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**TRIAL CHAMBER III**

**Before: Judge Miatta Maria Samba**

**SITUATION IN THE REPUBLIC OF KENYA**

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

**Public**

**With public redacted Annex A and public Annexes B and C**

**Lesser redacted version of "Prosecution's Closing Brief",**

**ICC-01/09-01/20-333-Red, 21 June 2022**

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## I. Introduction

1. Pursuant to the order of Trial Chamber III,<sup>1</sup> the Prosecution submits its closing brief<sup>2</sup> and related annexes.
2. The Prosecution will not repeat herein background information and legal submissions relating to the elements of the Charged Offences<sup>3</sup> or the relevant modes of liability, but refers to its submissions on these issues in the Prosecution's Trial Brief.<sup>4</sup> However, in order to assist the Chamber to navigate the evidence on record, the Prosecution includes in this Brief a description of the main facts relied upon to prove the offences charged and the Accused's criminal responsibility, with specific reference to the evidence now recognised by the Chamber as formally submitted.
3. The Accused, Mr Paul GICHERU,<sup>5</sup> is charged with eight counts of offences against the administration of justice committed in respect of witnesses for the Prosecution<sup>6</sup> in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*,<sup>7</sup> more specifically the corrupt influencing of Prosecution Witnesses through bribery, intimidation, or a combination of both.
4. Eight Prosecution witnesses testified before the Chamber. Additionally, the Chamber recognised a total of 735 items submitted into evidence. The Accused elected not to present any oral testimony,<sup>8</sup> but rather relies mainly on documents disclosed by the Prosecution and the Prosecution's own witnesses.
5. The Prosecution's evidence – if accepted by the Chamber – clearly establishes that the Accused is guilty of all charges, as confirmed.<sup>9</sup> There is no innocent explanation consistent with the Prosecution's evidence, nor has any been suggested by the Defence. It proves beyond reasonable doubt the Accused's essential role in the implementation of the witness

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<sup>1</sup> “Chamber”, ICC-01/09-01/20-329, para. 7 (disposition).

<sup>2</sup> “Brief”.

<sup>3</sup> As defined in footnote 132 below.

<sup>4</sup> “Trial Brief”, ICC-01/09-01/20-220-Conf, in particular Chapters A.I., B.I. and portions of B.II.

<sup>5</sup> “Gicheru” or “the Accused”.

<sup>6</sup> 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”.

<sup>7</sup> ICC-01/09-01/11 (“*Ruto and Sang* case”).

<sup>8</sup> ICC-01/09-01/20-323.

<sup>9</sup> Including all material facts and their legal qualification (under both article 70 and article 25), and precise form of participation (“Charges”).

interference scheme described below, which was conducted for the benefit of William Samoei RUTO.<sup>10</sup>

6. Chapter A of the Brief sets out the Prosecution's overarching submissions on the analysis of the evidence; Chapter B sets out the evidence on record establishing the criminal liability of the Accused; Chapter C provides a summary and analysis of facts and evidence that prove each of the eight confirmed Charges, with relevant legal analysis; and Chapter D provides a preliminary analysis of the Defence's apparent case theory, to the extent that this can be discerned at present.
7. Additionally, the Prosecution annexes the following (updated) supporting documents to this Brief: Annex A is a list of defined terms and relevant persons; Annex B is a list of abbreviations; and Annex C is a list of authorities cited.

## II. Confidentiality

8. Pursuant to regulation 23bis(1) of the Regulations of the Court,<sup>11</sup> the Brief and Annex A 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. ANALYSIS OF THE EVIDENCE

### I. Evaluating the Evidence

#### *i. General principles*

9. The Prosecution relies on the in-court testimony of eight witnesses and a number of items of evidence, all of which have been recognised as formally submitted by the Chamber.<sup>12</sup> In

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<sup>10</sup> **P-0613**, T-55, p. 34, ln. 17. to p. 35, ln. 3; [KEN-OTP-0102-0178](#) at 0181-0182, paras. 18, 29; **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1355, lns. 557-565; **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; [KEN-OTP-0135-0200](#) at 0207, lns. 237-240; [KEN-OTP-0160-0432](#) at 0446, ln. 498 to 0447, ln. 513; **P-0800**/██████████, [KEN-OTP-0131-0431](#) at 0437. *See also* **P-0738**, T-60, p. 17, lns. 18-23, p. 19, lns. 9-10; **P-0738**/██████████, [KEN-OTP-0160-1002](#) at 1005, lns. 44-51. *Compare* **P-0738**, [KEN-OTP-0118-0011-R01](#) at 0017, para. 28; **P-0341**, T-53, p. 47, lns. 19-25, p. 58, lns. 9-16, p. 59, lns. 14-18, p. 73, lns. 18-20, p. 74, lns. 11-12, p. 86, lns. 17-21; [KEN-OTP-0150-0255-R01](#) at 0264, para. 58, 0265, para. 53, 0269, paras. 74-75, 0271, paras. 84, 86; **P-0274**, T-58, p. 51, lns. 9-17. All transcripts referenced in this Brief refer to the English edited or corrected versions on the record in the *Gicheru* case, unless stated otherwise.

<sup>11</sup> "RoC".

<sup>12</sup> Email decisions of 08/03/2022 15:20 (P-0800); 25/03/2022 11:08 (P-0341); 25/03/2022 11:17 (P-0613); 28/03/2022 15:05 (P-0274); 28/03/2022 15:06 (P-0738); 29/03/2022 13:55 (P-0730); 30/03/2022 14:36 (P-0516);

respect of those items for which the admissibility was challenged, these have been ruled admissible.<sup>13</sup> All but one<sup>14</sup> item were recognised for the truth of their contents.

10. As the Chamber deferred its assessment of the admissibility of evidence to the deliberation stage under article 74(2),<sup>15</sup> it must now assess the relevance, probative value and potential prejudice of the evidence on record.<sup>16</sup>
11. In doing so, the Chamber must assess the evidence holistically, and should determine the relevance of a particular item of evidence only after considering other items of evidence, and the totality of the evidence.<sup>17</sup> The Chamber must also determine the weight to be given to the evidence in light of the evidentiary record as a whole.<sup>18</sup>
12. Ultimately, the Chamber is called upon to search for and establish the truth.<sup>19</sup> In doing so, it must apply a three-stage analysis:<sup>20</sup>

*1. The first stage: assessing the credibility and reliability of the evidence*

13. *First*, the Chamber must assess the credibility and reliability of the relevant evidence.<sup>21</sup> It is inappropriate to adopt a piecemeal approach, assessing the evidence of each witness separately<sup>22</sup> “as if it existed in a hermetically sealed compartment.”<sup>23</sup> Individual items of evidence, such as the testimony of different witnesses or documents, must be analysed in light of the entire body of evidence, even if they, when seen in isolation, are open to different interpretations.<sup>24</sup>

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01/04/2022 09:22 (P-0739); ICC-01/09-01/20-235-Conf; ICC-01/09-01/20-250-Conf; ICC-01/09-01/20-282-Conf; ICC-01/09-01/20-284-Conf-Red; ICC-01/09-01/20-299; ICC-01/09-01/20-324.

<sup>13</sup> ICC-01/09-01/20-284-Conf-Red.

<sup>14</sup> [KEN-OTP-0116-0232-R01](#).

<sup>15</sup> ICC-01/09-01/20-189, para. 11.

<sup>16</sup> *Bemba et al. AJ*, para. 594; *Ongwen TJ*, para. 237; *Bemba et al. TJ*, paras. 189, 195; *Bemba TJ*, paras. 189, 222. *See also Ntaganda TJ*, para. 49;

<sup>17</sup> *Bemba TJ*, para. 225.

<sup>18</sup> *Bemba TJ*, para. 223.

<sup>19</sup> Article 69(3) Rome Statute; *Katanga Reg. 55 AJ*, para. 104.

<sup>20</sup> *Halilović AJ*, para. 125, citing *Ntagerura AJ*, para. 174.

<sup>21</sup> Although it need not discuss every piece of evidence in its judgment. *Bemba et al TJ*, para. 196; *Bemba TJ*, para. 227.

<sup>22</sup> *Ntaganda TJ*, para. 78; *Bemba TJ*, para. 225; *Ngudjolo TJ*, para. 45; *Lubanga TJ*, para. 94. *See also Bemba et al. TJ*, para. 196; *Lubanga AJ*, para. 22; *Katanga TJ*, para. 78; .

<sup>23</sup> *Ntagerura AJ*, para. 171, citing *Tadić Contempt AJ*, para. 92; *Musema AJ*, para. 134.

<sup>24</sup> *Ntaganda TJ*, para. 50; *Bemba TJ*, para. 225; *Ngudjolo TJ*, para. 45; *Lubanga TJ*, para. 94. *See also Bemba et al. AJ*, paras. 912, 1540; *Lubanga AJ*, para. 22; *Bemba et al. TJ*, para. 188.

14. The individual items of evidence in this case – examined holistically – reveal a clear and consistent pattern of criminality: GICHERU conspired with other members and associates of the Common Plan<sup>25</sup> to locate, contact and corruptly influence witnesses and potential witnesses in the *Ruto and Sang* case to withdraw and/or recant their evidence and cease all cooperation with the Court.

*2. The second stage: proof beyond reasonable doubt*

15. *Second*, the Chamber should analyse whether the relevant evidence, taken in its totality, establishes the alleged facts, notwithstanding the evidence relied upon by the Defence.<sup>26</sup> At this stage, the Chamber should apply the standard of proof beyond reasonable doubt concerning facts comprising the elements of the crimes and modes of liability alleged, and facts indispensable for entering a conviction.<sup>27</sup> Conversely, the Chamber does not need to apply this standard to “any other set of facts introduced by the different types of evidence”, nor to the evidence itself.<sup>28</sup> Similarly, when inferring the existence of facts indispensable for entering a conviction, such inference must be the only reasonable inference that may be drawn from the underlying circumstances.<sup>29</sup> However, not every underlying/intermediate fact needs to be proved separately beyond reasonable doubt.<sup>30</sup>

16. As the Appeals Chamber cautions, the reasonable doubt standard “cannot consist in imaginary or frivolous doubt based on empathy or prejudice”, but must be based on logic and common sense and have a rational link to the evidence, to the lack of evidence, or to inconsistencies therein.<sup>31</sup> Speculative or fanciful theories that are unsupported by the evidence on record cannot raise reasonable doubt. The Chamber is not required to indulge

<sup>25</sup> As defined in para. 67 below.

<sup>26</sup> *Ntaganda TJ*, para. 50; *Bemba TJ*, para. 225; *Katanga TJ*, para. 80; *Ngudjolo TJ*, para. 46; *Ntagerura AJ*, para. 174. See also *Bemba et al. TJ*, para. 197.

<sup>27</sup> *Lubanga AJ*, para. 22; *Ongwen TJ*, para. 227; *Ntaganda TJ*, para. 44; *Bemba et al. TJ*, para. 186; *Bemba TJ*, para. 215; *Katanga TJ*, para. 69; *Ngudjolo TJ*, para. 35; *Ntagerura AJ*, para. 174.

<sup>28</sup> *Bemba et al. AJ*, para. 868, citing *Lubanga AJ*, para. 22.

<sup>29</sup> *Bemba et al. AJ*, paras. 868-869; *Ntaganda TJ*, paras. 69-70; *Bemba TJ*, para. 239.

<sup>30</sup> *Bemba et al. AJ*, para. 868. See also *R v. De Villiers* at 508-509, where Davis AJA expressed the test thus: “The Court must not take each circumstance separately and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. *It must carefully weigh the cumulative effect of all of them together, and it is only after it has done so that the accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn.* To put the matter in another way; the Crown must satisfy the Court, not that each separate fact is inconsistent with the innocence of the accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence.” (Emphasis added)

<sup>31</sup> *Ngudjolo AJ*, para. 109, citing *Rutaganda AJ*, para. 488; *Bemba et al. TJ*, para. 187; *Bemba TJ*, para. 216.



in conjecture, nor to seek speculative explanations for conduct which on the face of it is incriminating. Likewise, the possibility that unavailable evidence may include exculpatory information is too hypothetical to qualify as a reasonable doubt.<sup>32</sup>

17. Applying this standard to the totality of the evidence in this case establishes that the Prosecution has proved its case. Neither the theories nor the evidence relied upon by the Defence disturb the coherence and weight of the evidence demonstrating GICHERU's guilt beyond reasonable doubt.
18. The Accused has the right to remain silent and not to testify in his defence, and the exercise of this right may not lead to an inference of guilt.<sup>33</sup> However, where the Prosecution has produced evidence that establishes proof beyond reasonable doubt, unless the Defence is able to present controverting evidence sufficient to raise reasonable doubt, the Accused must be convicted. In this case, the Defence has not called any witnesses or produced such evidence, but instead advances speculative theories based on inferences it seeks to draw from the Prosecution's own evidence. However, such inferences are unsupported by acceptable evidence and cannot raise reasonable doubt in the face of credible and corroborated evidence.<sup>34</sup>
19. The facts underpinning the Prosecution's case are proved through both direct and circumstantial<sup>35</sup> evidence. The Prosecution's evidence – summarised below – readily dispels the Defence's alternative theories.
20. When available evidence gives rise to only one reasonable conclusion, that particular conclusion is considered established beyond reasonable doubt.<sup>36</sup>

### *3. The third stage: the elements of the crimes and modes of liability*

21. *Third*, the Chamber must decide whether the essential elements<sup>37</sup> of the charged crimes and the modes of liability are proved.<sup>38</sup> As set out in detail below and argued in the Trial Brief,

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<sup>32</sup> *Ongwen TJ*, para. 229.

<sup>33</sup> Article 67(1)(g) Rome Statute.

<sup>34</sup> *Ngudjolo AJ*, para. 109, citing *Rutaganda AJ*, para. 488; *Ongwen TJ*, para. 228; *Bemba TJ*, para. 216.

<sup>35</sup> Nothing in the Court's statutory framework prevents the Chamber from relying on circumstantial evidence. *Bemba et al. AJ*, paras. 868-869, 1386; *Ntaganda TJ*, para. 69; *Bemba TJ*, para. 239.

<sup>36</sup> *Bemba et al. AJ*, paras. 868-869; *Ntaganda TJ*, paras. 69-70; *Bemba TJ*, para. 239.

<sup>37</sup> These elements must be distinguished from the material facts set out in the Document Containing the Charges ("DCC"), and only the former need to be proved beyond reasonable doubt. This is because material facts may be pleaded – for the purposes of notice to the Accused – that are not essential to the proof of the offences or modes of liability charged. *Ntagerura AJ* para. 174 and fn. 356; *Milutinović TJ*, para. 63.

<sup>38</sup> *Bemba et al. TJ*, para. 186; *Ntaganda TJ*, para. 44; *Ntagerura AJ*, para. 174.

if the Prosecution's evidence is accepted, it clearly establishes both the essential elements of each of the eight offences charged, and the individual criminal responsibility of the Accused under each of the modes of liability relied upon.

22. As further outlined in paras. 74-76 below, the Prosecution requests the Chamber to find that the conduct of several additional persons associated with the Common Plan was essential to the commission of the offence, or, in the alternative, to notify the Defence of a legal characterisation of the factual allegations constituting this conduct and find that these satisfy the requirements for co-perpetration under article 25(3)(a).

*ii. Overview of the Prosecution's evidence*

23. The Prosecution's oral, documentary and audio-visual evidence is credible, reliable, and corroborated in material respects.

24. The Prosecution called eight witnesses to testify *viva voce*, including the targets of corrupt influence<sup>39</sup> in six of the eight counts;<sup>40</sup> one corroborating witness who was himself the target of an uncharged incident of corrupt interference;<sup>41</sup> and the former investigation Team Leader for the "Kenya Article 70" case, who provided an overview of the investigation.<sup>42</sup> The prior recorded testimony<sup>43</sup> of four of these witnesses was also admitted under rule 68(3).<sup>44</sup> Additionally, the PRT of four other Prosecution witnesses was admitted under rules 68(2)(b)<sup>45</sup> and (c).<sup>46</sup>

25. The Prosecution's documentary evidence includes: the PRT of several Prosecution witnesses, including P-0397 [REDACTED] withdrawal affidavits and letters from corrupted witnesses; one party consent recordings<sup>47</sup> of telephone conversations and meetings between Prosecution witnesses and Intermediaries<sup>48</sup>/Associates;<sup>49</sup> OPC recordings between P-0397 and GICHERU; an article 55(2) interview with GICHERU in which he makes a number of important admissions and prevaricates on other issues; phone

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<sup>39</sup> "Corruption Targets".

<sup>40</sup> P-0516, P-0613, P-0800, P-0738, P-0341, and P-0274.

<sup>41</sup> P-0739.

<sup>42</sup> P-0730.

<sup>43</sup> "PRT".

<sup>44</sup> Corruption Targets P-0800, P-0613 and P-0738, and investigator P-0730.

<sup>45</sup> P-0734, P-0735, P-0736, and P-0737.

<sup>46</sup> Corruption Target P-0397.

<sup>47</sup> "OPC recordings".

<sup>48</sup> As defined in para. 73 below.

<sup>49</sup> As defined in para. 74 below.

records of GICHERU and Prosecution witnesses; bank records of P-0397 and P-0341; and investigation reports, extracted from contemporaneous records and documenting contacts with witnesses and other investigative activities.

26. While it is not possible to cite all of the evidence establishing GICHERU's individual criminal responsibility, the Prosecution addresses the issues and evidence it considers most significant in this Brief. However, the Prosecution's failure to cite other evidence on record, which supports the Prosecution's case, should not be construed to suggest that the Prosecution considers that such evidence is less than compelling.<sup>50</sup>

## II. Specific Categories of Evidence

### 1. Witness testimony

#### a. Evaluating witness testimony: general principles

27. 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,<sup>51</sup> against the background of the evidence as a whole.<sup>52</sup> The testimony of one and the same witness may therefore be reliable in one part, but not reliable in another.<sup>53</sup>
28. To determine the weight of testimony, the Chamber should assess both the credibility of the witnesses and the reliability of their evidence.<sup>54</sup> Having had the opportunity to observe the witnesses, the Chamber may properly consider their demeanour.<sup>55</sup>
29. Further, in evaluating inconsistencies within and/or among witnesses' testimonies,<sup>56</sup> the Chamber need not consider such evidence tainted or unreliable due to minor inconsistencies.<sup>57</sup> Indeed, inconsistencies, contradictions and inaccuracies may in fact speak in favour of the truthfulness of the witnesses account<sup>58</sup> and, in particular, inconsistencies between witnesses may point to the absence of collusion.

<sup>50</sup> [Bemba TJ](#), para. 226; [Katanga TJ](#), para. 81; [Ngudjolo TJ](#), para. 47.

<sup>51</sup> [Ntaganda AJ](#), paras. 589, 774; [Ntaganda TJ](#), paras. 77, 79, 81; [Bemba et al. TJ](#), para. 202.

<sup>52</sup> [Ntaganda AJ](#), para. 594.

<sup>53</sup> [Ntaganda AJ](#), para. 596; [Ntaganda TJ](#), paras. 78, 80; [Bemba et al. TJ](#), para. 202.

<sup>54</sup> [Lubanga AJ](#), para. 239; [Ntaganda TJ](#), paras. 53, 77-78. See also [Bemba et al. TJ](#), paras. 202-204; [Bemba TJ](#), paras. 229-230; [Katanga TJ](#), paras. 85, 87; [Ngudjolo TJ](#), paras. 51, 53; [Lubanga TJ](#), paras. 102, 106.

<sup>55</sup> [Bemba et al. TJ](#), para. 20.

<sup>56</sup> [Ntaganda AJ](#), para. 806; [Ngudjolo AJ](#), para. 23; [Lubanga AJ](#), paras. 23-24.

<sup>57</sup> [Bemba et al. TJ](#), para. 204; [Kupreškić AJ](#), para. 31.

<sup>58</sup> [Ntaganda TJ](#), para. 80; [Bemba et al. TJ](#), para. 204.

30. Instead, the Chamber may consider such testimony reliable, having resolved the inconsistencies. Moreover, because witnesses may be accurate (or truthful) on some issues, and less accurate (or untruthful) on others, the Chamber may accept certain parts of a witness's account while disregarding other portions of it, and consider the impact on the witness's overall reliability.<sup>59</sup>
31. Where the credibility of a witness is challenged, the Chamber should consider whether the party seeking to discredit the witness put to the witness the facts or evidence available at the time which are relied on to impeach the witness. The requirement for a party to put its case to the witness is a well-established rule of fairness: a witness must not be discredited without having had an opportunity to comment on or counter the discrediting information.<sup>60</sup> Further, the failure to cross examine a witness is a factor to be taken into account when evaluating the weight to be given to the witness's evidence.<sup>61</sup>
32. Corroboration is not required at this Court.<sup>62</sup> Nor when considered, does corroboration require that testimonies be identical in all aspects, or describe the same facts in the same way.<sup>63</sup> However, where there are reasons for approaching the evidence of certain witnesses with caution, corroboration may be an important factor in determining whether or not the Chamber may safely rely on their evidence, in whole or in part.
33. Witness testimonies are deemed corroborative when "one *prima facie* credible testimony is compatible with the other *prima facie* credible testimony regarding the same fact or a sequence of linked facts."<sup>64</sup> Therefore, thematic consistencies among testimonies are sufficient corroboration. Mirror images are unnecessary and unrealistic.<sup>65</sup> However, a tenuous link between two pieces of evidence may not automatically amount to corroboration (without more).<sup>66</sup>

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<sup>59</sup> *Bemba et al.* TJ, para. 204; *Ngudjolo TJ*, para. 50; *Lubanga TJ*, para. 104. See also *Ntaganda TJ*, para. 488, fn. 1401.

<sup>60</sup> *Browne v. Dunn*, p. 70. See also *Brđanin & Talić* Appeal Decision, p. 4.

<sup>61</sup> ICC-01/04-02/06-1791-Red, para. 12.

<sup>62</sup> See rule 63(4). *Ntaganda TJ*, para. 75; *Bemba et al. AJ*, para. 1084.

<sup>63</sup> *Ntaganda AJ*, para. 672; *Gbagbo & Ble Goude AJ*, para. 357; *Gatete AJ*, para. 125, citing *Kanyarukiga AJ*, para. 220; *Ntawukulilyayo AJ*, para. 24; *Munyakazi AJ*, para. 103; *Bikindi AJ*, para. 81; *Nahimana AJ*, para. 428. See also *Ntabakuze AJ*, para. 150.

<sup>64</sup> *Gatete AJ*, para. 125, citing *Kanyarukiga AJ*, para. 177, 220; *Ntawukulilyayo AJ*, para. 121, citing *Bikindi AJ*, para. 81; *Nahimana AJ*, para. 428.

<sup>65</sup> *Ntaganda AJ*, para. 18; *Ongwen TJ*, para. 664.

<sup>66</sup> *Gbagbo & Ble Goude AJ*, para. 358.

34. The Prosecution witnesses are corroborated: they are *prima facie* credible on the essential issues, and they describe the sequence of linked facts and events in a compatible manner. Their testimony is thematically consistent.<sup>67</sup>

*b. Evidence of corrupted witnesses*

35. Nothing prohibits the Chamber from relying on the testimony of witnesses who have previously recanted their evidence due to corrupt influence, even if viewed with some caution.<sup>68</sup> Such testimony can be relied upon especially where the witness is thoroughly cross-examined.<sup>69</sup> In a case involving the corrupt influencing of witnesses, the Chamber should also distinguish between actions and statements made while the witnesses were under the corrupt influence of the perpetrators, and the statements and testimony given once that influence has been removed.

36. With the exception of P-0730, all of the witnesses called by the Prosecution to testify were the targets of corruption by GICHERU,<sup>70</sup> as were P-0397 and P-0495 who did not testify. Of these witnesses, all but P-0613 and P-0738 accepted the bribes offered and received payments of varying amounts. In return, they cooperated with the perpetrators, including by signing affidavits containing false statements and therefore, to some extent, may be regarded as witnesses who possess insider-type of information.

37. Despite testifying from different roles, perspectives and interests, all the witnesses who were successfully corrupted gave consistent and detailed accounts of the circumstances in which the crimes charged occurred and of the individuals involved, as set out in this Brief. In this, the witnesses were internally consistent and corroborate each other. Their testimonial evidence was also corroborated by other evidence, including documentary, forensic and audio recorded evidence.

38. Generally, these witnesses had firm recall of the material facts that support the Charges despite the passage of time, were measured in their responses, and did not embellish or exaggerate. They provided their basis of knowledge and acknowledged readily what they did not know.<sup>71</sup>

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<sup>67</sup> See e.g. [Gatete AJ](#), para. 126.

<sup>68</sup> [Ntaganda TJ](#), para. 84; [Nchamihigo AJ](#), paras. 42-43.

<sup>69</sup> [Niyitegeka AJ](#), para. 98.

<sup>70</sup> P-0800, P-0341, P-0613, P-0738, P-0274, P-0516 and P-0739.

<sup>71</sup> See e.g. **P-0800**, T-50, p. 57, lns. 17-22, p. 79, lns. 17-21; **P-0341**, T-53, p. 35, lns. 1-4, p. 79, lns. 20-23; T-54, p. 33, lns. 13-15; **P-0739**, T-66, p. 26, lns. 8-9; T-67, p. 31, lns. 18-19, p. 32, lns. 8-9.

39. The corrupted witnesses were also thoroughly cross-examined and answered questions of both Parties spontaneously and candidly.
40. Assessed as a whole, in light of the entire body of evidence, the testimony of these witnesses was credible, reliable and probative of facts in issue, as can be seen from the detail of their testimony relied on herein. Their testimony compels GICHERU's conviction for the crimes under the modes of liability charged.

*c. Evidence of accomplices*

41. Evidence of witnesses who were involved in the criminal events for which the accused person is charged are not *per se* unreliable, nor does their evidence need to be corroborated as a matter of law.<sup>72</sup> The Chamber “may convict on the basis of the evidence of a single witness, even an accomplice, provided such evidence is viewed with caution.”<sup>73</sup> A Chamber may appropriately approach accomplice evidence by considering whether, *inter alia*: (i) discrepancies in the testimony are explained; (ii) the witness has already been tried and, if applicable, sentenced for his/her own crimes or is awaiting the completion of his/her trial; (iii) whether the witness may have any other reason for holding a grudge against the accused;<sup>74</sup> and (iv) the witness has decided to testify, despite the possibility that his/her family may, as a result, suffer retaliation. Yet, none of these factors renders accomplice testimony unreliable *per se*.<sup>75</sup> Rather, the Chamber should duly weigh the testimony given the circumstances of each case<sup>76</sup> and must provide sufficient reasoning to rely on their evidence.
42. Of the Corrupted Witnesses,<sup>77</sup> at least three went further and acted in furtherance of the Common Plan by in turn corruptly influencing other witnesses.<sup>78</sup> P-0800 and P-0397 candidly admitted their roles in furthering the ends of the Common Plan Members,<sup>79</sup> notwithstanding the fact that they incriminated themselves thereby. It would be highly improbable that these witnesses should invent this evidence in the hope of enjoying benefits from becoming witnesses. Aside from the fact that they were both already witnesses in the main case, it was entirely unnecessary to invent these details, since the mere

<sup>72</sup> Such witnesses are at times characterised as “accomplices”: [Ntaganda AJ](#), paras. 655 and 734.

<sup>73</sup> [Nchamihigo AJ](#), para. 42.

<sup>74</sup> [Ntaganda TJ](#), para. 77; *Bemba et al. TJ*, para. 202; [Nchamihigo AJ](#), para. 47.

<sup>75</sup> [Ntaganda AJ](#), para. 661.

<sup>76</sup> [Ntaganda TJ](#), para. 77; *Bemba et al. TJ*, para. 202; [Nchamihigo AJ](#), para. 47.

<sup>77</sup> As defined in footnote 217 below.

<sup>78</sup> P-0397, P-0516, P-0800 and possibly P-0341.

<sup>79</sup> As defined in footnote 145 below.

acknowledgement that they accepted bribes from GICHERU and his associates would suffice to establish the guilt of the Accused.

43. P-0516 and P-0341, on the other hand, denied the actions attributed to them by other witnesses. These denials must be treated with caution. However, the fact that they may have falsely denied their involvement in order to minimise their culpability does not mean that the crux of their evidence – namely that they were offered and accepted bribes from GICHERU and his associates – should be rejected. These are, after all admissions, *against* their interests that could potentially expose them to domestic prosecution under the International Crimes Act.<sup>80</sup> An “admission against (penal) interest” is recognised as an *indicium* 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 him or her to criminal prosecution or other adverse consequences.<sup>81</sup> This is accordingly a factor that strongly militates against the possibility that they would falsify such evidence.

44. The Prosecution therefore submits that the incriminating evidence of the corrupted witnesses, including those who were themselves co-opted into assisting the Common Plan is sufficiently credible, reliable, and probative of facts in issue. Their evidence is corroborated by other reliable evidence, internally and mutually consistent, consistent with the evidence of non-accomplice witnesses<sup>82</sup> and, assessed in light of the evidence as a whole, worthy of belief.<sup>83</sup>

*d. Hearsay/indirect evidence*

45. As confirmed by the Pre-Trial Chamber,<sup>84</sup> the Chamber may rely on indirect evidence, although as a general rule it will be accorded lower probative value than direct evidence.

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<sup>80</sup> Act No. 16 of 2008 (Available at <https://www.legal-tools.org/doc/816990/pdf/>) See for instance section 10(2)(a). Although they were given rule 74 assurances during their testimony, their statements to the Prosecution were given under caution without any assurances of non-disclosure.

<sup>81</sup> See for instance J Wigmore, Evidence §§ 1455-77 (3rd ed. 1940); Particularly where corroborated, see Federal Rules of Evidence, rule 804(b)(3).

<sup>82</sup> Including P-0738, whose credibility is unimpeached.

<sup>83</sup> *Ntaganda* TJ, para. 50.

<sup>84</sup> “PTC”, Confirmation Decision, paras. 38-39, and cases cited.

However, the PTC specifically acknowledged that “this will depend upon the infinitely variable circumstances which surround hearsay evidence.”<sup>85</sup>

## 2. *Expert witnesses*

46. The expert evidence of P-0734, P-0735, P-0736 and P-0737, introduced by the Prosecution through rule 68(2)(b),<sup>86</sup> is reliable and undisputed.<sup>87</sup> The evidence of expert witnesses P-0734, P-0735 and P-0736 concerns the technical process of data extractions from GICHERU’s mobile phone. The Defence contested neither the data extraction process itself, nor the authenticity of the data extracted.<sup>88</sup> The evidence of expert witness P-0737 concerns the technical process of enhancement of audio recordings of telephone calls.<sup>89</sup> The Defence did not challenge the quality of P-0737’s work or methodology.<sup>90</sup> The Chamber should therefore accord full weight to the Prosecution expert evidence.

## 3. *Overview/analysis witnesses*

47. Similarly the evidence of OTP analyst P-0733,<sup>91</sup> recognised as formally submitted,<sup>92</sup> provides an overview of the links between the phone contacts recovered from GICHERU’s phone and phone numbers previously identified during OTP investigations and the attribution of these numbers, including Managers<sup>93</sup> and Intermediaries, corrupted witnesses and lawyers involved in drafting recanting affidavits. Additionally, while not evidence *per se*, the timeline of relevant events compiled by P-0733<sup>94</sup> and organisational chart per incident<sup>95</sup> provides a useful overview of the sequence of and temporal relationships between the events established by the evidence and the persons involved in each incident.

48. P-0730 provided overview evidence of the evolution of the investigation into witness interference and how that established the existence of crime patterns, which led in turn to

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<sup>85</sup> *Ibid.*; *Bemba et al.* AJ, para. 874; *Ngudjolo* AJ para. 226. See further submissions in this regard in section 4. “OPC recordings” below.

<sup>86</sup> ICC-01/09-01/20-198-Conf; ICC-01/09-01/20-250-Conf.

<sup>87</sup> ICC-01/09-01/20-231-Conf, paras. 11, 13; ICC-01/09-01/20-250-Conf, paras. 18-19, 25, 28.

<sup>88</sup> ICC-01/09-01/20-231-Conf, para. 11; ICC-01/09-01/20-250-Conf, paras. 18-19, 25.

<sup>89</sup> ICC-01/09-01/20-250-Conf, para. 26.

<sup>90</sup> ICC-01/09-01/20-250-Conf, para. 28.

<sup>91</sup> **P-0733**, [KEN-OTP-0160-0699](#).

<sup>92</sup> ICC-01/09-01/20-250-Conf, para. 16 and p. 12.

<sup>93</sup> As defined in para. 72 below.

<sup>94</sup> ICC-01/09-01/20-143-Conf-AnxA.

<sup>95</sup> ICC-01/09-01/20-143-Conf-AnxB.



the identification of four main suspects, including GICHERU. He explained the various obstacles faced by the OTP and steps taken to overcome them, including efforts to corroborate witness evidence of interference. His evidence establishes that the investigation was conducted impartially and as thoroughly as possible, given the constraints faced.

#### 4. *OPC recordings*

49. In the OPC recordings<sup>96</sup> the direct perpetrators explain in their own words how the bribery scheme operated and GICHERU's role and responsibilities therein. These recordings are a reliable, objective source of evidence and should be accorded full weight by the Chamber. They provide a contemporaneous, verbatim and unfiltered record of the exchanges and eliminate, or at least substantially reduce, potential inaccuracies arising from witnesses' accounts, as set out in more detail in the Prosecution Response to the Defence request to exclude these recordings.<sup>97</sup> They are the best possible evidence of what transpired between the witnesses and the direct perpetrators and provide objective and independent corroboration of the witnesses' accounts of the corrupt interference. Although the persons whose statements are relied upon have not been subjected to cross examination,<sup>98</sup> the relevant witnesses have. They have been able to provide further details as to the context and meaning of the conversations, according to their understanding.
50. The Defence's theory that the OPC recordings were staged by the Prosecution witnesses – in collusion with the interlocutors YEBEI, BARASA, BETT and P-0495 – in order to falsely substantiate claims of witness interference is fanciful, unsubstantiated and unconvincing, as further detailed below.<sup>99</sup> No other reason has been suggested why these interlocutors would all falsely implicate GICHERU as the person organising the payment of bribes to Prosecution Witnesses, nor is any such reason suggested by the evidence. Accordingly, should the Chamber reject the Defence's conspiracy theory, it may safely rely

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<sup>96</sup> The relevant witnesses are P-0800, P-0738, P-0613, P-0397 and P-0495.

<sup>97</sup> ICC-01/09-01/20-258-Conf-Red, para. 48.

<sup>98</sup> However, the Prosecution notes that the Defence requested (Defence email of 09/12/2021 at 13:04) and was granted (Email decision of 15 December 2021 at 12:14) permission to interview P-0495. It appears this interview did not transpire, but no explanation has been provided by the Defence as to why this was the case, *see* Defence email of Tue 07/06/2022 at 16:58.

<sup>99</sup> *See* below Part D.

on the contents of the OPC recordings, particularly the evidence implicating the Accused in the witness interference scheme.

51. Additionally, the OPC recordings between P-0397 and GICHERU provide an important insight into the Accused's state of mind. His acquiescence in the face of incriminating statements by P-0397 is consistent with his alleged involvement in the witness corruption scheme—and entirely inconsistent with the behaviour of an innocent person. In determining whether the Accused is guilty of the offences charged, or if it is reasonably possible that he is instead the victim of a conspiracy to falsely incriminate him, this evidence weighs heavily in favour of the former.

#### 5. Phone data

52. The data extracted from GICHERU's phone, as well as that extracted or recorded from the phones of various witnesses,<sup>100</sup> which comprises *inter alia* phone contacts, call data logs, and text messages, is reliable, undisputed evidence and should be accorded full weight by the Chamber. The material was recovered from GICHERU's and the witnesses' phones respectively, who handed their phones over to the OTP voluntarily, or, in the case of GICHERU, pursuant to a search and seizure order issued by the PTC. The Defence did not dispute the reliability of this material, nor the process by which it was extracted at the time of its submission.<sup>101</sup> Moreover, some of the data recovered is independently corroborated, including the contact details of RUTO,<sup>102</sup> SIMATWO,<sup>103</sup> BARASA,<sup>104</sup> BUSIENEI,<sup>105</sup>

<sup>100</sup> P-0397; P-0800; P-0341; P-0613; P-0738.

<sup>101</sup> See *e.g.* for GICHERU's phone data: ICC-01/09-01/20-231-Conf, paras. 11, 13; ICC-01/09-01/20-250-Conf, paras. 18-19, 25, 28; P-0397's phone data: ICC-01/09-01/20-285-Conf, para. 16, ICC-01/09-01/20-299, para. 14; P-0800: ICC-01/09-01/20-209-Conf; P-0341's phone data: T-54, p. 40, lns. 12-15; Email decision of 25/03/2022 11:08; P-0613: ICC-01/09-01/20-209-Conf; Email decision of 25/03/2022 11:17; P-0738: ICC-01/09-01/20-209-Conf; Email decision 08/03/2022 15:20.

<sup>102</sup> P-0733, [KEN-OTP-0160-0699](#) at 0700; [KEN-OTP-0159-1638](#); [KEN-OTP-0160-0661](#).

<sup>103</sup> P-0733, [KEN-OTP-0160-0699](#) at 0701; [KEN-OTP-0153-0054-R01](#) at 0055.

<sup>104</sup> P-0733, [KEN-OTP-0160-0699](#) at 0700; P-0738, [KEN-OTP-0111-0198](#), [KEN-OTP-0111-0188-R01](#) at 0193; [KEN-OTP-0103-2693-R01](#) at 2696, para. 19; P-0800, [KEN-OTP-0106-0395](#) to 0397, [KEN-OTP-0103-2473](#) at 2477-2478, paras. 15, 18, 23-24; [KEN-OTP-0106-0388](#) at 0391 *et seq*; P-0613, [KEN-OTP-0111-0162](#) at 0172; [KEN-OTP-0111-0184](#); [KEN-OTP-0160-0697](#); [KEN-OTP-0159-1693](#).

<sup>105</sup> P-0733, [KEN-OTP-0160-0699](#) at 0701; [KEN-OTP-0159-1631](#).

NJUGUNA<sup>106</sup> and MITEI<sup>107</sup> on GICHERU's phone and GICHERU's contact details on P-0397's phone,<sup>108</sup> which further enhances its reliability.

53. While the recovered phone contacts by themselves do not prove that the respective individuals were in contact at the relevant time, they provide objective and independent corroboration of other Prosecution evidence of such contacts.<sup>109</sup> Moreover, the absence of any explanation from the Accused as to why these contacts existed on his phone if he did not in fact know these persons and/or was not in contact with them at the relevant time, strengthens the inference that they were all in fact connected with GICHERU.
54. In the same vein, the phone contacts extracted from GICHERU's phone provide significant corroboration of other evidence of such contacts at the time of the bribery scheme,<sup>110</sup> notwithstanding that GICHERU's phone was only recovered from him on 2 November 2020<sup>111</sup> and was likely activated in October 2020.<sup>112</sup> According to the data extraction report, the phone appears to have been activated by restoring a previous backup and thus the data extracted from it would pre-date the activation.<sup>113</sup>

#### 6. *Banking records*

55. P-0397 and P-0341's bank statements, recording the amounts and dates of the cash payments made by GICHERU to P-0397 and P-0341, are authentic and reliable and thus provide independent and objective corroboration of other evidence of these payments.
56. The Defence did not dispute the authenticity or reliability of this material at the time of its submission. The authenticity of P-0341's bank records are confirmed by the stamp of the bank and certification of a bank employee.<sup>114</sup> The authenticity of P-0397's records are confirmed by the SMS message alerts retrieved from his phone records confirming the

<sup>106</sup> **P-0733**, [KEN-OTP-0160-0699](#) at 0701; [KEN-OTP-0099-0286](#); **P-0397**, [KEN-OTP-0130-0165-R01](#) at 0171 (Nr. 58), 0181 (Nr. 70).

<sup>107</sup> **P-0733**, [KEN-OTP-0160-0699](#) at 0701; [KEN-OTP-0112-0126](#).

<sup>108</sup> [KEN-OTP-0153-0054-R01](#); [KEN-OTP-0124-0028](#). GICHERU confirmed the authenticity of this card, *see* **GICHERU**, [KEN-OTP-0159-0736](#) at 0739, ln. 87 to 0740, ln. 124; [KEN-OTP-0159-0766](#) at 0793, lns. 832-895; [KEN-OTP-0159-0585](#).

<sup>109</sup> *See e.g.* below paras. 72-73, 77.

<sup>110</sup> *See* below paras. 59-60.

<sup>111</sup> ICC-01/09-01/20-35-Conf, para. 11.

<sup>112</sup> **P-0733**, [KEN-OTP-0160-0045](#) at 0052.

<sup>113</sup> **P-0733**, [KEN-OTP-0160-0045](#) at 0052.

<sup>114</sup> [KEN-OTP-0159-1386](#). *See also* [KEN-OTP-0159-1384](#).

deposits.<sup>115</sup>

57. While these bank statements by themselves do not prove that the witnesses received the money from GICHERU, they provide objective and independent corroboration of other Prosecution evidence of these transactions.<sup>116</sup>
58. The absence of bank records of payments to other corrupted witnesses, however, is consistent with GICHERU's instructions not to deposit the money received into a bank account, as stated by witnesses P-0397, P-0613 and P-0739,<sup>117</sup> and corroborated by OPC recordings of the meeting between P-0613 and P-0495.<sup>118</sup>

### *7. GICHERU's article 55(2) interview*

59. GICHERU's article 55(2) interview was recognised as formally submitted by the Chamber.<sup>119</sup> He was properly cautioned and chose to waive his right to counsel.<sup>120</sup> He is of course a practicing advocate himself, and confirmed he had no complaints about the manner in which the interview was conducted.<sup>121</sup> The interview itself was audio-video recorded in full, and the Defence has raised no objection to the voluntariness of the interview or the procedures followed.<sup>122</sup>
60. During this interview, GICHERU made a number of important admissions,<sup>123</sup> including confirming contact details, knowing and meeting Common Plan Members YEBEI and SIMATWO and having dealings with P-0397 at the time of the bribery scheme.<sup>124</sup> These provide important corroboration of his involvement in the bribery scheme.

<sup>115</sup> [KEN-OTP-0130-0165-R01](#) at 0179 (Nr. 13-15).

<sup>116</sup> See below, paras. 115, 277.

<sup>117</sup> **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1355, ln. 541 to 1356, ln. 597; **P-0613**, T-55, p. 48, ln. 5 to p. 49, ln. 8, p. 66, lns. 12-21; [KEN-OTP-0115-0216-R01](#) at 0231, para. 76; See also [KEN-OTP-0111-0162](#) at 0169, 0173, paras. 36, 55; **P-0739**, T-66, p. 44, ln. 17 to p. 45, ln. 1.

<sup>118</sup> **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1130, ln. 101 to 1131, ln. 112.

<sup>119</sup> ICC-01/09-01/20-282-Conf, p.6.

<sup>120</sup> **GICHERU**, [KEN-OTP-0159-0695-R01](#) at 0697, ln. 62 to 0698, ln. 72, 0699, ln. 133 to 0700, ln. 150; [KEN-OTP-0159-0712-R01](#) at 0714, lns. 42-63, 0716, ln. 103 to 0717, ln. 143; [KEN-OTP-0159-0723](#) at 0729, lns. 204-213, 0730, ln. 240 to 0733 ln. 341.

<sup>121</sup> **GICHERU**, [KEN-OTP-0159-0712-R01](#) at 0714, lns. 42-63; [KEN-OTP-0159-0841](#) at 0861, lns. 676-680.

<sup>122</sup> ICC-01/09-01/20-266-Conf, para. 3; ICC-01/09-01/20-282-Conf, paras. 7-8.

<sup>123</sup> ICC-01/09-01/20-261-Conf, para. 24.

<sup>124</sup> **GICHERU**, [KEN-OTP-0159-0795](#) at 0804, ln. 303 to 0806, ln. 353; [KEN-OTP-0159-0766](#) at 0779, ln. 425 to 0780, ln. 459; [KEN-OTP-0159-0815](#) at 0817, lns. 63-116, 0820, lns. 142-159, 0821, ln. 186, 0825, ln. 344 to 0827, ln. 405.

61. However, the Chamber should not accept uncorroborated and self-serving aspects of GICHERU's interview, particularly since the Prosecution has been unable to test these under oath. However, the fact that GICHERU initially denied having known both P-0397 and YEBEI, and only admitted this after confronted with the recording of the phone call between him and P-0397,<sup>125</sup> demonstrates that GICHERU was disingenuous in response to the allegations put to him. This conclusion is supported by GICHERU's demeanour during the interview, where at times he appeared to be nervous, evasive, failing to maintain eye contact, looking around while speaking or taking long pauses before responding to questions.<sup>126</sup> The Chamber should thus treat his denials of the allegations with caution and accord no weight to these unless corroborated.

### III. Defence Evidence

62. In rebuttal of the Prosecution's case, the Defence elected not to call any witnesses and produced only two items of documentary evidence.<sup>127</sup> For the rest, the Defence rely on OTP disclosed documents – including Investigators reports, call records and PRT of Prosecution witnesses – in an attempt to impeach the credibility of the witnesses and support the Defence's case theory.<sup>128</sup>

63. The Prosecution considers that the fact that the Defence elected not to provide any details of its defence in its plea, not to make any opening statement, and not to put its case in any detail to each and every Prosecution witness, while permitted, opens the door to tailoring its case to fit the evidence.

64. The Defence's decision not to call any witnesses to respond to the allegations advanced by the Prosecution witnesses and other evidence, also leaves a number of vital questions unanswered, for example:

- a) Phone contacts – how is it that the Accused's phone contains contact details of so many of the persons alleged to be involved in, or targeted by, the Common Plan scheme if he was randomly selected as a scapegoat for the witness interference?

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<sup>125</sup> See below paras. 315 b) and c).

<sup>126</sup> GICHERU, [KEN-OTP-0159-0582](#) Track 03 at 36:31-37:23; 38:20-38:45; 48:30-49:12; 50:56-51:24; 55:20-55:14; 57:00-58:01; Track 04 at 5:50-06:10; 23:43-23:59.

<sup>127</sup> [KEN-D32-0001-0001](#); [KEN-D32-0001-0005](#).

<sup>128</sup> To the extent that this has been revealed during the course of the cross-examination of Prosecution witnesses.

- b) Calls with P-0397 – why is it that the Accused did not deny, or question, the allegations put to him in the phone call by P-0397, as noted above? Why was he concerned that P-0397 mentioned his [REDACTED] name on the phone? Why did GICHERU not want to take P-0397’s call on his business phone, even though he later claimed that P-0397 was a legitimate client of his?
- c) Why did P-0341 have GICHERU’s phone number<sup>129</sup> saved on his phone, under the name “Paulo”?<sup>130</sup>
- d) GICHERU’s article 55(2) interview – why did the Accused prevaricate about knowing P-0397 and YEBEI? If he does not know MAIYO, as he claimed, why does “Maiyo Cdf” appear as a contact on his phone?
- e) Voice on the call with P-0738 – whose voice is it on the final call with P-0738? Is it just a coincidence that the speaker introduced by [REDACTED] as the person P-0738 would meet sounds so much like the Accused [REDACTED] [REDACTED]?

65. In sum, the Defence has not produced any evidence that would lead the Chamber to reject the evidence presented by the Prosecution and the necessary inferences of guilt to be drawn therefrom.

## B. EVIDENCE ESTABLISHING CRIMINAL RESPONSIBILITY

### I. GICHERU’s Individual Criminal Responsibility under Article 25

#### *i. Overview of GICHERU’s individual criminal responsibility*

66. GICHERU is individually criminally responsible for eight counts<sup>131</sup> of corruptly influencing witnesses contrary to article 70(1)(c), under: (i) article 25(3)(a), for committing

<sup>129</sup> The same number as reflected on GICHERU’s business letterhead ([KEN-OTP-0095-0739](#)) and a different number from the one on the business card P-0341 was given (**P-0341**, [KEN-OTP-0150-0255-R01](#) at 0266, para. 56; T-54, p. 40, ln. 18 to p. 41, ln. 4). *See also*, **P-0341**, [KEN-OTP-0150-0288-R01](#) (Annex E), which the Prosecution understands to be formally submitted since it is an integral part of P-0341’s PRT, [KEN-OTP-0150-0255-R01](#).

<sup>130</sup> [KEN-OTP-0155-4982](#); **P-0341**, T-53, p. 71, lns. 11-15; [KEN-OTP-0150-0255-R01](#) at 0266, para. 55.

<sup>131</sup> 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.

the charged offences<sup>132</sup> individually as a direct perpetrator (Counts **1, 2, 4, 7** and **8** only) or jointly with other members of a common plan as a direct co-perpetrator;<sup>133</sup> (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, as set out below and in the Trial Brief<sup>134</sup> and confirmed by the PTC.<sup>135</sup>

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

*a. The Common Plan*

67. 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**”).

68. The Common Plan encompassed the identification, location and contacting of Prosecution Witnesses,<sup>136</sup> and offering and/or paying them financial benefits,<sup>137</sup> and/or threatening or intimidating them,<sup>138</sup> 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.<sup>139</sup> The ultimate goal of the Common

<sup>132</sup> Unless otherwise specified, the offences charged in Counts **1 to 8** under section C of the DCC (“**Charged Offences**”).

<sup>133</sup> All further references to **co-perpetration** in this document refer to **direct co-perpetration**, unless otherwise specified.

<sup>134</sup> Trial Brief, paras. 29-64.

<sup>135</sup> Confirmation Decision, pp. 78-81.

<sup>136</sup> 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-0738, P-0341** and **P-0274**.

<sup>137</sup> Including cash payments, land and houses, vehicles, educational support and employment opportunities (“**Bribes**”).

<sup>138</sup> The so-called “carrot and stick” approach”, **P-0730, KEN-OTP-0159-0884** at 0894, para. 36.

<sup>139</sup> **P-0397, KEN-OTP-0159-1232-R01** at 1235, ln. 60 to 1236, ln. 82, 1238, ln. 150 to 1239, ln. 196; **KEN-OTP-0159-1338-R01** at 1342, ln. 102 to 1344, ln. 177, 1351, ln. 425 to 1353, ln. 503, 1354, ln. 533 to 1355, ln. 548; **KEN-OTP-0159-1533-R01** at 1545, ln. 374 to 1546, ln. 420; **KEN-OTP-0159-1276-R01** at 1306, ln. 963 to 1308, ln. 1052; **KEN-OTP-0159-1309-R01** at 1311, ln. 20 to 1315, ln. 174.; **KEN-OTP-0160-0833** at 0839, ln. 156 to 0840, ln. 174; **P-0613**, T-55, p. 31, ln. 22 to p. 33, ln.1, p. 34, lns. 7-15, p. 62, ln. 19 to p. 70, ln. 13; **KEN-OTP-0102-0178** at 0180-0183, paras. 16, 18, 20, 23, 32; **KEN-OTP-0106-0910** at 0914-0915, paras. 20, 22, ; **KEN-OTP-0111-0162** at 0169-0173, paras. 36, 38, 46-47, 53, 55; **KEN-OTP-0115-0216-R01** at 0222-0223, 0230-0232, paras. 28-31, 75-80; **KEN-OTP-0124-0007-R01** at 0011, paras. 19-21, 23; **P-0613/P-0495, KEN-OTP-0160-1126** at 1129-1132, 1134-1137, 1144; **P-0800**, T-50, p. 70, lns. 18-25, p. 71, ln. 15, p. 77, ln.12 to p. 79, ln. 23; **KEN-OTP-0111-0140** at 0144, 0147-0149, paras. 20-21, 39-45, 49, 54-55; **KEN-OTP-0135-0103-R01** at 0105-0106; **KEN-OTP-0135-0113** at 0119-0120, 0126, 0131-0132, 0134; **KEN-OTP-0102-0205** at 0212-0213, paras. 41-47;

Plan was to undermine the Prosecution case in *Ruto and Sang* by preventing Prosecution Witnesses from testifying, either at all or in accordance with the evidence given in their previous statements, and/or tarnishing the credibility of the Prosecution and its witnesses.<sup>140</sup> Persons targeted included those having, or believed to have, information relevant to the Prosecution in the *Ruto and Sang* case, such as Post Election Violence<sup>141</sup> Victims P-0341 and P-0274.

69. The Common Plan materialised by April 2013<sup>142</sup> at the latest and continued until at least the close of the Prosecution's case in *Ruto and Sang* on 10 September 2015.<sup>143</sup> 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 confirmation.<sup>144</sup>
70. The existence of the Common Plan is the only reasonable inference from the statements and actions of the Common Plan Members and other persons associated with the Common Plan. Viewed holistically, this evidence establishes beyond reasonable doubt that they were working in a concerted manner to achieve the common goals described below.

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[KEN-OTP-0103-2473](#) at 2478-2479, paras. 24-30; **P-0800** [REDACTED], [KEN-OTP-0132-0167-R01](#), at 0171, [Ins. 90-93, 0180, Ins. 392-394; 0181, Ins. 444-452; at 0184-0185, Ins. 539 to 583; P-0341, KEN-OTP-0150-0255-R01](#) at 0265, paras. 49-52. *See also*, **P-0739**, T-66, p. 26, ln. 10 to p. 29, ln. 8, p. 39, lns. 1-24, p. 41, ln. 2 to p. 45, ln. 20, p. 52, ln. 3 to p. 55, ln. 24, p. 80, ln. 14 to p. 85, ln. 22, p. 90, lns. 13-24, p. 93, ln. 23 to p. 94, ln. 12, p. 97, ln. 16 to p. 105, ln. 17; T-68, p. 28, ln. 21-24; p. 32, lns. 12-16; p. 33, lns. 19-24; , p. 57, ln. 10 to p. 60, ln. 24; **P-0738**, T-60, p. 18, lns. 4-8, 12-25; **P-0516**, T-63, p. 33, lns. 8-13.

<sup>140</sup> **P-0495/P-0613**, [KEN-OTP-0160-1126](#) at 1142-1143, lns. 505 to 553; **P-0613**, T-55, p. 69, lns. 7-19; **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1538, ln. 135 to 1539 ln 146; **P-0800**, [KEN-OTP-0135-0113](#) at 0119, lns. 193-202, 0120, lns 242- 250; [KEN-OTP-0144-0272-R02](#) at 0283, ln. 388 to 0285, ln. 488; **P-0739**, T-66, p. 73, lns. 1-13; **P-0730**, [KEN-OTP-0159-0884](#) at 0911, para. 102; **P-0739**, T-66, p. 68, ln. 6 to p. 69, ln. 11; p. 72, ln. 8 to 73, ln. 17. *See also* [KEN-OTP-0111-0140](#) at 0144, para. 21.

<sup>141</sup> Herein also referred to as "PEV".

<sup>142</sup> 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 ln. 18 to 1235 ln. 40; 1235 ln. 60 to 1236, ln. 82; [KEN-OTP-0159-1276-R01](#) at 1307, ln. 998 to 1308, ln. 1052) and took him to meet GICHERU on or about 26 April 2013 ([KEN-OTP-0159-1309-R01](#) at 1312, lns. 38-63). 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](#).

<sup>143</sup> ICC-01/09-01/11-1954.

<sup>144</sup> ICC-01/09-01/20-143-Conf-AnxA-C. While the Prosecution has not again annexed these documents, the Chamber's attention is drawn to them as they may assist the Chamber to better understand the temporal relationship between the events, the sheer volume of incidents of corrupt influence and the persons responsible for each incident.



b. *The members of the Common Plan*

71. The members of the Common Plan<sup>145</sup> 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,<sup>146</sup> these individuals included, at least:<sup>147</sup> (i) **Managers:** GICHERU<sup>148</sup> and, *inter alios*, Silas Kibet SIMATWO (“SIMATWO”),<sup>149</sup> and Isaac MAIYO (“MAIYO”);<sup>150</sup> (ii) **Intermediaries:** between the Managers and Prosecution Witnesses,

<sup>145</sup> Collectively “**Common Plan Members**” or “**Common Plan Group**”.

<sup>146</sup> Confirmation Decision, paras. 188-199.

<sup>147</sup> 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, 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.

<sup>148</sup> **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0258, para. 15, at 0263, para. 38, at 0264, paras. 44-47, at 0265, paras. 50-52, 54, at 0266-0267, paras. 59-64, at 0268, paras. 68-70, at 0269, paras. 74-75, at 0270, paras. 77-78, at 0271, paras. 84, 86-88, at 0272, para. 90, at 0273, paras. 96-97, at 0274, paras. 99, 102, at 0279, paras. 129-131; [KEN-OTP-0160-1571](#) at 1572; **P-0397**, [KEN-OTP-0159-1191-R01](#) at 1230, lns. 1268-1294; [KEN-OTP-0159-1232-R01](#) at 1238, lns. 150-172; [KEN-OTP-0159-1309-R01](#) at 1313-1314, lns. 77-120; [KEN-OTP-0159-1338-R01](#) at 1342, lns. 71-77; [KEN-OTP-0125-0248](#) at 0258, lns. 277-287; [KEN-OTP-0159-1533-R01](#) at 1536, lns. 37-51, 1545, lns. 374-393, 1546, lns. 403-415, 1550, lns. 556-559, 1555, lns. 739-758; **P-0800**, T-50, pp. 68-69; **P-0800**, [KEN-OTP-0135-0103-R01](#) at 0105-0106, ln 60 to 89; [KEN-OTP-0135-0113](#) at 0117-0123, lns 123-363, 0126, lns. 446-469, 0128, lns. 524-548 0131-0132, lns. 649-685, 0134, lns. 733-758, 0137, lns. 853-877; [KEN-OTP-0135-0139-R01](#) at 0150-0152, lns. 384-436; [KEN-OTP-0135-0155-R01](#) at 0171-0172, lns. 578-615; [KEN-OTP-0135-0200](#) at 0208, lns. 268-277; [KEN-OTP-0160-0432](#) at 0446, lns. 498-505; **P-0800**/[REDACTED], [KEN-OTP-0131-0431](#) at 0437, lns-158-178; **P-0738**, T-60, p. 28, ln. 22 to p. 29, ln. 2; **P-0738**, [KEN-OTP-0118-0011-R01](#), at 0020, para. 48; **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1131, ln 117, 1134-1135, lns. 217-256; **P-0613**, T-55, p. 24, lns. 3-8; p. 32, lns. 14-17; **P-0274**, T-58, p. 47, ln. 3 to p. 48, ln. 25, p. 50, ln. 1 to p. 51, ln. 8; *contra* **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0280, para. 134; *see also*, **P-0739**, T-66, p. 26, lns. 19-22, p. 27, lns. 6-8, p. 29, ln 24 to p. 29, ln. 9, p. 39, lns. 1-5, p. 42, lns. 16-24, p. 44, lns. 20-24, p. 46, lns. 3-6, 20-24, p. 49, lns. 10-13, p. 52, lns. 16-20, p. 54, ln. 16, p. 55, lns. 10-24, p. 57, ln. 7 to p. 62, ln. 12, p. 100, lns. 18-21; T-68, p. 33, lns. 19-24, p. 82, lns. 3-6, (*see also*: audio-video [KEN-OTP-0113-0053](#), transcript [KEN-OTP-0134-0187](#), English translation [KEN-OTP-0134-0189](#)).

<sup>149</sup> **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; [KEN-OTP-0135-0103-R01](#) at 0105, lns. 71-78; [KEN-OTP-0132-0167-R01](#) at 0172, lns. 127-130; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0258, para. 15, at 0264, para. 44, at 0265, paras. 50, 53, at 0267, para. 61; [KEN-OTP-0160-1571](#) at 1572; **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1314-1315, lns. 121-150, 1334, lns. 837-855, 1335, lns. 870-882; [KEN-OTP-0159-1338-R01](#) at 1343, lns. 105-129; [KEN-OTP-0159-1533-R01](#) at 1539, lns. 169-176; **P-0613**, [KEN-OTP-0111-0162](#) at 0171, paras. 46-47; [KEN-OTP-0115-0216-R01](#) at 0222, paras. 29-30. *See also* **P-0800**, [KEN-OTP-0160-0432](#) at 0446-0447, lns. 498-508; **P-0800**/[REDACTED], [KEN-OTP-0131-0431](#) at 0437, lns. 166-168. **P-0274**, T-58, p. 57, ln. 22 to p. 58, ln. 5.

<sup>150</sup> **P-0613**, [KEN-OTP-0111-0162](#) at 0169, para. 36; [KEN-OTP-0124-0007-R01](#) at 0011, paras. 19-21; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0277-0278, paras. 122-123; **P-0274**, T-58, p. 58, ln. 20 to p. 59, ln. 17.

including Meshack YEBEI (“YEBEI”),<sup>151</sup> Philip Kipkoech BETT (“BETT”)<sup>152</sup> and Walter Osipiri BARASA (“BARASA”).<sup>153</sup>

72. 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<sup>154</sup> who informed both P-0397 and P-0800 that he was a close friend of RUTO and that they had both attended Kapsabet High School.<sup>155</sup> Open source evidence confirms that both attended this school.<sup>156</sup> An analysis of GICHERU’s mobile phone<sup>157</sup> indicates that RUTO was saved as a contact under number [REDACTED].<sup>158</sup> The same number has previously been attributed to RUTO.<sup>159</sup>

<sup>151</sup> Also known as “Kimutai”. **P-0800**, [KEN-OTP-0102-0205](#) at 0208-0210, paras. 23-33, 0210-0212, paras. 38-45; [KEN-OTP-0135-0200](#) at 0204, Ins. 131-132, 0207, Ins. 247-250; **P-0739**, T-66, p. 36, Ins. 4-4-17, p. 37, Ins. 8-24, p. 46, Ins. 20-24, p. 47, Ins. 9-18, 24 to p.-50, ln. 24; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0264, paras. 44, 114, 119; **P-0397**, [KEN-OTP-0159-1232-R01](#) at 1235, ln. 60 to 1236, ln. 82, 1239, Ins. 173-180; [KEN-OTP-0159-1276-R01](#) at 1307, Ins. 998-1007, 1308, Ins. 1039-1052; [KEN-OTP-0159-1309-R01](#) at 1311, Ins. 20-34; [KEN-OTP-0159-1338-R01](#) at 1352, ln. 456 to 1353, ln. 478; [KEN-OTP-0125-0248](#) at 0258, Ins. 277-287; [KEN-OTP-0159-1533-R01](#) at 1550-1551, Ins. 560-590; **P-0613**, T-55, p. 22, Ins. 2-15; [KEN-OTP-0106-0910](#) at 0914, para. 19-20; [KEN-OTP-0111-0557](#) at 0564-0565, 0568, paras. 35-37, 56; [KEN-OTP-0111-0162](#) at 0167, para. 25;

<sup>152</sup> Also known as “Kipseng’erya”. **P-0800**, T-50, p. 67, ln 5. To p.68, ln. 24; **P-0800**, [KEN-OTP-0135-0103-R01](#) at 0105, Ins. 60-69; [KEN-OTP-0135-0113](#), 0116, ln. 77 to -0119, ln. 224; [KEN-OTP-0135-0139-R01](#) at 0149, ln. 350 to 0150, ln. 388; [KEN-OTP-0135-0155-R01](#) at 0170, ln. 539 to-0171, ln. 553; [KEN-OTP-0135-0200](#) at 0205, Ins 160-183, 0208, Ins. 268-277; **P-0613**/[REDACTED], [KEN-OTP-0160-1349](#) at 1354, Ins. 115-118; **P-0613**, T-55, p. 48, ln. 20 to p. 49, ln. 2; [KEN-OTP-0111-0162](#) at 0169, para. 36-38; [KEN-OTP-0102-0178](#) at 0181, para. 20; **P-0397**, [KEN-OTP-0159-1232-R01](#) at 1235, ln. 60 to 1236, ln. 82; [KEN-OTP-0159-1309-R01](#) at 1311, Ins. 20-34, 1317, Ins. 221-251, 1319, Ins. 290-306; [KEN-OTP-0159-1276-R01](#) at 1308, Ins. 1041-1049; [KEN-OTP-0159-1533-R01](#) at 1559, Ins. 893-905.

<sup>153</sup> **P-0800**, T-50, p. 48, ln. 1 to p.61, ln. 11; **P-0800**, [KEN-OTP-0103-2473](#) at 2478-2429, paras. 24-30; [KEN-OTP-0106-0388](#) at 0392, paras. 18-21; [KEN-OTP-0109-0002](#) at 0007-0010, paras. 22-40; [KEN-OTP-0111-0140](#) at 0143-0145, paras. 14, 21-22, at 0147-0149, paras. 36-45, 49, 54-55; **P-0613**/[REDACTED], [KEN-OTP-0160-1371](#), at 1374, Ins. 51-53; **P-0613**, T-55, pp. 50-51; **P-0613**, [KEN-OTP-0111-0162](#) at 0172, para. 53; **P-0738**, T-60, p. 23, Ins. 22-25; **P-0738**, [KEN-OTP-0103-2693-R01](#) at 2696, paras. 23-24; [KEN-OTP-0111-0188-R01](#), at 0192-0193, paras. 18, 20-24; [KEN-OTP-0118-0011-R01](#) at 0015-0021, paras. 16-18, 24, 28, 41, 47-49, 0023, para. 62, at 0025-0027, paras. 73-74, 86, at 0029-0031, paras. 93, 102-103, 106; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0263, para. 42, at 0278, paras. 124-125; **P-0274**, T-58, p. 62, ln. 6 to p. 63, ln.9 ; T-59, p. 41, ln. 19 to p. 43, ln. 19, p. 47, Ins. 12-21. See also ICC-01/09-01/13-1-Red2.

<sup>154</sup> **GICHERU**, [KEN-OTP-0159-0723](#) at 0726, Ins. 74, 98-102; [KEN-OTP-0159-0736](#) at 0738, Ins. 64-65, 0741, ln. 161 to 0742, ln. 172, 0743, Ins. 233-235, 0749, Ins. 433-436; **P-0341**, T-53, p. 43, ln. 16; [KEN-OTP-0150-0255-R01](#) at 0264, para. 44; **P-0274**, T-58, p. 47, Ins. 3-6; **P-0516**, T-63, p. 27, Ins. 6-7, 16, 19; p. 36, Ins. 7-20.

<sup>155</sup> **GICHERU**, [KEN-OTP-0159-0736](#) at 0738, ln. 54, 0739, ln. 78; **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1313, Ins. 76-96; **P-0800**, [KEN-OTP-0135-0113](#) at 0119, Ins. 193-202. GICHERU admitted to knowing RUTO and attending Kapsabet High School, but denied that it was at the same time as RUTO, see **GICHERU**, [KEN-OTP-0159-0766](#) at 0771, ln. 141 to 0772, ln. 190; [KEN-OTP-0159-0815](#) at 0834, Ins. 634-639.

<sup>156</sup> 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](https://issuu.com/misoijonathan/docs/the_alumni_khs_at_90).

<sup>157</sup> **P-0733**, [KEN-OTP-0160-0699](#).

<sup>158</sup> Under the initials “H.E”, possible standing for His Excellency, see **P-0733**, [KEN-OTP-0160-0699](#) at 0700.

<sup>159</sup> [KEN-OTP-0159-1638](#); [KEN-OTP-0160-0661](#).

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.<sup>160</sup>

- b) SIMATWO, an influential Kenyan businessman and long-time business associate of RUTO. SIMATWO was the head of the board of Directors of AMACO<sup>161</sup> Insurance,<sup>162</sup> a firm with which RUTO is reported to have close connections as a major shareholder and former co-owner,<sup>163</sup> and which is one of GICHERU's clients.<sup>164</sup> SIMATWO [REDACTED] was "an eye of Mr RUTO".<sup>165</sup> GICHERU admitted that he knew SIMATWO<sup>166</sup> and that SIMATWO had visited his office in Eldoret in 2013 or 2014.<sup>167</sup> "Sila Simotwo" is saved as a contact on GICHERU's mobile phone under number [REDACTED].<sup>168</sup> The same number was previously saved on the mobile phone of P-0397 under the name "Simatwo".<sup>169</sup>
- c) MAIYO, 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.<sup>170</sup> He is widely reported to be one of RUTO's closest allies.<sup>171</sup> When interviewed in 2018, GICHERU denied knowing MAIYO, either personally or professionally.<sup>172</sup> However, "Maiyo Cdf" is saved as a contact on GICHERU's mobile phone.<sup>173</sup> Moreover, MAIYO and GICHERU appear to have coordinated approaching witnesses.<sup>174</sup>

<sup>160</sup> GICHERU, [KEN-OTP-0159-0766](#) at 0769, Ins. 88-104, 0774, Ins. 266-270; [KEN-OTP-0159-0815](#) at 0825, Ins. 311-343; [KEN-OTP-0093-1195](#); [KEN-OTP-0093-1191](#); [KEN-OTP-0095-0738](#); [KEN-OTP-0095-0739](#); *see also* P-0015, [KEN-OTP-0116-0221](#) at 0221; [KEN-OTP-0093-1199](#); [KEN-OTP-0095-0741](#); [KEN-OTP-0095-0743](#).

<sup>161</sup> African Merchant Assurance Company, *see* Annex B.

<sup>162</sup> [KEN-OTP-0159-1731](#) (<https://www.amaco.co.ke/board-of-directors/>). This is confirmed by GICHERU: GICHERU, [KEN-OTP-0159-0766](#) at 0778, Ins. 377-380, 396-397.

<sup>163</sup> *See* for instance: [KEN-OTP-0159-1779](#); [KEN-OTP-0159-1735](#); [KEN-OTP-0159-1780](#); [KEN-OTP-0159-1740](#).

<sup>164</sup> GICHERU, [KEN-OTP-0159-0766](#) at 0778, Ins. 397-402.

<sup>165</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, para. 53, at 0264, para. 44. *See also* P-0341, T-53, pp. 50-51; P-0274, T-58, p. 57, ln. 25 to p. 58, ln. 5.

<sup>166</sup> GICHERU, [KEN-OTP-0159-0766](#) at 0777, Ins. 346-374.

<sup>167</sup> GICHERU, [KEN-OTP-0159-0766](#) at 0779, Ins. 425-459.

<sup>168</sup> P-0733, [KEN-OTP-0160-0699](#) at 0701.

<sup>169</sup> [KEN-OTP-0153-0054-R01](#) at 0055.

<sup>170</sup> P-0274, T-58, p. 58, ln. 20 to p. 59, ln. 13; [KEN-OTP-0159-1776](#). *See also* Isaac Maiyo's public Facebook profile: <https://www.facebook.com/isaac.maiyo.75/about>. This is a fact of common knowledge of which the Chamber may take judicial notice.

<sup>171</sup> P-0397, [KEN-OTP-0074-0264-R01](#) at 0292, para. 142; [KEN-OTP-0047-0098](#) at 0098-0099.

<sup>172</sup> GICHERU, [KEN-OTP-0159-0766](#) at 0781, Ins. 487 to 493.

<sup>173</sup> P-0733, [KEN-OTP-0160-0699](#) at 0702.

<sup>174</sup> P-0274, T-58, p. 59, Ins. 8-24. *See also* P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 69; *contra* P-0341, T-54, p. 79, Ins. 16-23.

73. 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 ██████████, a human rights worker ██████████ ██████████.<sup>175</sup> He introduced witness P-0571, ██████████, to the Prosecution. YEBEI gave a statement to investigators, but the Prosecution’s request in 2013 to add him to its trial witness list was refused after the Prosecution reported to Trial Chamber<sup>176</sup> V that it had received information regarding YEBEI’s alleged involvement in witness interference.<sup>177</sup> The Prosecution sought a warrant for YEBEI’s arrest, but withdrew its request after receiving confirmation of his death.<sup>178</sup> GICHERU initially denied knowing YEBEI or having heard about his death,<sup>179</sup> but later admitted that he knew YEBEI and had met YEBEI at his (GICHERU’s) office in Eldoret.<sup>180</sup>
- b) BETT ██████████ was a human rights worker for the Kalenjin Youth Alliance<sup>181</sup> and a friend of ██████████.<sup>182</sup> BETT is ██████████<sup>183</sup> and was a childhood friend of YEBEI, a neighbour in ██████████<sup>184</sup> BETT initially provided information to ██████████<sup>185</sup> about attempts to interfere with Prosecution Witnesses, ██████████. However, he was subsequently also corrupted and co-opted into the Common Plan as an Intermediary, answerable to GICHERU.<sup>186</sup> “Phillip Bett” is saved as a contact on GICHERU’s mobile phone.<sup>187</sup> On 10 March 2015, PTC II issued a warrant for the arrest of BETT,<sup>188</sup> but to date the Kenyan authorities have not surrendered him to the Court. GICHERU

<sup>175</sup> P-0613, [KEN-OTP-0102-0178](#) at 0183, para. 32.

<sup>176</sup> “TC”.

<sup>177</sup> ICC-01/09-01/11-762.

<sup>178</sup> ICC-01/09-01/20-1-Red, paras. 1-2.

<sup>179</sup> GICHERU, [KEN-OTP-0159-0766](#) at 0784 ln. 607 to 0785, ln. 636.

<sup>180</sup> GICHERU, [KEN-OTP-0159-0815](#) at 0825, ln. 344 to 0827, ln. 405.

<sup>181</sup> “KALYA”, P-0613, [KEN-OTP-0102-0178](#) at 0180, para. 14.

<sup>182</sup> P-0800, T-50, p.87, ln. 25 and p. 89, ln. 3; P-0800, [KEN-OTP-0102-0205](#) at 0208, para. 18.

<sup>183</sup> P-0800, T-50, p. 67, lns. 5-13. P-0800, [KEN-OTP-0102-0205](#) at 0208, para. 23.

<sup>184</sup> P-0613, [KEN-OTP-0102-0178](#) at 0180, para. 15.

<sup>185</sup> Who in turn informed the Prosecution. See P-0800, [KEN-OTP-0102-0205](#) at 0208-0212, para. 23-45; P-0613, [KEN-OTP-0102-0178](#) at 0180, para. 14.

<sup>186</sup> P-0800, [KEN-OTP-0160-0338](#) at 0347, lns. 307-318; [KEN-OTP-0135-0200](#) at 0207, lns. 241-242

<sup>187</sup> Under number ██████████, P-0733, [KEN-OTP-0160-0699](#) at 0702.

<sup>188</sup> ICC-01/09-01/20-1-Red.

denied having known █████ prior to 2015, █████

█████<sup>189</sup>

c) BARASA was a journalist<sup>190</sup> from Eldoret and a former OTP intermediary. █████

█████<sup>191</sup>

█████<sup>192</sup>

█████<sup>193</sup> Two phone numbers previously attributed by the Prosecution to BARASA are saved as a contact on GICHERU's mobile phone as follows: (i) "Baraza" saved under number █████, which is attributed by multiple sources to BARASA,<sup>194</sup> and "Wb" saved under number █████, which has also been associated with BARASA during █████ OTP investigations.<sup>195</sup> When interviewed in 2018, GICHERU stated that, while he knew BARASA as a reporter, he had not met him since 2000 or 2001.<sup>196</sup> On 2 August 2013, PTC II issued a warrant for the arrest of BARASA,<sup>197</sup> but to date the Kenyan authorities have not surrendered him to the Court.

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

74. 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)".<sup>198</sup> Although PTC A found that the conduct of these Associates did not meet the *legal* threshold for an essential contribution for the purpose of article 25(3)(a), and they were thus not considered co-perpetrators,<sup>199</sup> the Chamber is not bound by that assessment

<sup>189</sup> GICHERU, [KEN-OTP-0159-0766](#) at 0783, Ins. 550-568.

<sup>190</sup> P-0800, [KEN-OTP-0103-2473](#) at 2477, para. 19; GICHERU, [KEN-OTP-0159-0766](#) at 0781, Ins. 503-504; P-0341, T-54, p. 23, ln. 13; [KEN-OTP-0150-0255-R01](#) at 0263, para. 42; P-0274, T-58, p. 62, Ins. 10-11; [KEN-OTP-0153-0497](#).

<sup>191</sup> P-0738, [KEN-OTP-0103-2693-R01](#) at 2696, para. 20; [KEN-OTP-0111-0188-R01](#) at 0192-0193, para. 22.

<sup>192</sup> P-0738, [KEN-OTP-0111-0188-R01](#) at 0193, para. 22; P-0800, [KEN-OTP-0111-0140](#) at 0147, para. 40.

<sup>193</sup> P-0800, [KEN-OTP-0103-2473](#) at 2477, para. 19.

<sup>194</sup> P-0733, [KEN-OTP-0160-0699](#) at 0700; [KEN-OTP-0103-2693-R01](#); P-0738, [KEN-OTP-0111-0198](#); [KEN-OTP-0111-0188-R01](#) at 0193, para. 26; [KEN-OTP-0103-2693-R01](#) at 2696, para. 19; P-0800, [KEN-OTP-0106-0395](#); [KEN-OTP-0106-03956](#); [KEN-OTP-0106-0397](#), [KEN-OTP-0103-2473](#) at 2477-2478, paras. 15, 18, 23-24; [KEN-OTP-0106-0388](#) at 0391-0392, paras. 16-21; P-0613, [KEN-OTP-0111-0162](#) at 0172, para. 52, [KEN-OTP-0111-0184](#); [KEN-OTP-0159-1693](#).

<sup>195</sup> Likely initials for "Walter Barasa", see P-0733, [KEN-OTP-0160-0699](#) at 0700; [KEN-OTP-0160-0697](#).

<sup>196</sup> GICHERU, [KEN-OTP-0159-0766](#) at 0781, ln. 494 to 0782, ln. 518.

<sup>197</sup> ICC-01/09-01/13-1-Red2.

<sup>198</sup> Confirmation Decision, para. 200.

<sup>199</sup> Confirmation Decision, para. 200.

and is free to apply the law to the facts as confirmed by PTC A. Accordingly, the Prosecution requests the Chamber to find that the conduct of the Associates identified in para. 77 a)-e) below in fact amounted to “essential contributions” for the purposes of article 25(3)(a) and that accordingly their contributions<sup>200</sup> can be attributed to GICHERU as a co-perpetrator. Since the underlying actions of the Associates were confirmed by the PTC, and the Chamber is not bound by the PTC’s legal assessment, correcting the PTC’s error in this regard does not exceed the facts and circumstances described in the Charges, as confirmed.

75. Alternatively, should the Chamber deem it necessary, the Prosecution reiterates the request in its Trial Brief<sup>201</sup> to legally re-characterise the factual allegations constituting the Associates’ contributions<sup>202</sup> and find that these satisfy the requirements for co-perpetration under article 25(3)(a).

76. The Appeals Chamber has confirmed that the Chamber may give regulation 55 notice at this stage of the proceedings, i.e. after having heard the evidence of the parties,<sup>203</sup> and that this will not render the trial unfair.<sup>204</sup> The Prosecution submits that, in these circumstances, giving the Defence the opportunity to make submissions on re-characterisation during its closing address<sup>205</sup> would provide the Defence with adequate opportunity to be heard.

77. The **Associates**, include:

- a) Elisha Kipkorir BUSIENEI (“BUSIENEI”).<sup>206</sup> BUSIENEI was a former ODM member<sup>207</sup> and political ally of RUTO. In 2013 he became a Kenyan Member of

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<sup>200</sup> The specific contributions are listed in this Brief as follows: BUSIENEI, para. 285(b); KOSGEI, para. 285(a); P-0397, para. 142(a)-(b); P-0800, paras. 178(e), 221(d), 229(a)-(b); P-0495, paras. 178(e), 229(b)-(c); P-0341, para. 304(a); P-0015, para. 274; and KOGO, paras. 118(g), 165(c).

<sup>201</sup> Trial Brief, para. 41.

<sup>202</sup> See *supra* fn. 200.

<sup>203</sup> [Katanga Reg 55 AJ, paras. 1, 93-96](#); *Gbagbo & Ble Goude* Reg. 55 AJ, paras. 2, 49, 51. See also *Bemba* Reg. 55 Notice, para. 5; *Bemba* TJ paras. 53-57.

<sup>204</sup> See Trial Brief, para. 41; *Bemba* TJ paras. 55-56.

<sup>204</sup> See *Ruto & Sang* Reg.55 Notice, para. 25.

<sup>205</sup> See *Ruto & Sang* Reg. 55 Notice, para. 25.

<sup>206</sup> **P-0341**, T-53, p. 47, lns. 7-18, p. 54, lns. 10-21; [KEN-OTP-0150-0255-R01](#) at 0258, para. 15, at 0263-0265, paras. 43-53; [KEN-OTP-0160-1571](#) at 1572; **P-0397**, [KEN-OTP-0159-1588-R01](#) at 1619, lns. 1013-1028.

<sup>207</sup> Orange Democratic Movement, see Annex B. See for instance [KEN-OTP-0159-1749, at 1752](#) 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](#).

Parliament<sup>208</sup> for the Turbo constituency.<sup>209</sup> “Busienei 2 Mp” is saved as a contact on GICHERU’s mobile phone. The Prosecution has previously attributed the associated number [REDACTED] to BUSIENEI.<sup>210</sup>

- b) Sammy Kiptanui KOSGEI (“KOSGEI”).<sup>211</sup> KOSGEI was a former witness in the Commission of Inquiry into the Post Election Violence<sup>212</sup> and Kenya National Commission on Human Rights<sup>213</sup> 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]  
[REDACTED],<sup>214</sup> [REDACTED]  
[REDACTED].<sup>215</sup> KOSGEI later recanted his CIPEV evidence and claimed he had been coached by [REDACTED].<sup>216</sup>
- c) Successfully corrupted Prosecution Witnesses,<sup>217</sup> including P-0397, P-0800, P-0495, and P-0341, described more fully below under the relevant incidents, who subsequently also acted as intermediaries and contributed to further the objectives of the Common Plan.<sup>218</sup> When interviewed in 2018, GICHERU denied knowing any [REDACTED].<sup>219</sup> [REDACTED] a contact corresponding to Corrupted Witness P-0495 (saved as [REDACTED], under number [REDACTED]) was found on GICHERU’s mobile phone.<sup>220</sup>

<sup>208</sup> “MP”.

<sup>209</sup> [KEN-OTP-0159-1631](#); [KEN-OTP-0159-1767](#); **P-0341**, T-53, p. 57, lns. 24-25; [KEN-OTP-0150-0255-R01](#) at 0263, para. 43.

<sup>210</sup> **P-0733**, [KEN-OTP-0160-0699](#) at 0701; [KEN-OTP-0159-1631](#).

<sup>211</sup> **P-0341**, T-53, p. 52, ln. 9; [KEN-OTP-0150-0255-R01](#) at 0262-0263, paras. 36-42, at 0266, para. 57, at 0275-0276, paras. 112-113.

<sup>212</sup> “CIPEV”

<sup>213</sup> “KNCHR”.

<sup>214</sup> [KEN-OTP-0047-0248](#), transcription: [KEN-OTP-0124-0317](#); [KEN-OTP-0047-0273](#).

<sup>215</sup> See [KEN-OTP-0047-0273](#).

<sup>216</sup> [KEN-OTP-0047-0273](#).

<sup>217</sup> Collectively: “Corrupted Witnesses”.

<sup>218</sup> **P-0397**, [KEN-OTP-0159-1232-R01](#) at 1235, ln. 60 to 1236, lns. 82, 1239, lns. 173-186; [KEN-OTP-0159-1338-R01](#) at 1352, ln. 449 to 1353, ln. 478; [KEN-OTP-0159-1533-R01](#) at 1550, lns. 556-564, 1555-1557, lns. 729-830; **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1129; **P-0613**, [KEN-OTP-0115-0216-R01](#) at 0230, para. 75; [KEN-OTP-0111-0162](#) at 0172, para. 53s. 53, 55; [KEN-OTP-0102-0178](#) at 0181, para. 23; **P-0800**, T-50, p. 71, lns. 2-8; **P-0800**, [KEN-OTP-0160-0354](#) at 0357, lns. 86-103, 0359, lns. 140-157; see also P-0341, T-54, p. 6, ln. 13 to p. 7, ln. 13.

<sup>219</sup> GICHERU, [KEN-OTP-0159-0766](#) at 0785, ln. 637 to 0786, ln. 660; [KEN-OTP-0159-0841](#) at 0845, ln. 145 to 0846, ln. 146.

<sup>220</sup> **P-0733**, [KEN-OTP-0160-0699](#) at 0701.

- d) Former Prosecution Witness [REDACTED] (P-0015), who GICHERU represented in 2013, preparing the affidavits in which P-0015 withdrew as a Prosecution Witness and recanted the evidence he had provided to the OTP.<sup>221</sup>
- e) GICHERU's bodyguard, one "KOGO".<sup>222</sup> "Kogo" is saved as a contact on GICHERU's phone.<sup>223</sup> In his 2017 interview, GICHERU denied having a bodyguard at the relevant time or having an employee named "Kogo".<sup>224</sup>

*d. The implementation of the Common Plan*

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

79. GICHERU and the 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;<sup>225</sup> and intimidating Prosecution Witnesses with threats of adverse consequences if they failed to cooperate.<sup>226</sup>

<sup>221</sup> **P-0015**, [KEN-OTP-0116-0221](#) at 0221; [KEN-OTP-0093-1199](#); [KEN-OTP-0095-0741](#); [KEN-OTP-0095-0743](#); **GICHERU**, [KEN-OTP-0159-0766](#) at 0769, lns. 88-104, 0774, lns. 266-270; [KEN-OTP-0159-0815](#) at 0825, lns. 311-343; [KEN-OTP-0093-1195](#); [KEN-OTP-0093-1191](#); [KEN-OTP-0095-0738](#); [KEN-OTP-0095-0739](#).

<sup>222</sup> **P-0739**, T-66, p. 30, ln. 11 to p. 32, ln. 21; **P-0397/YEBEI**, [KEN-OTP-0125-0248](#) at 0260, lns. 363-368; **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1347, ln. 279 to 1349, ln. 344; **P-0341**, T-53, p. 84, lns. 13-22, p. 86, lns. 4-14; [KEN-OTP-0150-0255-R01](#) at 0271, para. 83.

<sup>223</sup> Under the number [REDACTED], **P-0733**, [KEN-OTP-0160-0699](#) at 0701.

<sup>224</sup> **GICHERU**, [KEN-OTP-0159-0841](#) at 0843.

<sup>225</sup> **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1314, lns. 108-119, 1333, ln. 826 to 1334, ln. 851; [KEN-OTP-0159-1533-R01](#) at 1537, ln. 101 to 1538, ln. 111; **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-R01](#) at 0231-0232, paras. 76-78; [KEN-OTP-0106-0910](#) at 0914-0915, paras. 20, 22; **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1131, lns. 110-124; **P-0800**, [KEN-OTP-0135-0113](#) at 0121, lns. 298-299, 0137, lns. 862-870; [KEN-OTP-0111-0140](#) at 0148, para. 45; **P-0274**, T-58, p. 50, lns. 3-18, p. 51, lns. 1-2; **P-0341**, T-53, p. 65, lns. 16-20, p. 69, lns. 2-7, p. 74, lns. 5-12, p. 81-89; T-54, p. 9, lns. 12-14, p. 11, ln. 17 to p. 12, ln. 10, p. 23, lns. 3-10, p. 31, lns. 14-23, p. 33, lns. 13-21; [KEN-OTP-0150-0255-R01](#) at 0258, para. 15, at 0264, paras. 44, 46-47, at 0265, paras. 50-52, 54, at 0266, paras. 55-57, 59-60, at 0267, paras. 61-64, at 0268, paras. 68-70, at 0269, paras. 74-75, at 0270, paras. 77-78, at 0271, paras. 84, 86-88, at 0272, para. 90, at 0273, paras. 96-97, at 0274, para. 99, at 0279, paras. 129-131, at 0280, para. 134; [KEN-OTP-0160-1571](#) at 1572; **P-0516**, T-63, p. 33, ln. 10, p. 41, ln. 23 to p. 44, ln. 2, p. 45, ln. 20 to p. 47, ln. 12, p. 48, lns. 17-19; [KEN-OTP-0114-0296](#) at 0299, lns. 49-51, 58, 62-64; **P-0738**, T-60, p. 18, lns. 12-25, *see also* **P-0739**, T-66, p. 45, lns. 6-20.

<sup>226</sup> **P-0341**, T-53, p. 76, ln. 18 to p. 77, ln. 8; T-54, p. 15, ln. 22 to p. 16, ln. 9; [KEN-OTP-0150-0255-R01](#) at 0265, paras. 51-52, at 0271, paras. 86-88, at 0275-0276, paras. 112-113; **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1349, lns. 318-343.



80. SIMATWO and MAIYO also made essential contributions to the Charged Offences *inter alia* by working with GICHERU to coordinate with RUTO<sup>227</sup> and participating in meetings between GICHERU and Prosecution Witnesses during which they were corruptly influenced.<sup>228</sup> In some instances they also contacted Prosecution Witnesses telephonically in furtherance of the Common Plan.<sup>229</sup>
81. Intermediaries made essential contributions to the Charged Offences by identifying, locating and contacting Prosecution Witnesses; offering them Bribes to leave their protection locations and/or to 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,<sup>230</sup> and conveying threats of adverse consequences should they fail to cooperate.<sup>231</sup>
82. Intermediaries thus provided an essential link between the Managers and the Prosecution Witnesses. By 2013, ██████████<sup>232</sup> had relocated many Prosecution trial witnesses<sup>233</sup> for their security, particularly linkage witnesses, ██████████ ██████████. 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 to meet with GICHERU and other Managers for this purpose. As witnesses were successfully

<sup>227</sup> **P-0341**, T-53, p. 47, ln 19 to p. 48, ln. 3, p. 58, lns. 9-16, p. 62, lns. 12-24, p. 67, lns. 7-11, p. 73, lns. 18-20; [KEN-OTP-0150-0255-R01](#), at 0265, paras. 50, 53; **P-0274**, T-58, p. 59, lns. 8-24; **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; **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1342, ln. 96 to 1343, ln. 128; **P-0800**, [KEN-OTP-0132-0167-R01](#) at 0172, lns. 127-134; [KEN-OTP-0111-0140](#) at 0148, para. 45; [KEN-OTP-0135-0103-R01](#) at 0105, lns. 71-78; **P-0739**, T-66, p. 104, ln. 25 to p. 105, ln. 17. *See also* **P-0800**, [KEN-OTP-0160-0432](#) at 0446, ln. 501 to 0447, ln. 508; **P-0800**/██████████, [KEN-OTP-0131-0431](#) at 0437, lns. 156-157.

<sup>228</sup> **P-0341**, T-53, p. 46, ln. 23 to p. 47, ln. 24, p. 48, lns. 18-23, p. 52, lns. 19-25, p. 58, ln 9 to p. 60, ln. 14, p. 62, lns. 12-15, p. 67, lns. 7-11; T-54, p. 6, ln. 13 to p. 7, ln. 13, p. 21, lns. 14-17, p. 79, lns. 19-23; [KEN-OTP-0150-0255-R01](#) at 0263-0265, paras. 43-53; **P-0613**, [KEN-OTP-0115-0216-R01](#) at 0222, paras. 29-30; [KEN-OTP-0124-0007-R01](#) at 0011, paras. 19-21; **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; **P-0800**/██████████, [KEN-OTP-0132-0167-R01](#) at 0172, lns. 127-134; **P-0613**, [KEN-OTP-0115-0216-R01](#) at 0222, para. 29.

<sup>229</sup> **P-0274**, T-58, p. 59, lns. 1-24. *See also* **P-0613**, [KEN-OTP-0124-0007-R01](#) at 0011, paras. 19-20.

<sup>230</sup> **P-0397**, [KEN-OTP-0159-1232-R01](#) at 1235, ln. 68 to 1236, ln. 82; [KEN-OTP-0159-1309-R01](#) at 1311, ln. 20 to 1312, ln. 62; **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-R01](#) at 0011, para. 19; **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; [KEN-OTP-0135-0103-R01](#) at 0105, ln. 60 to 0106, ln. 89; **P-0800**/██████████, [KEN-OTP-0132-0167-R01](#) at 0180, lns. 397-410; **P-0738**, T-60, p. 18, lns. 12-25, p. 23, lns. 22-25, p. 24, lns. 8-13; **P-0738**, [KEN-OTP-0118-0011-R01](#) at 0014-0033, paras. 14-117; [KEN-OTP-0114-0296](#) at 0299, lns. 37-64; *see also* **P-0739**, T-66, p. 102, ln. 9 to p. 104, ln. 22.

<sup>231</sup> **P-0341**, T-53, p. 76, ln. 18 to p. 77, ln. 8; T-54, p. 15, ln. 22 to p. 16, ln. 9; [KEN-OTP-0150-0255-R01](#) at 0271, para. 85, at 0275-0276, paras. 112-113.

<sup>232</sup> ██████████.

<sup>233</sup> Including P-0800, P-0516, P-0613, P-0738, P-0274 and P-0739.

corrupted, Managers leveraged their relationships with other Prosecution Witnesses to repeat this process.

83. 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);
- c) P-0495, with respect to Count 3 (P-0613);
- d) KOSGEI, with respect to Count 7 (P-0341); and
- e) KOGO, with respect to Counts 1 (P-0397) and 7 (P-0341).

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

84. GICHERU made an essential contribution to the Charged Offences committed in the context of the Common Plan through the actions specified below,<sup>234</sup> 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;<sup>235</sup>
- b) Using his law office, centrally located at Veecam House in Eldoret,<sup>236</sup> as an operations centre from which he was able to direct the activities of Intermediaries and Corrupted

<sup>234</sup> As further detailed in the sections on criminal responsibility under each specific incident.

<sup>235</sup> **P-0800**, T-50, p. 56, lns. 17-18, p. 84, ln.5 to p. 86, ln. 1; **P-0800**, [KEN-OTP-0102-0205](#) at 0212, paras. 41-46; [KEN-OTP-0135-0113](#) at 0131, lns. 631-654, 0137, lns. 862-877; **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-R01](#) at 0231-0232, paras. 76-78; (“Gicheru is fixing everything”); **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1131-1135; **P-0341**, T-53, p. 67, lns. 7-15; [KEN-OTP-0150-0255-R01](#) at 0265, paras. 52-53 (GICHERU was the “focal point”); **P-0738**, T-60, p. 28, ln. 22 to p. 29, ln. 2; **P-0738**, [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; **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1314, ln. 121 to 1315, ln. 165; [KEN-OTP-0159-1338-R01](#) at 1344, ln. 147-149, 167-177; **P-0397/GICHERU**, [KEN-OTP-0160-0833](#) at 0837, lns. 86-93; [KEN-OTP-0159-1588-R01](#) at 1618, ln. 992 to 1619, ln. 1031.

<sup>236</sup> **GICHERU**, [KEN-OTP-0159-0736](#) at 0743, lns. 221-225.

Witnesses, and leveraging his influence as a prominent member of the community and the legal profession to advance the aims of the Common Plan;<sup>237</sup>

- c) Issuing instructions to Intermediaries and Associates, in particular to locate, contact and corruptly influence Prosecution Witnesses<sup>238</sup> and by promising and/or paying them financial rewards if they succeeded;<sup>239</sup>
- d) Meeting in person with certain Prosecution Witnesses;<sup>240</sup> negotiating and and/or paying them Bribes in exchange for their withdrawing as witnesses, ceasing cooperation with the Prosecution and/or the Court,<sup>241</sup> and/or recanting their

<sup>237</sup> **P-0341**, T-53, p. 46, ln. 25 to p. 47, ln. 25, p. 53, lns. 15-22, p. 54, lns. 5-7, p. 62, lns. 12-15, p. 67, lns. 10-11; [KEN-OTP-0150-0255-R01](#) at 0263-0265, paras. 38-53, at 0266, para. 58, at 0267, paras. 62-63, at 0268, para. 68, at 0269, paras. 71-72, 74, at 0273, para. 98; **P-0274**, T-58, p. 57, ln. 22 to p. 58, ln. 13; **P-0800**, [KEN-OTP-0102-0205](#) at 0211-0212, paras. 38-45; **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1312, lns. 41-63, at 1327, lns. 603-609; [KEN-OTP-0159-1533-R01](#) at 1535, lns. 22-35, at 1539, ln. 169 to 1540, ln. 184. *Contra* **GICHERU**, [KEN-OTP-0159-0766](#) at 0783, lns. 550-568, 577-582, at 0784, ln. 603 to 0785, ln. 624.

<sup>238</sup> **P-0613**, [KEN-OTP-0102-0178](#) at 0180-0181, paras. 16, 17; [KEN-OTP-0115-0216-R01](#) at 0231, paras. 76-78; [KEN-OTP-0111-0162](#) at 0169, paras. 37-38, at 0173, paras. 55; **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1131-1135; **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1550, lns. 554-564; **P-0516**, T-63, p. 33, lns. 8-13, p. 35, lns. 3-16; **P-0800**, T-50, pp. 70, ln. 23 to p.71, ln. 8, 78, ln. 1 to p. 82, ln.2; **P-0800**, [KEN-OTP-0135-0113](#) at 0121, lns. 282-290, 0126, lns. 446-456; *See also* **P-0739**, T-66, p. 62, ln. 11 to p.63, ln. 5, p. 93, ln. 23 to p. 94, ln. 4; T-68, p. 75, ln. 22 to p. 77, ln. 25; **P-0738**, T-60, p. 24, lns. 2-13.

<sup>239</sup> **P-0397**, [KEN-OTP-0159-1232-R01](#) at 1235, ln. 60 to 1236, ln. 82, 1238, ln. 145 to 1239, ln. 196; [KEN-OTP-0159-1338-R01](#) at 1351, ln. 423 to 1353, ln. 478; [KEN-OTP-0159-1533-R01](#) at 1559, lns. 885-903; **P-0800**, T-50, pp. 70, ln. 23 to p.71, ln. 8, 78, ln. 1 to p. 82, ln.2; **P-0800**, [KEN-OTP-0135-0113](#) at 0121, lns. 282-290, 0126, lns. 446-456; 0134, ln. 744 to 0135, ln. 787; **P-0613**, [KEN-OTP-0102-0178](#) at 0180, para. 16; [KEN-OTP-0115-0216-R01](#) at 0231, para. 77, 0732, para. 80; **P-0341**, T-53, p. 65, lns. 16-20, p. 69, lns. 2-7, p. 74, lns. 5-12, p. 81, ln. 16 to p. 89, ln. 23; T-54, p. 9, lns. 12-14, p. 11, ln. 17 to p. 12, ln. 10, p. 23, lns. 3-10, p. 31, lns. 14-23, p. 33, lns. 13-21; [KEN-OTP-0150-0255-R01](#) at 0265-0266, paras. 50-55, 57-60, at 0268, paras. 69-70, at 0273, paras. 94, 97, at 0275, para. 106, at 0276, para. 115; **P-0274**, T-58, p. 50, lns. 19-21, p. 51, lns. 4, p. 52, lns. 6-7, p. 59, lns. 8-24. *See also* **P-0739**, T-66, p. 98, ln. 1 to p. 103, ln. 24; **P-0738**, T-60, p. 18, lns. 4-7, 12-16.

<sup>240</sup> All except P-0613 and P-0738.

<sup>241</sup> **P-0800**, T-50, pp. 68-71; **P-0800**, [KEN-OTP-0102-0205](#) at 0211-0212, paras. 38-45; [KEN-OTP-0135-0113](#) at 1117, p. 116 to 1121, ln. 272, 0131, lns. 631-660, 0134, ln. 733 to 0135, ln. 787; **P-0274**, T-58, p. 50, lns. 1-18, p. 51, lns. 1-2; **P-0341**, T-53, p. 58, ln. 9 to p. -59, ln. 18, p. 65, lns. 19-21, p. 74, lns. 17-18, p. 76, lns. 14-16, p. 81, lns. 4-12, p. 85, lns. 20-25, T-54, p. 32, lns. 8-23, p. 41, lns. 12-21; [KEN-OTP-0150-0255-R01](#) at 0263-0264, paras. 43-44, at 0265, paras. 49-52, at 0266, paras. 59-60, at 0267, paras. 62-63, at 0269, para. 72, at 0270, paras. 77-78, at 0271, para. 88, at 0273, para. 96, at 0274, paras. 102, 104; **P-0739**, T-66, p. 26, lns. 15-25, p. 28, lns. 4-10, -p. 41, lns. 2-3, p. 59, lns 18-25, p. 61, lns. 2-6; **P-0516**, T-63, p. 46, lns. 6-15 ; **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1313, lns. 77-88, 1332, ln. 776 to 1333, ln. 811; [KEN-OTP-0159-1338-R01](#) at 1343, ln. 127 to 1344, ln. 154, 1355, lns. 541-548; [KEN-OTP-0124-0030](#); [KEN-OTP-0124-0029](#); **P-0397/GICHERU**, [KEN-OTP-0160-0833](#) at 0836, lns. 39-45; 0837, lns. 95-97; 0840, lns. 203-204; [KEN-OTP-0159-1533-R01](#) at 1538, lns. 135-142, 1546, 1557; [KEN-OTP-0159-1562-R01](#) at 1570, lns. 220-239.

evidence;<sup>242</sup> and threatening them with adverse consequences if they failed to comply;<sup>243</sup>

- e) Acting as a link between the funders and/or beneficiaries of the Common Plan, including RUTO, and the Intermediaries and Associates;<sup>244</sup>
- f) Acting as the conduit for the payment of the Bribes to the Corrupted Witnesses;<sup>245</sup> 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.<sup>246</sup>

85. 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.

<sup>242</sup> **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1313, lns. 77-88, 1332, ln. 776 to 1333, ln. 811; [KEN-OTP-0159-1338-R01](#) at 1343, ln. 127 to 1344, ln. 154, 1355, lns. 541-548; [KEN-OTP-0124-0029](#), para. 4; **P-0397/GICHERU**, [KEN-OTP-0160-0833](#) at 0836, lns. 39-45; 0837, lns. 95-97; 0840, lns. 203-204; [KEN-OTP-0159-1533-R01](#) at 1538, lns. 135-142, 1546, 1557; [KEN-OTP-0159-1562-R01](#) at 1570, lns. 220-239; **P-0800**, [KEN-OTP-0102-0205](#) at 0214-0215, para. 55; [KEN-OTP-0144-0272-R02](#) at 0285, lns. 454-472; **P-0613**, [KEN-OTP-0106-0910](#) at 0914-0915, paras. 20, 22. *See also*, **P-0739**, T-66, p. 39, lns. 1-5, p. 41, lns. 15-18; **P-0516**, T-63, p. 54, ln. 13 to p. 55, ln.10.

<sup>243</sup> **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1349, lns. 318-342; **P-0341**, T-53, p. 76, ln. 18 to p. 77, ln. 8, T-54, p. 15, ln. 22 to p. 16, ln. 9; [KEN-OTP-0150-0255-R01](#) at 0271, paras. 85-88.

<sup>244</sup> **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1355, lns. 541-565; **P-0613**, [KEN-OTP-0102-0178](#) at 0181-0182, paras. 18, 29; **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45;; [KEN-OTP-0135-0200](#) at 0207 **P-0800**, [KEN-OTP-0131-0431](#) at 0437, lns. 152-168. *See also* **P-0738**, T-60, p. 28, ln. 17 to p. 29, ln. 2; **P-0738**, [KEN-OTP-0160-1002](#) at 1004-1005. *Compare* **P-0738**, [KEN-OTP-0118-0011-R01](#) at 0017, para. 28.

<sup>245</sup> **P-0397**, [KEN-OTP-0159-1191-R01](#) at 1230, lns. 1269-1294; [KEN-OTP-0159-1309-R01](#) at 1313, ln. 99 to 1314, ln. 119; [KEN-OTP-0159-1338-R01](#) at 1342, lns. 72-85; **P-0341**, T-53, p. 81, ln. 16 to p. 82, ln. 6, p. 88, ln. 1 to p. -89, ln. 13; T-54, p. -12, lns. 6-10, p. 23, lns. 3-10, p. 30, ln. 17 to p. -31, ln. 9; [KEN-OTP-0150-0255-R01](#) at 0267, paras. 62-64, at 0269, paras. 71-73, at 0270, paras. 78-79, at 0274, paras. 99-102, at 0275, paras. 106-108; [KEN-OTP-0159-1386](#); **P-0800**, [KEN-OTP-0132-0167-R01](#), at 0171, lns. 90-93, 0180, lns. 392-394; **P-0800**, [KEN-OTP-0111-0140](#) at 0147-0148, paras. 39, 45 **P-0613**, [KEN-OTP-0111-0162](#) at 0169, para. 36; [KEN-OTP-0102-0178](#) at 0181, para. 18; [KEN-OTP-0115-0216-R01](#) at 0231-0232, paras. 77-79; **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1131-1135; **P-0274**, T-58, p. 50, lns. 3-18, p. 51, lns. 1-2; **P-0516**, T-63, p. 33, ln. 10, p. 41, ln. 23 to p. 44, ln. 2, p. 45, ln. 20 to p. 47, ln. 12, p. 48, lns. 17-19. *See also*, **P-0739**, T-66, p. 26, ln. 25 to p. 29, ln. 9, p. 42, ln. 19 to p. 45, ln. 20; **P-0738**, T-60, p. 28, ln. 22 to p. 29, ln. 2.

<sup>246</sup> **P-0800**, T-50, pp. 71-74; **P-0800**, [KEN-OTP-0135-0155-R01](#) at 0170, ln. 537 to 0171, ln. 583; [KEN-OTP-0160-0354](#) at 0364, lns. 350-351, 0370, lns. 551-558; [KEN-OTP-0160-0489](#) at 0492, ln. 108 to 0493, ln. 119; [KEN-OTP-0144-0272-R02](#) at 0283-0285; [KEN-OTP-0145-0560](#); [KEN-OTP-0145-0562](#); **P-0341**, T-53, p. 65, ln. 25 to p. 66, ln. 5, p. 71, lns. 2-5, p. 74, ln. 17 to p. 75, ln. 3; T-54, p. 41, lns. 10-19, p. 43, lns. 21-23; [KEN-OTP-0150-0255-R01](#) at 0268, para. 68, at 0269, paras. 74-76; **P-0613**, [KEN-OTP-0106-0910](#) at 0914-0915, paras. 20, 22; **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1130, lns. 106-108; **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1344, ln. 173 to 1345, ln. 207. *See also* **P-0739**, T-66, p. 72, ln. 14 to p. 73, ln. 15.

f. *Subjective elements of co-perpetration*

86. 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 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.

87. 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*

88. Alternatively, the evidence<sup>247</sup> also establishes beyond reasonable doubt that GICHERU intentionally and knowingly 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 offences charged in Counts 1 to 8,<sup>248</sup> as further set out in the relevant sections in each of the eight incidents below<sup>249</sup> and in the Trial Brief.<sup>250</sup> The group of persons sharing the Common Purpose included the Managers, Intermediaries and Associates<sup>251</sup> referred to above.

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

89. Alternatively, the evidence<sup>252</sup> also establishes beyond reasonable doubt that GICHERU intentionally and knowingly solicited and/or induced the Direct Perpetrators who committed the crimes, including through cash payments or the promise thereof, to corruptly

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<sup>247</sup> Particularly the evidence described in sections B. I. ii and vi.

<sup>248</sup> “**Common Purpose**” and “**Common Purpose Members**”.

<sup>249</sup> See subsections ii. and iv. in Part C. I. – VIII.

<sup>250</sup> Trial Brief, paras. 53-58.

<sup>251</sup> The Intermediaries and Associates are herein also referred to as “**Direct Perpetrators**”, depending on context.

<sup>252</sup> Including the evidence set out in section vi. below.

influence Prosecution Witnesses, through the actions specified below,<sup>253</sup> individually and cumulatively, and as further set out in the relevant sections in each of the eight incidents below<sup>254</sup> and the Trial Brief.<sup>255</sup>

- a) GICHERU tasked the Direct Perpetrators with locating and contacting and corruptly influencing Prosecution Witnesses.<sup>256</sup>
- b) GICHERU promised, and/or paid the Direct Perpetrators financial rewards for doing so.<sup>257</sup>
- 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.<sup>258</sup>

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

90. Alternatively, the evidence<sup>259</sup> also establishes beyond reasonable doubt that GICHERU intentionally and knowingly aided, abetted or otherwise assisted the Direct Perpetrators for the purpose of facilitating the commission of the Charged Offences through the actions

<sup>253</sup> As detailed in the sections on criminal responsibility under each specific incident.

<sup>254</sup> See subsections ii. and iv. in Part C. I. – VIII.

<sup>255</sup> Trial Brief, paras. 59-63.

<sup>256</sup> **P-0397**, [KEN-OTP-0159-1232-R01](#) at 1238, lns. 150-172; [KEN-OTP-0159-1338-R01](#) at 1351, ln. 423 to 1353, ln. 478; [KEN-OTP-0159-1533-R01](#) at 1550, lns. 555-562, 1551, ln. 612 to 1552, ln. 641; **P-0738**, [KEN-OTP-0118-0011-R01](#) at 0020-0021, para. 48; **P-0800**, T-50, p. 70, ln. 18 to p. 71, ln. 8, p. 78, ln. 16 to p. 81, ln. 11; **P-0800**, [KEN-OTP-0111-0140](#) at 0147-0148, paras. 39-45; [KEN-OTP-0135-0113](#) at 0120, lns. 238-243, 0121, ln. 268 to 0122, ln. 315, 0126, lns. 446-456, 0135, lns. 782-790, 0137, lns. 844-877; **P-0613**, [KEN-OTP-0102-0178](#) at 0181, para. 20; [KEN-OTP-0111-0162](#) at 0173, para. 55; [KEN-OTP-0115-0216-R01](#) at 0231-0232, paras. 78-79; **P-0274**, T-58, p. 48, lns. 12-13, p. 60, ln. 23 to p. 61, ln. 5, p. 62, ln. 2; T-59, p. 77, lns. 16-19; **P-0516**, T-63, p. 22, lns. 11-25, p. 33, lns. 8-13; **P-0341**, T-54, p. 5, ln. 23 to p. 6, ln. 21; [KEN-OTP-0150-0255-R01](#) at 0265, 0266, paras. 50-52, 59-60, *contra*: **P-0341**, T-53, p. 79, lns. 16-18; [KEN-OTP-0159-1803-R01](#) at 1818, lns. 508-510, 526-527, at 1823, lns. 693-694. *See also* **P-0739**, T-66, p. 102, ln. 9 to p. 103, ln. 24.

<sup>257</sup> **P-0397**, [KEN-OTP-0159-1232-R01](#) at 1235, ln. 62 to 1236, ln. 82, 1238, lns. 150-167; **P-0341**, T-53, p. 69, ln. 2 to p. 70, ln. 19, p. 74, lns. 4-12, p. 81, ln. 16 to p. 82, ln. 2, p. 86, lns. 4-8, p. 88, ln. 10 to p. 89, ln. 23; T-54, p. 23, lns. 8-10, p. 31, lns. 9-23, p. 44, lns. 2-4; [KEN-OTP-0150-0255-R01](#) at 0262-0266, paras. 36-41, 57; **P-0800**, T-50, p. 71, lns. 2-8, p. 78, ln. 16 to p. 81, ln. 11.

<sup>258</sup> **P-0613**, [KEN-OTP-0115-0216-R01](#) at 0231-0232, paras. 77-79; **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1131, lns. 117-137; **P-0397**, [KEN-OTP-0159-1232-R01](#) at 1238, lns. 150-172; [KEN-OTP-0159-1338-R01](#) at 1351, ln. 425 to 1352, ln. 431, 1353, lns. 469-478; [KEN-OTP-0159-1533-R01](#) at 1550, lns. 554-562, 1552, lns. 627-636, 1553, lns. 654-669; **P-0341**, T-53, p. 84, ln. 21 to p. 86, ln. 21; [KEN-OTP-0150-0255-R01](#) at 0274-0275, paras. 99-101, 106-108. *See also* **P-0800**, [KEN-OTP-0160-0432](#) at 0446, ln. 495 to 0447, ln. 513; **P-0800/██████████**, [KEN-OTP-0131-0431](#) at 0437, lns. 153-178.

<sup>259</sup> Including the evidence set out in section vi. below.

specified below,<sup>260</sup> individually and cumulatively, and as further set out in the relevant sections in each of the eight incidents below<sup>261</sup> and in the Trial Brief:<sup>262</sup>

- a) coordinating and directing the activities of Direct Perpetrators, including by assigning tasks, setting priorities, arranging meetings and providing funds for necessary expenses;<sup>263</sup>
- b) instructing or encouraging Direct Perpetrators to identify and locate Prosecution Witnesses,<sup>264</sup> to corruptly influence them and to bring them to meet GICHERU;<sup>265</sup>
- c) meeting with Prosecution Witnesses<sup>266</sup> 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;<sup>267</sup>
- 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.<sup>268</sup>

<sup>260</sup> As detailed in the sections on criminal responsibility under each specific incident.

<sup>261</sup> See subsections ii. and iv. in Part C. I. – VIII.

<sup>262</sup> Trial Brief, paras. 64-66.

<sup>263</sup> **P-0800**, [KEN-OTP-0135-0113](#) at 0120, lns. 230-250, 0121, lns. 265-299, 0126, lns. 446-478, 0131, ln. 631 to 0132, ln. 683, 0137, lns. 844-877. See also **P-0800**, [KEN-OTP-0160-0432](#) at 0446, ln. 498 to 0447, ln. 508; **P-0800**/[REDACTED], [KEN-OTP-0131-0431](#) at 0437, lns. 153-181.

<sup>264</sup> **P-0397**, [KEN-OTP-0159-1232-R01](#) at 1238, lns. 150-172; [KEN-OTP-0159-1338-R01](#) at 1352, lns. 449-464; [KEN-OTP-0159-1533-R01](#) at 1550, lns. 554-562, 1552, lns. 627-636, 1555, lns. 739-758; **P-0800**, T-50, p. 71, lns. 2-8, p. 78, ln. 16 to p. 81, ln. 11; **P-0800**, [KEN-OTP-0135-0113](#) at 0120, lns. 238-250, 0121, lns. 268-290, at 0126, lns. 446-478; **P-0516**, T-63, p. 22, lns. 11-25, p. 33, lns. 8-13.

<sup>265</sup> **P-0800**, [KEN-OTP-0135-0113](#) at 0120, lns. 238-250, 0121, lns. 268-290, 0126, lns. 446-478, 0131, lns. 631-650, 0134, lns. 736-745.

<sup>266</sup> All except P-0613 and P-0738.

<sup>267</sup> **P-0397**, [KEN-OTP-0159-1191-R01](#) at 1230, lns. 1263-1294; [KEN-OTP-0159-1309-R01](#) at 1313, lns. 77-92, 1314, lns. 105-123, 1332, lns. 764-781; [KEN-OTP-0159-1338-R01](#) at 1342, ln. 71 to 1346, ln. 246, 1354, ln. 507 to 1355, ln. 548; **P-0341**, [KEN-OTP-0150-0255-R01](#), at 0266, paras. 59-60; **P-0800**, T-50, p. 70, ln. 18 to p. 71, ln. 15, 79, lns. 14-23; **P-0800**, [KEN-OTP-0102-0205](#) at 0212, paras. 41-42; [KEN-OTP-0135-0113](#) at 0118, lns. 157-182, 0120, lns. 227-250, 0131, lns. 635-650, 0134, lns. 736-743; [KEN-OTP-0135-0200](#) at 0204, lns. 115-137, 0205, lns. 159-164; **P-0613**, [KEN-OTP-0102-0178](#) at 1083, para. 32; [KEN-OTP-0106-0910](#) at 0914-0915, paras. 20, 22. See also, **P-0800**, [KEN-OTP-0102-0205](#) at 0212-0215, paras. 42, 44, 51, 55; **P-0613**, [KEN-OTP-0111-0162](#) at 0173, para. 55; **P-0739**, T-66, p. 39, ln. 1 to p. 40, ln. 25. See also **P-0516**, T-63, p. 33, lns. 8-13; T-65, p. 16, lns. 6-15.

<sup>268</sup> **P-0800**, T-50, p. 71, ln. 11 to p. 74, ln. 9; **P-0800**, [KEN-OTP-0135-0155-R01](#) at 0170, ln. 519 to 0172, ln. 619; [KEN-OTP-0145-0560](#); [KEN-OTP-0145-0562](#); **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1344, ln. 141 to 1346, ln. 246; [KEN-OTP-0124-0030](#); **P-0341**, T-53, p. 65, ln. 19 to p. 66, ln. 2, p. 71, lns. 3-5, p. 74, ln. 17 to p. 75, ln. 3; T-54, p. 41, lns. 12-16, p. 43, lns. 21-23; [KEN-OTP-0150-0255-R01](#) at 0268-0269, paras. 68, 74-76.

- e) acting as a link between the funders and/or beneficiaries of the Common Plan, including RUTO,<sup>269</sup> and the Direct Perpetrators;<sup>270</sup> and/or
- f) acting as the conduit for the payment of the Bribes to the Corrupted Witnesses.<sup>271</sup>

vi. *Statement of material facts common to subjective elements*<sup>272</sup>

91. 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.

92. 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*

93. GICHERU's intention to engage in his conduct and to commit the Charged Offences, as set out in the Trial Brief,<sup>273</sup> 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,<sup>274</sup>

<sup>269</sup> **P-0800**, [KEN-OTP-0102-0205](#) at 0212, para. 45; [KEN-OTP-0135-0200](#) at 0207, lns. 231-250; [KEN-OTP-0111-0140](#) at 0148, para. 45; **P-0341**, T-53, p. 48, lns. 18-23, p. 58, lns. 9-16, p. 67, lns. 7-11, 74, lns. 1-12; [KEN-OTP-0150-0255-R01](#) at 0269-0271, paras. 71, 74-75, 77, 84, 86-87; **P-0397**, [KEN-OTP-0159-1191-R01](#) at 1230, lns. 1269-1294; [KEN-OTP-0159-1232-R01](#) at 1234, ln. 33 to 1235, ln. 57; [KEN-OTP-0159-1276-R01](#) at 1308, lns. 1033-1052; [KEN-OTP-0159-1309-R01](#) at 1313, lns. 77-92, 1332, lns. 776-796; [KEN-OTP-0159-1338-R01](#) at 1343, lns. 105-128. *See also* **P-0800**, [KEN-OTP-0160-0432](#) at 0446, ln. 498 to 0447, ln. 508; **P-0800**/[REDACTED], [KEN-OTP-0131-0431](#) at 0437, lns. 166-168.

<sup>270</sup> **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1355, lns. 541-548; **P-0800**, [KEN-OTP-0135-0200](#) at 0208, lns. 261-277.

<sup>271</sup> **P-0397**, [KEN-OTP-0159-1191-R01](#) at 1230, lns. 1269-1294; [KEN-OTP-0159-1338-R01](#) at 1342, lns. 73-86, 1343, lns. 105-128; [KEN-OTP-0159-1533-R01](#) at 1537, lns. 101-107, 1538, lns. 122-142; **P-0341**, T-53, p. 81, ln. 12 to p. 82, ln. 23, p. 88, ln. 10 to p. 89, ln. 23; T-54, p. 11, lns. 13-17, p. 12, lns. 6-14, p. 23, lns. 3-10, p. 30, ln. 20 to p. 31, ln. 14; **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; **P-0613**, [KEN-OTP-0111-0162](#) at 0169, para. 36; [KEN-OTP-0115-0216-R01](#) at 0231-0232, paras. 77-79; **P-0516**, T-63, p. 33, ln. 10, p. 45, ln. 20 to p. 47, ln. 12. *See also* **P-0739**, T-66, p. 27, ln. 8 to p. 28, ln. 23, p. 42, ln. 16 to p. 46, ln. 24, p. 49, ln. 10 to p. 50, ln. 25, p. 52, ln. 3 to p. 54, ln. 23, p. 56, ln. 1 to p. 58, ln. 6, p. 97, lns. 22-24, p. 99, ln. 2 to p. 100, ln. 24, p. 103, ln. 4 to p. 105, ln. 17; T-68, p. 78, ln. 25 to p. 79, ln. 1.

<sup>272</sup> *See* Trial Brief, paras. 67-70.

<sup>273</sup> Trial Brief, para. 69.

<sup>274</sup> **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; [KEN-OTP-0135-0113](#) at 0121, lns. 268-290, 0126, lns. 446-456, 0135, lns. 782-800, 0137, lns. 858-877; **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1550, lns. 555 to 1557, ln. 630; **P-0341**, T-54, p. 5, ln. 23 to p. 6, ln. 6; [KEN-OTP-0150-0255-R01](#) at 0265, 0271 paras. 50-52, 84; **P-0516**, T-63, p. 22, lns. 16-17.



- b) GICHERU's direct involvement in offering and/or paying substantial sums of money and other benefits to Prosecution Witnesses P-0397,<sup>275</sup> P-0800,<sup>276</sup> P-0495,<sup>277</sup> P-0516,<sup>278</sup> P-0341<sup>279</sup> and P-0274<sup>280</sup> 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;<sup>281</sup>
- d) GICHERU's direct involvement in arranging for Prosecution Witnesses to sign affidavits confirming their decision to withdraw and/or recant their evidence;<sup>282</sup>
- 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;<sup>283</sup>
- f) GICHERU's direct involvement in arranging the finances for the payment of Bribes,<sup>284</sup> and

<sup>275</sup> **P-0397**, [KEN-OTP-0159-1191-R01](#) at 1230, lns. 1269-1294; [KEN-OTP-0159-1309-R01](#) at 1313, lns. 77-92, 1314, lns. 105-120.

<sup>276</sup> **P-0800**, T-50, p. 70, ln. 18 to p. 71, ln. 15; **P-0800**, [KEN-OTP-0135-0113](#) at 0117, ln. 132 to 0118, ln. 181, 0120, lns. 227-248.

<sup>277</sup> **P-0800**, T-50, p. 71, lns. 2-8, p. 77, ln. 12 to p. 79, ln. 23; [KEN-OTP-0135-0113](#) at 0134, lns. 733-743; **P-0613**, [KEN-OTP-0115-0216-R01](#) at 0231, paras. 76-77.

<sup>278</sup> **P-0516**, T-63, p. 33, ln. 10, p. 45, ln. 20 to p. 47, ln. 12; **P-0397**, [KEN-OTP-0159-1232-R01](#) at 1238, ln. 150 to 1239, ln. 196; [KEN-OTP-0159-1338-R01](#) at 1352, ln. 449 to 1353, ln. 492; [KEN-OTP-0159-1533-R01](#) at 1550, ln. 554 to 1551, ln. 605; **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.

<sup>279</sup> **P-0341**, T-53, p. 65, lns. 16-20, p. 69, lns. 2-7, p. 74, lns. 5-12, p. 81-89; T-54, p. 9, lns. 12-14, p. 11, ln. 17 to p. 12, ln. 10, p. 23, lns. 3-10, p. 31, lns. 14-23, p. 33, lns. 13-21; [KEN-OTP-0150-0255-R01](#) at 0267, paras. 62-64, at 0269, paras. 71-73, at 0270, paras. 78-79, at 0274, paras. 99-102, at 0275, paras. 106-108, at 0277, para. 117; [KEN-OTP-0159-1386](#).

<sup>280</sup> **P-0274**, T-58, p. 50, lns. 3-18, p. 51, lns. 1-2.

<sup>281</sup> **P-0397**, [KEN-OTP-0159-1191-R01](#) at 1230, lns. 1269-1294; [KEN-OTP-0159-1309-R01](#) at 1313, lns. 77-88, 1314, lns. 105-120, 1332, lns. 776-793; **P-0800**, T-50, p. 70, ln. 18 to p. 71, ln. 15, p. 78, ln. 16 to p. 81, ln. 11; **P-0800**, [KEN-OTP-0135-0113](#) at 0118, lns. 173-181, 0120, lns. 238-250; **P-0341**, T-53, p. 65, ln. 9 to p. 66, ln. 5, p. 74, ln. 1 to p. 75, ln. 23; T-54, p. 41, lns. 10-16, p. 43, lns. 20-23; [KEN-OTP-0150-0255-R01](#) at 0264, 0266, paras. 47, 58; **P-0738**, [KEN-OTP-0118-0011-R01](#) at 0020-0021, para. 48

<sup>282</sup> **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1314, ln. 105 to 1315, ln. 174; [KEN-OTP-0159-1338-R01](#) at 1344, ln. 141 to 1346, ln. 246; [KEN-OTP-0159-1533-R01](#) at 1545, ln. 374 to 1546, ln. 427; **P-0800**, T-50, p. 71, ln. 11 to p. 74, ln. 9; **P-0800**, [KEN-OTP-0135-0155-R01](#) at 0170, ln. 530 to 0172, ln. 590; **P-0341**, T-53, p. 65, ln. 25 to p. 66, ln. 5, p. 71, lns. 2-5, p. 74, ln. 17 to p. 75, ln. 3; T-54, p. 41, lns. 10-19, p. 43, lns. 21-23; [KEN-OTP-0150-0255-R01](#) at 0268, para. 68; **P-0613**, [KEN-OTP-0106-0910](#) at 0914-0915, paras. 20, 22.

<sup>283</sup> **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1352, ln. 436 to 1353, ln. 492; **P-0341**, T-54, p. 5, ln. 23 to p. 6, ln. 6; [KEN-OTP-0150-0255-R01](#) at 0265, 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**, T-50, p. 71, lns. 2-8, p. 78, ln. 16 to p. 81, ln. 11; **P-0800**, [KEN-OTP-0135-0113](#) at 0120, lns. 230-250, 0121, lns. 265-290, 0126, lns. 446-456, 0128, lns. 524-531, 0131, lns. 631-650, 0134, ln. 733 to 0135, ln. 800, 0137, lns. 858-877; **P-0516**, T-63, p. 22, lns. 16-17.

<sup>284</sup> **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, ln. 298 to 0122, ln. 303; **P-0341**, T-53, p. 65, lns. 16-20, p. 69, lns. 2-7, p. 74, lns. 5-12, p. 81-89; T-54, p. 9, lns. 12-14, p. 11, ln. 17 to p. 12, ln. 10, p. 23, lns. 3-10, p. 31, lns. 14-23, p. 33, lns. 13-21; [KEN-](#)

- g) GICHERU's coordination of the activities of members of the Common Plan and/or Common Purpose and/or Direct Perpetrators.<sup>285</sup>

**b. Knowledge**

94. GICHERU's knowledge, as set out in the Trial Brief,<sup>286</sup> may be inferred in particular from the following facts:

- a) The facts listed under a. *Intention* 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<sup>287</sup> and/or agreed to contact other Prosecution Witnesses and bring them to meet with GICHERU;<sup>288</sup> and
- c) The steps taken by GICHERU to avoid detection, including: refusing to record the agreements with the Corrupted Witnesses in writing;<sup>289</sup> paying Corrupted Witnesses in cash only to avoid bank records;<sup>290</sup> instructing the Corrupted Witnesses not to deposit cash payments into their bank accounts;<sup>291</sup> instructing payments to be made through third persons;<sup>292</sup> instructing Intermediaries and Corrupted Witnesses to take

[OTP-0150-0255-R01](#) at 0267, paras. 62-64, at 0269, paras. 71-73, at 0270, paras. 78-79, at 0274, paras. 99-102, at 0275, paras. 106-108, at 0277, para. 117; [KEN-OTP-0159-1386](#); **P-0274**, T-58, p. 50, lns. 3-18, p. 51, lns. 1-2; **P-0516**, T-63, p. 33, ln. 10, p. 45, ln. 20 to p. 47, ln. 12. See also **P-0800**, [KEN-OTP-0160-0432](#) at 0446, ln. 498 to 0447, ln. 508; **P-0800**/[REDACTED], [KEN-OTP-0131-0431](#) at 0437, lns. 153-178; **P-0738**, T-60, p. 28, ln. 22 to p. 29, ln. 2.

<sup>285</sup> **P-0800**, [KEN-OTP-0102-0205](#) at 0212-0213, paras. 41-46; [KEN-OTP-0135-0113](#) at 0131 lns. 631-650, 0137, lns. 858-863; **P-0274**, T-58, p. 50, ln. 1 to p. 51, ln. 8; **P-0341**, T-53, p. 69, lns. 9-11, p. 70, lns. 16-19, p. 74, lns. 21-25, p. 81, ln. 4 to p. 82, ln. 6, p. 86, lns. 4-25, p. 88, lns. 10-17; T-54, p.23, lns. 3-10, p. 31, lns. 5-9, p. 44, lns. 1-4; [KEN-OTP-0150-0255-R01](#) at 0262-0263, paras. 36-41, at 0265, paras. 50-52, at 0266, paras. 57, 59-60, at 0268, para. 68, at 0274, paras. 99-101, at 0275, paras. 106-108. See also **P-0800**, [KEN-OTP-0160-0432](#) at 0446, ln. 501 to 0447, ln. 508; **P-0800**/[REDACTED], [KEN-OTP-0131-0431](#) at 0437, lns.153-178.

<sup>286</sup> Trial Brief, para.70.

<sup>287</sup> **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1314, ln. 105 to 1315, ln. 174; [KEN-OTP-0159-1533-R01](#) at 1545, ln. 374 to 1546, ln. 420; [KEN-OTP-0159-1338-R01](#) at 1344, ln. 141 to 1346, ln. 246; **P-0800**, [KEN-OTP-0135-0155-R01](#) at 0171, ln. 548 to 0172, ln. 590; **P-0613**, [KEN-OTP-0106-0910](#) at 0914-0915, paras. 20, 22.

<sup>288</sup> **P-0397**, [KEN-OTP-0159-1232-R01](#) at 1238, ln. 150 to 1239, ln. 196; [KEN-OTP-0159-1338-R01](#) at 1352, ln. 449 to 1353, ln. 492; [KEN-OTP-0159-1533-R01](#) at 1550, ln. 555 to 1552, ln. 632, 1556, lns. 759-790; **P-0800**, [KEN-OTP-0135-0113](#) at 0121, lns. 268-290, 0135, lns. 782-790. See also **P-0516**, T-63, p. 22, lns. 16-17.

<sup>289</sup> **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1355, lns. 541-560.

<sup>290</sup> **P-0341**, T-53, p. 82, lns. 1-6; T-54, p. 39, lns. 19-21; [KEN-OTP-0150-0255-R01](#) at 0267, para. 63, at 0269, paras. 71-72, at 0270, paras. 77-78, at 0271, para. 88, at 0272, para. 90, at 0273, para. 96, at 0274, para. 102; **P-0800**, [KEN-OTP-0135-0139-R01](#) at 0149, lns. 357-364; **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1314, lns. 114-116; [KEN-OTP-0159-1338-R01](#) at 1355, lns. 541-548; **P-0613**, T-55, p. 48, ln. 5 to p. 49, ln. 8; **P-0516**, T-63, p. 33, ln. 10, p. 45, ln. 20 to p. 47, ln. 12. See also **P-0739**, T-66, p. 44, lns. 10-11.

<sup>291</sup> **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1355, ln. 572 to 1356, ln. 597; **P-0341**, T-53, p. 82, lns. 1-6; T-54, p. 44, lns. 2-4; [KEN-OTP-0150-0255-R01](#) at 0267, para. 63. See also **P-0613**, [KEN-OTP-0115-0216-R01](#) at 0231, para. 76; [KEN-OTP-0111-0162](#) at 0169, 0173 paras. 36, 55; **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1130, ln. 101 to 1131, ln. 112; see also **P-0739**, T-66, p. 44, ln. 17 to p. 45, ln. 1.

<sup>292</sup> **P-0341**, T-53, p. 85, ln. 11 to 86, ln. 21; T-54, p. 31, lns. 5-9; [KEN-OTP-0150-0255-R01](#) at 0273, para. 97.

precautions including when communicating by telephone;<sup>293</sup> and taking measures to ensure that lead counsel for RUTO was not aware of the activities of the Common Plan Members.<sup>294</sup>

## C. EVIDENCE ESTABLISHING COMMISSION OF OFFENCES

95. In this section the Prosecution provides a summary and analysis of the evidence presented to support the Charges, with references to the most relevant and probative items of evidence supporting these facts,<sup>295</sup> and the relevant legal analysis.

### I. First Incident: Corruptly influencing Witness P-0397<sup>296</sup>

#### *i. Introduction*

96. [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.<sup>297</sup>

97. The evidence establishes beyond reasonable doubt that, 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 and his associates.<sup>298</sup> GICHERU paid P-0397 a total of 1,000,000 KSh<sup>299</sup> and organised his withdrawal as a Prosecution Witness by directing him to sign an affidavit.<sup>300</sup>

<sup>293</sup> P-0397/GICHERU, [KEN-OTP-0160-0824](#) at 0826, Ins. 16-20, [KEN-OTP-0160-0833](#) at 0837, ln. 86 to 0838, ln. 111; [KEN-OTP-0160-0870](#) at 0872, Ins. 6-19, 0873, Ins. 42-46, 0873, Ins. 42-49.

<sup>294</sup> P-0800, [KEN-OTP-0111-0140](#) at 0148, paras. 43-45.

<sup>295</sup> Or, where appropriate, contradicting the facts. Since the evidence presented at trial has in nearly all respects come up to proof with the case outlined in the Trial Brief, there is a significant overlap between the corresponding sections of both documents, however, the references have been updated to reflect the evidence discussed and submitted at trial.

<sup>296</sup> Confirmation Decision, paras. 56-70, disposition.

<sup>297</sup> P-0397, [KEN-OTP-0074-0264-R01](#) at 0270-0271, paras. 29-33.

<sup>298</sup> P-0397, [KEN-OTP-0159-1309-R01](#) at 1312, ln. 38 to 1315, ln. 174; [KEN-OTP-0159-1338-R01](#) at 1345, ln. 178 to 1346, ln. 246; [KEN-OTP-0124-0029](#); [KEN-OTP-0160-0870](#) at 0872-0873.

<sup>299</sup> P-0397, [KEN-OTP-0159-1191-R01](#) at 1230, Ins. 1269-1294; [KEN-OTP-0124-0021](#) at 0023-0024. *Contra* GICHERU, [KEN-OTP-0159-0815](#) at 0829, Ins. 474-482.

<sup>300</sup> P-0397, [KEN-OTP-0124-0029](#).

Subsequently, GICHERU and YEBEI solicited or induced P-0397 to approach and corruptly influence P-0516.<sup>301</sup>

*ii. Corruptly influencing P-0397*

98. On 18 February 2013, P-0397's identity as a Prosecution trial witness was disclosed to the RUTO and SANG Defence.<sup>302</sup> On 20 April 2013, ██████████ visited P-0397 ██████████ ██████████.<sup>303</sup> They asked if he was an ICC witness, which P-0397 denied.<sup>304</sup> ██████████ ██████████ 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.<sup>305</sup> P-0397 explained in a later interview with the Prosecution that ██████████ "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."<sup>306</sup> ██████████ told P-0397 that they would return to take P-0397 to meet this group of people, who were based in ██████████.<sup>307</sup>
99. On or about 26 April 2013, ██████████ took P-0397 to GICHERU ██████████ ██████████.<sup>308</sup> GICHERU spoke to P-0397 privately<sup>309</sup> and told him that he (GICHERU) had heard that P-0397 was an ICC witness.<sup>310</sup> GICHERU asked P-0397 to assist him by withdrawing as a witness against RUTO.<sup>311</sup> GICHERU told P-0397 that RUTO wanted P-0397 to identify other Prosecution Witnesses and bring them to him (GICHERU).<sup>312</sup>

<sup>301</sup> P-0397, [KEN-OTP-0159-1232-R01](#) at 1238, ln. 150 to 1239, ln. 196; P-0516, T-63, p. 37, lns. 17-22.

<sup>302</sup> ICC-01/09-01/11-1120-Red2-Corr, para. 38.

<sup>303</sup> P-0397, [KEN-OTP-0159-1276-R01](#) at 1307, ln. 998 to 1308, ln. 1052; [KEN-OTP-0159-1232-R01](#) at 1235, ln. 60 to 1236, ln. 82; [KEN-OTP-0159-1309-R01](#) at 1317, lns. 221-242.

<sup>304</sup> P-0397, [KEN-OTP-0159-1232-R01](#) at 1234, lns. 18-36, at 1235, ln. 62 to 1236, ln. 80, [KEN-OTP-0159-1309-R01](#) at 1317, ln. 249 to 1318, ln. 255.

<sup>305</sup> P-0397, [KEN-OTP-0159-1232-R01](#) at 1233, ln. 33 to 1236, ln. 80; [KEN-OTP-0159-1276-R01](#) at 1308, lns. 1039-1052, [KEN-OTP-0159-1309-R01](#) at 1311, lns. 33-34.

<sup>306</sup> P-0397, [KEN-OTP-0159-1232-R01](#) at 1236, lns. 81-82.

<sup>307</sup> P-0397, [KEN-OTP-0159-1309-R01](#) at 1311, ln. 20 to 1312, ln. 44.

<sup>308</sup> P-0397, [KEN-OTP-0159-1309-R01](#) at 1312, lns. 41-63, at 1327, lns. 603-609; [KEN-OTP-0159-1533-R01](#) at 1535, lns. 22-35, at 1539, ln. 169 to 1540, ln. 184; *Contra* GICHERU, [KEN-OTP-0159-0766](#) at 0783, lns. 550-568, 577-582, at 0784, ln. 603 to 0785, ln. 624.

<sup>309</sup> P-0397, [KEN-OTP-0159-1309-R01](#) at 1313, lns. 77-81, at 1332, lns. 765-781.

<sup>310</sup> P-0397, [KEN-OTP-0159-1309-R01](#) at 1313, lns. 82-92.

<sup>311</sup> P-0397, [KEN-OTP-0159-1309-R01](#) at 1313, lns. 84-92, at 1332, lns. 778-793.

<sup>312</sup> P-0397, [KEN-OTP-0159-1309-R01](#) at 1313, lns. 91-92.

GICHERU also said that he was very close friends with RUTO and they had attended Kapsabet High School together.<sup>313</sup>

100. GICHERU asked P-0397 to state his price in exchange for his withdrawal as an ICC witness.<sup>314</sup> P-0397 requested 10,000,000 KSh.<sup>315</sup> [REDACTED]  
[REDACTED]<sup>316</sup> 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.<sup>317</sup> GICHERU told [REDACTED] that P-0397 was a witness and must be paid.<sup>318</sup> After some negotiation, they agreed on a sum of 5,000,000 KSh<sup>319</sup> in cash instalments.<sup>320</sup> [REDACTED]  
[REDACTED].<sup>321</sup> GICHERU gave his business card to P-0397,<sup>322</sup> who later handed it to the OTP.<sup>323</sup>

101. The next day, 27 April 2013, GICHERU paid P-0397 a cash instalment of 600,000 KSh.<sup>324</sup> P-0397 kept 100,000 KSh and deposited 500,000 KSh into his bank account [REDACTED]  
[REDACTED].<sup>325</sup> 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.<sup>326</sup>

102. On 30 April 2013, P-0397 met with GICHERU a second time [REDACTED]<sup>327</sup> and GICHERU paid him a second cash instalment of 400,000 KSh.<sup>328</sup> [REDACTED] P-

<sup>313</sup> **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1313, lns. 93-100, at 1332, ln. 780. See also [KEN-OTP-0159-1647](#) at 1667; or [https://issuu.com/misoijonathan/docs/the\\_alumni\\_khs\\_at\\_90](https://issuu.com/misoijonathan/docs/the_alumni_khs_at_90), p. 40 and **P-0800**, [KEN-OTP-0135-0113](#) at 0119, lns. 191-202. *Contra* **GICHERU**, [KEN-OTP-0159-0766](#) at 0771, lns. 141-159.

<sup>314</sup> **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1314, lns. 105-120.

<sup>315</sup> **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1314, lns. 105-109.

<sup>316</sup> **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1314, lns. 121-138.

<sup>317</sup> **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1314, ln. 123 to 1315, ln. 150; [KEN-OTP-0159-1338-R01](#) at 1342, ln. 96 to 1343, ln. 129.

<sup>318</sup> **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1315, lns. 140-158.

<sup>319</sup> **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1314, lns. 105-112, at 1315, lns. 140-158.

<sup>320</sup> **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1314, lns. 110-119, at 1315, lns. 156-157.

<sup>321</sup> **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1343, lns. 138-140.

<sup>322</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1545, lns. 388-393. Compare **GICHERU**, [KEN-OTP-0159-0766](#) at 0793, lns. 919-923.

<sup>323</sup> [KEN-OTP-0124-0028](#). GICHERU confirmed the authenticity of this card, see **GICHERU**, [KEN-OTP-0159-0736](#) at 0739, ln. 87 to 0740, ln. 124; [KEN-OTP-0159-0766](#) at 0793, lns. 892-895; [KEN-OTP-0159-0585](#).

<sup>324</sup> **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1314, lns. 115-118.

<sup>325</sup> **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1341, lns. 62-70, corroborated by P-0397's bank statement record, showing he deposited 500,000 KSh [REDACTED]. See [KEN-OTP-0124-0021](#) at 0023. See also **P-0730**, T-61, p. 17, lns. 3-5; [KEN-OTP-0159-0884](#) at 0904, para.77.

<sup>326</sup> **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1355, ln. 572 to 1356, ln. 585.

<sup>327</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1538, lns. 121-132.

<sup>328</sup> **P-0397**, [KEN-OTP-0159-1309-R01](#) at 1314, lns. 115-119, at 1315, lns. 156-158; [KEN-OTP-0159-1338-R01](#) at 1342, lns. 79-92, [KEN-OTP-0159-1533-R01](#) at 1538, lns. 123-134.

0397 deposited an amount of 400,000 KSh into his bank account.<sup>329</sup> GICHERU [REDACTED] [REDACTED] told P-0397 that they would give him the remaining [REDACTED] later, but never did.<sup>330</sup>

103. On 9 May 2013, GICHERU called an advocate named [REDACTED] [REDACTED].<sup>331</sup> GICHERU instructed [REDACTED] to prepare an affidavit based on the discussion that GICHERU, [REDACTED] [REDACTED].<sup>332</sup> P-0397 signed a letter giving [REDACTED] the power to act for him before the ICC on this matter.<sup>333</sup> 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.<sup>334</sup> The affidavit was forwarded to the Prosecution by [REDACTED] [REDACTED].<sup>335</sup> On 14 May 2013, the Prosecution informed the TC V(A) of the P-0397's withdrawal.<sup>336</sup>

104. [REDACTED]<sup>337</sup>  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>338</sup> GICHERU admitted knowing [REDACTED] [REDACTED] with whom he had previously worked [REDACTED] [REDACTED].<sup>339</sup>

<sup>329</sup> P-0397, [KEN-OTP-0159-1533-R01](#) at 1537, lns. 121-133; [KEN-OTP-0159-1338-R01](#) at 1340, ln. 20 to 1341, ln. 51, at 1342, lns. 87-92; corroborated by P-0397's bank statement record, showing he deposited 400,000 KSh [REDACTED]. See [KEN-OTP-0124-0021](#) at 0024. See also P-0730, T-61, p. 17, lns. 3-5; [KEN-OTP-0159-0884](#) at 0904, para.77.

<sup>330</sup> P-0397, [KEN-OTP-0159-1338-R01](#) at 1343, lns. 139-140.

<sup>331</sup> P-0397, [KEN-OTP-0159-1309-R01](#) at 1315, lns. 160-165; [KEN-OTP-0159-1338-R01](#) at 1344, ln. 147 to 1345, ln. 193.

<sup>332</sup> P-0397, [KEN-OTP-0159-1338-R01](#) at 1344, ln. 141 to 1346, ln. 246.

<sup>333</sup> [KEN-OTP-0124-0030](#).

<sup>334</sup> P-0397, [KEN-OTP-0159-1338-R01](#) at 1345, lns. 186-193.

<sup>335</sup> P-0397, [KEN-OTP-0159-1276-R01](#) at 1301, ln. 794 to 1304, ln. 921; [KEN-OTP-0124-0030](#); [KEN-OTP-0124-0029](#). See also ICC-01/09-01/11-1120-Red2-Corr, para. 40.

<sup>336</sup> ICC-01/09-01/11-1120-Red2-Corr, paras. 38-41.

<sup>337</sup> P-0733, [KEN-OTP-0160-0699](#) at 0701.

<sup>338</sup> [KEN-OTP-0099-0286](#); P-0397, [KEN-OTP-0130-0165-R01](#) at 0171 (Nr. 58), 0181 (Nr. 70). P-0341 also testified that a lawyer named [REDACTED] had prepared an affidavit that GICHERU and [REDACTED] both asked P-0341 to sign in order to withdraw as a witness from the *Ruto and Sang* case, P-0341, T-53, p. 75, lns. 16-23.

<sup>339</sup> GICHERU, [KEN-OTP-0159-0815](#) at 0830, ln. 501 to 0831, ln. 530.

105. 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.<sup>340</sup> As a result, P-0397 contacted P-0516 and told him that “[t]here is a deal if you agree to it, then you could get money”.<sup>341</sup> P-0516 agreed to P-0397’s proposal to meet GICHERU<sup>342</sup> and shortly after P-0397 took him to GICHERU’s office in Eldoret.<sup>343</sup> After this first meeting with GICHERU, P-0397 confirmed that P-0516 received from GICHERU between 500,000 KSh and 800,000 KSh.<sup>344</sup> P-0397 did not receive any of the payment he was promised for introducing P-0516 to GICHERU.<sup>345</sup> When P-0397 asked for this payment, GICHERU avoided the issue.<sup>346</sup>

106. Around this time, P-0341 saw P-0397 in GICHERU’s office several times, as well as YEBEI.<sup>347</sup> On one of these occasions, P-0397 told P-0341 that they had received some payments, but if they did not receive them in full they would “return to the ICC”.<sup>348</sup>

107. P-0397 was also threatened by GICHERU, since the latter suspected that he might still be cooperating with the Prosecution. On 7 December 2013, P-0397 met with GICHERU [REDACTED]  
[REDACTED].<sup>349</sup> 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.<sup>350</sup> As a result of this exchange, P-0397 felt that he was in danger and could be killed.<sup>351</sup>

<sup>340</sup> P-0397, [KEN-OTP-0159-1232-R01](#) at 1239, lns. 173-180; [KEN-OTP-0159-1338-R01](#) at 1352, lns. 449-464.

<sup>341</sup> P-0397, [KEN-OTP-0159-1533-R01](#) at 1556, ln. 764; P-0516, T-63, p. 33, lns. 10-13.

<sup>342</sup> P-0397, [KEN-OTP-0159-1533-R01](#) at 1556, ln. 759 to 1557, ln. 830.

<sup>343</sup> P-0397, [KEN-OTP-0159-1232-R01](#) at 1239, lns. 173-195; [KEN-OTP-0159-1338-R01](#) at 1353, lns. 487-492; P-0516, T-63, p. 37, lns. 17-22; p. 46, lns. 9-15; T-65, p. 61, lns. 1-14.

<sup>344</sup> P-0397, [KEN-OTP-0159-1533-R01](#) at 1557, lns. 820-823. Compare with P-0516, T-63, p. 46, lns. 11-15.

<sup>345</sup> P-0397, [KEN-OTP-0159-1533-R01](#) at 1559, lns. 885-890.

<sup>346</sup> P-0397, [KEN-OTP-0159-1533-R01](#) at 1559, lns. 892-899.

<sup>347</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0277, para. 119; see also T-53, p. 55, ln. 18 to p. 56, ln. 2, p. 57, ln. 20 to p. 57, ln. 1.

<sup>348</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0277, para. 119.

<sup>349</sup> [REDACTED] P-0739, T-66, p. 30, ln. 11 to p. 32, ln. 21. [REDACTED]

<sup>350</sup> P-0397, [KEN-OTP-0159-1338-R01](#) at 1349, lns. 333-346.

<sup>351</sup> P-0397, [KEN-OTP-0159-1338-R01](#) at 1349, lns. 340-341; P-0516, T-63, p. 60, lns. 14-22.

108. Despite several attempts to clarify the circumstances of his withdrawal,<sup>352</sup> the OTP was unable to meet with P-0397. However, in December 2013, P-0397 began receiving threats to his life [REDACTED]<sup>353</sup>
109. 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.<sup>354</sup> 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.
110. On 16 January 2014,<sup>355</sup> and at the request of OTP investigators, P-0397 called GICHERU's official business telephone number. However GICHERU refused to talk on that phone, and called him back using a different number.<sup>356</sup> 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".<sup>357</sup> P-0397 told GICHERU that the money he had received seemed to have caused his problems.<sup>358</sup> 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.<sup>359</sup>
111. GICHERU then asked P-0397 whether he wanted a meeting with [REDACTED]  
[REDACTED].<sup>360</sup> GICHERU proposed a meeting between them to solve P-0397's problems.<sup>361</sup> 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

<sup>352</sup> **P-0730**, [KEN-OTP-0159-0884](#) at 0902-0903, paras. 68-72.

<sup>353</sup> **P-0397**, [KEN-OTP-0159-1191-R01](#) at 1202, ln. 314 to 1205, ln. 433, at 1218, lns. 867-882, at 1224, ln. 1060 to 1229, ln. 1251; [KEN-OTP-0138-0531](#). See also **P-0341**, T-53, p. 57, lns. 7-11; **P-0397/GICHERU**, [KEN-OTP-0160-0833](#) at 0838, lns. 131-134, **GICHERU**, [KEN-OTP-0159-0795](#) at 0804, ln. 300 to 0805, ln. 323.

<sup>354</sup> **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](#); [KEN-OTP-0159-1588-R01](#).

<sup>355</sup> **P-0397/GICHERU**, [KEN-OTP-0160-0824](#) at 0825.

<sup>356</sup> **P-0397/GICHERU**, [KEN-OTP-0160-0824](#) at 0826, lns. 18-21.

<sup>357</sup> **P-0397/GICHERU**, [KEN-OTP-0160-0833](#) at 0835, lns. 17, 28-30.

<sup>358</sup> **P-0397/GICHERU**, [KEN-OTP-0160-0833](#) at 0837, lns. 73-82.

<sup>359</sup> **P-0397/GICHERU**, [KEN-OTP-0160-0833](#) at 0836, ln. 40 to 0837, ln. 98.

<sup>360</sup> **P-0397/GICHERU**, [KEN-OTP-0160-0833](#) at 0837, lns. 86-93; [KEN-OTP-0159-1588-R01](#) at 1618, ln. 992 to 1619, ln. 1031.

<sup>361</sup> **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, lns. 5-29; **GICHERU**, [KEN-OTP-0159-0795](#) at 0803, ln. 245 to 0804, ln. 309; **P-0516**, T-63, p. 60, lns. 14-22. **P-0341**, T-53, p. 57, ln. 20 to p. 58, ln. 1.



responded “[c]an the white people really save someone, or?”<sup>362</sup> GICHERU later admitted having talked to ██████████ on behalf of P-0397 because of threats which P-0397 was receiving.<sup>363</sup> P-0397 also offered to refund the money, but GICHERU told him to “stop”.<sup>364</sup> P-0397 further stated: “You are the one who had me return to you. And you persuaded me. We spoke to you together with ██████████ (sic), you told me ‘My dear, you are one of our people.’”<sup>365</sup> 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”.<sup>366</sup>

112. 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 ██████████ 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.<sup>367</sup> YEBEI did not deny this. P-0397 told YEBEI about his encounter with GICHERU ██████████<sup>368</sup> at ██████████ ██████████ Eldoret, on 7 December 2013.<sup>369</sup>

113. Due to the assessed risk to his safety, P-0397 was subsequently relocated ██████████ ██████████<sup>370</sup>. OTP investigators were due to meet him on 10 March 2014.<sup>371</sup> However, ██████████ ██████████<sup>372</sup> As set out in more detail in the Trial Brief,<sup>373</sup> ██████████<sup>374</sup>

<sup>362</sup> P-0397/GICHERU, [KEN-OTP-0160-0833](#) at 0838, ln. 118.

<sup>363</sup> GICHERU, [KEN-OTP-0159-0795](#) at 0804, ln. 303 to 0806, ln. 353.

<sup>364</sup> P-0397/GICHERU, [KEN-OTP-0160-0833](#) at 0840, lns. 203-205.

<sup>365</sup> P-0397/GICHERU, [KEN-OTP-0160-0833](#) at 0839, lns. 156-158.

<sup>366</sup> P-0397/GICHERU, [KEN-OTP-0160-0833](#) at 0839, lns. 160-168.

<sup>367</sup> P-0397/YEBEI, [KEN-OTP-0125-0248](#) at 0260, lns. 359-368.

<sup>368</sup> YEBEI in fact volunteered the name ██████████. See P-0397/YEBEI, [KEN-OTP-0125-0248](#) at 0260, lns. 363-368.

<sup>369</sup> P-0397/YEBEI, [KEN-OTP-0125-0248](#) at 0260, lns. 363-365; P-0397, [KEN-OTP-0159-1338-R01](#) at 1347-1348, lns. 263-295.

<sup>370</sup> P-0730, [KEN-OTP-0159-0884](#) at 0906, para. 85.

<sup>371</sup> P-0730, [KEN-OTP-0159-0884](#) at 0906, paras. 85-86.

<sup>372</sup> P-0516, T-63, p. 36, lns. 19-22, p. 47, lns. 7-12, p. 61, lns. 1-5; P-0341, T-53, p. 57, lns. 7-11; T-54, p. 21, ln. 22 to p. 22, ln. 4; P-0730, T-62, p. 8, lns. 2-7; P-0739, T-66, p. 94, ln. 24 to p. 96, ln. 3.

<sup>373</sup> Trial Brief, para. 89.

<sup>374</sup> P-0516, T-63, p. 61, lns. 1-5; P-0730, T-62, p. 8, lns. 2-7; [KEN-OTP-0159-0884](#) at 0907, paras. 87-90; P-0739, T-66, p. 96, ln. 3.



- c) GICHERU's contact details in P-0397's phone<sup>381</sup> and possession of his business card;<sup>382</sup>
- d) GICHERU confirming the authenticity of the business card given to P-0397, including the mobile phone number, on which P-0397 called him for the recorded phone call;<sup>383</sup>
- e) the contents of P-0397's recorded phone call with YEBEI, during which YEBEI did not deny bringing P-0397 to GICHERU [REDACTED] or that GICHERU had paid P-0397 1,000,000 KSh and promised him 5,000,000 KSh in total;<sup>384</sup>
- f) P-0613's evidence that [REDACTED] had told her that P-0397 had received 500,000 KSh to withdraw as an ICC witness;<sup>385</sup>
- g) P-0613's report to the OTP [REDACTED] that P-0397 was in [REDACTED] "meeting with a lawyer of one of the accused";<sup>386</sup>
- h) P-0800's evidence that [REDACTED] had informed him that both P-0397 and P-0516 went to see GICHERU on that day [REDACTED];<sup>387</sup>
- i) P-0516's evidence that P-0397 took him to GICHERU [REDACTED];<sup>388</sup>
- j) P-0397's admission to the OTP investigators three days after the meeting [REDACTED] [REDACTED] that he had gone to a lawyer to withdraw as an ICC witness,<sup>389</sup> after having initially denied being offered any money to withdraw his testimony when asked on the day of the meeting;<sup>390</sup>
- k) P-0341's evidence that he saw P-0397 at GICHERU [REDACTED] on several occasions and that he admitted having received money from GICHERU;<sup>391</sup>

<sup>381</sup> [KEN-OTP-0153-0054-R01](#) at 0054.

<sup>382</sup> [KEN-OTP-0124-0028](#). GICHERU confirmed the authenticity of this card, *see* GICHERU, [KEN-OTP-0159-0736](#) at 0739, ln. 87 to 0740, ln. 124; [KEN-OTP-0159-0766](#) at 0793, lns. 892-895; [KEN-OTP-0159-0585](#).

<sup>383</sup> GICHERU, [KEN-OTP-0159-0736](#) at 0739, ln. 87 to 0740, ln. 124; [KEN-OTP-0159-0766](#) at 0790, lns. 792-807, at 0793, lns. 892-906; [KEN-OTP-0159-0585](#). *See also* P-0397, [KEN-OTP-0159-1365-R01](#) at 1369, ln. 83.

<sup>384</sup> P-0397/YEBEI, [KEN-OTP-0125-0248](#) at 0258, ln. 277 to 0260, ln. 361.

<sup>385</sup> P-0613, [KEN-OTP-0111-0162](#) at 0169, para. 36. *See also* P-0739, T-66, p. 94, ln. 24 to p. 95, ln. 4.

<sup>386</sup> [KEN-OTP-0129-0298-R01](#); P-0613, T-56, p. 70, lns. 16-25. Although GICHERU did not formally represent any of the accused at the ICC, a substantial body of evidence in this case indicates that he was bribing witnesses on behalf of RUTO, who was an accused.

<sup>387</sup> [KEN-OTP-0116-0482](#) at 0482, although [REDACTED] told P-0800 this meeting was at GICHERU [REDACTED].

<sup>388</sup> P-0516, T-63, p. 22, lns. 16-17, p. 37, lns. 17-22.

<sup>389</sup> [KEN-OTP-0139-0095-R01](#) at 0095.

<sup>390</sup> [KEN-OTP-0139-0097](#) at 0098.

<sup>391</sup> P-0341, T-53, p. 54, lns. 5-17, p. 55, ln. 18 to p. 56, ln. 2, p. 57, lns. 20-22; [KEN-OTP-0150-0255-R01](#) at 0277, para. 119. .

- l) GICHERU's own admission that he knew and spoke to P-0397 in person and by phone in 2013 and 2014 and that the latter visited ██████████;<sup>392</sup> and
- m) GICHERU's admission that he was talking to ██████████ on P-0397's behalf.<sup>393</sup>

*iv. GICHERU's individual criminal responsibility*

116. The evidence described above clearly establishes that GICHERU, jointly with ██████████ ██████████ approached and corrupted P-0397 as part of the Common Plan.<sup>394</sup> The Prosecution therefore submits that GICHERU's individual criminal responsibility is best characterised as a co-perpetrator under article 25(3)(a), and/or as a direct perpetrator for his personal acts of corrupt influence. Accordingly, these two modes are specifically addressed below. However, the evidence also supports his conviction under any of the other charged modes of liability as outlined in the Trial Brief.<sup>395</sup>

117. The material facts common to all incidents set out in Part B. I. above are incorporated *mutatis mutandis*.

118. The evidence proves beyond reasonable doubt that GICHERU performed the following specific acts in relation to the First Incident:

- a) During or before April 2013, GICHERU solicited or induced ██████████ to approach P-0397 to persuade him to meet with GICHERU in ██████████ which they in fact did.<sup>396</sup>
- b) On or about 26 April 2013, ██████████ took P-0397 to meet GICHERU at ██████████ ██████████ in ██████████.<sup>397</sup> At this meeting GICHERU ██████████ offered to pay P-0397 a Bribe of 5,000,000 KSh, in instalments,<sup>398</sup> as an inducement to withdraw as a

<sup>392</sup> GICHERU, [KEN-OTP-0159-0815](#) at 0817, ln. 63 to 0819, ln. 116; at 0821, lns. 184-200. See further GICHERU's disingenuous attempts to explain away his contacts with P-0397 in paras. 315 b) and 316 below.

<sup>393</sup> GICHERU, [KEN-OTP-0159-0795](#) at 0804 ln. 303 to 0806, ln. 353.

<sup>394</sup> See *supra* paras. 98-114.

<sup>395</sup> Trial Brief, paras. 97-103.

<sup>396</sup> P-0397, [KEN-OTP-0159-1276-R01](#) at 1307, ln. 998 to 1308, ln. 1052; [KEN-OTP-0159-1232-R01](#) at 1235, ln. 60 to 1236, ln. 82.

<sup>397</sup> P-0397, [KEN-OTP-0159-1309-R01](#) at 1312, lns. 41-63, at 1327, lns. 603-609; [KEN-OTP-0159-1533-R01](#) at 1535, lns. 22-35, at 1539, ln. 169 to 1540, ln. 184. *Contra* GICHERU, [KEN-OTP-0159-0766](#) at 0783, lns. 550-568, 577-582, at 0784, ln. 603 to 0785, ln. 624.

<sup>398</sup> P-0397, [KEN-OTP-0159-1309-R01](#) at 1314, ln. 105 to 1315, ln. 158.

Prosecution Witness,<sup>399</sup> to sign an affidavit to this effect, and to locate other Prosecution Witnesses and bring them to GICHERU.<sup>400</sup>

- c) On or about 27 April 2013 and at [REDACTED] GICHERU paid P-0397 a cash instalment of 600,000 KSh.<sup>401</sup>
- d) On or about 30 April 2013 [REDACTED] GICHERU paid P-0397 a second cash instalment of 400,000 KSh.<sup>402</sup>
- 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 wished to withdraw his testimony against said persons, and instructed or induced P-0397 to sign it.<sup>403</sup>
- 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.<sup>404</sup>
- g) On 7 December 2013 [REDACTED] GICHERU [REDACTED] [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.<sup>405</sup>

119. The Prosecution submits that the factual allegations set out above establish GICHERU's criminal responsibility for the First Incident, as a **direct perpetrator** as a result of the actions described in paragraphs a) to g) above and/or as a **co-perpetrator** as a result of his essential contributions to the Common Plan.<sup>406</sup> 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.

<sup>399</sup> P-0397, [KEN-OTP-0159-1309-R01](#) at 1315, lns. 151-167.

<sup>400</sup> P-0397, [KEN-OTP-0159-1309-R01](#) at 1313, lns. 77-92.

<sup>401</sup> P-0397, [KEN-OTP-0159-1309-R01](#) at 1314, ln. 110 to 1315, ln. 167.

<sup>402</sup> P-0397, [KEN-OTP-0159-1309-R01](#) at 1314 ln. 115 to 1315, ln. 167.

<sup>403</sup> P-0397, [KEN-OTP-0159-1338-R01](#) at 1345, ln. 184 to 1346, ln. 246.

<sup>404</sup> P-0397, [KEN-OTP-0159-1232-R01](#) at 1238, ln. 145 to 1239, ln. 180; [KEN-OTP-0159-1338-R01](#) at 1352, lns. 449-464; [KEN-OTP-0159-1533-R01](#) at 1550, ln. 555 to 1557, ln. 830. *See also*, P-0516, T-63, p. 22, lns. 16-17, p. 33, lns. 10-13, p. 37, lns. 17-22; T-65, p. 61, lns. 1-14.

<sup>405</sup> P-0397, [KEN-OTP-0159-1338-R01](#) at 1349, lns. 333-346.

<sup>406</sup> As set out in Part B. I. ii. and paragraphs a) to g) above.

120. The subjective elements of both direct perpetration and co-perpetration<sup>407</sup> may be inferred from the relevant facts, as set out in Part B. I. ii. and vi. and paragraphs a) to g) above.

121. Accordingly, the Prosecution submits that the evidence establishes beyond reasonable doubt that GICHERU is criminally responsible for the First Incident under articles 25(3)(a), or in the alternative (b), (c) or (d), as outlined in the Trial Brief.<sup>408</sup>

## II. Second Incident: Corruptly influencing Witness P-0516<sup>409</sup>

### i. Introduction

122. ██████████ (“P-0516”) was a Prosecution Witness in the *Ruto and Sang* case who testified in that trial pursuant to a summons.<sup>410</sup> He had previously given a statement to the Prosecution regarding the PEV.<sup>411</sup>

123. During the period April to May 2013, in ██████████ Kenya, GICHERU, ██████████ corruptly influenced P-0516 by offering and paying him a Bribe of 500,000 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.<sup>412</sup>

### ii. Corruptly influencing P-0516

124. ██████████  
██████████  
██████████<sup>413</sup> On 18 February 2013, in anticipation of his testimony in that case, P-0516’s identity was disclosed to the Defence.<sup>414</sup> On 6 July 2014, P-0516 was scheduled to attend a meeting with Court officials regarding his scheduled testimony, but he failed to do so and ceased all communication.<sup>415</sup> As a result, the TC V(A) issued a

<sup>407</sup> As set out in paras. 93-94 of the Trial Brief.

<sup>408</sup> Trial Brief, paras. 93-103.

<sup>409</sup> Confirmation Decision, paras. 71-87, disposition.

<sup>410</sup> ICC-01/09-01/11-1274-Corr2, p. 77 (disposition); **P-0516**, T-63, p. 21, lns. 10-12, p. 51, lns. 18-22, p. 54, lns. 13-16, p. 58, lns. 15-16.

<sup>411</sup> **P-0516**, T-63, p. 21, lns. 2-4; T-64, p. 30, lns. 19 to p. 31, ln. 14.

<sup>412</sup> **P-0516**, T-63, p. 33, lns. 8-13; **P-0397**, [KEN-OTP-0159-1562-R01](#) at 1568, lns 156-168; [KEN-OTP-0159-1533-R01](#) at 1556, ln. 759 to 1557, ln. 830; [KEN-OTP-0159-1338-R01](#) at 1352, ln. 449 to 1354, ln. 491. *Contra* GICHERU, [KEN-OTP-0159-0815](#) at 0835, lns. 677-681.

<sup>413</sup> ICC-01/09-01/11-1120-Red2-Corr, para. 45.

<sup>414</sup> ICC-01/09-01/11-1120-Red2-Corr, para. 44.

<sup>415</sup> **P-0730**, [KEN-OTP-0159-0884](#) at 0911, para. 102.

summons for his appearance in court,<sup>416</sup> where he testified between 22 and 26 September 2014.<sup>417</sup> In his testimony, he renounced almost all material portions of his prior statements to the OTP which implicated RUTO or SANG,<sup>418</sup> and denied having any knowledge of GICHERU.<sup>419</sup> The evidence summarised below establishes that this recantation was the result of corrupt influence from GICHERU and his associates.

125. During their meeting in April or May 2013<sup>420</sup> at GICHERU's office in Eldoret,<sup>421</sup> GICHERU asked P-0397 if he knew of other ICC witnesses.<sup>422</sup> In P-0397's presence, GICHERU directed YEBEI to locate an ICC witness – referring to P-0516 [REDACTED] [REDACTED].<sup>423</sup> P-0397 told them that he had seen P-0516 [REDACTED].<sup>424</sup> 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.<sup>425</sup> As a result, GICHERU and YEBEI instructed P-0397 to locate P-0516 and take him to GICHERU [REDACTED].<sup>426</sup> P-0397 explained that YEBEI told him that he [REDACTED] (who P-0397 described as “brokers”)<sup>427</sup> received payment for identifying and locating other Prosecution Witnesses.<sup>428</sup>

126. Subsequently, in May 2013, P-0397 saw P-0516 [REDACTED]<sup>429</sup> and the two met at a local hotel.<sup>430</sup> During their meeting, P-0397 told P-0516 about the rumours circulating that he was an ICC witness.<sup>431</sup> 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

<sup>416</sup> ICC-01/09-01/11-1274-Corr2, p. 77 (disposition).

<sup>417</sup> **P-0516**, T-63, p. 21, lns. 10-12; T-64, p. 10, lns. 15-20, p. 17, ln. 14 to p. 19, ln. 7, p. 48, ln. 17 to p. 49, ln. 4; T-65, p. 74, lns. 8-11.

<sup>418</sup> **P-0516**, T-63, p. 54, ln. 17 to p. 55, ln. 10.

<sup>419</sup> **P-0516**, T-63, p. 55, lns. 11-17.

<sup>420</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1554, lns. 689-708. *See also*, **P-0516**, T-63, p. 24, lns. 17-25.

<sup>421</sup> **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1352, ln. 465 to 1353, ln. 472.

<sup>422</sup> **P-0397**, [KEN-OTP-0159-1338-R01](#) at 1352, lns. 449-464.

<sup>423</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1551, ln. 612 to 1552, ln. 622. *See also*, **P-0516**, T-64, p. 9, ln. 22 to p. 10, ln. 9.

<sup>424</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1552, lns. 621-624.

<sup>425</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1552, lns. 627-632; [KEN-OTP-0159-1232-R01](#) at 1238, ln. 150 to 1239, ln. 180.

<sup>426</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1550, lns. 555-562.

<sup>427</sup> **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).

<sup>428</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1559, lns. 885-905.

<sup>429</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1552, lns. 621-645. *See also*, **P-0613**, [KEN-OTP-0102-0178](#), para. 23.

<sup>430</sup> **P-0516**, T-63, p. 23, lns. 13-24, p. 36, lns. 6-8; T-65, p. 24, lns. 11-15.

<sup>431</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1555, lns. 730-732; *compare with* **P-0516**, T-63, p. 23, lns. 13-22, p. 25, lns. 5-25, p. 26, lns. 10-20, p. 36, lns. 9-18.

GICHERU.<sup>432</sup> In the context of this conversation with P-0397, P-0516 caught a “hint that the money was for withdrawing” as ICC witnesses.<sup>433</sup> P-0516 agreed to meet with the individual he later learned was GICHERU<sup>434</sup> and P-0397 then reported this to GICHERU, who said he would find a date to meet with P-0516.<sup>435</sup>

127. Shortly after, P-0397 took P-0516 to meet GICHERU at his Eldoret office.<sup>436</sup> There GICHERU and P-0516 had a private discussion during which they formally introduced themselves.<sup>437</sup> Later on, upon GICHERU’s invitation, P-0516 returned to see GICHERU in his office on several occasions, alone.<sup>438</sup> According to P-0516, GICHERU agreed to pay him 500,000 KSh,<sup>439</sup> which P-0516 understood to be in exchange for his withdrawal as a witness in the *Ruto and Sang* case.<sup>440</sup> P-0516 also mentioned to P-0397 the payment amount, but P-0397 could not recall if the exact amount was 500,000 KSh or 800,000 KSh.<sup>441</sup>

128. Thereafter, P-0516 went through the same withdrawal process as P-0397,<sup>442</sup> but ultimately did not follow through. In fact, while P-0516 initially visited the office of ██████ Advocates with the intention to depose to an affidavit, in the end he did not do so out of fear for his security.<sup>443</sup> P-0397 heard that, like him, P-0516 “was in the process as well of writing a letter of withdrawal from the case”, but did not know whether or not P-0516’s letter was sent to the ICC.<sup>444</sup> The Prosecution is not in possession of either the letter or the affidavit.

<sup>432</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1556, lns. 759-779; *compare with* **P-0516**, T-63, p. 26, ln. 24 to p. 27, ln. 7.

<sup>433</sup> **P-0516**, T-63, p. 56, lns. 15-22, p. 33, lns. 10-13.

<sup>434</sup> **P-0516**, T-63, p. 27, lns. 4-7, p. 33, lns. 10-13.

<sup>435</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1553, lns. 654-662.

<sup>436</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1556, ln. 759 to 1557, ln. 802; **P-0516**, T-63, p. 27, lns. 6-7, 16, 19, p. 36, lns. 7-20; T-65, p. 16, lns. 24-25.

<sup>437</sup> **P-0516**, T-63, p. 38, lns. 15-19, p. 41, lns. 15-20, T-65, lns. 1-14.

<sup>438</sup> **P-0516**, T-63, p. 37, ln. 7 to p. 38, ln. 11, p. 41, ln. 22 to p. 46, ln. 5, p. 48, lns. 20-24; T-65, p. 91, lns. 3-5.

<sup>439</sup> **P-0516**, T-63, p. 32, lns. 10-13, p. 33, ln. 10, p. 43, ln. 15 to p. 44, ln. 5, p. 46, lns. 11-13, p. 48, lns. 20-24.

<sup>440</sup> **P-0516**, T-63, p. 56, lns. 15-22, p. 33, lns. 10-13, p. 34, lns. 8-11. *Compare with*, **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1556, lns. 759-764.

<sup>441</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1557, lns. 820-823, *compare with* **P-0516**, T-63, p. 44, lns. 11-15.

<sup>442</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1557, lns. 826-830.

<sup>443</sup> **P-0516**, T-63, p. 49, ln. 8 to p. 51, ln. 22; T-65, p. 77, ln. 12 to p. 78, ln. 2.

<sup>444</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1557, lns. 827-830.



129. GICHERU met with P-0516 [REDACTED] five or six times in the following weeks and paid him a total of at least 500,000 KSh.<sup>445</sup> P-0516 told P-0397 that he had received the entire payment and that he was not complaining.<sup>446</sup> The last time P-0516 went to GICHERU [REDACTED] to receive money from him, GICHERU told him to “never come back”.<sup>447</sup>
130. Thereafter, P-0516 ceased communicating with the Prosecution and refused to testify voluntarily in the *Ruto and Sang* case.<sup>448</sup>
131. 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,<sup>449</sup> and again on 19 July 2013 [REDACTED] told [REDACTED] that GICHERU had paid P-0516 600,000 KSh;<sup>450</sup> and both [REDACTED]<sup>451</sup> and [REDACTED] told [REDACTED] that P-0516 had been paid.<sup>452</sup> By suddenly withdrawing his cooperation with the Prosecution, without explanation, P-0516’s behaviour is also indicative of a corruptly influenced witness.<sup>453</sup>
132. 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.<sup>454</sup>
133. During his *Ruto and Sang* in court testimony in September 2014, P-0516 stated that much of the evidence that he provided the Prosecution in his original witness statement was false,<sup>455</sup> and that he had been told by [REDACTED] what to say.<sup>456</sup> In the course of the same testimony, P-0516 also denied knowing GICHERU.<sup>457</sup> Based on the available

<sup>445</sup> **P-0516**, T-63, p. 33, ln. 10, p. 41, ln. 23 to p. 44, ln. 2, p. 45, ln. 20 to p. 47, ln. 12, p. 48, lns. 17-19; **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1557, lns. 820-823; **P-0613**, T-55, p. 45, lns. 2-15; [KEN-OTP-0111-0162](#) at 0169, para. 36; [KEN-OTP-0102-0178](#) at 0181, paras. 18, 22.

<sup>446</sup> **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1559, lns. 871-880.

<sup>447</sup> **P-0516**, T-63, p. 47, lns. 9-17.

<sup>448</sup> **P-0730**, [KEN-OTP-0159-0884](#) at 0911, para. 102 ; ICC-01/09-01/11-1274-Corr2, p. 77 (disposition).

<sup>449</sup> **P-0613**, [KEN-OTP-0102-0178](#) at 0181, para. 18.

<sup>450</sup> **P-0613**, T-55, p. 44, ln. 22 to p. 45, ln. 15; [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).

<sup>451</sup> **P-0800**, [KEN-OTP-0160-0468](#) at 0471, ln. 109 to 0472, ln. 120.

<sup>452</sup> **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 42.

<sup>453</sup> **P-0730**, [KEN-OTP-0159-0884](#) at 0911-0912, paras. 98-107.

<sup>454</sup> **P-0613**, [KEN-OTP-0102-0178](#) at 0181, para. 23. *Contra* **P-0516**, T-63, p. 51, ln. 24 to p. 25, ln. 1.

<sup>455</sup> **P-0516**, T-63, p. 54, ln. 13 to p. 55, ln. 10.

<sup>456</sup> **P-0516**, T-64, p. 16, lns. 4-19, p. 24, lns. 6-10. *Contra*, **P-0613**, T-55, p. 84, lns. 10-15, p. 86, lns. 1-6; **P-0800**, T-51, p. 5, ln. 25 to p. 6, ln. 7.

<sup>457</sup> **P-0516**, T-63, p. 55, lns. 11-21, p. 56, lns. 5-13.

evidence, including P-0516's subsequent admission to having been paid by GICHERU,<sup>458</sup> the Prosecution submits that P-0516's recantation of his witness statement during his previous testimony was the result of the bribery and the continuing influence by GICHERU and the Common Plan Members.<sup>459</sup>

*iii. Analysis of the evidence related to the Second Incident*

134. The Prosecution relies on P-0516's evidence to the effect that GICHERU agreed to and then paid P-0516 money to corruptly influence him to recant his testimony. The Prosecution considers that although P-0516 has not been completely candid in his statements to the Prosecution, the particular circumstances pertaining to this witness, when assessed carefully, show that the core portions of his evidence may be relied upon by the Chamber. Despite his denial in *Ruto and Sang* that he knew GICHERU, and even if the Chamber concludes that P-0516 has not been fully forthcoming regarding the extent of his involvement with the witness interference scheme, this does not mean he should be disbelieved when he now admits that he was bribed by GICHERU. P-0516's admission of receiving money from GICHERU may be regarded as "an admission against interest" which is an indicium of reliability, as discussed in Chapter A.III above.
135. Specifically, as detailed in the previous section, P-0516's admitted that: (i) he was taken by P-0397 to meet GICHERU in his office; (ii) GICHERU agreed to pay P-0516 a substantial sum of money; (iii) P-0516 then went to a lawyer with the intention of signing an affidavit withdrawing as a Prosecution Witness; (iv) P-0516 refused to testify voluntarily in the *Ruto and Sang* case; and (v) when summonsed before the Court (in *Ruto and Sang*), P-0516 recanted his original statement and denied knowing GICHERU. All of these facts are either adequately corroborated by other witnesses in this case or are facts of which the Chamber can take judicial notice. The Chamber may thus safely rely upon P-0516's testimony to find that these facts have been proved beyond a reasonable doubt.

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<sup>458</sup> P-0516, T-65, p. 13, ln. 7 to p. 14, ln. 13.

<sup>459</sup> In [REDACTED] in-court testimony, [REDACTED] denied the allegations made by P-0516 in his *Ruto and Sang* in-court testimony and noted that, as far as [REDACTED] knows, P-0516 gave a statement to the ICC before [REDACTED], [REDACTED]

136. Moreover, despite the contradictions in the statements P-0516 gave to the Prosecution after he had testified in the *Ruto and Sang* case<sup>460</sup> and his reluctance to testify voluntarily in this case,<sup>461</sup> P-0516 remained consistent in his testimony that GICHERU had paid him a sum of money after P-0397 introduced them, and that the money was to withdraw as a Prosecution Witness from the *Ruto and Sang* case<sup>462</sup> (which he then did by refusing to testify voluntarily). When questioned in court about it, P-0516 explained that these contradictions were mainly due to the fact that when he was interviewed by the OTP in January 2015, he was in a state of great fear due, *inter alia*, to the disappearance of his friends, ██████████<sup>463</sup> and then was confused by the interview process and the legal consequences.<sup>464</sup>

137. Beyond exploring these contradictions, however, the Defence did not challenge the crux of P-0516's testimony regarding GICHERU's actions, the money the latter paid to P-0516, or P-0397's role in introducing P-0516 to GICHERU. Rather, the Defence obliquely implied that, through a sophisticated and deliberate amalgam of facts and fiction, P-0516 (possibly together with P-0397)<sup>465</sup> falsely incriminated GICHERU in order to benefit from the ICC Protection Programme.<sup>466</sup> This theory, based on speculation and unsupported by evidence, does not account for several factors.

138. *First*, P-0516's testimony regarding the main allegations against GICHERU was internally consistent and corroborated by other evidence, including an unguarded, audio-recorded statement made by Intermediary ██████████ to another witness.<sup>467</sup> *Second*, the Defence's theory is inconsistent with P-0516's dissatisfaction with the Court's protection scheme<sup>468</sup> and his clear reluctance to engage with the Court.<sup>469</sup> *Third*, this theory does not

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<sup>460</sup> **P-0516**, T-65, p. 15, ln. 12 to p. 16, ln. 6, p. 19, ln. 11 to p. 21, ln. 2, p. 21, ln. 21 to p. 22, ln. 11, p. 24, ln. 3 to p. 25, ln. 18, p. 31, ln. 23 to p. 33, ln. 5, p. 36, ln. 1 to p. 37, ln. 16, p. 39, ln. 18 to p. 40, ln. 15, p. 47, ln. 22 to p. 48, ln. 4.

<sup>461</sup> ICC-01/09-01/20-277-Red, para. 36. **P-0516**, T-62, p. 40, ln. 24 to p. 44, ln. 22.

<sup>462</sup> **P-0730**, [KEN-OTP-0159-0884](#) at 0912, para. 107.

<sup>463</sup> **P-0516**, T-63, p. 59, ln. 22 to p. 61, ln. 11; T-65, p. 9, lns. 2-15, p. 20, ln. 23 to p. 21, ln. 7, p. 26, ln. 13 to p. 27, ln. 2, p. 28, lns. 22-23, p. 30, lns. 7-15.

<sup>464</sup> **P-0516**, T-65, p. 32, ln. 14 to p. 33, ln. 6, p. 38, lns. 2-12, p. 46, lns. 5-9. *See also* T-65, p. 50, lns. 21-24.

<sup>465</sup> Although not stated explicitly, this is the only explanation that would explain the agreement between their versions regarding P-0397 taking P-0516 to meet GICHERU and P-0397 thereafter being paid by GICHERU to withdraw.

<sup>466</sup> "ICCPP", **P-0516**, T-65, p. 21, lns. 13-17, p. 22, lns. 19-23, p. 28, ln. 11 to p. 29, ln. 2.

<sup>467</sup> ██████████

<sup>468</sup> **P-0516**, [KEN-OTP-0150-0684-R01](#) at 0695, lns. 402-406. *Compare with* T-65, p. 30, lns. 1-15.

<sup>469</sup> **P-0730**, [KEN-OTP-0159-0884](#) at 0912, para. 103.

gel with P-0516 denying that he knew GICHERU when asked under oath in the *Ruto and Sang* case, at a time when P-0397 – P-0516’s presumed accomplice – had already informed the OTP that he and P-0516 had been paid by GICHERU<sup>470</sup> and had in fact disappeared, never to be seen again.<sup>471</sup> *Fourth*, this theory ignores that two of P-0516’s friends and associates of GICHERU – [REDACTED] – had indeed gone missing,<sup>472</sup> sparking a genuine security concern requiring the specialised attention of the Court.<sup>473</sup> *Fifth*, this theory also ignores that acceptance into the ICCPP is subject to a decision by the VWU only, based on an independent assessment of the existence of a real and objective threat to a witness<sup>474</sup> and not on a witness’ subjective representation of the perceived threat. Nor is admission into the ICCPP contingent upon being accepted as a witness, or giving evidence favourable to the Prosecution.<sup>475</sup>

139. In light of the foregoing and when considered in its totality, it is undisputable that the evidence related to the Second Incident is consistent with the general pattern of approaching and corrupting Prosecution Witnesses, directly and through other witnesses in the *Ruto and Sang* case.

140. However, the Prosecution submits that certain uncorroborated and self-serving aspects of P-0516’s evidence should not be accepted by the Chamber, in particular that GICHERU never explicitly 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,<sup>476</sup> notwithstanding that he now admits that he accepted a bribe at least to cease cooperating with the Prosecution.

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<sup>470</sup> **P-0516**, T-63, p. 55, lns. 14-21. **P-0397**, [KEN-OTP-0159-1533-R01](#) at 1550, ln. 555 to 1557, ln. 830. This begs the question, if P-0397 and P-0516 had in fact conspired to falsely incriminate GICHERU *prior to* P-0516’s testimony, why would he deny this in court?

<sup>471</sup> See paras. 113-114 above. Therefore, clearly P-0516 could not have conspired with P-0397 *after* he testified in the *Ruto and Sang* case, which again begs the question: how was he able to tailor his version to match that of P-0397?

<sup>472</sup> **P-0730**, [KEN-OTP-0159-0884](#) at 0906-0909, 0912, paras. 86-92, 104; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0277, para. 121. See also, [REDACTED].

<sup>473</sup> **P-0730**, [KEN-OTP-0159-0884](#) at 0912, para. 104; **P-0516**, T-65, p. 11, lns. 15-19

<sup>474</sup> **P-0516**, T-65, p. 11, lns. 23-25. See also **P-0730**, T-61, p. 21, ln. 21 to p. 23, ln. 11, p. 24, lns. 2-4.

<sup>475</sup> **P-0730**, T-61, p. 23, lns. 16-22.

<sup>476</sup> With the exception of falsely denying meeting with GICHERU.

iv. *GICHERU's individual criminal responsibility*

141. The evidence described above clearly establishes that GICHERU, jointly with YEBEI ██████████, approached and corrupted P-0516 as part of the Common Plan.<sup>477</sup> The Prosecution therefore submits that GICHERU's individual criminal responsibility is best characterized as a co-perpetrator under article 25(3)(a), and/or as a direct perpetrator for his personal acts of corrupt influence. Accordingly, these two modes are specifically addressed below. However, the evidence also supports his conviction under any of the other charged modes of liability, as outlined in the Trial Brief.<sup>478</sup>

142. The material facts common to all incidents set out in Part B. I. above are incorporated *mutatis mutandis*.

143. The evidence discussed and submitted at trial, as illustrated above, proves beyond reasonable doubt that 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 Witness and recant his evidence,<sup>479</sup> which P-0397 did.<sup>480</sup>
- b) During May to June 2013, P-0397 took P-0516 to meet GICHERU at the latter's office in Veecam House, Eldoret.<sup>481</sup> GICHERU then separately met with P-0516 approximately five to six times over this period and paid him a Bribe of at least 500,000 KSh,<sup>482</sup> which P-0516 understood to be in exchange for his withdrawal as a Prosecution Witness.<sup>483</sup>
- c) 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.<sup>484</sup>

<sup>477</sup> See *supra* paras. 124-133.

<sup>478</sup> Trial Brief, paras. 128-134.

<sup>479</sup> P-0397, [KEN-OTP-0159-1533-R01](#) at 1550, ln. 555 to 1552, ln. 632.

<sup>480</sup> P-0397, [KEN-OTP-0159-1533-R01](#) at 1552, lns. 633-646, 1555, lns. 729-758.

<sup>481</sup> P-0397, [KEN-OTP-0159-1533-R01](#) at 1556, lns. 759-790; P-0516, T-63, p. 27, lns. 6-7, 16, 19, p. 36, lns. 6-20; T-65, p. 16, lns. 24-25. See also, P-0341, T-53, p. 47, lns. 1-10, p. 53, ln. 1 to p. 56, ln. 5, p. 61, lns. 15-20; [KEN-OTP-0150-0255-R01](#) at 0263-0264, para. 43.

<sup>482</sup> P-0516, T-63, p. 33, lns. 8-13, p. 46, lns. 6-15; P-0397, [KEN-OTP-0159-1533-R01](#) at 1557, lns. 819-823; P-0613, [KEN-OTP-0111-0162](#) at 0169, para. 36; [KEN-OTP-0102-0178](#) at 0181, paras. 18, 22.

<sup>483</sup> P-0516, T-63, p. 33, lns. 8-13; P-0397, [KEN-OTP-0159-1533-R01](#) at 1556, ln. 759 to 1557, ln. 830.

<sup>484</sup> P-0613, [KEN-OTP-0102-0178](#) at 0181, para. 23 *Contra*, P-0516 T-65, p.23, lns.10-25; p.25, lns.9-18.

144. The Prosecution submits that the factual allegations set out above establish GICHERU's criminal responsibility for the Second Incident, as a **direct perpetrator** as a result of the specific acts described in paragraphs a) and b) above, and/or as a **co-perpetrator** as a result of the specific acts described in paragraphs a) to c) as his essential contributions to the Common Plan.<sup>485</sup> 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.

145. The subjective elements of both direct perpetration and co-perpetration<sup>486</sup> may be inferred from the relevant facts, as set out in Part B. I. ii. and vi. and paragraphs a) to c) above.

146. Accordingly, the Prosecution submits that the evidence establishes beyond reasonable doubt that GICHERU is criminally responsible for the Second Incident under articles 25(3)(a), or in the alternative (b), (c) or (d), as outlined in the Trial Brief.<sup>487</sup>

### III. Third Incident: Corruptly influencing Witness P-0613<sup>488</sup>

#### *i. Introduction*

147. [REDACTED] ("P-0613", [REDACTED]) [REDACTED] [REDACTED] was a Prosecution Witness<sup>489</sup> who provided evidence regarding the PEV to the CIPEV.<sup>490</sup>

148. The evidence proves beyond reasonable doubts that, between April and September 2013, in [REDACTED] GICHERU, [REDACTED] with the assistance of P-0800, P-0604 and P-0495, corruptly influenced P-0613 by offering her bribes to withdraw as a Prosecution Witness and to recant her evidence.<sup>491</sup>

<sup>485</sup> As set out in Part B. I. ii. and paragraphs a) to e) above.

<sup>486</sup> As set out in paras. 124-125 of the Trial Brief.

<sup>487</sup> Trial Brief, paras. 124-134.

<sup>488</sup> Confirmation Decision, paras. 88-112, disposition.

<sup>489</sup> P-0613, T-55, p. 6, lns. 2-8.

<sup>490</sup> P-0613, [KEN-OTP-0106-0910](#) at 0913, para. 10.

<sup>491</sup> P-0613, [KEN-OTP-0102-0178](#) at 0180-0182, paras. 16-23 [KEN-OTP-0115-0216-R01](#) at 0222-0223, paras. 28-34; [KEN-OTP-0118-0137](#) at 0141, para. 16; [KEN-OTP-0106-0910](#) at 0914, paras. 19-20; [KEN-OTP-0111-0162](#) at 0167, para. 25, 0169, paras. 36-39; 0171-0172, paras. 46-55; [KEN-OTP-0111-0557](#) at 0562, 0564-0565, 0568,

ii. *Corruptly influencing P-0613*

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

Prior to this, [REDACTED]<sup>492</sup> [REDACTED]  
[REDACTED].

150. [REDACTED] told P-0613 that RUTO had instructed GICHERU to bribe Prosecution Witnesses in exchange for their withdrawal from the *Ruto and Sang* case.<sup>493</sup> Based on his conversations with GICHERU and [REDACTED] told P-0613 that GICHERU had paid YEBEI and other ICC witnesses such as P-0397 and P-0516.<sup>494</sup>

151. [REDACTED] also told P-0613 that [REDACTED] was taking ICC witnesses to GICHERU to prepare affidavits for their withdrawal from the ICC process.<sup>495</sup> [REDACTED] had taken [REDACTED] to GICHERU and they spoke about P-0613.<sup>496</sup> [REDACTED] informed him [REDACTED] that P-0613 had gone to [REDACTED], to meet with ICC personnel to provide them with information about the PEV.<sup>497</sup> [REDACTED] further stated that [REDACTED] had instructed him to find P-0613's [REDACTED] for GICHERU,<sup>498</sup> who had promised 2,000,000 KSh for P-0613's [REDACTED].<sup>499</sup> [REDACTED]  
[REDACTED]<sup>500</sup>

152. [REDACTED] told P-0613 that GICHERU had informed him that [REDACTED]<sup>501</sup> was tracking her [REDACTED]  
[REDACTED].<sup>502</sup>

paras. 22, 31, 35-37, 54-56;; [KEN-OTP-0124-0007-R01](#) at 0011, paras. 19-21; **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1129; **P-0613**, [KEN-OTP-0115-0216-R01](#) at 0230, para. 75.

**P-0800**, [KEN-OTP-0111-0140](#) at 0147-0149, paras. 35-44, 49, 54; [KEN-OTP-0103-2473](#) at 2478, para. 28; [KEN-OTP-0117-0897](#); [KEN-OTP-0103-3498](#).

<sup>492</sup> **P-0613**, T-58, p. 32, lns. 10-24.

<sup>493</sup> **P-0613**, [KEN-OTP-0102-0178](#) at 0181-0182, paras. 18, 29. *See also* **P-0613**, T-55, p. 38, lns. 14-23.

<sup>494</sup> **P-0613**, [KEN-OTP-0102-0178](#) at 0181, para. 18.

<sup>495</sup> **P-0613**, [KEN-OTP-0106-0910](#) at 0914, para. 20.

<sup>496</sup> **P-0613**, [KEN-OTP-0106-0910](#) at 0914, para. 20.

<sup>497</sup> **P-0613**, [KEN-OTP-0102-0178](#) at 0180, para. 16.

<sup>498</sup> **P-0613**, T-55, p. 19, ln. 24 to p. 20, ln. 3, p. 22, lns. 2-15; [KEN-OTP-0106-0910](#) at 0914, paras. 19-20. *See also* [KEN-OTP-0103-3498](#); [KEN-OTP-0117-0897](#); **P-0800**, [KEN-OTP-0102-0205](#) at 0211, para. 38.

<sup>499</sup> **P-0613**, T-55, p. 19, ln. 24 to p. 20, ln. 3; [KEN-OTP-0102-0178](#) at 0180, para. 16. *See also* **P-0613**, T-56, p. 48, ln 23 to p. 49, ln. 1.

<sup>500</sup> **P-0613**, [KEN-OTP-0102-0178](#) at 0180, para. 17. *See also* **P-0613**, [KEN-OTP-0106-0910](#) at 0914, para. 19.

<sup>501</sup> [REDACTED]

<sup>502</sup> **P-0613**, T-55, p. 23, lns. 11-16; [KEN-OTP-0102-0178](#) at 0181, para. 21. *See also* [KEN-OTP-0106-0910](#) at 0914, para. 19; [KEN-OTP-0117-0898](#) at 0898; [KEN-OTP-0117-1071](#) at 1071. *Contra* GICHERU, [KEN-OTP-0159-0841](#) at 0843-0844.

153. In a phone conversation on 13 May 2013, P-0516 urged P-0613 to withdraw as a Prosecution Witness.<sup>503</sup> On 14 and 17 June 2013, P-0613 received an anonymous SMS trying to organise a meeting with her and promising her *inter alia* [REDACTED] [REDACTED].<sup>504</sup> On 21 June 2013, YEBEI told her he wanted to meet her.<sup>505</sup> They had two further phone conversations that day and YEBEI told her “these people” were seeking witnesses and that they were calling them individually.<sup>506</sup>

154. YEBEI [REDACTED] continued calling P-0613 several times in July 2013.<sup>507</sup> [REDACTED] [REDACTED]<sup>508</sup> explained to P-0613 that: the people who were looking for Prosecution Witnesses had a strong network and a chain of command that included GICHERU and [REDACTED];<sup>509</sup> that the network used intermediaries to contact witnesses;<sup>510</sup> and that GICHERU had paid P-0571 400,000 KSh, P-0516 600,000 KSh, P-0397 500,000 KSh,<sup>511</sup> and P-0739<sup>512</sup> several million.<sup>513</sup> In the same conversation, [REDACTED] suggested that P-0613 go to [REDACTED] and receive her cash payment, but warned her to not deposit the money into a bank account.<sup>514</sup> [REDACTED] [REDACTED]<sup>515</sup> that [REDACTED] [REDACTED] had said that if P-0613 withdrew, the case would be over; and that members of the Common Plan feared her because they believed that she would report them to the ICC.<sup>516</sup> [REDACTED]

<sup>503</sup> P-0613, [KEN-OTP-0102-0178](#) at 0181, para. 23. Compare with P-0516, T-63, p. 51, ln. 24 to p. 25, ln. 1 and T-65, p.23, lns.23-25; p.25, lns.9-18.

<sup>504</sup> P-0613, T-55, p. 79, lns. 4-24; [KEN-OTP-0117-0903](#); P-0613, [KEN-OTP-0106-0910](#) at 0916, paras. 32-35.

<sup>505</sup> P-0613, [KEN-OTP-0106-0922](#) at 0926, para. 16.

<sup>506</sup> P-0613, [KEN-OTP-0106-0922](#) at 0927, para. 23. .

<sup>507</sup> [KEN-OTP-0153-0040](#); P-0613, T-55, p. 52, lns. 2-15; [KEN-OTP-0111-0162](#) at 0165-0167, paras. 14-27, 0169, paras. 37-38; P-0613/YEBEI, [KEN-OTP-0160-1204](#); [KEN-OTP-0160-1334](#); [KEN-OTP-0160-1209](#); [KEN-OTP-0160-1341](#); [KEN-OTP-0160-1223](#); [KEN-OTP-0160-1359](#); P-0613/[REDACTED], [KEN-OTP-0160-1215](#); [KEN-OTP-0160-1349](#); [KEN-OTP-0111-0178](#).

<sup>508</sup> P-0613/[REDACTED], [KEN-OTP-0160-1215](#); [KEN-OTP-0160-1349](#).

<sup>509</sup> P-0613/[REDACTED], [KEN-OTP-0160-1349](#), at 1351, lns. 14-34; P-0613, T-55, pp. 32, lns. 5-17.

<sup>510</sup> P-0613/[REDACTED], [KEN-OTP-0160-1349](#), at 1351, lns. 25-28; P-0613, T-55, p. 32, ln. 18 to p.33, ln. 1.

<sup>511</sup> P-0613/[REDACTED], [KEN-OTP-0160-1349](#) at 1353, lns. 82-97; P-0613, T-55, pp. 43-47.

<sup>512</sup> [REDACTED]

<sup>513</sup> P-0613/[REDACTED], [KEN-OTP-0160-1349](#) at 1353, ln. 90; P-0613, T-55, pp. 45-46; P-0613, [KEN-OTP-0111-0162](#) at 0169, para. 36; This is corroborated by P-0739’s testimony, who testified that he agreed upon 10,000,000 Ksh with GICHERU, see T-66, p. 43, lns. 3-6.

<sup>514</sup> P-0613/[REDACTED], [KEN-OTP-0160-1349](#) at 1354, lns. 115-118; P-0613, T-55, p. 48, ln. 20 to p. 49, ln. 2; [KEN-OTP-0111-0162](#) at 0169, para. 36; see also 0173, para. 55 where [REDACTED] again warns P-0613 not to deposit the money in the bank.

<sup>515</sup> P-0613, [KEN-OTP-0111-0162](#) at 0169, para. 37; P-0613/[REDACTED], [KEN-OTP-0160-1349](#) at 1357, ln. 239.

<sup>516</sup> P-0613, [KEN-OTP-0111-0162](#) at 0169, para. 38; P-0613/[REDACTED], [KEN-OTP-0160-1349](#) at 1355-1356.







did not leave “those people”, her life would be in danger.<sup>540</sup> Upon hearing this, P-0613 called YEBEI to complain about P-0397’s threats.<sup>541</sup>

161. In August 2013, acting in furtherance of the Common Plan, P-0800 called and visited P-0613 when [REDACTED] to offer her payment to [REDACTED] recant her evidence to the Prosecution.<sup>542</sup> P-0800 told P-0613 that he was traveling to [REDACTED] to “speak with these people about the offer”, which P-0613 understood to mean that P-0800 was going to negotiate the amount of the bribe.<sup>543</sup>

162. 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.<sup>544</sup> [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.<sup>545</sup> This corroborates [REDACTED] statement about “suspicions” surrounding P-0613. P-0495 himself attempted to recruit P-0613, telling her [REDACTED] because “things were good”.<sup>546</sup> P-0495 told her about his meeting with [REDACTED] and a governmental official – who he refused to identify<sup>547</sup> – during which they asked P-0495 how he knew P-0613. They instructed him to locate P-0613, convince her [REDACTED] and tell her [REDACTED].<sup>548</sup> P-0495 told P-0613 that these individuals were afraid to speak to her directly because she was surrounded by ICC people.<sup>549</sup>

163. P-0613 jokingly requested a house with a swimming pool, which P-0495 responded was possible as “they” were ready to give her everything.<sup>550</sup> P-0495 told P-0613 that he had been promised money and that she [REDACTED] and do the same thing.<sup>551</sup> When P-0613 asked how much she would be paid, P-0495 told her to meet [REDACTED]

<sup>540</sup> P-0613, [KEN-OTP-0111-0557](#) at 0568, para. 54. *See also* P-0613, T-58, p. 22 ln. 25 to p. 23, ln. 17.

<sup>541</sup> P-0613/YEBEI, [KEN-OTP-0160-1396](#) at 1399, ln. 36 to 1400, ln. 74; P-0613, [KEN-OTP-0111-0557](#) at 0568, paras. 55-56.

<sup>542</sup> P-0613, [KEN-OTP-0118-0137](#) at 0141, para. 16. *See also* [KEN-OTP-0153-0041](#) at 0041-0042.

<sup>543</sup> P-0613, [KEN-OTP-0111-0557](#) at 0568, para. 58-59. *See also* para. 60.

<sup>544</sup> P-0613, [KEN-OTP-0115-0216-R01](#) at 0222, para. 28.

<sup>545</sup> P-0800, [KEN-OTP-0160-0374](#) at 0378-0379, lns. 121-167.

<sup>546</sup> P-0613, T-55, p. 49, lns. 17-20, p. 57, lns. 5-6; [KEN-OTP-0115-0216-R01](#) at 0222, para. 28.

<sup>547</sup> P-0613, [KEN-OTP-0115-0216-R01](#) at 0222, para. 29.

<sup>548</sup> P-0613, [KEN-OTP-0115-0216-R01](#) at 0222, para. 29.

<sup>549</sup> P-0613, [KEN-OTP-0115-0216-R01](#) at 0222, para. 30.

<sup>550</sup> P-0613, [KEN-OTP-0115-0216-R01](#) at 0222, para. 28.

<sup>551</sup> P-0613, [KEN-OTP-0115-0216-R01](#) at 0222, para. 30.

and the ██████████ to discuss the amount.<sup>552</sup> P-0495 offered to meet P-0613 in Uganda or to buy her an air ticket to travel to Eldoret to meet them.<sup>553</sup> P-0613 told P-0495 that she would consider his offer.<sup>554</sup>

164. On 13 September 2013, P-0495 and P-0613 met at the ██████████  
 ██████████<sup>555</sup> During their meeting, which was audio-recorded by P-0613,<sup>556</sup> P-0495 attempted to persuade P-0613 to meet members of the Common Plan ██████████  
 ██████████ to directly negotiate the payment amount in exchange for her withdrawal from the ICC.<sup>557</sup> P-0495 told P-0613 that they could offer her ██████████.<sup>558</sup> P-0495 explained that the amount was subject to negotiation and depended on “your situation and your expenses.”<sup>559</sup> He told her that P-0800 was paid 1,200,000 KSh based on his children and family situation<sup>560</sup> and that he (P-0495) had managed to negotiate 2,200,000 KSh for himself after “present[ing] [his] case”.<sup>561</sup> P-0495 explained that it would be a verbal agreement, with cash payment as the only “evidence”, and there would be a meeting with a lawyer to prepare the withdrawal from the ICC process.<sup>562</sup> Regarding the cash payment, P-0495 said P-0613 would be told not to put the money in the bank because “they will trace the bank”.<sup>563</sup> Rather, she should “[j]ust put it under the mattress and keep quiet.”<sup>564</sup>

<sup>552</sup> P-0613, [KEN-OTP-0115-0216-R01](#) at 0222, para. 30.

<sup>553</sup> P-0613, [KEN-OTP-0115-0216-R01](#) at 0222, para. 31.

<sup>554</sup> P-0613, [KEN-OTP-0115-0216-R01](#) at 0222-0223, paras. 31-33.

<sup>555</sup> P-0613, T-55, p. 57, ln. 7 to p. 58, ln. 17 and p. 59, ln. 10 to p. 61, ln. 3; [KEN-OTP-0115-0216-R01](#) at 0229-0232, paras. 66, 74-80; P-0613/P-0495, [KEN-OTP-0160-1126](#); [KEN-OTP-0138-0649](#); [KEN-OTP-0138-0652](#); [KEN-OTP-0138-0663](#). See also P-0800/P-0495, [KEN-OTP-0160-1035](#) at 1037-1039; [KEN-OTP-0160-1429](#) at 1431-1433.

<sup>556</sup> P-0613, T-55, p. 58, lns. 21-24 and p. 87, lns. 11-25. See also [KEN-OTP-0138-0649](#); [KEN-OTP-0138-0652](#); [KEN-OTP-0138-0663](#).

<sup>557</sup> P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1129; P-0613, [KEN-OTP-0115-0216-R01](#) at 0230, para. 75.

<sup>558</sup> P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1129, lns. 49-53; P-0613, [KEN-OTP-0115-0216-R01](#) at 0230, para. 75.

<sup>559</sup> P-0613, T-55, p. 63, lns. 5-16; P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1129, lns. 59-60, 1139, lns. 418-420; P-0613, [KEN-OTP-0115-0216-R01](#) at 0230-0231, para. 75.

<sup>560</sup> P-0613, T-55, p. 62, ln. 24 to p. 63, ln. 4; P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1129, 1139; P-0613, [KEN-OTP-0115-0216-R01](#) at 0230-0231, para. 75.

<sup>561</sup> P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1129, lns. 63-67.

<sup>562</sup> P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1130, lns. 101-108; P-0613, T-55, p. 65, ln. 17 to p. 66, ln. 11; P-0613, [KEN-OTP-0115-0216-R01](#) at 0231, para. 76.

<sup>563</sup> P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1131, lns. 110-116; P-0613, T-55, p. 66, lns. 12-21.

<sup>564</sup> P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1131, lns. 112-116; P-0613, T-55, p. 66, lns. 12-21; [KEN-OTP-0115-0216-R01](#) at 0231, para. 76.

165. P-0495 told P-0613 that the person giving out the money was based in Eldoret<sup>565</sup> and confirmed when asked that this person was GICHERU.<sup>566</sup> P-0495 told her that GICHERU was the person to complete everything for her, since he had all the authority.<sup>567</sup> 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.<sup>568</sup> He told P-0613 that she would be provided with government protection.<sup>569</sup> P-0495 said that GICHERU asked him if P-0613 was educated because, otherwise, they could provide her with a certificate.<sup>570</sup>
166. P-0604 also attempted to corruptly influence P-0613 on behalf of the Common Plan Group.<sup>571</sup> On 23 September 2013, P-0604 called P-0613 and informed her that [REDACTED] wanted him to locate her.<sup>572</sup> P-0604 also told her that [REDACTED] arranged a meeting between himself (P-0604) and [REDACTED] to discuss P-0613.<sup>573</sup> [REDACTED] gave P-0604 [REDACTED] KSh via [REDACTED] to give to P-0613 for her transportation back to [REDACTED].<sup>574</sup> P-0604 told her that “these people” were using everyone who knew P-0613 in order to approach her.<sup>575</sup> P-0613 told P-0604 to use the money for himself.<sup>576</sup> During her in-court testimony, P-0613 confirmed that P-0604 approached her and offered to meet at [REDACTED] and promised payment to withdraw as a witness.<sup>577</sup>
167. The information is corroborated by a phone conversation of 24 September 2013, where P-0604 informed investigators that he had been approached by [REDACTED] acting as [REDACTED]

<sup>565</sup> P-0613, T-55, p. 66, ln. 22 to p. 67, ln. 11; P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1131, lns. 117-122.

<sup>566</sup> P-0613, T-55, p. 66, ln. 22 to p. 68, ln. 7; P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1131, lns. 123-124; P-0613, [KEN-OTP-0115-0216-R01](#) at 0231, para. 77.

<sup>567</sup> P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1133-1134, lns. 212-222; P-0613, [KEN-OTP-0115-0216-R01](#) at 0231-0232, paras. 76-78.

<sup>568</sup> P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1142, lns. 507-517; P-0613, T-55, p. 69, lns. 7-19.

<sup>569</sup> P-0613, T-55, p. 70, lns. 3-13; P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1134, lns. 223-232; P-0613, [KEN-OTP-0115-0216-R01](#) at 0232, para. 79.

<sup>570</sup> P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1134, lns. 240-241, and at 1141, lns. 499-500.

<sup>571</sup> P-0613, T-55, p. 53, ln. 2 to p. 54, ln. 7.

<sup>572</sup> P-0613, [KEN-OTP-0124-0007-R01](#) at 0011, para. 19.

<sup>573</sup> P-0613, [KEN-OTP-0124-0007-R01](#) at 0011, paras. 19-20.

<sup>574</sup> P-0613, [KEN-OTP-0124-0007-R01](#) at 0011, para. 20. P-0613 got the impression that it was [REDACTED], see P-0613, [KEN-OTP-0124-0007-R01](#) at 0011, para. 21.

<sup>575</sup> P-0613, [KEN-OTP-0124-0007-R01](#) at 0011, para. 21.

<sup>576</sup> P-0613, [KEN-OTP-0124-0007-R01](#) at 0011, para. 21.

<sup>577</sup> P-0613, T-55, p. 53, ln. 2 to p. 54, ln. 7.

associate, for the purposes of “lowering” (*sic*)<sup>578</sup> P-0613 and that he (P-0604) was supposed to receive money from them.<sup>579</sup>

168. During his ICC testimony in the *Ruto and Sang* case, however, P-0604 recanted his previous evidence about the Common Plan and of approaching P-0613 on behalf of Common Plan Members. The Prosecution submits that P-0604’s new version of events given in his court testimony was a consequence of bribery and the continuing influence by the members of the Common Plan upon him.<sup>580</sup>

169. Despite the multiple attempts to interfere with her, P-0613 did not withdraw and testified before TC V(A) between 18 and 20 June 2014.<sup>581</sup>

*iii. Analysis of the evidence related to the Third Incident*

170. The evidence proves beyond reasonable doubt that GICHERU, with the assistance of various Intermediaries and Associates, attempted to corruptly influence P-0613. Despite the multiple attempts, P-0613 did not [REDACTED] and never accepted a Bribe.<sup>582</sup> Rather, she cooperated with the investigation and helped to obtain evidence of the Common Plan. As a result, P-0613 became a target of the Common Plan Members, who instructed Corrupted Witnesses to accuse her of coaching them.<sup>583</sup> However, these allegations are based solely on the word of corrupted witnesses who were impeached and discredited in the *Ruto and Sang* case – two of whom admitted being coached by GICHERU and other lawyers.<sup>584</sup> P-0613 unequivocally denied these allegations in her testimony in court.<sup>585</sup>

171. P-0613’s testimony has remained unchanged and is fully consistent with the general pattern of the Common Plan. During her cross-examination, the Defence sought to

<sup>578</sup> *Sic*, i.e “luring”.

<sup>579</sup> [KEN-OTP-0117-1060-R01](#) at 1060.

<sup>580</sup> **P-0613**, T-57, pp. 7-10. 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; **P-0604**, [KEN-OTP-0135-1135](#) at 1137; [KEN-OTP-0140-0048](#); [KEN-OTP-0135-1134](#).

<sup>581</sup> **P-0613**, T-55, p. 6, lns. 2-17; T-57, p. 3, lns. 21-24.

<sup>582</sup> **P-0613**, T-55, p. 75, lns. 12-20.

<sup>583</sup> **P-0800**, [KEN-OTP-0144-0272-R02](#) at 0285, lns. 454-472; **P-0613**, [KEN-OTP-0160-0609-R01](#), at 0613, paras. 16-18.

<sup>584</sup> **P-0730**, [KEN-OTP-0159-0884](#), paras. 168, 195-197; **P-0800**, T-50, p. 91, ln 10 to p. 92, ln. 2; [KEN-OTP-0144-0272-R02](#) at 0283, ln. 391 to 0284, ln. 448.

<sup>585</sup> **P-0613**, T-57, p. 9, ln. 14 to p. 10, ln. 5; p. 17, ln. 3 to p. 18, ln. 8; p. 20, lns. 23-25; p. 24, lns. 11-18; p. 27, lns. 17-25.

establish that P-0613 was already acquainted with the people who she says tried to corrupt her<sup>586</sup> and suggested that she orchestrated a plan to convince the OTP that witnesses were being bribed, in order to enjoy the benefits of being a witness.<sup>587</sup> This suggestion is speculative. *First*, the fact that P-0613 knew the people who approached her is consistent with the *modus operandi* of the Common Plan of exploiting witnesses' relationships to locate, make contact and corruptly influence them.<sup>588</sup> In any event, the fact that they knew each other, or even that they may have been in contact at times, is insufficient to lead to a reasonable inference of falsifying evidence. *Second*, P-0613 was trying to obtain information from these contacts, which is evidenced by her multiple reports to the OTP investigators.<sup>589</sup> This is in line with instructions routinely given to witnesses [REDACTED]<sup>590</sup> *Third*, P-0613's account is corroborated by several recordings of phone conversations with Common Plan Members and Associates, including a controlled meeting with P-0495 in [REDACTED] where P-0495 tried to persuade her to accept a Bribe from GICHERU to withdraw as a witness.<sup>591</sup>

172. Nor do the supposed benefits of being accepted into witness protection provide a rational justification for the alleged falsification of evidence on a grand scale as suggested by the Defence. The actual benefits received by the witnesses, over and above necessary expenses for subsistence and security, were in fact modest.<sup>592</sup> To the contrary, the evidence reveals that the lives of witnesses under protection were often difficult, and the emotional and pecuniary costs of leaving behind families, friends, careers and countries were high.<sup>593</sup>

173. The Defence suggestion that P-0613 embellished her original statement because it was not considered relevant enough for her to become a Prosecution Witness<sup>594</sup> is also

<sup>586</sup> P-0613, T-56, p. 18, lns. 6-8.

<sup>587</sup> P-0613, T-56, p. 82, lns. 5-8; T-58, p. 28, ln. 4 to p. 29, ln. 15.

<sup>588</sup> P-0613/[REDACTED], [KEN-OTP-0160-1349](#), at 1351, lns. 25-34; P-0613, T-55, p. 32, ln. 18 to p.33, ln. 1.

<sup>589</sup> See for instance, P-0613, [KEN-OTP-0102-0178](#) at 0180-0183; [KEN-OTP-0106-0910](#) at 0914, para. 19 to 0916, para. 35; [KEN-OTP-0111-0162](#) at 0156, para. 13 to 0167, para. 27 and at 0168, para. 34 to 0173, para. 55; [KEN-OTP-0111-0557](#) at 0560, para. 14 to 0566, para. 41.

<sup>590</sup> [REDACTED], P-0613, T-58, p. 25, ln. 8 to p. 26, ln. 16.

<sup>591</sup> P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1133-1134, lns. 212-222.

<sup>592</sup> [KEN-OTP-0132-0002](#); P-0613, T-58, p. 32, ln. 25 to p. 33, ln. 23.

<sup>593</sup> In relation to P-0613, see P-0613, T-57, p. 39, lns. 12-17; T-58, p. 32, ln. 10 to p. 33, ln. 15. See also [KEN-OTP-0160-0609-R01](#), from 0619, para. 59 to 0620, para. 61 and at 0621, para. 72.

<sup>594</sup> P-0613, T-56, p. 34, lns. 4-16.

contradicted by the statement itself.<sup>595</sup> It is apparent from the statement that the Prosecution re-interviewed her because the original source of the information was no longer available to testify, and that the Prosecution in fact contacted her in this regard, not *vice versa*.<sup>596</sup>

174. The Defence also tried to undermine P-0613's credibility using the intercepts of her conversations ██████████ and claiming she "was herself" when she didn't know her conversations were being recorded.<sup>597</sup> However, she explained that she was merely playing along to obtain information from ██████████ and did not in fact do any of the things discussed.<sup>598</sup> There is no evidence which contradicts her account. Irrespective of the risks and the fact that P-0613 disobeyed VWU's instructions,<sup>599</sup> P-0613's explanation is consistent with her prior conduct in assisting investigators to obtain information from people by "playing along" and encouraging her interlocutors to disclose information.<sup>600</sup>

175. Finally, and in any event, even if the contents of these conversations were true, while they might not reflect well on the witness' character, they do not provide any evidence of the sort of conspiracy hypothesised by the Defence. It is especially significant that, despite reviewing 1,450 pages of transcripts<sup>601</sup> of unguarded conversations ██████████ ██████████, the Defence were unable to confront P-0613 with a single instance where she mentioned to them that she had falsified reports of witness interference, falsely incriminated GICHERU, or conspired with other witnesses and alleged Intermediaries and Associates to falsify the OPC recordings.<sup>602</sup>

*iv. GICHERU's individual criminal responsibility*

176. The evidence described above clearly establishes that GICHERU, jointly with YEBEI, ██████████, offered P-0613 a Bribe to withdraw from the *Ruto and Sang* case, in

<sup>595</sup> P-0613, [KEN-OTP-0109-0360](#) at 0363, para. 14.

<sup>596</sup> P-0613, T-58, p. 18, ln. 7 to p. 20, ln. 14.

<sup>597</sup> P-0613, T-57, p. 117 lns. 7-18. 7-8.

<sup>598</sup> P-0613, T-57, p. 41, lns 5-19.

<sup>599</sup> P-0613, T-57, p. 44, lns. 8-13.

<sup>600</sup> P-0613/█████████, [KEN-OTP-0160-1349](#), at 1351-1358; P-0613/█████████, [KEN-OTP-0160-1371](#), at 1374, ln. 51 to 1375, ln. 82; P-0613/YEBEI, [KEN-OTP-0160-1310](#), at 1312, ln. 18 to 1314, ln. 1; P-0613, [KEN-OTP-0115-0216-R01](#), at 0222-0223, paras. 28-31. See P-0613, [KEN-OTP-0102-0178](#) at 0181, para. 20 where P-0613 advises ██████████ to pretend he is siding with GICHERU and YEBEI to obtain information. See also [KEN-OTP-0117-1060-R01](#) at 1060.

<sup>601</sup> P-0613, T-56, p. 8, ln. 25 to p. 9, ln. 7.

<sup>602</sup> While not all of the recordings have been submitted into evidence, this may be inferred from the fact that the Defence, who asserted that they had reviewed all of this material, were not able to confront her with any such statement.



furtherance of the Common Plan.<sup>603</sup> The Prosecution therefore submits that GICHERU's individual criminal responsibility is best characterised as a co-perpetrator under article 25(3)(a). Accordingly, this mode of liability is specifically addressed below. However, the evidence also supports his conviction under any of the other charged modes of liability as outlined in the Trial Brief.<sup>604</sup>

177. The material facts common to all incidents set out in Part B. I. above are incorporated *mutatis mutandis*.

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

- a) In late April 2013, GICHERU offered ██████ 2,000,000 KSh to obtain P-0613's ██████.<sup>605</sup>
- b) On or before 19 July 2013, GICHERU solicited or induced ██████ to provide P-0613 with a mobile phone so that she could be contacted in order to make her a financial offer.<sup>606</sup>
- c) On or before 21 July 2013, GICHERU solicited or induced ██████ to ██████ ██████ to corruptly influence witnesses, including P-0613. ██████ was to report back to GICHERU ██████.<sup>607</sup>
- d) GICHERU instructed ██████ to meet him on ██████ to discuss P-0613. This followed a series of phone calls between ██████ and P-0613,<sup>608</sup> during which ██████ tried to persuade her to meet with GICHERU in order to negotiate a Bribe.<sup>609</sup> ██████ said he would come to meet P-0613 ██████ following this meeting.<sup>610</sup> It may be inferred in the circumstances that the purpose of the meeting with GICHERU ██████ ██████ related to this activity.

<sup>603</sup> See *supra* paras. 149-169.

<sup>604</sup> Trial Brief, paras. 170-177.

<sup>605</sup> P-0613, T-55, p. 19, ln. 24 to p. 20, ln. 3, p. 22, lns. 2-15; P-0613, [KEN-OTP-0102-0178](#) at 0180, para. 16.

<sup>606</sup> P-0613, [KEN-OTP-0111-0162](#) at 0169, paras. 37-38; P-0613/█████, [KEN-OTP-0160-1349](#) at 1356, lns. 201-202.

<sup>607</sup> P-0800, [KEN-OTP-0111-0140](#) at 0149, para. 54; P-0800/█████, [KEN-OTP-0132-0167-R01](#) at 0218, lns. 1730-1733. See also P-0613, T-55, p. 26, lns. 6-16.

<sup>608</sup> See P-0613, [KEN-OTP-0111-0162](#) at 0168 to 0172, especially at paras. 34-38; P-0613/█████, [KEN-OTP-0160-1149](#); [KEN-OTP-0160-1156](#); [KEN-OTP-0160-1160](#); [KEN-OTP-0160-1163](#).

<sup>609</sup> P-0613, [KEN-OTP-0111-0162](#) at 0173, paras. 55-56; [KEN-OTP-0111-0184](#); [KEN-OTP-0111-0185](#).

<sup>610</sup> P-0613, [KEN-OTP-0111-0162](#) at 0173, para. 55.

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,<sup>611</sup> which they did.<sup>612</sup>

179. The Prosecution submits that the factual allegations set out above establish GICHERU's criminal responsibility for the Third Incident, as a **co-perpetrator** as a result of his essential contributions to the Common Plan.<sup>613</sup> 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.

180. The subjective elements of co-perpetration<sup>614</sup> may be inferred from the relevant facts, as set out in Part B. I. ii. and vi. and paragraphs a) to e) above.

181. Accordingly, The Prosecution submits that the evidence establishes beyond reasonable doubt that GICHERU is criminally responsible for the Third Incident under articles 25(3)(a), or in the alternative (b), (c) or (d), as outlined in the Trial Brief.<sup>615</sup>

#### IV. Fourth Incident: Corruptly influencing Witness P-0800<sup>616</sup>

##### *i. Introduction*

182. [REDACTED] ("P-0800", [REDACTED]) was a Prosecution Witness who provided evidence, among other things, about RUTO [REDACTED] [REDACTED] relating to the PEV<sup>617</sup> and crimes committed against civilians [REDACTED] Kenya.<sup>618</sup>

183. The evidence proves beyond reasonable doubt that, between May 2013 and March 2014, [REDACTED], GICHERU, together with [REDACTED],

<sup>611</sup> **P-0613/P-0495**, [KEN-OTP-0160-1126](#), at 1131, lns. 117-124, 1133-1134, lns. 212-; **P-0613**, T-55, p. 66, ln. 22 to p. 68, ln. 7; [KEN-OTP-0115-0216-R01](#) at 0231-0232, paras. 76-79.

<sup>612</sup> **P-0613/P-0495**, [KEN-OTP-0160-1126](#); **P-0800/P-0495**, [KEN-OTP-0160-1035](#) at 1037-1040; **P-0495/P-0800**, [KEN-OTP-0160-1429](#) at 1431-1433; **P-0613**, T-55, p. 65, ln. 17 to p. 67, ln. 11; **P-0613**, [KEN-OTP-0115-0216-R01](#) at 0222-0223, paras. 28-33, and 0229-0232, paras. 66, 74-80; [KEN-OTP-0138-0649](#); [KEN-OTP-0138-0652](#); [KEN-OTP-0138-0663](#).

<sup>613</sup> As set out in Part B. I. ii. and paragraphs a) to e) above.

<sup>614</sup> As set out in para. 167 of the Trial Brief.

<sup>615</sup> Trial Brief, paras. 167-177.

<sup>616</sup> Confirmation Decision, paras. 113-120, disposition.

<sup>617</sup> **P-0800**, T-50, p. 39, lns. 15-21.

<sup>618</sup> **P-0800**, T-26; T-18; T-19.

██████████ 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. The evidence also shows that GICHERU requested P-0800 to approach and corruptly influence P-0495 and, subsequently, assist in corruptly influencing P-0613.

*ii. Corruptly influencing P-0800*

184. ██████████  
██████████ on 11 February 2013, P-0800’s identity was disclosed to RUTO and SANG and their Defence.

185. As a result of acute security risks,<sup>619</sup> P-0800 was ██████████  
██████████  
██████████.

186. On 25 April 2013, ██████████ called P-0800 to inform him about attempts by ██████████ to convince ██████████<sup>620</sup> – who had been interviewed as an ICC witness – to “change his mind and withdraw as an OTP witness”.<sup>621</sup> ██████████ knowing P-0800 was in contact with the OTP, told P-0800 that he feared for ██████████ safety and believed that RUTO would kill ██████████<sup>622</sup> ██████████ also reported that ██████████ had disclosed to him information concerning a series of meetings between 26 and 30 April 2013 at ██████████  
██████████ involving *inter alios* GICHERU, ██████████ and ██████████.<sup>623</sup> During these meetings, ██████████ was paid to recant his testimony.<sup>624</sup>

187. On or about 20 May 2013, ██████████ informed P-0800 that ██████████ had accepted an offer of 1,500,000 KSh to join the “Big Man[‘s]” team and withdraw his assistance to the ICC.<sup>625</sup> P-0800 understood the “Big Man” to refer to RUTO.<sup>626</sup> ██████████ asked P-

<sup>619</sup> See *e.g.* ICC-01/09-01/20-111-Conf-Red, paras. 34-35; ICC-01/09-01/11-468-Conf-Red, paras. 34-35; [KEN-OTP-0129-0699-R01](#). The fact that these risks were reported to the OTP, and in turn to TC V, is a matter of record of which the Chamber may take judicial notice. See *Bemba et al* TJ, para. 201.

<sup>620</sup> P-0800, [KEN-OTP-0102-0205](#) at 0208, para. 23.

<sup>621</sup> P-0800, [KEN-OTP-0102-0205](#) at 0209, para. 28.

<sup>622</sup> P-0800, [KEN-OTP-0102-0205](#) at 0208, para. 23.

<sup>623</sup> P-0800, [KEN-OTP-0102-0205](#) at 0211-0212, paras. 38-45.

<sup>624</sup> P-0800, [KEN-OTP-0102-0205](#) at 0212, para. 42.

<sup>625</sup> P-0800, [KEN-OTP-0103-2473](#) at 2478, para. 28.

<sup>626</sup> P-0800, [KEN-OTP-0103-2473](#) at 2478, paras. 26-27. That ██████████ 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 ██████████, as well as subsequent events described below.

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.<sup>627</sup>

188. On 29 and 30 May 2013, investigators met with P-0800, who provided further details of his contacts with [REDACTED].<sup>628</sup> He told investigators that the Kenyan phone number used by [REDACTED] to contact P-0800 was [REDACTED].<sup>629</sup> This is in fact one of the contact numbers which [REDACTED] had previously provided to the Prosecution,<sup>630</sup> and was also listed as a contact on GICHERU’s phone under the name [REDACTED].<sup>631</sup>

189. [REDACTED]<sup>632</sup> [REDACTED] 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 have been 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.<sup>633</sup>

190. P-0800 clarified that, despite his refusal of [REDACTED] offer, the conversation had not ended [REDACTED].<sup>634</sup> In the Prosecution’s view, this presented a legitimate investigative opportunity to obtain objective confirmation of the bribe. The Prosecution therefore decided to ask P-0800 to call [REDACTED] back and tell him that he had indeed reconsidered [REDACTED] offer and for P-0800 to record the conversation. P-0800 agreed,<sup>635</sup> and on 30 May 2013 he called [REDACTED] and recorded the conversation.<sup>636</sup> 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. No further discussion ensued regarding the details of [REDACTED] offer.<sup>637</sup> [REDACTED] did not, however, come to [REDACTED] or call P-0800 later

<sup>627</sup> P-0800, [KEN-OTP-0103-2473](#) at 2478, para. 29.

<sup>628</sup> These details were captured in a statement [REDACTED] See P-0800, [KEN-OTP-0103-2473](#).

<sup>629</sup> P-0800, [KEN-OTP-0103-2473](#) at 2477-2478, paras. 15, 18, 23-24.

<sup>630</sup> [KEN-OTP-0159-1693](#).

<sup>631</sup> P-0733, [KEN-OTP-0160-0699](#) at 0700.

<sup>632</sup> [KEN-OTP-0153-0497](#).

<sup>633</sup> See paras. 194-195 below.

<sup>634</sup> P-0800, [KEN-OTP-0103-2473](#) at 2479, para. 30.

<sup>635</sup> P-0800, T-50, p. 48, ln. 25 to p. 49, ln. 12.

<sup>636</sup> P-0800/[REDACTED], [KEN-OTP-0104-0917](#); [KEN-OTP-0104-0920](#).

<sup>637</sup> P-0800/[REDACTED], [KEN-OTP-0104-0920](#) at 0922, lns. 27-34.

and no meeting ensued at that time. The details of these interactions were then recorded in [REDACTED].<sup>638</sup>

191. After several days without contact, P-0800 again called [REDACTED] at the Prosecution's request and also recorded this conversation.<sup>639</sup> He enquired why [REDACTED] still had not come to see him.<sup>640</sup> [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].<sup>641</sup> [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>642</sup> [REDACTED]  
[REDACTED].<sup>643</sup> [REDACTED] stated that "[REDACTED]" and that he would come to see P-0800 [REDACTED].<sup>644</sup> [REDACTED] also added that "[REDACTED]"  
[REDACTED].<sup>645</sup> [REDACTED]  
[REDACTED].<sup>646</sup>  
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.<sup>647</sup>

192. Following a series of further phone communications, most recorded by P-0800 or by the Prosecution with P-0800's consent,<sup>648</sup> [REDACTED] and P-0800, with the knowledge of

<sup>638</sup> P-0800, [KEN-OTP-0103-2473](#) at 2480, paras. 35-37.

<sup>639</sup> P-0800/[REDACTED], [KEN-OTP-0106-0365](#); [KEN-OTP-0106-0371](#). See also P-0800, [KEN-OTP-0106-0388](#) at [0391-0392](#), paras. 15-18.

<sup>640</sup> P-0800/[REDACTED], [KEN-OTP-0106-0371](#) at 0373, lns. 9-14.

<sup>641</sup> P-0800/[REDACTED], [KEN-OTP-0106-0371](#) at 0373, lns. 17-33.

<sup>642</sup> [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, see also [KEN-OTP-0152-0171](#), [KEN-OTP-0152-0173](#).

<sup>643</sup> [KEN-OTP-0159-1690](#).

<sup>644</sup> P-0800, [KEN-OTP-0106-0388](#) at 0392, para. 19; P-0800/[REDACTED], [KEN-OTP-0106-0371](#) at 0373, ln. 33 to 0374, ln. 39.

<sup>645</sup> P-0800/[REDACTED], [KEN-OTP-0106-0371](#) at 0374, lns. 48-52.

<sup>646</sup> P-0800/[REDACTED], [KEN-OTP-0106-0371](#) at 0374, lns. 56-59 (underlined words were uttered in English).

<sup>647</sup> P-0800, [KEN-OTP-0106-0388](#) at 0392, para. 20.

<sup>648</sup> P-0800, [KEN-OTP-0106-0388](#); [KEN-OTP-0109-0002](#); [KEN-OTP-0111-0140](#) at 0143-0146, paras. 13-31; 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 P-0730, [KEN-OTP-0159-0884](#) at 0915, paras. 118-119.

the Prosecution, agreed to meet to discuss P-0800's withdrawal as an ICC witness and the payment of the Bribe.<sup>649</sup>

193. On [REDACTED], and asked P-0800 to meet him.<sup>650</sup> Despite having arranged with the Prosecution to conduct a controlled meeting with [REDACTED] on the next day, P-0800 agreed to meet [REDACTED] to avoid arousing suspicion, and recorded the conversation.<sup>651</sup> The meeting took place at [REDACTED].<sup>652</sup> During their conversation, [REDACTED] informed P-0800 that GICHERU was working with [REDACTED] and RUTO,<sup>653</sup> and that GICHERU was handling the money intended for witnesses who accepted to withdraw.<sup>654</sup> [REDACTED] explained that GICHERU had asked him to offer witnesses 500,000 KSh, but [REDACTED] requested more for P-0800.<sup>655</sup> Since [REDACTED] was looking for other witnesses, P-0800 said that he could find [REDACTED] and suggested to meet again the next day.<sup>656</sup>

194. [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.<sup>657</sup> During these controlled meetings, [REDACTED] repeated the offer of a Bribe of at least 1,000,000 KSh,<sup>658</sup> stated that GICHERU would channel the payment<sup>659</sup> and that he dealt with cash money.<sup>660</sup> He explained that "the deal" was with [REDACTED], GICHERU and RUTO.<sup>661</sup> [REDACTED] told P-0800 that he was working for GICHERU,<sup>662</sup>

<sup>649</sup> P-0800, T-50, p. 51, lns. 1-6; P-0800, [KEN-OTP-0111-0140](#) at 0146-0147, paras. 33-35. See also [KEN-OTP-0107-0288](#); P-0730, [KEN-OTP-0159-0884](#) at 0936, para. 210.

<sup>650</sup> P-0800, T-50, p. 54, lns. 2-25. See also 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 at 0310, lns. 60-67](#).

<sup>651</sup> P-0800, T-50, p. 54, lns. 11-19; [KEN-OTP-0160-0308](#) at 0313, lns. 165-170.

<sup>652</sup> P-0800, T-50, p. 52, lns. 2-8.

<sup>653</sup> P-0800/[REDACTED], [KEN-OTP-0131-0431](#) at 0437, lns. 152-168.

<sup>654</sup> P-0800/[REDACTED], [KEN-OTP-0131-0431](#) at 0447, lns. 525-533; P-0800, T-50, p. 56, lns. 17-18.

<sup>655</sup> P-0800/[REDACTED], [KEN-OTP-0131-0431](#) at 0438, lns. 192-196, 0439, lns. 234-237.

<sup>656</sup> P-0800/[REDACTED], [KEN-OTP-0131-0431](#) at 0454, ln. 753 to 0455, ln. 791. See also P-0800, T-50, p.61, lns. 5-11.

<sup>657</sup> P-0800, T-50, p. 59, ln. 1 to p. 60, ln. 21. See also P-0800, [KEN-OTP-0111-0140](#) at 0147-0150, paras. 34-61; P-0800/[REDACTED], [KEN-OTP-0132-0167-R01](#); [KEN-OTP-0111-0159](#); P-0613, T-55, p. 26, lns. 1-16.

<sup>658</sup> P-0800/[REDACTED], [KEN-OTP-0132-0167-R01](#), at 0184-0185, lns. 539 to 583.

<sup>659</sup> P-0800/[REDACTED], [KEN-OTP-0132-0167-R01](#), at 0171, lns. 90-93, 0180, lns. 392-394; P-0800, [KEN-OTP-0111-0140](#) at 0147-0148, paras. 39, 45. See also P-0800, [KEN-OTP-0160-0432](#) at 0446, ln. 501 to 0447, ln. 508; [KEN-OTP-0160-0448](#) at 0463, lns. 539-554; [KEN-OTP-0160-0555](#) at 0561, lns. 179-180.

<sup>660</sup> P-0800/[REDACTED], [KEN-OTP-0132-0167-R01](#), at 0175, ln. 228 to 0176 ln. 243.

<sup>661</sup> P-0800/[REDACTED], [KEN-OTP-0132-0167-R01](#), at 0172, lns. 127-133.

<sup>662</sup> P-0800/[REDACTED], [KEN-OTP-0132-0167-R01](#), at 0175, ln. 218.

who was trying to locate ICC witnesses within Kenya and in nearby countries.<sup>663</sup>

██████████ was looking for witnesses overseas<sup>664</sup> and ██████████

was trying to locate ██████████.<sup>665</sup>

195. ██████████ told P-0800 that ██████████ had been paid 500,000 KSh initially and that he had subsequently received 100,000 KSh<sup>666</sup> from RUTO.<sup>667</sup> ██████████ also told P-0800 that another ICC witness ██████████ – referring to P-0516 – received money, although ██████████ did not specify the amount or the purpose of such payment.<sup>668</sup>

196. ██████████ further instructed P-0800 ██████████ ██████████<sup>669</sup> ██████████ promised to send P-0800 ██████████ KSh ██████████ for his transportation back to ██████████, together with other ICC witnesses he managed to locate, where they would receive payment.<sup>670</sup> ██████████ told P-0800 that he had to return to ██████████ the following day to report to GICHERU about his activities in ██████████<sup>671</sup>

197. However, notwithstanding P-0800's cooperation with the Prosecution's investigation, he subsequently accepted a bribe to withdraw as a Prosecution Witness. In early August 2013, shortly before the commencement of the *Ruto and Sang* trial, P-0800 broke off all contacts with the VWU and the Prosecution, ██████████ ██████████<sup>672</sup> and ██████████<sup>673</sup> Accordingly, a summons was issued by TC V(A) for his appearance before the ICC.<sup>674</sup>

<sup>663</sup> P-0800/██████████, [KEN-OTP-0132-0167-R01](#) at 0180, Ins. 397-401; P-0800, [KEN-OTP-0111-0140](#) at 0148, para. 45. See also P-0800, [KEN-OTP-0109-0002](#) at 0007, para. 27; [KEN-OTP-0160-0448](#) at 0466, Ins. 654-660.

<sup>664</sup> P-0800, [KEN-OTP-0111-0140](#) at 0148, para. 45.

<sup>665</sup> P-0800, [KEN-OTP-0111-0140](#) at 0148, para. 45; P-0800/██████████, [KEN-OTP-0132-0167-R01](#) at 0203, Ins. 1203-1216. See also P-0800, [KEN-OTP-0160-0432](#) at 0446, ln. 501 to 0447, ln. 508; [KEN-OTP-0160-0555](#) at 0575, Ins. 680-683.

<sup>666</sup> P-0800, [KEN-OTP-0111-0140](#) at 0148, para. 42. See also P-0800, [KEN-OTP-0160-0432](#) at 0445, Ins. 442-456; P-0800/██████████, [KEN-OTP-0131-0431](#) at 0436, Ins. 104-107.

<sup>667</sup> 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.

<sup>668</sup> P-0800, [KEN-OTP-0111-0140](#) at 0148, para. 42. However, the transcript is somewhat cryptic on this point, compare P-0800/██████████, [KEN-OTP-0132-0167-R01](#) at 0177, Ins. 293-299.

<sup>669</sup> P-0800/██████████, [KEN-OTP-0132-0167-R01](#) at 0206, Ins. 1295-1303; P-0800, T-50, p. 57, Ins. 12-19; P-0800, [KEN-OTP-0111-0140](#) at 0148-0149, paras. 43, 54. See also P-0800, [KEN-OTP-0160-0448](#) at 0452, Ins. 137-140, 0460, Ins. 413-415; P-0613, T-55, p. 51, Ins. 6-16.

<sup>670</sup> P-0800, [KEN-OTP-0111-0140](#) at 0149, para. 54.

<sup>671</sup> P-0800, [KEN-OTP-0111-0140](#) at 0149, para. 54.

<sup>672</sup> ICC-01/09-01/11-1120-Red2-Corr, paras. 30-32. See also P-0800, [KEN-OTP-0160-0354](#) at 0356, Ins. 38-52.

<sup>673</sup> P-0800, T-50, p. 65, Ins. 16-17.

<sup>674</sup> ICC-01/09-01/11-1274-Corr2.

198. 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.<sup>675</sup>
199. P-0800 was thereafter re-interviewed on [REDACTED]. He explained that his withdrawal as an ICC witness had been due to [REDACTED]<sup>676</sup> and because GICHERU had offered him 2,000,000 KSh and the opportunity to [REDACTED]<sup>677</sup>. This allegation is consistent with P-0613's statement that, during August 2013, [REDACTED] told her 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.<sup>678</sup> P-0613 further informed investigators that P-0800 called her in late August 2013 to say that he had accepted 2,500,000 KSh to recant his testimony.<sup>679</sup>
200. P-0800 testified that, at GICHERU's request,<sup>680</sup> [REDACTED] induced him to meet with GICHERU to discuss [REDACTED].<sup>681</sup> P-0800 agreed and met with GICHERU [REDACTED] a hotel restaurant [REDACTED].<sup>682</sup> During this meeting GICHERU assured P-0800 that his safety and security would be ensured if he withdrew as an ICC witness.<sup>683</sup> GICHERU told P-0800 that if P-0800 encountered any security problem, GICHERU would reach out to the local administration to make sure P-0800 was safe.<sup>684</sup> GICHERU also offered P-0800 between 1,500,000 to 2,000,000 KSh to withdraw as a witness.<sup>685</sup> GICHERU told P-0800 that he was protecting RUTO because

<sup>675</sup> P-0800, [KEN-OTP-0138-0092](#) at 0094, lns. 60-63.

<sup>676</sup> P-0800, [KEN-OTP-0135-0113](#) at 0114, lns. 15-16. *See also* P-0800, [KEN-OTP-0160-0308](#) at 0326, lns. 646-656.

<sup>677</sup> P-0800, [KEN-OTP-0135-0103-R01](#) at 0105, lns. 60-68; T-50, p. 70, ln. 18 to p. 71, ln. 1. *See also* P-0800, [KEN-OTP-0160-0308](#) at 0326, lns. 654-657; [KEN-OTP-0160-0354](#) at 0359, lns. 140-154, 0361, lns. 239-246, 0364, lns. 333-337, 0370, lns. 545-554; [KEN-OTP-0117-0917](#).

<sup>678</sup> P-0613, [KEN-OTP-0111-0557](#) at 0568-0569, para. 60.

<sup>679</sup> P-0613, [KEN-OTP-0118-0137](#) at 0141, para. 16.

<sup>680</sup> P-0800, [KEN-OTP-0135-0103-R01](#) at 0105, lns. 62-65.

<sup>681</sup> P-0800, T-50, p. 67, lns. 5-13. *See also* P-0800, [KEN-OTP-0135-0103-R01](#) at 0105, lns. 62-65; [KEN-OTP-0135-0113](#) at 0114, lns. 12-16, 0117, lns. 116-127. *See also* [KEN-OTP-0135-0103-R01](#) at 0108, lns. 179-185; P-0800, [KEN-OTP-0160-0338](#) at 0346, lns. 258-264, 0350, lns. 423-425; [KEN-OTP-0160-0468](#) at 0471, lns. 103-106.

<sup>682</sup> P-0800, T-50, p. 68, lns. 11-17. *See also* P-0800, [KEN-OTP-0135-0113](#) at 0117, lns. 116-127; P-0800, [KEN-OTP-0160-0354](#) at 0358, lns. 125-127; [KEN-OTP-0160-0400-R02](#) at 0418, lns. 629-632; [KEN-OTP-0160-0489](#) at 0497, lns. 264-268.

<sup>683</sup> P-0800, [KEN-OTP-0135-0113](#) at 0118, lns. 163-170. *See also* P-0800, [KEN-OTP-0160-0382](#) at 0388, ln. 229 to 0389, ln. 237.

<sup>684</sup> P-0800, T-50, p. 68, ln. 24 to p. 69, ln. 12.

<sup>685</sup> P-0800, T-50, p. 70, ln. 18 to p. 71, ln. 1.



they were good friends and they went to the same school.<sup>686</sup> 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.<sup>687</sup>

201. Subsequently, at GICHERU's request, P-0800 approached P-0495<sup>688</sup> and took him to meet GICHERU [REDACTED], where GICHERU offered P-0495 a Bribe of 1,500,000 KSh to withdraw as a Prosecution Witness and look for P-0613.<sup>689</sup> GICHERU instructed P-0800 to monitor P-0495.<sup>690</sup>

202. However, while P-0800 was promised money by GICHERU, he testified that he never received it.<sup>691</sup> He explained that the only money GICHERU gave him was 50,000 KSh for his transportation costs to go [REDACTED] to persuade P-0495 to meet with GICHERU,<sup>692</sup> and 10,000 KSh to meet with [REDACTED] Advocates' office in Nairobi<sup>693</sup> to sign an affidavit [REDACTED]<sup>694</sup> [REDACTED]<sup>695</sup> [REDACTED].

<sup>686</sup> **P-0800**, [KEN-OTP-0135-0113](#) at 0119, Ins. 193-196. *See also* **P-0800**, [KEN-OTP-0160-0423](#) at 0426, ln. 110 to 0427, ln. 117; [KEN-OTP-0160-0555](#) at 0561, ln. 208 to 0562, ln. 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/misojonathan/docs/the\\_alumni\\_khs\\_at\\_90](https://issuu.com/misojonathan/docs/the_alumni_khs_at_90), last accessed 10 November 2021. *Contra* **GICHERU**, [KEN-OTP-0159-0766](#) at 0771, Ins. 142-147; [KEN-OTP-0159-0815](#) at 0834, Ins. 634-639.

<sup>687</sup> **P-0800**, [KEN-OTP-0135-0200](#) at 0207, Ins. 241-242. *See also* **P-0800**, [KEN-OTP-0160-0432](#) at 0446, ln. 502 to 0447, ln. 508; **P-0800**, [REDACTED], [KEN-OTP-0131-0431](#) at 0437, Ins. 166-168.

<sup>688</sup> **P-0800**, T-50, p. 71, Ins. 2-8. *See also* **P-0800**, [KEN-OTP-0160-0290](#) at 0295, Ins. 179-181; [KEN-OTP-0160-0354](#) at 0357, Ins. 86-103, 0359, Ins. 140-157.

<sup>689</sup> **P-0800**, T-50 p. 77, ln.12 to p. 79, ln. 23, 81, ln. 19 to 83, ln. 2; **P-0800**, [KEN-OTP-0135-0113](#) at 0121, ln. 277 to 0122, ln. 315, 0128, Ins. 525-526. *See also* **P-0800/P-0495**, [KEN-OTP-0160-1035](#); [KEN-OTP-0160-1423](#); [KEN-OTP-0160-1426](#); [KEN-OTP-0160-1429](#); **P-0800**, [KEN-OTP-0160-0354](#) at 0362, ln. 285 to 0363, ln.289; [KEN-OTP-0160-0400-R02](#) at 0418, Ins. 637-638, 0422, Ins. 778-780. *Contra* **GICHERU**, [KEN-OTP-0159-0841](#) at 0848, Ins. 235-241.

<sup>690</sup> **P-0800**, T-50, p. 80, ln. 16 to p. 81, ln. 6. *See also* **P-0800**, [KEN-OTP-0135-0113](#) at 0135, Ins. 784-790; [KEN-OTP-0135-0139-R01](#) at 0140, ln. 22 to 0142, ln. 92; [KEN-OTP-0160-0489](#) at 0497, Ins. 282-287.

<sup>691</sup> **P-0800**, T-50, p. 84, Ins. 1-4. *See also* **P-0800**, [KEN-OTP-0135-0200](#) at 0208, Ins. 268-273; [KEN-OTP-0135-0103-R01](#) at 0105, Ins. 69-70. *See also* [KEN-OTP-0160-0354](#) at 0361, Ins. 242-248, 0364, Ins. 333-334; [KEN-OTP-0160-0382](#) at 0385, Ins. 107-109.

<sup>692</sup> **P-0800**, T-50, p. 84, Ins. 5-22. *See also* **P-0800**, [KEN-OTP-0135-0113](#) at 0121, ln. 298 to 0122, ln. 313; [KEN-OTP-0135-0200](#) at 0212, Ins. 425-429; [KEN-OTP-0160-0468](#) at 0474, Ins. 197-201.

<sup>693</sup> **P-0800**, T-50, p. 75, ln. 1 to p. 76, ln. 12, p. 84, ln. 1 to p. 86, ln. 1. *See also* **P-0800**, [KEN-OTP-0135-0103-R01](#) at 0107, Ins. 165-172; [KEN-OTP-0135-0139-R01](#) at 0149, ln. 357 to 0152, ln. 445; [KEN-OTP-0135-0200](#) at 0212, Ins. 425-429. *See also* **P-0800**, [KEN-OTP-0160-0354](#) at 0362, Ins. 257-262, 0364, Ins. 350-357, 0370, Ins. 551-554; [KEN-OTP-0160-0468](#) at 0479, Ins. 385-386; [KEN-OTP-0160-0489](#) at 0494, Ins. 171-173.

<sup>694</sup> [KEN-OTP-0145-0550](#). *See also* **P-0015**, [KEN-OTP-0116-0201](#); **P-0739**, T-66, p. 81, ln.17 to p. 82, ln. 22.

<sup>695</sup> **P-0800**, [KEN-OTP-0145-0554](#); [KEN-OTP-0135-0103-R01](#) at 0107, Ins. 165-171; [KEN-OTP-0135-0155-R01](#) at 0156, ln. 24 to 0158, ln. 50. *See* [KEN-OTP-0116-0261](#). *See also* **P-0800**, [KEN-OTP-0160-0400-R02](#) at 0421, ln. 750 to 0422, ln. 766.

█<sup>696</sup> GICHERU admitted in 2018 that █ had been classmates of his at university and that █<sup>697</sup> P-0800 explained that he also signed an affidavit to withdraw as an ICC witness at the office of █ █<sup>698</sup> and that █ had been instructed by GICHERU to prepare that affidavit.<sup>699</sup>

203. █ is saved as a contact on █ phone under number █.<sup>700</sup> This same number can be independently attributed to █.<sup>701</sup>

204. Between 17 and 26 November 2014, P-0800 testified voluntarily before TC V(A).<sup>702</sup> During his ICC testimony, P-0800 reaffirmed his previous evidence about the Common Plan under oath, including the involvement of GICHERU, █.<sup>703</sup>

*iii. Analysis of the evidence related to the Fourth Incident*

205. P-0800 was a victim but also a facilitator of GICHERU's plan to interfere with Prosecution Witnesses, thus, his testimony should be viewed with caution.<sup>704</sup> The Prosecution submits that he was forthright with the Chamber regarding his involvement in the Common Plan. P-0800 candidly admitted his participation in recruiting P-0495 and assisting to corruptly influence P-0613.<sup>705</sup> He also admitted █ █ withdrawing as a witness<sup>706</sup> and █.<sup>707</sup>

206. P-0800 also admitted that he initially misrepresented certain facts about how he came to meet GICHERU in his █ re-interview. He explained that, at the time, he was concerned about his security if he gave the "full story" to the investigators and subsequently had to go █<sup>708</sup> and that he was trying to protect his friend █ when he

<sup>696</sup> █

<sup>697</sup> GICHERU, [KEN-OTP-0159-0841](#) at 0851, ln. 347 to 0852, ln. 362.

<sup>698</sup> P-0800, T-50 p. 71, ln. 11 to p. 74, ln. 9; [KEN-OTP-0135-0155-R01](#) at 0170, lns. 533-540. See also [KEN-OTP-0145-0560](#); [KEN-OTP-0145-0562](#); [KEN-OTP-0145-0566](#); P-0800, [KEN-OTP-0160-0374](#) at 0376, ln. 67 to 0377, ln. 73; T-50, p. 71, ln. 11 to p. 73, ln. 15. *Contra* GICHERU, [KEN-OTP-0159-0841](#) at 0851, lns. 340-346.

<sup>699</sup> P-0800, [KEN-OTP-0135-0155-R01](#) at 0171, lns. 578-580. See also P-0800, [KEN-OTP-0160-0468](#) at 0481, ln. 460 to 0483, ln. 519.

<sup>700</sup> P-0733, [KEN-OTP-0160-0699](#) at 0701.

<sup>701</sup> [KEN-OTP-0112-0126](#).

<sup>702</sup> P-0800, ICC-01/09-01/20-T-026-CONF-ENG.

<sup>703</sup> P-0800, ICC-01/09-01/20-T-027-CONF-ENG.

<sup>704</sup> See Part A. II. 1. c.

<sup>705</sup> P-0800, T-50 p. 77, ln. 12 to p. 79, ln. 23, p. 82, ln. 10 to p. 83, ln. 3.

<sup>706</sup> P-0800, T-50 p. 71, ln. 11 to p. 74, ln. 11.

<sup>707</sup> P-0800, T-50 p. 74, ln. 13 to p. 76, ln. 12.

<sup>708</sup> P-0800, T-50, p. 88, ln. 18 to p. 89, ln. 11. See also T-51, p. 49, ln. 1 to p. 50, ln. 8, p. 65, ln. 12 to p. 66, ln. 9.

initially stated that P-0516 had introduced him to GICHERU.<sup>709</sup> Irrespective of these and other peripheral discrepancies in P-0800's accounts, his evidence on the existence of the Common Plan and GICHERU's responsibility has remained consistent and is independently corroborated in essential details.

207. It is undisputable that P-0800's evidence is consistent with the general pattern of approaching and corrupting Prosecution Witnesses through other witnesses in the *Ruto and Sang* case. His evidence is also corroborated by P-0613's testimony, the fact that he [REDACTED] a withdrawal affidavit, several recorded phone conversations with [REDACTED] and with P-0495, when P-0495 travelled to [REDACTED] to recruit P-0613.<sup>710</sup>

208. P-0800's account is also corroborated by the recordings of his meetings with [REDACTED] [REDACTED], which confirm that GICHERU was behind [REDACTED] actions to locate and corrupt Prosecution Witnesses. The Defence's attempt to discredit these recordings by suggesting to P-0800 that he could have "confabulated" with [REDACTED] to mislead the Prosecution<sup>711</sup> is speculative and unsupported by evidence. Moreover, this theory does not explain why [REDACTED] would knowingly and voluntarily incriminate himself of a serious criminal offence – on record – for the benefit of P-0800. Likewise, it fails to explain P-0800's decision to disobey investigators by meeting [REDACTED], but nevertheless record their conversation. If the purpose was to collude with [REDACTED] to falsely incriminate GICHERU in order to benefit from witness protection, as the Defence speculates, then this would risk P-0800 being dropped as a witness and losing all benefits. Additionally, any such collusion could have been done telephonically and before [REDACTED]. The only reasonable explanation is the one given by P-0800: he met [REDACTED] because he could not come up with an excuse not to meet him upon his arrival in [REDACTED] and did not want to raise suspicion.<sup>712</sup>

209. For these reasons, the Chamber can safely rely on the material elements of P-0800's testimony, particularly when corroborated by other acceptable evidence.

<sup>709</sup> P-0800, T-50, p. 87, ln. 5 to p. 88, ln. 24. See also T-51, p. 88, lns. 2-18.

<sup>710</sup> P-0800/P-0495, [KEN-OTP-0160-1035](#); [KEN-OTP-0160-1423](#); [KEN-OTP-0160-1426](#); [KEN-OTP-0160-1429](#).

<sup>711</sup> P-0800, T-51, p. 101, ln. 1 to p. 102, ln. 11.

<sup>712</sup> P-0800, T-50, p. 54, lns. 11-19.

iv. *GICHERU's individual criminal responsibility*

210. The evidence described above clearly establishes that GICHERU, jointly with ██████████ ██████████, approached and corrupted P-0800 as part of the Common Plan.<sup>713</sup>

The Prosecution therefore submits that GICHERU's individual criminal responsibility is best characterised as a co-perpetrator under article 25(3)(a), and/or as a direct perpetrator for his personal acts of corrupt influence. Accordingly, these two modes are specifically addressed below. However, the evidence also supports his conviction under any of the other charged modes of liability as outlined in the Trial Brief.<sup>714</sup>

211. The material facts common to all incidents set out in Part B. I. above are incorporated *mutatis mutandis*.

212. The evidence proves beyond reasonable doubt that GICHERU performed the following specific acts in relation to the Fourth Incident:

- a) During May 2013, at the latest, GICHERU solicited or induced ██████████ to contact P-0800 and corruptly influence him to withdraw as a Prosecution Witness,<sup>715</sup> ██████████ ██████████.<sup>716</sup>
- b) In July 2013, GICHERU solicited or induced ██████████<sup>717</sup> to contact P-0800 and persuade him to meet with GICHERU in order that GICHERU could corruptly influence P-0800,<sup>718</sup> ██████████.<sup>719</sup>
- c) In August 2013, GICHERU met P-0800 ██████████ at a hotel in the ██████████ ██████████.<sup>720</sup> GICHERU offered P-0800 a Bribe of 2,000,000 KSh in

<sup>713</sup> See *supra* paras. 84-204.

<sup>714</sup> Trial Brief, paras. 207-213.

<sup>715</sup> **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45.

<sup>716</sup> **P-0800**, T-50, p. 51, lns. 1-18, p. 52, lns. 2-23, p. 53, lns. 1-5, p. 56, lns. 17-18, p. 57, lns. 1-25; [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** ██████████, [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-R01](#); [KEN-OTP-0131-0431](#).

<sup>717</sup> **P-0800**, [KEN-OTP-0135-0113](#) at 0118, lns. 155-159; *contra* [KEN-OTP-0135-0054-R01](#) at 0069, lns. 554-561; [KEN-OTP-0135-0103-R01](#) at 0108, ln. 182-185.

<sup>718</sup> **P-0800**, [KEN-OTP-0135-0113](#) at 0120, lns. 238-243.

<sup>719</sup> **P-0800**, T-50, p. 67, lns. 5-13; **P-0800**, [KEN-OTP-0135-0113](#) at 0116, lns. 77-85; [KEN-OTP-0160-0338](#) at 0346, lns. 258-262, 0350, lns. 423-428; [KEN-OTP-0160-0354](#) at 0358, lns. 125-127.

<sup>720</sup> **P-0800**, T-50, p. 68, lns. 7-17; **P-0800**, [KEN-OTP-0135-0113](#) at 0117, lns. 116-127; [KEN-OTP-0160-0354](#) at 0358, lns. 125-127; [KEN-OTP-0160-0400-R02](#) at 0418, lns. 629-633, 0422, lns. 766-768.

order to withdraw as a Prosecution Witness,<sup>721</sup> to sign an affidavit to that effect,<sup>722</sup> and to help to locate other Prosecution Witnesses and persuade them to withdraw.<sup>723</sup>

- 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,<sup>724</sup> which P-0800 did.<sup>725</sup> GICHERU was the only person with the authority to discuss the amount of the Bribes.<sup>726</sup> GICHERU gave P-0800 50,000 KSh for expenses in order to travel to find P-0495 [REDACTED] for this purpose.<sup>727</sup>
- e) In or about [REDACTED],<sup>728</sup> GICHERU [REDACTED] arranged for P-0800 to sign an affidavit prepared, under GICHERU's instructions, by [REDACTED] [REDACTED] withdrawing as a Prosecution Witness.<sup>729</sup>

213. The Prosecution submits that the factual allegations set out above establish GICHERU's criminal responsibility for the Fourth Incident, as a **direct perpetrator** as a result of the specific acts described in paragraphs a) to e) above, and/or as a **co-perpetrator** as a result of his essential contributions to the Common Plan.<sup>730</sup> 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.

<sup>721</sup> P-0800, T-50, p. 68, ln. 7 to p. 69, ln. 12, p. 70, ln. 18 to p. 71, ln. 8; P-0800, [KEN-OTP-0135-0113](#) at 0118, lns. 173-181; [KEN-OTP-0160-0354](#) at 0359, lns. 143-157, 0361, lns. 239-242.

<sup>722</sup> P-0800, T-50, p. 71, ln. 11 to p. 74, ln. 11; P-0800, [KEN-OTP-0135-0113](#) at 0122, lns. 327-335. *See also* P-0800, [KEN-OTP-0160-0374](#) at 0377, lns. 81-84; P-0800, [KEN-OTP-0160-0468](#) at 0476, lns. 283-285.

<sup>723</sup> P-0800, T-50, p. 70, ln. 18 to p. 71, ln. 8; P-0800, [KEN-OTP-0135-0113](#) at 0121, lns. 277-287; [KEN-OTP-0160-0354](#) at 0359, lns. 140-149. *See also* P-0800, [KEN-OTP-0135-0113](#) at 0135, lns. 784-790; [KEN-OTP-0160-0338](#), at 0350, lns. 423-428.

<sup>724</sup> P-0800, [KEN-OTP-0135-0113](#) at 0121, lns. 282-290, 0126, lns. 446-456; [KEN-OTP-0160-0354](#) at 0357, lns. 86-103, 0359, lns. 140-157, 0370, lns. 545-549. *See also* P-0800, [KEN-OTP-0160-0468](#) at 0477, lns. 327-332.

<sup>725</sup> P-0800, T-50, p. 77, ln. 12 to p. 79, ln. 23; P-0800, [KEN-OTP-0135-0113](#) at 0134, lns. 744-745; [KEN-OTP-0160-0354](#) at 0357, lns. 81-103, 0370, lns. 545-549. *See also* P-0800, [KEN-OTP-0160-0290](#) at 0295, lns. 175-181.

<sup>726</sup> P-0800, [KEN-OTP-0135-0113](#) at 0126, lns. 461-478.

<sup>727</sup> P-0800, T-50, p. 84, lns. 5-22; P-0800, [KEN-OTP-0135-0113](#) at 0121, ln. 295 to 0122, ln. 303; [KEN-OTP-0160-0354](#) at 0359, lns. 140-157.

<sup>728</sup> P-0800, [KEN-OTP-0135-0179-R01](#) at 0197, ln. 659 to 0198, ln. 691.

<sup>729</sup> P-0800, T-50, p. 71, ln. 11 to p. 74, ln. 2; P-0800, [KEN-OTP-0135-0155-R01](#) at 0170, ln. 537 to 0171, ln. 583; [KEN-OTP-0160-0354](#) at 0364, lns. 350-351, 0370, lns. 551-558; [KEN-OTP-0160-0489](#) at 0492, ln. 108 to 0493, ln. 119.

<sup>730</sup> As set out in Part B. I. ii. and paragraphs a) to e) above.

214. The subjective elements of both direct perpetration and co-perpetration<sup>731</sup> may be inferred from the relevant facts, as set out in Part B. I. ii. and vi. and paragraphs a) to e) above.

215. Accordingly, the Prosecution submits that the evidence establishes beyond reasonable doubt that GICHERU is criminally responsible for the Fourth Incident under articles 25(3)(a), or in the alternative (b), (c) or (d), as outlined in the Trial Brief.<sup>732</sup>

## V. Fifth Incident: Corruptly influencing Witness P-0495<sup>733</sup>

### i. Introduction

216. ██████████ (“P-0495”) ██████████ and a Prosecution Witness in the *Ruto and Sang* case.<sup>734</sup>

217. The evidence proves beyond reasonable doubt that, during August to September 2013, in Kenya, GICHERU ██████████, 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.<sup>735</sup> At GICHERU’s request, P-0495 subsequently approached P-0613 in order to convince her to meet GICHERU.<sup>736</sup> In September 2014, pursuant to GICHERU’s instructions, he gave false testimony before TC V(A) when he was summonsed to testify.<sup>737</sup>

<sup>731</sup> As set out in para. 203-204 of the Trial Brief.

<sup>732</sup> Trial Brief, paras. 203-213.

<sup>733</sup> Confirmation Decision, paras. 121-125, disposition.

<sup>734</sup> **P-0495**, T-47; T-24; T-16; T-17; T-25. While P-0495’s testimony in the *Ruto and Sang* case has not been submitted, the Chamber may take judicial notice of the fact that he was summonsed as a Prosecution Witness, the dates of his testimony, and that he was declared a hostile by TC V(A), pursuant to article 69(6) of the Statute, as these are facts of common knowledge and public record; *Bemba et al* TJ, para. 201. (*see e.g.* ICC-01/05-01/13-1473, para. 3, *citing* ICC-01/05-01/13-1249, paras. 5-6). *See also* ICC-01/09-01/11-1274-Corr2, p. 77.

<sup>735</sup> **P-0800**, T-50, p. 70, ln. 18 to p. 71, ln. 25, p. 77, ln. 12 to p. 79, ln. 23; [KEN-OTP-0135-0113](#) at 0121, lns. 265-290, 0131, lns. 638-654, 0134, lns. 738-745, 0135, lns. 784-786; **P-0613**, T-55, p. 49, lns. 17-20, 63, ln. 22 to p. 67, ln. 11, p. 69, lns. 7-24; [KEN-OTP-0115-0216-R01](#) at 0222, 0229-0232, paras. 29-31, 66, 74-80; **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1130, ln. 79 to 1131, ln. 124, 1133, lns. 212-213, 1139, lns. 404-420, 1142, lns. 501-508; **P-0800/P-0495**, [KEN-OTP-0160-1035](#) at 1038, ln. 61 to 1039, ln. 96; [KEN-OTP-0160-1429](#) at 1432, lns. 40-60.

<sup>736</sup> *See above* Third Incident.

<sup>737</sup> **P-0800**, T-50, p. 91, ln. 10 to p. 92, ln. 2; [KEN-OTP-0144-0272-R02](#) at 0283, ln. 383 to 0285, ln. 472. *See also* **P-0613**, T-55, p. 87, lns. 11-19.

ii. *Corruptly influencing P-0495*

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

219. In August 2013, GICHERU met P-0800 [REDACTED] at a hotel [REDACTED].<sup>738</sup> GICHERU asked P-0800 to help to locate other Prosecution Witnesses and persuade them to withdraw.<sup>739</sup> 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.<sup>740</sup> P-0800 later told the Prosecution that GICHERU promised him money to do this, but he never received it.<sup>741</sup> However, GICHERU gave P-0800 50,000 KSh for expenses to travel [REDACTED] to find P-0495 and corruptly influence him.<sup>742</sup>

220. P-0800 informed P-0495 that GICHERU had instructed him to locate P-0495 and take him to GICHERU.<sup>743</sup> Subsequently, P-0800, [REDACTED] and GICHERU met with P-0495 at [REDACTED] to discuss his withdrawal as a Prosecution Witness.<sup>744</sup> [REDACTED] GICHERU and P-0495 discussed the terms of their agreement.<sup>745</sup> After the meeting, P-0495 told P-0800 that GICHERU had offered him 1,500,000 KSh to withdraw as an ICC witness.<sup>746</sup> In addition, GICHERU instructed P-0495 to find P-0613.<sup>747</sup> While at the [REDACTED] GICHERU told P-0800 that P-0495 had

<sup>738</sup> **P-0800**, T-50, p. 68, lns. 7-17; [KEN-OTP-0135-0113](#) at 0117, lns. 114-143; [KEN-OTP-0160-0354](#) at 0358, lns. 125-127.

<sup>739</sup> **P-0800**, T-50, p. 70, lns. 23-24; [KEN-OTP-0135-0113](#) at 0118, lns. 176-180; [KEN-OTP-0160-0354](#) at 0359, lns. 140-149.

<sup>740</sup> **P-0800**, T-50, p. 71, lns. 2-8, p. 77, lns. 12-25; [KEN-OTP-0135-0113](#) at 0121, ln. 265 to 0122, ln. 315; [KEN-OTP-0160-0354](#) at 0357, lns. 86-103, 0359, lns. 140-149, 0369, ln. 514 to 0370, ln. 549. *See also* **P-0800**, [KEN-OTP-0160-0290](#) at 0295, lns. 175-181.

<sup>741</sup> **P-0800**, [KEN-OTP-0135-0200](#) at 0208, lns. 263-277; [KEN-OTP-0160-0354](#) at 0361, lns. 239-249.

<sup>742</sup> **P-0800**, T-50, p. 84, lns. 5-15; [KEN-OTP-0135-0113](#) at 0121, lns. 298-299; [KEN-OTP-0135-0103-R01](#) at 0107, lns. 143-147. GICHERU admitted knowing [REDACTED] and being

there once or twice in a month in 2013, *see* **GICHERU**, [KEN-OTP-0159-0841](#) at 0846, ln. 167 to 0847, ln. 193.

<sup>743</sup> **P-0800**, T-50, p. 71, lns. 2-8, p. 77, lns. 12-20; [KEN-OTP-0135-0113](#) at 0121, lns. 265-290. *See also* **P-0800**, [KEN-OTP-0160-0354](#) at 0357, lns. 86-103, 0359, lns. 140-149.

<sup>744</sup> **P-0800**, T-50, p. 71, lns. 2-8, p. 77, ln. 12 to p. 78, ln. 7; [KEN-OTP-0135-0113](#) at 0131, lns. 638-654; [KEN-OTP-0160-0354](#) at 0363, lns. 288-292; [KEN-OTP-0160-0400-R02](#) at 0418, ln. 637 to 0419, ln. 661, 0422, lns. 779-780.

<sup>745</sup> **P-0800**, T-50, p. 78, lns. 13-15; [KEN-OTP-0135-0113](#) at 0134, lns. 738-741.

<sup>746</sup> **P-0800**, T-50, p. 79, lns. 17-23; [KEN-OTP-0135-0113](#) at 0134, lns. 741-742; [KEN-OTP-0160-0354](#) at 0363, lns. 288-293.

<sup>747</sup> **P-0800**, T-50, p. 78, lns. 18-25; [KEN-OTP-0135-0113](#) at 0132, ln. 663, 0135, lns. 784-786. *See also* **P-0613**, [KEN-OTP-0115-0216-R01](#) at 0222, paras. 29-31.

agreed to find P-0613 and that GICHERU would facilitate P-0495's travel to [REDACTED] where P-0613 was residing at the time.<sup>748</sup>

221. 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.<sup>749</sup> 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.<sup>750</sup> P-0495 explained that he requested 2,500,000 KSh because that would [REDACTED].<sup>751</sup> Additionally, P-0495 stated that he was promised a job offer anywhere even if he did not have the right qualifications.<sup>752</sup> P-0495 told P-0613 that after accepting the offer of 2,500,000 KSh, he agreed to go to convince P-0613 to withdraw as a witness in order to show that he had "truly surrendered".<sup>753</sup> In addition, P-0495 told P-0613 that he was offered private security to ensure his safety and peace of mind.<sup>754</sup> Immediately following his meeting with P-0613, P-0495 was intercepted and interviewed under caution by the OTP investigators.<sup>755</sup>

222. Also on 13 September 2013, at the request of investigators, P-0495 agreed to call P-0800 in the presence of the OTP investigators and record the conversations.<sup>756</sup> P-0800, who was responsible for monitoring P-0495,<sup>757</sup> 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.<sup>758</sup> P-

<sup>748</sup> **P-0800**, T-50, p. 78, lns. 16-20; [KEN-OTP-0135-0113](#) at 0135, lns.784-800, 0136, lns. 822-826.

<sup>749</sup> **P-0613**, T-55, p. 18, lns. 11-13, p. 49, lns. 17-20, p. 57, lns. 2-9, p. 59, ln. 18 to p. 60, ln. 16, p. 63, ln. 22 to p. 64, ln. 18, p. 66, ln. 12 to p. 67, ln. 11; [KEN-OTP-0115-0216-R01](#) at 0229-0232, paras. 66, 74-80; **P-0613/P-0495**, [KEN-OTP-0160-1126](#); [KEN-OTP-0138-0649](#); [KEN-OTP-0138-0652](#); [KEN-OTP-0138-0663](#). See also **P-0800**, T-50, p. 82, ln. 10 to p. 83, ln. 3.

<sup>750</sup> **P-0613**, T-55, p. 63, ln. 22 to p. 64, ln. 18; [KEN-OTP-0115-0216-R01](#) at 0222, para. 30; **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1130, ln. 79 to 1131, ln. 138, 1139, lns. 404-420.

<sup>751</sup> **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1130, lns. 79-82, 1142, lns. 501-507.

<sup>752</sup> **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1130, lns. 84-89.

<sup>753</sup> **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1130, lns. 89-100. See also **P-0613**, T-55, p. 65, lns. 3-14.

<sup>754</sup> **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1132, lns. 158-162. See also **P-0613**, T-55, p. 69, ln. 21 to p. 70, ln. 13.

<sup>755</sup> **P-0730**, [KEN-OTP-0159-0884](#) at 0925, para. 162.<sup>756</sup> **P-0730**, [KEN-OTP-0159-0884](#) at 0925, para. 162; **P-0800/P-0495**, [KEN-OTP-0160-1035](#); [KEN-OTP-0160-1423](#); [KEN-OTP-0160-1426](#); [KEN-OTP-0160-1429](#); **P-0800**, T-50, p. 83, lns. 4-13.

<sup>756</sup> **P-0730**, [KEN-OTP-0159-0884](#) at 0925, para. 162; **P-0800/P-0495**, [KEN-OTP-0160-1035](#); [KEN-OTP-0160-1423](#); [KEN-OTP-0160-1426](#); [KEN-OTP-0160-1429](#); **P-0800**, T-50, p. 83, lns. 4-13.

<sup>757</sup> **P-0800**, T-50, p. 80, ln. 18 to p. 81, ln. 6.

<sup>758</sup> **P-0800/P-0495**, [KEN-OTP-0160-1035](#) at 1038, ln. 48 to 1040, ln. 96; [KEN-OTP-0160-1429](#) at 1432, lns. 50-60. See also **P-0800**, T-50, p. 81, ln. 1 to p. 83, ln. 3; [KEN-OTP-0135-0074-R01](#) at 0082, lns. 275-281, 0084, lns. 358-363.



0800 told P-0495 that he was “not concerned about the money”<sup>759</sup> and if P-0613 or P-0495 were concerned about the payment, they should not be.<sup>760</sup> P-0800 later explained that he wanted to make sure that P-0495 “goes back” and that any questions related to money “would be discussed by GICHERU”.<sup>761</sup> P-0800 also told P-0495 that “these people [were] dangerous”, that he was “really scared of them” and that they were “piling [on] the pressure”,<sup>762</sup> which he explained was referring to pressure from GICHERU “to get” P-0495.<sup>763</sup>

223. 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 ██████, Kenya, but ceased cooperating with the OTP.<sup>764</sup> He was summonsed,<sup>765</sup> but during his court testimony between 16 and 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 ██████.<sup>766</sup> P-0495 alleged that ██████ briefed him on what to say prior to his meeting with the Prosecution.<sup>767</sup> 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.<sup>768</sup>

224. P-0800 confirmed that P-0495’s recantation in his testimony was the result of corrupt influence by the members of the Common Plan. 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.<sup>769</sup> The plan was to testify in such a way as to “blame everything” on ██████, and to claim that ██████ had instructed witnesses on what to say to the OTP investigators.<sup>770</sup>

<sup>759</sup> P-0800/P-0495, [KEN-OTP-0160-1035](#) at 1038, ln. 63.

<sup>760</sup> P-0800/P-0495, [KEN-OTP-0160-1035](#) at 1038, lns. 61-63.

<sup>761</sup> P-0800, [KEN-OTP-0135-0074-R01](#) at 0081, lns. 220-226.

<sup>762</sup> P-0800/P-0495, [KEN-OTP-0160-1423](#) at 1425, lns. 17-18; [KEN-OTP-0160-1429](#) at 1432, lns. 56-57.

<sup>763</sup> P-0800, [KEN-OTP-0135-0074-R01](#) at 0084, lns. 347-363.

<sup>764</sup> P-0730, [KEN-OTP-0159-0884](#) at 0925, paras. 164-165.

<sup>765</sup> ICC-01/09-01/11-1274-Corr2, p. 77.

<sup>766</sup> P-0730, [KEN-OTP-0159-0884](#) at 0925, para. 166. *See also* P-0613, T-57, p. 26, ln. 22 to p. 27, ln. 25.

<sup>767</sup> P-0613, T-57, p. 26, ln. 22 to p. 27, ln. 25. *Contra*, P-0613, [KEN-OTP-0160-0609-R01](#) at 01613, paras. 21-22. The PTC found the version provided by P-0495 in his *Ruto and Sang* testimony to be implausible and untruthful, Confirmation Decision, paras. 121-123.

<sup>768</sup> P-0613, T-57, p. 26, ln. 22 to p. 27, ln. 25.

<sup>769</sup> P-0800, T-50, p. 91, ln 10 to p. 92, ln. 2; [KEN-OTP-0144-0272-R02](#) at 0283, ln. 391 to 0284, ln. 448.

<sup>770</sup> P-0800, [KEN-OTP-0144-0272-R02](#) at 0285, lns. 454-472.

iii. *Analysis of the evidence related to the Fifth Incident*

225. The foregoing evidence proves beyond reasonable doubt that GICHERU corruptly influenced P-0495. The main source of evidence proving the essential elements of this incident is the direct and reliable evidence of P-0800 and P-0613. Their evidence that P-0495 accepted a Bribe of between 1,500,000 and 2,500,000 KSh, to be paid by GICHERU, to withdraw as a Prosecution Witness and to corruptly influence P-0613<sup>771</sup> is reliably corroborated by the controlled meeting between P-0495 and P-0613 and the recording of their conversation,<sup>772</sup> as well as P-0495's recorded phone call with P-0800.<sup>773</sup> The Defence seeks to dismiss the recording relating to the controlled meeting as false and pre-scripted by [REDACTED], as claimed by P-0495 in his *Ruto and Sang* testimony.<sup>774</sup> However, this explanation is at odds with the contents of the recording, such as the fact that P-0495 was unable to name the other person working with GICHERU to bribe witnesses<sup>775</sup>—a detail that would surely have been agreed upon in advance. P-0495's evidence in the *Ruto and Sang* case was also rejected by the PTC as untruthful.<sup>776</sup>

226. The Prosecution notes that, beyond what was read into the record during the cross examination of P-0613,<sup>777</sup> P-0495's subsequent denial in the *Ruto and Sang* case of having met GICHERU or receiving any money does not form part of the case record.<sup>778</sup> But in any event, it was merely an attempt to minimise his (P-0495's) involvement in the bribery scheme, particularly his interaction with GICHERU, and should be rejected as false, as the PTC did.<sup>779</sup> It is contradicted by P-0800's direct evidence that he arranged for P-0495 to meet GICHERU at [REDACTED]<sup>780</sup> Moreover, P-0495 told P-0800 that GICHERU and other lawyers coached P-0495 as to what to say in his *Ruto and Sang*

<sup>771</sup> P-0800, T-50, p. 78, lns. 18-25, p. 79, lns. 17-23; [KEN-OTP-0135-0113](#) at 0132, ln. 663, 0134, lns. 738-743, 0135, lns. 784-786; [KEN-OTP-0160-0354](#) at 0363, lns. 288-293; P-0613, T-55, p. 63, ln. 22 to p. 65, ln. 18; [KEN-OTP-0115-0216-R01](#) at 0222, paras. 29-31.

<sup>772</sup> P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1130, ln. 79 to 1131, ln. 124, 1133, lns. 212-213, 1139, lns. 404-420, 1142, lns. 501-508.

<sup>773</sup> P-0800/P-0495, [KEN-OTP-0160-1035](#) at 1037, ln. 14 to 1039, ln. 96; [KEN-OTP-0160-1423](#) at 1425, lns. 17-18; [KEN-OTP-0160-1429](#) at 1432, lns. 40-60.

<sup>774</sup> P-0613, T-57, p. 26, ln. 22 to p. 27, ln. 25.

<sup>775</sup> P-0613/P-0495, [KEN-OTP-0160-1126](#) at 1131, lns. 118-126.

<sup>776</sup> Confirmation Decision, para. 124.

<sup>777</sup> P-0613, T-57, particularly at p. 26, ln. 22 to p. 27, ln. 25.

<sup>778</sup> ICC-01/09-01/20-247-Red, p. 10.

<sup>779</sup> The PTC found the version provided by P-0495 in his *Ruto and Sang* testimony to be implausible and untruthful, see Confirmation Decision, paras. 121-123.

<sup>780</sup> P-0800, T-50, p. 68, lns. 7-17; [KEN-OTP-0135-0113](#) at 0131, lns. 638-654, 0134, lns. 736-745; [KEN-OTP-0160-0354](#) at 0358, lns. 124-127.

testimony,<sup>781</sup> which undermines the credibility of P-0495's *Ruto and Sang* testimony generally and in particular in relation to GICHERU. This is also consistent with a similar admission by summonsed *Ruto and Sang* witness P-0604 that he too had been coached on what to say in his testimony.<sup>782</sup>

*iv. GICHERU's individual criminal responsibility*

227. The evidence described above clearly establishes that GICHERU, jointly with [REDACTED] and assisted by P-0800, approached and corrupted P-0495 as part of the Common Plan.<sup>783</sup>

The Prosecution therefore submits that GICHERU's individual criminal responsibility is best characterised as a **co-perpetrator** under article 25(3)(a). Accordingly, this mode of liability is specifically addressed below. However, the evidence also supports his conviction under any of the other charged modes of liability as outlined in the Trial Brief.<sup>784</sup>

228. The material facts common to all incidents set out in Part B. I. above are incorporated *mutatis mutandis*.

229. The evidence proves beyond reasonable doubt that GICHERU performed the following specific acts in relation to the Fifth Incident:

- a) In August 2013, GICHERU met P-0800, [REDACTED] at a [REDACTED] [REDACTED].<sup>785</sup> GICHERU requested P-0800 to help to locate other Prosecution Witnesses and persuade them to withdraw.<sup>786</sup> 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

<sup>781</sup> **P-0800**, T-50, p. 91, ln. 10 to p. 92, ln. 2; [KEN-OTP-0144-0272-R02](#) at 0283, ln. 383 to 0285, ln. 472. The inconsistency as to whether this conversation with P-0495 took place in person or over the phone, is a peripheral issue unrelated to the substance of their conversation and does not detract from the credibility of P-0800's otherwise consistent evidence that P-0495 was coached by GICHERU and other lawyers.

<sup>782</sup> **P-0730**, [KEN-OTP-0159-0884](#) at 0933, para. 196.

<sup>783</sup> *See supra* paras. 218-224.

<sup>784</sup> Trial Brief, paras. 237-243.

<sup>785</sup> **P-0800**, T-50, p. 68, lns. 7-17; [KEN-OTP-0135-0113](#) at 0117, lns. 114-143; [KEN-OTP-0160-0354](#) at 0358, lns. 124-127; [KEN-OTP-0160-0400-R02](#) at 0418, lns. 629-635, 0422, lns. 763-768.

<sup>786</sup> **P-0800**, T-50, p. 70, lns. 23-24; [KEN-OTP-0135-0113](#) at 0118, lns. 176-180; [KEN-OTP-0160-0354](#) at 0357, lns. 86-103, 0359, lns. 140-149.

Witness, which P-0800 did.<sup>787</sup> GICHERU gave P-0800 50,000 KSh for expenses to travel to ██████████ to find P-0495 for this purpose.<sup>788</sup>

- b) Approximately three days later in August 2013, GICHERU met with P-0495, together ██████████ and P-0800, at ██████████. GICHERU offered P-0495 a Bribe of between 1,500,000 and 2,500,000 KSh in order to withdraw as a Prosecution Witness and, in turn, to help locate other Prosecution Witnesses and persuade them to withdraw.<sup>789</sup> 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.<sup>790</sup>
- c) Between 5 and 16 September, before P-0495 was summonsed to testify in front of the ICC via video link. GICHERU coached P-0495 on 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 ██████████.<sup>791</sup> Further, GICHERU told P-0495 to claim in court that ██████████ had instructed witnesses as what to say to the OTP investigators.<sup>792</sup> P-0495's testimony before the Court between 16 and 22 September 2014 followed GICHERU's script.<sup>793</sup> GICHERU and other lawyers coached P-0495 prior to his testimony before TC V(A).<sup>794</sup>

230. The Prosecution submits that the factual allegations set out above establish GICHERU's criminal responsibility for the Fifth Incident, as a **co-perpetrator** as a result of his essential contributions to the Common Plan.<sup>795</sup> GICHERU is thus criminally responsible for the specific acts of corrupt influence performed by the Direct Perpetrators in relation to the

<sup>787</sup> P-0800, T-50, p. 71, lns. 2-8, p. 77, ln. 12 to 78, ln. 7; [KEN-OTP-0135-0113](#) at 0121, ln. 268 to 0122, ln. 315; [KEN-OTP-0160-0354](#) at 0357, lns. 86-103, 0359, lns. 140-149.

<sup>788</sup> P-0800, T-50, p. 84, lns. 5-15; [KEN-OTP-0135-0113](#) at 0121, lns. 298-299; [KEN-OTP-0160-0354](#) at 0359, lns. 140-149.

<sup>789</sup> P-0800, T-50, p. 71, lns. 2-8, p. 77, ln. 12 to p. 79, ln. 25; [KEN-OTP-0135-0113](#) at 0131, ln. 638 to 0132, ln. 681, 0134, ln. 733 to 0135, ln. 787; [KEN-OTP-0160-0354](#) at 0362, ln. 285 to 0363, ln. 308; [KEN-OTP-0160-0400-R02](#) at 0418, ln. 637 to 0419, ln. 661, 0422, lns. 779-780; P-0613, [KEN-OTP-0115-0216-R01](#) at 0222, para. 30.

<sup>790</sup> P-0800, [KEN-OTP-0135-0113](#) at 0132, ln. 663, 0135, lns. 784-786. *See also* P-0613, T-55, p. 57, lns. 2-9; [KEN-OTP-0115-0216-R01](#) at 0222, paras. 29-31.

<sup>791</sup> P-0800, T-50, p. 91, ln. 10 to p. 92, ln. 2; [KEN-OTP-0144-0272-R02](#) at 0283, ln. 383 to 0285, ln. 472.

<sup>792</sup> P-0800, [KEN-OTP-0144-0272-R02](#) at 0285, lns. 454-472.

<sup>793</sup> P-0613, T-57, p. 26, ln. 22 to p. 27, ln. 25; P-0730, [KEN-OTP-0159-0884](#) at 0925, para. 166.

<sup>794</sup> P-0800, T-50, p. 91, ln. 10 to p. 92, ln. 2; [KEN-OTP-0144-0272-R02](#) at 0283, ln. 383 to 0285, ln. 472.

<sup>795</sup> As set out in Part B. I. ii. and paragraphs a) to c) above.

Fifth Incident set out in the narrative of the evidence above, and listed in Chapter C of the DCC.

231. The subjective elements of co-perpetration<sup>796</sup> may be inferred from the relevant facts, as set out in Part B. I. ii and vi. and paragraphs a) to c) above.
232. Accordingly, the Prosecution submits that the evidence establishes beyond reasonable doubt that GICHERU is criminally responsible for the Fifth Incident under articles 25(3)(a), or in the alternative (b), (c) or (d), as outlined in the Trial Brief.<sup>797</sup>

## VI. Sixth Incident: Corruptly influencing Witness P-0738<sup>798</sup>

### *i. Introduction*

233. [REDACTED] (“P-0738”) 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.<sup>799</sup> She also provided evidence about [REDACTED] RUTO, held at [REDACTED]<sup>800</sup> P-0738 testified before TC V(A) between 17 September 2013 and 4 October 2013.<sup>801</sup>
234. The evidence presented at trial proves beyond reasonable doubt that, during the period May to September 2013, at [REDACTED] GICHERU corruptly influenced P-0738, through [REDACTED], by offering her a Bribe of between 1,400,000 and 1,600,000 KSh to withdraw as a Prosecution Witness.<sup>802</sup>

### *ii. Corruptly influencing P-0738*

235. P-0738’s identity was disclosed to the Defence on 13 March 2013. [REDACTED]  
[REDACTED]

<sup>796</sup> As set out in para. 234 of the Trial Brief.

<sup>797</sup> Trial Brief, paras. 234-243.

<sup>798</sup> Confirmation Decision, paras. 126-130, disposition.

<sup>799</sup> P-0738, [KEN-OTP-0104-0679](#) at 0679.

<sup>800</sup> P-0738, T-60, p. 9, Ins. 15-16, p. 14, Ins. 1-3, 14-17.

<sup>801</sup> P-0738, T-60, p. 9, Ins. 13-15.

<sup>802</sup> P-0738, T-60, p. 17, ln. 18 to p. 18, ln. 25; [KEN-OTP-0111-0201-R01](#) at 0206, paras. 22, 26; P-0738/[REDACTED] [KEN-OTP-0160-0983](#), Ins. 124-132, 154-159, 221-236; [KEN-OTP-0160-1002](#), Ins. 29, 33. *Contra* GICHERU, [KEN-OTP-0159-0815](#) at 0838, Ins. 779-784.

236. On 24 May 2013, P-0738 – ██████████<sup>803</sup> – confirmed that ██████████ had called her on ██████████ to say that he would come to visit her.<sup>804</sup> Investigators provided P-0738 with a recording device and requested her to record any future conversations with ██████████<sup>805</sup>
237. On 19 July 2013, P-0738 received a series of telephone calls from ██████████,<sup>806</sup> from an unconfirmed location, which she recorded.<sup>807</sup> ██████████ again expressed his wish to meet with P-0738 and enquired about her location.<sup>808</sup> She replied (falsely)<sup>809</sup> that she was ██████████<sup>810</sup> ██████████ mentioned, *inter alia*, that he was travelling to ██████████ on ██████████ July 2013 to see some other people, but that he would come to see her in ██████████ thereafter.<sup>811</sup> This is confirmed by the fact that ██████████ subsequently met with P-0800 in ██████████ on ██████████ July 2013.<sup>812</sup>
238. ██████████ did not want to discuss the purpose of the meeting over the phone,<sup>813</sup> but P-0738 understood that he intended to offer her a bribe to withdraw as a Prosecution Witness.<sup>814</sup> ██████████  
██████████<sup>815</sup> ██████████  
██████████<sup>816</sup> When P-0738 expressed concern that she might be “left stranded”, ██████████ said that this was the reason why he wanted to meet her and he would tell her

<sup>803</sup> P-0738, [KEN-OTP-0103-2693-R01](#) at 2696, para. 20.

<sup>804</sup> P-0738, T-60, p. 18, lns. 4-8; [KEN-OTP-0103-2693-R01](#) at 2696, paras. 23-25; [KEN-OTP-0107-0287](#).

<sup>805</sup> P-0738, T-60, p. 16, ln. 22 to p. 17, ln. 7; P-0730, [KEN-OTP-0159-0884](#) at 0896, para. 43.

<sup>806</sup> P-0738, [KEN-OTP-0111-0188-R01](#) at 0191-0193, paras. 17-24.

<sup>807</sup> P-0738, T-60, p. 17, lns. 4-7; [KEN-OTP-0111-0188-R01](#) at 0192-0193, paras. 18-20, 24; [KEN-OTP-0153-0044](#); P-0738/██████████, [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 other ERNs contain revised translations of tracks 1-4 following an audio-enhancement of the original recording).

<sup>808</sup> P-0738/██████████, [KEN-OTP-0160-0964](#) at 0966, lns. 15-26.

<sup>809</sup> As she was instructed to do, ██████████, P-0730, [KEN-OTP-0159-0884](#) at 0898, para. 52.

<sup>810</sup> P-0738/██████████, [KEN-OTP-0160-0964](#) at 0966, ln. 16; P-0738, [KEN-OTP-0111-0188-R01](#) at 0192, para. 18.

<sup>811</sup> P-0738/██████████, [KEN-OTP-0160-0969](#) at 0972, ln. 66, 0973, lns. 83-88; P-0738, [KEN-OTP-0111-0188-R01](#) at 0193, paras. 23-24.

<sup>812</sup> P-0800, [KEN-OTP-0111-0140](#) at 0147, paras. 35-39.

<sup>813</sup> P-0738, [KEN-OTP-0111-0188-R01](#) at 0193, para. 23.

<sup>814</sup> P-0738, T-60, p. 18, lns. 4-8.

<sup>815</sup> P-0738/██████████, [KEN-OTP-0160-0969](#) at 0973, lns. 191, 114-115; P-0738, [KEN-OTP-0111-0188-R01](#) at 0193, para. 23.

<sup>816</sup> P-0738, [KEN-OTP-0111-0188-R01](#) at 0193, para. 23.



she would be paid in cash.<sup>827</sup> [REDACTED] promised P-0738 that she would be relocated to an area where she could start her life afresh.<sup>828</sup>

241. In August 2013, P-0738 recorded various telephone calls and messages between her and [REDACTED].<sup>829</sup> On 9 August 2013, [REDACTED] told P-0738 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.<sup>830</sup> When P-0738 asked if RUTO agreed to their return, [REDACTED] responded that [REDACTED].<sup>831</sup>

242. On [REDACTED] August 2013, [REDACTED] explained to P-0738 that the ICC could not prosecute her for withdrawing as a witness and P-0738 reminded [REDACTED] [REDACTED].<sup>832</sup> [REDACTED] then told P-0738 that [REDACTED] [REDACTED] and had no issues.<sup>833</sup> [REDACTED] told P-0738 that GICHERU, the lawyer, could be trusted and [REDACTED].<sup>834</sup> When P-0738 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 finalises things with all the “people who are returning”.<sup>835</sup> [REDACTED] told P-0738 that they would conclude this issue by cash payment.<sup>836</sup> [REDACTED] explained to P-0738 that “they” were serious and that they would not pay her in [REDACTED] but rather somewhere else.<sup>837</sup>

<sup>827</sup> P-0738, T-60, p. 24, lns. 2-13; [KEN-OTP-0111-0201-R01](#) at 0206, para. 22. *See also* P-0613, T-55, p. 48, ln. 18 to p. 49, ln. 8.

<sup>828</sup> P-0738, T-60, p. 23, lns. 3-4; [KEN-OTP-0111-0201-R01](#) at 0206, para. 21.

<sup>829</sup> P-0738, T-60, p. 17, lns. 4-7. *See*, P-0738, [KEN-OTP-0118-0011-R01](#) at 0014-0022, paras. 14-55.

<sup>830</sup> P-0738/[REDACTED], [KEN-OTP-0160-1002](#) at 1004, lns. 24-29; P-0738, T-60, p. 17, ln. 20 to p.18, ln. 16; [KEN-OTP-0118-0011-R01](#) at 0016-0017, paras. 27-28.

<sup>831</sup> P-0738/[REDACTED], [KEN-OTP-0160-1002](#) at 1005, lns. 49-51. *Compare* P-0738, [KEN-OTP-0118-0011-R01](#) at 0017, para. 28.

<sup>832</sup> P-0738/[REDACTED], [KEN-OTP-0114-0296](#) at 0298, lns. 20-27; P-0738, [KEN-OTP-0118-0011-R01](#) at 0020, para. 47.

<sup>833</sup> P-0738/[REDACTED], [KEN-OTP-0114-0296](#) at 0298, lns. 28-31.

<sup>834</sup> P-0738/[REDACTED], [KEN-OTP-0114-0296](#) at 0299, lns. 39-45; P-0738, T-60, p. 22, lns. 10-11; [KEN-OTP-0118-0011-R01](#) at 0020, para. 48. *See also* P-0738/[REDACTED], [KEN-OTP-0160-1002](#) at 1005, lns. 42-43 [REDACTED].

*See also* GICHERU, [KEN-OTP-0159-0736](#) at 0737, lns. 16, 27.

<sup>835</sup> P-0738/[REDACTED], [KEN-OTP-0114-0296](#) at 0299, lns. 46-51; P-0738, [KEN-OTP-0118-0011-R01](#) at 0020-0021, para. 48.

<sup>836</sup> P-0738/[REDACTED], [KEN-OTP-0114-0296](#) at 0299, ln. 62; P-0738, T-60, p. 24, lns. 8-13; P-0738, [KEN-OTP-0118-0011-R01](#) at 0021, para. 48.

<sup>837</sup> P-0738/[REDACTED], [KEN-OTP-0114-0296](#) at 0300, lns. 79-82; P-0738, [KEN-OTP-0118-0011-R01](#) at 0021, para. 49.





that she could withdraw as a witness and [REDACTED],<sup>849</sup> and that the people of Kenya [REDACTED].<sup>850</sup>

245. P-0738's identification of GICHERU as the speaker in this call is not only supported by the content of this and previous calls and [REDACTED], but also by the fact that towards the end of the call, after P-0738 said that [REDACTED] GICHERU [REDACTED]<sup>851</sup> Gicheru acknowledges that he [REDACTED].<sup>852</sup> Moreover, by listening to the enhanced audio of the call,<sup>853</sup> GICHERU's distinct voice is recognisable even by a layperson, when compared with other recordings of GICHERU.<sup>854</sup> The Prosecution invites the Chamber to listen to the above mentioned recordings and draw its own conclusions.

*iii. Analysis of the evidence related to the Sixth Incident*

246. Based on the consistent, credible and unchallenged evidence of P-0738, the Chamber should conclude that the charge of corruptly influencing P-0738 is established beyond a reasonable doubt. Furthermore, her account is corroborated by her phone records and the audio-recordings of her phone calls with [REDACTED], which constitute an independent and objective record of the attempts to corrupt P-0738.<sup>855</sup> [REDACTED] clear, unambiguous and contemporaneous statements regarding GICHERU's role<sup>856</sup> – made in the execution of the Common Plan – implicate GICHERU as the person who would pay the bribe monies to P-0738. In the absence of any reliable evidence that [REDACTED] was falsely incriminating GICHERU, [REDACTED] statements provides compelling proof of his (GICHERU's) involvement in the Common Plan. Further, even though GICHERU's voice could not be

<sup>849</sup> P-0738/[REDACTED], [KEN-OTP-0160-0857](#) at 0863, lns. 171-172; P-0738, T-60, p. 30, lns. 2-3.

<sup>850</sup> P-0738/[REDACTED], [KEN-OTP-0160-0857](#) at 0863, ln. 174.

<sup>851</sup> P-0738, [KEN-OTP-0118-0011-R01](#) at 0032, para. 107; T-60, p. 19, lns. 16-19; [KEN-OTP-0159-2024](#), at 2026.

<sup>852</sup> GICHERU, [KEN-OTP-0159-0736](#) at 0737, lns. 16, 27.

<sup>853</sup> P-0738/[REDACTED], [KEN-OTP-0118-0135](#), Track 11 Enhanced03, from timestamp 07:27.

<sup>854</sup> See, for example, GICHERU, [KEN-OTP-0159-0582](#); P-0397/GICHERU, [KEN-OTP-0124-0018](#), Track 04 Enhanced 02.

<sup>855</sup> P-0738/[REDACTED], [KEN-OTP-0111-0554](#); [KEN-OTP-0116-0268](#); [KEN-OTP-0115-0002](#); [KEN-OTP-0118-0135](#); [KEN-OTP-0111-0196](#); [KEN-OTP-0111-0197](#); [KEN-OTP-0111-0198](#); [KEN-OTP-0111-0199](#); [KEN-OTP-0111-0210-R01](#); [KEN-OTP-0111-0211-R01](#); [KEN-OTP-0111-0212-R01](#); [KEN-OTP-0118-0037](#); [KEN-OTP-0118-0038](#); [KEN-OTP-0118-0039](#); [KEN-OTP-0118-0040](#); [KEN-OTP-0118-0041](#); [KEN-OTP-0118-0042](#); [KEN-OTP-0118-0043](#); [KEN-OTP-0118-0044](#); [KEN-OTP-0118-0045](#); [KEN-OTP-0118-0046](#); [KEN-OTP-0118-0047](#); [KEN-OTP-0118-0048](#); [KEN-OTP-0118-0049](#); [KEN-OTP-0118-0050](#); [KEN-OTP-0118-0051](#); [KEN-OTP-0118-0052](#); [KEN-OTP-0118-0053](#); [KEN-OTP-0118-0054](#); [KEN-OTP-0118-0055](#); [KEN-OTP-0118-0056](#).

<sup>856</sup> See para. 244 above.

positively identified on the [REDACTED] September call,<sup>857</sup> the fact that the speaker is someone who sounds very much like GICHERU and [REDACTED] are additional factors which implicate GICHERU and weigh against any reasonable possibility that he has been falsely implicated.

247. Additionally, P-0800's evidence and recorded calls between P-0800 and [REDACTED] further corroborate the efforts made by GICHERU and [REDACTED] to try to bring P-0738 [REDACTED], and the large sum of money that she was offered to withdraw as a witness.<sup>858</sup>

*iv. GICHERU's individual criminal responsibility*

248. The evidence described above establishes beyond a reasonable doubt that GICHERU, jointly with [REDACTED], approached and corrupted P-0738 as part of the Common Plan.<sup>859</sup> Accordingly, GICHERU's individual criminal responsibility is best characterized as a **co-perpetrator** under article 25(3)(a). This mode of liability is specifically addressed below. However, the evidence also supports his conviction under any of the other charged modes of liability, as outlined in the Trial Brief.<sup>860</sup>

249. The material facts common to all incidents set out in Part B. I. above are incorporated *mutatis mutandis*.

250. GICHERU performed the following specific acts in relation to the Sixth Incident:

- a) During or before May 2013, GICHERU induced or solicited [REDACTED] to locate and contact witness P-0738 and corruptly influence her to withdraw as a Prosecution Witness, which [REDACTED] did.<sup>861</sup>
- b) GICHERU coordinated with [REDACTED] in between his calls with P-0738 in regard to P-0738's Bribe and other arrangements necessary to bring her back [REDACTED].<sup>862</sup>

<sup>857</sup> P-0738/[REDACTED], [KEN-OTP-0118-0135](#), Track 11 Enhanced03, from timestamp 07:27.

<sup>858</sup> P-0800/[REDACTED], [KEN-OTP-0132-0167-R01](#) at 0186, lns. 591-612, 0204, lns.1228-1241, 0208, lns. 1377-1386, 0215, lns. 1623-1630; P-0800, [KEN-OTP-0111-0140](#) at 0147, paras. 40-41.

<sup>859</sup> See *supra* paras. 235-245.

<sup>860</sup> Trial Brief, paras. 261-267.

<sup>861</sup> P-0738, T-60, p. 24, lns. 2-13, p. 29, ln. 24 to p. 30, ln. 3; [KEN-OTP-0118-0011-R01](#) at 0019-0021, 0024, paras. 41, 48, 65. See also P-0738, [KEN-OTP-0111-0201-R01](#) at 0206-0207, paras. 22-26.

<sup>862</sup> P-0738, T-60, p. 18, lns. 4-16, p. 23, lns. 18-25, p. 24, lns. 2-13; [KEN-OTP-0118-0011-R01](#) at 0019-0021, 0024, paras. 41, 48, 65; P-0738/[REDACTED], [KEN-OTP-0160-0997](#) at 1000, lns. 47-59; [KEN-OTP-0114-0296](#) at 0299, lns. 37-51, 0301, lns. 105-108.

c) On █ September 2013, GICHERU spoke with P-0738 on the phone to corruptly influence her to withdraw as a Prosecution Witness.<sup>863</sup>

251. GICHERU is criminally responsible as a **co-perpetrator** as a result of his essential contributions to the Common Plan.<sup>864</sup> 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-0738, 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.

252. 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.

253. The subjective elements of co-perpetration<sup>865</sup> may be inferred from the material facts described in Part B. I. ii. and vi. and paragraphs a) to c) above.

254. Accordingly, the Prosecution submits that the evidence establishes beyond reasonable doubt that GICHERU is criminally responsible for the Sixth Incident under articles 25(3)(a), or in the alternative (b), (c) or (d), as outlined in the Trial Brief.<sup>866</sup>

## VII. Seventh Incident: Corruptly influencing Witness P-0341<sup>867</sup>

### *i. Introduction*

255. █ (“P-0341”, █) was a potential witness in the *Ruto and Sang* case, who filed a victim application with the Victims Participation and Reparation Section<sup>868</sup> at the pre-trial stage in the context of the Kenya situation.<sup>869</sup>

<sup>863</sup> **P-0738**, T-60, p. 29, lns. 20-23, p. 30, lns. 2-3; [KEN-OTP-0160-0857](#) at 0863, lns. 158-159, 163, 167, 171-172, 174.

<sup>864</sup> As set out in Part B. I. ii. and paragraphs a) to c) above.

<sup>865</sup> As set out in para. 258 of the Trial Brief.

<sup>866</sup> Trial Brief, paras. 258-267.

<sup>867</sup> Confirmation Decision, paras. 131-154, disposition.

<sup>868</sup> “VPRS”.

<sup>869</sup> **P-0341**, T-53, p. 34, ln.13 to p. 37, ln. 4; T-54, p. 18, lns. 1-5, p. 45, ln. 16 to p. 46, ln. 14; [KEN-OTP-0152-0091-R01](#).

256. P-0341 is a Kalenjin from [REDACTED] Kenya. [REDACTED]<sup>870</sup> [REDACTED] during the 2007 general elections and, in the violence that ensued, [REDACTED] [REDACTED]<sup>871</sup> After the PEV, P-0341 filed a victim application with the Court, [REDACTED] [REDACTED].<sup>872</sup> [REDACTED] P-0341 continued to publically condemn the violence on multiple occasions during ICC victims meetings, [REDACTED] [REDACTED]<sup>873</sup> Prosecution investigators conducted a short screening meeting with P-0341 on [REDACTED],<sup>874</sup> but did not subsequently interview him.<sup>875</sup> 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* case.<sup>876</sup> P-0341 was therefore a potential witness in that case for the purpose of article 70 proceedings.<sup>877</sup>

257. Shortly prior to the period 24 April 2013 to mid-April 2014, in Eldoret, Kenya, GICHERU, [REDACTED] and others corruptly influenced P-0341 by (i) promising him 2,000,000 KSh, a car, a farm, a plot of land in town, [REDACTED] [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 influence other Prosecution Witnesses.

<sup>870</sup> [REDACTED] see Annex B.

<sup>871</sup> **P-0341**, T-53, p. 28, lns. 20-21, p. 29, lns. 16-24, p. 41, lns. 19-21; T-54, p. 46, ln. 22 to p. 47, ln. 7; [KEN-OTP-0152-0091-R01](#) at 0095; [KEN-OTP-0147-1590-R01](#).

<sup>872</sup> ICC-01/09-01/11-249, para. 59. See also **P-0341**, T-54, p. 50, ln. 24 to p. 51, ln. 22.

<sup>873</sup> **P-0341**, T-53, p. 39, lns. 1-22, p. 40, ln. 10 to p. 42, ln. 14, p. 60, lns. 5-8, p. 76, lns. 1-2; T-54, p. 41, ln. 22 to p. 42, ln. 18; [KEN-OTP-0150-0255-R01](#) at 0260, paras. 24-25; [KEN-OTP-0150-0285-R01](#).

<sup>874</sup> **P-0341**, T-54, p. 53, ln. 9 to p. 55, ln. 5; [KEN-OTP-0147-1590-R01](#).

<sup>875</sup> **P-0341**, T-54, p. 55, ln. 25 to p. 56, ln. 19, p. 58, lns. 8-23, p. 60, ln. 18 to p. 61, ln. 9; [KEN-OTP-0150-0255-R01](#) at 0269, para. 76.

<sup>876</sup> **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0264-0266, paras. 47, 59.

<sup>877</sup> *Bemba et al.* AJ, para. 721.

ii. *Corruptly influencing P-0341*

258. 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.<sup>878</sup>

259. [REDACTED],<sup>879</sup> [REDACTED] [REDACTED],<sup>880</sup> [REDACTED] where P-0341 was expected to meet [REDACTED].<sup>881</sup> [REDACTED] had told P-0341 that because P-0341 [REDACTED] [REDACTED] wanted to meet him [REDACTED] [REDACTED],<sup>882</sup> [REDACTED] [REDACTED].<sup>883</sup>

260. Once at [REDACTED] P-0341 proceeded to GICHERU [REDACTED] where he saw and greeted [REDACTED],<sup>884</sup> before being met by [REDACTED] who had walked out of GICHERU [REDACTED] to escort P-0341 back in.<sup>885</sup> Already present in the room were GICHERU himself, [REDACTED],<sup>886</sup> together with a group of other individuals from [REDACTED], including P-0397.<sup>887</sup> [REDACTED] recognized P-0341 and told him the individuals present [REDACTED] [REDACTED]<sup>888</sup> and [REDACTED].<sup>889</sup>

261. The individuals from [REDACTED] left the room and [REDACTED] GICHERU, [REDACTED] and [REDACTED] stayed on.<sup>890</sup> P-0341 was taken aback when [REDACTED] whom P-0341

<sup>878</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0260-0262, paras. 26-33.

<sup>879</sup> [REDACTED]. P-0341, T-53, p. 44, lns. 6-7, p. 52, lns. 7-10; [KEN-OTP-0159-1985](#) at 1988; [KEN-OTP-0150-0255-R01](#) at 0268-0278, paras. 70, 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.

<sup>880</sup> P-0341, T-53, p. 48, lns. 14-15, p. 49, lns. 19-23.

<sup>881</sup> P-0341, T-53, p. 44, lns. 6-11, p. 46, ln. 23 to p. 47, ln. 17, p. 49, ln. 25 to p. 50, ln. 2, p. 52, ln. 7 to p. 53, ln. 2, p. 53, lns. 15-22; [KEN-OTP-0150-0255-R01](#) at 0263, paras. 37-41; [KEN-OTP-0160-1436](#).

<sup>882</sup> P-0341, T-53, p. 44, lns. 6-9, p. 46, lns. 23-25, p. 48, lns. 18-23.

<sup>883</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0266, para. 57; *see also* T-53, p. 68, ln. 21.

<sup>884</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0263, para. 42. *See also*, T-54, p. 23, ln. 13 to p. 24, ln. 9.

<sup>885</sup> P-0341, T-53, p. 47, lns. 1-2, p. 54, lns. 5-14, p. 55, lns. 11-14, p. 56, lns. 3-5.

<sup>886</sup> P-0341, T-53, p. 47, lns. 1-14, p. 53, lns. 15-16, p. 54, lns. 5-24, p. 55, lns. 11-15, p. 57, lns. 22-25; [KEN-OTP-0150-0255-R01](#) at 0264, paras. 43-47.

<sup>887</sup> P-0341, T-53, p. 54, lns. 5-18, p. 57, lns. 7-11; [KEN-OTP-0150-0255-R01](#) at 0263, para. 43.

<sup>888</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0264, para. 46.

<sup>889</sup> P-0341, T-53, p. 47, lns. 5-10; [KEN-OTP-0150-0255-R01](#) at 0264, para. 46; [KEN-OTP-0160-1571](#) at 1572.

<sup>890</sup> P-0341, T-53, p. 47, lns. 13-14; [KEN-OTP-0150-0255-R01](#) at 0264, para. 44.

had never met before, pointed a finger at him and stated that “he knew [P-0341] very well”.<sup>891</sup> They asked whether P-0341 was an ICC witness, to which P-0341 responded he was just a victim.<sup>892</sup>

262. [REDACTED] then directed P-0341 to [REDACTED]  
[REDACTED]<sup>893</sup>  
P-0341 understood these words to mean that he should not become a witness if asked to by the ICC and should not go to any more meetings relating to the ICC.<sup>894</sup>

263. GICHERU, [REDACTED] also asked P-0341 to approach perceived ICC witnesses in Kenya and abroad to convince them to withdraw from the case,<sup>895</sup> notably [REDACTED].<sup>896</sup> P-0341 later told [REDACTED] that [REDACTED] wanted to meet him.<sup>897</sup> P-0341 was also asked whether P-0274 qualified to be a witness<sup>898</sup> and to bring him to GICHERU [REDACTED].<sup>899</sup>

264. [REDACTED] he had discussed with RUTO,<sup>900</sup> and that now P-0341 had “[REDACTED]  
[REDACTED]”,<sup>901</sup> [REDACTED]  
[REDACTED]”,<sup>902</sup> The meeting ended with [REDACTED] giving P-0341 10,000 KSh as petty cash<sup>903</sup> and GICHERU scheduling another appointment with P-0341.<sup>904</sup>

265. On a day between [REDACTED] April 2013 and [REDACTED] May 2013, P-0341 returned to GICHERU [REDACTED] and was informed that RUTO had agreed to pay him 2,000,000 KSh, give him a car, farms and a plot of land in town, and said [REDACTED] in

<sup>891</sup> P-0341, T-53, p. 47, lns. 14-15; [KEN-OTP-0150-0255-R01](#) at 0264, para. 44.

<sup>892</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0264, para. 47.

<sup>893</sup> P-0341, T-53, p. 58, lns. 7-11; T-54, p. 6, lns. 13-15; [KEN-OTP-0150-0255-R01](#) at 0264, para. 47.

<sup>894</sup> P-0341, T-53, p. 59, ln. 4 to p. 60, ln. 2, p. 68, lns. 2-4; [KEN-OTP-0150-0255-R01](#) at 0264, paras. 47-48.

<sup>895</sup> P-0341, T-54, p. 6, lns. 16-17; [KEN-OTP-0150-0255-R01](#) at 0265, para. 50.

<sup>896</sup> P-0341, T-54, p. 6, ln. 16 to p. 8, ln. 13; [KEN-OTP-0150-0255-R01](#) at 0265, paras. 50, 52; [KEN-OTP-0159-1803-R01](#) at 1819, lns. 537-553. [REDACTED]

<sup>897</sup> P-0341, T-54, p. 6, ln. 25 to p. 8, ln. 18.

<sup>898</sup> P-0341, T-54, p. 79, lns. 19-21.

<sup>899</sup> P-0341, T-54, p. 78, ln. 15 to p. 79, ln. 6.

<sup>900</sup> P-0341, T-53, p. 47, lns. 19-21; [KEN-OTP-0150-0255-R01](#) at 0265, para. 53.

<sup>901</sup> P-0341, T-53, p. 47, lns. 19-25, p. 58, lns. 11-13.

<sup>902</sup> P-0341, T-53, p. 47, lns. 22-25.

<sup>903</sup> P-0341, T-53, p. 47, lns. 20-21, p. 48, lns. 4-5, p. 60, lns. 11-14, p. 67, lns.7-11.

<sup>904</sup> P-0341, T-53, p. 60, lns. 16-19; [KEN-OTP-0150-0255-R01](#) at 0265, para. 53.

exchange for P-0341's withdrawal.<sup>905</sup> GICHERU reminded P-0341 to no longer attend victims' meetings,<sup>906</sup> but P-0341 in fact subsequently continued to do so.<sup>907</sup> GICHERU also entered his own number in P-0341's mobile phone and saved it under the name "Paulo".<sup>908</sup>

266. On a day between [REDACTED] April 2013 and [REDACTED] May 2013, GICHERU summonsed P-0341 to his office. GICHERU called an advocate by the name of [REDACTED]<sup>909</sup> [REDACTED] [REDACTED] affidavit.<sup>910</sup> GICHERU asked P-0341 to sign the document and told him "with this you are out of ICC".<sup>911</sup> [REDACTED] [REDACTED].<sup>912</sup> GICHERU said that P-0341 should not [REDACTED].<sup>913</sup> P-0341 did not receive a copy of the document he signed.<sup>914</sup> GICHERU also requested that P-0341 announce his withdrawal to the media, [REDACTED] had done before him.<sup>915</sup> Unwilling, P-0341 stalled for some time, but GICHERU pressed P-0341, saying that RUTO had asked him "many times" why this had not occurred yet.<sup>916</sup>

267. On [REDACTED] May 2013, GICHERU paid P-0341 500,000 KSh and told him he would be given the rest later.<sup>917</sup> GICHERU instructed him not to deposit the money in the bank because "ICC people" could inspect those records.<sup>918</sup> Despite this admonition, P-0341 opened an

<sup>905</sup> P-0341, T-53, p. 65, lns. 12-20, p. 69, lns. 2-14, p. 70, lns. 20-23, p.73, lns. 18-20, p. 74, lns. 1-12.

<sup>906</sup> P-0341, T-53, p. 60, lns. 5-8.

<sup>907</sup> P-0341, T-53, p. 60, lns. 3-8; [KEN-OTP-0150-0255-R01](#) at 0265, para. 53.

<sup>908</sup> P-0341, T-53, p. 71, lns. 11-15; T-54, p. 19, ln. 18 to p. 21, ln. 5; [KEN-OTP-0150-0255-R01](#) at 0266, para. 55; [KEN-OTP-0155-4982](#). The contact number in question – [REDACTED] – is the same number listed as part of GICHERU's office letterhead in [KEN-OTP-0095-0739](#) (first page, top left), in correspondence received from GICHERU

<sup>909</sup> 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 0171 (Nr. 58), 0181 (Nr. 70).

<sup>910</sup> P-0341, T-53, p. 74, ln. 17 to p. 75, ln. 23; [KEN-OTP-0150-0255-R01](#) at 0268, para. 68.

<sup>911</sup> P-0341, T-53, p. 75, lns. 3, 22-23, p. 81, lns. 4-12; T-54, p. 32, lns. 6-23; [KEN-OTP-0150-0255-R01](#) at 0268, para. 68.

<sup>912</sup> P-0341, T-53, p. 74, ln. 24 to p. 75, lns. 3, 16-19.

<sup>913</sup> P-0341, T-53, p. 76, lns. 1-12; [KEN-OTP-0150-0255-R01](#) at 0268, para. 68.

<sup>914</sup> P-0341, T-53, p. 75, lns. 1-3; T-54, p. 43, lns. 21-23; [KEN-OTP-0150-0255-R01](#) at 0268, para. 68.

<sup>915</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 70. See also, P-0739, T-66, p. 65, ln. 22 to p. 66, ln. 3, p. 67, ln. 15 to p. 69, ln. 11; T-68, p. 25, ln. 1 to p. 34, ln. 17, p. 39, ln. 16 to p. 40, ln. 6, p. 41, ln. 24 to p. 44, ln. 2, p. 99, ln. 2 to p. 100, ln. 18.

<sup>916</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 70.

<sup>917</sup> P-0341, T-053, p. 81, ln. 13 to p. 82, ln. 2; [KEN-OTP-0150-0255-R01](#) at 0267, paras. 62-63.

<sup>918</sup> P-0341, T-53, p. 82, lns. 1-6; [KEN-OTP-0150-0255-R01](#) at 0267, para. 63.



account [REDACTED] and deposited 300,000 KSh.<sup>919</sup> P-0341 spent the remaining 200,000 KSh.<sup>920</sup> Between 2 and 7 May 2013, P-0341 contacted [REDACTED] and informed them that he had received money in exchange for not attending ICC meetings.<sup>921</sup>

268. On [REDACTED] May 2013, GICHERU summonsed P-0341 to his office and paid him 500,000 KSh.<sup>922</sup> P-0341 deposited 300,000 KSh into his bank account and kept 200,000 KSh for [REDACTED].<sup>923</sup>

269. One day between 9 May and 19 July 2013, GICHERU summonsed P-0341 [REDACTED] and asked him to draft a handwritten affidavit.<sup>924</sup> He said that RUTO had requested this additional document.<sup>925</sup> GICHERU instructed P-0341 to write that he had no evidence against RUTO and that he was withdrawing from the ICC proceedings.<sup>926</sup> P-0341 complied because he was afraid for his family if he refused.<sup>927</sup> He never received a copy.<sup>928</sup> A couple of days later, GICHERU informed P-0341 that RUTO was pleased when he received the affidavit, and had instructed GICHERU to pay P-0341 more money.<sup>929</sup>

270. Between [REDACTED] July 2013 and [REDACTED] April 2014, GICHERU paid P-0341 no less than 1,000,000 KSh, which P-0341 then deposited on his bank account.<sup>930</sup> GICHERU did so directly, by handing out P-0341 cash money [REDACTED]<sup>931</sup> or at other designated locations

<sup>919</sup> P-0341, T-53, p. 65, lns. 22-24, p. 82, lns. 14-19; T-54, p. 23, lns. 3-10; [KEN-OTP-0150-0255-R01](#) at 0267, paras. 64-65; [KEN-OTP-0159-1386](#) at 1386, *see also* [KEN-OTP-0147-2132](#).

<sup>920</sup> P-0341, T-53, p. 65, lns. 22-24; [KEN-OTP-0150-0255-R01](#) at 0267, para. 65.

<sup>921</sup> P-0341, T-54, p. 26, ln. 4 to p. 27, ln. 9; [KEN-OTP-0150-0255-R01](#) at 0258, 0267-0268, paras. 15, 66-67.

<sup>922</sup> P-0341, T-53, p. 83, ln. 17 to p. 84, ln. 7; [KEN-OTP-0150-0255-R01](#) at 0269, paras. 71-72.

<sup>923</sup> P-0341, T-53, p. 84, lns. 6-7; T-54, p. 23, lns. 3-10; [KEN-OTP-0150-0255-R01](#) at 0269, para. 73; [KEN-OTP-0159-1386](#) at 1386.

<sup>924</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0269, para. 74. *See also*, T-53, p. 76, lns. 8-16.

<sup>925</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0269, para. 74.

<sup>926</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0269, para. 75.

<sup>927</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0269-0270, paras. 75-76.

<sup>928</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0269, para. 75.

<sup>929</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0269-0270, paras. 75, 77.

<sup>930</sup> P-0341, T-53, p. 62, lns. 14-15, p. 63, ln. 1, p. 65, lns. 12-16, 22-23, p. 81, ln. 16 to p. 82, ln. 4, p. 84, lns. 6-7, 17-18, p. 85, lns. 22-25, p. 86, lns. 4-8, p. 87, lns. 15-17, p. 87, ln. 25 to p. 88, ln. 3, [KEN-OTP-0150-0255-R01](#) at 0270, 0271, 0274, 0275, paras. 78-79, 88, 99-101, 106-108; [KEN-OTP-0159-1386](#), *see also* [KEN-OTP-0147-2132](#).

<sup>931</sup> P-0341, T-53, p. 62, lns. 12-15, p. 71, lns. 11-12, p. 81, lns. 16-23, p. 86, lns. 4-8, [KEN-OTP-0150-0255-R01](#) at 0270, paras. 78-79.

██████████,<sup>932</sup> or via ██████████.<sup>933</sup> GICHERU started making payments to P-0341 through ██████████ because he was nervous about being monitored by Prosecution investigators.<sup>934</sup>

271. Over time and further to his interactions with ██████████ P-0341 grew increasingly fearful for his life.<sup>935</sup>

272. Around October 2013, ██████████ ██████████. He was very reluctant to meet her because of GICHERU's previous threats.<sup>936</sup> ██████████ ██████████.<sup>937</sup> He told ██████████ he had been paid in exchange for withdrawing from the ICC process.<sup>938</sup> ██████████<sup>939</sup> A week later, GICHERU summonsed P-0341.<sup>940</sup> GICHERU accused him of meeting ICC Prosecution individuals.<sup>941</sup> P-0341 responded that he only met ██████████.<sup>942</sup>

273. After depositing the money on █ April 2014, P-0341 departed to meet with OTP investigators in ██████████. ██████████

██████████<sup>943</sup> ██████████  
██████████  
██████████<sup>944</sup> ██████████

<sup>932</sup> P-0341, T-53, p. 84, lns. 17-23, p. 85, lns. 11-19, p. 86, lns. 11-13, p. 87, lns. 15-16; T-54, p. 11, ln. 20 to p. 12, ln. 19, p. 19, lns. 3-11 [KEN-OTP-0150-0255-R01](#) at 0274-0275 paras. 99-101, 106-108.

<sup>933</sup> P-0341, T-53, p. 85, lns. 13-14, 17-19, 22-23, p. 84, lns. 13-20, p. 86, lns. 2-14; T-54, p. 11, ln. 20 to p. 12, ln. 19, p. 19, lns. 3-11, [KEN-OTP-0150-0255-R01](#) at 0271, 0274, paras. 83, 88, 99-101. *Contra* GICHERU, [KEN-OTP-0159-0736](#) at 0760, ln. 806 to 0761, ln. 829.

<sup>934</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, para. 84, *see also* T-53, p. 85, lns. 19-21.

<sup>935</sup> P-0341, T-54, p. 15, ln. 15 to p. 16, ln. 9.

<sup>936</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0272, para. 92; [KEN-OTP-0160-1571](#) at 1572.

<sup>937</sup> P-0341, T-53, p. 85, lns. 6-7; T-54, p. 9, ln. 6 to p. 10, ln. 13; [KEN-OTP-0150-0255-R01](#) at 0272, para. 92; [KEN-OTP-0160-1571](#) at 1572.

<sup>938</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0272-0273, paras. 92-93; [KEN-OTP-0160-1571](#) at 1572; *see also* T-54, p. 9, lns. 12-14; [KEN-OTP-0150-0289-R01](#).

<sup>939</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0272, para. 92; [KEN-OTP-0160-1571](#) at 1572.

<sup>940</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0273, paras. 94-95; [KEN-OTP-0160-1571](#) at 1572, 1573.

<sup>941</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0273, para. 96.

<sup>942</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0273, para. 96.

<sup>943</sup> P-0341, T-53, p. 77, lns. 15-18; T-54, p. 35, lns. 19-21; [KEN-OTP-0150-0255-R01](#) at 0258-0259, 0275, paras. 15-17, 109-110; [KEN-OTP-0160-1571](#) at 1573; [KEN-OTP-0160-1436](#) at 1436.

<sup>944</sup> P-0341, T-53, p. 77, lns. 5-6, 18; T-54, p. 68, lns. 19-23; [KEN-OTP-0150-0255-R01](#) at 0259, 0275 paras. 17, 109-111; [KEN-OTP-0160-1436](#).

[REDACTED]

[REDACTED]<sup>945</sup>

274. [REDACTED]<sup>946</sup> [REDACTED]<sup>947</sup> [REDACTED]  
 [REDACTED]<sup>948</sup> [REDACTED]<sup>949</sup>  
 [REDACTED]  
 [REDACTED]<sup>950</sup> [REDACTED] threatened P-0341, saying: [REDACTED]  
 [REDACTED]<sup>951</sup> [REDACTED]  
 [REDACTED]<sup>952</sup> [REDACTED] but P-0341 never did so.<sup>953</sup>

*iii. Analysis of evidence related to the Seventh Incident*

275. P-0341's testimony proves beyond reasonable doubt that GICHERU paid him approximately 2,000,000 KSh, but in any event, no less than 1,000,000 KSh,<sup>954</sup> and offered him other financial inducements in exchange for P-0341 ceasing all cooperation with the Court in connection with the *Ruto and Sang* case.

276. In his testimony, P-0341 provided a coherent and reliable account of his interactions with GICHERU and his associates during the relevant period, which is consistent with the general pattern of them approaching and corrupting Prosecution Witnesses in the *Ruto and Sang* case.<sup>955</sup>

<sup>945</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0275, para. 111.

<sup>946</sup> P-0341, T-53, p. 78, ln. 19 to p. 79, ln. 3; [KEN-OTP-0150-0255-R01](#) at 0275-0276, para. 112; [KEN-OTP-0160-1436](#) at 1437.

<sup>947</sup> Referred to as [REDACTED], see P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 70: "[...] [REDACTED] [REDACTED] at 0278, paras. 126-127.

<sup>948</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0276, para. 112; [KEN-OTP-0160-1436](#) at 1437.

<sup>949</sup> P-0341, T-054, p. 21, lns. 11-15. Compare [KEN-OTP-0150-0255-R01](#) at 0276, para. 112; [KEN-OTP-0160-1436](#) at 1437.

<sup>950</sup> P-0341, T-53, p. 79, lns. 13-18; [KEN-OTP-0150-0255-R01](#) at 0276, para. 112.

<sup>951</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0276, para. 113; see also T-54, p. 22, lns. 6-7. P-0397 disappeared on 8 March 2014, see *supra* para. 114.

<sup>952</sup> P-0341, T-54, p. 22, lns. 18-21; [KEN-OTP-0150-0255-R01](#) at 0276, para. 113; [KEN-OTP-0160-1436](#) at 1437.

<sup>953</sup> P-0341, T-53, p. 76, lns. 18-22, p. 78, lns. 22-24; [KEN-OTP-0150-0255-R01](#) at 0276, para. 113; [KEN-OTP-0160-1436](#) at 1437.

<sup>954</sup> P-0341, T-53, p. 85, lns. 24-25; [KEN-OTP-0150-0255-R01](#) at 0277, para. 117; [KEN-OTP-0159-1386](#).

<sup>955</sup> P-0739, T-66, p. 31, lns. 7-19, p. 35, lns. 7-15; P-0397/GICHERU, [KEN-OTP-0160-0833](#) at 0839, lns. 156-168; P-0397, [KEN-OTP-0159-1309-R01](#) at 1314, ln. 121 to 1315, ln. 158; [KEN-OTP-0159-1338-R01](#) at 1342, ln. 96 to 1343, ln. 129; P-0739: T-66, p. 105, lns. 1-18; P-0613, T-55, pp. 48-49 and p. 66, lns. 12-21; [KEN-OTP-0115-0216-R01](#) at 0222, paras. 29-30 [KEN-OTP-0111-0162](#) at 0169, para. 36; P-0613/[REDACTED], [KEN-OTP-0160-](#)

277. P-0341's testimony is corroborated by contemporaneous bank and phone records,<sup>956</sup> [REDACTED]<sup>957</sup> documentary<sup>958</sup> as well as other witness evidence.<sup>959</sup> Regarding the large sums of money in his bank statements, P-0341 explained that they could only have come from GICHERU [REDACTED] as he "had no [any] other source of income that could earn money to be deposited into this account".<sup>960</sup>

278. Further indicia of P-0341's reliability are, *inter alia*, (i) the details he provided regarding the members of the Common Plan and Associates, their contributions to the Common Plan and overall *modus operandi*, which are all corroborated by the evidence of other witnesses;<sup>961</sup> (ii) P-0341 candidly admitting – against his own interest – not only to have accepted bribe money, but also to having initially requested GICHERU to be paid more;<sup>962</sup> and (iii) P-0341 spontaneously and repeatedly contacting ICC staff members [REDACTED], just after receiving the first amount of money from GICHERU, as well as the [REDACTED].<sup>963</sup>

279. The Defence's attempt to discredit the witness by suggesting that he falsely implicated GICHERU in order to be interviewed as a witness by the OTP as a springboard to access and benefit from [REDACTED], is speculative and unsupported by evidence.<sup>964</sup> So too are other attempts by the Defence to undermine P-0341's credibility,<sup>965</sup> such as suggesting that P-0341 never communicated with GICHERU by phone as there were no relevant call data

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[1349](#); **P-0800**, [KEN-OTP-0111-0140](#) at 0148, para. 45; **P-0341**, T-53, p. 47, lns. 5-10; [KEN-OTP-0150-0255-R01](#) at 0264, para. 46; **P-0397/GICHERU**, [KEN-OTP-0160-0833](#) at 0837, lns. 86-93, 0838, lns. 109-111; [KEN-OTP-0159-1588-R01](#) at 1618, ln. 992 to 1619, ln. 1031, 1018, ln. 1002 to 1619, ln. 1030; [KEN-OTP-0160-0853](#) at 0855, lns. 12-15; P-0397, [KEN-OTP-0159-1232-R01](#) at 1235, ln. 60 to 1236, ln. 82; [KEN-OTP-0159-1309-R01](#) at 1311, ln. 20 to 1312, ln. 44, at 1313, lns. 84-92, at 1314, lns. 105-120, 1332, lns. 778-793; [KEN-OTP-0159-1338-R01](#) at 1355, ln. 572 to 1356, ln. 585. **GICHERU**, [KEN-OTP-0159-0795](#) at 0804, ln. 303 to 0806, ln. 353; **P-0739**, T-66, p. 46, ln. 20 to p. 49, ln. 13. *See supra* sections C. III. iv. and IV. iv.

<sup>956</sup> [KEN-OTP-0159-1386](#); [KEN-OTP-0155-4982](#).

<sup>957</sup> [KEN-OTP-0150-0289-R01](#); [KEN-OTP-0150-0285-R01](#).

<sup>958</sup> [KEN-OTP-0150-0288-R01](#); [KEN-OTP-0152-0091-R01](#).

<sup>959</sup> **P-0274**, T-58, p. 48, lns. 22-25.

<sup>960</sup> **P-0341**, T-53, p. 88, lns. 22-24.

<sup>961</sup> For instance, attempts to conceal the offence: P-0397, [KEN-OTP-0159-1309-R01](#) at 1314, lns. 105-114, at 1315, lns. 140-158; [KEN-OTP-0159-1533-R01](#) at 1559, lns. 885-890. **P-0613/[REDACTED]**, [KEN-OTP-0160-1349](#) at 1354; **P-0613/P-0495**, [KEN-OTP-0160-1126](#) at 1131, lns. 112-116; **P-0341**, T-53, p. 71, lns. 4-5, p. 74, lns. 21-22; **P-0739**, T-66, p. 66, lns. 7-18, p. 85, lns. 3-5.

<sup>962</sup> **P-0341**, T-53, p. 69, lns. 9-14, p. 70, lns. 13-19, p. 74, lns. 4-7.

<sup>963</sup> **P-0341**, [KEN-OTP-0150-0255-R01](#), at 0258, 0268, 0269, 0274, paras. 15, 66, 76, 104; **P-0730**, [KEN-OTP-0159-0884](#) at 0944, para. 245, [KEN-OTP-0153-0028](#).

<sup>964</sup> **P-0341**, T-54, p. 52, ln. 8 to p. 61, ln. 10, p. 81, ln. 20 to p. 82, ln. 2.

<sup>965</sup> **P-0341**, T-54, p. 36, ln. 18 to p. 37, ln. 5, p. 41, ln. 6 to p. 44, ln. 8.

records on the SIM or mobile phone seized from P-0341.<sup>966</sup> In this respect, the witness provided ample explanations justifying the absence of this data from his phone, such as that on occasion he used his SIM card on a different mobile device or that he might have removed the battery from his own device.<sup>967</sup> These explanations are consistent with the fact that the mobile phone in question was a basic model and was collected, together with the SIM card, only on 26 February 2015,<sup>968</sup> some ten months after P-0341 had received the last payment from GICHERU.<sup>969</sup>

280. Furthermore, the Defence's challenge of P-0341 on his status ( [REDACTED] ) of victim or witness in the *Ruto and Sang* proceedings<sup>970</sup> is irrelevant since, for the purposes of article 70(1)(c), "witness" includes *potential* witnesses, as held by the Appeals Chamber<sup>971</sup> The evidence shows that P-0341 was an [REDACTED]<sup>972</sup> in Kenya and that Common Plan Members, including GICHERU, knew that P-0341 was participating in [REDACTED] meetings. As such, they regarded him as an individual who may possess relevant information and *could* be approached by the OTP to become a witness in the *Ruto and Sang* case by the mere fact of him having been in contact with the Court.<sup>973</sup> Whether the OTP had contacted P-0341 or not is immaterial for the purpose of establishing the commission of the relevant offence.

281. Finally, the Prosecution acknowledges that P-0341 denied having facilitated GICHERU's plan to interfere with Prosecution Witness P-0274 by bringing him to his office,<sup>974</sup> in direct contradiction with P-0274's testimony on this point.<sup>975</sup> However, this should not cast doubt on the credibility of P-0341 as a whole, or lead to his entire evidence being rejected. As indicated above, a Chamber may reject one part of the testimony of a

<sup>966</sup> **P-0341**, T-54, p. 37, ln. 10 to p. 39, ln. 2, p. 40, ln. 18 to p. 41, ln. 4, p. 73, ln. 12 to p. 75, ln. 19.

<sup>967</sup> **P-0341**, T-53, p. 71, lns. 16-20, p. 72, ln. 25 to p. 73, ln. 5; T-54, p. 38, ln. 23 to p. 39, ln. 2, p. 74, lns. 3-13.

<sup>968</sup> [KEN-OTP-0150-0300](#); [KEN-OTP-0150-0298-R01](#).

<sup>969</sup> **P-0730**, T-61, p. 33, ln. 10 to p. 34, ln. 1.

<sup>970</sup> **P-0341**, T-54, p. 45, ln. 16 to p. 52, ln. 7, p. 82, lns. 3-18.

<sup>971</sup> *Bemba et al.* AJ, para. 721: "(...) In the view of the Appeals Chamber, the offence under article 70(1) (c) of the Statute is committed when the perpetrator corruptly influences 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".

<sup>972</sup> **P-0341**, T-53, p. 38, ln. 22 to p. 39, ln. 22, p. 40, lns. 18-21, p. 42, lns. 2-14.

<sup>973</sup> **P-0341**, T-53, p. 49, lns. 19-23, p. 59, ln. 14 to p. 60, ln. 2, p. 76, lns. 1-3.

<sup>974</sup> **P-0341**, T-54, p. 78, ln. 22 to p. 79, ln. 11, lns. 16-18; [KEN-OTP-0159-1803-R01](#) at 1823, lns. 693-694.

<sup>975</sup> **P-0274**, T-58, p. 48, lns. 12-13, p. 60, ln. 23 to p. 61, ln. 5, p. 62, ln. 2; T-59, p. 77, lns. 8, 16-19.

witness, while relying on another part.<sup>976</sup> While P-0341 would have had a clear interest to protect himself from potential prosecution by denying his participation in the furtherance of the criminal activities of the corruption scheme, this does not mean that he should be disbelieved where – to the contrary – he admits accepting bribes.

282. P-0341's evidence on the existence of the Common Plan, the actions of its members and GICHERU's responsibility have remained consistent and are independently corroborated in essential details, and as such can safely be relied upon by the Chamber. Moreover, P-0341 acknowledged having been asked by GICHERU about P-0274 [REDACTED] status and having discussed ICC-related matters with him,<sup>977</sup> consistent with P-0247's testimony.<sup>978</sup>

*iv. GICHERU's individual criminal responsibility*

283. The evidence described above establishes beyond a reasonable doubt that GICHERU, jointly with [REDACTED] and others, approached and corrupted P-0341 as part of the Common Plan.<sup>979</sup> The Prosecution therefore submits that GICHERU's individual criminal responsibility is best characterized as **direct perpetrator** under article 25(3)(a), and/or as a **co-perpetrator** since these actions were carried out in furtherance of the Common Plan. Accordingly, these two modes are specifically addressed below. However, the evidence would also support conviction under any of the other charged modes of liability, as outlined in the Trial Brief.<sup>980</sup>

284. The material facts common to all incidents set out in Part B. I above are incorporated *mutatis mutandis*.

285. The evidence proves beyond reasonable doubt that GICHERU performed the following specific acts in relation to the Seventh Incident:

- a) At some stage prior to [REDACTED] April 2013, GICHERU solicited or induced, and subsequently paid, [REDACTED] to locate P-0341 and bring him to GICHERU [REDACTED] [REDACTED] Kenya, [REDACTED]<sup>981</sup>

<sup>976</sup> *Ngudjolo* AJ, para. 168; *Bemba et al.* TJ, paras. 202, 204. See also *Popović et al.* AJ, para. 1243, n. 3265 and references cited therein.

<sup>977</sup> **P-0341**, T-54, p. 79, lns. 19-23.

<sup>978</sup> **P-0274**, T-58, p. 60, ln. 23 to p. 61, ln. 7.

<sup>979</sup> See *supra* paras. 258-274.

<sup>980</sup> Trial Brief, paras. 304-311.

<sup>981</sup> **P-0341**, T-53, p. 44, lns. 6-11, p. 46, ln. 23 to p. 47, ln. 4, p. 50, lns. 1-14; [KEN-OTP-0150-0255-R01](#) at 0262-0263, 0266, paras. 36-41, 57.

- b) On [REDACTED] April 2013, GICHERU met P-0341 at [REDACTED]<sup>982</sup> together with [REDACTED].<sup>983</sup> At this meeting P-0341 was asked to withdraw as a witness, 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.<sup>984</sup> In exchange, P-0341 was promised everything he wanted.<sup>985</sup>
- c) Between [REDACTED] April 2013 and [REDACTED] April 2014, GICHERU paid P-0341 between 1,000,000 and 2,000,000 KSh and offered him other financial inducements, such as a car, property and [REDACTED].<sup>986</sup> GICHERU met with P-0341 on several occasions and paid him cash instalments of the promised Bribe, which P-0341 then deposited in his bank account. GICHERU paid P-0341 directly, at [REDACTED] or at other designated locations in [REDACTED], or via Common Plan Associate, [REDACTED].
- d) Between [REDACTED] May 2013, GICHERU called P-0341 [REDACTED] and asked him to sign an affidavit to withdraw from the ICC, [REDACTED].<sup>987</sup>
- 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.<sup>988</sup>
- f) 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],<sup>989</sup> (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.<sup>990</sup>

<sup>982</sup> P-0341, T-53, p. 53, ln. 15 to p. 54, ln. 24; [KEN-OTP-0150-0255-R01](#) at 0263, paras. 37-39.

<sup>983</sup> P-0341, T-53, p. 54, lns. 9-24; [KEN-OTP-0150-0255-R01](#) at 0263-0264, paras. 43-45.

<sup>984</sup> P-0341, T-53, p. 58, ln. 9 to p. 59, ln. 18; T-54, p. 6, ln. 7 to p. 8, ln. 18, p. 79, lns. 19-23; [KEN-OTP-0150-0255-R01](#) at 0264-0265, paras. 47, 50-52.

<sup>985</sup> P-0341, T-53, p. 58, lns. 12-16.

<sup>986</sup> P-0341, T-53, p. 65, lns. 12-16, p. 69, lns. 2-7, p. 74, lns. 4-7; [KEN-OTP-0150-0255-R01](#) at 0265, para. 49.

<sup>987</sup> P-0341, T-53, p. 74, ln. 17 to p. 75, ln. 23; [KEN-OTP-0150-0255-R01](#) at 0268, para. 68.

<sup>988</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0269-0270, paras. 74-77.

<sup>989</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, para. 52.

<sup>990</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0271, paras. 86-88, *compare with* T-54, p. 13, ln. 17.

286. Based on the above specific acts described in paragraphs a) to f), GICHERU is criminally responsible as a **direct perpetrator** and/or as a **co-perpetrator** as a result of his essential contributions to the Common Plan.<sup>991</sup> 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.

287. The subjective elements of both direct perpetration and co-perpetration<sup>992</sup> may be inferred from the relevant facts, in Part B. I. ii. and vi. and paragraphs a) to f) above.

288. Accordingly, The Prosecution submits that the evidence establishes beyond reasonable doubt that GICHERU is criminally responsible for the Seventh Incident under articles 25(3)(a), or in the alternative (b), (c) or (d), as outlined in the Trial Brief.<sup>993</sup>

## VIII. Eighth Incident: Corruptly influencing Witness P-0274<sup>994</sup>

### *i. Introduction*

289. [REDACTED] (“P-0274”) [REDACTED]<sup>995</sup> [REDACTED]  
[REDACTED]<sup>996</sup> [REDACTED]  
[REDACTED].

290. P-0274 is a [REDACTED] from [REDACTED] who was attacked during the PEV in 2007 for supporting the PNU.<sup>997</sup> [REDACTED].<sup>998</sup> [REDACTED]  
[REDACTED]  
[REDACTED]<sup>999</sup> [REDACTED]<sup>1000</sup> 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

<sup>991</sup> As set out in Part B. I. ii. and paragraphs a) to f) above.

<sup>992</sup> As set out in paras. 299-300 of the Trial Brief.

<sup>993</sup> Trial Brief, paras. 299-311.

<sup>994</sup> Confirmation Decision, paras. 155-165, disposition.

<sup>995</sup> P-0274, T-58, p. 39, lns. 8-15.

<sup>996</sup> [REDACTED].

<sup>997</sup> P-0274, [KEN-OTP-0159-1997-R01](#) at 2000-2001, *see also* T-58, p. 39, lns. 14-15.

<sup>998</sup> P-0274, T-58, p. 72, lns. 10-15; [KEN-OTP-0159-1997-R01](#) at 2000-2001.

<sup>999</sup> P-0274, T-58, p. 40, lns. 7-24.

<sup>1000</sup> P-0274, [REDACTED]; T-54, p. 39, lns. 12-23; [REDACTED].



*Ruto and Sang* case. P-0274 was therefore a potential witness in the *Ruto and Sang* case for the purpose of article 70 proceedings.<sup>1001</sup>

291. From April or May 2012 to 2014, [REDACTED], Kenya, GICHERU, [REDACTED] and others corruptly influenced P-0274 by (i) promising him at least 500,000 KSh to withdraw as a victim from the *Ruto and Sang* case; (ii) intimidating and threatening him; and (iii) requesting him to locate, contact and/or corruptly influence Prosecution Witnesses.

*ii. Corruptly influencing P-0274*

292. [REDACTED], P-0274 participated in [REDACTED].<sup>1002</sup> He received several direct threats and was extremely concerned about his and his family's safety.<sup>1003</sup>

293. [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 to not provide information against RUTO to the ICC, and to be left in peace.<sup>1004</sup> P-0341 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.<sup>1005</sup>

294. Towards the end of 2013, P-0274 attended GICHERU [REDACTED],<sup>1006</sup> where P-0274 recognised [REDACTED] among other people present [REDACTED] of GICHERU [REDACTED].<sup>1007</sup> Once in his presence, GICHERU explained to P-0274 that paying witnesses so that they would stop assisting the ICC is "how we do it".<sup>1008</sup> GICHERU

<sup>1001</sup> *Bemba et al.* AJ, para. 721.

<sup>1002</sup> **P-0274**, T-58, p. 40, ln. 7-24; [REDACTED], T-59, p. 14, lns. 9-17, p. 31, lns. 3-5.

<sup>1003</sup> **P-0274**, T-58, p. 42, ln. 9 to p. 43, ln. 1, p. 72, lns. 1-7, p. 80, lns. 2-3; T-59, p. 6, lns. 6-11, p. 31, lns. 17-24, p. 42, ln. 12 to p. 44, ln. 9, p. 47, ln. 9 to p. 48, ln. 1, lns. 21-25; **P-0341**, [KEN-OTP-0150-0255-R01](#) at 0279, para. 133. *See also*, [KEN-OTP-0107-0565](#), at 0575-0576, lns. 351-372 and lns. 399-408.

<sup>1004</sup> **P-0274**, T-58, p. 48, lns. 22-25, p. 60, ln. 23 to p. 61, ln. 6; **P-0341**, [KEN-OTP-0159-1803-R01](#) at 1820-1821, lns. 582-633.

<sup>1005</sup> **P-0274**, T-58, p. 61, lns. 15-25, p. 62, lns. 1-5. *Contra* **P-0341**, [KEN-OTP-0159-1803-R01](#) at 1825, ln. 755 to 1826, ln. 793, at 1828, lns. 865-878; [KEN-OTP-0159-1833](#) at 1836, lns. 106-107.

<sup>1006</sup> P-0274 alleges he was taken there by P-0341, although the latter denies this. *See* **P-0274**, T-58, p. 48, ln. 12-49, ln. 1, p. 60, ln. 23 to p. 61, ln. 5, p. 62, ln. 2; T-59, p. 77, lns. 16-19; *contra*: **P-0341**, T-54, p. 78, ln. 22 to p. 79, ln. 11, lns. 16-18; [KEN-OTP-0159-1803-R01](#) at 1818, lns. 508-510, 526-527, at 1823, lns. 693-694.

<sup>1007</sup> **P-0274**, T-58, p. 57, ln. 25 to p. 58, ln. 5, p. 62, lns. 18-21, p. 63, lns. 2-9.

<sup>1008</sup> **P-0274**, T-58, p. 50, ln. 4; *See also*, T-58, p. 50, lns. 3-9, p. 51, lns. 7-17, p. 52, lns. 6-7.

said they needed to reach everyone involved in the *Ruto and Sang* case, and that “the boss, *Mkubwa*”, which P-0274 understood to mean RUTO, wanted “no stone left unturned”.<sup>1009</sup>

295. GICHERU told P-0274 that he would pay him 500,000 KSh if he stopped engaging with the ICC and withdrew from the proceedings.<sup>1010</sup> GICHERU asked P-0274 to approach other witnesses, and promised that he would give him more money if P-0274 will assist in locating other witnesses.<sup>1011</sup> GICHERU then gave P-0274 10,000 KSh transport money<sup>1012</sup> and handed him a piece of paper with his (GICHERU’s) mobile phone number.<sup>1013</sup>

296. Several days later, [REDACTED] phoned P-0274 and asked him to meet with GICHERU.<sup>1014</sup> Scared, P-0274 switched off his phone and did not attend the meeting.<sup>1015</sup> When P-0274 turned the phone back on, he saw that he had a missed call.<sup>1016</sup> The number was the same one that GICHERU handed to P-0274 on a piece of paper.<sup>1017</sup>

297. A couple of weeks after P-0274 met with GICHERU, [REDACTED] called P-0274 on his phone and offered him 1,000,000 KSh to approach [REDACTED], P-0356.<sup>1018</sup>

298. In [REDACTED], P-0274 and his family were relocated by the ICC.<sup>1019</sup>

### *iii. Analysis of the evidence related to the Eighth Incident*

299. The evidence presented at trial proves beyond reasonable doubt that GICHERU corruptly influenced P-0274. P-0274 provided a credible, consistent and detailed account of how he was brought to GICHERU and offered a bribe by him in order to withdraw from any involvement in the *Ruto and Sang* case and to assist in locating other Prosecution

<sup>1009</sup> P-0274, T-58, p. 52, lns. 6-7, p. 51, lns. 7-19.

<sup>1010</sup> P-0274, T-58, p. 50, lns. 3-18, p. 51, lns. 1-2.

<sup>1011</sup> P-0274, T-58, p. 50, lns. 19-21, p. 51, ln. 4, p. 52, lns. 6-8.

<sup>1012</sup> P-0274, T-58, p. 54, lns. 5-6; P-0341, [KEN-OTP-0159-1803-R01](#) at 1828, lns. 884-885.

<sup>1013</sup> P-0274, T-58, p. 50, lns. 11-13.

<sup>1014</sup> P-0274, T-58, p. 53, lns. 13-17, p. 54, lns. 23-24, p. 55, lns. 11-24.

<sup>1015</sup> P-0274, T-58, p. 56, lns. 1-5, p. 60, lns. 15-18.

<sup>1016</sup> P-0274, T-58, p. 56, lns. 6-12.

<sup>1017</sup> P-0274, T-58, p. 54, lns. 23-24.

<sup>1018</sup> P-0274, T-58, p. 59, lns. 8-24. *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. In T-54, p. 13, lns. 12-13, P-0341 states that [REDACTED] asked him several times about P-0356. P-0356 was a Prosecution witness in the *Ruto and Sang* case.

<sup>1019</sup> P-0274, T-58, p. 85, lns. 13-23.

Witnesses. P-0274's testimony is fully consistent with the general pattern of the Common Plan.

300. Notwithstanding P-0341's denial that he physically accompanied P-0274 to GICHERU's office on the day P-0274's met with GICHERU,<sup>1020</sup> P-0341's account provides significant corroboration to P-0274's testimony. In particular, P-0341 stated that GICHERU told him that he (GICHERU) promised money to P-0274 for bringing him P-0356.<sup>1021</sup> P-0341 further stated that GICHERU asked him to bring P-0274 to meet with GICHERU.<sup>1022</sup> P-0341 stated that he was aware that P-0274 met with GICHERU and that, while he did not know the details of the conversation between P-0274 and GICHERU, P-0274 told him that he received 10,000 KSh from GICHERU in that meeting and that P-0274 was to meet GICHERU another time.<sup>1023</sup>

301. Moreover, the Defence's suggestion that P-0274 wished to be a witness in order to benefit financially and to be relocated to a "first world country"<sup>1024</sup> are unsubstantiated and speculative. P-0274 consistently explained that he never wished to be an ICC witness.<sup>1025</sup> P-0274 maintained that, above all, his main concern was the physical safety and security of himself and his family.<sup>1026</sup> This is consistent with his evidence that he was subject to multiple threats<sup>1027</sup> and that he had initially agreed to accept a bribe from GICHERU because he was persuaded that this would bring safety to his family.<sup>1028</sup> His extreme distress due to his security concerns is evident from his [REDACTED]  
[REDACTED].<sup>1029</sup> To the extent that the Defence may suggest that this was a motive for P-0274 to falsely incriminate GICHERU, this is also inconsistent with the fact that P-0274 only gave

<sup>1020</sup> P-0341, T-54, p. 78, lns. 16-22, p. 79, lns. 16-18, p. 80, lns. 5-7.

<sup>1021</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0268, para. 69; *contra* P-0341, T-54, p. 18, lns. 17-23.

<sup>1022</sup> P-0341, T-54, p. 78, lns. 17-22, p. 79, lns. 18-20; [KEN-OTP-0150-0255-R01](#) at 0265, para. 51, and at 0266, para. 60.

<sup>1023</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0280, para. 134.

<sup>1024</sup> P-0274, T-58, p. 97, lns. 3-14, p. 98, lns. 15-20.

<sup>1025</sup> P-0274, T-58, p. 92, lns. 6-14; T-59, p. 79, lns. 10-11.

<sup>1026</sup> P-0274, T-58, p. 80, lns. 2-15, p. 97, ln. 7 to p. 99, ln. 3, p. 102, lns. 1-3, p. 106, lns. 14-24, p. 107, lns. 3-4; T-59, p. 11, lns. 11-20, p. 79, lns. 17-19.

<sup>1027</sup> P-0274, T-58, p. 42, lns. 9-21, p. 72, lns. 1-9, p. 80, lns. 2-3; T-59, p. 6, lns. 6-11, p. 31, lns. 17-24, p. 42, ln. 12 to p. 44, ln. 9, p. 47, lns. 9-25, p. 48, lns. 21-25.

<sup>1028</sup> P-0274, T-58, p. 52, ln. 22 to p. 53, ln. 4; T-59, p. 39, lns. 7-13. P-0274 later decided to cut ties with GICHERU and did not go to accept the promised bribe due to fear for his safety. P-0274, T-58, p. 52, lns. 24-25, p. 53, lns. 1-4, p. 56, lns. 1-5, p. 60, lns. 15-18; T-59, p. 54, lns. 18-20.

<sup>1029</sup> [KEN-OTP-0148-0140](#); [KEN-OTP-0148-0141-R01](#); [KEN-OTP-0150-0617-R01](#); [KEN-OTP-0150-1011-R01](#).

his statement to the OTP in February 2021,<sup>1030</sup> long after he had already been [REDACTED]  
[REDACTED].<sup>1031</sup> GICHERU's Individual Criminal Responsibility

*iv. GICHERU's individual criminal responsibility*

302. The evidence described above clearly establishes that GICHERU, jointly with [REDACTED] and others, approached and corrupted P-0274 as part of the Common Plan.<sup>1032</sup> The Prosecution therefore submits that GICHERU's individual criminal responsibility is best characterized as **direct perpetrator** under article 25(3)(a), and/or as a **co-perpetrator** since these actions were carried out in furtherance of the Common Plan. Accordingly, these two modes are specifically addressed below. However, the evidence also supports his conviction under any of the other charged modes of liability, as outlined in the Trial Brief.<sup>1033</sup>
303. The material facts common to all incidents set out in Part B. I. above are incorporated *mutatis mutandis*.
304. 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 told P-0341 that he (GICHERU) and others preferred to pay witnesses to stop them from cooperating with the ICC and directed P-0341 to locate, approach and bring P-0274 to his office.<sup>1034</sup>
  - b) Towards the end of 2013, at his office in Eldoret, GICHERU promised to pay P-0274 500,000 KSh to stop engaging with the ICC, withdraw from the *Ruto and Sang* case,<sup>1035</sup> and that he would pay him additional sums of money for locating and approaching other Prosecution Witnesses.<sup>1036</sup>
305. GICHERU is criminally responsible as a **direct perpetrator** as a result of the specific acts described in paragraphs a) and b) above; and/or as a **co-perpetrator** as a result of his essential contributions to the Common Plan.<sup>1037</sup> GICHERU is thus criminally responsible

<sup>1030</sup> P-0274, T-59, p. 26, lns. 17-22.

<sup>1031</sup> P-0274, T-58, p. 85, lns. 13-20.

<sup>1032</sup> See *supra* paras. 292-297.

<sup>1033</sup> Trial Brief, paras. 332-338.

<sup>1034</sup> P-0341, [KEN-OTP-0150-0255-R01](#) at 0265, paras. 51, 59-60, see also T-54, p. 79, lns. 19-21.

<sup>1035</sup> P-0274, T-58, p. 50, lns. 3-18, p. 51, lns. 1-2.

<sup>1036</sup> P-0274, T-58, p. 50, lns. 19-21, p. 51, ln. 4, p. 52, lns. 6-8.

<sup>1037</sup> As set out in Part B. I. ii. and paragraphs a) and b) above.

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.

306. The subjective elements of both direct perpetration and co-perpetration<sup>1038</sup> may be inferred from the material facts described in Part B. I. ii. and vi. and paragraphs a) and b) above.

307. Accordingly, The Prosecution submits that the evidence establishes beyond reasonable doubt that GICHERU is criminally responsible for the Eighth Incident under articles 25(3)(a), or in the alternative (b), or (c) or (d), as outlined in the Trial Brief.<sup>1039</sup>

## D. ANALYSIS OF THE DEFENCE CASE THEORY

308. In the face of the Prosecution's evidence establishing the guilt of the Accused beyond reasonable doubt, the Defence has not produced any controverting evidence capable of disturbing that conclusion. Instead, it advances speculative theories based on possible inferences to be drawn from the Prosecution's evidence and other material disclosed to the Defence. However, these alleged inferences are irreconcilable with the body of direct and circumstantial evidence produced by the Prosecution, viewed holistically, and cannot be accepted as *reasonable* inferences.

309. The Prosecution and Defence were unable to reach any agreement on evidence in terms of rule 69 and thus all facts alleged in the DCC were placed in dispute. The Accused pleaded not guilty to all Charges, but declined to elaborate on the basis of his defence and elected not to make any opening statement. Nor was the Defence's case theory put to the Prosecution witnesses in any detail. The practical result of this "stonewall" defence is that the Prosecution is left in the dark as to the Defence's explanation, if any, for much of the evidence presented by the Prosecution.

310. Given the paucity of information on the Defence's case theory, the Prosecution will reserve a detailed response for its oral arguments. However, suffice to say for now that the Defence's conspiracy theories are speculative and unsupported by any acceptable evidence.

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<sup>1038</sup> As set out in paras. 328-329 of the Trial Brief.

<sup>1039</sup> Trial Brief, paras. 328-338.

311. The following themes can however be discerned from the cross examination of Prosecution witnesses:

- a) The Prosecution witnesses, other than P-0738, are untruthful and their evidence incapable of belief.
- b) The Prosecution witnesses colluded to falsely incriminate the Accused in order to benefit from the ICC witness protection programme, or to assist other witnesses to benefit from it.
- c) The OPC recordings were faked – in collusion with the interlocutors ██████████ ██████████ – in order to substantiate the witnesses’ false claims of witness interference.

312. However, the only evidence of actual collusion to falsely incriminate GICHERU that the Defence was able to confront any of the Prosecution witnesses with was the testimony of P-0495 in *Ruto and Sang* to the effect that ██████████ instructed him to implicate GICHERU during their recorded meeting ██████████ on ██████████ September 2013. However, P-0495 was a hostile witness who was impeached in the *Ruto and Sang* case and whose evidence is incapable of belief. His claims of having been coached – including by members of the Prosecution – were transparently false, and rightly rejected by the PTC.<sup>1040</sup>

313. In particular, the suggestion that the OPC recordings were staged or scripted in collusion with the alleged Intermediaries is fanciful in the extreme. It is inconsistent with the contents of the recordings themselves<sup>1041</sup> and with the fact that large sums of money were actually received and deposited by two of the witnesses. Such a concerted effort to falsify evidence would also require a level of criminal sophistication that is completely at odds with the profile of the witnesses concerned. It would require consistent coordination between the persons alleged to be responsible from diverse locations across the world and over a period of seven years, even persisting well after the supposed rewards had been received.

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<sup>1040</sup> Confirmation Decision, paras. 122-123. Even the Defence counsel for RUTO disavowed these claims, *see* T-17, p. 85, ln. 19 to p. 86, ln. 2; ICC-01/09-01/20-203-Conf, para. 137. This is a matter of record of which the Chamber may take judicial notice.

<sup>1041</sup> In which the Intermediaries and Associates are often guarded in their statements regarding the corruption scheme and those involved, talk about irrelevant issues and incriminate themselves of criminal offences—thereby placing themselves at risk of arrest—and in the case of P-0495 and ██████████ then facilitating the possibility of such arrest by travelling to ██████████ and planning to travel to ██████████.

314. Additionally, the theory that the Accused is the innocent victim of a conspiracy to falsely incriminate him, as appears to be suggested by the Defence, is inconsistent with several items of evidence sourced independently of the witnesses or from the Accused himself, such as his phone contacts, admissions made during his article 55(2) interview and his audio-recorded phone conversation with P-0397, for which no reasonable explanations have been forthcoming from the Accused.

315. Finally, in considering whether the Accused may have been falsely implicated, it is instructive to analyse his responses to certain evidence that was put to him during his voluntary interview under caution with the Prosecution in 2018:

- a) The Accused confirmed various biographical and contact details<sup>1042</sup> and the fact that he retained some of the contacts details from the SIM card that he was using at the relevant time.<sup>1043</sup>
- b) The Accused initially denied having ever heard of ICC witness P-0397 or having any dealings with him.<sup>1044</sup> When confronted with a recording of a phone conversation between P-0397 and himself, he initially claimed that he did not recall the telephone call and that he was not able to recognise his own voice.<sup>1045</sup> Only when confronted with the fact that the call was made to his mobile phone [REDACTED] did he concede the possibility that it could be his voice.<sup>1046</sup> GICHERU ultimately had to admit that “[p]robably he was a client”<sup>1047</sup> and that he may have acted for him in a land transaction.<sup>1048</sup> However, despite conceding that his firm would have had records of P-0397 if he were in fact a client,<sup>1049</sup> the Accused has not produced before this Court any documents reflecting the nature of his business dealings with P-0397. GICHERU was also unable to explain why, when he received calls from P-0397 on his mobile phone, he called him back using a different number ([REDACTED]).<sup>1050</sup> All of the above

<sup>1042</sup> GICHERU, [KEN-OTP-0159-0736](#) at 0737, ln. 14 to 0748, ln. 379; [KEN-OTP-0159-0795](#) at 0802, lns. 217-224.

<sup>1043</sup> GICHERU, [KEN-OTP-0159-0736](#) at 0748, lns. 380-387.

<sup>1044</sup> GICHERU, [KEN-OTP-0159-0766](#) at 0787, lns. 692-721.

<sup>1045</sup> GICHERU, [KEN-OTP-0159-0766](#) at 0788, ln. 728 to 0789, ln. 773.

<sup>1046</sup> GICHERU, [KEN-OTP-0159-0766](#) at 0790, lns. 792-807.

<sup>1047</sup> GICHERU, [KEN-OTP-0159-0795](#) at 0799, lns. 106-108.

<sup>1048</sup> GICHERU, [KEN-OTP-0159-0815](#) at 0817, ln. 63 to 0819, ln. 116.

<sup>1049</sup> GICHERU, [KEN-OTP-0159-0795](#) at 0799, lns. 111-114; 0801, lns. 183-189; [KEN-OTP-0159-0815](#) at 0818, lns. 96-97.

<sup>1050</sup> GICHERU, [KEN-OTP-0159-0795](#) at 0796, ln. 31 to 0797, ln. 62.

clearly demonstrates that the Accused was evasive and disingenuous regarding his relationship with P-0397, which supports the conclusion that they were involved in illegal activity, as alleged.

- c) The Accused initially categorically denied knowing YEBEI.<sup>1051</sup> However, after being confronted with the recorded call with P-0397, GICHERU admitted not only that he knew YEBEI,<sup>1052</sup> but that he knew YEBEI was alleged to be [REDACTED],<sup>1053</sup> that YEBEI had attended his office, that YEBEI was a relative of [REDACTED]<sup>1054</sup> and that he had been interviewed [REDACTED]<sup>1055</sup>.

316. The Accused's evasiveness and mendacity on these issues and his overall demeanour during the interview are factors that the Chamber may properly consider when deciding whether his denial of any involvement in the witness interference scheme is reasonably possibly true.

317. In sum, no theory, innuendo or evidence advanced by the Defence raises any *reasonable* doubt that GICHERU was in fact personally involved in the corrupt influencing of the eight witnesses who are the subject of the confirmed Charges.

## E. CONCLUSION

318. The evidence before the Chamber, considered and weighed in its totality, establishes beyond reasonable doubt that Paul GICHERU is guilty of the Charges confirmed by PTC A (Article 70),<sup>1056</sup> specifically of corruptly influencing witnesses through bribery, intimidation, or a combination of both, contrary to article 70(1)(c), as a direct perpetrator (Counts 1, 2, 4, 7 and 8 only) and/or as a co-perpetrator (Counts 1-8) pursuant to article 25(3)(a); or alternatively by soliciting or inducing these offences pursuant to article 25(3)(b) (Counts 1-8); or by aiding, abetting or otherwise assisting in the commission of these offences pursuant to article 25(3)(c) (Counts 1-8); or by contributing, in any other

<sup>1051</sup> GICHERU, [KEN-OTP-0159-0766](#) at 0784, ln. 607 to 0785, ln. 636.

<sup>1052</sup> GICHERU, [KEN-OTP-0159-0795](#) at 0808, lns. 428-436.

<sup>1053</sup> GICHERU, [KEN-OTP-0159-0795](#) at 0810, lns. 487-491.

<sup>1054</sup> GICHERU, [KEN-OTP-0159-0815](#) at 0822, ln. 243 to 0824, ln. 303

<sup>1055</sup> GICHERU, [KEN-OTP-0159-0795](#) at 0808, ln. 434 to 0809, ln. 458; [KEN-OTP-0159-0815](#) at 0827, lns. 386-408.

<sup>1056</sup> Confirmation Decision, pp. 78-81.



way, to the commission of these offences pursuant to article 25(3)(d) of the Statute (Counts 1-8).



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**Ms Nazhat Shameen Khan, Deputy Prosecutor**

Dated this 25<sup>th</sup> day of July 2023

At The Hague, The Netherlands