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Before: **Judge Miatta Maria Samba**

SITUATION IN THE REPUBLIC OF KENYA

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

Public

With confidential annexes A-C and public annexes D-E

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I. Introduction

1. Pursuant to the direction of Trial Chamber III ("Chamber"),[1] the Prosecution submits its trial brief ("Brief"), its list of evidence, its witness list and related annexes.

2. The primary charging instrument is the Decision on the Confirmation of Charges,[2] read in conjunction with the Document Containing the Charges.[3] Thus, the Brief is intended to complement this instrument for notice purposes, facilitate the Parties' preparation, and advance their and the Chamber's understanding of the issues. It also provides a framework that will assist the Chamber and Defence to understand the most relevant items of evidence relied upon by the Prosecution in support of the material facts alleged in the charges. The Brief is not intended to limit the Prosecution's prospective submission of relevant and probative evidence, nor the discretion of the Chamber to refer to and/or rely upon any item of evidence submitted into evidence that is not specifically referred to herein.

3. This case concerns offences against the administration of justice committed in respect of witnesses for the Prosecution[4] in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*,[5] more specifically the corrupt influencing of Prosecution Witnesses through bribery, intimidation, or a combination of both.

4. The evidence establishes that Paul GICHERU[6] and associated persons 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

[1] ICC-01/09-01/20-185, paras. 16-18.
[2] ICC-01/09-01/20-153-Conf-Red ("**Decision on the Confirmation of Charges**").
[3] ICC-01/09-01/20-125-AnxA-Corr-Red-Corr ("**DCC**"); *See* Section A. III below.
[4] 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**".
[5] ICC-01/09-01/11 ("***Ruto and Sang* case**").
[6] "Gicheru" or "**the Accused**".

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.[7]

5. The Brief, in Chapter A, sets out the Prosecution's overarching legal submissions. Chapter B provides a narrative and analysis of facts and evidence that proves the confirmed charges, with references to the most important items of evidence supporting these facts, and relevant legal analysis.

II. Confidentiality

6. Pursuant to regulation 23bis(1) of the Regulations of the Court,[8] the Brief and annexes A-C[9] are filed as confidential as they contain information that may reveal the identity of protected Prosecution witnesses and confidential material. A public redacted version will be filed as soon as practicable.

A. LEGAL SUBMISSIONS

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

7. The essential elements of the offence of corruptly influencing a witness in contravention of article 70(1)(c) have previously been defined by Trial Chamber[10] VII in the *Bemba et al* case,[11] and confirmed by the Appeals Chamber.[12] They were also adopted by Pre-Trial Chamber A (Article 70)[13] in the Decision on the

[7] **P-0613,** KEN-OTP-0102-0178 at 0181-0182, paras. 18, 29; **P-0397**, KEN-OTP-0159-1338-R01 at 1355; **P-0800**, KEN-OTP-0111-0140 at 0148, para. 45; KEN-OTP-0135-0200 at 0207; KEN-OTP-0160-0432 at 0446-0447; **P-0800** [redacted] KEN-OTP-0131-0431 at 0437. *See also* **P-0604**, KEN-OTP-0143-0144-R01 at 0165; **P-0536** [redacted] KEN-OTP-0160-1002 at 1004-1005, lns. 44-46; *Compare* **P-0536**, KEN-OTP-0118-0011-R01 at 0017, para. 28; **P-0341,** KEN-OTP-0150-0255-R01 at 0264-0265, paras. 48, 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.
[8] "**RoC**".
[9] Confidential Annexes A-C are List of Evidence (Annex A), List of Witnesses (Annex B) and List of Defined Terms and Persons (Annex C).
[10] "**TC**".
[11] *Bemba et al.* TJ, especially at paras. 43-50.
[12] *Bemba et al.* AJ, pp. 300-330.
[13] "**PTC A**".

confirmation of charges against Paul Gicheru.[14] According to this precedent, "Article 70(1)(c), first alternative, of the Statute ('corruptly influencing a witness') 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."[15] In particular:

i. Conduct crime

8. 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".[16]

ii. Influencing

9. "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.[17]

iii. Corruptly

10. "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."[18] "The use of the word 'corruptly' signifies that the relevant conduct is aimed at contaminating the witness's testimony."[19]

11. The Prosecution submits it is axiomatic that, at least in the context of an opposing party's witness, interference aimed at preventing a witness from testifying *at all* must also be included in the conduct proscribed.

[14] Decision on the Confirmation of Charges, paras. 44-51.
[15] *Bemba et al.* TJ, para. 43.
[16] *Id.*, para. 48; *Bemba et al.* AJ, para. 737.
[17] *Id.*, para. 45; *Bemba et al.* AJ, paras. 730, 733.
[18] *Id.*, para. 44.
[19] *Id.*, para. 46.

iv. Witness

12. "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 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."[20]

v. *Mens rea*

13. There is no special intent requirement for article 70 offences. *Mens rea* is to be determined according to the ordinary requirements under article 30.[21]

II. The Chamber's assessment of the evidence

14. 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 TC VII, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo and 4 others*,[22] and endorsed by PTC A,[23] "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."[24] It follows that evidence given by a witness at a time when he or she was subject to corrupt

[20] *Bemba et al.* AJ, para. 721.
[21] *Bemba et al.* TJ, paras. 26, 31; *Bemba et al.* AJ, paras. 676-677
[22] *Bemba et al.* TJ, para. 220; The Appeals Chamber found no error with this reasoning *Bemba et al.* AJ, paras. 1018-1019.
[23] Decision on the Confirmation of Charges, para. 41.
[24] In respect of certain witnesses in this case, the Prosecution will ask the 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.

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 accepted as reliable. For these reasons, the Chamber should be particularly cautious in its assessment of witness credibility.[25]

III. Scope of the confirmed Charges

15. PTC A confirmed the charges against Gicheru, "as articulated by the Prosecutor in the DCC and to the extent that the Chamber considers them sufficiently supported by evidence".[26] PTC A also clarified that "[i]n its decision, the Chamber refers only to those pieces of evidence it considers relevant and sufficient to sustain its findings, without prejudice to the relevance of other pieces of evidence presented by the parties".[27]

16. While PTC A did not specifically repeat in the Confirmation Decision each and every essential fact pleaded in the DCC, nor analyse exhaustively each item of evidence referenced,[28] it fully endorsed the charges brought by the Prosecution. Thus the Prosecution submits that the Confirmation Decision must be read together with the DCC to fully understand the scope of the confirmed charges.[29]

17. As noted by the TC in the *Ntaganda* case, "there is no indication that the Pre-Trial Chamber intended to confirm the relevant charges only in part and to decline to confirm the remaining parts. Rather, the Pre-Trial Chamber considered evidence of some aspects of the crimes charged and, based on that evidence, confirmed the crimes charged in their entirety"[30] Moreover, "where the Pre-Trial Chamber was

[25] ICC-01/04-01/10-514 OA 4, para. 48; *Bemba et al.* TJ, para. 203.
[26] Decision on the Confirmation of Charges, disposition.
[27] *Ibid*. para. 34.
[28] *See* ICC-01/12-01/18-1562-Red, para. 93.
[29] *Ibid.*, para. 94; ICC-01/04-02/06-450, para. 40.
[30] ICC-01/04-02/06-2666-Red, para. 336.

silent on a particular allegation in the DCC it cannot be presumed to have been rejected […]".[31]

18. Accordingly, when the Confirmation Decision is read in conjunction with the DCC, the Prosecution submits that each material fact pleaded in Section C of the DCC must be regarded as confirmed unless the PTC specifically stated otherwise.

B. NARRATIVE AND ANALYSIS OF THE FACTS

I. Introduction

19. In this section the Prosecution provides a narrative and analysis of facts and evidence to explain and support the Charges, with references to the most relevant and probative items of evidence supporting these facts,[32] and the relevant legal analysis.[33]

i. Background to the *Ruto and Sang* case

20. William Samoei RUTO[34] and Joshua Arap SANG[35] were charged with six counts of crimes against humanity[36] arising out of the post-election violence[37] that followed the 2007 general election in Kenya. This election saw the Orange Democratic Movement,[38] led by Raila ODINGA and *inter alios* RUTO, vying for power against the Party of National Unity,[39] led by incumbent President Mwai KIBAKI and *inter alios* Uhuru KENYATTA. Support for the rival coalitions was split largely along ethnic lines, with the Kalenjin, who formed the majority of the

[31] ICC-01/04-02/06-450, para. 39; ICC-01/04-02/06-2666-Red, para. 335.
[32] Or, where appropriate, contradicting the facts.
[33] 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.
[34] "**RUTO**".
[35] "**SANG**".
[36] ICC-01/09-01/11-448.
[37] Commonly referred to as the "**PEV**".
[38] "**ODM**".
[39] "**PNU**".

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.

21. Victory by KIBAKI and the PNU in disputed circumstances led to an outbreak of violence across Kenya. This was particularly bloody in the Rift Valley,[40] 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.[41]

ii. Cooperation issues

22. While the ICC was initially welcomed by the Kenyan authorities,[42] 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.

23. [redacted]

[40] 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.
[41] 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.
[42] "**Kenya**".
[43] [redacted]

[redacted]

24. The result 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 any investigations requiring coercive state powers, such as phone intercepts or searches.[46] The same issues also affected the Prosecution's investigation into instances of witness interference, including offences charged in this case.[47] 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.[48]

25. [redacted][49]

iii. Witness intimidation and interference

26. Anti-ICC sentiment was particularly fierce in the Rift Valley. Persons cooperating with the ICC, particularly suspected witnesses for the Prosecution, were widely regarded as traitors, and were vilified and intimidated in public discourse and in the media, leading to an atmosphere of fear and suspicion.[50] 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.[51] This

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[44] [redacted]
[46] *See* for instance ICC-01/09-02/11-982, paras. 48-78, read with ICC-01/09-02/11-1037, para. 16.
[47] KEN-OTP-0159-0884 at 0887-0888, para. 19.
[48] KEN-OTP-0159-0884 at 0888-0889, para. 20.
[49] [redacted]
[50] ICC-01/09-01/11-2027-Red-Corr, at p. 122, para. 161.
[51] The *Ruto and Sang* case, and *The Prosecutor v. Uhuru Muigai Kenyatta*, ICC-01/09-02/11.

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 filings lodged with the relevant Pre-Trial and Trial Chambers.[52] Notably, from early 2013 the Prosecution received numerous reports of concerted attempts to identify, contact and corruptly influence Prosecution Witnesses through bribery and intimidation, which ultimately led to the Prosecutor requesting[53] and obtaining arrest warrants against Walter Osipiri BARASA,[54] GICHERU and Phillip BETT.[55]

27. Eventually, this pattern of witness interference caused a number of Prosecution Witnesses to withdraw and/or recant their evidence,[56] leading to a collapse of the Prosecution case and the vacating of the charges against RUTO and SANG, without prejudice. 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".[57]

28. 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

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[52] [redacted] The filings related to witness interferences stopped in 2013, not because the incidents of witness interference had ceased, but because TC 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.

[53] [redacted] ICC-01/09-144-CONF-Red.

[54] [redacted] ICC-01/09-01/13-1-Red2; and [redacted] ICC-01/09-01/20-1-CONF-Red.

[55] 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]

[56] ICC-01/09-01/11-2027-Red-Corr, at pp. 118-119, paras. 151-152, at pp. 128-129, para. 178.

[57] *Per* Judge Eboe-Osuji, ICC-01/09-01/11-2027-Red-Corr, at p. 115, para. 141. *See also* majority opinion, at p. 55, paras. 147-148;. dissenting opinion of Judge Herrera-Carbuccia, ICC-01/09-01/11-2027-AnxI, para. 30.

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

29. GICHERU is individually criminally responsible for eight counts[58] of corruptly influencing witnesses contrary to article 70(1)(c), under: (i) article 25(3)(a), for committing the charged offences[59] 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;[60] (ii) 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) article 25(3)(b), for soliciting or inducing the direct perpetrators to commit the Charged Offences; or (iv) article 25(3)(c), for aiding, abetting or otherwise assisting the direct perpetrators in the commission of the Charged Offences.

30. Below, the Prosecution will set out and analyse the facts relevant to modes of liability common to all incidents charged, 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).

31. 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 case specific. GICHERU's criminal

[58] Each count in turn consists of several acts of corrupt interference by GICHERU and his associates.While these have been charged cumulatively as a course of conduct, in principle proof of a single act of corrupt interference could be sufficient to establish criminal liability.
[59] Unless otherwise specified, the offences charged in Counts **1 to 8** under section C of the DCC ("**Charged Offences**").
[60] All further references to **co-perpetration** in this document refer to **direct co-perpetration**, unless otherwise specified.

liability for **direct perpetration** under article 25(3)(a) is addressed under the six incidents to which this mode of liability applies.[61]

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

a. *The Common Plan*

32. 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**").

33. The Common Plan encompassed the identification, location and contacting of Prosecution Witnesses,[62] and offering and/or paying them financial benefits,[63] and/or threatening or intimidating them,[64] in order to induce them to withdraw as Prosecution Witnesses, refuse to cooperate or cease cooperating with the Prosecution and/or the Court, and/or recant the evidence which they had provided to the Prosecution.[65] The ultimate goal of the Common Plan was to undermine the Prosecution case in the *Ruto and Sang* case by preventing Prosecution Witnesses

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[61] Namely, the incidents relating to P-0397, P-0516, P-0800, P-0495, P-0341 and P-0274.
[62] *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**.
[63] Including cash payments, land and houses, vehicles, educational support and employment opportunities ("**Bribes**").
[64] In what may be described as a "carrot and stick" approach", KEN-OTP-0159-0884 at 0894, para. 36.
[65] **P-0397**, KEN-OTP-0159-1232-R01 at 1235-1236, 1238-1239; KEN-OTP-0159-1338-R01 at 1351-1353; KEN-OTP-0159-1533-R01 at 1545-1546; KEN-OTP-0159-1276-R01 at 1306-1308; KEN-OTP-0159-1309-R01 at 1311-1315; KEN-OTP-0159-1338-R01 at 1343-1344, 1354-1355 (*see also* **P-0397,** KEN-OTP-0160-0833 at 0839-0840, lns. 156-174; KEN-OTP-0159-1562-R01 at 1570; **P-0613**, KEN-OTP-0102-0178 at 0180-108, 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-0743**, 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; ICC-01/09-01/20-T-033-CONF-ENG, pp. 83-92; ICC-01/09-01/20-T-034-CONF-ENG, pp. 18-19; ICC-01/09-01/20-T-035-CONF-ENG, pp. 71-74; ICC-01/09-01/20-T-037-CONF-ENG, pp. 50-55, 61, 73.

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.[66] 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.

34. The Common Plan materialised by April 2013[67] at the latest and continued until at least the close of the Prosecution's case in *Ruto and Sang* on 10 September 2015.[68] A timeline of key events relevant to the execution of the Common Plan, a relationship chart and a witness overview were annexed to the Prosecution's written submissions on confirmationare [69] and are incorpotated in this Brief by reference.

35. The existence of the Common Plan can be inferred from the statements and actions of the Common Plan members and other persons associated with the Common Plan, which establish beyond reasonable doubt that they were working in a concerted manner to achieve the common goals described below.

b. *The members of the Common Plan*

36. The members of the Common Plan[70] consisted of a network of individuals associated-in-fact and acting jointly, at different levels, to realise the objectives of the Common Plan. As confirmed by PTC A,[71] these individuals include, at least:[72]

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[66] **P-0495/P-0613**, KEN-OTP-0129-0740 at 0755; **P-0397,** KEN-OTP-0159-1533-R01 at 1537-1538; **P-0800**, KEN-OTP-0135-0113 at 0120; KEN-OTP-0144-0272-R01 at 0283-0285.

[67] For instance, on 20 April 2013 P-0397 was approached [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-0159-1232-R01 at 1234-1236; KEN-OTP-0159-1276-R01 at 1307-1308) and took him to meet GICHERU [redacted] on or about 26 April 2013 (KEN-OTP-0159-1309-R01 at 1312). 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.

[68] ICC-01/09-01/11-1954.

[69] ICC-01/09-01/20-143-Conf-AnxA-C.

[70] Collectively "**Common Plan Members**" or "**Common Plan Group**".

[71] Decision on the Confirmation of Charges, paras. 188-199.

[72] PTC A found, in respect of several individuals named in the DCC as members of the Common Plan, that while they had each contributed to the commission of at least one of the crimes charged, their contributions could not be characterised as essential to the Common Plan as a whole. For the reasons discussed under sub-section (c) below,

(i) **Managers**: GICHERU[73] and, *inter alios*, Silas Kibet SIMATWO ("SIMATWO"),[74] and Isaac MAIYO ("MAIYO");[75] (ii) **Intermediaries**: between the Managers and Prosecution Witnesses, including Meshack YEBEI ("YEBEI"),[76] Philip Kipkoech BETT ("BETT"),[77] Walter Osipiri BARASA ("BARASA").[78]

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the Prosecution submits that this characterisation of the facts is incorrect in law and that this Chamber may reconsider this characterisation, either *sua sponte* or upon a motivated request from the Prosecution.

[73] **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-0159-1191-R01 at 1229-1230; KEN-OTP-0159-1232-R01 at 1238; KEN-OTP-0159-1309-R01 at 1312-1316; KEN-OTP-0159-1338-R01 at 1342-1346; KEN-OTP-0125-0248 at 0258, lns. 277-287; KEN-OTP-0159-1533-R01 at 1536-1538, 1545-1546, 1549-1550, 1554-1556 ; **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-0743**, 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); ICC-01/09-01/20-T-033-CONF-ENG, pp. 83-92; ICC-01/09-01/20-T-034-CONF-ENG, pp. 18-19; ICC-01/09-01/20-T-035-CONF-ENG, pp. 71-74; ICC-01/09-01/20-T-037-CONF-ENG, pp. 50-55, 61, 73. *See also* **P-0800**, KEN-OTP-0160-0432 at 0446-0447; **P-0800**[redacted] KEN-OTP-0131-0431 at 0437.

[74] **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-0159-1309-R01 at 1314, 1334-1335; KEN-OTP-0159-1338-R01 at 1343-1345; KEN-OTP-0159-1533-R01 at 1539; **P-0613**, KEN-OTP-0111-0162 at 0171, paras. 46-47; KEN-OTP-0115-0216 at 0222, paras. 29-30. *See also* **P-0800**, KEN-OTP-0160-0432 at 0446-0447; **P-0800/**[redacted], KEN-OTP-0131-0431 at 0437.

[75] **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 0277-0278, paras. 122-123; **P-0274**, KEN-OTP-0159-0986-R01 at 0997, paras. 66-67.

[76] *Also* known as "Kimutai". **P-0800**, KEN-OTP-0102-0205 at 0208-0210, paras. 23-33; KEN-OTP-0135-0200 at 0204, 0207; **P-0743**, KEN-OTP-0141-0154-R01 at 0172, 0174-0176; ICC-01/09-01/20-T-033-CONF-ENG, pp. 83-93; **P-0341**, KEN-OTP-0150-0255-R01 at 0264, paras. 44, 114, 119; **P-0397**, KEN-OTP-0159-1232-R01 at 1234-1236, 1238-1239; KEN-OTP-0159-1276-R01 at 1306-1308; KEN-OTP-0159-1309-R01 at 1311, 1316; KEN-OTP-0159-1338-R01 at 1352-1353; KEN-OTP-0125-0248 at 0258, lns. 277-287; KEN-OTP-0159-1533-R01 at 1550-1551, 1558 .

[77] *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-0159-1232-R01 at 1234-1236; KEN-OTP-0159-1309-R01 at 1311, 1316-1320; KEN-OTP-0159-1276-R01 at 1307-1308; KEN-OTP-0159-1533-R01 at 1559; **P-0604**, KEN-OTP-0117-1019-R01 at 1022-1023, paras. 18-24; **P-0743**, KEN-OTP-0141-0013 at 0014-0017, paras. 9, 12, 16; KEN-OTP-0141-0197-R01 at 0218; ICC-01/09-01/20-T-034-CONF-ENG, p. 12-13.

[78] **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.

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

a) GICHERU an Eldoret lawyer[79] 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.[80] Open source evidence confirms that both attended this school.[81] An analysis of GICHERU's mobile phone[82] indicates that RUTO was saved as a contact under number [redacted].[83] The same number has previously been attributed to RUTO by multiple sources.[84] GICHERU also represented P-0015, who was one of the first Prosecution Witnesses to withdraw, and commissioned an affidavit to this effect on 7 February 2013.[85]

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[86] Insurance,[87] a firm with which RUTO is reported to have close connections as a major shareholder and former co-owner.[88] SIMATWO [redacted] was "an eye of Mr RUTO".[89] "Sila Simotwo" is saved as a contact on GICHERU's mobile phone under number [redacted].[90] The same number

[79] **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.
[80] **P-0397**, KEN-OTP-0159-1309-R01 at 1313; **P-0800**, KEN-OTP-0135-0113 at 0019, lns. 193-202.
[81] *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.
[82] KEN-OTP-0160-0699.
[83] Under the initials "H.E", possible standing for His Excellency, *see* KEN-OTP-0160-0699 at 0700.
[84] **P-0028**, KEN-OTP-0028-1630 at 1649; KEN-OTP-0159-1638; KEN-OTP-0160-0661.
[85] KEN-OTP-0116-0206.
[86] African Merchant Assurance Company.
[87] KEN-OTP-0159-1731 (*See also* web version at https://www.amaco.co.ke/team/silas-simatwo/).
[88] *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/).
[89] **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.
[90] KEN-OTP-0160-0699 at 0701.

was previously saved on the mobile phone of P-0028 under the name "Silas Simatwo".[91]

c) MAIYO was the Chairman of the Constituencies Development Fund ("CDF") of Eldoret North, a position to which he was appointed when RUTO was MP for the constituency.[92] He is widely reported to be one of RUTO's closest allies.[93] "Maiyo Cdf" is saved as a contact on GICHERU's mobile phone.[94]

38. The **Intermediaries** consisted of current or former Prosecution witnesses and intermediaries 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. They were:

a) YEBEI [redacted], a human rights worker [redacted]. He introduced witness P-0471, [redacted] to the Prosecution. YEBEI gave a statement to the Prosecution, whose 2013 request to add him to its trial witness list was refused after the Prosecution reported to TC V that it had received information regarding his alleged involvement in witness interference.[95] The Prosecution sought a warrant for YEBEI's arrest, but withdrew the request after confirmation of his death.[96]

b) BETT [redacted] was a human rights worker for the Kalenjin Youth Alliance ("KALYA")[97] and friend of [redacted]. BETT [redacted]

[91] **P-0028**, KEN-OTP-0028-1630 at 1650.
[92] **P-0274,** KEN-OTP-0159-0986-R01 at 0997, para. 66; **P-0341**, KEN-OTP-0150-0255-R01 at 0277-0278, para. 122.
[93] CIPEV testimony [redacted], KEN-OTP-0007-0852 at 0865 ("Isaac MAYO [and others] […] these people are the closest people to the Honourable RUTO. These are confidants of Honourable RUTO"); **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.
[94] KEN-OTP-0160-0699 at 0702.
[95] ICC-01/09-01/11-762.
[96] ICC-01/09-01/20-1-Red, paras. 1-2.
[97] **P-0613**, KEN-OTP-0102-0178 at 0180, para. 14.

[redacted] was a childhood friend of YEBEI, a neighbour in [redacted].[98] BETT initially provided information to [redacted][99] about attempts to interfere with Prosecution Witnesses – [redacted]. However, he was subsequently also corrupted and co-opted into the Common Plan as an Intermediary, answerable to GICHERU.[100] "Phillip Bett" is saved as a contact on GICHERU's mobile phone.[101] On 10 March 2015, PTC II issued a warrant for the arrest of BETT,[102] but to date the Kenyan authorities have not surrendered him to the Court.

c) BARASA was a journalist[103] from Eldoret and former OTP intermediary. [redacted] Two phone numbers previously attributed by the Prosecution to BARASA are saved in the contact list on GICHERU's mobile phone as follows: (i) "Baraza" saved under number [redacted], which is attributed by multiple sources to BARASA;[104] and "Wb" saved under number [redacted], which has also been associated with BARASA during [redacted] OTP investigations.[105] On 2 August 2013, PTC II issued a warrant for the arrest of BARASA,[106] but to date the Kenyan authorities have not surrendered him to the Court.

[98] **P-0613**, KEN-OTP-0102-0178 at 0180, para. 15.
[99] Who in turn informed the Prosecution. *See* **P-0800**, KEN-OTP-0102-0205 at 0208, paras. 23, 29-45.
[100] **P-0800**, KEN-OTP-0160-0338 at 0347.
[101] Under number ~720562137, KEN-OTP-0160-0699 at 0702.
[102] ICC-01/09-01/20-1-Red.
[103] **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.
[104] KEN-OTP-0160-0699 at 0700; KEN-OTP-0103-2693-R01; **P-0536**, KEN-OTP-0111-0198, KEN-OTP-0111-0188-R01 at 0193, KEN-OTP-0103-2693-R01 at 2696; **P-0800**, KEN-OTP-0106-0395 to 0397, KEN-OTP-0103-2473 at 2477 *et seq*., KEN-OTP-0106-0388 at 0391 *et seq*; **P-0613**, KEN-OTP-0111-0162 at 0172, KEN-OTP-0111-0184.
[105] Likely initials for "Walter Barasa", *see*: KEN-OTP-0160-0699 at 0700; KEN-OTP-0160-0697.
[106] ICC-01/09-01/13-1-Red2.

c. *Other individuals contibuting to the activities of the Common Plan*

39. Several other individuals, including Corrupted Witnesses, espoused the Common Plan and participated in the criminal activities that were carried out in the context thereof ("**Associates**"). They played important roles in the events surrounding the corrupt influencing of one or more of the eight Prosecution Witnesses. PTC A found that these Associates intervened "once to contact and try to convince one single other witness (except for P-0800)".[107] Although PTC A found that these contributions do not meet the *legal* threshold for an essential contribution,[108] the Chamber is not bound by that legal assessment and is free to apply the law to the facts as confirmed by PTC A.

40. As correctly held by PTC A in its Confirmation Decision, it is not necessary for the co-perpetrators to make an essential contribution to each criminal incident;[109] none of the co-perpetrators has overall control over the offence because they all depend on one another for its commission;[110] and the co-perpetrator must have control over *the crime* and the power to frustrate it.[111] The Prosecution submits that it has not yet been authoritatively decided whether or not it is necessary to prove that that the contributions of *non-charged* co-perpetrators meet the "essential contribution" threshold.[112] However, it is unnecessary to decide this issue since – assuming *arguendo* that it is – the Prosecution submits that PTC A erred in law in finding that an essential contribution must be made to the Common Plan *as a whole*, when as a matter of law, an essential contribution to the commission of any *crime*

[107] Decision on the Confirmation of Charges, para. 200.
[108] Decision on the Confirmation of Charges, para. 200.
[109] Decision on the Confirmation of Charges, para. 177, and authorities cited therein.
[110] *Ibid*., para. 171, and authorities cited therein.
[111] As opposed to control over the overall *common plan* and the power to frustrate the common plan: *Ibid*., paras. 174, 175 (emphasis added), and authorities cited therein.
[112] According to the Appeals Chamber, what ties the co-perpetrators together and justifies the reciprocal attribution of their respective acts is not the degree of their contribution, but the common plan or agreement itself (*Lubanga* AJ, para. 445; *CAR Article 70* AJ , para. 818; *CAR Article 70* TJ, para. 65). Thus, it is arguable that as long as it is established that non-charged members of the common plan contributed to crimes that were committed in the context of the common plan, their acts can be attributed to the accused, regardless of the severity of their contribution."

(or – in an article 70 case – *offence*) committed as part of the Common Plan would suffice.[113] PTC A confirmed that each of the Associates contributed to at least one of the Charged Offences. The Prosecution submits that these contributions by the Associates can be characterised as essential contributions *to those Charged Offences* that were committed as part of the Common Plan.[114]

41. Since no interlocutory appeals are permitted Article 70 prosecutions,[115] the Prosecution could not seek correction of this error by the Appeals Chamber. However, the Chamber is free to legally recharacterise the Associates' contributions to the Charged Offences within the context of the Common Plan as "essential" pursuant to regulation 55 of the Regulations of the Court. This way their conduct can be attributed to GICHERU pursuant to article 25(3)(a). The Prosecution thus requests the Chamber to give the Defence notice of a possible recharacterisation to that effect pursuant to regulation 55(2).

42. The **Associates**, include:

a) Elisha Kipkorir BUSIENEI ("BUSIENEI").[116] BUSIENEI was a former ODM member[117] and political ally of RUTO. In 2013 he became a Kenyan Member of Parliament ("MP") for the Turbo constituency.[118] "Busienei 2 Mp" is saved as a contact on GICHERU's mobile phone. The Prosecution has previously attributed the associated number [redacted] to BUSIENEI.[119]

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[113] It may be observed, however, that by making an essential contribution to even one offence committed in pursuance of the Common Plan, the Associates *ipso facto* made a contribution to the Common Plan as a whole, since the corrupt influencing of each of the Prosecution Witnesses was a key element of the overall plan.
[114] PTC A did not consider or decide this issue.
[115] Provisional rule 165(2).
[116] **P-0341**, KEN-OTP-0150-0255-R01 at 0258, paras. 15, 43-53: **P-0397**, KEN-OTP-0159-1588-R01 at 1618-1619 .
[117] *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).
[118] KEN-OTP-0159-1631 (https://info.mzalendo.com/person/elisha-kipkorir-busienei/); KEN-OTP-0159-1767 (https://uasingishudecides.wordpress.com/category/busienei/); KEN-OTP-0159-1781 (https://www.facebook.com/groups/632310313581348); **P-0341**, KEN-OTP-0150-0255-R01 at 0263, para. 43.
[119] KEN-OTP-0160-0699 at 0701; KEN-OTP-0159-1631.

b) Sammy Kiptanui KOSGEI ("KOSGEI").[120] KOSGEI was a former witness in the CIPEV and Kenya National Commission on Human Rights[121] investigations into the PEV, who was provided as a lead to the Prosecution, but never interviewed. KOSGEI reported to the KNCHR that he had been threatened due to his involvement with these investigations [redacted][122] [redacted] KOSGEI later recanted his CIPEV evidence[123] and publically claimed he had been coached by [redacted].[124]

c) Successfully corrupted Prosecution Witnesses,[125] including P-0397, P-0800, P-0495, P-0516, and P-0341, described more fully below under the individual incidents concerning them, who subsequently also acted as intermediaries and helped to further the objectives of the Common Plan.[126] A contact corresponding to Corrupted Witness P-0495 (saved as [redacted], under number [redacted]) was found on GICHERU's mobile phone.[127]

d) Former Prosecution Witness [redacted] (P-0015).

e) CIPEV witness, screened by the OTP, [redacted] (P-0017).

f) GICHERU's bodyguard, one "KOGO"."Kogo" is saved as a contact on GICHERU's phone.[128]

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[120] **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.
[121] "**KNCHR**".
[122] [redacted] KEN-OTP-0047-0179-R01, paras. 78-79; KEN-OTP-0047-0248, transcription: KEN-OTP-0124-0317; KEN-OTP-0047-0273.
[123] KEN-OTP-0047-0273.
[124] [redacted]; *See* [redacted], KEN-OTP-0047-0179-R01, paras. 207, 214, 251-263, and 328-329.
[125] Collectively: "**Corrupted Witnesses**".
[126] **P-0397**, KEN-OTP-0159-1232-R01 at 1235-1236, 1238-1239; KEN-OTP-0159-1338-R01 at 1351-1353; KEN-OTP-0159-1533-R01 at 1549-1551, 1554-1557; KEN-OTP-0159-1562-R01 at 1570 ; **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.
[127] KEN-OTP-0160-0699 at 0701.
[128] Under the number ~ 723939041, KEN-OTP-0160-0699 at 0701.

d. *The implementation of the Common Plan*

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

44. 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;[129] and intimidating Prosecution Witnesses with threats of adverse consequences if they failed to cooperate.[130]

45. SIMATWO and MAIYO also made essential contributions to the Charged Offences *inter alia* by working with GICHERU to coordinate with RUTO[131] and participating in meetings between GICHERU and Prosecution Witnesses during which they were corruptly influenced.[132] In some instances they also contacted Prosecution Witnesses telephonically in furtherance of the Common Plan.[133]

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[129] **P-0397**, KEN-OTP-0159-1309-R01 at 1313-1314, 1333-1334; KEN-OTP-0159-1533-R01 at 1536-1537, 1555; **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, lns. 49-51, 58, 62-64.

[130] **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-0159-1338-R01 at 1347-1351.

[131] **P-0341**, KEN-OTP-0150-0255-R01, at 0265, paras. 50 and 53; **P-0274**, KEN-OTP-0159-0986-R01 at 0997, paras. 66-67; **P-0397**, KEN-OTP-0159-1338-R01 at 1342-1343 ; **P-0800**, KEN-OTP-0132-0167 at 0172; KEN-OTP-0111-0140 at 0148, para. 45; KEN-OTP-0135-0103 at 0105. *See also* **P-0800**, KEN-OTP-0160-0432 at 0446-0447; **P-0800**[redacted] KEN-OTP-0131-0431 at 0437.

[132] **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.

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

46. Intermediaries made essential contributions to the Charged Offences by identifying, locating and contacting Prosecution Witnesses; offering them 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,[134] and conveying threats of adverse consequences should they fail to cooperate.[135]

47. Intermediaries thus provided an essential link between the Managers and the Prosecution Witnesses. By 2013, [redacted] had relocated many Prosecution trial witnesses for their security, particularly linkage witnesses, [redacted] 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.

48. Certain Associates also made essential contributions to at least one of the Charged Offences in furtherance of the Common Plan, which actions may accordingly be attributed to GICHERU under article 25(3)(a) (Co-perpetration). The Prosecution submits that at least the following Associates made essential contributions to one or more Charged Offences:

    a) P-0397, with respect to Count 2 (P-0516);

    b) P-0800, with respect to Counts 3 (P-0613) and 5 (P-0495);

[134] **P-0397,** KEN-OTP-0159-1232-R01 at 1235-1236; KEN-OTP-0159-1309-R01 at 1311-1312 ; **P-0613,** KEN-OTP-0102-0178 at 0180-0181, paras. 16, 17; KEN-OTP-0111-0162 at 0172, paras. 52-53; KEN-OTP-0106-0910 at 0914, para. 19; KEN-OTP-0124-0007 at 0011, para. 19; **P-0274,** KEN-OTP-0159-0986-R01 at 0990, paras. 26-36; **P-0800**, KEN-OTP-0111-0140 at 0148, para. 45; KEN-OTP-0135-0103 at; **P-0800**[redacted], KEN-OTP-0132-0167 at 0180; **P-0536**, KEN-OTP-0118-0011-R01 at 0014-0033; KEN-OTP-0114-0296 at 0299.
[135] **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.

c) P-0495, with respect to Count 3 (P-0613);

d) KOSGEI, with respect to Count 7 (P-0341);

e) KOGO, with respect to Counts 1 (P-0397) and 7 (P-0341); and

f) P-0341, with respect to Count 8 (P-0274).

e. *GICHERU's essential contribution to the Charged Offences committed in the context of the Common Plan*

49. GICHERU made an essential contribution to the Charged Offences committed in the context fo the Common Plan through the actions specified below,[136] 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;[137]

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;[138]

[136] As further detailed in the sections on criminal responsibility under each specific incident.
[137] **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.
[138] **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.

c) Issuing instructions to Intermediaries and Associates, in particular to locate, contact and corruptly influence Prosecution Witnesses[139] and by promising and/or paying them financial rewards if they succeeded;[140]

d) Meeting in person with certain Prosecution Witnesses;[141] negotiating and and/or paying them Bribes in exchange for their withdrawing as witnesses, ceasing cooperation with the Prosecution and/or the Court,[142] and/or recanting their evidence;[143] and threatening them with adverse consequences if they failed to comply;[144]

e) Acting as a link between the funders and/or beneficiaries of the Common Plan, including RUTO, and the Intermediaries and Associates;[145]

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[139] **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-0159-1533-R01 at 1549-1550; **P-0516**, KEN-OTP-0150-0837-R01 at 0859; **P-0800**, KEN-OTP-0135-0113 at 0120,0126 and 0135-0137.

[140] **P-0397**, KEN-OTP-0159-1232-R01 at 1235-1236, 1238-1239; KEN-OTP-0159-1338-R01 at 1351-1353; KEN-OTP-0159-1533-R01 at 1549, 1558-1559; **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-0743**, KEN-OTP-0141-0013 at 0016, para. 23.

[141] All except P-0613 and P-0536.

[142] **P-0800,** KEN-OTP-0102-0205 at 0211-0212, paras. 38-45; 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; **P-0743**, ICC-01/09-01/20-T-033-CONF-ENG, pp. 85-92; ICC-01/09-01/20-T-034-CONF-ENG, pp. 18-19 ; ICC-01/09-01/20-T-037-CONF-ENG, pp. 50-55, 73.

[143] **P-0397**, KEN-OTP-0159-1191-R01 at 1229-1230; KEN-OTP-0159-1309-R01 at 1311-1314, 1326-1332; KEN-OTP-0159-1338-R01 at 1342-1345, 1354-1355; **P-0397/GICHERU,** KEN-OTP-0160-0833 at 0836, ln. 39-45; 0837, lns. 95-97; 0840, lns. 203-204; KEN-OTP-0159-1533-R01 at 1537-1539, 1545-1546, 1556-1559; KEN-OTP-0159-1562-R01 at 1570; **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-0743**, 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.

[144] **P-0397**, KEN-OTP-0159-1338-R01 at 1347-1349; **P-0341,** KEN-OTP-0150-0255-R01 at 0271, paras. 85-88; **P-0274,** KEN-OTP-0159-0986-R01 at 0996, paras. 60-64.

[145] **P-0397**, KEN-OTP-0159-1338-R01 at 1355; **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-0160-1002 at 1004-1005. *Compare* **P-0536**, KEN-OTP-0118-0011-R01 at 0017, para. 28.

f) Acting as the conduit for the payment of the Bribes to the Corrupted Witnesses;[146] and

g) Arranging for Corrupted Witnesses to sign affidavits recording their decisions to withdraw as Prosecution Witnesses and/or recanting material aspects of their previous evidence and/or making false assertions undermining the Prosecution's case against RUTO and SANG.[147]

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

f. *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.

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[146] **P-0397**, KEN-OTP-0159-1191-R01 at 1229-1230; KEN-OTP-0159-1309-R01 at 1311-1314, 1326-1332; KEN-OTP-0159-1338-R01 at 1342-1346; **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-0743**, 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-0743**, ICC-01/09-01/20-T-033-CONF-ENG, pp. 85-93; ICC-01/09-01/20-T-034-CONF-ENG, pp. 18-19 ; ICC-01/09-01/20-T-037-CONF-ENG, pp. 50-55, 73.

[147] **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-0159-1338-R01 at 1344-1346. *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.

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 Prosecution Witnesses by committing the types of offences charged in Counts **1 to 8**.[148] The Common Purpose materialised at the latest extemporaneously with the commission of the offences in question.

54. As described in section II. ii. above, the listed persons[149] 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 witnesses contrary to article 70(1)(c). Thus, the members of the Common Plan *ipso facto* also shared the Common Purpose.

55. As found by the PTC, the Associates, including BUSIENEI, KOSGEI, KOGO, P-0397, P-0800, P-0516, P-0495 and P-0341, also contributed to the commission or attempted commission of, at least one of the Charged Offences. The evidence establishes that each of the Associates shared the Common Purpose to corruptly influencing Prosecution Witnesses in contravention of article 70(1)(c).

[148] "**Common Purpose**" and "**Common Purpose Members**".
[149] Including Managers, Intermediaries and Associates.

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; and Associates BUSIENEI, KOSGEI, KOGO, 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 their intention to commit those offences.

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,[150] individually and cumulatively:

[150] As detailed in the sections on criminal responsibility under each specific incident.

a) GICHERU tasked the Direct Perpetrators with locating and contacting and corruptly influencing Prosecution Witnesses.[151]

b) GICHERU promised, and/or paid the Direct Perpetrators financial rewards for doing so.[152]

c) GICHERU authorised the Direct Perpetrators to offer Bribes to the Prosecution Witnesses, the details of which would be finalised when they met GICHERU, to induce their cooperation.[153]

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.**

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[151] **P-0397**, KEN-OTP-0159-1232-R01 at 1238; KEN-OTP-0159-1338-R01 at 1351-1353; KEN-OTP-0159-1533-R01 at 1550-1552; **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.

[152] **P-0397**, KEN-OTP-0159-1232-R01 at 1235-1236, 1238-1239 ; **P-0341,** KEN-OTP-0150-0255-R01 at 0263, paras. 36-41, at 0266, para. 57.

[153] **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-0159-1232-R01 at 1238; KEN-OTP-0159-1338-R01 at 1351-1353; KEN-OTP-0159-1533-R01 at 1550-1555; **P-0341,** KEN-OTP-0150-0255-R01 at 0274, paras. 99-101, 106-108. *See also* **P-0800**, KEN-OTP-0160-0432 at 0446-0447; **P-0800**[redacted], KEN-OTP-0131-0431 at 0437.

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,[154] 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;[155]

b) instructing or encouraging,Direct Perpetrators to identify and locate Prosecution Witnesses,[156] to corruptly influence them and to bring them to meet GICHERU;[157]

c) meeting with Prosecution Witnesses[158] 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;[159]

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[154] As detailed in the sections on criminal responsibility under each specific incident.
[155] **P-0800**, KEN-OTP-0135-0113 at 0120-0121, 0126, 0131-0133, 0137. *See also*, **P-0604**, KEN-OTP-0143-0144-R01 at 0148; **P-0800**, KEN-OTP-0160-0432 at 0446-0447; **P-0800**[redacted], KEN-OTP-0131-0431 at 0437.
[156] **P-0397**, KEN-OTP-0159-1232-R01 at 1238; KEN-OTP-0159-1338-R01 at 1352; KEN-OTP-0159-1533-R01 at 1550-1552, 1555 ; **P-0800**, KEN-OTP-0135-0113 at 0120-0122, 0126.
[157] **P-0800,** KEN-OTP-0135-0113 at 0120-0122, 0126, 0131-0132, 0134.
[158] All except P-0613 and P-0536.
[159] **P-0397**, KEN-OTP-0159-1191-R01 at 1229-1230; KEN-OTP-0159-1309-R01 at 1311-1314, 1326-1332; KEN-OTP-0159-1338-R01 at 1342-1346, 1354-1355; **P-0397/GICHERU,** KEN-OTP-0160-0833 at 0836, ln. 40-42, 0840 (lns. 203-205); KEN-OTP-0159-1533-R01 at 1535-1539, 1545-1546, 1556-1559; KEN-OTP-0159-1562-R01 at 1570; **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-0743**, KEN-OTP-0141-0013 at 0016,

d) arranging for Corrupted Witnesses to sign affidavits recording their decisions to withdraw as Prosecution Witnesses and/or recanting the material aspects of their previous evidence and/or making false assertions undermining the Prosecution's case against RUTO and SANG.[160]

e) acting as a link between the funders and/or beneficiaries of the Common Plan, including RUTO,[161] and the Direct Perpetrators;[162] and/or

f) acting as the conduit for the payment of the Bribes to the Corrupted Witnesses.[163]

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**. He further assisted in, for the purpose of facilitating, the commission of the Charged Offences.

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.

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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.

[160] **P-0800**, KEN-OTP-0135-0155 at 0170-0172; KEN-OTP-0145-0560; KEN-OTP-0145-0562; **P-0397**, KEN-OTP-0159-1338-R01 at 1344-1346; 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.

[161] **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-0159-1191-R01 at 1230; KEN-OTP-0159-1232-R01 at 1234-1235; KEN-OTP-0159-1276-R01 at 1308; KEN-OTP-0159-1309-R01 at 1313-1314, 1332-1333; KEN-OTP-0159-1338-R01 at 1343. *See also* **P-0743**, KEN-OTP-0141-0013 at 0017, para. 26; **P-0800**, KEN-OTP-0160-0432 at 0446-0447; **P-0800**[redacted], KEN-OTP-0131-0431 at 0437.

[162] **P-0397**, KEN-OTP-0159-1338-R01 at 1355; **P-0800**, KEN-OTP-0135-0200 at 0208. *See also*, **P-0604**, KEN-OTP-0143-0144-R01 at 0165.

[163] **P-0397**, KEN-OTP-0159-1191-R01 at 1229-1230; KEN-OTP-0159-1309-R01 at 1311-1314, 1326-1332; KEN-OTP-0159-1338-R01 at 1342-1346; **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-0743**, 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; ICC-01/09-01/20-T-033-CONF-ENG, pp. 85-93; ICC-01/09-01/20-T-034-CONF-ENG, pp. 18-19; ICC-01/09-01/20-T-037-CONF-ENG, pp. 50-55, 73; **P-0604**, KEN-OTP-0143-0144-R01 at 0151-0152.

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 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 the Accused, the following facts are particularly material:

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;[164] and/or intentionally making an essential contribution to the Common Plan;[165] 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; [166] and/or meaning (intending) to induce or solicit;[167] and/or to aid, abet or otherwise assist the Direct Perpetrators to commit those offences;[168] may be inferred in particular from the following facts:

a) GICHERU's direct involvement in planning, and instructing Intermediaries and Associates, to locate and contact Prosecution Witnesses for the purpose of corruptly influencing them to withdraw as witnesses;[169]

[164] *Per* articles 70(1)(c) and 30(2).
[165] *Per* article 25(3)(a).
[166] *Per* article 25(3)(d).
[167] *Per* article 25(3)(b).
[168] *Per* article 25(3)(c).
[169] **P-0800**, KEN-OTP-0111-0140 at 0148, para. 45; KEN-OTP-0135-0113 at 0121-0122, 0126, 0135, 0137; **P-0397**, KEN-OTP-0159-1533-R01 at 1550-1557; **P-0495**, KEN-OTP-0130-0507-R01 at 0527-0528; **P-0341**, KEN-OTP-0150-0255-R01 at 0265, paras. 50-52, 84.

b) GICHERU's direct involvement in offering and/or paying substantial sums of money and other benefits to Prosecution Witnesses P-0397,[170] P-0800,[171] P-0495,[172] P-0516,[173] P-0341[174] and P-0274[175] 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;[176]

d) GICHERU's direct involvement in arranging for Prosecution Witnesses to sign affidavits confirming their decision to withdraw and/or recant their evidence;[177]

e) GICHERU's instructions to Intermediaries and Associates, 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;[178]

f) GICHERU's direct involvement in arranging the finances for the payment of Bribes;[179] and

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[170] **P-0397**, KEN-OTP-0159-1191-R01 at 1229-1230; KEN-OTP-0159-1309-R01 at 1311-1314.
[171] **P-0800**, KEN-OTP-0135-0113 at 0117-0120.
[172] **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.
[173] **P-0397**, KEN-OTP-0159-1191-R01 at 1236-1237; KEN-OTP-0159-1232-R01 at 1238-1239; KEN-OTP-0159-1338-R01 at 1352-1353; KEN-OTP-0159-1533-R01 at 1549-1551; **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.
[174] **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.
[175] **P-0274,** KEN-OTP-0159-0986-R01 at 0996, paras. 60-61.
[176] **P-0397**, KEN-OTP-0159-1191-R01 at 1229-1230; KEN-OTP-0159-1309-R01 at 1311-1314, 1332; **P-0397/GICHERU,** KEN-OTP-0160-0824 at 0826 (ln. 13-15), 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
[177] **P-0397**, KEN-OTP-0159-1309-R01 at 1314-1315; KEN-OTP-0159-1338-R01 at 1344-1350; KEN-OTP-0159-1533-R01 at 1545-1546; **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.
[178] **P-0397**, KEN-OTP-0159-1338-R01 at 1351-1353; **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.
[179] **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;

g) GICHERU's coordination of the activities of members of the Common Plan and/or Common Purpose and/or Direct Perpetrators.[180]

b. ***Knowledge***

70. GICHERU's knowledge that his actions;[181] and/or the implementation of the Common Plan[182] and/or Common Purpose;[183] and/or the actions of the Direct Perpetrators induced or solicited by him;[184] and/or aided, abetted or otherwise assisted by him;[185] 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 effect[186] and/or agreed to contact other Prosecution Witnesses and bring them to meet with GICHERU;[187] and

c) The steps taken by GICHERU to avoid detection, including: refusing to record the agreements with the Corrupted Witnesses in writing; [188] paying Corrupted

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. *See also* **P-0800**, KEN-OTP-0160-0432 at 0446-0447; **P-0800**[redacted], KEN-OTP-0131-0431 at 0437.

[180] **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. *See also* **P-0800**, KEN-OTP-0160-0432 at 0446-0447; **P-0800**[redacted], KEN-OTP-0131-0431 at 0437.

[181] *Per* articles 70(1)(c) and 30(3).

[182] *Per* article 25(3)(a).

[183] *Per* article 25(3)(d).

[184] *Per* article 25(3)(b).

[185] *Per* article 25(3)(c).

[186] **P-0397**, KEN-OTP-0159-1309-R01 at 1314-1315; KEN-OTP-0159-1533-R01 at 1545-1546; KEN-OTP-0159-1338-R01 at 1344-1346; **P-0800**, KEN-OTP-0135-0155 at 0171-0172; **P-0613**, KEN-OTP-0106-0910 at 0914-0915, paras. 20, 22.

[187] **P-0397**, KEN-OTP-0159-1232-R01 at 1238-1239; KEN-OTP-0159-1338-R01 at 1352-1353; KEN-OTP-0159-1533-R01 at 1550-1552, 1556; **P-0800**, KEN-OTP-0135-0113 at 0121, 0135.

[188] **P-0397**, KEN-OTP-0159-1338-R01 at 1355.

Witnesses in cash only to avoid bank records;[189] instructing the Corrupted Witnesses not to deposit cash payments into their bank accounts;[190] instructing payments to be made through third persons;[191] instructing Intermediaries and Corrupted Witnesses to take precautions including when communicating by telephone;[192] and taking measures to ensure that lead counsel for RUTO was not aware of the activities of the Common Plan members.[193]

III. First Incident: Corruptly influencing Witness P-0397

i. Introduction

71. [redacted] ("P-0397") was a Prosecution Witness who provided evidence regarding the PEV in [redacted] Kenya. He also provided important evidence about meetings [redacted] at which RUTO allegedly incited and organised violence against ethnic Kikuyu.[194]

72. Between April 2013 and January 2014 [redacted] 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

[189] **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-0159-1309-R01 at 1314; KEN-OTP-0159-1338-R01 at 1354. *See also* KEN-OTP-0141-0197-R01 at 0218.
[190] **P-0397**, KEN-OTP-0159-1338-R01 at 1355-1356; **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.
[191] **P-0341,** KEN-OTP-0150-0255-R01 at 0273, para. 97.
[192] **P-0397/GICHERU**, KEN-OTP-0160-0824 at 0826, lns. 16-20, KEN-OTP-0160-0833 at 0837-0838, lns. 86-111; KEN-OTP-0160-0870 at 0872, lns. 6-19, 0873 (lns. 42-46), 0873 (lns. 42-49).
[193] **P-0800**, KEN-OTP-0111-0140 at 0148, paras. 43-45.
[194] **P-0397**, KEN-OTP-0074-0264-R01 at 0270-0271, paras. 29-33.

and his associates.[195] GICHERU paid P-0397 a total of 1,000,000 KSh[196] and organised his withdrawal as a Prosecution Witness by directing him to sign an affidavit.[197] Subsequently, GICHERU and YEBEI solicited or induced P-0397 to approach and corruptly influence P-0516.[198]

73. PTC A confirmed the charges for the offence set out in article 70(1)(c) of the Statute with respect to P-0397.[199]

ii. Corruptly influencing P-0397

74. On 18 February 2013, P-0397's identity as a Prosecution trial witness was disclosed to the RUTO and SANG Defence.[200] On 20 April 2013, [redacted] visited P-0397 [redacted].[201] They asked if he was an ICC witness, which P-0397 denied.[202] [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.[203] 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."[204] [redacted] told P-0397 that they would return to take P-0397 to meet this group of people, who were based in [redacted].[205]

[195] **P-0397**, KEN-OTP-0159-1309-R01 at 1312-1315; KEN-OTP-0159-1338-R01 at 1345-1346; KEN-OTP-0124-0029; KEN-OTP-0160-0870 at 0872-0873.
[196] **P-0397**, KEN-OTP-0159-1191-R01 at 1229-1230; KEN-OTP-0124-0021 at 0023-0024.
[197] **P-0397**, KEN-OTP-0124-0029.
[198] **P-0397**, KEN-OTP-0159-1232-R01 at 1238-1239.
[199] Decision on the Confirmation of Charges, paras. 56-70, disposition.
[200] ICC-01/09-01/11-1120-Red2-Corr, para. 38.
[201] KEN-OTP-0159-1276-R01 at 1307-1308; KEN-OTP-0159-1232-R01 at 1234-1236.
[202] **P-0397**, KEN-OTP-0159-1232-R01 at 1234-1236.
[203] **P-0397**, KEN-OTP-0159-1232-R01 at 1234-1236; KEN-OTP-0159-1276-R01 at 1308.
[204] **P-0397**, KEN-OTP-0159-1232-R01 at 1235-1236.
[205] **P-0397**, KEN-OTP-0159-1309-R01 at 1311.

75. On or about 26 April 2013, [redacted] took P-0397 to GICHERU [redacted].[206] GICHERU spoke to P-0397 privately[207] and told him that he (GICHERU) had heard that P-0397 was an ICC witness.[208] GICHERU asked P-0397 to assist him by withdrawing as a witness against RUTO.[209] GICHERU told P-0397 that RUTO wanted P-0397 to identify other Prosecution Witnesses and bring them to him (GICHERU).[210] GICHERU also said that he was very close friends with RUTO and they had attended Kapsabet High School together.[211]

76. GICHERU asked P-0397 to state his price in exchange for his withdrawal as an ICC witness.[212] P-0397 requested 10,000,000 KSh.[213] [redacted][214] GICHERU explained that [redacted] must be consulted concerning money and the amount to be paid to witnesses, and that RUTO had given him [redacted] the authority to pay witnesses.[215] GICHERU told [redacted] that P-0397 was a witness and must be paid.[216] After some negotiation, they agreed on a sum of 5,000,000 KSh[217] in cash instalments.[218] [redacted][219] GICHERU gave his business card to P-0397,[220] who later handed it to the OTP.[221]

77. The next day, 27 April 2013, GICHERU paid P-0397 a cash instalment of 600,000 KSh.[222] P-0397 kept 100,000 KSh and deposited 500,000 KSh into his bank account

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[206] **P-0397**, KEN-OTP-0159-1309-R01 at 1312 and 1326-1327; KEN-OTP-0159-1533-R01 at 1539.
[207] **P-0397**, KEN-OTP-0159-1309-R01 at 1312-1313.
[208] **P-0397**, KEN-OTP-0159-1309-R01 at 1312-1313.
[209] **P-0397**, KEN-OTP-0159-1309-R01 at 1313, 1331-1332.
[210] **P-0397**, KEN-OTP-0159-1309-R01 at 1313.
[211] **P-0397**, KEN-OTP-0159-1309-R01 at 1313. *See also* KEN-OTP-0159-1647 at 1667; *or* https://issuu.com/misoijonathan/docs/the_alumni_khs_at_90, p. 40 and **P-0800**, KEN-OTP-0135-0113 at 0119.
[212] **P-0397**, KEN-OTP-0159-1309-R01 at 1314, 1331-1332.
[213] **P-0397**, KEN-OTP-0159-1309-R01 at 1314.
[214] **P-0397**, KEN-OTP-0159-1309-R01 at 1314-1315; KEN-OTP-0159-1533-R01 at 1539.
[215] **P-0397**, KEN-OTP-0159-1338-R01 at 1342-1343.
[216] **P-0397**, KEN-OTP-0159-1309-R01 at 1315.
[217] **P-0397**, KEN-OTP-0159-1309-R01 at 1314-1315.
[218] **P-0397**, KEN-OTP-0159-1309-R01 at 1314.
[219] **P-0397**, KEN-OTP-0159-1338-R01 at 1343, lns. 138-140.
[220] **P-0397**, KEN-OTP-0159-1533-R01 at 1544-1545.
[221] KEN-OTP-0124-0028.
[222] **P-0397**, KEN-OTP-0159-1309-R01 at 1314.

[redacted][223] He did so despite GICHERU's warning not to deposit the money in the bank to avoid detection by the "ICC people", as he was afraid of getting robbed.[224]

78. On 30 April 2013, P-0397 met with GICHERU a second time[redacted][225] and GICHERU paid him a second cash instalment 400,000 KSh.[226] [redacted] P-0397 deposited an amount of 400,000 KSh into his bank account.[227] GICHERU [redacted] told P-0397 that they would give him the remaining [redacted] later, but never did.[228]

79. On 9 May 2013, GICHERU called an advocate named [redacted].[229] GICHERU instructed [redacted] to prepare an affidavit based on the discussion that GICHERU, [redacted][230] P-0397 signed a letter giving [redacted] the power to act for him before the ICC on this matter.[231] 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. The affidavit was prepared in English and [redacted] translated it to P-0397 because the latter did not understand English well.[232] The affidavit was forwarded to the

[223] **P-0397**, KEN-OTP-0159-1338-R01 at 1340-1341, corroborated by P-0397's bank statement record, showing he deposited 500,000 KSh on 27 April 2013. *See* KEN-OTP-0124-0021 at 0023.
[224] **P-0397**, KEN-OTP-0159-1338-R01 at 1355-1356.
[225] **P-0397**, KEN-OTP-0159-1309-R01 at 1313-1314.
[226] **P-0397**, KEN-OTP-0159-1309-R01 at 1314-1315.
[227] **P-0397**, KEN-OTP-0159-1533-R01 at 1537; KEN-OTP-0159-1338-R01 at 1340-1341; corroborated by P-0397's bank statement record, showing he deposited 500,000 KSh [redacted], *See* KEN-OTP-0124-0021 at 002.
[228] **P-0397**, KEN-OTP-0159-1338-R01 at 1343, lns. 139-140.
[229] **P-0397**, KEN-OTP-0159-1309-R01 at 1315; KEN-OTP-0159-1338-R01 at 1344-1345.
[230] **P-0397**, KEN-OTP-0159-1338-R01 at 1344-1346.
[231] KEN-OTP-0124-0030.
[232] **P-0397**, KEN-OTP-0159-1338-R01 at 1345.

Prosecution by [redacted][233] On 14 May 2013, the Prosecution informed the TC V(A) of the P-0397's withdrawal.[234]

80. [redacted].[235] [redacted][236]

81. After GICHERU paid P-0397, GICHERU and YEBEI asked P-0397 to approach P-0516 and ask him to withdraw as a witness. P-0397, who knew P-0516 and had a better relationship with him than YEBEI, was considered a "better option" to approach P-0516.[237] 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".[238] P-0516 agreed to P-0397's proposal to meet GICHERU and get what was promised[239] and subsequently P-0397 took him to GICHERU'[redacted].[240] P-0397 heard that P-0516 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.[241] 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.[242]

82. 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]

[233] **P-0397**, KEN-OTP-0159-1276-R01 at 1300-1304; KEN-OTP-0124-0030; KEN-OTP-0124-0029; *See also* ICC-01/09-01/11-1120-Red2-Corr, para. 40.
[234] ICC-01/09-01/11-1120-Red2-Corr, paras. 38-41.
[235] KEN-OTP-0160-0699 at 0701.
[236] KEN-OTP-0099-0286; **P-0397**, KEN-OTP-0130-0165-R01 at 0181.
[237] **P-0397**, KEN-OTP-0159-1232-R01 at 1238-1239; KEN-OTP-0159-1338-R01 at 1352.
[238] **P-0397**, KEN-OTP-0159-1533-R01 at 1556, ln. 764; **P-0516**, KEN-OTP-0150-0837-R01 at 0855, ln. 624.
[239] **P-0397**, KEN-OTP-0159-1533-R01 at 1556-1557.
[240] **P-0397**, KEN-OTP-0159-1232-R01 at 1239; **P-0516**, KEN-OTP-0150-0817-R01 at 0821-0824.
[241] **P-0397**, KEN-OTP-0159-1338-R01 at 1353.
[242] **P-0341**, KEN-OTP-0150-0255-R01 at 0277, para. 119.

[redacted][243] 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 RUTO arrested by the ICC. GICHERU was calmed down by [redacted] and P-0397 left the meeting.[244] As a result of this exchange, P-0397 felt that he was in danger and could be killed.[245]

83. Despite several attempts to clarify the circumstances of his withdrawal,[246] the OTP was unable to meet with P-0397 However, in December 2013, P-0397 began receiving threats to his life [redacted][247] P-0397 heard that RUTO's supporters had convened meetings [redacted] at which [redacted][248] [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.[249]

84. 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.[250] P-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.

85. On 16 January 2014,[251] and at the request of OTP investigators, P-0397 called GICHERU's official business telephone number. However GICHERU refused to

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[243] [redacted]
[244] **P-0397**, KEN-OTP-0159-1338-R01 at 1347-1349.
[245] **P-0397**, KEN-OTP-0159-1338-R01 at 1349.
[246] KEN-OTP-0159-0884 at 0902-0903, paras. 68-72.
[247] **P-0397**, KEN-OTP-0159-1191-R01 at 1198-1208, 1218, 1224-1229; KEN-OTP-0138-0531. *See also* KEN-OTP-0160-0665 at 0669.
[248] KEN-OTP-0096-0104 at 0110, para. 23; **P-0397/GICHERU**, KEN-OTP-0160-0833 at 0838, lns. 131-134.
[249] **P-0397**, KEN-OTP-0159-1191-R01 at 1226-1228.
[250] **P-0397**, KEN-OTP-0159-1191-R01; KEN-OTP-0159-1232-R01; KEN-OTP-0159-1248-R01; KEN-OTP-0159-1276-R01; KEN-OTP-0159-1309-R01; KEN-OTP-0159-1338-R01; KEN-OTP-0159-1365-R01; KEN-OTP-0159-1377-R01; KEN-OTP-0159-1507-R01; KEN-OTP-0159-1514-R01; KEN-OTP-0159-1533-R01; KEN-OTP-0159-1562-R01; and KEN-OTP-0159-1588-R01.
[251] **P-0397/GICHERU**, KEN-OTP-0160-0824 at 0825.

talk on that phone, and called him back using a different number.[252] During this conversation, P-0397 complained to GICHERU that despite his agreement 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".[253] P-0397 told GICHERU that the money he had received seemed to have caused his problems.[254] 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.[255]

86. GICHERU then asked P-0397 whether he wanted a meeting with [redacted][256] GICHERU proposed a meeting between them to solve P-0397's problems.[257] 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 save someone, or?"[258] P-0397 also offered to refund the money, but GICHERU told him to "stop".[259] P-0397 further stated: "You are the one who had me return to you. And you persuaded me. We spoke to you together with [redacted] (*sic*), you told me 'My dear, you are one of our people.'"[260] Once again, GICHERU does not deny or question this statement, but instead responded: "But you mentioned my name and the old man's. […] What did we do wrong? […] I don't even know where he is. You know, I haven't even talked to him for a month".[261]

87. 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]

[252] **P-0397/GICHERU**, KEN-OTP-0160-0824 at 0826, lns. 18-21.
[253] **P-0397/GICHERU**, KEN-OTP-0160-0833 at 0835, ln. 30.
[254] **P-0397/GICHERU**, KEN-OTP-0160-0833 at 0837, lns. 73-82.
[255] **P-0397/GICHERU**, KEN-OTP-0160-0833 at 0836-0837.
[256] **P-0397/GICHERU**, KEN-OTP-0160-0833 at 0837, lns. 86-93; KEN-OTP-0159-1588-R01 at 1618-1619.
[257] **P-0397/GICHERU**, KEN-OTP-0160-0833 at 0838, lns. 109-111; KEN-OTP-0160-0853 at 0855, lns. 12-15. *See also* KEN-OTP-0160-0870 at 0872.
[258] **P-0397/GICHERU**, KEN-OTP-0160-0833 at 0838, ln. 118.
[259] **P-0397/GICHERU**, KEN-OTP-0160-0833 at 0840-0841, lns. 203-205.
[260] KEN-OTP-0160-0833 at 0839, lns. 156-158.
[261] KEN-OTP-0160-0833 at 0839, lns. 160-168.

where GICHERU promised to pay 5,000,000 KSh, but he had only received 1,000,000 KSh, which was already creating problems for him.[262] YEBEI did not deny this. P-0397 told YEBEI about his encounter with GICHERU [redacted][263] at [redacted] Eldoret, on 7 December 2013.[264]

88. Other Prosecution Witnesses also confirmed that P-0397 had been corruptly influenced by GICHERU and other Common Plan members and Associates. [redacted] told [redacted] that P-0397 had received 500,000 KSh to withdraw as an ICC witness.[265] On 7 May 2013, [redacted] reported information to the OTP that P-0397 was [redacted] "meeting with a lawyer of one of the accused".[266] [redacted] also informed [redacted] that both P-0397 and P-0516 went to see GICHERU on that day, although [redacted] told [redacted] this was at [redacted][267] That same day, when called by OTP investigators, P-0397 denied being offered any money to withdraw his testimony[268] but, three days later, admitted going to a lawyer to withdraw as an ICC witness.[269] 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.[270]

89. Due to the assessed risk to his safety, P-0397 was subsequently relocated [redacted] [redacted][271] OTP investigators were due to meet him on 10 March 2014.[272] However, [redacted]

[262] **P-0397/YEBEI,** KEN-OTP-0125-0248 at 0258-0260.
[263] YEBEI in fact volunteered the name [redacted] *See* **P-0397/YEBEI,** KEN-OTP-0125-0248 at 0260, lns. 363-368.
[264] **P-0397/YEBEI,** KEN-OTP-0125-0248 at 0260; **P-0397**, KEN-OTP-0159-1338-R01 at 1347-1349.
[265] **P-0613**, KEN-OTP-0111-0162 at 0169, para. 36.
[266] KEN-OTP-0129-0298-R01-R01.
[267] KEN-OTP-0116-0482.
[268] KEN-OTP-0139-0097 at 0098.
[269] KEN-OTP-0139-0095.
[270] **P-0516**, KEN-OTP-0150-0817-R01 at 0821-0824.
[271] KEN-OTP-0159-0884 at 0906, para. 85.
[272] KEN-OTP-0159-0884 at 0906, paras. 85-86.

[redacted][273][redacted][274][redacted][275][redacted][276][redacted][277][redacted] As a result, the Prosecution was unable to call P-0397 in either the *Ruto and Sang* case, or in the present case.

90. Significantly, [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 [redacted] and threatened him, saying [redacted]

[273] KEN-OTP-0125-0830 at 0831-0832; KEN-OTP-0160-0690 at 0690, para. 4; KEN-OTP-0160-0665.
[274] KEN-OTP-0159-0884 at 0907, para. 91(a); KEN-OTP-0149-0444 at 0445, para. 9; KEN-OTP-0160-0665.
[275] KEN-OTP-0159-0884 at 0910, para. 93; KEN-OTP-0144-0168-R01 at 0169, para. 6.
[276] KEN-OTP-0160-0690.
[277] KEN-OTP-0160-0690 at 0691-0692, paras. 6-9, 11; KEN-OTP-0159-0884 at 0907, paras. 87-90. *See also* KEN-OTP-0160-0676-R01 at 0676-0677; KEN-OTP-0160-0680-R01; KEN-OTP-0160-0681-R01 at 0681-0682; KEN-OTP-0144-0168-R01 at 0169, para. 6; KEN-OTP-0141-0495-R01 at 0497, para. 7; KEN-OTP-0135-0446-R01 at 0448, para. 10; KEN-OTP-0149-0449-R01 at 0450, para. 9; KEN-OTP-0149-0444 at 0447-0448, paras. 11-12.

[redacted][278]

iii. GICHERU's Individual Criminal Responsibility

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

92. 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 to persuade him to meet with GICHERU in [redacted], which they in fact did.[279]

b) On or about 26 April 2013, [redacted] took P-0397 to meet GICHERU at [redacted] in [redacted].[280] At this meeting GICHERU [redacted] offered to pay P-0397 a Bribe of 5,000,000 KSh, in instalments,[281] as an inducement to withdraw as a Prosecution Witness,[282] to sign an affidavit to this effect, and to locate other Prosecution Witnesses and bring them to GICHERU.[283]

c) On or about 27 April 2013 and at [redacted] GICHERU paid P-0397 a cash instalment of 600,000 KSh.[284]

d) On or about 30 April 2013 and at GICHERU's law office in Eldoret, GICHERU paid P-0397 a second cash instalment of 400,000 KSh.[285]

e) On 9 May 2013 [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

[278] **P-0341**, KEN-OTP-0150-0255-R01 at 0275-0276, paras. 112-113.
[279] **P-0397**, KEN-OTP-0159-1276-R01 at 1307-1308; KEN-OTP-0159-1232-R01 at 1234-1236.
[280] **P-0397**, KEN-OTP-0159-1309-R01 at 1312 and 1326-1327; KEN-OTP-0159-1533-R01 at 1534-1536.
[281] **P-0397**, KEN-OTP-0159-1309-R01 at 1314-1315.
[282] **P-0397**, KEN-OTP-0159-1309-R01 at 1313.
[283] **P-0397**, KEN-OTP-0159-1309-R01 at 1313.
[284] **P-0397**, KEN-OTP-0159-1309-R01 at 1314-1315.
[285] **P-0397**, KEN-OTP-0159-1309-R01 at 1314-1315.

wished to withdraw his testimony against said persons, and instructed or induced P-0397 to sign it.[286]

f) During April or May 2013 [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.[287]

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 RUTO arrested.

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

93. 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.

94. 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 intent to bring about the material elements of the offence, or was aware that this would occur in the ordinary course of the events.

95. 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 of the DCC.

[286] **P-0397**, KEN-OTP-0159-1338-R01 at 1345-1346.
[287] **P-0397**, KEN-OTP-0159-1232-R01 at 1238; KEN-OTP-0159-1338-R01 at 1352; KEN-OTP-0159-1533-R01 at 1550-1557.

96. 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)*

97. 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.

98. 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)*

99. 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.

100. 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)*

101. 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 that were used to bribe P-0397, 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.

102. 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.

103. 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

104. [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.[288]

105. 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 affidavit withdrawing his prior statement to the Prosecution.[289] As requested by GICHERU, P-0516 in turn urged P-0613 to withdraw as a witness.[290]

106. PTC A confirmed the charges for the offence set out in article 70(1)(c) of the Statute with respect to P-0516.[291]

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[288] **P-0516**, KEN-OTP-0087-0031-R01.
[289] **P-0397**, KEN-OTP-0159-1562-R01 at 1568; KEN-OTP-0159-1533-R01 at 1556-1557; KEN-OTP-0159-1338-R01 at 1352-1354; **P-0516**, KEN-OTP-0150-0817-R01 at 0823, 0824; KEN-OTP-0150-0837-R01 at 0849, 0850.
[290] **P-0516**, KEN-OTP-0150-0837-R01 at 0859; **P-0613**, KEN-OTP-0102-0178 at 0181, para. 23.
[291] Decision on the Confirmation of Charges, p. 78, para. 2.

ii. Corruptly influencing P-0516

107. [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,[292] but he failed to do so and ceased all communication. As a result, the TC V(A) issued a summons for his appearance in court,[293] where he testified between 22 and 26 September 2014.[294] In his testimony, he renounced almost all material portions of his prior statements to the OTP which implicated RUTO or SANG. The evidence referenced below establishes that this recantation was the result of corrupt influence from GICHERU and his associates.

108. During their meeting in April or May 2013[295] at GICHERU's office in Eldoret,[296] GICHERU asked P-0397 if he knew of other ICC witnesses.[297] In P-0397's presence, GICHERU directed YEBEI to locate an ICC witness – referring to P-0516 [redacted][298] P-0397 told them that he had seen P-0516 [redacted].[299] 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.[300] As a result, GICHERU and YEBEI instructed P-0397 to locate P-0516 and take him to GICHERU [redacted].[301] P-0397 explained that YEBEI told him that he

[292] KEN-OTP-0159-0884 at 0911, para. 102.
[293] ICC-01/09-01/11-1274.
[294] ICC-01/09-01/20-T-002-CONF-ENG-ET to T-006-CONF-ENG-ET.
[295] **P-0397**, KEN-OTP-0159-1533-R01 at 1553-1554.
[296] **P-0397**, KEN-OTP-0159-1338-R01 at 1352.
[297] **P-0397**, KEN-OTP-0159-1338-R01 at 1352-1355.
[298] **P-0397**, KEN-OTP-0159-1533-R01 at 1550-1552.
[299] **P-0397**, KEN-OTP-0159-1533-R01 at 1551.
[300] **P-0397**, KEN-OTP-0159-1533-R01 at 1551; KEN-OTP-0159-1232-R01 at 1238-1239.
[301] **P-0397**, KEN-OTP-0159-1533-R01 at 1550.

[redacted] (who P-0397 described as "brokers")[302] received payment for identifying and locating other Prosecution Witnesses.[303]

109. Subsequently, in May 2013, P-0397 saw P-0516[redacted][304] and arranged to meet him at a local hotel.[305] During the meeting P-0397 told P-0516 about the rumours circulating that he was an ICC witness.[306] 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 later with GICHERU.[307] In this context, P-0516 and P-0397 "talked about withdrawing" as ICC witnesses.[308] P-0516 agreed to meet with the individual he later learned was GICHERU[309] and P-0397 then reported this to GICHERU, who said he would find a date to meet with P-0516.[310]

110. A few days later, P-0397 took P-0516 to meet GICHERU at his Eldoret office.[311] There GICHERU and P-0516 had a private discussion during which they formally introduced themselves.[312] Later on, upon GICHERU's invitation, P-0516 went to see him in his office again, alone.[313] According to P-0516, GICHERU agreed to pay him 800,000 KSh which P-0516 understood to be in exchange for his withdrawal as a witness in the RUTO case.[314] P-0516 also mentioned to P-0397 the payment amount

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[302] **P-0397**, KEN-OTP-0159-1533-R01 at 1559, lns. 897-905 (note that the English word "broker" used by the witness at lns. 900, 902 was not included in the interpreter's translation of the witness' answer).
[303] **P-0397**, KEN-OTP-0159-1533-R01 at 1549, 1559.
[304] **P-0397**, KEN-OTP-0159-1533-R01 at 1552-1553.
[305] **P-0516**, KEN-OTP-0160-0107 at 0121, ln. 493.
[306] **P-0397**, KEN-OTP-0159-1533-R01 at 1555; *compare* **P-0516**, KEN-OTP-0160-0078 at 0087, lns. 285-307
[307] **P-0397**, KEN-OTP-0159-1533-R01 at 1556; **P-0516**, KEN-OTP-0150-0837-R01 at 0855, ln. 624; KEN-OTP-0160-0078 at 0087, lns. 285-312.; *compare* KEN-OTP-0160-0078 at 0091, lns. 426-434.
[308] **P-0516**, KEN-OTP-0160-0107 at 0122, lns. 501-514, at 0123, lns. 539-550.
[309] **P-0516**, KEN-OTP-0160-0078 at 0091-0092, lns. 426-438, at 0092, lns. 466-486.
[310] **P-0397**, KEN-OTP-0159-1533-R01 at 1553.
[311] **P-0397**, KEN-OTP-0159-1533-R01 at 1556; **P-0516**, KEN-OTP-0150-0817-R01 at 0821-0822; KEN-OTP-0160-0078 at 0086, ln. 252-256, at 0091-0092, lns. 439-465.
[312] **P-0516**, KEN-OTP-0160-0078 at 0092-0093, lns. 473-493.
[313] **P-0516**, KEN-OTP-0160-0078 at 0097-0098, lns. 650-679, **P-0516**, KEN-OTP-0160-0107 at 0122, lns. 522-529.
[314] **P-0516**, KEN-OTP-0150-0817-R01 at 0823, 0824, particularly at lns. 222-227; KEN-OTP-0150-0837-R01 at 0849, 0850; KEN-OTP-0160-0078 at 0098, lns. 690-880; KEN-OTP-0160-0107 at 0118, ln. 373; KEN-OTP-0160-0107 at 0124, lns. 569-574; KEN-OTP-0160-0107 at 0127, lns. 690-707; KEN-OTP-0160-0107 at 0128, lns. 720-737; **P-0397**, KEN-OTP-0159-1533-R01 at 1556. *Compare with* **P-0516**, KEN-OTP-0150-0760-R01 at 0775-0776; KEN-OTP-0150-0837-R01 at 0842, 0846.

that he and GICHERU agreed upon, but P-0397 could not recall if the exact amount was 500,000 KSh or 800,000 KSh.[315] This is corroborated by P-0341 who saw both P-0397 and P-0516 at GICHERU's office in Eldoret "many times".[316] 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".[317]

111. Thereafter, P-0516 went through the same withdrawal process as P-0397,[318] but ultimately did not follow through. In fact, while P-0516 initially visited the office of [redacted] Advocates with the intention to depose to an affidavit,[319] in the end he told OTP investigators he did not.[320] P-0397 heard contradictory versions about whether or not P-0516's letter and/or affidavit were sent to the ICC.[321] 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,[322] but subsequently told investigators that he did not not go through with this as he got scared.[323]

112. GICHERU met with P-0516 approximately four times in the following weeks and paid him a total of at least 500,000 KSh.[324] P-0397, however, did not receive any of the payment he was promised for introducing P-0516 to GICHERU.[325] When P-0397 asked for this payment, GICHERU avoided the issue.[326]

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[315] **P-0397**, KEN-OTP-0159-1533-R01 at 1556-1557.
[316] **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]
[317] **P-0341**, KEN-OTP-0150-0255-R01 at 0277, para. 119.
[318] **P-0397**, KEN-OTP-0159-1533-R01 at 1557.
[319] **P-0516**, KEN-OTP-0160-0107 at 0119, lns. 413-427; KEN-OTP-0160-0107 at 0136-0137, lns. 1002-1025; KEN-OTP-0160-0139 at 0140, lns. 16-165.
[320] **P-0516**, KEN-OTP-0160-0107 at 0120, lns. 440-447.
[321] **P-0397**, KEN-OTP-0159-1533-R01 at 1557.
[322] ICC-01/09-01/20-T-005-CONF-Red-ENG- ET, pp. 50-51.
[323] **P-0516**, KEN-OTP-0160-0107 at 0119, ln. 406 to 0120 ln. 447.
[324] **P-0516**, KEN-OTP-0150-0817-R01 at 0823-0824, 0826; KEN-OTP-0150-0837-R01 at 0839-0841, 0851, 0857; KEN-OTP-0160-0078 at 0098, ln. 699; KEN-OTP-0160-0107 at 0126, lns. 665-673; KEN-OTP-0160-0107 at 0129-0131, lns. 744-846; **P-0397**, KEN-OTP-0159-1533-R01 at 1557-1558 ; **P-0613**, KEN-OTP-0111-0162 at 0169, para. 36; KEN-OTP-0102-0178 at 0181, paras. 18, 22.
[325] **P-0397**, KEN-OTP-0159-1533-R01 at 1558-1559.
[326] **P-0397**, KEN-OTP-0159-1533-R01 at 1559.

113. 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".[327] P-0516 stopped going to GICHERU's office to receive money, despite being paid less than originally promised,[328] because it was becoming dangerous.[329] However, P-0516 told P-0397 that he had received the entire payment and that he was not complaining.[330]

114. 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 others[331] and again on 19 July 2013 [redacted] told [redacted] that GICHERU had paid P-0516 600,000 KSh;[332] and both [redacted][333] and [redacted] told [redacted] that P-0516 had been paid.[334] By suddenly withdrawing his cooperation with the Prosecution, without explanation, P-0516's behaviour is also indicative of a corruptly influenced witness.[335]

115. During one of P-0516's meetings with GICHERU, GICHERU asked him whether he knew "other people like you," meaning other witnesses.[336] 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.[337]

116. 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

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[327] **P-0516**, KEN-OTP-0150-0837-R01 at 0848. *See also* KEN-OTP-0150-0817-R01 at 0823.
[328] **P-0516**, KEN-OTP-0160-0107 at 0134, lns. 918-941.
[329] **P-0516**, KEN-OTP-0150-0817-R01 at 0824, 0825.
[330] **P-0397**, KEN-OTP-0159-1533-R01 at 1557-1558.
[331] **P-0613**, KEN-OTP-0102-0178 at 0181, para. 18.
[332] **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).
[333] **P-0800**, KEN-OTP-0160-0468 at 0471-0472, lns. 109-120.
[334] **P-0800**, KEN-OTP-0111-0140 at 0148, para. 42.
[335] KEN-OTP-0159-0884 at 0911-0912.
[336] **P-0516**, KEN-OTP-0150-0837-R01 at 0859.
[337] **P-0613**, KEN-OTP-0102-0178 at 0181, para. 23. *Contra* **P-0516**, KEN-OTP-0150-0837-R01 at 0860.

he had been told by [redacted] what to say.[338] Based on the available evidence, including P-0516's subsequent admission to having been paid by GICHERU,[339] the Prosecution submits 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. In her recent interview, [redacted] denied the accusations made by P-0516 in his in-court testimony and noted that, as far as she knows, P-0516 gave a statement to the ICC before [redacted].[340]

iii. Analysis of P-0516's evidence

117. 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,[341] the particular circumstances pertaining to this witness, when assessed carefully, show that portions of his evidence may be relied upon by the Chamber.

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

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[338] *See*, for example, **P-0516**, ICC-01/09-01/20-T-003-CONF-Red-ENG, p. 42 *et seq*.
[339] **P-0516**, KEN-OTP-0150-0817-R01 at 0824, 0826; KEN-OTP-0150-0837-R01 at 0839-0841, 0851, 0857.
[340] **P-0613**, KEN-OTP-0160-0609-R01 at 0614, paras. 23-25.
[341] As PTC A observed, during his interview with the OTP in January 2015, "[P-0516] seemed not entirely forthright specifically regarding the extent and purpose of his interactions with Mr Gicheru and his contact with P-0613", Decision on the Confirmation of Charges, para. 74 and fn. 178.

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

120. 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.[342]

121. However, the Prosecution submits that certain uncorroborated and self-serving aspects of P-0516 should not be accepted by the Chamber, in particular his insistence that Gicheru never told him why he was being paid and his claim that, despite having taken the payment from Gicheru, he still testified truthfully in the *Ruto and Sang* case.[343].

iv. GICHERU's Individual Criminal Responsibility

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

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

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

[342] *See* for instance J Wigmore, Evidence §§ 1455-77 (3d ed. 1940); Particularly where corroborated, *see* Federal Rules of Evidence, Rule 804(b)(3).
[343] With the exception of falsely denying meeting with Gicheru.

Witness and recant his evidence,[344] which P-0397 did, providing an essential contribution to the commission of this offence.[345]

b) During May to June 2013, P-0397 took P-0516 to meet GICHERU at the latter's office in Veecam House, Eldoret.[346] At this meeting, GICHERU paid P-0516 a bribe of 800,000 KSh in exchange for his withdrawal as a Prosecution Witness.[347] GICHERU met with P-0516 approximately four times over this period and actually paid him a total of at least 500,000 KSh.[348]

c) GICHERU asked P-0516 whether he knew "other people like you", which P-0516 understood to mean other ICC witnesses.[349] 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.[350]

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

124. 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.

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

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[344] **P-0397**, KEN-OTP-0159-1533-R01 at 1550-1552.
[345] **P-0397**, KEN-OTP-0159-1533-R01 at 1552, 1555.
[346] **P-0397**, KEN-OTP-0159-1533-R01 at 1556.
[347] **P-0516**, KEN-OTP-0150-0817-R01 at 0823-0824; **P-0397**, KEN-OTP-0159-1533-R01 at 1556-1557.
[348] **P-0516**, KEN-OTP-0150-0837-R01 at 0839-0841, 0851, 0857; **P-0397**, KEN-OTP-0159-1533-R01 at 1557-1558; **P-0613**, KEN-OTP-0111-0162 at 0169, para. 36; **P-0613**, KEN-OTP-0102-0178 at 0181, paras. 18, 22.
[349] **P-0516**, KEN-OTP-0150-0837-R01 at 0858, ln. 708 to 0859, ln. 736.
[350] **P-0613**, KEN-OTP-0102-0178 at 0181, para. 23. *Contra* **P-0516**, KEN-OTP-0150-0837-R01 at 0860.

126. 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 of the DCC.

127. 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)*

128. 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.

129. 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)*

130. 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.

131. 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)*

132. 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.

133. 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.

134. 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

135. [redacted] ("P-0613", [redacted]) [redacted] provided evidence regarding the PEV to the CIPEV[351] and was a Prosecution Witness.[352]

136. Between April and September 2013, [redacted] GICHERU, [redacted] with the assistance of P-0800, P-0604 and P-0495 corruptly influenced P-0613 by offering her

[351] **P-0613,** KEN-OTP-0106-0910 at 0913, para. 10.
[352] **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.

Bribes to withdraw as a Prosecution Witness and to recant her evidence.[353] Despite these attempts, P-0613 testified before TC V(A) between 18 and 20 June 2014.[354]

137. P-0613 became a key target in this case after YEBEI, whom she knew even before 2008,[355] told GICHERU that she was co-operating with the ICC by providing evidence concerning the PEV and introducing other witnesses [redacted] to the Prosecution.[356]

138. PTC A confirmed the charges for the offence set out in article 70(1)(c) of the Statute with respect to P-0613.[357]

ii. Corruptly influencing P-0613

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

140. [redacted] told P-0613 that RUTO had instructed GICHERU to bribe Prosecution Witnesses in exchange for their withdrawal from the case.[358] Based on his conversations with GICHERU and [redacted] told P-0613 that GICHERU had paid YEBEI and other ICC witnesses such as P-0397 or P-0516.[359]

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[353] **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, lns. 29-753; KEN-OTP-0130-0563-R01 at 0565, lns. 39-67; KEN-OTP-0117-0897; KEN-OTP-0103-3498.
[354] **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.
[355] **P-0613,** KEN-OTP-0106-0910 at 0913, para. 14.
[356] **P-0613,** KEN-OTP-0102-0178 at 0180-0181, para. 17.
[357] Decision on the Confirmation of Charges, paras. 88-112 and disposition.
[358] **P-0613,** KEN-OTP-0102-0178 at 0181-0182, paras. 18, 29.
[359] **P-0613,** KEN-OTP-0102-0178 at 0181, para. 18.

141. 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.[360] BETT also told P-0613 that [redacted] was taking ICC witnesses to GICHERU to prepare affidavits for their withdrawal from the ICC process.[361] [redacted] further stated that [redacted] had instructed him to find P-0613's [redacted] for GICHERU.[362] GICHERU himself promised [redacted] 2,000,000 KSh for P-0613's [redacted].[363] [redacted][364]

142. [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.[365]

143. [redacted] told P-0613 that GICHERU had informed him [redacted] was tracking her [redacted][366]

144. In May 2013, [redacted] told P-0613 that he was looking for new OTP witnesses to persuade them to withdraw.[367] In another conversation, P-0800's [redacted] told P-0613 that [redacted] had been hired to encourage P-0800 to withdraw.[368]

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[360] **P-0613,** KEN-OTP-0102-0178 at 0180, para. 16.
[361] **P-0613,** KEN-OTP-0106-0910 at 0914, para. 20.
[362] **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.
[363] **P-0613,** KEN-OTP-0102-0178 at 0180, para. 16.
[364] **P-0613,** KEN-OTP-0102-0178 at 0180, para. 17.
[365] **P-0613,** KEN-OTP-0106-0910 at 0914-0915, para. 22.
[366] **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.
[367] KEN-OTP-0107-0288.
[368] KEN-OTP-0107-0288; KEN-OTP-0159-0884 at 0936, para. 210.
[369] **P-0613,** KEN-OTP-0102-0178 at 0181, para. 23. *Contra* **P-0516,** KEN-OTP-0150-0837-R01 at 0860, lns. 777-797.

145. In a phone conversation on 13 May 2013, P-0516 urged P-0613 to withdraw as a Prosecution Witness.[369]

146. On 7 June 2013, YEBEI tried to get into contact with P-0613.[370] On 14 and 17 June 2013, unknown people sent her SMS trying to organise a meeting with her and promising her *inter alia* [redacted].[371] After some phone calls,[372] on 21 June 2013, YEBEI told her he wanted to meet her.[373] They had two further phone conversations that day and YEBEI told her "these people" were seeking witnesses.[374]

147. YEBEI [redacted] continued calling P-0613 several times in July 2013.[375] [redacted][376] [redacted] also told P-0613 that members of the Common Plan feared her because they believed that she [redacted].[377] [redacted].[378] 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][379]

[369] **P-0613,** KEN-OTP-0102-0178 at 0181, para. 23. *Contra* **P-0516,** KEN-OTP-0150-0837-R01 at 0860, lns. 777-797.
[370] **P-0613,** KEN-OTP-0106-0910 at 0915, para. 23.
[371] KEN-OTP-0117-0903; **P-0613,** KEN-OTP-0106-0910 at 0916, paras. 32-35.
[372] **P-0613,** KEN-OTP-0106-0910 at 0915-0916, para. 30; **P-0613/YEBEI,** KEN-OTP-0118-1927 at 1929-1932.
[373] **P-0613,** KEN-OTP-0106-0922 at 0926, para. 16.
[374] **P-0613,** KEN-OTP-0106-0922 at 0926, paras. 19-21.
[375] 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.
[376] **P-0613,** KEN-OTP-0111-0162 at 0169, para. 37.
[377] **P-0613,** KEN-OTP-0111-0162 at 0169, para. 38.
[378] **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.
[379] **P-0613,** KEN-OTP-0111-0162 at 0169, para. 39; **P-0613/YEBEI,** KEN-OTP-0118-1927 at 1950-1951; KEN-OTP-0111-0181.

148. [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-0743[380] had requested 8,000,000 KSh, but they were still negotiating.[381] [redacted] told P-0613 that she should go to [redacted] and receive her payment,[382] but not to put the cash into a bank account.[383]

149. 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.[384]

150. This report is corroborated by the fact that on 21 July 2013, P-0800 and [redacted] in fact met [redacted] during a controlled operation that was photographed and recorded with P-0800's consent. During these meetings, [redacted] offered P-0800 money to assist in locating and corrupting other witnesses, specifically P-0613.[385] [redacted][386] [redacted][387] More specifically, [redacted] "everything's OK" with P-0613.[388] This conversation confirms that GICHERU tasked [redacted] with finding and bribing P-0613.

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[380] [redacted]
[381] **P-0613,** KEN-OTP-0111-0162 at 0169, para. 36.
[382] **P-0613,** KEN-OTP-0111-0162 at 0169, para. 36.
[383] **P-0613,** KEN-OTP-0111-0162 at 0169, para. 36.
[384] **P-0613,** KEN-OTP-0111-0162 at 0171, para. 49; **P-0613/YEBEI,** KEN-OTP-0118-1927 at 1954-1955; KEN-OTP-0111-0182.
[385] **P-0800,** KEN-OTP-0111-0140 at 0147-0149, paras. 35-44, 49; KEN-OTP-0160-0432 at 0441-0442; **P-0800**[redacted], KEN-OTP-0131-0431 at 0451-0457; KEN-OTP-0111-0159. *See also* **P-0800,** KEN-OTP-0160-0432 at 0441-0442; **P-0800**[redacted], KEN-OTP-0131-0431 at 0451-0457.
[386] **P-0800,** KEN-OTP-0111-0140 at 0148-0149, paras. 43, 54; **P-0800**[redacted], KEN-OTP-0132-0167 at 0189, 0206.
[387] **P-0800,** KEN-OTP-0111-0140 at 0149, para. 54.
[388] **P-0800**[redacted], KEN-OTP-0132-0167 at 0218-0220, lns. 1709-1744.

151. The next day on 22 July 2013, [redacted] informed P-0613 in a recorded telephone conversation that he was in [redacted].[389] [redacted][390] [redacted] explained that he had personally benefitted from "leaving the program" and assured her that everything was very well organised.[391] The Prosecution submits that, in context, by "leaving the program" [redacted] meant withdrawing as a Prosecution Witness. [redacted][392] 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][393] [redacted]

152. Also on [redacted] told P-0613 that GICHERU wanted to meet him [redacted] at 10:00 the next morning [redacted] to discuss matters "regarding her" and he [redacted] would contact her afterwards.[394] [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.[395] These words indicate that

[389] **P-0613,** KEN-OTP-0111-0162 at 0172, paras. 52-53; **P-0613** [redacted], KEN-OTP-0118-1927 at 1955-1959.
[390] **P-0613,** KEN-OTP-0111-0162 at 0172, para. 53; **P-0613** [redacted], KEN-OTP-0118-1927 at 1955-1959.
[391] **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.
[392] **P-0613,** KEN-OTP-0111-0162 at 0172, para. 53.
[393] **P-0613,** KEN-OTP-0111-0162 at 0172-0173, para. 54; KEN-OTP-0111-0178; KEN-OTP-0111-0179; KEN-OTP-0111-0180.
[394] **P-0613,** KEN-OTP-0111-0162 at 0173, paras. 55-56; KEN-OTP-0111-0184; KEN-OTP-0111-0185.
[395] **P-0613,** KEN-OTP-0111-0162 at 0173, paras. 55-56.

GICHERU [redacted] planned to discuss the exact amount which should be given to P-0613.

153. On [redacted] arrived [redacted] and requested to meet with P-0613.[396] P-0613 called [redacted] who told her that [redacted] had given [redacted] the money to travel there.[397] However, [redacted] did not meet P-0613. [redacted].[398] 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].[399]

154. 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.[400] P-0397 warned [redacted] that if P-0613 did not leave "those people", her life would be in danger.[401] Upon hearing this, P-0613 called YEBEI to complain about P-0397's "threats".[402] P-0613 also complained about [redacted].[403] [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.[404] During this conversation with [redacted] P-0613 also recalled [redacted] refusal to meet with her.[405] [redacted] told P-0613 that he did not want these things to happen and he wanted "a smooth negotiation".[406]

[396] **P-0613,** KEN-OTP-0111-0557 at 0564-0565, 0569, paras. 31, 35-36, 62.
[397] **P-0613,** KEN-OTP-0111-0557 at 0565, para. 35.
[398] **P-0613,** KEN-OTP-0111-0557 at 0571, para. 75.
[399] **P-0613,** KEN-OTP-0111-0557 at 0565, paras. 37-38; KEN-OTP-0111-0581.
[400] **P-0613,** KEN-OTP-0111-0557 at 0568, para. 54.
[401] **P-0613,** KEN-OTP-0111-0557 at 0568, para. 54.
[402] **P-0613,** KEN-OTP-0111-0557 at 0568, paras. 55-56; **P-0613** [redacted] KEN-OTP-0118-1927 at 1967-1968.
[403] **P-0613,** KEN-OTP-0111-0557 at 0568, para. 56; **P-0613** [redacted], KEN-OTP-0118-1927 at 1968.
[404] **P-0613,** KEN-OTP-0111-0162 at 0170, paras. 42-43.
[405] **P-0613,** KEN-OTP-0111-0557 at 0568, para. 56; **P-0613** [redacted] KEN-OTP-0118-1927 at 1967.
[406] **P-0613,** KEN-OTP-0111-0557 at 0568, para. 56; **P-0613** [redacted] KEN-OTP-0118-1927 at 1969.

155. 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 [redacted] and recantation of her evidence to the Prosecution.[407] Around the same time, [redacted] told P-0613 that [redacted] went to a meeting where RUTO was told that [redacted][408] [redacted] said that [redacted] was not prepared to bring P-0613 back because he believed that [redacted]".[409] It may be reasonably inferred that this was a reference to possible arrest by the ICC.

156. 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.[410] [redacted] had previously told P-0800 that P-0613 was recording conversations and that he [redacted] had been warned by GICHERU to "be very careful" with P-0613.[411] This corroborates [redacted] statement about suspicions surrounding P-0613. P-0495 himself attempted to recruit P-0613 telling her [redacted] because things were good.[412] P-0495 told her about his meeting with [redacted] and a governmental official whom he refused to identify.[413] During this meeting these two individuals asked P-0495 how he knew P-0613, [redacted][414] They instructed P-0495 to locate P-0613 and convince her [redacted]

[407] **P-0613,** KEN-OTP-0118-0137 at 0141, para. 16. *See also* KEN-OTP-0153-0041 at 0041-0042; **P-0800,** KEN-OTP-0160-0290 at 0295.
[408] **P-0613,** KEN-OTP-0111-0557 at 0569, para. 60.
[409] **P-0613,** KEN-OTP-0111-0557 at 0569, para. 60.
[410] **P-0613,** KEN-OTP-0115-0216 at 0222, para. 28.
[411] **P-0800**, KEN-OTP-0160-0374 at 0378-0379, lns. 121-167.
[412] **P-0613,** KEN-OTP-0115-0216 at 0222, para. 28.
[413] **P-0613,** KEN-OTP-0115-0216 at 0222, para. 29.
[414] **P-0613,** KEN-OTP-0115-0216 at 0222, para. 29.

[redacted][415] P-0495 told P-0613 that they were afraid to speak to her directly because she was surrounded by ICC people.[416]

157. P-0613 jokingly requested a house with a swimming pool, which P-0495 responded was possible as "they" were ready to give her everything.[417] P-0495 told P-0613 that he was promised money and that she [redacted] and do the same thing.[418] When P-0613 asked how much she would be paid, P-0495 told her to meet [redacted] and the [redacted] to discuss the amount.[419] P-0495 offered to meet P-0613 in Uganda or to buy her an air ticket to travel to Eldoret to meet them.[420] P-0613 told P-0495 that she would consider his offer.[421]

158. On 13 September 2013, P-0495 and P-0613 met at the [redacted].[422] 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.[423] P-0495 told P-0613 that they could offer her [redacted][424] P-0495 explained that the amount was subject to negotiation and depended on "your situation and your worth."[425] He told her that P-0800 was paid 1,200,000 KSh based on his children and family situation.[426] P-0495 explained that it would be a verbal agreement, with cash payment as the only "surety", and there

[415] **P-0613,** KEN-OTP-0115-0216 at 0222, para. 29.
[416] **P-0613,** KEN-OTP-0115-0216 at 0222, para. 30.
[417] **P-0613,** KEN-OTP-0115-0216 at 0222, para. 28.
[418] **P-0613,** KEN-OTP-0115-0216 at 0222, para. 30.
[419] **P-0613,** KEN-OTP-0115-0216 at 0222, para. 30.
[420] **P-0613,** KEN-OTP-0115-0216 at 0222, para. 31.
[421] **P-0613,** KEN-OTP-0115-0216 at 0222-0223, paras. 31-33.
[422] **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.
[423] **P-0613/P-0495**, KEN-OTP-0129-0740 at 0743; **P-0613,** KEN-OTP-0115-0216 at 0230, para. 75.
[424] **P-0613/P-0495**, KEN-OTP-0129-0740 at 0743; **P-0613,** KEN-OTP-0115-0216 at 0230, para. 75.
[425] **P-0613/P-0495**, KEN-OTP-0129-0740 at 0743, 0752; **P-0613,** KEN-OTP-0115-0216 at 0230-0231, para. 75.
[426] **P-0613/P-0495**, KEN-OTP-0129-0740 at 0743, 0752; **P-0613,** KEN-OTP-0115-0216 at 0230-0231, para. 75.

would be a meeting with a lawyer to prepare the withdrawal from the ICC process.[427] 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."[428] He told her that, "if I get 10 million, you will not notice that I have anything, for sure."[429]

159. P-0495 told P-0613 that the person giving out the money was based in Eldoret.[430] P-0613 asked if that person was GICHERU, which P-0495 confirmed.[431] P-0495 told her that GICHERU was the person to meet, since he had all the authority and would arrange everything.[432] 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.[433] He told P-0613 that she would be provided with government protection so that she could defect and be protected from others too.[434] P-0495 said that GICHERU asked him if P-0613 was educated because, otherwise, they could provide her with a certificate.[435]

160. P-0604 also attempted to corruptly influence P-0613 on behalf of the Common Plan Group. On or about 20 September 2013, [redacted] called P-0604 to ask him to take [redacted] – to [redacted] who P-0604 understood to be P-0613.[436] When P-0604 asked about his security, [redacted] assured him [redacted][437]

[427] **P-0613/P-0495**, KEN-OTP-0129-0740 at 0744; **P-0613,** KEN-OTP-0115-0216 at 0231, para. 76.
[428] **P-0613/P-0495**, KEN-OTP-0129-0740 at 0744, lns. 96-102; **P-0613,** KEN-OTP-0115-0216 at 0231, para. 76.
[429] **P-0613/P-0495**, KEN-OTP-0129-0740 at 0745, ln. 129.
[430] **P-0613/P-0495**, KEN-OTP-0129-0740 at 0744-0745, lns. 103-108.
[431] **P-0613/P-0495**, KEN-OTP-0129-0740 at 0744-0745, lns. 108-110; **P-0613,** KEN-OTP-0115-0216 at 0231, para. 77.
[432] **P-0613/P-0495**, KEN-OTP-0129-0740 at 0747-0748, lns. 191-210; **P-0613,** KEN-OTP-0115-0216 at 0231-0232, paras. 76, 78.
[433] **P-0613/P-0495**, KEN-OTP-0129-0740 at 0755, lns. 458-470.
[434] **P-0613/P-0495**, KEN-OTP-0129-0740 at 0747, lns. 201-208; **P-0613,** KEN-OTP-0115-0216 at 0232, para. 79.
[435] **P-0613/P-0495**, KEN-OTP-0129-0740 at 0748, lns. 268-217, 0754, lns. 452-453.
[436] **P-0604,** KEN-OTP-0117-1019-R01 at 1022, paras. 21-22; KEN-OTP-0117-1060-R01 at 1060.
[437] **P-0604,** KEN-OTP-0117-1019-R01 at 1022-1023, paras. 22-23.

161. About twenty minutes later, [redacted] called P-0604 and identified himself as [redacted].[438] He expressed gratitude for P-0604[redacted].[439] [redacted] requested that P-0604 convince P-0613 to go to the [redacted] where they would arrange for her transportation.[440]

162. 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.[441] [redacted] asked P-0604 to continue his attempts to convince P-0613 [redacted].[442]

163. On 23 September 2013, P-0604 called P-0613 and informed her that [redacted] wanted him to locate her.[443] P-0604 also told her that [redacted] arranged a meeting between [redacted] P-0604, and [redacted] to discuss P-0613.[444] [redacted] gave P-0604 [redacted] KSh [redacted] to send to P-0613 for her transportation back to the [redacted][445] P-0604 told her that "these people" (P-0613 got the impression that it was either [redacted] [redacted] were using everyone who knew P-0613 in order to approach her.[446] P-0613 told P-0604 to use the money for himself.[447]

164. 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

[438] **P-0604,** KEN-OTP-0117-1019-R01 at 1023, para. 26.
[439] **P-0604,** KEN-OTP-0117-1019-R01 at 1023, para. 26.
[440] **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.
[441] **P-0604,** KEN-OTP-0117-1019-R01 at 1023, para. 27.
[442] **P-0604,** KEN-OTP-0117-1019-R01 at 1023, para. 27.
[443] **P-0613,** KEN-OTP-0124-0007 at 0011, para. 19.
[444] **P-0613,** KEN-OTP-0124-0007 at 0011, paras. 19-20.
[445] **P-0613,** KEN-OTP-0124-0007 at 0011, para. 20.
[446] **P-0613,** KEN-OTP-0124-0007 at 0011, para. 21.
[447] **P-0613,** KEN-OTP-0124-0007 at 0011, para. 21.

members of the Common Plan upon him.[448] This has been confirmed in a subsequent recorded telephone conversations between the Prosecution and P-0604, on 22 October 2014 and in March 2017, 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][449] P-0604 stated that he had been promised further money and a "letter of employment" after he finished testifying, but had not received this.[450] When P-0604 asked [redacted][451]

iii. GICHERU's Individual Criminal Responsibility

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

166. 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].[452]

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.[453]

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[448] 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; *See also* P-0613, KEN-OTP-0160-0609-R01 at 0612-0613, paras. 12-19.

[449] P-0604 stated that he received 850,00 KSh from GICHERU [redacted] via M-Pesa and admitted to having lied under oath in his courtroom testimony: **P-0604**, KEN-OTP-0160-0716-R01 at 0727-0727; *see also* **P-0604,** KEN-OTP-0160-0732-R01 at 0732-0748, where P-0604 provided specific details on 14 M-Pesa transfers from GICHERU, [redacted] with total worth of 835,000 KSh. P-0604 stated that these payments were made for the specific purpose of having him recant his evidence: **P-0604**, KEN-OTP-0160-0732-R01 at 0748. However, P-0604 later neglected to bring the M-Pesa records to a meeting with OTP Investigators: **P-0604,** KEN-OTP-0160-0783, at 0784, lns. 2-8; KEN-OTP-0160-0769-R01, at 0772-0774, lns. 89-185 ; **P-0604,** KEN-OTP-0143-0144-R01 at 0148-0149, lns. 123-183; KEN-OTP-0160-0732-R01 at 0748

[450] **P-0604,** KEN-OTP-0143-0144-R01 at 0149, lns. 151-153.

[451] **P-0604**, KEN-OTP-0143-0144-R01 at 0149, lns. 153-156.

[452] **P-0613,** KEN-OTP-0102-0178 at 0180, para. 16.

[453] **P-0613,** KEN-OTP-0111-0162 at 0169, paras. 37-38.

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][454]

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,[455] during which [redacted] had tried to persuade her to come and meet with GICHERU in order to negotiate a Bribe.[456] [redacted] said he would come to meet P-0613 [redacted] following this meeting.[457] 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,[458] which they did,[459] making an essential contribution to the commission of this offence.

a. Article 25(3)(a)

167. 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

[454] **P-0800,** KEN-OTP-0111-0140 at 0149, para. 54; **P-0800**[redacted] KEN-OTP-0132-0167 at 0218-0220.
[455] *See* **P-0613,** KEN-OTP-0111-0162 at 0168 to 0172, especially at paras. 34-38.
[456] **P-0613,** KEN-OTP-0111-0162 at 0173, paras. 55-56; KEN-OTP-0111-0184; KEN-OTP-0111-0185.
[457] **P-0613,** KEN-OTP-0111-0162 at 0173, para. 55.
[458] **P-0613,** KEN-OTP-0115-0216 at 0231-0232, paras. 76-79; **P-0613/0495,** KEN-OTP-0129-0740 at 0744-0748, 0754-0755.
[459] **P-0613,** KEN-OTP-0115-0216 at 0222-0223, paras. 28-33, and 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 0589-0592; **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-0138-0658; KEN-OTP-0138-0659; KEN-OTP-0138-0660; KEN-OTP-0138-0661; KEN-OTP-0138-0662; KEN-OTP-0138-0663.

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.

168. 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 of the DCC.

169. 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)

170. 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.

171. 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)

172. 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.

173. 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 they 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.

174. 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)

175. 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, assisted by P-0800, to corruptly influence P-0613 by providing the moral support or encouragement described in paragraphs c) and e) above.

176. 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.

177. 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

178. [redacted] ("P-0800", [redacted]) was a Prosecution Witness who was interviewed by the Prosecution and provided evidence about RUTO [redacted] relating to the PEV and SANG [redacted]

provided evidence about murder, persecution and forcible transfer or deportation of civilians in Eldoret, Kenya.[460]

179. 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 influence P-0613.

180. PTC A confirmed the charges for the offence set out in article 70(1)(c) of the Statute with respect to P-0800.[461]

ii. Corruptly influencing P-0800

181. [redacted] on 11 February 2013, P-0800's identity was disclosed to RUTO and SANG and their Defence.

182. Since his initial interview 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.[462] As a result, P-0800 [redacted].

183. On 25 April 2013, [redacted] called P-0800 to inform him about attempts by [redacted] to convince [redacted][463] – who had been interviewed as an ICC witness – to "change his mind and withdraw as an OTP witness".[464] [redacted] knowing P-0800

[460] **P-0800**, KEN-OTP-0082-0187.
[461] Decision on the Confirmation of Charges, paras. 113-120, disposition.
[462] **P-0800**, KEN-OTP-0082-0187 at 0216, paras. 159-161.
[463] **P-0800**, KEN-OTP-0102-0205 at 0208, para. 23.
[464] **P-0800**, KEN-OTP-0102-0205 at 0208-0209, para. 28.

was in contact with the OTP, told P-0800 that he feared for [redacted] safety. [redacted] believed that RUTO would kill [redacted][465] P-0800 informed the Prosecution of [redacted] allegations.[466] [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].[467] During these meetings, [redacted] was paid to recant his testimony.[468]

184. 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.[469] P-0800 understood the "Big Man" to refer to RUTO.[470] [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.[471]

185. On 29 and 30 May 2013, investigators met with P-0800, who provided further details of his contacts with [redacted][472] He told investigators that the Kenyan phone number used by [redacted] to contact P-0800 was [redacted].[473] This is in fact one of the contact numbers which [redacted] had previously provided to the Prosecution,[474] and was also listed as a contact on GICHERU's phone under the name [redacted].[475]

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[465] **P-0800**, KEN-OTP-0102-0205 at 0208, para. 23.
[466] **P-0800**, KEN-OTP-0102-0205 at 0208, para. 23; KEN-OTP-0102-0217.
[467] **P-0800**, KEN-OTP-0102-0205 at 0211-0212, paras. 38-45.
[468] **P-0800**, KEN-OTP-0102-0205 at 0212, para. 42.
[469] **P-0800**, KEN-OTP-0103-2473 at 2478, para. 28.
[470] **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 recently attended a Status Conference at the Court on 14 May 2013, as alluded to by [redacted] as well as subsequent events described below.
[471] **P-0800**, KEN-OTP-0103-2473 at 2478, para. 29.
[472] These details were captured in a statement which he subsequently signed on 30 May 2013. *See* **P-0800**, KEN-OTP-0103-2473.
[473] **P-0800**, KEN-OTP-0103-2473 at 2477-2478, paras. 15, 18, 23-24.
[474] *See* KEN-OTP-0159-1693.
[475] KEN-OTP-0160-0699 at 0701.

186. [redacted][476] [redacted][477] It is apparent that he did not have the financial resources to pay bribes of the magnitude being discussed with P-0800, 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.

187. P-0800 clarified that, despite his refusal of [redacted] offer, the conversation had not ended [redacted][478] In the Prosecution's view, this presented a legitimate investigative opportunity to obtain objective confirmation of the Bribe. 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.[479] P-0800 agreed, and on 30 May 2013 he called [redacted] and recorded the conversation.[480] 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.[481] [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].[482]

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[476] *See* for instance KEN-OTP-0153-0497.
[477] *See* for instance KEN-OTP-0114-0090-R01 at 0096.
[478] **P-0800,** KEN-OTP-0103-2473 at 2479, para. 30.
[479] 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. The recording of this conversation (and others like it) was not "in the course of its transmission" and was done by, and with the consent of, the persons sending and/or receiving the calls.
[480] *See* **P-0800/**[redacted] KEN-OTP-0104-0917; KEN-OTP-0104-0920.
[481] *See* **P-0800/**[redacted], KEN-OTP-0104-0920 at 0922, lns. 27–34.
[482] **P-0800,** KEN-OTP-0103-2473 at 2480, paras. 35-37.

188. After several days without contact, P-0800 again called [redacted] at the Prosecution's request and also recorded this conversation.[483] He enquired why [redacted] still had not come to see him and mentioned that he (P-0800) was [redacted][484] [redacted] stated that he would "conclude these things" the next day. He added that [redacted] and that they ([redacted] and RUTO) would meet the next evening [redacted].[485] [redacted][486] [redacted].[487] [redacted] stated that "[redacted]" and that he would come to see P-0800 [redacted].[488] [redacted] also added that "[redacted][489] 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.[490]

189. Following a series of further phone communications, most recorded by P-0800 or by the Prosecution with P-0800's consent,[491] [redacted] and P-0800, with the

[483] *See* **P-0800**[redacted], KEN-OTP-0106-0365; KEN-OTP-0106-0371. *See* also **P-0800,** KEN-OTP-0106-0388.
[484] **P-0800**[redacted], KEN-OTP-0106-0371 at 0373, lns. 9-14.
[485] **P-0800**[redacted], KEN-OTP-0106-0371 at 0373, lns. 17-33.
[486] *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.
[487] *See* KEN-OTP-0159-1690.
[488] **P-0800,** KEN-OTP-0106-0388 at 0392, para. 19; **P-0800/**[redacted], KEN-OTP-0106-0371 at 0373-0374, lns. 33-39.
[489] **P-0800/**[redacted], KEN-OTP-0106-0371 at 0374, lns. 48-59 (underlined words were uttered in English).
[490] **P-0800,** KEN-OTP-0106-0388 at 0392, para. 20.
[491] **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.

knowledge of the Prosecution, agreed to meet to discuss P-0800's withdrawal as an ICC witness and the Bribe.[492]

190. On [redacted] and asked P-0800 to meet him.[493] Despite having arranged with the Prosecution to conduct a controlled meeting with [redacted] the next day, P-0800 agreed to see him to avoid arousing suspicion and recorded the conversation.[494] [redacted] and P-0800 met again on three consecutive occasions [redacted] which P-0800 recorded and the Prosecution observed and photographed, with P-0800's consent.[495] During these controlled 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. [redacted] explicitly confirmed that the payments would be channelled to P-0800 *via* GICHERU.[496] [redacted] told P-0800 that he was working for GICHERU, who was trying to locate ICC witnesses within Kenya and in nearby countries.[497] [redacted], who were also working for RUTO, were trying to locate witnesses overseas.[498]

191. [redacted] further told P-0800 that [redacted] had been paid 500,000 KSh initially and that he had subsequently received 100,000 KSh[499] from RUTO.[500] [redacted] also told

[492] **P-0800,** KEN-OTP-0111-0140 at 0146-0147, paras. 33-35.
[493] **P-0800/**[redacted], KEN-OTP-0134-0278 ; KEN-OTP-0131-0431. P-0800 explained in his [redacted] 2021 interview that he agreed to meet [redacted] that evening because he could not find a reasonable excuse not to see him and he did not want [redacted] to be suspicious. *See* KEN-OTP-0160-0308.
[494] KEN-OTP-0160-0308 at 0313.
[495] **P-0800,** KEN-OTP-0111-0140 at 0147-0150; **P-0800/**[redacted], KEN-OTP-0132-0167; KEN-OTP-0111-0159. *See also* **P-0800/**[redacted], KEN-OTP-0131-0431.
[496] **P-0800**, KEN-OTP-0111-0140 at 0147-0148, paras. 39 and 45. *See also* **P-0800**, KEN-OTP-0160-0432 at 0446-0447; **P-0800/**[redacted], KEN-OTP-0131-0431 at 0437; **P-0800,** KEN-OTP-0160-0448 at 0463, lns. 553-556; KEN-OTP-0160-0555 at 0561, lns. 179-180.
[497] **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; KEN-OTP-0160-0448 at 0466, lns. 654-662.
[498] **P-0800**, KEN-OTP-0111-0140 at 0148, para. 45; **P-0800/**[redacted], KEN-OTP-0132-0167 at 0203. *See also* **P-0800**, KEN-OTP-0160-0432 at 0446-0447; KEN-OTP-0160-0555 at 0575, lns. 680-683; **P-0800/**[redacted], KEN-OTP-0131-0431 at 0437.
[499] **P-0800**, KEN-OTP-0111-0140 at 0148, para. 42; **P-0800/**[redacted] KEN-OTP-0132-0167 at 0177-0178. *See also* **P-0800**, KEN-OTP-0160-0432 at 0445; **P-0800/**[redacted], KEN-OTP-0131-0431 at 0435-0436.
[500] It is clear from the context that RUTO was the source of the funds. *See* **P-0800**, KEN-OTP-0111-0140 at 0147-0148, paras. 39-42.

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.[501]

192. [redacted] further instructed P-0800 [redacted][502] [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.[503] [redacted] told P-0800 that he had to return to [redacted] the following day to report to GICHERU about his activities in [redacted].[504]

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

194. 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 [redacted].[505] Accordingly, a summons was issued by TC V(A) for his appearance before the ICC.[506]

195. 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.[507] 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.[508] Similarly, P-0495 stated that P-0800 told him that he (P-0800) had received 1,000,000 KSh of

[501] **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.
[502] **P-0800**, KEN-OTP-0111-0140 at 0148-0149, paras. 43, 54; **P-0800/**[redacted], KEN-OTP-0132-0167 at 0206; *see also* **P-0800,** KEN-OTP-0160-0448 at 0452, lns. 137-140, at 0460, lns. 413-415.
[503] **P-0800**, KEN-OTP-0111-0140 at 0149, para. 54.
[504] **P-0800**, KEN-OTP-0111-0140 at 0149, para. 54.
[505] ICC-01/09-01/11-1120-Red2-Corr, paras. 30-32. *See also* **P-0800**, KEN-OTP-0160-0354 at 0356.
[506] ICC-01/09-01/11-1274-Corr2.
[507] **P-0613**, KEN-OTP-0111-0557 at 0568-0569, para. 60.
[508] **P-0613**, KEN-OTP-0118-0137 at 0141, para. 16.

the 2,000,000 KSh that he was offered to withdraw as an ICC witness.[509] 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, but expressed doubts as to whether P-0800 was being truthful about having received so much money.[510]

196. Following the abduction of P-0397, the OTP assessed that P-0800 might be at risk and contacted him [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.[511]

197. P-0800 was thereafter re-interviewed on [redacted]. He explained that his withdrawal as an ICC witness had been due to [redacted][512] and because he was offered 2,000,000 KSh and the opportunity to [redacted].[513] However, while P-0800 was promised money by GICHERU, he states that he never received it.[514] 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 GICHERU,[515] and 10,000 KSh to meet with [redacted] Advocates' office in Nairobi[516] to sign an affidavit [redacted][517] [redacted],[518] [redacted]

[509] **P-0495**, KEN-OTP-0130-0540-R01 at 0542, lns. 56-58 and 0558-0559, lns. 638-660.
[510] **P-0495**, KEN-OTP-0130-0540-R01 at 0543, lns. 86-87.
[511] **P-0800**, KEN-OTP-0138-0092 at 0094, lns. 60-63.
[512] **P-0800**, KEN-OTP-0135-0113 at 0114, lns. 15-16. *See also* **P-0800**, KEN-OTP-0160-0308 at 0326, lns. 646-656.
[513] **P-0800**, KEN-OTP-0135-0103 at 0105. *See also* **P-0800**, KEN-OTP-0160-0308 at 0326, lns. 654-657; KEN-OTP-0160-0354 at 0359, 0361, 0364, 0370.
[514] **P-0800**, KEN-OTP-0135-0200 at 0208, lns. 268-273; KEN-OTP-0135-0103 at 0105. *See also* KEN-OTP-0160-0354 at 0361, 0364; KEN-OTP-0160-0382 at 0385.
[515] **P-0800**, KEN-OTP-0135-0113 at 0121-0122; KEN-OTP-0135-0200 at 0212; KEN-OTP-0160-0468 at 0474, ln. 201.
[516] **P-0800**, KEN-OTP-0135-0103 at 0107; KEN-OTP-0135-0139 at 0149-0152; KEN-OTP-0135-0200 at 0212. *See also* **P-0800**, KEN-OTP-0160-0354 at 0362, 0364, 0370; KEN-OTP-0160-0468 at 0479, lns. 385-386; KEN-OTP-0160-0489 at 0494, lns. 171-173.
[517] KEN-OTP-0145-0550.
[518] **P-0800**, KEN-OTP-0145-0554; KEN-OTP-0135-0103 at 0107; KEN-OTP-0135-0155 at 0156-0158. *See* KEN-OTP-0116-0261. *See also* **P-0800**, KEN-OTP-0160-0400-R01 at 0421-0422.

[redacted][519] P-0800 explained that he also signed an affidavit to withdraw as an ICC witness at the office of [redacted][520] and that [redacted] had been instructed by GICHERU to prepare that affidavit.[521]

198. [redacted] is saved as a contact on [redacted] phone under number [redacted].[522] This same number can be independently attributed to [redacted].[523]

199. P-0800 further informed the Prosecution that [redacted] had called him and offered to meet with GICHERU to discuss [redacted].[524] [redacted] stated that GICHERU had asked him to contact P-0800 and organise a meeting.[525] P-0800 met with GICHERU [redacted] at a hotel restaurant in the [redacted].[526] During this meeting GICHERU assured P-0800 that his safety and security would be ensured if he withdrew as an ICC witness.[527] 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.[528] Subsequently, at GICHERU's request, P-0800 approached P-0495[529] and took him to meet GICHERU in [redacted] where GICHERU offered P-0495 a bribe of 1,500,000 KSh to withdraw as a

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[519] [redacted]. *See also* **P-0800**, KEN-OTP-0160-0374 at 0377.
[520] **P-0800**, KEN-OTP-0135-0155 at 0170. S*ee also* KEN-OTP-0145-0560; KEN-OTP-0145-0562; KEN-OTP-0145-0566; **P-0800**, KEN-OTP-0160-0374 at 0377.
[521] **P-0800**, KEN-OTP-0135-0155 at 0171. *See also* **P-0800**, KEN-OTP-0160-0468 at 0481-0483, lns. 460-519.
[522] KEN-OTP-0160-0699 at 0701.
[523] KEN-OTP-0112-0126.
[524] **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; **P-0800**, KEN-OTP-0160-0338 at 0346, 0350; KEN-OTP-0160-0468 at 0471, lns. 103-106.
[525] **P-0800**, KEN-OTP-0135-0103 at 0105.
[526] **P-0800**, KEN-OTP-0135-0113 at 0117. *See also* **P-0800**, KEN-OTP-0160-0354 at 0358; KEN-OTP-0160-0400-R01 at 0418-0419, 0422; KEN-OTP-0160-0489 at 0497, lns. 264-268.
[527] **P-0800**, KEN-OTP-0135-0113 at 0118. *See also* **P-0800**, KEN-OTP-0160-0382 at 0388-0389.
[528] **P-0800**, KEN-OTP-0135-0113 at 0119. *See also* **P-0800**, KEN-OTP-0160-0423 at 0426-0427; KEN-OTP-0160-0555 at 0561-0562, lns. 208-210. *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, last accessed 10 November 2021.
[529] **P-0495,** KEN-OTP-0130-0507-R01 at 0515-0518, 0527-0528. *See also* **P-0800**, KEN-OTP-0160-0290 at 0295; KEN-OTP-0160-0354 at 0357, 0359.

Prosecution Witness and look for P-0613.[530] GICHERU instructed P-0800 to monitor P-0495.[531] P-0800 further informed the Prosecution that [redacted] had told him that GICHERU was in direct contact with RUTO and worked on RUTO's behalf.[532]

200. Between 17 and 26 November 2014, P-0800 testified voluntarily before TC V(A).[533] During his ICC testimony, P-0800 reaffirmed his previous evidence about the Common Plan under oath, including the involvement of GICHERU, [redacted].[534]

iii. GICHERU's Individual Criminal Responsibility

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

202. 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,[535] [redacted].[536]

[530] **P-0800**, KEN-OTP-0135-0113 at 0121-0136. *Contra* **P-0495,** KEN-OTP-0130-0507-R01 at 0527. *See also* **P-0800**, KEN-OTP-0160-0354 at 0362-0363; KEN-OTP-0160-0400-R01 at 0418-0419, 0422.
[531] **P-0800**, KEN-OTP-0135-0113 at 0135-0137; KEN-OTP-0135-0139 at 0140-0142; KEN-OTP-0160-0489 at 0497, lns. 282-287.
[532] **P-0800**, KEN-OTP-0135-0200 at 0207. *See also* **P-0800**, KEN-OTP-0160-0432 at 0446-0447; **P-0800/**[redacted], KEN-OTP-0131-0431 at 0437.
[533] **P-0800**, ICC-01/09-01/20-T-026-CONF-ENG.
[534] **P-0800**, ICC-01/09-01/20-T-027-CONF-ENG.
[535] **P-0800**, KEN-OTP-0111-0140 at 0148, para. 45.
[536] **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.

b) In July 2013, GICHERU solicited or induced [redacted][537] to contact P-0800 and persuade him to meet with GICHERU in order that GICHERU could corruptly influence P-0800,[538] [redacted].[539]

c) In August 2013, GICHERU met P-0800 [redacted] at a hotel in the [redacted].[540] GICHERU offered P-0800 a Bribe of 2,000,000 KSh in order to withdraw as a Prosecution Witness,[541] to sign an affidavit to that effect,[542] and to help to locate other Prosecution Witnesses and persuade them to withdraw.[543]

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,[544] which P-0800 did.[545] GICHERU was the only person with the authority to discuss the amount of the Bribes.[546] GICHERU gave P-0800 50,000 KSh for expenses in order to travel to find P-0495 [redacted] for this purpose.[547]

e) In or about [redacted],[548] GICHERU [redacted] arranged for P-0800 to sign an affidavit prepared, under GICHERU's instructions, by [redacted]

[537] **P-0800**, KEN-OTP-0135-0113 at 0118; *Contra* KEN-OTP-0135-0054 at 0068-0069 and KEN-OTP-0135-0103 at 0108-0109.
[538] **P-0800**, KEN-OTP-0135-0113 at 0120, lns. 238-243.
[539] **P-0800**, KEN-OTP-0135-0113 at 0116, ln. 85; KEN-OTP-0160-0338 at 0346, 0350; KEN-OTP-0160-0354 at 0358.
[540] **P-0800**, KEN-OTP-0135-0113 at 0117; KEN-OTP-0160-0354 at 0358; KEN-OTP-0160-0400-R01 at 0418, 0422.
[541] **P-0800**, KEN-OTP-0135-0113 at 0118; KEN-OTP-0160-0354 at 0359, 0361.
[542] **P-0800**, KEN-OTP-0135-0113 at 0122, lns. 327-335. *See also* **P-0800**, KEN-OTP-0160-0374 at 0377; **P-0800**, KEN-OTP-0160-0468 at 0476, lns. 283-285.
[543] **P-0800**, KEN-OTP-0135-0113 at 0121; KEN-OTP-0160-0354 at 0359. *See also* **P-0800**, KEN-OTP-0135-0113 at 0135; KEN-OTP-0160-0338, at 0350, lns. 423-428.
[544] **P-0800**, KEN-OTP-0135-0113 at 0121, 0126; KEN-OTP-0160-0354 at 0357, 0359, 0369-0370, *see also* **P-0800**, KEN-OTP-0160-0468 at 0477, ln. 327.
[545] **P-0800**, KEN-OTP-0135-0113 at 0134; KEN-OTP-0160-0354 at 0357, 0369-0370. *See also* **P-0800**, KEN-OTP-0160-0290 at 0295.
[546] **P-0800**, KEN-OTP-0135-0113 at 0126.
[547] **P-0800**, KEN-OTP-0135-0113 at 0121-0122; KEN-OTP-0160-0354 at 0359.
[548] **P-0800**, KEN-OTP-0135-0179 at 0197-0198.

[redacted] withdrawing as a Prosecution Witness.[549]

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

203. 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.

204. 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 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.

205. 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 of the DCC .

206. 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)***

207. 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.

[549] **P-0800**, KEN-OTP-0135-0155 at 0070-0171; KEN-OTP-0160-0354 at 0364, 0370; KEN-OTP-0160-0489 at 0492-0493 lns. 109, 118-119.

208. 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)*

209. 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.

210. 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)*

211. 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.

212. 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.

213. 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

214. [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.[550]

215. 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.[551] At GICHERU's request, P-0495 subsequently approached P-0613 in order to convince her to meet GICHERU.[552] In September 2014, pursuant to GICHERU's instructions, he gave false testimony before TC V(A) when he was summonsed to testify.[553]

216. PTC A confirmed the charges for the offence set out in article 70(1)(c) of the Statute with respect to P-0495.[554]

ii. Corruptly influencing P-0495

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

[550] **P-0495,** [redacted]

[551] **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-0336,** KEN-OTP-0145-0594 at 0596.

[552] *See above*. Third Incident.

[553] **P-0800,** KEN-OTP-0144-0272-R01 at 0283-0285.

[554] Decision on the Confirmation of Charges, paras. 121-125, disposition.

218. In August 2013, GICHERU met P-0800 [redacted] at a hotel [redacted].[555] GICHERU asked P-0800 to help to locate other Prosecution Witnesses and persuade them to withdraw.[556] 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.[557] P-0800 later told the Prosecution that GICHERU promised him money to do this, but he never received it.[558] However, GICHERU gave P-0800 50,000 KSh for expenses to travel [redacted] to find P-0495 and corruptly influence him.[559]

219. 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.[560] 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.[561] P-0800 explained that, once he decides to withdraw, P-0495 would be taken to GICHERU to discuss the offer.[562] He explained to P-0495 that GICHERU was responsible for the bribery offers and for paying witnesses.[563]

220. P-0495 agreed to P-0800's offer of 2,500,000 KSh in exchange for his withdrawal from the ICC process.[564] P-0800 told P-0495 that he would be paid for locating other witnesses and bringing them "to the table".[565] P-0800 told P-0495 that, since he had

[555] **P-0800,** KEN-OTP-0135-0113 at 0117; KEN-OTP-0160-0354 at 0358.
[556] **P-0800,** KEN-OTP-0135-0113 at 0118; KEN-OTP-0160-0354 at 0359.
[557] **P-0800,** KEN-OTP-0135-0113 at 0121-0122; KEN-OTP-0160-0354 at 0357, 0359, 0369-0370; **P-0495,** KEN-OTP-0130-0540-R01 at 0541-0542. *See also* **P-0800**, KEN-OTP-0160-0290 at 0295.
[558] **P-0800,** KEN-OTP-0135-0200 at 0208; KEN-OTP-0160-0354 at 0361.
[559] **P-0800,** KEN-OTP-0135-0113 at 0121; KEN-OTP-0135-0103 at 0107.
[560] **P-0495,** KEN-OTP-0130-0540-R01 at 0542; KEN-OTP-0130-0507-R01 at 0515-0516, 0531.
[561] **P-0495,** KEN-OTP-0130-0540-R01 at 0542.
[562] **P-0495,** KEN-OTP-0130-0507-R01 at 0518, 0527-0528.
[563] **P-0495,** KEN-OTP-0130-0507-R01 at 0527-0528.
[564] **P-0495,** KEN-OTP-0130-0540-R01 at 0543.
[565] **P-0495,** KEN-OTP-0130-0507-R01 at 0534.

"joined them", he should assist them by approaching P-0613 whom he (P-0495) spoke to often.[566] P-0495 agreed to travel [redacted] to meet P-0613.[567]

221. P-0800 informed P-0495 that GICHERU had instructed him to locate P-0495 and take him to GICHERU.[568] Subsequently, P-0800, [redacted] and GICHERU met with P-0495 at [redacted], to discuss his withdrawal as a Prosecution Witness.[569] [redacted] GICHERU and P-0495 discussed the terms of their agreement.[570] After the meeting, P-0495 told P-0800 that GICHERU had offered him 1,500,000 KSh to withdraw as an ICC witness.[571] In addition, GICHERU instructed P-0495 to find P-0613.[572] 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.[573]

222. 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.[574] During this 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.[575] P-0495 explained that he requested 2,500,000 KSh because that would [redacted]

[566] **P-0495,** KEN-OTP-0130-0540-R01 at 0543.
[567] **P-0495,** KEN-OTP-0130-0540-R01 at 0543.
[568] **P-0800,** KEN-OTP-0135-0113 at 0121. *See also* **P-0800**, KEN-OTP-0160-0354 at 0357, 0359.
[569] **P-0800,** KEN-OTP-0135-0113 at 0131; KEN-OTP-0160-0354 at 0363; KEN-OTP-0160-0400-R01 at 0418-0419, 0422. *Contra* **P-0495,** KEN-OTP-0130-0540-R01 at 0544.
[570] **P-0800,** KEN-OTP-0135-0113 at 0134.
[571] **P-0800,** KEN-OTP-0135-0113 at 0134; KEN-OTP-0160-0354 at 0363.
[572] **P-0800,** KEN-OTP-0135-0113 at 0132, 0134. *See also* **P-0613,** KEN-OTP-0115-0216 at 0222, paras. 29-31.
[573] **P-0800,** KEN-OTP-0135-0113 at 0135.
[574] **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.
[575] **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.

[redacted].[576] Additionally, P-0495 stated that he was promised a job offer anywhere even if he did not have the right qualifications.[577] 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".[578] In addition, P-0495 told P-0613 that he was offered private security to ensure his safety and peace of mind.[579]

223. 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.[580] 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 to discuss her withdrawal from the ICC.[581] However, P-0495 denied having met GICHERU or having received any money from him yet.[582] 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.[583] The Prosecution considers that he falsely denied meeting GICHERU.

224. 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.[584] P-0800 asked P-0495 for a report of his meeting with P-0613 and told him that "those people" were waiting for him to go there the next day.[585] P-0800 told P-0495 that

[576] **P-0613/P-0495,** KEN-OTP-0129-0740 at 0744 and 0755.
[577] **P-0613/P-0495,** KEN-OTP-0129-0740 at 0744.
[578] **P-0613/P-0495,** KEN-OTP-0129-0740 at 0744, lns. 81-88.
[579] **P-0613/P-0495,** KEN-OTP-0129-0740 at 0746.
[580] **P-0495,** KEN-OTP-0130-0540-R01 at 0549-0550.
[581] **P-0495,** KEN-OTP-0130-0540-R01 at 0550.
[582] **P-0495,** KEN-OTP-0130-0540-R01 at 0544; [redacted].
[583] **P-0495,** KEN-OTP-0130-0540-R01 at 0550, 0544.
[584] **P-0495,** KEN-OTP-0130-0540-R01 at 0541, 0554.
[585] **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.

"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.[586] P-0800 told him that there was a lot of pressure "from above", which P-0495 interpreted as referring to pressure from GICHERU.[587]

225. 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.[588] He was summoned but, during his court testimony between 16 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].[589] P-0495 alleged that [redacted] briefed him on what to say prior to his meeting with the Prosecution.[590] 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.[591]

226. P-0800 confirmed that P-0495's recantation in his testimony was the result of corrupt influence 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.[592] The plan was to testify in such a way as to "blame everything" on [redacted] and to claim that P-0613 had instructed witnesses what to say to OTP investigators.[593]

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[586] **P-0800/P-0495,** KEN-OTP-0145-0587 at 0592.
[587] **P-0495,** KEN-OTP-0130-0585-R01 at 0590; **P-0800/P-0495,** KEN-OTP-0145-0594 at 0596.
[588] **P-0495,** KEN-OTP-0084-0236 at 0240-0244, paras. 27-30, 34-35, 38-40, 44-49.
[589] **P-0495,** ICC-01/09-01/20-T-016-CONF-Red-ENG, p. 13; [redacted]
[590] **P-0495,** [redacted] *Contra*, P-0613, KEN-OTP-0160-0609-R01 at 01613-0614, paras. 21-22. The PTC found the version provided by P-0495 in his *Ruto and Sang* testimony to be implausible and untruthful, Decision on the Confirmation of Charges, paras. 121-123.
[591] **P-0495,** [redacted]
[592] **P-0800,** KEN-OTP-0144-0272-R01 at 0283-0284.
[593] **P-0800,** KEN-OTP-0144-0272-R01 at 0285.

iii. Analysis of P-0495's evidence

227. As discussed above, on 13 September 2013, P-0495 was caught in the act of corruptly influencing P-0613 and was approached by Prosecution investigators immediately after the fact and interviewed under caution.[594] 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.[595] However, he denied actually having met with GICHERU.[596] This denial is contradicted by P-0800, who confirmed that he personally took P-0495 to meet GICHERU at [redacted].[597]

228. 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].[598] He had to be summoned to appear before the Trial Chamber, and in his testimony recanted his previous evidence and was impeached.[599] 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.[600]

229. The Prosecution submits that, in his interview of 13 September 2013, P-0495 only admitted that which he was forced to acknowledge, given the circumstances. However, he 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 to the extent that it is corroborated by other reliable evidence, or when other circumstances reduce the risk of relying on it.

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[594] **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.
[595] **P-0495,** KEN-OTP-0130-0507-R01 at 0515-0518, 0527-0528, 0531-0534.
[596] **P-0495,** KEN-OTP-0130-0540-R01 at 0544.
[597] **P-0800,** KEN-OTP-0135-0113 at 0131, 0132, 0134-0135.
[598] KEN-OTP-0159-0884 at 0925, paras. 164-165.
[599] **P-0495,** ICC-01/09-01/20-T-016-CONF-Red-ENG, p. 13; [redacted]
[600] **P-0800,** KEN-OTP-0144-0272-R01 at 0283-0285.

230. One such circumstance is the admission against interest[601] 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

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

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

a) In August 2013, GICHERU met P-0800, [redacted] at a [redacted].[602] GICHERU requested P-0800 to help to locate other Prosecution Witnesses and persuade them to withdraw.[603] 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.[604] GICHERU gave P-0800 50,000 KSh for expenses to travel to [redacted] to find P-0495 for this purpose.[605]

b) Approximately three days later in August 2013, GICHERU met with P-0495, together [redacted] and 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 locate other

[601] *See* analysis of P-0516's evidence above.
[602] **P-0800,** KEN-OTP-0135-0113 at 0117; KEN-OTP-0160-0354 at 0358; KEN-OTP-0160-0400-R01 at 0418-0419, 0422.
[603] **P-0800,** KEN-OTP-0135-0113 at 0118; KEN-OTP-0160-0354 at 0357, 0359.
[604] **P-0800,** KEN-OTP-0135-0113 at 0121; KEN-OTP-0160-0354 at 0357, 0359.
[605] **P-0800,** KEN-OTP-0135-0113 at 0121; KEN-OTP-0160-0354 at 0359.

Prosecution Witnesses and persuade them to withdraw.[606] In particular, GICHERU instructed P-0495 to locate P-0613 and bring her to meet GICHERU so that he (GICHERU) could persuade P-0613 to withdraw as a Prosecution Witness.[607]

c) Between 5 and 16 September, before P-0495 was summoned to testify in front of the ICC via video link. GICHERU coached P-0495on what to say, inducing him to repudiate the content of his prior statement to the Prosecution and to state that it had been fabricated by the Prosecution [redacted].[608] Further, GICHERU told P-0495 to claim in court that [redacted] had instructed witnesses as what to say to OTP investigators.[609] P-0495's testimony before the Court between 16 and 22 September 2014 followed GICHERU's script.[610] GICHERU and other lawyers coached P-0495 prior to his testimony before TC V(A).[611]

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

233. 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.

234. 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

[606] **P-0800,** KEN-OTP-0135-0113 at 0118-0119, 0131-0132, 0134-0135; KEN-OTP-0160-0354 at 0362-0363; KEN-OTP-0160-0400-R01 at 0418-0419, 0422; **P-0613,** KEN-OTP-0115-0216 at 0222, para. 30. *Contra* **P-0495,** KEN-OTP-0130-0540-R01 at 0544.
[607] **P-0800,** KEN-OTP-0135-0113 at 0132, 0134. *See also* **P-0613,** KEN-OTP-0115-0216 at 0222, paras. 29-31.
[608] **P-0800,** KEN-OTP-0144-0272-R01 at 0283-0284.
[609] **P-0800,** KEN-OTP-0144-0272-R01 at 0285.
[610] **P-0495,** ICC-01/09-01/20-T-016-CONF-Red-ENG, p. 59-66; [redacted]
[611] **P-0800,** KEN-OTP-0144-0272-R01 at 0283-0285.

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

235. 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 of the DCC.

236. 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)***

237. 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.

238. 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)***

239. 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.

240. 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)*

241. 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.

242. 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.

243. 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

244. [redacted] ("P-0536") was an [redacted] Prosecution Witness in the *Ruto and Sang* case who was interviewed by the Prosecution and provided evidence about the attack [redacted] by Kalenjin youths, during which Kikuyu residents [redacted][612] P-0536 testified before TC V(A) between 17 September 2013 and 4 October 2013.[613]

[612] KEN-OTP-0090-0640-R01.
[613] ICC-01/09-01/20-T-007-CONF-ENG to ICC-01/09-01/20-T-012-CONF-ENG.

245. 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.[614]

246. PTC A confirmed the charges for the offence set out in article 70(1)(c) of the Statute with respect to P-0536.[615]

ii. Corruptly influencing P-0536

247. P-0536's identity was disclosed to the Defence on 13 March 2013. [redacted]

248. On 24 May 2013, P-0536 – [redacted] – confirmed that [redacted] had called her on [redacted] to say that he would come to visit her.[616] Investigators provided P-0536 with a recording device and requested her to record any future conversations with [redacted].[617]

249. On 19 July 2013, P-0536 received a series of telephone calls from [redacted],[618] from an unconfirmed location, which she recorded.[619] [redacted] again expressed his wish to meet with P-0536 and enquired about her location. She replied (falsely)[620] that she was [redacted].[621] [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

[614] **P-0536**, KEN-OTP-0111-0201-R01 at 0206, paras. 22, 26.
[615] Decision on the Confirmation of Charges, paras. 126-130 and disposition.
[616] **P-0536**, KEN-OTP-0103-2693-R01 at 2696, paras. 23-25.
[617] KEN-OTP-0159-0884 at 0896, para. 43.
[618] **P-0536**, KEN-OTP-0111-0188-R01 at 0191-0193, paras. 17-24.
[619] **P-0536**, KEN-OTP-0111-0188-R01 at 0191-0193, paras. 19, 20 and 24; KEN-OTP-0153-0044; **P-0536/**[redacted], KEN-OTP-0160-0964; KEN-OTP-0160-0969; KEN-OTP-0160-0975; KEN-OTP-0160-0978; KEN-OTP-0114-0198 (the latter ERN is relevant for track 5, the rest contain revised translations of tracks 1-4 following an audio-enhancment of the original recording).
[620] As she was instructed to do, [redacted] by ICC investigators. KEN-OTP-0159-0884 at 0898, para. 52.
[621] **P-0536**, KEN-OTP-0111-0188-R01 at 0192, para. 18; **P-0536/**[redacted], KEN-OTP-0160-0964 at 0966.

her in [redacted] thereafter.[622] This is confirmed by the fact that [redacted] subsequently met with P-0800 in [redacted] on [redacted] July 2013.[623]

250. [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][624] [redacted][625] 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.[626] Finally, [redacted] told P-0536 that [redacted].[627]

251. On [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.[628] Although [redacted] did not mention P-0536 by name, he stated that he had been in touch with her and [redacted][629] This corroborates P-0536's version of the telephone call she received from [redacted] on [redacted] July 2013.[630] [redacted] also correctly described her [redacted][631] [redacted] further

[622] **P-0536**, KEN-OTP-0111-0188-R01 at 0193, paras. 23-24; **P-0536/**[redacted] KEN-OTP-0160-0969 at 0972-0973.
[623] **P-0800**, KEN-OTP-0111-0140 at 0147, paras. 35-39.
[624] **P-0536,** KEN-OTP-0111-0188-R01 at 0193**; P-0536/**[redacted], KEN-OTP-0160-0969 at 0973-0974.
[625] **P-0536**, KEN-OTP-0111-0188-R01 at 0193, para. 23.
[626] **P-0536**, KEN-OTP-0111-0188-R01 at 0193, para. 23; **P-0536/**[redacted] KEN-OTP-0160-0969 at 0973-0974.
[627] **P-0536**, KEN-OTP-0111-0188-R01 at 0193, para. 24. *See also* **P-0536/**[redacted] KEN-OTP-0160-0969 at 0973-0974; KEN-OTP-0160-0975 at 0977.
[628] **P-0800**, KEN-OTP-0111-0140 at 0147, paras. 39-41. *See also* **P-0800**, KEN-OTP-0160-0432 at 0443-0444, 0446; **P-0800/**[redacted] KEN-OTP-0131-0431 at 0434-0436.
[629] **P-0800**, KEN-OTP-0111-0140 at 0147, para. 40.
[630] **P-0536**, KEN-OTP-0111-0188-R01 at 0192, para. 18.
[631] **P-0800**, KEN-OTP-0111-0140 at 0147, para. 40; **P-0800/**[redacted] KEN-OTP-0132-0167 at 0186, 0204, 0208, 0215. *See also* **P-0800**, KEN-OTP-0160-0432 at 0443-0444, 0446; **P-0800/**[redacted] KEN-OTP-0131-0431 at 0434-0436.

requested P-0800 to fly [redacted] to locate an ICC witness,[632] which was clearly a reference to P-0536.

252. On [redacted] July 2013, [redacted] called P-0536 three times. These telephone calls were all recorded.[633] 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.[634] [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.[635] [redacted] assured P-0536 that she would be paid in cash.[636] [redacted] promised P-0536 that she would be relocated to an area where she could start her life afresh.[637]

253. In August 2013, P-0536 recorded various telephone calls and messages between her and [redacted].[638] On 9 August 2013, [redacted] told P-0536 that he had 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.[639] When P-0536 asked if RUTO agreed to their return, [redacted] responded that "[redacted]".[640]

254. 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]

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[632] **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, at 0025, para. 74; KEN-OTP-0111-0188-R01 at 0192, para. 18.
[633] **P-0536**, KEN-OTP-0111-0201-R01 at 0204-0207, paras. 15-27; **P-0536/[redacted]** KEN-OTP-0160-0978; KEN-OTP-0114-0198 at 0208-0216. *Note* that the date of the recordings is 25 July 2013 in line with P-0536's statement and not as incorrectly reflected in the transcripts and translations of the calls from that day.
[634] **P-0536**, KEN-OTP-0111-0201-R01 at 0206, para. 22; **P-0536/[redacted]**, KEN-OTP-0114-0198 at 0213, 0215.
[635] **P-0536**, KEN-OTP-0111-0201-R01 at 0206, para. 26; **P-0536/[redacted]**, KEN-OTP-0114-0198 at 0215.
[636] **P-0536**, KEN-OTP-0111-0201-R01 at 0206, para. 22; **P-0536/[redacted]**, KEN-OTP-0114-0198 at 0212.
[637] **P-0536**, KEN-OTP-0111-0201-R01 at 0206, para. 21; **P-0536/[redacted]**, KEN-OTP-0114-0198 at 0212.
[638] *See*, **P-0536**, KEN-OTP-0118-0011-R01 at 0014-0022, paras. 14-55.
[639] **P-0536**, KEN-OTP-0118-0011-R01 at 0016 to 0017, para. 28; **P-0536/[redacted]**, KEN-OTP-0160-1002 at 1004-1005.
[640] **P-0536/[redacted]**, KEN-OTP-0160-1002 at 1004-1005; *Compare* **P-0536**, KEN-OTP-0118-0011-R01 at 0017, para. 28.

[redacted].[641] [redacted] then told P-0536 that [redacted] and had no issues.[642] [redacted] told P-0536 that GICHERU, the lawyer, could be trusted and [redacted].[643] 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 is the one who finalizes things with all the "people who are returning".[644] [redacted] told P-0536 that they would conclude this issue by cash payment.[645] [redacted] explained to P-0536 that "they" were serious and that they would not pay her in [redacted] but rather somewhere else.[646]

255. [redacted] made various attempts to come to meet P-0536 at [redacted],[647] for the purposes of [redacted] to meet with GICHERU.[648] [redacted][649] 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][650]

[641] **P-0536**, KEN-OTP-0118-0011-R01 at 0020, para. 47; **P-0536/**[redacted] KEN-OTP-0114-0296 at 0298.
[642] **P-0536/**[redacted], KEN-OTP-0114-0296 at 0298.
[643] **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-0160-1002 at 1005 [redacted].
[644] **P-0536**, KEN-OTP-0118-0011-R01 at 0020, para. 48; **P-0536/**[redacted], KEN-OTP-0114-0296 at 0299.
[645] **P-0536**, KEN-OTP-0118-0011-R01 at 0021, para. 48; **P-0536/**[redacted], KEN-OTP-0114-0296 at 0299.
[646] **P-0536**, KEN-OTP-0118-0011-R01 at 0021, para. 49; **P-0536/**[redacted], KEN-OTP-0114-0296 at 0300.
[647] [redacted] **P-0536**, KEN-OTP-0118-0011-R01 at 0019, paras. 37-38.
[648] **P-0536**, KEN-OTP-0118-0011-R01 at 0015, para. 16 *et seq*.
[649] KEN-OTP-0159-0884 at 0900, paras. 58-59.
[650] **P-0536**, KEN-OTP-0118-0011-R01 at 0032-0033, paras. 111, 118.

iii. GICHERU's Individual Criminal Responsibility

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

257. 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.[651]

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].[652]

a. Article 25(3)(a)

258. 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.

259. 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 of the DCC.

260. 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.

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[651] **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;
[652] **P-0536**, KEN-OTP-0118-0011-R01 at 0019-0020, 0024, paras. 41, 48, 65; **P-0536/**[redacted] KEN-OTP-0160-0997 at 1000; KEN-OTP-0114-0296 at 0299, 0301.

b. Article 25(3)(d)

261. 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.

262. 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)*

263. 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.[653] GICHERU knew that his actions would, in the ordinary course of events, lead to [redacted] committing the offence of corruptly influencing P-0536.

264. 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)*

265. 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) to b) above.

[653] **P-0536**, KEN-OTP-0111-0201-R01 at 0206-0207, paras. 22-26; as described further in section ii. above.

266. 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.

267. 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

268. [redacted] ("P-0341", [redacted] was a potential witness in the *Ruto and Sang* case, [redacted] in the context of the Kenya situation.

269. P-0341 is a Kalenjin from [redacted] Kenya. [redacted] during the 2007 general elections and, in the violence that ensued, [redacted][655] After the PEV, P-0341 filed a victim application with the Court, [redacted][656] [redacted] P-0341 continued to publically condemn the violence on multiple occasions during ICC victims meetings, [redacted][657] Prosecution investigators conducted a short screening meeting with P-0341 on [redacted][658] but did not subsequently interview him.[659] Although P-0341 was not a Prosecution trial witness, he was regarded by GICHERU as a person possessing information relevant to the proceedings before the Court, and in particular information detrimental to RUTO in the *Ruto and Sang*

654 [redacted].
655 **P-0341,** KEN-OTP-0147-1590-R01.
656 [redacted]
657 **P-0341,** KEN-OTP-0150-0255-R01 at 0260, paras. 24-25; KEN-OTP-0150-0285-R01.
658 **P-0341,** KEN-OTP-0147-1590-R01.
659 **P-0341,** KEN-OTP-0150-0255-R01 at 0269, para. 76.

case. P-0341 was therefore a potential witness in the *Ruto and Sang* case for the purpose of article 70 proceedings.[660]

270. 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.

271. PTC A confirmed the charges for the offence set out in article 70(1)(c) of the Statute with respect to P-0341.[661]

ii. Corruptly influencing P-0341

272. 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.[662]

273. [redacted][663] [redacted][664] On [redacted] April 2013, [redacted] brought P-0341 to GICHERU [redacted][665] [redacted]

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[660] *Bemba et al.* AJ, para. 721.
[661] Decision on the Confirmation of Charges, paras. 136-154.
[662] **P-0341,** KEN-OTP-0150-0255-R01 at 0260-262, paras. 26-33.
[663] [redacted] see **P-0341**, KEN-OTP-0150-0255-R01 at 0268, para. 70; and at 0278, paras. 126-127. *See also* [redacted] **P-0800**, KEN-OTP-0102-0205 at 0210, para. 34; **P-0613**, KEN-OTP-0102-0178 at 0183, para. 33; **P-0604**, KEN-OTP-0143-0144-R01 at 0166, lns. 767-782; **P-0274**, KEN-OTP-0159-0986-R01 at 0998, para. 78.
[664] **P-0341,** KEN-OTP-0150-0255-R01 at 0262, para. 36; KEN-OTP-0149-0119-R01 at 0122, para. 16.
[665] **P-0341,** KEN-OTP-0150-0255-R01 at 0263, paras. 37-41; KEN-OTP-0150-0286-R01; KEN-OTP-0150-0287-R01.

[redacted][666] At [redacted] P-0341 recognised [redacted] from previous [redacted][667] [redacted] P-0516, and P-0397, [redacted], were also present on the premises.[668]

274. 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.[669] They asked him not to go to any more meetings relating to the ICC and advised him he should not become a witness if asked to by the ICC, as they were worried that there were a lot of new ICC witnesses coming forward.[670] They said that [redacted][671] [redacted] which P-0341 took as a threat.[672]

275. 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.[673]

276. GICHERU, [redacted] asked P-0341 to approach perceived ICC witnesses in Kenya and abroad to convince them to withdraw from the case,[674] citing notably [redacted].[675] [redacted] requested that P-0341 bring P-0274, [redacted] to GICHERU [redacted] to sign an affidavit of withdrawal from

[666] **P-0341,** KEN-OTP-0150-0255-R01 at 0266, para. 57; KEN-OTP-0159-1833 at 1841, lns. 264-266.
[667] **P-0341,** KEN-OTP-0150-0255-R01 at 0263, para. 42.
[668] **P-0341,** KEN-OTP-0150-0255-R01 at 0263, para. 43.
[669] **P-0341,** KEN-OTP-0150-0255-R01 at 0264, para. 47; KEN-OTP-0159-1803-R01 at 1822, lns. 652-655.
[670] **P-0341,** KEN-OTP-0150-0255-R01 at 0264, para. 47; KEN-OTP-0159-1833 at 1842, lns. 295-297.
[671] **P-0341,** KEN-OTP-0150-0255-R01 at 0264, para. 46.
[672] **P-0341,** KEN-OTP-0150-0255-R01 at 0264, para. 48.
[673] **P-0341,** KEN-OTP-0150-0255-R01 at 0265, para. 49.
[674] **P-0341,** KEN-OTP-0150-0255-R01 at 0265, para. 50.
[675] [redacted] **P-0341,** KEN-OTP-0150-0255-R01 at 0265, para. 52. [redacted] P-0604: **P-0341**, KEN-OTP-0159-1803-R01 at 1819, lns. 537-553.

the *Ruto and Sang* case.[676] Fearful, P-0341 accepted but did not intend to deliver.[677] GICHERU told P-0341 that he had already sent other people to track the individuals he had asked P-0341 to locate.[678] 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.[679]

277. P-0341 agreed not to attend any more ICC meetings, but in fact subsequently continued to do so.[680] [redacted] RUTO was pleased with the agreement reached with P-0341.[681] [redacted] gave P-0341 10,000 KSh for his transport and lunch, and told him that GICHERU would [redacted].[682] GICHERU scheduled another appointment with P-0341.[683] GICHERU then entered his own number in P-0341's phone and saved it under the name "Paulo".[684]

278. Between [redacted] April and [redacted] May 2013, [redacted] GICHERU requested P-0341 to come [redacted] to receive money.[685] 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.[686] He asked P-0341 to come back another day when "RUTO will send more money".[687] GICHERU repeatedly reminded P-0341 about the conditions of their agreement: to refrain

[676] **P-0341,** KEN-OTP-0150-0255-R01 at 0265, para. 51.
[677] **P-0341,** KEN-OTP-0150-0255-R01 at 0265, para. 51; KEN-OTP-0159-1803-R01 at 1818, lns. 508-510. *Contra* **P-0274,** KEN-OTP-0159-0986-R01 at 0995, paras. 55-58.
[678] **P-0341,** KEN-OTP-0150-0255-R01 at 0265, para. 52.
[679] **P-0341,** KEN-OTP-0150-0255-R01 at 0265, para. 52. *See also* **P-0341**, KEN-OTP-0159-1803-R01 at 1831, lns. 971-972.
[680] **P-0341,** KEN-OTP-0150-0255-R01 at 0265, para. 53.
[681] **P-0341,** KEN-OTP-0150-0255-R01 at 0265, para. 53.
[682] **P-0341,** KEN-OTP-0150-0255-R01 at 0265, para. 53.
[683] **P-0341,** KEN-OTP-0150-0255-R01 at 0265, para. 53.
[684] **P-0341,** KEN-OTP-0150-0255-R01 at 0265-0266, paras. 54-56; KEN-OTP-0150-0288-R01. [redacted]
[685] **P-0341,** KEN-OTP-0150-0255-R01 at 0266, para. 58.
[686] **P-0341,** KEN-OTP-0150-0255-R01 at 0266, para. 58.
[687] **P-0341**, KEN-OTP-0159-1833 at 1843, lns. 352-354.

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.[688] GICHERU also asked P-0341 to put him in contact with perceived ICC witnesses, [redacted] promising "something special" in exchange, and again requested that P-0341 bring P-0274 [redacted][689] By asking P-0341 [redacted] regularly, GICHERU was monitoring him, and kept doing so throughout the relevant period.[690]

279. On 2 May 2013[redacted] GICHERU paid P-0341 500,0000 KSh and told him to return later to sign the affidavit.[691] GICHERU instructed him not to deposit the money in the bank because "the ICC" could inspect those records.[692] Despite this, however, P-0341 opened a bank account [redacted] and deposited 300,000 KSh.[693] P-0341 spent the remaining 200,000 KSh.[694]

280. 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.[695]

281. One day [redacted] May 2013, GICHERU summoned P-0341 into his office. GICHERU called an advocate by the name of [redacted][696] [redacted] affidavit.[697] GICHERU asked P-0341 to sign the document and told him it was a withdrawal from the entire ICC process.[698] [redacted]

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[688] **P-0341,** KEN-OTP-0150-0255-R01 at 0266, para. 59.
[689] **P-0341,** KEN-OTP-0150-0255-R01 at 0266, para. 60.
[690] **P-0341,** KEN-OTP-0150-0255-R01 at 0266, para. 58, at 0273, para. 98.
[691] **P-0341,** KEN-OTP-0150-0255-R01 at 0267, paras. 62-63; KEN-OTP-0149-0119-R01 at 0122, para. 16.
[692] **P-0341,** KEN-OTP-0150-0255-R01 at 0267, para. 63; KEN-OTP-0159-1833 at 1843, lns. 327-328.
[693] **P-0341,** KEN-OTP-0150-0255-R01 at 0267, paras. 64-65; 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.
[694] **P-0341,** KEN-OTP-0150-0255-R01 at 0267, para. 65.
[695] **P-0341,** at 0258, para. 15, at 0267-0268, paras. 66-67.
[696] As noted under the First Incident above, "[redacted]" is saved as a contact on [redacted] phone under number [redacted]. This same phone number can be independently attributed to [redacted]. *See* KEN-OTP-0099-0286; **P-0397**, KEN-OTP-0130-0165-R01 at 0181 (Nr. 70).
[697] **P-0341,** KEN-OTP-0150-0255-R01 at 0268, para. 68.
[698] **P-0341,** KEN-OTP-0150-0255-R01 at 0268, para. 68.

[redacted]. GICHERU said that P-0341 should not [redacted].[699] P-0341 did not receive a copy of the document he signed.[700] GICHERU paid for P-0341's transportation.[701] GICHERU also requested that P-0341 announce his withdrawal to the media, as [redacted] had done before him.[702] Unwilling, P-0341 stalled for time, but GICHERU pressed P-0341, saying that RUTO had asked him "many times" why this had not occurred yet.[703]

282. Around the same time, GICHERU told P-0341 he had asked P-0274 to bring him P-0356,[704] in exchange for 5,000,000 KSh.[705]

283. On [redacted] May 2013, GICHERU summoned P-0341 to his office and paid him 500,000 KSh.[706] P-0341 deposited 300,000 KSh into his bank account and kept 200,000 KSh for [redacted][707]

284. One day between 9 May and 19 July 2013, GICHERU summoned P-0341 [redacted] and asked him to draft a handwritten affidavit.[708] He said that RUTO had requested this second document.[709] GICHERU instructed P-0341 to write that he had no evidence against RUTO and that he was withdrawing from the ICC proceedings.[710] P-0341 complied because he was afraid for his family if he refused.[711] He never received a copy.[712] A couple of days later, GICHERU informed

[699] **P-0341,** KEN-OTP-0150-0255-R01 at 0268, para. 68.
[700] **P-0341,** KEN-OTP-0150-0255-R01 at 0268, para. 68.
[701] **P-0341,** KEN-OTP-0150-0255-R01 at 0268, para. 68.
[702] **P-0341,** KEN-OTP-0150-0255-R01 at 0268, para. 70.
[703] **P-0341,** KEN-OTP-0150-0255-R01 at 0268, para. 70.
[704] A witness in the *Ruto and Sang* case, not to be confused with Prosecution Witness P-0536.
[705] **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 [redacted]
[706] **P-0341,** KEN-OTP-0150-0255-R01 at 0269, paras. 71-72.
[707] **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.
[708] **P-0341,** KEN-OTP-0150-0255-R01 at 0269, para. 74.
[709] **P-0341,** KEN-OTP-0150-0255-R01 at 0269, para. 74.
[710] **P-0341,** KEN-OTP-0150-0255-R01 at 0269, para. 75.
[711] **P-0341,** KEN-OTP-0150-0255-R01 at 0269, paras. 75-76.
[712] **P-0341,** KEN-OTP-0150-0255-R01 at 0269, para. 75.

P-0341 that RUTO was pleased when he received the affidavit, and had instructed GICHERU to pay P-0341 more money.[713]

285. On [redacted] July 2013 [redacted] GICHERU gave 100,000 KSh to P-0341, who deposited half of it into his Cooperative Bank account and kept the rest.[714]

286. That month, [redacted][715] [redacted][716]

287. In August or September 2013, GICHERU asked P-0341 to meet him [redacted].[717] He was accompanied by [redacted][718] [redacted][719] [redacted][720] [redacted].[721] GICHERU said RUTO was very angry because he had given [redacted].[722]

288. GICHERU asked P-0341 to be a witness in support of RUTO.[723] P-0341 argued that it would mean giving contradictory information [redacted]

[713] **P-0341,** KEN-OTP-0150-0255-R01 at 0269-0270, paras. 75, 77.
[714] **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.
[715] **P-0341,** KEN-OTP-0150-0255-R01 at 0270, para. 80.
[716] **P-0341,** KEN-OTP-0150-0255-R01 at 0270, paras. 80-82.
[717] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, para. 83.
[718] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, para. 83. P-0743 [redacted]
[719] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, para. 84.
[720] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, para. 85.
[721] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, para. 86.
[722] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, para. 86.
[723] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, para. 87.

[redacted].[724] [redacted].[725] [redacted] [redacted].[726] P-0341 felt very threatened during the entire meeting.[727] GICHERU paid P-0341 between 100,000 KSh and 200,000 KSh and told him [redacted].[728]

289. Sometime later, P-0341 participated in a PEV victims meeting [redacted].[729] 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.[730] GICHERU gave him some money.[731]

290. Around October 2013, [redacted] He was very reluctant to meet her because of GICHERU's previous threats.[732] [redacted][733] He told [redacted] he had been paid in exchange for withdrawing from the ICC process.[734] [redacted].[735] A week later, GICHERU summoned P-0341.[736] GICHERU accused him of meeting ICC Prosecution individuals.[737] P-0341 responded that he only met [redacted].[738] GICHERU appeared sceptical but gave P-0341 150,000 KSh.[739]

[724] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, para. 87.
[725] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, para. 88.
[726] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, para. 88.
[727] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, para. 88.
[728] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, para. 88.
[729] **P-0341,** KEN-OTP-0150-0255-R01 at 0272, para. 89.
[730] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, para. 90.
[731] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, para. 90.
[732] **P-0341,** KEN-OTP-0150-0255-R01 at 0272, para. 92.
[733] **P-0341,** KEN-OTP-0150-0255-R01 at 0272, para. 92.
[734] **P-0341,** KEN-OTP-0150-0255-R01 at 0272-0273, paras. 92-93; KEN-OTP-0150-0289-R01.
[735] **P-0341,** KEN-OTP-0150-0255-R01 at 0272, para. 92.
[736] **P-0341,** KEN-OTP-0150-0255-R01 at 0273, paras. 94-95.
[737] **P-0341,** KEN-OTP-0150-0255-R01 at 0273, para. 96.
[738] **P-0341,** KEN-OTP-0150-0255-R01 at 0273, para. 96.
[739] **P-0341,** KEN-OTP-0150-0255-R01 at 0273, para. 96.

291. Subsequently, GICHERU paid P-0341, several times more.[740] Nervous about being monitored by Prosecution investigators, GICHERU made the payments through [redacted].[741]

292. On [redacted] October 2013, GICHERU directed P-0341 to meet [redacted].[742] [redacted] gave him 350,000 KSh. P-0341 deposited 300,000 KSh and kept the rest.[743] [redacted] was also present and received money [redacted] that day.[744] After that, GICHERU gave P-0341 between 20,000 KSh and 100,000 KSh [redacted] on several occasions,[745] always enquiring whether P-0341 had been in contact with ICC representatives.[746]

293. On [redacted] April 2014, GICHERU directed P-0341 to go to [redacted] where [redacted] paid him 100,000 KSh.[747] P-0341 deposited 50,000 KSh into his bank account and kept the rest.[748]

294. After depositing the money, P-0341 departed to meet with OTP investigators in [redacted].[749] [redacted].[750] [redacted].[751]

[740] **P-0341,** KEN-OTP-0150-0255-R01 at 0273, para. 97.
[741] **P-0341,** KEN-OTP-0150-0255-R01 at 0273, para. 97.
[742] **P-0341,** KEN-OTP-0150-0255-R01 at 0274, para. 99.
[743] **P-0341,** KEN-OTP-0150-0255-R01 at 0274, para. 101; KEN-OTP-0149-0126, at 0127; KEN-OTP-0150-0283-R01; KEN-OTP-0159-1386 at 1387.
[744] **P-0341,** KEN-OTP-0150-0255-R01 at 0274, paras. 99-100.
[745] **P-0341,** KEN-OTP-0150-0255-R01 at 0274, paras. 102-104.
[746] **P-0341,** KEN-OTP-0150-0255-R01 at 0274, para. 103.
[747] **P-0341,** KEN-OTP-0150-0255-R01 at 0275, para. 106.
[748] **P-0341,** KEN-OTP-0150-0255-R01 at 0275, para. 108; KEN-OTP-0150-0283-R01; KEN-OTP-0159-1386 at 1390.
[749] **P-0341,** KEN-OTP-0150-0255-R01 at 0275, paras. 109-110, at 0258-0259, paras. 15-17.
[750] **P-0341,** KEN-OTP-0150-0255-R01 at 0259, para. 17, at 0275, paras. 109-111.
[751] **P-0341,** KEN-OTP-0150-0255-R01 at 0275, para. 111.

295. [redacted][752][redacted][753][redacted][754][redacted].[755][redacted][756][redacted] threatened P-0341, saying: [redacted][757][redacted][758][redacted].[759] After this, GICHERU attempted to arrange further meetings with P-0341 [redacted] but P-0341 never went back there.[760]

296. 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.[761]

iii. GICHERU's Individual Criminal Responsibility

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

298. GICHERU performed the following specific acts in relation to the Seventh Incident:

[752] **P-0341,** KEN-OTP-0150-0255-R01 at 0275-0276, para. 112.
[753] Referred to as [redacted] *see* P-0341, KEN-OTP-0150-0255-R01 at 0268, para. 70: "[…] [redacted] at 0278, paras. 126-127.
[754] **P-0341,** KEN-OTP-0150-0255-R01 at 0276, para. 112.
[755] **P-0341,** KEN-OTP-0150-0255-R01 at 0276, para. 112.
[756] **P-0341,** KEN-OTP-0150-0255-R01 at 0276, para. 112.
[757] **P-0341,** KEN-OTP-0150-0255-R01 at 0276, para. 113. [redacted] *see* III. First incident.
[758] **P-0341,** KEN-OTP-0150-0255-R01 at 0276, para. 113. [redacted]
[759] **P-0341,** KEN-OTP-0150-0255-R01 at 0276, para. 113.
[760] **P-0341,** KEN-OTP-0150-0255-R01 at 0276, paras. 114-115.
[761] **P-0341,** KEN-OTP-0150-0255-R01 at 0277, para. 117.

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], [redacted], Kenya, [redacted].[762]

b) On 24 April 2013, GICHERU met P-0341 at [redacted].[763] [redacted].[764] At this meeting P-0341 was offered a Bribe of 5,000,000 KSh and other financial inducements, such as a car, property, [redacted][765] 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.[766]

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 2 May 2013 and [redacted] GICHERU paid P-0341 500,000 KSh;[767] (ii) on 9 May 2013 and [redacted] GICHERU paid P-0341 another 500,000 KSh;[768] (iii) on 19 July 2013 and [redacted], GICHERU paid P-0341 100,000 KSh;[769] (iv) on [redacted] October 2013 and at [redacted] GICHERU paid P-0341 350,000 KSh [redacted];[770] and (v) on [redacted] April 2014 and at [redacted] GICHERU paid P-0341 100,000 KSh, [redacted]

[762] **P-0341,** KEN-OTP-0150-0255-R01 at 0262-0263, paras. 36-41, at 0266, para. 57; Annex C, KEN-OTP-0150-0286-R01; Annex D, KEN-OTP-0150-0287-R01.
[763] **P-0341,** KEN-OTP-0150-0255-R01 at 0263, paras. 37-39.
[764] **P-0341,** KEN-OTP-0150-0255-R01 at 0263-0264, paras. 43-45.
[765] **P-0341,** KEN-OTP-0150-0255-R01 at 0265, para. 49.
[766] **P-0341,** KEN-OTP-0150-0255-R01 at 0264, para. 47, at 0265, paras. 50-52.
[767] **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.
[768] **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.
[769] **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.
[770] **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.

[redacted].[771] In addition, GICHERU paid P-0341 several smaller amounts, bringing the total to approximately 2,000,000 KSh.[772]

d) Between [redacted] May 2013, GICHERU called P-0341 [redacted] and asked him to sign an affidavit to withdraw from the ICC, [redacted].[773]

e) Between 9 May and 19 July 2013, GICHERU again called P-0341 [redacted] 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.[774]

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,[775] and also to approach other ICC victims and witnesses.[776]

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][777] (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.[778]

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

299. 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.

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[771] **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.
[772] **P-0341,** KEN-OTP-0150-0255-R01 at 0277, para. 117.
[773] **P-0341,** KEN-OTP-0150-0255-R01 at 0268, para. 68.
[774] **P-0341,** KEN-OTP-0150-0255-R01 at 0269-0270, paras. 74-77.
[775] **P-0341,** KEN-OTP-0150-0255-R01 at 0265, para. 51.
[776] **P-0341,** KEN-OTP-0150-0255-R01 at 0265-0266, paras. 51-52, 59-60.
[777] **P-0341,** KEN-OTP-0150-0255-R01 at 0265, para. 52.
[778] **P-0341,** KEN-OTP-0150-0255-R01 at 0271, paras. 86-88.

300. 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.

301. 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 of the DCC.

302. 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.

303. 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)

304. 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.

305. 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)

306. 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.

307. 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 KOGO committing of the offence of corruptly influencing P-0341.

308. 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)

309. 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.

310. 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.

311. 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

312. [redacted] ("P-0274") [redacted].[779]

313. P-0274 is a [redacted] from [redacted] who was attacked during the PEV in 2007 for supporting the PNU.[780] [redacted][782] P-0274 was regarded by GICHERU as a person possessing 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.[783]

314. 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 record [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.

315. PTC A confirmed the charges for the offence set out in article 70(1)(c) of the Statute with respect to P-0274.[784]

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[779] [redacted]
[780] **P-0274,** KEN-OTP-0159-0986-R01 at 0988, para. 12.
[781] **P-0274,** KEN-OTP-0159-0986-R01 at 0988, para. 12.
[782] **P-0274,** [redacted]
[783] *Bemba et al.* AJ, para. 721.
[784] Decision on the Confirmation of Charges, paras. 156-166

ii. Corruptly influencing P-0274

316. In 2011, after the suspects were named in the ICC Kenya situation proceedings, P-0274 received a letter threatening: [redacted][785] [redacted][786] He also reported the letter to ICC [redacted][787]

317. In 2012, P-0274 approached his friend [redacted][788] [redacted][789] On that occasion, [redacted] told P-0274 that he was close to RUTO, [redacted][790]

318. [redacted][791] [redacted][792] [redacted][793] [redacted][794] [redacted][795] [redacted][796] [redacted][797]

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[785] **P-0274,** KEN-OTP-0159-0986-R01 at 0989, para. 17.
[786] **P-0274,** KEN-OTP-0159-0986-R01 at 0989, paras. 18-19.
[787] **P-0274,** KEN-OTP-0159-0986-R01 at 0989-0990, paras. 17-22.
[788] **P-0274,** KEN-OTP-0159-0986-R01 at 0990, para. 24: [redacted]
[789] **P-0274,** KEN-OTP-0159-0986-R01 at 0990, para. 23.
[790] **P-0274,** KEN-OTP-0159-0986-R01 at 0990, para. 25.
[791] **P-0274,** KEN-OTP-0159-0986-R01 at 0999, para. 83; KEN-OTP-0159-1001.
[792] **P-0274,** KEN-OTP-0159-0986-R01 at 0990, para. 26.
[793] **P-0274**, KEN-OTP-0159-0986-R01 at 0991, paras. 29-30,
[794] **P-0274,** KEN-OTP-0159-0986-R01 at 0991, para. 33.
[795] **P-0274,** KEN-OTP-0159-0986-R01 at 0992, para. 34.
[796] **P-0274,** KEN-OTP-0159-0986-R01 at 0992, para. 34.
[797] **P-0274,** KEN-OTP-0159-0986-R01 at 0992, para. 35.

[redacted].[798] [redacted]

[redacted]

[redacted][799] [redacted].[800] [redacted]

[redacted]

[redacted][801]

319. [redacted] Following this, [redacted] wife received 30,000 KSh [redacted][802] which P-0274 used to move back [redacted] A few days later, [redacted] called P-0274 and promised he would receive more than the 30,000 KSh.[803]

320. After the 2013 elections in Kenya, in which RUTO was elected Deputy President, P-0274 started to receive threats again.[804] [redacted] P-0341 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 to be left in peace.[805] [redacted] with P-0274 and told P-0341 "they did not have to worry" about P-0274 anymore.[806] 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.[807]

[798] **P-0274,** KEN-OTP-0159-0986-R01 at 0992, para. 36.
[799] **P-0274,** KEN-OTP-0160-0206.
[800] **P-0274,** KEN-OTP-0159-0986-R01 at 0992, para. 37.
[801] **P-0274,** KEN-OTP-0159-0986-R01 at 0993, para. 42.
[802] **P-0274,** KEN-OTP-0159-0986-R01 at 0993, paras. 40-41.
[803] **P-0274,** KEN-OTP-0159-0986-R01 at 0993, para. 41.
[804] **P-0274,** KEN-OTP-0159-0986-R01 at 0994, para. 49.
[805] **P-0274,** KEN-OTP-0159-0986-R01 at 0994, paras. 50-51; **P-0341**, KEN-OTP-0159-1803-R01 at 1820-1821, lns. 582-633.
[806] **P-0274,** KEN-OTP-0159-0986-R01 at 0994-0995, para. 52.
[807] **P-0274,** KEN-OTP-0159-0986-R01 at 0995, para. 54.

321. Towards the end of 2013, P-0341 brought P-0274 to GICHERU [redacted], where P-0274 recognised [redacted] leaving the room.[808] Once in his presence, GICHERU explained to P-0274 that "they" preferred to pay witnesses so that they would stop assisting the ICC.[809] GICHERU said they needed to reach everyone involved in the *Ruto and Sang* case, and that the "big man, *Mkubwa*", which P-0274 understood to mean RUTO, wanted "no stone left unturned".[810]

322. GICHERU told P-0274 that he would pay him 500,000 KSh first and 500,000 KSh later if he stopped engaging with the ICC and withdrew from the proceedings.[811] He added P-0274 would then "be safe".[812] GICHERU asked him to approach other witnesses, and gave him 10,000 KSh transport money and handed him a piece of paper with his (GICHERU's) mobile phone number.[813] P-0274 felt uneasy about the meeting and reported what had occurred to an ICC staff member.[814]

323. [redacted] later, [redacted] phoned P-0274 and asked him to meet with GICHERU.[815] Scared, P-0274 switched off his phone and did not attend the meeting.[816] 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 to the ICC about their elder and knew where he lived.[817] P-0274 changed his number and did not interact with GICHERU again.[818]

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[808] **P-0274,** KEN-OTP-0159-0986-R01 at 0995, paras. 55-57; *contra*: **P-0341**, KEN-OTP-0159-1803-R01 at 1818, lns. 508-510, 526-527, at 1823, lns. 693-694.
[809] **P-0274,** KEN-OTP-0159-0986-R01 at 0996, paras. 58-59.
[810] **P-0274,** KEN-OTP-0159-0986-R01 at 0996, para. 58.
[811] **P-0274,** KEN-OTP-0159-0986-R01 at 0996, para. 60.
[812] **P-0274,** KEN-OTP-0159-0986-R01 at 0996, para. 60.
[813] **P-0274,** KEN-OTP-0159-0986-R01 at 0996, para. 61; **P-0341,** KEN-OTP-0150-0255-R01 at 0268, para. 69; KEN-OTP-0159-1803-R01 at 1828, lns.884-885.
[814] **P-0274,** KEN-OTP-0159-0986-R01 at 0996, para. 62.
[815] **P-0274,** KEN-OTP-0159-0986-R01 at 0996, para. 63.
[816] **P-0274,** KEN-OTP-0159-0986-R01 at 0996, para. 64.
[817] **P-0274,** KEN-OTP-0159-0986-R01 at 0996, para. 64.
[818] **P-0274,** KEN-OTP-0159-0986-R01 at 0997, para. 65.

324. [redacted] contacted P-0274 and offered him 1,000,000 KSh to approach [redacted] P-0356.[819] [redacted][820] [redacted] came to P-0274's house and told him that RUTO wanted to meet him. This terrified P-0274.[821]

325. [redacted].[822] [redacted][823] [redacted][824]

iii. GICHERU's Individual Criminal Responsibility

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

327. 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][825] which he did at the end of 2013.[826]

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 from the *Ruto and Sang* case, and to locate and approach other Prosecution Witnesses.[827]

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[819] **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.
[820] **P-0274,** KEN-OTP-0159-0986-R01 at 0997, para. 68.
[821] **P-0274,** KEN-OTP-0159-0986-R01 at 0997, para. 70.
[822] **P-0274,** KEN-OTP-0159-0986-R01 at 0998, para. 73.
[823] **P-0274,** KEN-OTP-0159-0986-R01 at 0998, para. 73.
[824] **P-0274,** KEN-OTP-0159-0986-R01 at 0998, para. 73.
[825] **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.
[826] **P-0274,** KEN-OTP-0159-0986-R01 at 0995, paras. 55-57. *Contra*: **P-0341,** KEN-OTP-0150-0255-R01 at 0280, para. 134.
[827] **P-0274,** KEN-OTP-0159-0986-R01 at 0996, paras. 60-61.

c) Towards the end of 2013, [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.[828] 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)***

328. 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.

329. 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.

330. 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 of the DCC.

331. 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.

[828] **P-0274,** KEN-OTP-0159-0986-R01 at 0996, paras. 60-61.

b. Article 25(3)(d)

332. 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.

333. 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)

334. 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.

335. 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)

336. 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.

337. 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.

338. 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. CONCLUSION

339. On the basis of the facts described above and the evidence that will be presented in the course of the trial, the Prosecution will establish beyond reasonable doubt that Paul GICHERU is guilty of the charges confirmed by Pre-Trial Chamber A (Article 70),[829] specifically of corruptly influencing witnesses through bribery, intimidation, or a combination of both, contrary to article 70(1)(c), as a direct perpetrator or co-perpetrator in the meaning of article 25(3)(a); by soliciting or inducing these offences in the meaning of article 25(3)(b); by aiding, abetting or otherwise assisting in the commission of these offences in the meaning of article 25(3)(c); or by contributing, in any other way, to the commission of these offences in the meaning of article 25(3)(d) of the Statute.

Nazhat Shameen Khan , Deputy Prosecutor

Dated this 27th day of July 2023
At The Hague, The Netherlands

[829] Decision on the Confirmation of Charges, pp. 78-81.