Intermediaries and Corrupted Witnesses;
- f) Acting as the conduit for the payment of the Bribes to the Corrupted Witnesses; and
- g) Arranging for Corrupted Witnesses to sign affidavits recording their decisions to withdraw as Prosecution Witnesses and/or recanting the material aspects of the evidence they had previously provided to the Prosecution and/or making false assertions undermining the Prosecution's case in the *Ruto and Sang case*.

347. Without GICHERU's aforementioned contributions to the Common Plan, the commission of the Charged Offences would not have been committed or would have been committed in a significantly different way.

e. Subjective elements of co-perpetration

348. GICHERU meant to engage in his conduct and intended to commit the Charged Offences or was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of offences of the type charged in Counts 1 to 8. GICHERU was aware that the Common Plan included an essential criminal component, namely the commission of the type of offences charged in Counts 1 to 8. He was aware of his essential role in and contribution to the

implementation of the Common Plan, as well as the co-perpetrators' joint control over the commission of the Charged Offences.

349. The material facts establishing the existence of the subjective elements of article 25(3)(a) [co-perpetration] are detailed in section vi. below and the sections on criminal responsibility under each specific incident.

iii. Facts common to all incidents: article 25(3)(d) – contributing, in any other way, to the commission of the offences

a. Existence of a Common Purpose to commit the charged offences

350. Alternatively, GICHERU contributed to the commission of the Charged Offences by a group of persons acting pursuant to a common purpose to corruptly influence Prosecution Witnesses by committing the types of offences charged in Counts 1 to 8 (“**Common Purpose**” and “**Common Purpose Members**”). The Common Purpose materialised at the latest extemporaneously when the offences in question were carried out.

351. As described in section II. ii. above, the listed persons participated in a Common Plan to, *inter alia*, corruptly influence Prosecution Witnesses. This Common Plan encompassed the Common Purpose to commit offences within the jurisdiction of the Court, namely corruptly influencing Prosecution Witnesses in contravention of article 70(1)(c) of the Statute.

352. Thus, the members of the Common Plan *ipso facto* also shared the Common Purpose.

b. GICHERU contributed “in any other way” to the commission of the charged offences

353. GICHERU's contributions to the Common Plan described in section II. ii. above *ipso facto* also amount to contributions “in any other way” to the commission of the Charged Offences under article 25(3)(d).

c. Subjective elements of common purpose liability

354. GICHERU intentionally contributed to the commission of the Charged Offences by the direct perpetrators of the Charged Offences – namely Intermediaries BARASA, BETT, YEBEI, KOSGEI and Corrupted Witnesses P-0397, P-0800, P-0516, P-0495 and P-0341 (“**Direct Perpetrators**”) - acting pursuant to the Common Purpose, with the aim of furthering the criminal activity or the criminal purpose of members of the Common Purpose who committed those offences, or in the knowledge of the intention of members of the Common Purpose to commit those offences.

355. The material facts establishing the existence of the subjective elements of article 25(3)(d) are detailed in section vi. below and the sections on criminal responsibility under each specific incident.

iv. Facts common to all incidents: article 25(3)(b) – soliciting or inducing the commission of the offences

a. GICHERU's acts of solicitation and inducement

356. Alternatively, GICHERU solicited and/or induced the Direct Perpetrators, including through cash payments or the promise thereof, to corruptly influence Prosecution Witnesses, through the actions specified below, individually and cumulatively:

- a) GICHERU tasked the Direct Perpetrators with locating and contacting and corruptly influencing Prosecution Witnesses.
- b) GICHERU promised, and/or paid the Direct Perpetrators financial rewards for doing so.
- c) GICHERU authorised the Direct Perpetrators to offer the Prosecution Witnesses Bribes, the details of which would be finalised during their meeting with GICHERU, to induce their cooperation.

b. The crime in fact occurred or was attempted

357. As a result of GICHERU's solicitation and/or inducement, the Direct Perpetrators located and contacted Prosecution Witnesses and corruptly influenced them, as detailed more fully in the sections on criminal responsibility set out under each specific incident.

358. Thus, GICHERU's actions had a direct effect on the Charged Offences, which in fact occurred.

c. Subjective elements of solicitation or inducement

359. When acting as aforesaid, GICHERU intended to engage in conduct that constitutes an act of solicitation or inducement and meant to solicit or induce the commission of the offence or was aware that the Direct Perpetrators would, in the ordinary course of events, commit the type of offences charged in Counts **1 to 8**.

360. The material facts establishing the existence of the subjective elements of article 25(3)(b) are detailed in section vi. below and the sections on criminal responsibility under each specific incident.

v. Facts common to all incidents article 25(3)(c) – aiding, abetting or otherwise assisting in the commission of the offences

a. GICHERU's acts of assistance to the commission of the offences

361. Alternatively, GICHERU aided, abetted or otherwise assisted the Direct Perpetrators for the purpose of facilitating the commission of the Charged Offences through the actions specified below, individually and cumulatively:

- a) coordinating and directing the activities of Direct Perpetrators, including by assigning tasks, setting priorities, arranging meetings and providing funds for necessary expenses;
- b) instructing, alternatively encouraging, Direct Perpetrators to identify and locate Prosecution Witnesses, to corruptly influence them and to bring these witnesses to meet GICHERU;

- c) meeting with Prosecution Witnesses and negotiating the Bribes to be paid to them in exchange for their withdrawing as witnesses, ceasing cooperation with the Prosecution and/or the Court, and/or recanting their evidence;
- d) arranging for Corrupted Witnesses to sign affidavits recording their decisions to withdraw as Prosecution Witnesses and/or recanting the material aspects of the evidence they had previously provided to the Prosecution and/or making false assertions undermining the Prosecution's case in the *Ruto and Sang* case;
- e) acting as an intermediary between the funders and/or beneficiaries of the Common Plan, including RUTO, and the Direct Perpetrators; and/or
- f) acting as the conduit for the payment of the Bribes to the Corrupted Witnesses.

b. Subjective elements of aiding, abetting or otherwise assisting

362. GICHERU was aware that the Direct Perpetrators would, in the ordinary course of events, commit the type of offences charged in Counts **1 to 8**.

363. The material facts establishing the existence of the subjective elements of article 25(3)(c) are detailed in section vi. below and the sections on criminal responsibility under each specific incident.

vi. Statement of Material Facts common to subjective elements

364. Since there is a significant overlap between the subjective elements for the offences charged and the various modes of liability alleged, there is also a substantial overlap of the material facts from which these subjective elements may be inferred. It is thus convenient to group these facts under one heading, to avoid substantial repetition.

365. While subjective elements must ultimately be inferred from an assessment of all the evidence before a Chamber, including the entire course of conduct of a suspect/accused, the following facts are particularly material:

a. Intention

366. GICHERU's intention to engage in his conduct and to commit the Charged Offences, in the sense of: acting with the purposeful will (intent) or desire to bring about the material elements of the offences; and/or intentionally making an essential contribution to the Common Plan; and/or intentionally contributing to the commission of the Charged Offences by the specified persons acting pursuant to the Common Purpose, to further the criminal activity or the criminal purpose of members of the Common Purpose who committed those offences; and/or meant (intended) to induce or solicit; and/or to aid, abet or otherwise assist the Direct Perpetrators to commit those offences; may be inferred in particular from the following facts:

- a) GICHERU's direct involvement in the planning, and the instruction of Intermediaries, to locate and contact Prosecution Witnesses for the purpose of inducing them to withdraw as witnesses;
- b) GICHERU's direct involvement in offering and/or paying substantial sums of money and other benefits to Prosecution Witnesses P-0397, P-0800, P-0495, P-0516, P-0341 and P-0274 that would, in the ordinary course of events, be sufficient to influence the will of a witness;
- c) GICHERU's direct involvement in persuading Prosecution Witnesses to withdraw as witnesses;
- d) GICHERU's direct involvement in arranging for Prosecution Witnesses to sign affidavits confirming their decision to withdraw and/or recant their evidence;
- e) GICHERU's instructions to Intermediaries and Corrupted Witnesses to locate and contact Prosecution Witnesses in order to corruptly influence them and/or to bring them to meet with him, and his funding of necessary expenses for this purpose;
- f) GICHERU's direct involvement in arranging the finances for the payment of Bribes; and

- g) GICHERU's coordination of the activities of members of the Common Plan and/or Common Purpose and/or Direct Perpetrators.

b. Knowledge

367. GICHERU's knowledge that his actions; and/or the implementation of the Common Plan and/or Common Purpose; and/or the actions of the Direct Perpetrators induced or solicited by him; and/or aided, abetted or otherwise assisted by him; would bring about the material elements of the Charged Offences, may be inferred in particular from the following facts:

- a) The facts listed under section a., paragraphs a) to g) above;
- b) The fact that GICHERU had direct knowledge that P-0397, P-0800, P-0495, P-0516 and P-0341 agreed to withdraw as Prosecution Witnesses and/or to refuse to become witnesses if asked and/or actually signed affidavits to that effect and/or to contact other Prosecution Witnesses and bring them to meet with GICHERU; and
- c) The steps taken by GICHERU to avoid detection, including: refusing to record the agreements with the Corrupted Witnesses in writing; paying Corrupted Witnesses in cash only to avoid bank records; instructing the Corrupted Witnesses not to deposit cash payments into their bank accounts; instructing payments to be made through third persons; instructing Intermediaries and Corrupted Witnesses to take precautions including when communicating by telephone; and taking measures to ensure that lead counsel for RUTO was not aware of the activities of the Common Plan members.

III. First Incident: Corruptly influencing Witness P-0397

i. Legal characterisation of facts

COUNT 1: Corruptly influencing a witness in contravention of article 70(1)(c) of the Rome Statute read in conjunction with articles 25(3)(a) (direct perpetration or co-perpetration), 25(3)(d) (contributing in any other way to a group acting with a

common purpose), 25(3)(b) (soliciting or inducing), and 25(3)(c) (aiding, abetting or otherwise assisting)

GICHERU is criminally responsible, under article 25(3)(a), article 25(3)(d), article 25(3)(b), or article 25(3)(c), for the offence of corruptly influencing a witness, [REDACTED] P-0397 [REDACTED] by (i) offering to pay him a Bribe of 5,000,000 KSh in cash instalments; (ii) and/or threatening him; (iii) and/or by actually paying him a total of 1,000,000 KSh, in order to influence him to withdraw as a Prosecution Witness and cease cooperating with the ICC, to sign an affidavit to that effect, and/or to locate, contact and/or corruptly influence P-0516 on behalf of the Common Plan Members, committed during the period April 2013 to January 2014 and at [REDACTED], Kenya.

ii. **Material facts**

a. *Actus reus: corruptly influencing a witness*

368. P-0397 was a Prosecution Witness.

369. Between April 2013 and January 2014 and [REDACTED] in Kenya, GICHERU and other Common Plan Members, namely [REDACTED], influenced P-0397 by offering him a bribe of 5,000,000 KSh in cash instalments, of which GICHERU then paid P-0397 a total of 1,000,000 KSh.

370. On 7 December 2013 and [REDACTED], GICHERU influenced P-0397 by threatening or intimidating him, accusing P-0397 of being in touch with the ICC and trying to have him (GICHERU) arrested.

371. Through these Bribes, GICHERU, [REDACTED] corruptly induced P-0397 to withdraw as a Prosecution Witness, to cease cooperating with the ICC, and to sign an affidavit to that effect. Additionally, GICHERU [REDACTED] corruptly induced P-0397, in turn, to approach P-0516 in order to corruptly influence P-0516 to withdraw as a Prosecution Witness and recant his evidence.

b. Mens rea

372. GICHERU knew that his actions would bring about the material elements of the offence, viz. corruptly influencing P-0397, and acted with the purposeful will (intent) or desire to bring about those material elements.

373. GICHERU's *mens rea* may be inferred from the facts set out in Part II. vi. above and in particular the specific actions listed in section iii. below.

374. At all material times GICHERU knew that P-0397 was a Prosecution Witness.

iii. GICHERU's Individual Criminal Responsibility

375. The material facts common to all incidents set out in Part II. above are incorporated *mutatis mutandis*.

376. GICHERU performed the following specific acts in relation to the First Incident:

- a) During or before April 2013, GICHERU solicited or induced [REDACTED] to approach P-0397 and persuade him to meet with GICHERU [REDACTED] to discuss a bribery offer in exchange for withdrawing as a Prosecution Witness, which they in fact did.
- b) On or about 26 April 2013, and at [REDACTED] in [REDACTED], GICHERU [REDACTED] offered to pay P-0397 a Bribe of 5,000,000 KSh, in instalments to withdraw as a Prosecution Witness, to sign an affidavit to this effect and to locate other Prosecution Witnesses and bring them to GICHERU.
- c) On or about 27 April 2013 and at [REDACTED] in [REDACTED], GICHERU paid P-0397 a cash instalment of 600,000 KSh.
- d) On or about 30 April 2013 and at [REDACTED] in [REDACTED], GICHERU paid P-0397 a second cash instalment of 400,000 KSh.
- e) On 9 May 2013 and at [REDACTED] in [REDACTED], GICHERU arranged for advocate [REDACTED] to prepare an affidavit stating that P-0397 no longer intended to testify against any accused persons before the ICC and wished to

withdraw his testimony against said persons, and instructed or induced P-0397 to sign it.

- f) During April or May 2013 and at [REDACTED] in [REDACTED], GICHERU and YEBEI solicited or induced P-0397 to in turn approach P-0516 and corruptly influence him to meet with GICHERU in order to conclude a deal to withdraw as a Prosecution Witness and recant his evidence in return for a cash payment.
- g) On 7 December 2013 [REDACTED] in [REDACTED], GICHERU, [REDACTED], met with P-0397 and threatened or intimidated him, accusing P-0397 of being in touch with the ICC and trying to have him (GICHERU) arrested.

a. Article 25(3)(a)

377. GICHERU is criminally responsible as a **direct perpetrator** as a result of the actions described in paragraphs a) to g) above. At all material times, GICHERU intended that his actions would corruptly influence P-0397.

378. Alternatively, GICHERU is criminally responsible as a direct **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II. ii. and paragraphs a) to g) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of corruptly influencing P-0397, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the material elements of the offence or was aware that this would occur in the ordinary course of the events.

379. GICHERU is thus criminally responsible for the following specific acts of corrupt influence performed by the Direct Perpetrators in relation to the First Incident:

- i. On or about 20 April 2013 and [REDACTED], [REDACTED] corruptly influenced P-0397 to meet with GICHERU in order to negotiate a Bribe for his withdrawal as a Prosecution Witness, and thereafter on or about 26 April 2013 took P-0397 to meet with GICHERU [REDACTED] [REDACTED] Kenya, for this purpose.

380. The subjective elements of co-perpetration may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to g) above.

b. Article 25(3)(d)

381. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0397 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to g) above.

382. The subjective elements of common purpose liability may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to g) above.

c. Article 25(3)(b)

383. Alternatively, GICHERU is criminally responsible for **soliciting** or **inducing** YEBEI [REDACTED] to corruptly influence P-0397, which they duly did, as set out in paragraph a) above. GICHERU knew that his actions would, in the ordinary course of events, lead to YEBEI [REDACTED] committing the offence of corruptly influencing P-0397.

384. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to g) above.

d. Article 25(3)(c)

385. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0397, by acting as a conduit for the funds used to bribe him, which provided the means for the offence to be committed, and performing the actions further described in paragraphs b) to g) above. He is further criminally responsible for **abetting** YEBEI [REDACTED] to corruptly influence P-0397 by providing the moral support or encouragement described in paragraph a) above.

386. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to YEBEI [REDACTED] committing the offence of corruptly influencing P-0397.

387. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to g) above.

IV. Second Incident: Corruptly influencing Witness P-0516

i. Legal characterisation of facts

COUNT 2 Corruptly influencing a witness in contravention of article 70(1)(c) of the Rome Statute read in conjunction with articles 25(3)(a) (direct perpetration or co-perpetration), 25(3)(d) (contributing in any other way to a group acting with a common purpose), 25(3)(b) (soliciting or inducing), and 25(3)(c) (aiding, abetting or otherwise assisting)

GICHERU is criminally responsible, under article 25(3)(a), article 25(3)(d), article 25(3)(b), or article 25(3)(c), for the offence of corruptly influencing a witness [REDACTED] P-0516 [REDACTED] by offering him a Bribe of 800,000 KSh in instalments and actually paying him a total of 500,000 KSh to withdraw as a Prosecution Witness and to sign an affidavit withdrawing his prior statement to the

Prosecution, committed during the period April to May 2013 and at [REDACTED], Kenya.

ii. **Material facts**

a. *Actus reus: corruptly influencing a witness*

388. P-0516 was a Prosecution Witness.

389. During the period April to May 2013 and at [REDACTED], Kenya, GICHERU influenced P-0516 by offering him a Bribe of at least 800,000 KSh, of which he actually paid P-0516 a total of 500,000 KSh.

390. Through this bribe, GICHERU corruptly induced P-0516 to withdraw as a Prosecution Witness to recant the evidence he had provided to the Prosecution and/or to sign an affidavit to that effect.

b. *Mens rea*

391. GICHERU knew that his actions would bring about the material elements of the offence, viz. corruptly influencing P-0516, and acted with the purposeful will (intent) or desire to bring about those material elements.

392. GICHERU's *mens rea* may be inferred from the facts set out in Part II. vi. above and in particular the specific actions listed in section iii. below.

393. At all material times GICHERU knew that P-0516 was a Prosecution Witness.

iii. **GICHERU's Individual Criminal Responsibility**

394. The material facts common to all incidents set out in Part II. above are incorporated *mutatis mutandis*.

395. GICHERU performed the following specific acts in relation to the Second Incident:

- a) During the period April to May 2013, GICHERU and YEBEI induced P-0397 to approach P-0516 in order to corruptly influence P-0516 to withdraw as a Prosecution Witness and recant his evidence, which P-0397 did.
- b) Also during the period April to May 2013, GICHERU met P-0516 at his office in Veecam House, Eldoret and offered P-0516 a Bribe of 800,000 KSh in instalments to withdraw as a Prosecution Witness, recant his evidence and sign an affidavit to that effect.
- c) Also during the period April to May 2013, GICHERU met with P-0516 [REDACTED] approximately four times over this period and actually paid him a total of 500,000 KSh.
- d) During one of GICHERU's abovementioned meetings with P-0516, GICHERU asked him whether he knew "other people like you," meaning other witnesses, in order to induce P-0516 to corruptly influence such witnesses.
- e) Also during one of GICHERU's abovementioned meetings with P-0516. GICHERU arranged for P-0516 to sign an affidavit withdrawing as a witness.

a. Article 25(3)(a)

396. GICHERU is criminally responsible as a **direct perpetrator** as a result of the specific acts described in paragraphs a) to e) above. At all material times, GICHERU intended that his actions would corruptly influence P-0516.

397. Alternatively, GICHERU is criminally responsible as a **direct co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II. ii. and paragraphs a) to e) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of corruptly influencing P-0516, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the material elements of the offence or was aware that this would occur in the ordinary course of the events.

398. GICHERU is thus criminally responsible for the following specific acts of corrupt influence performed by the Direct Perpetrators in relation to the Second Incident:

- i. During the period April to May 2013 [REDACTED], [REDACTED], P-0397 corruptly influenced P-0516 to meet with GICHERU in order to negotiate a Bribe for his withdrawal as a Prosecution Witness, telling P-0516 that "[t]here is a deal if you agree to it, then you could get money". Subsequently, P-0397 took P-0516 to GICHERU[REDACTED] to get what was promised.

399. The subjective elements of co-perpetration may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to e) above.

b. Article 25(3)(d)

400. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0516 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to e) above.

401. The subjective elements of common purpose liability may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to e) above.

c. Article 25(3)(b)

402. Alternatively, GICHERU is criminally responsible for, together with YEBEI, **soliciting** or **inducing** P-0397 to corruptly influence P-0516, which he did, as set out in paragraph a) above. GICHERU knew that his actions would, in the ordinary course of events, lead to P-0397 committing the offence of corruptly influencing P-0516.

403. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to e) above.

d. Article 25(3)(c)

404. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0516, by acting as a conduit for the funds used to bribe him, which provided the means for the offence to be committed, and performing the actions further described in paragraphs b) to e) above. He is further criminally responsible for **abetting** P-0397 to corruptly influence P-0516 by providing the moral support or encouragement described in paragraph a) above.

405. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to P-0397 committing the offence of corruptly influencing P-0516.

406. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to e) above.

V. Third Incident: Corruptly influencing Witness P-0613

i. Legal characterisation of facts

COUNT 3: Corruptly influencing a witness in contravention of article 70(1)(c) of the Rome Statute read in conjunction with articles 25(3)(a) (co-perpetration), 25(3)(d) (contributing in any other way to a group acting with a common purpose), 25(3)(b) (soliciting or inducing), and 25(3)(c) (aiding, abetting or otherwise assisting)

GICHERU is criminally responsible, under article 25(3)(a), article 25(3)(d), article 25(3)(b), or article 25(3)(c), for the offence of corruptly influencing a witness,

[REDACTED] P-0613 [REDACTED],⁷⁸² by offering to pay her a Bribe, the amount of which would be subject to negotiation, to influence her to withdraw as a Prosecution Witness, committed during the period April to September 2013 and [REDACTED].

ii. **Material facts**

a. *Actus reus: corruptly influencing a witness*

407. P-0613 was a Prosecution Witness.

408. During the period April to September 2013 and at [REDACTED], GICHERU, [REDACTED], with the assistance of P-0800, P-0604, P-0495 and P-0516, influenced P-0613 by offering her a Bribe of an unspecified sum of money, the amount of which was subject to negotiation, and/or promising to secure her a job.

409. Though this Bribe, GICHERU and other Common Plan Members, corruptly induced P-0613 to withdraw as a Prosecution Witness.

b. *Mens rea*

410. GICHERU knew that his actions would bring about the material elements of the offence, viz. corruptly influencing P-0613, and acted with the purposeful will (intent) or desire to bring about those material elements.

411. GICHERU's *mens rea* may be inferred from the facts set out in Part II. vi. above and in particular the specific actions listed in section iii. below.

412. At all material times GICHERU knew that P-0613 was a Prosecution Witness.

iii. **GICHERU's Individual Criminal Responsibility**

413. The material facts common to all incidents set out in Part II. above are incorporated *mutatis mutandis*.

414. GICHERU performed the following specific acts in relation to the Third Incident:

⁷⁸² [REDACTED].

- a) In late April 2013, GICHERU offered [REDACTED] 2,000,000 KSh to obtain P-0613's [REDACTED].
- b) On or before 19 July 2013, GICHERU solicited or induced [REDACTED] to take a mobile phone to P-0613 so that she could be contacted in order to make her a financial offer.
- c) On or before 21 July 2013, GICHERU solicited or induced [REDACTED] to [REDACTED] to corruptly influence witnesses, including P-0613, and to report back to him [REDACTED].
- d) GICHERU instructed [REDACTED] to meet him on [REDACTED] to discuss P-0613. This followed a series of phone calls between [REDACTED] and P-0613, during which [REDACTED] had tried to persuade her to come and meet with GICHERU in order to negotiate a Bribe. [REDACTED] said he would come to meet P-0613 [REDACTED] following this meeting. In the circumstances, there are substantial grounds to believe that the purpose of the meeting with GICHERU [REDACTED] related to this activity.
- e) In September 2013, GICHERU instructed P-0495, assisted by P-0800, to contact P-0613 to corruptly influence her to withdraw as a Prosecution Witness, which P-0495 did.

a. Article 25(3)(a)

415. GICHERU is criminally responsible as a direct **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II. ii. and paragraphs a) to e) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of corruptly influencing P-0613, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the material elements of the offence or was aware that this would occur in the ordinary course of the events.

416. GICHERU is thus criminally responsible for the following specific acts of corrupt influence performed by the Direct Perpetrators in relation to the Third Incident:

- i. In a phone conversation on 13 May 2013 from an unconfirmed location, P-0516 urged P-0613 to withdraw as a Prosecution Witness, saying that she “should come back because RUTO's people need witnesses to come and withdraw from the ICC process”.
- ii. During June and July 2013, YEBEL, [REDACTED] called P-0613 on various occasions from unconfirmed locations and corruptly influenced her, by offering her Bribes to withdraw as a Prosecution Witness.
- iii. On 29 August 2013, P-0800 called P-0613 and corruptly influenced her by offering her a Bribe in exchange for [REDACTED] [REDACTED] and the recantation of her evidence to the Prosecution.
- iv. In a phone call on 7 September 2013 from an unconfirmed location, and at a subsequent face to face meeting on 13 September 2013 [REDACTED], P-0495 corruptly influenced P-0613 by offering her Bribes in exchange for withdrawing as a Prosecution Witness, [REDACTED] and meeting with GICHERU and other Common Plan members.
- v. On or about 20 September 2013, [REDACTED] tasked P-0604 to bring money to P-0613. About two minutes later, [REDACTED] also called P-0604 and spoke with him about this plan. As requested by [REDACTED], P-0604 called P-0613 and attempted unsuccessfully to convince her [REDACTED].

417. The subjective elements of co-perpetration may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to e) above.

b. Article 25(3)(d)

418. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0613 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to e) above.

419. The subjective elements of common purpose liability may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to e) above.

c. Article 25(3)(b)

420. Alternatively, GICHERU is criminally responsible for **soliciting** or **inducing** [REDACTED] to corruptly influence P-0613, as set out in paragraph c) above, which he attempted to do by offering P-0800 money to assist in locating and corrupting P-0613. GICHERU knew that his actions would, in the ordinary course of events, lead [REDACTED] to commit or attempt to commit the offence of corruptly influencing P-0613.

421. GICHERU is also criminally responsible for **soliciting** or **inducing** P-0495, assisted by P-0800, to corruptly influence P-0613, as set out in paragraph e) above, which he did. GICHERU knew that his actions would, in the ordinary course of events, lead P-0495 to commit the offence of corruptly influencing P-0613.

422. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to e) above.

d. Article 25(3)(c)

423. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0613, by acting as a conduit for the funds used to bribe her, which provided the means for the offence to be committed. He is further criminally responsible for **abetting** [REDACTED] and P-0495 to corruptly

influence P-0613 by providing the moral support or encouragement described in paragraphs c) and e) above.

424. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to the commission or attempted commission of the offence of corruptly influencing P-0613 by [REDACTED] and/or P-0495.

425. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to e) above.

VI. Fourth Incident: Corruptly influencing Witness P-0800

i. Legal characterisation of facts

COUNT 4: Corruptly influencing a witness in contravention of article 70(1)(c) of the Rome Statute read in conjunction with articles 25(3)(a) (direct perpetration or co-perpetration), 25(3)(d) (contributing in any other way to a group acting with a common purpose), 25(3)(b) (soliciting or inducing), and 25(3)(c) (aiding, abetting or otherwise assisting)

GICHERU is criminally responsible, under article 25(3)(a), article 25(3)(d), article 25(3)(b), or article 25(3)(c), for the offence of corruptly influencing a witness, [REDACTED] P-0800 [REDACTED], by offering to pay him a Bribe of between 1,500,000 and 2,500,000 KSh in order to influence him to withdraw as a Prosecution Witness, to sign an affidavit to this effect and to locate and corruptly influence other Prosecution Witnesses, including P-0495 and P-0613, committed during the period May 2013 to March 2014 and in Nairobi and [REDACTED], Kenya [REDACTED]

ii. Material facts

a. *Actus reus: corruptly influencing a witness*

426. P-0800 was a Prosecution Witness.

427. During the period May 2013 to March 2014 [REDACTED], GICHERU, [REDACTED] corruptly influenced P-0800, by offering him a Bribe of between 1,500,000 and 2,500,000 KSh.

428. Though this Bribe, GICHERU and other Common Plan Members corruptly induced P-0800 to withdraw as a Prosecution Witness and to sign an affidavit to that effect.

b. *Mens rea*

429. GICHERU knew that his actions would bring about the material elements of the offence, viz. corruptly influencing P-0800, and acted with the purposeful will (intent) or desire to bring about those material elements.

430. GICHERU's *mens rea* may be inferred from the facts set out in Part II. above and in particular the specific actions listed in section iii. below.

431. At all material times GICHERU knew that P-0800 was a Prosecution Witness.

iii. GICHERU's Individual Criminal Responsibility

432. The material facts common to all incidents set out in Part II. above are incorporated *mutatis mutandis*.

433. GICHERU performed the following specific acts in relation to the Fourth Incident:

- a) During May 2013, at the latest, GICHERU solicited or induced [REDACTED] to contact P-0800 and corruptly influence him to withdraw as a Prosecution Witness, [REDACTED].

- b) In July 2013, GICHERU solicited or induced [REDACTED] to contact P-0800 and persuade him to meet with GICHERU in order that GICHERU could corruptly influence P-0800, [REDACTED].
- c) In August 2013, GICHERU met P-0800 [REDACTED] at a hotel in [REDACTED]. GICHERU offered P-0800 a Bribe of 2,000,000 KSh in order to withdraw as a Prosecution Witness, to sign an affidavit to that effect, and to help to locate other Prosecution Witnesses and persuade them to withdraw, including P-0495 and P-0613.
- d) In particular, GICHERU solicited or induced P-0800 to locate P-0495 and bring him to meet GICHERU so that he could persuade P-0495 to withdraw as a Prosecution Witness, which P-0800 did. GICHERU gave P-0800 50,000 KSh for expenses for the purpose of travelling to find P-0495 [REDACTED].
- e) In or about [REDACTED], GICHERU [REDACTED] arranged for P-0800 to sign an affidavit prepared, under GICHERU's instructions, by [REDACTED] withdrawing as a Prosecution Witness.

a. Article 25(3)(a)

434. GICHERU is criminally responsible as a **direct perpetrator** as a result of the specific acts described in paragraphs a) to e) above. At all material times, GICHERU intended that his actions would corruptly influence P-0800.

435. Alternatively, GICHERU is criminally responsible as a **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II. ii. and paragraphs a) to e) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of corruptly influencing P-0800, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the material elements of the offence or was aware that this would occur in the ordinary course of the events.

436. GICHERU is thus criminally responsible for the following specific acts of corrupt influence performed by the Direct Perpetrators in relation to the Fourth Incident:

- i. [REDACTED] corruptly influenced P-0800 several times between May and July 2013 with promises of payment of between 1,500,000 and 2,500,000 KSh to withdraw as a witness. Subsequently, on 21 July 2013, [REDACTED] met in person with P-0800 [REDACTED], and again offered him money in order to recant his evidence given to the Prosecution and to help locate and corrupt other Prosecution Witnesses.
- ii. [REDACTED] corruptly influenced P-0800 several times between May and July 2013 with promises of payment of between 1,500,000 and 2,500,000 KSh to withdraw as a witness. Subsequently, on 21 July 2013, [REDACTED] met in person with P-0800 [REDACTED], and again offered him money in order to recant his evidence given to the Prosecution and to help locate and corrupt other Prosecution Witnesses.
- iii. On 21 July 2013, [REDACTED] solicited or induced P-0800 to persuade P-0613 to recant her testimony and to offer her 500,000 KSh. [REDACTED] promised to send P-0800 15,000 KSh [REDACTED], together with other ICC witnesses he managed to locate, where they would all receive payment.
- iv. In August 2013, [REDACTED] corruptly influenced P-0800 to meet with GICHERU to discuss P-0800's [REDACTED]. [REDACTED] took P-0800 to [REDACTED] Nairobi, Kenya to meet GICHERU and to hear GICHERU's offer to receive between 1,500,000 to 2,000,000 KSh to withdraw as an ICC witness.

437. The subjective elements of co-perpetration may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and paragraphs a) to e) above.

b. Article 25(3)(d)

438. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0800 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to e) above.

439. The subjective elements of common purpose liability may be inferred from the material facts described in Part II. vi above and the specific acts described in Part II. ii. and in paragraphs a) to e) above.

c. Article 25(3)(b)

440. Alternatively, GICHERU is criminally responsible for **soliciting** or **inducing** [REDACTED] to corruptly influence P-0800, which he duly did, as set out in paragraph a) above. GICHERU knew that his actions would, in the ordinary course of events, lead to [REDACTED] committing the offence of corruptly influencing P-0800.

441. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to e) above.

d. Article 25(3)(c)

442. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0800, by acting as a conduit for the funds used to bribe him, which provided the means for the offence to be committed, and performing the actions further described in paragraphs c) to e) above. He is further criminally responsible for **abetting** [REDACTED] to corruptly influence P-0800 by providing the moral support or encouragement described in paragraphs a) and b) above.

443. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to [REDACTED] committing the offence of corruptly influencing P-0800.

444. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to e) above.

VII. Fifth Incident: Corruptly influencing Witness P-0495

i. Legal characterisation of facts

COUNT 5: Corruptly influencing a witness in contravention of article 70(1)(c) of the Rome Statute read in conjunction with articles 25(3)(a) (direct perpetration or co-perpetration), 25(3)(d) (contributing in any other way to a group acting with a common purpose), 25(3)(b) (soliciting or inducing), and 25(3)(c) (aiding, abetting or otherwise assisting)

GICHERU is criminally responsible, under article 25(3)(a), article 25(3)(d), article 25(3)(b), or article 25(3)(c), for the offence of corruptly influencing a witness, [REDACTED] P-0495 [REDACTED] by offering to pay him a Bribe of between 1,500,000 and 2,500,000 KSh and employment, to withdraw as a Prosecution Witness in the *Ruto and Sang* case and corruptly influence other Prosecution Witnesses, committed during September 2013 [REDACTED].

ii. Material facts

a. *Actus reus: corruptly influencing a witness*

445. P-0495 was a Prosecution Witness.

446. During August 2013 and [REDACTED] in [REDACTED] Kenya, GICHERU [REDACTED], with the assistance of P-0800, influenced P-0495 by offering him a Bribe of between 1,500,000 KSh and 2,500,000 KSh.

447. Though this Bribe, GICHERU and other Common Plan Members, corruptly induced P-0495 to withdraw as a Prosecution Witness and, in turn, to help to locate other Prosecution Witnesses and persuade them to withdraw.

b. Mens rea

448. GICHERU knew that his actions would bring about the material elements of the offence, viz. corruptly influencing P-0495, and acted with the purposeful will (intent) or desire to bring about those material elements.

449. GICHERU's *mens rea* may be inferred from the facts set out in Part II. above and in particular the specific actions listed in section iii. below.

450. At all material times GICHERU knew that P-0495 was a Prosecution Witness.

iii. GICHERU's Individual Criminal Responsibility

451. The material facts common to all incidents set out in Part II. above are incorporated *mutatis mutandis*.

452. GICHERU performed the following specific acts in relation to the Fifth Incident:

- a) In August 2013, GICHERU met P-0800 [REDACTED] at [REDACTED]. GICHERU offered P-0800 a Bribe of 2,000,000 KSh in order, *inter alia*, to help to locate other Prosecution Witnesses and persuade them to withdraw. In particular, GICHERU solicited or induced P-0800 to locate P-0495 and bring him to meet GICHERU so that he could corruptly influence P-0495 to withdraw as a Prosecution Witness, which P-0800 did. GICHERU gave P-0800 50,000KSH for expenses [REDACTED] [REDACTED] to find P-0495 for this purpose.
- b) Approximately three days later in August 2013, GICHERU met with P-0495, together with [REDACTED] P-0800, at [REDACTED]. GICHERU offered P-0495 a bribe of between 1,500,000 KSh and 2,500,000 KSh in order to withdraw as a Prosecution Witness and, in turn, to help to locate other Prosecution

Witnesses and persuade them to withdraw. In particular, GICHERU instructed P-0459 to locate P-0613 and bring her to meet GICHERU so that he could persuade P-0613 to withdraw as a Prosecution Witness.

- c) Between 5 and 16 September, before P-0495 was summoned to testify in front of the ICC via video link, GICHERU induced P-0495 to repudiate the content of his prior statement to the Prosecution and to state that it had been fabricated by the Prosecution and [REDACTED]. Further, GICHERU told P-0495 to claim in court that [REDACTED] had instructed witnesses what to say to OTP investigators. P-0495's testimony before the Court between 16 and 22 September 2014 followed GICHERU's script. GICHERU and other lawyers coached P-0495 prior to his testimony before Trial Chamber V(a).

a. Article 25(3)(a)

453. GICHERU is criminally responsible as a **direct perpetrator** as a result of the specific acts described in paragraphs a) to c) above. At all material times, GICHERU intended that his actions would corruptly influence P-0495.

454. Alternatively, GICHERU is criminally responsible as a direct **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II. ii. and paragraphs a) to c) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of corruptly influencing P-0495, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the material elements of the offence or was aware that this would occur in the ordinary course of the events.

455. GICHERU is thus criminally responsible for the following specific acts of corrupt influence performed by the Direct Perpetrators in relation to the Fifth Incident:

- i. In August 2013, P-0800 contacted and corruptly influenced P-0495 by offering him a Bribe of up to 2,500,000 KSh to withdraw as an ICC witness and to meet with GICHERU to discuss the details of the offer.

456. The subjective elements of co-perpetration may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.

b. Article 25(3)(d)

457. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0495 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to c) above.

458. The subjective elements of common purpose liability may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.

c. Article 25(3)(b)

459. Alternatively, GICHERU is criminally responsible for **soliciting** or **inducing** P-0800 to corruptly influence P-0495 as set out in paragraph a) above, which he duly did. GICHERU knew that his actions would, in the ordinary course of events, lead to P-0800 committing the offence of corruptly influencing P-0495.

460. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.

d. Article 25(3)(c)

461. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0495, by acting as a conduit for the funds used to bribe him, which provided the means for the offence to be committed, and

performing the actions further described in paragraphs b) to c) above. He is further criminally responsible for **abetting** P-0800 to corruptly influence P-0495 by providing the moral support or encouragement described in paragraph a) above.

462. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to P-0800 committing the offence of corruptly influencing P-0495.

463. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.

VIII. Sixth Incident: Corruptly influencing Witness P-0536

i. Legal characterisation of facts

COUNT 6: Corruptly influencing a witness in contravention of article 70(1)(c) of the Rome Statute read in conjunction with articles 25(3)(a) (co-perpetration), 25(3)(d) (contributing in any other way to a group acting with a common purpose), 25(3)(b) (soliciting or inducing), and 25(3)(c) (aiding, abetting or otherwise assisting)

GICHERU is criminally responsible, under article 25(3)(a), article 25(3)(d), article 25(3)(b), or article 25(3)(c), for the offence of corruptly influencing a witness, [REDACTED] P-0536 [REDACTED] by offering her a Bribe of between 1,400,000 and 1,600,000 KSh in exchange for her withdrawal as a Prosecution Witness, committed during the period May to September 2013 and at [REDACTED].

ii. Material facts

a. Actus reus: corruptly influencing a witness

464. P-0536 was a Prosecution Witness.

465. Between May and September 2013 [REDACTED] GICHERU and [REDACTED] influenced P-0536 by offering her a Bribe of between 1,400,000 and 1,600,000 KSh.

466. Through this Bribe, GICHERU and [REDACTED] corruptly induced P-0536 to withdraw as a Prosecution Witness.

b. Mens rea

467. GICHERU knew that his actions would bring about the material elements of the offence, viz. corruptly influencing P-0536, and acted with the purposeful will (intent) or desire to bring about those material elements.

468. GICHERU's *mens rea* may be inferred from the facts set out in section II. above and in particular the specific actions listed in section iii. below.

469. At all material times GICHERU knew that P-0536 was a Prosecution Witness.

iii. GICHERU's Individual Criminal Responsibility

470. The material facts common to all incidents set out in Part II. above are incorporated *mutatis mutandis*.

471. GICHERU performed the following specific acts in relation to the Fifth Incident:

- a) During or before May 2013, GICHERU induced or solicited [REDACTED] to locate and contact witness P-0536 and corruptly influence her to withdraw as a Prosecution Witness, [REDACTED].
- b) GICHERU coordinated with [REDACTED] in between his calls with P-0536 in regard to P-0536's Bribe and other arrangements necessary to bring her back [REDACTED].

a. Article 25(3)(a)

472. GICHERU is criminally responsible as a **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II. ii. and paragraphs a) to b) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of corruptly influencing P-0536, and nevertheless performed the abovementioned

actions with the purposeful will (intent) to bring about the material elements of the offence or was aware that this would occur in the ordinary course of the events.

473. GICHERU is thus criminally responsible for the following specific acts of corrupt influence performed by the Direct Perpetrators in relation to the Sixth Incident:

- i. During the period 21 May to September 2013, [REDACTED] phoned P-0536 several times while P-0536 was in [REDACTED] and corruptly influenced her by offering her a Bribe of between 1,400,000 and 1,600,000 KSh to withdraw as a Prosecution Witness.

474. The subjective elements of co-perpetration may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to b) above.

b. Article 25(3)(d)

475. GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0536 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to b) above.

476. The subjective elements of common purpose liability may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to b) above.

c. Article 25(3)(b)

477. Alternatively, GICHERU is criminally responsible for **soliciting** or **inducing** [REDACTED] to corruptly influence P-0536, as set out in paragraph a) above, as a result of which, during the period [REDACTED] May to September 2013, [REDACTED] phoned P-0536 several times while P-0536 was in [REDACTED], and corruptly influenced her.

478. GICHERU knew that his actions would, in the ordinary course of events, lead to [REDACTED] committing the offence of corruptly influencing P-0536.

479. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to b) above.

d. Article 25(3)(c)

480. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0536, by acting as a conduit for the funds used to bribe him, which provided the means for the offence to be committed. He is further criminally responsible for **abetting** [REDACTED] to corruptly influence P-0536 by providing the moral support or encouragement described in paragraphs a) and b) above.

481. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to [REDACTED] committing the offence of corruptly influencing P-0536.

482. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II. vi above and the specific acts described in Part II. ii. and in paragraphs a) to b) above.

IX. Seventh Incident: Corruptly influencing Witness P-0341

i. Legal characterisation of facts

COUNT 7: Corruptly influencing a witness in contravention of article 70(1)(c) of the Rome Statute read in conjunction with articles 25(3)(a) (direct perpetration or co-perpetration), 25(3)(d) (contributing in any other way to a group acting with a common purpose), 25(3)(b) (soliciting or inducing), and 25(3)(c) (aiding, abetting or otherwise assisting)

GICHERU is criminally responsible, under article 25(3)(a), article 25(3)(d), article 25(3)(b), or article 25(3)(c), for the offence of corruptly influencing a Prosecution Witness, [REDACTED] P-0341 [REDACTED] by (i) offering to pay him a Bribe of 5,000,000 KSh and other financial benefits; (ii) actually paying him between 1,000,000 and 2,000,000 KSh; and (iii) intimidating him, in order to influence him to refuse to become a Prosecution Witness if asked to do so, to cease to attend [REDACTED] meetings in the same case, to sign pre-prepared or dictated affidavits recording his withdrawal from the ICC process, and/or to locate, contact and/or corruptly influencing other Prosecution Witnesses, committed during the period 24 April 2013 to mid-April 2014 and at [REDACTED].

ii. Material facts

a. Actus reus: corruptly influencing a witness

483. [REDACTED] [REDACTED]. GICHERU believed P-0341 to know information relevant to the *Ruto and Sang* case, and in particular information detrimental to RUTO. P-0341 was thus a “potential witness” for the purposes of article 70(1)(c).

484. Between 24 April 2013 and mid-April 2014 and in [REDACTED], Kenya, GICHERU and other Common Plan Members, namely [REDACTED] influenced P-0341 by:

- a) Offering him a bribe of 5,000,000 KSh in cash instalments, of which GICHERU then paid P-0341 a total of between 1,000,000 and 2,000,000 KSh; and/or
- b) Threatening or intimidating P-0341, including by implying that GICHERU would be able to find him anywhere if he became an ICC witness: that GICHERU’s [REDACTED].

485. Through these Bribes, and acts of intimidation, GICHERU, [REDACTED] corruptly induced P-0341 to refuse to become a Prosecution Witness if asked to do so, to cease to attend [REDACTED] meetings in the same case, to sign pre-prepared

or dictated affidavits recording his withdrawal from the ICC process, and/or to locate, contact and/or corruptly influencing other Prosecution Witnesses, including P-0274, P-0019 and P-0356.

b. Mens rea

486. GICHERU knew that his actions would bring about the material elements of the offence, viz. corruptly influencing P-0341, and acted with the purposeful will (intent) or desire to bring about those material elements.

487. GICHERU's *mens rea* may be inferred from the facts set out in Part II. above and in particular the specific actions listed in section iii. below.

488. At all material times GICHERU knew that P-0341 was a Prosecution Witness.

iii. GICHERU's Individual Criminal Responsibility

489. The material facts common to all incidents set out in Part II. above are incorporated *mutatis mutandis*.

490. GICHERU performed the following specific acts in relation to the Seventh Incident:

- a) At some stage prior to [REDACTED] April 2013, GICHERU solicited or induced, and subsequently paid, [REDACTED] to locate P-0341 and bring him to GICHERU[REDACTED], Kenya, [REDACTED].
- b) On 24 April 2014, GICHERU met P-0341 at [REDACTED]. At this meeting P-0341 was offered a Bribe of 5,000,000 KSh and other financial inducements, such as a car, property, [REDACTED]. In return P-0341 was asked to withdraw [REDACTED], refuse to become an ICC witness if asked, sign affidavits to this effect, and to approach other Prosecution Witnesses and convince them to withdraw as witnesses.
- c) Between 24 April 2013 and 3 April 2014, GICHERU met with P-0341 on several occasions and paid him cash instalments of the promised Bribe, in particular:

(i) on [REDACTED] May 2013 and at [REDACTED], GICHERU paid P-0341 500,000 KSh; (ii) on [REDACTED] May 2013 and at [REDACTED], GICHERU paid P-0341 another 500,000 KSh; (iii) on [REDACTED] July 2013 and [REDACTED] GICHERU paid P-0341 100,000 KSh; (iv) on [REDACTED] October 2013 and at the [REDACTED] [REDACTED], GICHERU paid P-0341 350,000 KSh [REDACTED]; and (v) on [REDACTED] April 2014 and at the [REDACTED], [REDACTED], GICHERU paid P-0341 100,000 KSh, again [REDACTED]. In addition, GICHERU paid P-0341 several smaller amounts, bringing the total to approximately 2,000,000 KSh.

- d) Between [REDACTED] May 2013, GICHERU called P-0341 [REDACTED] [REDACTED] and asked him to sign an affidavit to withdraw from the ICC, [REDACTED].
- e) Between 9 May and 19 July 2013, GICHERU again called P-0341 [REDACTED] [REDACTED] and asked him to draft a document in his own handwriting stating that P-0341 had no evidence against William Ruto and was withdrawing from the ICC.
- f) Between 24 April 2013 and 3 April 2014, GICHERU instructed P-0341 to approach P-0274 and bring him to GICHERU [REDACTED] to sign an affidavit of withdrawal from the *Ruto and Sang* case, and also to approach other victims and witnesses.
- g) GICHERU intimidated P-0341, in particular (i) not to become a witness for the Prosecution by signalling he could track individuals anywhere, on 24 April 2013 [REDACTED] [REDACTED], (ii) not to cooperate with the Prosecution if requested to become a witness for RUTO by threatening physical violence against any “white man” with whom P-0341 interacted, and stating that RUTO was very angry at [REDACTED] for providing information to the Prosecution.

a. Article 25(3)(a)

491. GICHERU is criminally responsible as a **direct perpetrator** as a result of the specific acts described in paragraphs a) to g) above. At all material times, GICHERU intended that his actions would corruptly influence P-0341.

492. Alternatively, GICHERU is criminally responsible as a direct **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II. ii. and paragraphs a) to g) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of the offence of corruptly influencing P-0341, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the material elements of the offence or was aware that this would occur in the ordinary course of the events.

493. GICHERU is thus criminally responsible for the following specific acts of corrupt influence performed by the Direct Perpetrators in relation to the Seventh Incident :

- i. On 24 April 2013, [REDACTED] brought P-0341 to GICHERU [REDACTED], to discuss withdrawing from the ICC process.
- ii. On 24 April 2013, at GICHERU[REDACTED] [REDACTED] [REDACTED] offered P-0341 a Bribe of 5,000,000 KSh and other benefits, if P-0341 stopped going to [REDACTED] meetings, refused to be an ICC witness, and signed an affidavit; [REDACTED] also intimidated P-0341 by stating that RUTO would be “very worried” if he continued [REDACTED]. [REDACTED] asked P-0341 to locate and approach ICC witnesses to convince them to withdraw from the case.
- iii. In April 2013 and at P-0341’s [REDACTED] [REDACTED] intimidated P-0341 by reproaching him for travelling to meet with ICC staff, telling him that RUTO [REDACTED], threatening that P-0341 would meet the same fate as P-

0397, telling P-0341 he was only saved by the fact that he had not been summoned to appear as a witness, and advising P-0341 to go [REDACTED] sign a new affidavit.

494. The subjective elements of co-perpetration may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to g) above.

b. Article 25(3)(d)

495. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0341 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to g) above.

496. The subjective elements of common purpose liability may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to g) above.

c. Article 25(3)(b)

497. Alternatively, GICHERU is criminally responsible for **soliciting** or **inducing** [REDACTED] to corruptly influence P-0341, which he duly did, as set out in paragraph a) above. GICHERU knew that his actions would, in the ordinary course of events, lead to [REDACTED] committing the offence of corruptly influencing P-0341.

498. In addition, GICHERU is criminally responsible for soliciting or inducing [REDACTED] to corruptly influenced P-0341, which he duly did, as set out in paragraph c) above. GICHERU knew that his actions would, in the ordinary course of events, lead to [REDACTED] committing of the offence of corruptly influencing P-0341.

499. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to g) above.

d. Article 25(3)(c)

500. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0341, by acting as a conduit for the funds used to bribe him, which provided the means for the offence to be committed, and performing the actions further described in paragraphs b) to g) above. He is further criminally responsible for **abetting** [REDACTED] to corruptly influence P-0341 by providing the moral support or encouragement described in paragraph a) above.

501. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to [REDACTED] committing the offence of corruptly influencing P-0341.

502. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to g) above.

X. Eighth Incident: Corruptly influencing Witness P-0274

i. Legal characterisation of facts

COUNT 8: Corruptly influencing a witness in contravention of article 70(1)(c) of the Rome Statute read in conjunction with articles 25(3)(a) (direct perpetration or co-perpetration), 25(3)(d) (contributing in any other way to a group acting with a common purpose), 25(3)(b) (soliciting or inducing), and 25(3)(c) (aiding, abetting or otherwise assisting)

GICHERU is criminally responsible, under article 25(3)(a), article 25(3)(d), article 25(3)(b), or article 25(3)(c), for the offence of corruptly influencing a potential witness, [REDACTED] P-0274 [REDACTED], by (i) promising him at least 2,000,000 KSh; (ii)

intimidating and threatening him multiple times, including at gunpoint; and (iii) paying him 30,000 KSh to induce him to withdraw [REDACTED] stating that the ICC attempted to coach him to give evidence against RUTO, to sign a blank piece of paper, and to locate, contact and/or corruptly influence other Prosecution Witnesses, committed during the period April or May 2012 to 2014 and at [REDACTED].

ii. **Material facts**

a. *Actus reus: corruptly influencing a witness*

503. [REDACTED]. P-0274 was [REDACTED] regarded by GICHERU as a person who knew information relevant to the proceedings before the Court, and in particular information detrimental to RUTO in the *Ruto and Sang* case. P-0274 was therefore a potential witness in the *Ruto and Sang* case for the purpose of article 70 proceedings. P-0274 was thus a “potential witness” for the purposes of article 70(1)(c).

504. Between April or May 2012 to 2014 and in [REDACTED], Kenya, GICHERU and other Common Plan Members, [REDACTED], and others influenced P-0274 by (i) promising him at least 2,000,000 KSh; (ii) intimidating and threatening him multiple times, including by holding him at gunpoint; and (iii) paying him 30,000 KSh.

505. Through these Bribes and acts of intimidation, GICHERU, [REDACTED], and others corruptly induced P-0274 to withdraw [REDACTED] stating that the ICC attempted to coach him to give evidence against RUTO, to sign a blank piece of paper, and to locate, contact and/or corruptly influence Prosecution Witnesses on behalf of the Common Plan Members.

b. *Mens rea*

506. GICHERU knew that his actions would bring about the material elements of the offence, viz. corruptly influencing P-0274, and acted with the purposeful will (intent) or desire to bring about those material elements.

507. GICHERU's *mens rea* may be inferred from the facts set out in Part II. above and in particular the specific actions listed in section iii. below.

508. At all material times GICHERU knew that P-0274 was a potential witness.

iii. **GICHERU's Individual Criminal Responsibility**

509. The material facts common to all incidents set out in Part II. above are incorporated *mutatis mutandis*.

510. GICHERU performed the following specific acts in relation to the Eighth Incident:

- a) On 24 April 2013 and between 25 April and 2 May 2013, [REDACTED], GICHERU directed P-0341 to locate, approach and bring P-0274 [REDACTED], which he did at the end of 2013.
- b) Towards the end of 2013, at his office in Eldoret, GICHERU promised to pay P-0274 1,000,000 KSh to stop engaging with the ICC, withdraw [REDACTED] in the *Ruto and Sang* case, and to locate and approach other actual, perceived or potential witnesses.
- c) Towards the end of 2013, at [REDACTED], GICHERU intimidated P-0274 by promising he "would now be safe" if he stopped engaging with the ICC, withdrew from the *Ruto and Sang* case, and located and approached other actual, perceived or potential witnesses.

a. **Article 25(3)(a)**

511. GICHERU is criminally responsible as a **direct perpetrator** as a result of the specific acts described in paragraphs a) to c) above. At all material times, GICHERU intended that his actions would corruptly influence P-0274.

512. Alternatively, GICHERU is criminally responsible as a direct **co-perpetrator** as a result of his essential contributions to the Common Plan set out in Part II. ii. and paragraphs a) to c) above. GICHERU was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of

the offence of corruptly influencing P-0274, and nevertheless performed the abovementioned actions with the purposeful will (intent) to bring about the material elements of the offence or was aware that this would occur in the ordinary course of the events.

513. GICHERU is thus criminally responsible for the specific acts of corrupt influence performed by the Direct Perpetrators in relation to the Eighth Incident:

- i. In April or May 2012 [REDACTED], promised P-0274 money and intimidated him into making a video recorded statement falsely stating that the ICC was going to coach him to give evidence against RUTO, and signing a blank page.
- ii. In a telephone conversation at the end of 2013, [REDACTED] promised P-0274 1,000,000 KSh to locate Prosecution Witness P-0356.

514. The subjective elements of co-perpetration may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.

b. Article 25(3)(d)

515. Alternatively, GICHERU is criminally responsible for contributing in any other way to the commission of the offence of corruptly influencing P-0274 by the Common Purpose Members as a result of his contributions set out in Part II. ii. and paragraphs a) to c) above.

516. The subjective elements of common purpose liability may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.

c. Article 25(3)(b)

517. Alternatively, GICHERU is criminally responsible for **soliciting** or **inducing** P-0341 to corruptly influence P-0274, which he duly did, as set out in paragraph a)

above. GICHERU knew that his actions would, in the ordinary course of events, lead to P-0341 committing the offence of corruptly influencing P-0274.

518. The subjective elements of soliciting or inducing may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.

d. Article 25(3)(c)

519. Alternatively, GICHERU is criminally responsible for **aiding** or **otherwise assisting** the corrupt influencing of P-0274, by acting as a conduit for the funds used to bribe him, which provided the means for the offence to be committed, and performing the actions further described in paragraphs b) to c) above. He is further criminally responsible for **abetting** P-0341 to corruptly influence P-0274 by providing the moral support or encouragement described in paragraph a) above.

520. GICHERU intended to facilitate the offence and knew and intended that this assistance would, in the ordinary course of events, lead to P-0341 committing the offence of corruptly influencing P-0274.

521. The subjective elements of aiding, abetting or otherwise assisting may be inferred from the material facts described in Part II. vi. above and the specific acts described in Part II. ii. and in paragraphs a) to c) above.



Ms Nazhat Shameen Khan, Deputy Prosecutor

Dated this 20th day of July 2023
At The Hague, The Netherlands